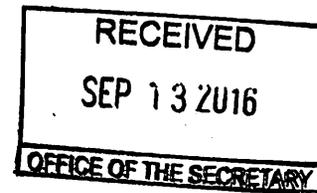


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16937

In the Matter of

JAMES MICHAEL MURRAY,

Respondent.

DECLARATION OF JASON M. HABERMEYER IN SUPPORT OF DIVISION OF
ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST
RESPONDENT JAMES MICHAEL MURRAY

DECLARATION OF JASON M. HABERMEYER

I, Jason M. Habermeyer, declare:

1. I am an attorney duly admitted to practice in the State of California. I am a Trial Counsel in the San Francisco Regional Office of the United States Securities and Exchange Commission. I am the attorney with primary responsibility for litigating this administrative proceeding. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify as follows:

2. I am informed and aware of the criminal proceeding against Respondent James Michael Murray in an action titled *United States v. Murray*, No. 12-CR-0278 (EMC) (hereafter the "criminal trial"). Voir dire began in the criminal trial on September 21, 2015, and the jury returned a verdict three weeks later on October 13, 2015.

3. I subsequently caused our office to request from the court reporter a copy of all of the transcripts from the criminal trial. I also caused our office to request from the United States Attorney's Office a copy of all of the admitted exhibits from the criminal trial, and those exhibits were received on approximately December 3, 2015. The exhibits referenced in the accompanying Memorandum of Law in Support of the Division's Motion for Summary Disposition are each described below.

4. Exhibit A is a true and correct copy of Volume 1 of the transcript of the criminal trial proceedings, dated September 22, 2015.

5. Exhibit B is a true and correct copy of Volume 2 of the transcript of the criminal trial proceedings, dated September 24, 2015.

6. Exhibit C is a true and correct copy of Volume 3 of the transcript of the criminal trial proceedings, dated September 25, 2015.

7. Exhibit D is a true and correct copy of Volume 4 of the transcript of the criminal trial proceedings, dated September 28, 2015.

8. Exhibit E is a true and correct copy of Volume 5 of the transcript of the criminal trial proceedings, dated September 29, 2015.

9. Exhibit F is a true and correct copy of Volume 6 of the transcript of the criminal trial proceedings, dated September 30, 2015.

10. Exhibit G is a true and correct copy of Volume 7 of the transcript of the criminal trial proceedings, dated October 2, 2015.

11. Exhibit H is a true and correct copy of Volume 8 of the transcript of the criminal trial proceedings, dated October 5, 2015.

12. Exhibit I is a true and correct copy of Volume 9 of the transcript of the criminal trial proceedings, dated October 6, 2015.

13. Exhibit J is a true and correct copy of Volume 10 of the transcript of the criminal trial proceedings, dated October 7, 2015.

14. Exhibit K is a true and correct copy of Volume 11 of the transcript of the criminal trial proceedings, dated October 9, 2015.

15. Exhibit L is a true and correct copy of Volume 12 of the transcript of the criminal trial proceedings, dated October 13, 2015.

16. Exhibit M is a true and correct copy of excerpts of the transcript of the SEC investigative testimony of James Michael Murray, dated February 23, 2011.

17. Exhibit N is a true and correct copy of Exhibit 159 at the criminal trial, which was admitted on September 25, 2015, and is an email, with attachments, dated August 12, 2010 from James Murray to Paul Eckel (Bates numbered JM-035254 - JM-035321).

18. Exhibit O is a true and correct copy of Exhibit 160 at the criminal trial, which was admitted on September 25, 2015, and is an email, with an attachment, dated August 12, 2010 from James Murray to Paul Eckel (Bates numbered JM-035230 - JM-035253).

19. Exhibit P is a true and correct copy of excerpts of Exhibit 141 at the criminal trial, which was admitted on September 25, 2015, and is a report from third-party administrator CCS Financial Services containing the performance data for Market Neutral Trading, LLC as of January 31, 2009 (Bates numbered JM-SEC-0000345 - JM-SEC-0000354).

20. Exhibit Q is a true and correct copy of Exhibit 158 at the criminal trial, which was admitted on September 25, 2015, and is an email, with attachments, dated July 15, 2010 (Bates numbered JM-035223 – JM035229).

21. Exhibit R is a true and correct copy of excerpts of Exhibit 140 at the criminal trial, which was admitted on September 25, 2015, and is a report from third-party administrator CCS Financial Services containing the performance data for Market Neutral Trading, LLC as of December 31, 2009 (Bates numbered JM-SEC-0000738, JM-SEC-0000748).

22. Exhibit S is a true and correct copy of excerpts of Exhibit 102 at the criminal trial, which was admitted on September 29, 2015, and is a series of photographs and evidence taken by the United States Secret Service during a November 3, 2011 search of James Michael Murray's residence in Larkspur, California (Bates numbered JM-034562 – JM-034563; JM-034565 – JM-034573; JM-034576; JM-034578 – JM-034580; JM-034601 – JM-034602; JM-034604; JM-034607; JM-034611; JM-034614; JM-034618; JM-034634).

23. Exhibit T is a true and correct copy of excerpts of Exhibit 40 at the criminal trial, which is the transcript of the April 9, 2015 videotaped deposition of David Lowe, which was

played for the jury during the September 29-30 proceedings (Bates numbered JM-034813 – JM-034823; JM-034827; JM-034832 – JM-034835; JM-035000 – JM-035002).

24. Exhibit U is a true and correct copy of Exhibit 390 at the criminal trial, which was admitted on October 2, 2015, and is a summary exhibit reflecting Chase Paymentech fund transfers to Anderson & Associates Ltd. accounts at Fidelity and Merrill Lynch.

25. Exhibit V is a true and correct copy of Exhibit 391 at the criminal trial, which was admitted on October 2, 2015, and is a summary exhibit reflecting a cash flow analysis of Netflix short sale proceeds.

26. Exhibit W is a true and correct copy of a Criminal Complaint filed by the United States against James Murray on February 16, 2012 (ECF Docket No. 1).

27. Exhibit X is a true and correct copy of the returned February 16, 2012 arrest warrant for the arrest of James Murray, dated March 14, 2012 (ECF Docket No. 4).

28. Exhibit Y is a true and correct copy of a Fourth Superseding Indictment filed by the United States against James Murray on March 17, 2015 (ECF Docket No. 203).

29. Exhibit Z is a true and correct copy of the Verdict Form signed by the jury foreperson in the criminal trial, dated October 13, 2015 (ECF Docket No. 310).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was signed in San Francisco, California on January 22, 2016.

By: 
JASON M. HABERMEYER

Volume 1
Pages 1 - 206

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDWARD M. CHEN

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) NO. CR 12-0278 EMC
JAMES MURRAY,) San Francisco, California
Defendant.) Tuesday
September 22, 2015
8:15 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:
For Plaintiff: MELINDA HAAG
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: ROBIN HARRIS, AUSA
LLOYD FARNHAM, AUSA

For Defendant: ALAN A. DRESSLER, ESQ.
400 Montgomery Street
Suite 200
San Francisco, California 94104

Also Present: USSS AGENT ANTHONY SIMS, JR.
FBI AGENT BRIAN C. WEBER

Reported By: Debra L. Pas, CSR 11916, CRR, RMR
Belle Ball, CSR 8785, CRR, RMR
Official Reporters - US District Court

PROCEEDINGS

1
2 SEPTEMBER 22, 2015 8:25 A.M.
3 (Defendant present, in custody.)
4 (Proceedings held in open court, outside the presence
5 and hearing of the jury.)
6 THE COURT: We're on the record. I want to raise a
7 couple of procedural things.
8 One is, given the number of witnesses, I think I am going
9 to adopt Judge Illston's technique of having a photo taken of
10 each witness, which we will then download and I guess print as
11 best we can -- I don't even know if we have a color printer --
12 and keep a binder or something that we can give the jury later
13 so they can remember who each person -- at least what the face
14 looks like.
15 I can explain to them: Don't take anything from the
16 angle, you know, we don't guarantee that these are going to be
17 beautiful portraits or anything, but just to get the idea.
18 So unless there is an objection to that, I think that
19 would be helpful for the jury.
20 MS. HARRIS: That's a good idea, Your Honor.
21 MR. DRESSLER: That's fine.
22 MS. HARRIS: We are good with that.
23 THE COURT: Now, if you have a camera or something
24 that you'd like to do, but right now Betty and I are just going
25 to use the iPhone and upload it.

1 MS. HARRIS: That's fine.
2 MR. DRESSLER: I'm the worst picture taker in the
3 world.
4 THE CLERK: I tested it, it works.
5 THE COURT: Okay. So Betty is pretty good at that.
6 The second thing I want to bring to your attention, I have
7 a question. In reading the witness list yesterday I notice a
8 name that is maybe coincidental. There's a Scott Greenberg.
9 MS. HARRIS: Yes.
10 THE COURT: There is a Dr. Greenberg that lives in my
11 neighborhood.
12 MS. HARRIS: This is a financial guy who lives
13 part-time in the U.S. Virgin Islands. I don't think it's the
14 same one.
15 THE COURT: He may be a relative, he may be the son,
16 because I know that they have kids, daughters and sons, and
17 I've heard the name. I don't know him.
18 MS. HARRIS: He lives in San Anselmo, Your Honor.
19 Would that --
20 THE COURT: I wouldn't even know that. But there is
21 a possibility -- I just want to bring to your attention that
22 this may be a relative of a neighbor.
23 MS. HARRIS: Oh, that's interesting. We have no
24 issue with it. He's been told the courtroom, and he didn't say
25 to us that he knew you.

1 THE COURT: Okay. He probably doesn't know me.
2 Because I don't know if I've ever met him. But to the extent
3 that --
4 MR. DRESSLER: I don't have a problem, Your Honor.
5 THE COURT: Okay. I don't know if it's the same
6 person, but the name sounds familiar. I know that they've got
7 kids.
8 MR. DRESSLER: I had a conversation with the U.S.
9 Attorney this morning. And on Corinna Seibt, there's one
10 exhibit that they have agreed not to attempt to offer.
11 MS. HARRIS: That is correct, Your Honor.
12 THE COURT: Which one is that? What is that?
13 MS. HARRIS: I believe it's Exhibit --
14 MR. DRESSLER: I think it's 221.
15 THE COURT: Okay.
16 MS. HARRIS: We will not be offering that.
17 MR. DRESSLER: We both know what we're talking about.
18 THE COURT: Okay. All right. All right.
19 MR. DRESSLER: I have one other thing.
20 THE COURT: Yeah.
21 MR. DRESSLER: There's a document -- I was at the
22 jail last night with Mr. Murray until relatively late hours.
23 And we were trying to find a possible impeachment document.
24 And, we didn't have time to continue our search.
25 I have a computer that is not connected -- that I don't

1 even know how to connect it to the internet, Your Honor. And I
 2 was hoping that maybe during their opening statement, I have in
 3 there one of the CDs that contains some SEC discovery. If he
 4 could just scroll through it?

5 THE COURT: In other words, as a demonstrative?
 6 MR. DRESSLER: No, I just want him to -- we're
 7 looking for a document possibly to impeach one of the witnesses
 8 here today. We couldn't --

9 THE COURT: Oh, so you need a computer to show it to
 10 your client.

11 MR. DRESSLER: I have a computer and I have the disk
 12 in there that we think it's in.

13 THE COURT: Yeah.

14 MR. DRESSLER: And I want him to, during their
 15 opening statement -- not that he's not going to be listening to
 16 it, but see if he can find this document for me.

17 THE COURT: Oh. So you are wondering whether there
 18 is any objection to your client going through a computer as you
 19 are talking?

20 MR. DRESSLER: It's kind of a sensitive issue, him
 21 using a computer.

22 THE COURT: Oh, for that purpose.

23 MR. DRESSLER: So I wanted to just -- just bring it
 24 up.

25 THE COURT: If it's in the courtroom I don't have any

1 objection.

2 MS. HARRIS: As long as it isn't noisy or distracting
 3 during the opening.

4 MR. DRESSLER: No.

5 THE COURT: I think your concern is my order that he
 6 not have access to the internet. And I'm assuming that that's
 7 not going to be a problem in here.

8 MR. DRESSLER: Thank you.

9 MS. HARRIS: We had one issue.

10 THE COURT: Yeah.

11 MS. HARRIS: We have several exhibits that we have a
 12 stipulation for.

13 Do you want us to move for their admission in front of the
 14 jury, or to do it now and we just have the record that they are
 15 admitted, and we can use them with the exhibits?

16 THE COURT: Well, if you have stipulated to
 17 admission, as long as you move formally at some point, whether
 18 in or outside the jury, that's fine. If we can save time by
 19 doing it outside the jury, that way you don't have to go
 20 through "I formally move" and all that sort of stuff. Once you
 21 publish it, just say, "Exhibit X has been admitted."

22 MS. HARRIS: Okay.

23 MR. DRESSLER: I agree on that.

24 THE COURT: Yeah, let's do whatever we can to save
 25 time. As I mentioned yesterday I'm concerned about time,

1 because we have realistically a little over 50 hours of
 2 testimony, maybe 55 -- I've done the numbers. And you've got
 3 about 70-something.

4 So, I don't know if you're still going to call all these
 5 witnesses and whether your times are conservative, but if you
 6 do, we are going to run into a problem. So, just keep that in
 7 mind.

8 MS. HARRIS: Okay.

9 MR. DRESSLER: We will talk twice as fast,
 10 Your Honor.

11 THE COURT: Good, excellent. And really, anything
 12 that you want to stipulate to outside the presence of the jury
 13 is, get it all done, get it in the record. Just make sure
 14 there's been a record, that it's been admitted.

15 MS. HARRIS: Thank you.

16 THE COURT: All right. Are they all here?

17 THE CLERK: They are all here.

18 MR. DRESSLER: Off the record, Your Honor?
 19 (Off-the-Record discussion)
 20 (The following proceedings were held in the presence
 21 of the Jury)

22 THE CLERK: All rise for the jury. Please be seated.

23 THE COURT: Okay. Good morning, ladies and
 24 gentlemen. Appreciate your promptness. We are going to
 25 commence the trial now, and I'm going to first give you a few

1 preliminary instructions.

2 PRELIMINARY JURY INSTRUCTIONS

3 THE COURT: Jurors, you are now the jury in this
 4 case, and I want to take a few minutes to tell you something
 5 about your duty as jurors, and to give you some preliminary
 6 instructions. At the end of the trial I will give you more
 7 detailed written instructions that will control your
 8 deliberations.

9 When you deliberate it will be your duty to weigh and
 10 evaluate all the evidence received in this case, and in that
 11 process, to decide the facts. To the facts as you find them,
 12 you will apply the law as I give it to you, whether you agree
 13 with the law or not.

14 You must decide the case solely on the evidence, and the
 15 law before you, and must not be influenced by any personal
 16 likes or dislikes, opinions, prejudices or sympathy.

17 Please do not take anything I may say or do during the
 18 trial as indicating what I think of the evidence or what your
 19 verdict should be. That is entirely up to you.

20 Charge in the presumption of innocence. This is a
 21 criminal case brought by the United States Government. The
 22 Government charges the Defendant with 16 counts of wire fraud,
 23 four counts of money laundering, two counts of aggravated
 24 identity theft, and one count of contempt of court.

25 The charges against the Defendant are contained in the

1 indictment. The indictment simply describes the charges the
2 Government brings against the Defendant. The indictment is not
3 evidence, and does not prove anything. The Defendant has
4 pleaded not guilty to the charges, and is presumed innocent
5 unless and until the Government proves the Defendant guilty
6 beyond a reasonable doubt. In addition, the Defendant has a
7 right to remain silent and never has to prove innocence or
8 present any evidence.

9 What is evidence? The evidence you are to consider in
10 deciding what the facts are consists of: One, the sworn
11 testimony of any witness; two, the exhibits which are received
12 in evidence; and three, any facts to which the parties agree.

13 What is not evidence? The following things are not
14 evidence, and you must not consider them as evidence in
15 deciding the facts of the case: Number one, statements and
16 arguments of the attorneys; two, questions and objections of
17 the attorneys; three, testimony that I instruct you to
18 disregard; four, anything you may see or hear when court is not
19 in session, even if what you see or hear is done or said by one
20 of the parties or by one of the witnesses.

21 Direct and circumstantial evidence. Evidence may be
22 direct or circumstantial. Direct evidence is direct proof of a
23 fact such as testimony by a witness about what that witness
24 personally saw or heard or did. Circumstantial evidence is
25 indirect evidence. That is it is proof of one or more facts

1 from which one can find another fact.

2 By way of example, if you wake up in the morning and you
3 see the sidewalk is wet, you may find from that fact that it
4 rained during the night. However, other evidence such as a
5 turned-on garden hose may provide an explanation for the water
6 on the sidewalk.

7 Therefore, before you decide that a fact has been proved
8 by circumstantial evidence, you must consider all the evidence
9 in the light of reason, experience, and common sense. You are
10 to consider both direct and circumstantial evidence. Either
11 may be used to prove any fact. The law makes no distinction
12 between the weight to be given to either direct or
13 circumstantial evidence. It is for you to decide how much
14 weight to give to any evidence.

15 Ruling on objections. There are Rules of Evidence that
16 control what can be received in evidence. When a lawyer asks a
17 question, or offers an exhibit in evidence, and a lawyer on the
18 other side thinks that it is not permitted by the Rules of
19 Evidence, that lawyer may object. If I overrule the objection,
20 the question may be answered or the exhibit received.

21 When I sustain the objection, the answer -- the question
22 cannot be answered or the exhibit cannot be received.

23 Whenever I sustain an objection to a question, you must
24 ignore the question and must not guess what the answer would
25 have been. Sometimes I may order that evidence be stricken

1 from the record and that you disregard or ignore the evidence.
2 That means when you are deciding the case, you must not
3 consider the evidence I told you to disregard.

4 Credibility of witnesses. In deciding the facts in this
5 case, you may have to decide which testimony to believe, and
6 which testimony not to believe. You may believe everything a
7 witness says, or part of it, or none of it. In considering the
8 testimony of any witness, you may take into account: One, the
9 witness's opportunity and ability to see or hear or know the
10 things testified to; two, the witness's memory; three, the
11 witness's manner while testifying; four, the witness's interest
12 in the outcome of the case, if any; five, the witness's bias or
13 prejudice, if any; six, whether other evidence contradicted the
14 witness's testimony; seven, the reasonableness of the witness's
15 testimony in light of all the evidence; eight, any other
16 factors that bear on believability.

17 The weight of the evidence as to a fact does not
18 necessarily depend on the number of witnesses who testify about
19 it.

20 Conduct of the jury. Now I will say a few words about
21 your conduct as jurors. First, keep an open mind throughout
22 the trial, and do not decide what the verdict should be until
23 you and your fellow jurors have completed your deliberations at
24 the end of the case.

25 Second, because you must decide this case based on the

1 evidence received in the case and on my instructions as to the
2 law that applies, you must not be exposed to any other
3 information about the case or to the issues it involves during
4 the course of your jury duty.

5 Thus, until the end of the case, or unless I tell you
6 otherwise, do not communicate with anyone in any way, and do
7 not let anyone else communicate with you in any way about the
8 merits of the case or anything to do with it.

9 This includes discussing the case in person, in writing,
10 by telephone or electronic means, via email, text message,
11 Internet chatroom, blog, website or other feature. This
12 applies to communicating with your fellow jurors, until I give
13 you the case for deliberation. And it applies to communicating
14 with everyone else, including family members, your employer,
15 the media or press and the people involved in the trial.
16 Although, you may notify your family and your employer that you
17 have been seated as a juror in the case. But if asked, if you
18 are asked or approached in any way about your jury service or
19 anything about the case, you must respond that you have been
20 ordered not to discuss the matter and to report that contact to
21 the Court.

22 Because you will receive all the evidence and legal
23 instructions you may properly consider to return a verdict, do
24 not read, watch or listen to any news or media accounts or
25 commentary about the case or anything to do with it. Do not do

1 any research such as consulting dictionaries, searching the
 2 internet or using other reference materials, and do not make
 3 any investigation or in any other way try to learn about the
 4 case on your own. The law requires these restrictions to
 5 ensure the parties have a fair trial, based on the same
 6 evidence that each party has had an opportunity to address.
 7 A juror who violates these restrictions jeopardizes the
 8 fairness of these proceedings, and a mistrial could result that
 9 would require the entire trial process to start all over.
 10 If any juror is exposed to any outside information, please
 11 notify the Court immediately.
 12 No transcript available. At the end of the trial, you
 13 will have to make your decisions based on what you recall of
 14 the evidence. You will not be given a written transcript of
 15 the trial, so I urge you to pay close attention to the
 16 testimony as it is given.
 17 Taking notes. If you wish, you may take notes to help you
 18 remember the evidence. If you do take notes, please keep them
 19 to yourself until you and your fellow jurors go to the jury
 20 room to decide the case. Do not let note-taking distract you
 21 from being attentive.
 22 When you leave court for recess, your notes should be left
 23 in the envelope in the jury room. No one will read your notes.
 24 Whether or not you take notes, you should rely on your own
 25 memory of the evidence. Notes are only to assist your memory.

1 You should not be overly influenced by your notes or those of
 2 your fellow jurors.
 3 Bench conferences and recesses. From time to time during
 4 the trial it may become necessary for me to take up legal
 5 matters with the attorneys privately, either by having a
 6 conference at the bench or, when necessary, by calling a
 7 recess. We will do what we can to keep the number and length
 8 of those conferences to a minimum. I may not always grant an
 9 attorney's request for a conference.
 10 Outline of the trial. The next phase of the trial will
 11 now begin. First, each side may make an opening statement. An
 12 opening statement is not evidence. It is simply an outline to
 13 help you understand what that party expects the evidence will
 14 show. A party's not required to make an opening statement.
 15 The Government will then present evidence, and counsel for
 16 the Defendant may cross-examine. Then, if the Defendant
 17 chooses to offer evidence, counsel for the Government may
 18 cross-examine.
 19 After the evidence has been presented, I will instruct you
 20 on the law that applies to the case, and the attorneys will
 21 make closing arguments. After that, and some final
 22 instructions, you will go to the jury room to deliberate on
 23 your verdict.
 24 So at this point, we're going to hear opening statements.
 25 And because the Government has the burden of proof, it will

1 begin that process.
 2 Mr. Farnham?
 3 OPENING STATEMENT
 4 MR. FARNHAM: Thank you.
 5 Good morning. May it please the Court.
 6 Stealing. That's what fraud is. The thief who commits
 7 fraud doesn't use a crowbar, or a gun, but instead uses lies
 8 and deceit. The evidence you will hear during this trial will
 9 prove that the Defendant, James Murray, lied and stole money,
 10 real money from real people, using fake companies, fake
 11 documents, and false promises.
 12 Mr. Murray is charged with a scheme to defraud that began
 13 in 2007 and continued even after he was arrested in this case
 14 in 2012. Throughout that time, he used fake companies and a
 15 web of related bank accounts to move money around and cover his
 16 tracks. You will see that many of these accounts were opened
 17 in other people's names.
 18 You will also hear evidence that he lied to his wife until
 19 they separated in 2011, and that he used her name and identity
 20 for a key part of the fraud. You will hear her testify in this
 21 case.
 22 The evidence will show that the Defendant stole more than
 23 \$500,000 in a sophisticated credit card scam. But this is only
 24 one part of Mr. Murray's scheme in this case.
 25 Mr. Murray also lied to trick people into investing into

1 what he said was a successful hedge fund, and based on those
 2 lies, investors gave him their money. A lot of it was
 3 retirement savings and IRA accounts. Mr. Murray called this
 4 fund Market Neutral Trading, or by the initials MNT.
 5 You will hear testimony from victims, the people who
 6 trusted him and believed the lies, including Corinna Seibt.
 7 S-E-I-B-T is her name. She considered Mr. Murray a friend.
 8 She trusted the Defendant, and invested her lifesavings with
 9 Mr. Murray's fund in 2009.
 10 Other investors paid Mr. Murray more than two and a half
 11 million dollars in 2011 and 2012, believing they were investing
 12 in a small but successful hedge fund. Those investors also
 13 trusted Mr. Murray and they believed his sophisticated lies.
 14 I want to give you a few examples.
 15 The evidence will show that the Defendant told investors
 16 in Market Neutral Trading that it was -- that it had a
 17 successful track record stretching back more than five years,
 18 with steady profits and no losing years. He told them that the
 19 fund had an outside auditor to check the books and a
 20 third-party fund administrator to track investments and check
 21 on fund assets. He even said that a local attorney handled the
 22 legal work for the fund. The evidence will show that all of
 23 this was false.
 24 The Defendant's lies continued, and parts of this fraud
 25 scheme actually continued after he was being investigated for

1 credit card fraud, after he was arrested and after he was
 2 indicted on wire fraud charges in this case.

3 You will hear evidence that while the Defendant was out on
 4 bond in this case, he also defrauded a New York brokerage
 5 company, and tricked it into letting him place a stock trade in
 6 MNT's name, worth more than three and a half million dollars.
 7 He opened that account and placed that large trade at this
 8 brokerage without telling the firm that he had no funds to pay
 9 for the trade or to cover any possible loss.

10 The proceeds from that fraud were then transferred to new
 11 accounts, in the names of new entities under his control. The
 12 documents will show that some of the money was also laundered
 13 through the attorney trust account of the criminal defense
 14 attorney who was representing Mr. Murray at that time. It was
 15 also laundered through Mr. Murray's father's bank account.
 16 Circular transfers that masked the path of the funds.

17 But the deception was not over yet. While he was awaiting
 18 trial on the fraud and other charges, in July of 2013,
 19 Mr. Murray was released from custody to a halfway house. He
 20 was released under court-ordered conditions. And Mr. Murray
 21 violated those conditions.

22 The Defendant was ordered not to access the internet or to
 23 use a computer with internet access, he was ordered not to
 24 provide stock advice, and he was ordered not to communicate
 25 with witnesses in this case. But the evidence will show that

1 he snuck a tablet computer into the office of his criminal
 2 defense attorney at that time, hiding it in the ceiling of a
 3 conference room, and using it to get online and communicate
 4 with witnesses.

5 The evidence will point to one person at the center of
 6 these frauds: James Murray.

7 First, I'd like to talk about Jones Moore & Associates.
 8 It is a Delaware company on paper, but for Mr. Murray, the
 9 company was part of his stock in trade. It was one of the
 10 tools he used to steal and defraud the victims in this case.
 11 Jones Moore & Associates is a sham company and it has an
 12 important part in this story.

13 Lisa Brigulio and James Murray were married in October,
 14 2008. Just months after they were married, Mr. Murray used her
 15 name and California driver's license to set up what's called a
 16 virtual office. Ms. Brigulio will testify that she did not
 17 know that he had used her name, and didn't know what Jones
 18 Moore was.

19 You will hear evidence about that virtual office that was
 20 set up in the names of Jones Moore & Associates. A virtual
 21 office is a service that gives companies an address and a phone
 22 number, and a receptionist may answer phones to direct calls,
 23 and mail can be sent to the virtual office to be forwarded from
 24 there.

25 But as you will see from the evidence in this case, a

1 virtual office can also be used to make a fake business look
 2 real.

3 (Document displayed)

4 MR. FARNHAM: This is the application that was faxed
 5 to the virtual office company Brandywine in December of 2008.
 6 Brandywine provided virtual office services from an office
 7 building in Wilmington, Delaware. And this is the signature
 8 page of that application. On its face, the application was
 9 made by Lisa Brigulio, and signed by her.

10 The application identified her as the administrative
 11 assistant at Jones Moore. The assistant to someone named R.
 12 Jones.

13 A copy of her driver's license was submitted with the
 14 application. Ms. Brigulio will testify she did not know about
 15 Jones Moore & Associates, and was not the administrative
 16 assistant for this supposed Delaware company. In fact, she was
 17 a fourth-grade teacher in Marin County. She didn't sign this
 18 form, and didn't submit her driver's license to set up this
 19 virtual office.

20 How do we know the Defendant set this office up, even
 21 though his name is not on the form? Connections, financial
 22 records, and a trail of evidence tie the virtual office to one
 23 person: James Murray.

24 You'll hear testimony that the mail was forwarded from the
 25 Jones Moore virtual office in Delaware to another virtual

1 office in San Rafael, California, in Marin County. Then from
 2 there the Marin virtual office staff was instructed to forward
 3 all mail to Mr. Murray's home in Larkspur, California. That
 4 was the house Mr. Murray lived in with Ms. Brigulio. At the
 5 time the Jones Moore virtual office was set up, Mr. Murray had
 6 a home office in a small back house.

7 During this trial, we will show you the opened envelopes
 8 found in Mr. Murray's house, showing the mail forwarded from
 9 Brandywine virtual offices in Delaware, to the San Rafael
 10 virtual office in Marin, to the house in Larkspur. This is
 11 evidence of the chain of connections leading to the Defendant.

12 And there are more connections. And I want to give you
 13 just one example.

14 This is another document from the Brandywine virtual
 15 office records for the Jones Moore virtual office. It's a
 16 payment authorization form that says the president of Jones
 17 Moore & Associates is a man named David Lowe.

18 (Document displayed)

19 MR. FARNHAM: The form has a signature, supposedly
 20 David Lowe's.

21 You will hear video testimony from the real David Lowe.
 22 Just like Ms. Brigulio, he has never heard of Jones Moore, and
 23 was not the president of Jones Moore. And he knew nothing
 24 about the virtual office. He did not sign this form, and
 25 didn't know that the account in his name used to pay for the

1 virtual office existed.
 2 You will see documents showing several accounts that were
 3 opened in his name, David Lowe, as the president of Jones,
 4 Moore & Associates. And in listening to Mr. Lowe's testimony,
 5 you will hear that -- excuse me -- he didn't know about those
 6 accounts.
 7 So, who opened them? The evidence will show that James
 8 Murray controlled those accounts.
 9 You will hear that David Lowe is a British citizen who
 10 hasn't been in the U.S. for at least ten years. But when
 11 agents searched Mr. Murray's home in Larkspur, in Mr. Murray's
 12 locked briefcase they found a color copy of David Lowe's
 13 passport.
 14 (Document displayed)
 15 MR. FARNHAM: This is a photo of the briefcase that
 16 the agents found during that search. That's the briefcase in
 17 the back.
 18 (Document displayed)
 19 MR. FARNHAM: And then when agents opened it, inside
 20 was the color copy of the passport. Mr. Lowe's passport.
 21 You will see documents that show that copies of this same
 22 passport were used to open accounts in the name of Jones Moore
 23 & Associates, and David Lowe.
 24 You will also see other documents found during the search
 25 that tie the Defendant to Jones Moore and the use of David

1 Lowe's identity. This evidence will show there was one person
 2 behind Jones Moore, and that one person was responsible for
 3 setting up that virtual office.
 4 That virtual office, the entity Jones Moore & Associates,
 5 was used in several parts of the fraud scheme in this case.
 6 That entity was part of the deception.
 7 The next part of this story involves a scam targeting a
 8 credit card processing company. You will hear evidence that
 9 Mr. Murray opened an account with the credit card processor
 10 using the address and phone number of the virtual office he set
 11 up for Jones Moore & Associates.
 12 On that account application, Mr. Murray, himself -- excuse
 13 me -- Mr. Murray actually listed himself as the CFO, or the
 14 chief financial officer of Jones, Moore & Associates. And he
 15 signed that application himself.
 16 You will hear testimony explaining the credit card
 17 processing account that Mr. Murray opened, and explaining how
 18 that account worked.
 19 But I want to briefly explain what a merchant account is,
 20 and the role that a credit card processing company plays in
 21 credit card transactions. When someone uses a credit card at a
 22 store, for example, a grocery store, the customer takes that
 23 card and swipes it through the machine next to the cash
 24 register. The machine we have all seen and used.
 25 That machine is called the point of sale terminal or the

1 credit card terminal, and it sends information about that
 2 credit card to the credit card processor. Information like the
 3 card number and the amount of purchase. In this case, the
 4 point of sale terminal communicated with the credit card
 5 processor by connecting to a phone line.
 6 When a sale is completed, the credit card processing
 7 company collects the money from the correct credit card
 8 account, the card holder's account, and pays the money to the
 9 store. Instead of getting transfers from many different credit
 10 cards and many different credit card holders, with a credit
 11 card processor the store gets one daily transfer from the
 12 credit card processing company. The credit card processor is
 13 an important intermediary between the store and the card
 14 holders' credit card accounts.
 15 One of the credit card processing companies involved in
 16 this case is Chase Paymentech. And you will hear testimony
 17 from a fraud investigator who works at Paymentech and he will
 18 explain how Paymentech lost hundreds of thousands of dollars in
 19 this scheme.
 20 (Document displayed)
 21 MR. FARNHAM: So in May of 2010, James Murray
 22 submitted this application to open a Chase Paymentech merchant
 23 account for Jones, Moore & Associates, claiming the company was
 24 an audit and tax consulting firm.
 25 (Document displayed)

1 MR. FARNHAM: You can see on the first page, the
 2 application says it is made for the company Jones Moore &
 3 Associates, and it includes the address of the virtual office
 4 in Delaware.
 5 (Document displayed)
 6 MR. FARNHAM: The second page lists James Murray as
 7 the CFO of Jones Moore. It also lists David Lowe as the
 8 president. And again, you will hear testimony that Mr. Lowe
 9 didn't know anything about this application.
 10 (Document displayed)
 11 MR. FARNHAM: And this application was signed by
 12 Mr. Murray as the CFO of Jones Moore.
 13 The evidence will show that in this application,
 14 Mr. Murray was representing Jones Moore as a legitimate
 15 business. A business that wanted to accept credit card
 16 payments from its customers. But the evidence will show that
 17 Jones Moore was not a legitimate business, and that it was a
 18 sham company controlled by Mr. Murray, and used in the scheme
 19 here.
 20 After that credit card processing account was opened,
 21 Paymentech shipped a point of sale terminal to the address on
 22 the application, the virtual office in Delaware. As I talked
 23 about earlier, evidence will show that mail was forwarded from
 24 there to the address in San Rafael, and then to Mr. Murray's
 25 house in Larkspur.

1 Then from June, 2010, to March, 2011, almost \$650,000 was
2 charged on various cards, using that point of sale machine.
3 And each time a card was swiped for what should have been a
4 sale of goods or services, that card was swiped in Mr. Murray's
5 home in Larkspur. Paymentech records will show that the
6 terminal was connected through Mr. Murray's home phone line at
7 that house.

8 The evidence will show that those charges were not real
9 purchases by real customers. Some of the cards were in the
10 name of James Murray, or in the names of some of his family
11 members. Some were tied to accounts held in the name of Jones
12 Moore & Associates and David Lowe.

13 We'll also show that agents found that actual Paymentech
14 point of sale machine, the credit card machine, in the back
15 house Mr. Murray used as a home office.

16 (Photograph displayed)

17 MR. FARNHAM: And that's the terminal. This is the
18 credit card machine that agents found in that back house.

19 You will also hear evidence that agents found several
20 other point of sale terminals, credit card machines, at that
21 house.

22 So in the evening of March 30th, 2011 -- this is after all
23 the charges and purported sales on the terminal I talked
24 about -- Mr. Murray began the next part of the fraud. The
25 evidence will show that beginning at 7:30 p.m. and continuing

1 until just after 9:00 p.m., charges made on that credit card
2 machine in Mr. Murray's house were reversed.

3 In that hour and a half, about \$350,000 of the charges
4 were refunded back to the cards. Back to the card holders.
5 The evidence will show that Paymentech then sent that \$350,000
6 in real money back to the credit cards, back to the card
7 holders. Paymentech then tried to transfer funds as they
8 normally would from the account linked to the merchant, to the
9 customer. Here, Jones Moore. But that account was empty, and
10 the money had already been moved out. So because of this
11 fraud, those refunds that Paymentech sent back to the cards
12 were never recouped, and it lost the \$350,000.

13 You will hear evidence that Paymentech lost even more
14 after this. In April and May, card holders began to dispute
15 those charges on the cards. And under its agreements with the
16 credit card holders -- excuse me, the credit card companies,
17 Paymentech was required to pay back the amounts that were
18 disputed. The company lost an additional \$200,000 on those
19 disputes that it also could not transfer out of the Jones Moore
20 account because there was money there, and never recouped.

21 Again, this scam began and ended with Mr. Murray. Just
22 like the charges on the cards, the refunds were entered on the
23 terminal that was connected to Mr. Murray's home phone line.
24 The same cards swiped again on the night of March 30th. These
25 were not cards belonging to real customers of a real business

1 asking for their money back. The evidence will show this was
2 part of an orchestrated scheme by the Defendant to steal money
3 from Paymentech.

4 In another case, I might be sitting down now. But the
5 evidence will show that this scheme to defraud involved other
6 parts, other ways that Mr. Murray lied and deceived.

7 The evidence will show that while Mr. Murray was playing a
8 shell game with the credit card processing account in the name
9 of Jones Moore, he was also using Jones Moore & Associates in
10 another part of the scheme.

11 From at least 2009, Mr. Murray was lying to prospective
12 investors to raise money for what he called "Market Neutral
13 Trading," presented as a successful hedge fund.

14 I want to talk briefly about what a hedge fund is. It can
15 certainly mean different things, but basically you will hear in
16 this case a hedge fund is an investment, usually for people
17 with high net worth or for large organizations, maybe pension
18 funds. The investors put in their share of the money, which
19 the hedge fund managers invest. And then the investors receive
20 their share of the profits based on assets they've invested, or
21 their share of the fund.

22 If an investor owns 25 percent of a hedge fund, and the
23 fund makes a profit, the investor is entitled to 25 percent of
24 the profits, minus any fees that are part of the fund. If the
25 fund loses money, the investor loses their share of the

1 investment.

2 You will hear testimony that hedge funds fall into a
3 category called alternative investments, something different
4 than a mutual fund or a savings account.

5 Back to Market Neutral Trading. The evidence will show
6 that as early as 2009, the Defendant was lying to get people to
7 invest in that fund. The Defendant lied to his friend, Corinna
8 Seibt, to convince her to invest. The evidence will show that
9 the Defendant told Ms. Seibt that MNT had an independent
10 outside auditor, what is supposed to be an independent company,
11 verifying the books. Documents she received from the Defendant
12 said the auditor was Jones Moore & Associates.

13 Ms. Seibt invested her retirement funds and all her
14 savings into MNT. About \$150,000. After she'd invested, in
15 late 2009, Mr. Murray told her that his fund had lost about
16 40 percent on some bad trades, but he urged her to keep her
17 money in. She did, and she never got any of that money back,
18 even after she asked to withdraw some funds.

19 You will hear evidence that he admitted to her that he'd
20 lost about 40 percent, but the actual loss in 2009 was far
21 worse. You will hear evidence that MNT, at least what it was
22 at that time, lost nearly all of its remaining assets in 2009.
23 A huge loss. And whatever assets were there were nearly
24 completely gone.

25 I want to go back to something I talked about a few

1 minutes ago. The credit card scam. That scam involved
 2 charging hundreds of thousands of dollars on credit cards, and
 3 then transferring that money out of the Jones Moore accounts.
 4 Why did the Defendant go to the trouble of setting up that
 5 scheme, and why would he risk getting caught? The evidence
 6 will show that during that time period, June 2010 to
 7 March 2011, about \$375,000 from the credit card scam was
 8 transferred to Market Neutral Trading accounts. The accounts
 9 of James Murray's hedge funds, hedge fund accounts that were
 10 under his control.
 11 The evidence will show that this was an elaborate shell
 12 game used to get money, and that -- the evidence will show that
 13 some of this money was funneled as seed money into what was
 14 left of the hedge fund. Fraudulent funds to get the fund back
 15 up and running after a loss of nearly all its assets.
 16 Fraudulent funds to help him get back in the hedge fund game.
 17 So, back to MNT. In 2010, Mr. Murray began soliciting new
 18 investors as if nothing had happened. He retained a marketer
 19 named Paul Eckel, who ran a small business called Emerging
 20 Manager.
 21 A marketer in this business is someone in the securities
 22 industry who is hired to find investors for a fund. Marketers
 23 are paid a fee or a portion of the investors' profits in the
 24 fund.
 25 The evidence will show that Mr. Murray lied to Mr. Eckel

1 about MNT, and lied to Mr. Eckel about his background.
 2 Mr. Murray provided Mr. Eckel with information about Market
 3 Neutral Trading, and Mr. Eckel used that information to put
 4 together materials to send to investors.
 5 You will hear that Paul Eckel was told by Mr. Murray that
 6 MNT was a small but successful hedge fund run with by
 7 Mr. Murray, and that it was a fund with a proven track record,
 8 outside auditors, and a third-party administrator. None of
 9 that was true.
 10 How could Mr. Murray raise new money, new investors in his
 11 fund, find new investors in his fund after his fund blew up in
 12 2009? By pretending it didn't happen. The evidence will show
 13 that the Defendant did not tell Mr. Eckel and potential
 14 investors about that loss, and instead, falsely claimed the
 15 fund had steady annual gains.
 16 Mr. Eckel relied on Mr. Murray's lies, and put the
 17 Defendant's false information into the marketing materials that
 18 he sent to solicit new investors.
 19 (Document displayed)
 20 MR. FARNHAM: This is one of those marketing
 21 documents prepared by Mr. Eckel, using information from
 22 Mr. Murray.
 23 (Document displayed)
 24 MR. FARNHAM: As you can see from the graph on that
 25 chart, the chart on that material, the fund looks successful.

1 No indication of a loss in 2009.
 2 The first new round of investments started coming in in
 3 2011. One victim of the Defendant's lies was John Pernell, who
 4 runs an investment firm that helped manage pension and
 5 retirement funds for small businesses.
 6 Mr. Pernell will testify that he looked carefully at these
 7 materials, spoke directly to Mr. Murray, and then invested
 8 about \$250,000 from one of those pension funds he helped
 9 manage.
 10 (Document displayed)
 11 MR. FARNHAM: This is one of the documents that
 12 Mr. Pernell was provided. This is a so-called due diligence
 13 questionnaire, or DDQ. And Mr. Pernell will tell you it's
 14 standard in the hedge fund industry. He would have expected a
 15 real hedge fund to have a document like this.
 16 This document had a number of false statements. First, it
 17 had information about Mr. Murray's background. And you will
 18 hear evidence that he lied about that background.
 19 (Document displayed)
 20 MR. FARNHAM: This disclosure on this page says that
 21 Mr. Murray had never been disciplined by any regulatory agency.
 22 We'll prove that was false. You will hear that Mr. Murray had
 23 been suspended by the New York Stock Exchange for six months in
 24 2002. But he lied about that in this document.
 25 The document also lists the service providers to the funds

1 as I mentioned before, including the fake auditor, Jones Moore
 2 & Associates.
 3 (Document displayed)
 4 MR. FARNHAM: So here's a question that says -- that
 5 asks whether the fund employs an outside auditor. The document
 6 says "Jones Moore & Associates," and it lists the address of
 7 the virtual office in Delaware.
 8 And I want to talk about what this means for a minute.
 9 Now, potential investors were told that the books of Market
 10 Neutral Trading had been audited, had been reviewed and checked
 11 by an independent auditor.
 12 You will hear that the -- you will hear the investors
 13 testify that they understood this to mean an independent third
 14 party that employed accountants who reviewed the financial
 15 information for the fund. Investors were reassured by seeing
 16 that it had an auditor. The investors will testify that they
 17 would not have invested if the fund did not have an outside
 18 auditor.
 19 Can you have an independent audit if the supposed audit
 20 company is controlled by the same person that controls the
 21 fund? The testimony and evidence at trial will show that the
 22 representation in the MNT materials that it had an independent
 23 auditor was false.
 24 Some investors were also given purported audit reports
 25 from that independent auditor. The evidence will show that

1 investors believed what they were told, and relied on those
2 false reports.

3 The lies told to potential investors about the MNT fund is
4 part of the larger scheme to defraud in this case. And the
5 evidence will show that throughout this scheme, James Murray
6 tricked investors into paying millions of dollars in
7 investments in MNT through fraud.

8 And there's still more to the story. I want to talk about
9 the part of the fraud scheme that continued after Mr. Murray
10 was being investigated, and after he was arrested and charged.

11 You will hear evidence that Mr. Murray's house was
12 searched by federal agents in November of 2011, and that
13 Mr. Murray was arrested in March of 2012.

14 (Document displayed)

15 MR. FARNHAM: I know it is hard to read, but this is
16 some of the events in this next part of the scheme.

17 This next part involves Mr. Murray's lies told to a
18 brokerage company named Oppenheimer, before and after his
19 arrest in this case.

20 In February of 2012, Mr. Murray applied to open an account
21 in the name of MNT Master Fund. When he applied, he told
22 Oppenheimer representatives that MNT had \$5 million in assets
23 to trade. The evidence will show that was a lie.

24 Then the lies get worse. The Defendant was arrested in
25 March, 2012, and then in June, 2012, he was charged with wire

1 fraud related to the MNT investment fraud.

2 You will hear that the investor money that was still left
3 in another MNT Master Fund account at another brokerage was
4 seized by the Government as ordered by a federal Magistrate
5 Judge. And then he was sued by the Securities and Exchange
6 Commission, or SEC, for securities fraud. Those events are
7 shown on the bottom of the timeline.

8 After all of this, in June of 2012, Mr. Murray submitted
9 additional information needed to open and activate the
10 Oppenheimer trading account. He never told the brokerage or
11 stockbrokers at Oppenheimer that he had been arrested, charged
12 with wire fraud, and that MNT money had been seized.

13 The evidence will show that despite being out on bail
14 pending these proceedings and having no funds to trade, he
15 still wanted to be a hedge fund player, wanted to trade, wanted
16 to keep the scheme going. So he called his broker at
17 Oppenheimer to place a large trade.

18 You will hear testimony from his broker that he thought
19 the Defendant still had \$5 million to trade, and did not know
20 Mr. Murray had been indicted, sued by the SEC, and that the
21 investor funds had been seized. The broker put the trade
22 through.

23 Oppenheimer put its capital at risk without knowing that
24 Mr. Murray did not have the assets to follow through if the
25 trade went south. The value of the stock Oppenheimer traded on

1 the Defendant's behalf, based on Mr. Murray's lies, was about
2 three and a half million dollars.

3 You will hear testimony that the large trade of Netflix
4 stock in this case was successful. The bet paid off. And as a
5 result, there were about \$400,000 in profits in the account.
6 But the Defendant tricked Oppenheimer into putting its capital
7 at risk. If the trade had gone south, and resulted in a loss,
8 Mr. Murray did not have the assets or funds to pay for it.

9 You will hear more details about that trade during the
10 course of this trial. And you will hear evidence about how the
11 Defendant moved the proceeds of that trade to a new entity he
12 controlled, called Event Trading. The evidence will show that
13 some of the money was moved around in a secretive route,
14 through the account of the attorney representing him at that
15 time, and then through his father's account. Those are the
16 facts that give rise to the money laundering charges in this
17 case.

18 Even after he was arrested and charged in this case, the
19 evidence will show Mr. Murray continued to try to beat the
20 system, to cheat, and to deceive. While this case was pending,
21 in July of 2013, the Court released Mr. Murray to a halfway
22 house in San Francisco.

23 A halfway house is a facility that's something like a
24 jail, except that residents of a halfway house can leave during
25 the day for certain permitted activities, like court or a job.

1 In this case, the Court put Mr. Murray under strict
2 conditions. Mr. Murray was permitted to leave the halfway
3 house to go to the office of the attorney who was representing
4 him at that time. It was a lawyer with law firm of Pillsbury
5 Winthrop Shaw Pittman, with offices near the Embarcadero in
6 San Francisco. He had to be escorted each day to and from the
7 halfway house.

8 The Court also ordered that during this release,
9 Mr. Murray could not have contact with any witnesses, could not
10 contact his ex-wife, and specifically could not speak with a
11 man named Giovanni de Francisci, a potential witness in this
12 case.

13 Mr. Murray specifically was ordered not to give financial
14 advice, or to trade stocks for anyone, and not to use the
15 internet or computers with internet access.

16 But Mr. Murray ignored the Court's order, and he cheated
17 again. You will hear the evidence about how he violated that
18 order, skirting these restrictions by sneaking a computer into
19 the room he was allowed to work in at the law firm, and using
20 that computer to get online and communicate by messenger --
21 messages and voice calls with witnesses.

22 The evidence will show he communicated with Giovanni
23 de Francisci, a person the Court had explicitly barred him from
24 speaking with. The evidence will show that his conduct
25 violated that order.

1 So even as he faced fraud charges, and even as he was
 2 released under these strict conditions imposed by the Court,
 3 Mr. Murray continued to cheat.
 4 (Document displayed)
 5 MR. FARNHAM: The scheme to defraud I've described
 6 and the evidence and testimony you will hear during the course
 7 of this trial relate to a number of criminal charges. The
 8 charges fall into these categories: Wire fraud, money
 9 laundering, identity theft, and contempt of court.
 10 (Document displayed)
 11 MR. FARNHAM: And you'll hear from a number of
 12 witnesses in this case, some that I have mentioned and some
 13 that I haven't. Each one will be able to tell you what they
 14 know. They'll tell you their piece of the story.
 15 Some testimony may seem like it's about details, seem
 16 unconnected to what you know, or the facts may seem out of
 17 context. This is the nature of a case involving a fraud scheme
 18 like the one alleged here. The evidence will be presented as
 19 it must be, witness by witness, document by document. And it
 20 won't all make sense right away.
 21 But slowly, as you hear the evidence, you will start to
 22 see the big picture. You will see how often Mr. Murray lied.
 23 You will see how the lies piled up, you'll see how the scheme
 24 tricked victims, and how investors, the Court, and others were
 25 deceived. Patterns will emerge, and you will see the

1 connections.
 2 And the evidence will point to Mr. Murray. The evidence
 3 you will hear, once it's all put together, will show that
 4 Mr. Murray lied and deceived repeatedly and intentionally.
 5 After the Government has called its last witness and shown
 6 you the last document, then you'll have the big picture. You
 7 will have all the evidence you need to find, beyond a
 8 reasonable doubt, that James Murray is guilty of the offenses
 9 charged in this case.
 10 Thank you very much.
 11 THE COURT: All right. Thank you, Mr. Farnham.
 12 Mr. Dressler?
 13 OPENING STATEMENT
 14 BY MR. DRESSLER:
 15 Good morning, ladies and gentlemen. I'm going to try it
 16 from here.
 17 Can everybody hear me?
 18 (The Jury indicates in the affirmative)
 19 MR. DRESSLER: All right. The Court instructed you
 20 that opening statements are not evidence. And they're not
 21 evidence. An opening statement is somewhat like a preview of
 22 coming attractions at a movie.
 23 I'm sure we have all had the experience of watching coming
 24 attractions of a movie, and saying, "That looks like a great
 25 movie." And then you go to the movie, and you see the whole

1 movie from beginning to end, and sometimes it turns out not to
 2 be such a good movie.
 3 So, what I say is not evidence, also. But -- and I'm not
 4 going to go over all the evidence in this case. I'm going to
 5 try and make this very short, because you're going to start
 6 hearing from witnesses this morning. And that's the evidence
 7 in the case. What the witnesses say, what the documents
 8 actually say.
 9 Start off with one thing: The last -- kind of "The last
 10 shall be first," as the Bible says. Well, the last charge in
 11 this case is contempt of court for violating the Court's order.
 12 The U.S. Attorney was just talking about that.
 13 Mr. Murray is not going to dispute that he violated the
 14 Court's order. He did access the internet. He did have
 15 conversations with one or -- one or two witnesses,
 16 Mr. de Francisci, or "Fran-siski," it's pronounced both ways;
 17 or Mr. de Francisci's father, who you will also hear about. He
 18 won't be here. He lives in Europe. But you'll hear about him.
 19 So we're not contesting that. That's just something that
 20 he's going to have to live with. However -- and I'm not here
 21 to argue this point, but you're going to be instructed that
 22 fraud requires a certain state of mind. An intent to defraud
 23 or deceive.
 24 You are going hear from Mr. Murray at the end of this
 25 case. He is going to tell you what his state of mind -- what

1 he did, what his state of mind was, and why he did it. He will
 2 tell you that he did play a part in opening up these various
 3 entities, JMA and a couple of other entities that will be
 4 mentioned that you haven't heard about. And he will tell you
 5 that what he was doing, he did with a good-faith belief that he
 6 wasn't defrauding anyone.
 7 Let me use Oppenheimer as an example of what I'm talking
 8 about. You will hear the Government is going to call various
 9 employees of Oppenheimer & Company. I may call one or two of
 10 them, myself.
 11 You're going to hear that the account that Mr. Murray
 12 opened with Oppenheimer was an account where he was an account
 13 holder, and another individual by the name of Gian Luca
 14 de Francisci was an account holder. And that is the account
 15 that the trade was done on.
 16 And that account did -- I really don't want to get bogged
 17 down in the details, but basically this was a margin account.
 18 You didn't have to put money into it. Basically, you walk in
 19 and say, "I want to open up a margin account." And based on
 20 various factors which we will get into, Oppenheimer said
 21 "Fine," eventually.
 22 But it took six months for him the open that account, and
 23 he was required to produce a lot of information to Oppenheimer
 24 because his partner in that account was a foreign national. So
 25 there's all kinds of documents that have to be filed.

1 It's not as simple as opening up a regular margin account
2 where either you are a citizen or two people are citizens.
3 Where one is a citizen and one is not, it's a different
4 process. And it took a lot of time.

5 And Mr. Murray will tell you that he knew Mr. de Francisci
6 for a long time. Mr. de Francisci was worth at least
7 \$5 million. And that he had agreed to back trades done by
8 Mr. Murray, and had a good-faith belief that if it lost money,
9 Mr. de Francisci would make the losses good. Mr. Murray did
10 not have the money to do that, but Mr. de Francisci did.

11 And he also had a good-faith belief that if it made
12 money -- you're going to find out that in these kinds of
13 trades -- this one made \$400,000. And Oppenheimer got, I
14 think, a \$40,000 fee for this.

15 It's a short sale, which, I'm going to try and explain it
16 to you, or maybe they will, during the trial. It's a very
17 hard -- it's counter-intuitive to try and understand what it
18 was.

19 But in any event, in this kind of trade, within three days
20 of a successful trade, you're required to place half the value
21 of the stock with Oppenheimer for a certain short amount of
22 time. And then they give you the money back.

23 So in this case, it was 1,700,000, because the stock was
24 worth 3 million. In order to generate 400,000, the trade
25 involved \$3 million, approximately, worth of stock.

1 So, at all times, Mr. Murray thought that he had a
2 commitment from Mr. de Francisci to do that. And when the time
3 came, Mr. de Francisci didn't want to do it. And Mr. Murray
4 tried to find someone else to do it. All right?

5 There are regulations, Government -- I believe they are
6 Government regulations, that cover these kinds of trades. And
7 if you're not able to meet -- come up with one million, seven,
8 in this case, then there's a penalty. And the penalty can
9 vary. It's up to the stock brokerage company. They can
10 suspend you for 60 days, and say you can't trade in your
11 account for 60 days.

12 And then what they do is they liquidate the account, which
13 is what was done here. And that is, they sold the stock,
14 realized the \$400,000 profit, and took their fee, and then gave
15 the balance to Mr. Murray.

16 It is going to be our contention at this trial that they
17 knew that there was a person in Europe who was backing the
18 trade. And that there was no fraud committed.

19 And if there was no fraud committed, this money laundering
20 that you are hearing about will go away, because the money
21 laundering counts in this case, which are four, are based on
22 transferring a portion of the profits from the Netflix trade.
23 And in order to be money laundering, the Netflix trade has to
24 be illegal. So if there was no fraud, there was no money
25 laundering.

1 You are also going to hear about identity theft. And it's
2 -- in this case, the identity theft, it's actually called
3 "aggravated identity theft." It is using someone's name or
4 identification or personal identifying information, which can
5 be anything. It can be just a name. It's a very broad
6 statute. And the crime is using it to commit a separate
7 felony.

8 We are going -- you will see in this case, the evidence is
9 going to show that -- and Mr. Murray says he had Lisa
10 Brigulio's permission to use her information to open JMA. I
11 expect she will say she didn't.

12 And you'll see that they were married. Their house -- she
13 was home alone when a posse of federal agents came in to
14 execute a search warrant, waving guns. And she was put in a
15 very difficult position. She was a suspect in the case, as far
16 as they were concerned.

17 And so she has -- she's under a lot of pressure in her
18 life, both their lives, obviously. Their marriage was
19 destroyed by these events. So she's under a lot of pressure to
20 testify in a way that protects her and her child. They have a
21 young son.

22 So, in any event, I think when you review the evidence as
23 to what -- whether there was -- the question is: Was there --
24 Let's talk about the JMA thing that they're going to start off
25 with. The issue is: Was a fraud committed with -- by use of

1 her license? That's something you're going to have to decide.
2 Because this is not argument, I'm not going to go into why
3 there was no fraud committed. But in any event, that's the
4 identity theft.

5 And with regard to all the fraud counts in this case, the
6 investor fraud, the MNT investors, Mr. Murray is going to
7 testify. He's going to tell you what he told the investors
8 what these documents -- allegedly false documents -- actually
9 mean. And at the conclusion of the case, I'm going to ask you
10 to find him not guilty of those fraud counts.

11 So, I could go on and on, but it's time to start the
12 trial. So, thank you for listening to me. And we'll talk
13 again in about four weeks. I get to talk now. I get to talk
14 to you in closing arguments. So, I'll be here, but I'll see
15 you in four weeks.

16 Thanks.

17 THE COURT: All right. Thank you, Mr. Dressler.

18 This is the time now where we're going to take evidence.
19 And, the Government may proceed. You may call your first
20 witness.

21 (A hand is raised)

22 THE COURT: Oh, all right. We have had a request for
23 a short break. So why don't we take an early break now,
24 fifteen minutes, and we will resume. And we'll have a longer
25 session next time. All right?

1 Thank you.
 2 THE CLERK: All rise for the jury.
 3 (Whereupon there was a recess in the proceedings
 4 from 9:39 a.m. until 9:56 a.m.)
 5 THE COURT: All right. Welcome back, ladies and
 6 gentlemen of the jury. We're going to proceed now with the
 7 Government's first witness.
 8 You may call your first witness.
 9 MS. HARRIS: Thank you, your Honor. The United
 10 States calls H. Charles Boyce.
 11 THE COURT: Thank you.
 12 And let me explain to the jurors. One of the things that
 13 we're going to do to, hopefully, help you remember is we're
 14 going to take little snapshots of every witness and keep a
 15 little photo book with their name so that they may help you
 16 recall, since this is a fairly lengthy trial. If the angles
 17 don't turn out right or the pictures don't look the greatest,
 18 don't blame anybody but us. So don't take that as evidence,
 19 but we're going to try this.
 20 Go ahead.
 21 H. CHARLES BOYCE,
 22 called as a witness for the Government herein, having been
 23 first duly sworn, was examined and testified as follows:
 24 THE CLERK: Could you please state your full name and
 25 state your last name?

1 A H. Charles Boyce, B-O-Y-C-E, Junior.
 2 THE COURT: Thank you, Mr. Boyce.
 3 You may proceed, Ms. Harris.
 4 DIRECT EXAMINATION
 5 BY MS. HARRIS
 6 Q Good morning, Mr. Boyce. Where do you currently work?
 7 A The Brandywine Executive Center.
 8 Q How long with you worked for Brandywine Executive Center?
 9 A Nine years.
 10 Q What is your current job title?
 11 A President and CEO.
 12 Q Before you were the president and CEO of Brandywine
 13 Executive Center, what was your job title?
 14 A Regional manager.
 15 Q What type of work do you currently do for Brandywine
 16 Executive Center?
 17 A I oversee the operation of our three executive suite
 18 locations.
 19 Q Where is Brandywine Executive Center located?
 20 A Wilmington, Delaware and Henderson, Nevada.
 21 Q Which location do you work out of?
 22 A Wilmington, Delaware.
 23 Q What is a virtual office?
 24 A A virtual office is a service that we provide that
 25 provides companies with mail receiving, forwarding, voicemail,

1 live call answering.
 2 Q You just described some of the services that are provided
 3 by your company. Can you describe what type of phone service
 4 is available to customers at Brandywine?
 5 A We provide local telephone, fax, toll free numbers, as
 6 well as live call answering.
 7 Q What is the difference between a virtual office and
 8 brick-and-mortar office?
 9 A A virtual office is used by companies that don't normally
 10 come into the office on a regular basis.
 11 Q Are there any real employees of the companies that you
 12 provide virtual office services for at the Delaware location?
 13 A Not for virtual office clients.
 14 Q Are you aware of any way that someone who calls a phone
 15 number that you have assigned for a virtual office would know
 16 that they are not dealing with an actual employee of the
 17 company that they think they are calling?
 18 A No.
 19 Q How does someone set up a virtual office through your
 20 company?
 21 A Either via the internet or via phone.
 22 Q Is there an application?
 23 A Yes.
 24 Q What type of information is required on the application by
 25 your company?

1 A The company's information, the mail and call processing
 2 information, the forwarding information, and then who is
 3 authorized to receive those mail and messages.
 4 Q Do you require any type of photo identification with the
 5 virtual office application?
 6 A Yes. We usual require a government photo I.D.
 7 Q Why is that?
 8 A To help us track down clients that don't pay their bill.
 9 Q Does your company do anything to verify whether the
 10 company you receive an application from actually exists?
 11 A No.
 12 Q Why not?
 13 A That's not part of the services that we offer.
 14 Q Do you rely entirely on the information you receive in the
 15 application when you set up a virtual office for one of your
 16 customers?
 17 A Yes.
 18 MS. HARRIS: Your Honor, may I approach the witness?
 19 THE COURT: Yes.
 20 BY MS. HARRIS
 21 Q I'm handing you what's been marked as Government's
 22 Exhibit 1 for identification and ask you to take a look at it.
 23 (Whereupon document was tendered to the witness.)
 24 Q And tell us whether you recognize Government's Exhibit 1?
 25 A Yes.

1 Q What is Government's Exhibit 1?
 2 A This is the application that was received to set up the
 3 virtual office for Jones Moore & Associates.
 4 Q If you could take a look at Page 2 of Government's
 5 Exhibit 1? Is that your signature in the middle right corner?
 6 A Yes.
 7 Q And underneath that there is the date, December 23, 2008.
 8 Is that the date on which you signed Government's Exhibit 1?
 9 A Yes.
 10 Q Does Brandywine Executive Center maintain files for the
 11 companies it provides virtual office service to?
 12 A Yes.
 13 Q Did Brandywine Executive Company have a file for Jones
 14 Moore & Associates?
 15 A Yes.
 16 Q Was Exhibit 1 placed in that file?
 17 A Yes.
 18 Q And was Brandywine's file on Jones Moore & Associates
 19 maintained in the ordinary course of Brandywine's business?
 20 A Yes.
 21 MS. HARRIS: Your Honor, I offer Government's
 22 Exhibit 1 into evidence.
 23 THE COURT: Any objection?
 24 MR. DRESSLER: No, your Honor.
 25 THE COURT: All right. Exhibit 1 is admitted.

1 (Trial Exhibit 1 received in evidence.)
 2 MS. HARRIS: May we publish Exhibit 1 to the jury?
 3 THE COURT: Yes, you may.
 4 (Document displayed.)
 5 BY MS. HARRIS
 6 Q How did your company receive the application that is
 7 Government's Exhibit 1?
 8 A Via email.
 9 Q How can you tell that?
 10 A There is no fax header or footer stamped on our copy.
 11 Q If you could take a look at the first page of Government's
 12 Exhibit 1, and specifically in the upper right-hand corner
 13 there is some handwritten entries that say "Phone" and then
 14 there appear to be some numbers. Do you recognize that
 15 handwriting?
 16 A Yes.
 17 Q Whose handwriting is that?
 18 A That is my handwriting.
 19 Q And then underneath, what do those numbers represent?
 20 A That is the phone number and the toll free number that was
 21 assigned to the account of Jones Moore.
 22 Q So when you say "that is the phone number," what phone
 23 number was actually assigned to the virtual office for Jones
 24 Moore & Associates?
 25 A They were assigned a local Delaware number of

1 (302)824-7088 and they were assigned a toll free number of
 2 (888)792-2932.
 3 Q Drawing your attention to the 302 prefix, do you recognize
 4 what that prefix corresponds to, that area code?
 5 A Yes.
 6 Q What is that?
 7 A That is the area code for the state of Delaware.
 8 Q Now, underneath the part on Page 1 of Government's
 9 Exhibit 1 where says "Virtual Office Agreement," there is some
 10 handwriting that appear to say that it was entered into the
 11 22nd day of December, and then the words "Jones Moore and
 12 Assoc., Ltd."
 13 Do you recognize that handwriting?
 14 A Yes.
 15 Q Whose handwriting is that?
 16 A That was the handwriting that was on the application when
 17 we received it.
 18 Q But you don't know who wrote it?
 19 A I do not.
 20 Q Drawing your attention to Page 2 of Government's
 21 Exhibit 1.
 22 (Document displayed.)
 23 Q You've already identified your signature, but next to your
 24 signature there is some handwriting and let's first focus on
 25 where it says "Client" and it appears to say "Jones Moore &

1 Associates, Ltd."
 2 Was this handwriting where it says "Jones Moore &
 3 Associates, Limited," was that on Exhibit 1 when your company
 4 received the application?
 5 A Yes.
 6 Q Okay. And underneath that, there appears to be a
 7 signature. Whose signature does that appear to be?
 8 A That appears to be a Lisa M. Brigulio.
 9 Q Were you present when the Lisa M. Brigulio's handwritten
 10 signature was placed on Exhibit Page 2?
 11 A No.
 12 Q Was that signature actually on the application when it was
 13 received by your company?
 14 A Yes.
 15 Q And underneath that there appears to be the name Lisa
 16 Brigulio and a title. What title is listed for Lisa Brigulio?
 17 A Administrative Assistant to R. Jones.
 18 Q Was that information also on the application at the time
 19 that your company received Exhibit 1?
 20 A Yes.
 21 Q Now, if we could take a look at Page 3 of Government's
 22 Exhibit 1.
 23 (Document displayed.)
 24 Q There is a Client Data Information Sheet. Was all of the
 25 handwriting on Page 3 of Exhibit 1 on the document at the time

- 1 Exhibit 1 was received by your company?
 2 A Yes.
 3 Q What is the name listed under the Client Data Information
 4 Sheet?
 5 A Lisa Brigulio.
 6 Q What is the company name for Lisa Brigulio?
 7 A Jones Moore and Associates, Ltd.
 8 Q And what is the date to begin the contract for Jones Moore
 9 & Associates with your company?
 10 A December 23rd, 2008.
 11 Q What type of service is requested, phone service?
 12 A They requested a phone line with voicemail and a fax line.
 13 Q And then under the section that says, "Who is authorized
 14 to pick up messages," what was written on the application by
 15 the time that your company received it?
 16 A Lisa Brigulio and Richard Jones.
 17 Q Where was mail requested to be forwarded for Jones Moore &
 18 Associates?
 19 A To the email address richard@jonesmoore.com.
 20 Q What were the business needs that were listed for Jones
 21 Moore & Associates?
 22 A They were requesting a 411 listing with a local telephone
 23 number, local fax number, faxes, and if possible voicemail,
 24 email, email forwarded to richard@jonesmoore.com.
 25 They requested that the phones be answered in the phrase,

- 1 "Jones Moore & Associates, how may I help you?" And they would
 2 like the email notification of messages left, if possible.
 3 Q Do you know if one named Richard Jones actually worked at
 4 Jones Moore & Associates?
 5 A I don't.
 6 Q Did your company do any research into the firm Jones Moore
 7 & Associates before agreeing to provide a virtual office for
 8 that company?
 9 A No.
 10 Q Why not?
 11 A That's not part of our normal process.
 12 Q Now, if we could take a look at Page 4 of Government's
 13 Exhibit 1?
 14 (Witness complied.)
 15 Q Is there an emergency contact or phone number listed for
 16 anyone at Jones Moore & Associates?
 17 A No.
 18 Q How about an auto license number?
 19 A No.
 20 Q Was there a home address left for anyone at Jones Moore &
 21 Associates?
 22 A No.
 23 Q Now, if I could draw your attention to the box on Page 4
 24 where it says "Home Phone." Did anyone with Jones Moore &
 25 Associates give your company a home phone number to reach them

- 1 at?
 2 A No.
 3 Q Was a cell phone number given?
 4 A No.
 5 Q Were you given any way that you could telephone anyone
 6 that may have been associated with Jones Moore & Associates?
 7 A Not on this application.
 8 Q What email were you given for Jones Moore & Associates?
 9 A Richard@jonesmoore.com.
 10 Q Was there another email address listed?
 11 A Info@jonesmoore.com.
 12 Q And where was your company instructed to send invoices to?
 13 A The email address richard@jonesmoore.com.
 14 Q What signature does there appear to be on Page 4 of
 15 Exhibit 5?
 16 A Lisa M. Brigulio.
 17 Q Was that signature already on the application by the time
 18 your company received it?
 19 A Yes.
 20 Q Did you ever see anyone named Lisa Brigulio sign
 21 Exhibit 1?
 22 A No.
 23 Q Now, if we could draw your attention to Page 6 of
 24 Exhibit 1.
 25 (Document displayed.)

- 1 Q What is Page 6?
 2 A Page 6 is the authorization for automatic credit card
 3 charges received with the initial application for the account
 4 of Jones Moore.
 5 Q And I think we have the wrong page up. We're going to
 6 move to Page 6 of Exhibit 1.
 7 Oh, that's right. Okay.
 8 Who is the authorized credit card holder, according to
 9 this application?
 10 A Lisa Brigulio.
 11 Q And, again, was all of the handwriting on the page that we
 12 see on the screen on Exhibit 1, was that all present on the
 13 application at the time you received it?
 14 A Yes.
 15 Q What was the name listed as it appears on the credit card?
 16 A Lisa Brigulio.
 17 Q What was listed as Ms. Brigulio's billing address?
 18 A 44 Civic Center Drive, San Rafael, California, 94903.
 19 Q And where there appears to be the signature of Lisa
 20 Brigulio in the lower left corner, what is the title listed for
 21 Lisa Brigulio?
 22 A Administrative Assistant to R. Jones.
 23 Q And what is the business name?
 24 A Jones Moore & Associates, Limited.
 25 Q At some point did the credit card authorization for the

- 1 Jones Moore & Associates' virtual office change?
 2 A Yes.
 3 Q Now, if we could draw your attention to Page 5 of
 4 Exhibit 1?
 5 (Document displayed)
 6 Q What is Page 5 of Exhibit 1?
 7 A This was an additional authorization for automatic credit
 8 card charge for the account of Jones Moore & Associates.
 9 Q And who is the name as it appeared on this credit card?
 10 A David Lowe.
 11 Q What was the billing addresses for Mr. David Lowe?
 12 A 1521 Concord Pike, Suite 301, Wilmington, Delaware 19803.
 13 Q What was Mr. Lowe's telephone number as listed on Page 5
 14 of Exhibit 1?
 15 A (302)377-7206.
 16 Q What does that 302 prefix correspond to, do you know?
 17 A That is the area code for the State of Delaware.
 18 Q And what is Mr. Lowe's title as stated on Page 5 of
 19 Government's Exhibit 1?
 20 A President.
 21 Q Of Jones Moore & Associates?
 22 A Yes.
 23 Q What are the last four digits of credit card that
 24 Brandywine was authorized to charge, Mr. Lowe's credit card?
 25 A 6912.

- 1 Q Now, if you could take a look at Page 7 of Government's
 2 Exhibit 1?
 3 (Document displayed)
 4 Q What is Page 7?
 5 A A copy of a Visa card that was in the file of Jones Moore
 6 & Associates.
 7 Q Was this Visa card submitted in connection with the
 8 opening the virtual office?
 9 A I'm not sure exactly when this card was submitted.
 10 Q And who is the credit card -- what name appears on the
 11 front of the credit card?
 12 A Lisa M. Brigulio.
 13 Q And what is the business listed under Lisa M. Brigulio?
 14 A Pareto Media, Inc.
 15 Q Now, if we could take a look at Page 8 of Government's
 16 Exhibit 1?
 17 (Document displayed)
 18 Q What is Page 8 of Exhibit 1?
 19 A A copy of a California driver's license for Lisa Marie
 20 Brigulio.
 21 Q Was Page 8 submitted with the application to open the
 22 virtual office for Jones Moore & Associates?
 23 A Yes.
 24 Q Was this something that was required by your company
 25 before a virtual office could be opened?

- 1 A Yes.
 2 Q Now, if we would look at Page 10 of Government's
 3 Exhibit 1?
 4 (Document displayed)
 5 Q There are some handwritten entries on Page 10. Do you
 6 recognize that handwriting?
 7 A Yes.
 8 Q Whose handwriting is that.
 9 A That is my handwriting.
 10 Q What are you indicating in the handwritten entries?
 11 A That the toll free number (888)792-2932 was assigned to
 12 the account of Jones Moore & Associates.
 13 Q And what do we see in the little box under the "Phone
 14 Number Inventory"? What does that refer to?
 15 A I'm sorry. I'm not sure which box.
 16 Q The box above your handwritten entry?
 17 A Those are the two local Delaware phone numbers that were
 18 assigned to the account of Jones Moore.
 19 Q And when you say "local" phone numbers, what were those
 20 phone numbers for?
 21 A The -- there was a local voice line to be live answered
 22 and there was a local fax number assigned.
 23 Q When you say "live answered," what would happen if a
 24 customer calls the number that you assigned to Jones Moore &
 25 Associates?

- 1 A It would be answered by a receptionist.
 2 Q And what instructions was the receptionist given as to
 3 what to say?
 4 A Answered in the name of "Jones Moore" and "How may I help
 5 you?"
 6 Q Now, if we could look at Page 12 of Government's
 7 Exhibit 1?
 8 (Document displayed)
 9 Q What is Page 12?
 10 A It's a transaction receipt for a credit card that was
 11 processed.
 12 Q Whose credit card -- who was the card holder for the
 13 credit card?
 14 A Lisa Brigulio.
 15 Q And was this a charge that your company processed for
 16 virtual office services to Jones Moore & Associates?
 17 A Yes. This was the charge for opening the account.
 18 Q Okay. And if you could look at Page 13 of Government's
 19 Exhibit 1 and tell us what Page 13 is?
 20 (Document displayed)
 21 A That is a transaction receipt that the previous
 22 transaction was voided.
 23 Q Why was the previous transaction voided?
 24 A It was entered for the incorrect amount.
 25 Q And now if we could look at Page 14 of Government's

1 Exhibit 1?
 2 (Document displayed)
 3 Q Can you tell us what we're looking at?
 4 A That was another charge made to the credit card of Lisa
 5 Brigulio for the opening of the Jones Moore account.
 6 Q If we could look at Page 18 of Government Exhibit 1, can
 7 you tell us what is on Page 18?
 8 (Document displayed)
 9 A That is a deposit slip report from our billing system
 10 indicating that a payment in the amount of \$2,000 was credited
 11 to the account of Jones Moore on June 6th of 2011.
 12 Q And now if you could take a look at Page 19 of
 13 Government's Exhibit 1?
 14 (Document displayed.)
 15 Q Do you know what we're looking at on Page 19?
 16 A An authorization for an automatic credit card charge for
 17 the account of Jones Moore & Associates.
 18 Q And what was the name that appeared on the credit card for
 19 this authorization?
 20 A Jones Moore.
 21 Q What was the billing address that was listed for Jones
 22 Moore?
 23 A 4040 Civic Center Drive, San Rafael, California 94903.
 24 Q Is this the third credit card authorization form you
 25 received for the Jones Moore & Associates' virtual office?

1 A Yes.
 2 Q So was one in the name of Lisa Brigulio?
 3 A Correct.
 4 Q And one credit card in the name of David Lowe?
 5 A Correct.
 6 Q And one credit card in the name of Jones Moore?
 7 A Correct.
 8 Q Now if you could take a look at Page 20 of Government's
 9 Exhibit 1 and tell us what we're looking at on Page 20?
 10 (Document displayed)
 11 A That's a report of our billing system indicating all of
 12 the invoices that were posted to the account of Jones Moore.
 13 Q When you say "invoices," are these credit card charges
 14 that were made based on the credit card authorizations your
 15 company received for this account?
 16 A Yes. Now if you could look at Page 25 of Government's
 17 Exhibit 1?
 18 (Document displayed)
 19 Q In 2011, in September of 2011 did you respond to someone
 20 from your company concerning where mail that was received for
 21 Jones Moore & Associates was forwarded to?
 22 A I had placed a request for the current forwarding address
 23 to the general manager.
 24 Q And did you receive information from your company as to
 25 where Jones Moore's mail that was received in Wilmington,

1 Delaware was forwarded to?
 2 A Yes.
 3 Q Where was mail that was received for Jones Moore &
 4 Associates in Wilmington, Delaware forwarded to?
 5 A Pareto Capital, LLC care of Jones Moore & Associates, 44
 6 Civic Center Drive, Suite 200, San Rafael, California 94903.
 7 MS. HARRIS: No further questions, your Honor.
 8 THE COURT: All right. Thank you.
 9 Cross?
 10 MR. DRESSLER: Yes, your Honor. Thank you.
 11 CROSS EXAMINATION
 12 BY MR. DRESSLER
 13 Q Mr. Boyce, I don't have a computerized version of what's
 14 in front of you, so I'm going to be asking you to do it the
 15 old-fashioned way.
 16 My name is Alan Dressler. I represent Mr. Murray. Nice
 17 to meet you.
 18 Do the Brandywine offices in the location that we're
 19 talking about in this case, if someone wants to rent an actual
 20 office and use it part time or full time, do you have that
 21 ability?
 22 A Yes.
 23 Q Could you look at Exhibit 1, Pages 1 and 2, which is the
 24 Virtual Office Agreement? Could you look at Page 1 and 2,
 25 please?

1 (Witness complied.)
 2 Q Is there anything in there that says you have to submit a
 3 driver's license in order to obtain the services of your
 4 company?
 5 A No.
 6 Q I'd like you to look at the Client Data Sheet. That's
 7 Exhibit No. 1, Page 3 and 4. That document requests certain
 8 information with regard to the customer, correct?
 9 A Correct.
 10 Q And is there anything in there that -- strike that. Let
 11 me go back a step.
 12 Is this Client Data Information Sheet, if you apply for a
 13 virtual office online, is this document online?
 14 A No. This is emailed.
 15 Q Okay. So how does a person go about getting the Client
 16 Data Information Sheet?
 17 A They have requested to set up a virtual office.
 18 Q And would that be done by email?
 19 A That can be done by email, yes.
 20 Q In any event, looking at that, is there any place in there
 21 where it says that you have to submit a driver's license with
 22 your application?
 23 A Not on this document.
 24 Q You've obviously reviewed this packet of information
 25 before your testimony, correct?

- 1 A Yes.
- 2 Q Is there any document in there that indicates that it's
3 required in order to open an account that a driver's license
4 has to be submitted?
- 5 A Not in these documents, no.
- 6 Q And these are the documents that your business has with
7 regard to the opening of this account, correct?
- 8 A That is correct.
- 9 Q Okay. Now, if you look at Page 6, this is an
10 authorization dated on December 20th for an automatic credit
11 card charge, correct?
- 12 A Correct.
- 13 Q And it says, "American Express" box is checked and there
14 is a credit card number, correct?
- 15 A Correct.
- 16 Q And that would indicate, would it not, that American
17 Express with a credit card ending in 2005 was the credit card
18 that was going to be used to make payments on this account,
19 correct?
- 20 A Correct.
- 21 Q Okay. And directly behind it on Page 7 is a -- I guess a
22 Xerox copy of a credit card, correct?
- 23 A Correct.
- 24 Q And that's not an Amex card, correct?
- 25 A That is correct.

- 1 Q And the four numbers at the end of that are not the same
2 numbers on the credit card authorization, correct?
- 3 A That is correct.
- 4 Q So when you ran the -- the American Express number was
5 used for the initial billing payment, correct?
- 6 A That is correct.
- 7 Q And there is no picture of that account -- of that credit
8 card in your file?
- 9 A No.
- 10 Q And starting on Page 9 through the end of that exhibit --
11 well, let's try it this the way.
- 12 Page 9 through -- 9 through 20. There are various emails
13 communications between your company and -- on Exhibit 1, Page 9
14 there is an indication that -- there is an email from you to
15 someone named Giovana Messina.
- 16 (Brief pause.)
- 17 THE COURT: Is there a question pending?
- 18 MR. DRESSLER: Yes. I'm sorry.
- 19 BY MR. DRESSLER
- 20 Q If you look at the top of Exhibit 1, Page 9, there is a
21 message to you from Giovana Messina, "Thank you for your" -- it
22 says, "Thank you for your interest in Brandywine."
- 23 I guess that's in response -- on the bottom there it says,
24 there is a -- an email from you to that person saying, "Thank
25 you for your interest in Brandywine."

- 1 And then on the top it says the account -- there is an
2 email from Giovana Messina saying, "The account is created and
3 the account number is... Have a great day."
- 4 Oh, I'm sorry. My apologies. That had to do with setting
5 up the answering machine, correct?
- 6 A Yes. This was regarding setting up the live operator
7 answer.
- 8 Q My apologies.
- 9 In any event, in these documents is there any email asking
10 anyone to send a driver's license along with the application?
- 11 A Not in these documents.
- 12 Q Okay. And are there in these documents any telephone
13 records indicating that someone was asked to send that
14 document -- send a driver's license with the application?
- 15 A No.
- 16 Q And would it be fair to state that it appears that from
17 this file that the -- at least initially, the driver's license
18 was to make sure that the credit card in the name of Lisa
19 Brigulio was verifying that she was a real person and actually
20 has authority to use that credit card, correct?
- 21 A That's not why we request the driver's license as part of
22 our application process.
- 23 Q Okay. Do you have any document that indicates anything
24 other than what I just said?
- 25 A No.

- 1 Q Thank you.
- 2 THE COURT: All right. Anything on redirect?
- 3 MS. HARRIS: Thank you, your Honor.
- 4 REDIRECT EXAMINATION
- 5 BY MS. HARRIS
- 6 Q Good morning again, Mr. Boyce.
- 7 You were asked some questions regarding the California
8 driver's license and you said, "Not in these documents."
- 9 Does your company require a photo I.D. before a virtual
10 office is set up?
- 11 A Yes.
- 12 Q How do you communicate that information to customers?
- 13 A That's part of the email communications that would go back
14 and forth when they were asking about setting up the -- and we
15 send them the forms to be filled out and list the documents
16 that we need returned.
- 17 Q Can you tell from Exhibit 1 whether the application was
18 submitted to you by email?
- 19 A Yes.
- 20 Q How is it that you can tell that?
- 21 A At the time we were only accepting applications via email
22 or via fax. And if it was received via fax, we would have fax
23 headers stamped on the top and bottom of the pages.
- 24 Q And did you specifically request a photo identification
25 before your company would open an account for a virtual office

1 for Jones Moore & Associates?
 2 A Yes.
 3 MS. HARRIS: No further questions.
 4 THE COURT: Anything on recross?
 5 RECROSS EXAMINATION
 6 BY MR. DRESSLER
 7 Q Mr. Boyce, do you have a recollection of actually making
 8 such a request with regard to this file?
 9 A Yes. At the time I was the only employee of the company,
 10 so I was setting up all the accounts and that was the process.
 11 Q And how did you do that?
 12 A It was via email.
 13 Q And is that email -- that email is not in the file, is it?
 14 A We don't keep those emails.
 15 Q You keep everything else but that, pretty much? It looked
 16 like all -- strike that.
 17 It appears there are all of the communications between
 18 whoever opened this account and your company, the emails were
 19 in that file correct?
 20 A That is not correct.
 21 Q Okay. All right. So the only thing -- would there be
 22 anything else that you sent that was not in there?
 23 A Yes. The only thing that was in the files was the actual
 24 documents that were required by the client.
 25 Q Thank you.

1 THE COURT: Anything further?
 2 MS. HARRIS: No, your Honor.
 3 THE COURT: All right. Thank you. This witness may
 4 be excused.
 5 And, Mr. Boyce, you may step down. Thank you.
 6 THE WITNESS: Thank you.
 7 (Witness excused.)
 8 THE COURT: The Government's next witness.
 9 MR. FARNHAM: The Government will call Kiu Phung,
 10 K-I-U, P-H-U-N-G.
 11 THE COURT: Okay.
 12 KIU PHUNG,
 13 called as a witness for the Government herein, having been
 14 first duly sworn, was examined and testified as follows:
 15 THE WITNESS: Yes.
 16 THE CLERK: Thank you.
 17 I need to take a picture of you for our binder and then
 18 after that, if you would say your name.
 19 THE WITNESS: Okay.
 20 THE CLERK: Please state your full name and spell
 21 your last name, and try to speak into the microphone.
 22 THE WITNESS: Kiu Lee Phung, P-H-U-N-G.
 23 THE COURT: Thank you, Ms. Phung.
 24 You may proceed, Mr. Farnham.
 25

1 DIRECT EXAMINATION
 2 BY MR. FARNHAM
 3 Q Good morning, Ms. Phung. Where do you currently work?
 4 A Regus Management Group.
 5 Q And how long have you worked at Regus Management Group?
 6 A Eight years.
 7 Q What's your position there?
 8 A General manager.
 9 Q Do you work in a particular location or office?
 10 A In San Rafael California.
 11 Q Is your position the general manager of that location?
 12 A Yes.
 13 Q And what are your responsibilities as the general manager
 14 of the San Rafael location?
 15 A I'm responsible for selling the offices and -- virtual
 16 office and business world memberships, taking care of the
 17 clients.
 18 Q Tell me again what's the -- what's the name of the company
 19 that you work for?
 20 A Regus Management Group.
 21 Q Regus Management Group. What is the business of Regus
 22 Management Group?
 23 A We provide office solutions to businesses.
 24 Q Are there different types of office solutions?
 25 A Yes.

1 Q What are the general categories?
 2 A Full time office, virtual office, and business world
 3 membership.
 4 Q And how many offices does Regus have around the world?
 5 A 3,000.
 6 Q Let's talk about that virtual office service you
 7 mentioned. What is that?
 8 A A virtual office is basically an option that the clients
 9 can use to support their home-based business. We provide a
 10 professional image for them.
 11 Q And are there different types of virtual office services?
 12 A Yes.
 13 Q Maybe you would describe some of those?
 14 A Mailbox Plus would be for clients who strictly wants the
 15 address for their business.
 16 Telephone Answering would be for clients who wants to have
 17 telephone answering done for them.
 18 Standard Virtual Office would be for clients who wants to
 19 have access to day offices and, also, will give them telephone
 20 answering and Mailbox Plus.
 21 And Virtual Office Plus will be for clients who wants
 22 telephone answering, mail service and, also, access to private
 23 office five times a day -- a month.
 24 Q And tell me why -- in your experience, why do customers
 25 use the Regus virtual office service?

1 A To supplement their home-based business.
 2 Q And what's the -- the location in San Rafael where you
 3 work, where is that located?
 4 A At 440 Civic Center Drive, Suite 200.
 5 Q And if a customer signs up for a virtual office and wants
 6 Regus to accept mail for them, what's the address that mail
 7 will be sent to?
 8 A 4040 Civic Center Drive, Suite 200.
 9 Q And just generally, what are the steps a client takes to
 10 sign up for the virtual office service?
 11 A They sign the service agreement and then we go over a
 12 move-in questionnaire with them to ask for specifics on how
 13 they want their mail service to be handled.
 14 Q If the -- if the client wants to change the handling of
 15 mail or phone calls, how is that typically done?
 16 A They just tell us how -- where they want us to forward it
 17 to.
 18 Q How do they tell you?
 19 A Via email or a phone call.
 20 MR. FARNHAM: Your Honor, may I approach the witness
 21 with an exhibit?
 22 THE COURT: Yes.
 23 (Whereupon document was tendered to the witness.)
 24 BY MR. FARNHAM
 25 Q Ms. Phung, I've handed you what's been marked for

1 identification as Exhibit 63. Do you recognize that document?
 2 A Yes.
 3 Q What is that?
 4 A That's a Virtual Office Service Agreement.
 5 Q And what's the name of the client that that agreement
 6 relates to.
 7 A Pareto Capital.
 8 Q And are agreements like this for virtual offices
 9 maintained by Regus after they are completed?
 10 A Yes.
 11 Q And are those agreements part of Regus's normal business
 12 activity?
 13 A Yes.
 14 MR. FARNHAM: Your Honor, I would move Exhibit 63
 15 into evidence.
 16 THE COURT: Any objection?
 17 MR. DRESSLER: No objection.
 18 THE COURT: All right. 63 is admitted.
 19 (Trial Exhibit 63 received in evidence.)
 20 MR. FARNHAM: May I publish it to the jury?
 21 THE COURT: Yes.
 22 BY MR. FARNHAM
 23 Q If we could look at Page 1 of that exhibit?
 24 And, Ms. Phung, you're free to look at the paper. It will
 25 also show up on the screen there.

1 (Document displayed.)
 2 Q If we could look at the upper -- the very upper left,
 3 actually, where it says "HQ Agreement." What does the "HQ"
 4 stand for there?
 5 A HQ, it's -- we just bought HQ, so this is the service
 6 agreement that we used before we changed everything over to
 7 Regus.
 8 Q So is it like a predecessor to Regus?
 9 A Yes.
 10 Q If we could look at the box that identifies the company
 11 name there in the upper left, what company does this agreement
 12 pertain to?
 13 A Pareto Capital.
 14 Q And on the right side of that same box you see that there
 15 is a contact name. Who is the contact for this account?
 16 A Jim Murray.
 17 Q If we could look at the -- there is a Mail and Fax
 18 Handling Portion about two-thirds down. You see that there is
 19 some handwritten notes on the right side of that?
 20 A Yes.
 21 Q What does that handwritten note say in the Mail and Fax
 22 Handling Portion?
 23 A Pareto Capital.
 24 Q Sorry. I think that's the Telephone Call Handling.
 25 I'm looking at the zoomed portion on the screen there.

1 What does that say?
 2 A 125 Bayview Avenue, California 94920.
 3 Q If you look at this section, does that indicate to you
 4 that that's where mail would be forwarded for this account?
 5 A Yes.
 6 Q If we could look at the second page of this document?
 7 (Document displayed)
 8 Q This is Exhibit 63 again.
 9 MR. FARNHAM: If we could zoom in on the signatures
 10 and dates there?
 11 (Document enlarged.)
 12 BY MR. FARNHAM
 13 Q Could you tell who signed this document?
 14 A I'm not sure what the signature says.
 15 Q Can you see the date that the document was signed?
 16 A Yes. March 14, 2008.
 17 Q Would this indicate that the office was set up around this
 18 time?
 19 A Yes.
 20 Q If we could go to Page 3 of this document -- I'm sorry.
 21 Page 4.
 22 (Document displayed.)
 23 Q What is this page of the document?
 24 A That's the Credit Card Authorization Form.
 25 Q And what is this form's purpose?

1 A The client is authorizing us to use their credit card for
2 a monthly payment.

3 MR. DRESSLER: Excuse me, your Honor. Can I
4 approach? The numbering that I have on the exhibits is
5 different than the numbering --

6 THE COURT: Go ahead and talk and clarify that.

7 MR. DRESSLER: Thank you.

8 (Discussion held off the record between counsel.)

9 THE COURT: All right.

10 BY MR. FARNHAM

11 Q I'm sorry, Page 4. Could you tell me what this part of
12 the document is?

13 A Credit Card Authorization Form.

14 Q And what's the purpose of this form?

15 A Authorizing us to use the credit card for monthly
16 payments.

17 Q And when do you require -- when do you ask clients to
18 submit a form like this?

19 A When they sign up for the virtual office.

20 Q Do they have to submit it if they make a change to any
21 information about the credit card?

22 A Yes.

23 Q If you could look at the middle of this document where
24 there is handwriting after "Pareto Capital." What's the -- can
25 you read the card holder name and the address?

1 A Pareto Capital, LLC. 4040 Civic Center Drive, Suite 200,
2 San Rafael, California 94903.

3 Q What's the last four digits of the card number that this
4 authorization pertains to?

5 A 2005.

6 Q Can you tell who signed this document, this authorization
7 form?

8 A Looks like a Mike Murray.

9 Q And if you look at the next page of this exhibit?
10 Exhibit 63, Page 5.

11 (Document displayed.)

12 Q What is this part of the document?

13 A That's a copy of the back of the credit card.

14 Q And is that something that Regus asks to be submitted?

15 A No.

16 Q Do you know why it's in this file?

17 A Not too sure.

18 MR. FARNHAM: I'd like to approach with another
19 exhibit.

20 THE COURT: Okay.

21 (Whereupon document was tendered to the witness.)

22 BY MR. FARNHAM

23 Q Ms. Phung, you have been handed what's been marked as
24 Exhibit 64, and I'd like to give you a chance to review it.
25 Is Exhibit 64 an email conversation regarding this Pareto

1 Capital virtual office account?

2 A Yes.

3 Q And do you recognize the name Brian Sparks?

4 A Yes.

5 Q Who is that?

6 A He was the general manager at that location.

7 Q Was that previous to you being general manager?

8 A Yes.

9 Q And is this a typical conversation about the set-up for a
10 virtual office?

11 A Yes.

12 Q And is this type of email part of Regus's regular
13 business?

14 A Yes.

15 MR. FARNHAM: I would move Exhibit 64 into evidences.

16 THE COURT: Any objection?

17 (Brief pause.)

18 THE COURT: Any objection, Mr. Dressler?

19 MR. DRESSLER: No, your Honor.

20 THE COURT: 64 is admitted.

21 (Trial Exhibit 64 received in evidence.)

22 BY MR. FARNHAM

23 Q So for this --

24 MR. FARNHAM: And permission to publish, your Honor?

25 THE COURT: You may.

1 (Document displayed)

2 BY MR. FARNHAM

3 Q For this, this is an email. And isn't it right that
4 usually they go -- email chains go from the bottom to the top?
5 From the back to the front?

6 A Yes.

7 Q So I want to ask you to look at part of this email chain.
8 If you could start -- IF we could start on Page 3. There is an
9 email in the middle of this page from Brian Sparks, and you see
10 where it starts, "Hi, Jim"?

11 A Yes.

12 Q What is the -- we don't have to read the whole thing, but
13 what is Mr. Sparks requesting here?

14 A Requesting information on how to set up the account such
15 as, you know, where the mail should be sent to and how to
16 answer the calls.

17 Q Are these typical questions for a set-up of a virtual
18 office?

19 A Yes.

20 Q Could you look at the response to that email up above?
21 And, first, I want to go one page back to Page 2 so we can
22 see who that email was sent from. And at the very bottom of
23 Page 2 you see there is an email address that says "From?"

24 A Yes.

25 Q Does that indicate the email address that this was sent

1 from?
 2 A Yes.
 3 Q And does it say Market Neutral Trading?
 4 A Yes.
 5 Q So if we look back to Page 3 to see the response, please?
 6 What is the response that was sent to Mr. Sparks'
 7 question? For example, with the -- what was the response to
 8 the company name question?
 9 A Pareto Capital, LLC.
 10 Q And what was the response to the question about mail
 11 handling?
 12 A [REDACTED] Belvedere, California [REDACTED].
 13 Q What would happen within Regus when Regus staff, such as
 14 Mr. Sparks, receives mail forwarding information?
 15 A We print out a label and then set it up according to what
 16 the clients want.
 17 Q And then how would that be -- how would that be used for
 18 mail handling?
 19 A If they get mail, we forward it to them.
 20 Q By putting the --
 21 A The label of the address they stated in the email of the
 22 forms.
 23 Q So that's how email would be forwarded, is by placing that
 24 label on the email that comes in?
 25 A Yes.

1 THE COURT: Did you say "email"? I'm now confused.
 2 MR. FARNHAM: I did say "email."
 3 THE COURT: Did you say "mail" or "email"?
 4 MR. FARNHAM: I did say "email." I'm sorry. Let me
 5 ask a better question.
 6 BY MR. FARNHAM
 7 Q Just wondering how email -- mail. Wondering how mail
 8 would be physically processed?
 9 After -- you mentioned that after you get an instruction,
 10 then mailing labels would be created for that address, is that
 11 right?
 12 A Correct.
 13 Q So then how is that put into place? How does mail get
 14 handled then after you receive the instructions for forwarding?
 15 A When mail comes in, we sort by client name, company name,
 16 and depending on the client's instructions, if they wanted to
 17 forward it to a specific address by day, by week or month, we
 18 use the printed labels to forward those mail out.
 19 Q Thank you.
 20 MR. FARNHAM: I'd like to approach with another
 21 exhibit.
 22 THE COURT: All right.
 23 (Whereupon document was tendered to the witness.)
 24 BY MR. FARNHAM
 25 Q You have been handed Exhibit 62, and I would ask if you

1 recognize that exhibit?
 2 A Yes.
 3 Q Are these emails between you and a client?
 4 A Yes.
 5 Q Which client?
 6 A Tim, Pareto Capital.
 7 Q And is there a client contact that you're communicating
 8 with?
 9 A Yes.
 10 Q What's that person's name?
 11 A Tim.
 12 Q And is this -- do these email communications include
 13 instructions from the client about that virtual office?
 14 A Yes.
 15 MR. FARNHAM: I would offer -- well, let me ask this
 16 first.
 17 BY MR. FARNHAM
 18 Q And are you -- you were actually on these emails, is that
 19 right?
 20 A Correct.
 21 MR. FARNHAM: I would offer Exhibit 62 into evidence.
 22 MR. DRESSLER: No objection.
 23 THE COURT: Admitted.
 24 (Trial Exhibit 62 received in evidence)
 25

1 MR. FARNHAM: And I'd like to publish that, starting
 2 with Page 2. We don't have to go through the whole chain. The
 3 very bottom of Page 2 of Exhibit 62.
 4 BY MR. FARNHAM
 5 Q Is this an email from you?
 6 A Yes.
 7 Q Could you read what you wrote on October 28th, 2009?
 8 A Starting where?
 9 Q Starting with "perfect"?
 10 A (As read)
 11 "I will let the team know. Also, what if they
 12 call for Mike or Jim? Do you want us to let the
 13 callers know that they are no longer here" -- I mean,
 14 "no longer there."
 15 (Document displayed)
 16 Q Thank you.
 17 And then if we could look at -- on Page 2, higher up on
 18 the page is a response to that email. What's -- could you read
 19 the response from the email address to your email?
 20 A (As read)
 21 "For Mike, have them put into voicemail. If
 22 someone calls for Jim Murray, please instruct them to
 23 say 'no one by that name works here' or 'he doesn't
 24 work here.' Jim was never part of the company."
 25 Q And what did you do after you received this response?

1 A Instruct the team, you know, if they get a phone call for
2 those people, they are not there.
3 Q So this would have been the instructions that the team
4 answering the phone got?
5 A Correct.
6 Q And then if we could go to the first page of Exhibit 62?
7 (Document displayed)
8 Q At the top of that page, you see there is an email
9 addressed to you from sales@paretomusic.com?
10 A Yes.
11 Q If you could just read the email that starts "Please"?
12 A (As read)
13 "Please change mail forwarding address for all
14 packages and mail to [REDACTED]
15 California [REDACTED]
16 Q What did you do, if anything, after you received this
17 email?
18 A We update the change of address, the label.
19 Q So as of January 7, 2010 where would mail be forwarded for
20 Pareto Capital?
21 A [REDACTED], California [REDACTED]
22 Q A couple more.
23 MR. FARNHAM: I'd like to approach with an exhibit,
24 your Honor.
25 THE COURT: Okay.

1 (Whereupon document was tendered to the witness.)
2 BY MR. FARNHAM
3 Q Ms. Phung, you have been handed what's been marked as
4 Exhibit 31. I'd ask you to review that and tell me if you
5 recognize it.
6 A Yes.
7 Q Is this an email communication between you and the Pareto
8 Capital client?
9 A Yes.
10 Q If you could look at the -- the bottom of Page 1 and --
11 well, I'm sorry.
12 Is this a -- is this another email that contains
13 communications between you and the client regarding the virtual
14 office account?
15 A Yes.
16 MR. FARNHAM: Your Honor, I would move Exhibit 31
17 into evidence.
18 THE COURT: Any objection?
19 MR. DRESSLER: No objection.
20 THE COURT: Admitted.
21 (Trial Exhibit 31 received in evidence.)
22 BY MR. FARNHAM
23 Q So I'd like you to --
24 MR. FARNHAM: And permission to publish it?
25 THE COURT: Yes.

1 (Document displayed)
2 BY MR. FARNHAM
3 Q I would like you to look at the email from you that starts
4 at the bottom of Page 1 of this exhibit and goes on to the top
5 of Page 2. Maybe you could just tell me what you're asking and
6 why you're asking it?
7 A I'm asking for a credit card change.
8 Q And why are you doing that?
9 A Because the current one on file failed for payment.
10 Q So above that email on Page 1, is that the response?
11 A Where?
12 Q I was just wondering if that was the response to your
13 email, from Tim Palm sent Thursday June 3, 2010. Is that the
14 response to your email?
15 A Yes.
16 Q What does that say?
17 A (As read)
18 "Tim, who is David Lowe? Also, we need an email
19 address for David as well. We need all info on the
20 form, otherwise the system will reject the call."
21 Q Sorry. I wasn't clear. I was asking about the response
22 from Tim Palm below that.
23 A Tim Palm attaches the new Credit Card Authorization Form.
24 Q And then in response to that?
25 A Below that?

1 Q What do you say?
2 A (As read)
3 "Hi, Tim. Credit card ending 2039 that you
4 provided last week declined for" --
5 Q I'm sorry. Responses are further up in the email, is that
6 right?
7 I'm asking you to look at on June 3, 2010 at 10:12 a.m.
8 It's about a third of the page down, third of the way down the
9 page.
10 A Okay.
11 Q And it's highlighted on the screen. Did you write that
12 email?
13 A Yes.
14 Q And why were you asking who was David Lowe?
15 A The credit card that was provided was that client's name.
16 Q Why did you need to know who he was?
17 A In order for us to put the credit card information, it has
18 to match.
19 Q The name on the credit card has to match the credit card
20 number?
21 A Correct.
22 Q And then what is the response? If you could read the
23 response that you received from that question? And it will be
24 higher up on that email?
25 A (As read)

1 "He's a managing member. His email is
2 david@jonesmoore.com."
3 Q Did you know who David Lowe was at that point?
4 A No.
5 MR. FARNHAM: If I could approach with the last
6 exhibit, your Honor?
7 THE COURT: All right.
8 (Whereupon document was tendered to the witness.)
9 BY MR. FARNHAM
10 Q And I have handed you what's been marked for
11 identification as Exhibit 27. Can you tell me what Exhibit 27
12 is?
13 A It's a virtual office agreement.
14 Q Is this a Regus Virtual Office Agreement?
15 A Yes.
16 Q And what's the name of the client for this agreement?
17 A Anderson and Associates, Ltd.
18 Q And do you recognize the name of the person who signed
19 this on behalf of Regus?
20 A Yes.
21 Q Who is that?
22 A Tim Palm.
23 Q Sorry. On behalf of Regus?
24 A Oh, Brian Sparks.
25 Q And is this a -- an agreement that Regus maintains in its

1 normal course of its business?
2 A Yes.
3 MR. FARNHAM: I would move Exhibit 27 into evidence.
4 THE COURT: Any objection?
5 MR. DRESSLER: No objection.
6 THE COURT: Admitted.
7 (Trial Exhibit 27 received in evidence.)
8 MR. FARNHAM: And I would like to publish portions of
9 it.
10 THE COURT: Okay.
11 (Document displayed)
12 BY MR. FARNHAM
13 Q If we could look at Page 1? And if you look at the upper
14 left box of this agreement? What is that -- what does that
15 upper left box tell you?
16 A The Regus location and then, also, the company name of the
17 client.
18 Q And what's the Regus location that this agreement relates
19 to?
20 A Brandywine, Wilmington, Delaware.
21 Q What's the address for that location?
22 A 1000 Northwest Street, Suite 1200.
23 Q And if we could look at the box on the right side on the
24 top? What's the name of the client for this Virtual Office
25 Agreement?

1 A Anderson and Associates, Ltd.
2 Q And what's the contact name?
3 A Tim Palm.
4 Q And what's the address for that contact?
5 A 4040 Civic Center Drive, Suite 200.
6 Q And do you recognize that address?
7 A Yes.
8 Q What is that?
9 A That's the Regus location in San Rafael.
10 Q If we could look at Page 6?
11 (Document displayed.)
12 Q What is this document?
13 A It's a Credit Card Authorization Form.
14 Q And can you tell who signed this Credit Card Authorization
15 Form?
16 A The company's name is Anderson and Associates.
17 Q And how about at the very bottom, who's signature is that?
18 Can you read that?
19 A I'm not too sure.
20 Q How about the card holder information? Who is the card
21 holder for this card?
22 A Pareto Capital.
23 Q And do you recognize the billing address under the Pareto
24 Capital?
25 A Yes.

1 Q What is that?
2 A That's the Regus location address.
3 Q If we could look at Page 9 of this exhibit?
4 (Document displayed)
5 Q If we could look at the card holder information box in the
6 middle of that document. Can you read the card holder name for
7 this authorization form?
8 A David Lowe.
9 Q And what's the address for the -- the billing address for
10 that?
11 A 1521 Concord Pike Street, Pike, Suite 301, Wilmington
12 Delaware 19803.
13 Q Do you recognize that address?
14 A No.
15 Q If we could go -- let's do this first.
16 If we could look at Page 10 and zoom in on the credit card
17 number that's associated with this authorization?
18 (Document displayed)
19 Q That would be the card holder information.
20 What are the last four digits of the card number for this
21 authorization?
22 A 6296.
23 Q And if we could look two pages back to Page 12?
24 (Document displayed)
25 Q What is this -- what does this portion of the document

1 appear to be?

2 A It's a copy of the credit card.

3 Q And is that -- based on the last four numbers, does that

4 look like the same credit card that was referenced in that

5 authorization?

6 A Yes.

7 MR. FARNHAM: Just a moment, your Honor.

8 (Brief pause.)

9 BY MR. FARNHAM

10 Q One more page. Page 14, if we could.

11 (Document displayed)

12 Q What is this page?

13 A Credit Card Authorization Form.

14 Q If we could zoom in on the card holder information?

15 What of the last -- first, what's the card holder name

16 that was used, that was on the credit card used for this

17 authorization?

18 A David Lowe.

19 Q And what are the last four digits of the card?

20 A [REDACTED]

21 Q And if we go two pages back -- no, I'm sorry. It's

22 actually one page back. On Page 13 --

23 THE COURT: Forward or back?

24 MR. FARNHAM: Backwards, Page 13.

25 (Document displayed)

1 BY MR. FARNHAM

2 Q Is -- if you look at the last four digits of this credit

3 card and the name on the card, does this appear to be the card

4 that was associated with that authorization form?

5 A Yes.

6 Q I don't have any further questions. Thank you.

7 THE COURT: Thank you.

8 Cross?

9 MR. DRESSLER: No questions, your Honor.

10 THE COURT: All right. Thank you.

11 Then this witness is excused. Ms. Phung, you may step

12 down.

13 (Witness excused.)

14 THE COURT: The Government may call it's next

15 witness, please.

16 MS. HARRIS: Thank you, your Honor. The United

17 States calls Barry Barner.

18 BARRY BARNER,

19 called as a witness for the Government herein, having been

20 first duly sworn, was examined and testified as follows:

21 THE WITNESS: Yes.

22 THE CLERK: Please state your full name and spell

23 your last name? And try to speak into the microphone, please.

24 THE WITNESS: My name is Barry Alan Barner,

25 B-A-R-N-E-R.

1 THE COURT: Thank you, Mr. Barner.

2 You may proceed.

3 DIRECT EXAMINATION

4 BY MS. HARRIS

5 Q Good morning, Mr. Barner. Where do you currently work?

6 A Employed with Comcast Cable Corporation.

7 Q How long have you worked for Comcast?

8 A For two years and four months.

9 Q What do you do for Comcast?

10 A I'm a security investigator.

11 Q Do your duties include searching for records in response

12 to document subpoenas?

13 A Yes.

14 Q Are you familiar with the types of service that Comcast

15 offers its customers?

16 A Yes.

17 Q Does Comcast maintain subscriber records for IP addresses

18 that it assigns its customers?

19 A Yes, it does.

20 Q Does Comcast also maintain subscriber records for landline

21 telephone numbers that it assigns its customers?

22 A Yes, it does.

23 Q Approximately how long is the retention period for the

24 records that Comcast maintains?

25 A 180 days.

1 Q Is it the regular practice of Comcast to keep records,

2 subscriber information, for customers who are provided a

3 specific IP address by Comcast?

4 A Yes.

5 Q And is it also the regular practice of Comcast to keep

6 records of subscriber information for customers who are

7 provided a landline telephone number by Comcast?

8 A Yes.

9 Q Are these records kept in the ordinary course of Comcast's

10 business?

11 A Yes, they are.

12 Q And do the records maintained -- that Comcast maintains

13 reflect what service address corresponds to a particular

14 landline telephone number?

15 A Yes, it does.

16 Q Do the records that Comcast maintains reflect what service

17 address corresponds to a particular IP address provided by

18 Comcast?

19 A Yes, it does.

20 Q Are you familiar with a search for a Comcast subscriber

21 for the records for IP address 71.20.117.49 for the period of

22 December 2nd, 2010 through February 9, 2011?

23 A Yes, I am.

24 Q Is this particular IP address a Comcast-issued IP address?

25 A Yes, it is.

1 Q Did Comcast search for subscriber records concerning this
2 IP address in June of 2011?
3 A Yes, they did.
4 Q Can you describe what type of records were located by
5 Comcast for that IP address?
6 A They located the subscriber information, which includes
7 the subscriber's name, address, the telephone number, the IP
8 address, the billing address, account number, as well as the
9 phone records associated with that account.
10 Q Are you also familiar with a search for Comcast subscriber
11 records for the telephone number [REDACTED] for the time
12 period May 1st, 2010 through June 8th, 2011?
13 A Yes, I am.
14 Q And did Comcast locate subscriber records for the
15 telephone number [REDACTED]?
16 A Yes, they did.
17 MS. HARRIS: Your Honor, may I approach the witness?
18 THE COURT: Yes.
19 (Whereupon document was tendered to the witness.)
20 Q I'm showing you what's been marked as Government's
21 Exhibit 56 for identification. Can you please take a look at
22 Exhibit 56 and tell us whether you recognize Government's
23 Exhibit 56?
24 A I do recognize this.
25 Q What is Government's Exhibit 56?

1 A It's a letter drafted by Comcast certifying that the
2 records provided in response to a subpoena under the penalties
3 of perjury are accurate documents.
4 Q And are the responses on Government's Exhibit 56, were
5 they based on records that were kept in the ordinary course of
6 the business of Comcast?
7 A Yes, they were.
8 Q And are the entries on Exhibit 56 made at or near the time
9 of the acts and events appearing on Exhibit 56?
10 A Yes, they are.
11 MS. HARRIS: Your Honor, I offer Government's
12 Exhibit 56 on into evidence.
13 THE COURT: Any objection?
14 MR. DRESSLER: No objection.
15 THE COURT: Admitted.
16 (Trial Exhibit 56 received in evidence)
17 MS. HARRIS: Your Honor, may we publish Exhibit 56 to
18 the jury?
19 THE COURT: Yes.
20 (Document displayed.)
21 BY MS. HARRIS
22 Q Does Exhibit 56 reflect the subscriber name for the
23 landline telephone number (415)891-8371? Actually, if you
24 could turn to Page 2 of Exhibit 56?
25 A Yes, it does.

1 Q Who -- what is the subscriber name for that particular
2 landline telephone number?
3 A Lisa and Jim Murray.
4 Q What is the service address for the landline telephone
5 number [REDACTED]?
6 A [REDACTED], Larkspur, California [REDACTED]
7 Q Is the telephone number [REDACTED] a landline?
8 A Yes, it is.
9 Q Does Exhibit 56 reflect who the subscriber name is for the
10 IP address 71.202.117.49?
11 A Yes. It would be the account holders, Lisa and Jim
12 Murray.
13 Q What is the service address for that particular IP
14 address?
15 A It's the same. [REDACTED], Larkspur, California
16 [REDACTED]
17 Q If you could look at where it says "IP Assignment" on
18 Page 2 of Government's Exhibit 56, there is an entry that says
19 "dynamically assigned." Do you know what that means?
20 A Yes.
21 Q What does that mean?
22 A That's an IP address that's assigned to all residential
23 addresses.
24 They assign a dynamic IP address and what that means is
25 the IP address or the IP number will stay with that modem as

1 long as that modem is not swapped out for another product or as
2 long as that service does not go down for an extended amount of
3 time.
4 Q And do you have any information that the service
5 associated with this particular IP address, that it was ever
6 down for an extended period of time in 2010 and 2011?
7 A I don't have that information.
8 Q And does this mean that the IP address 71.202.117.49 has a
9 window spanning back to January 2011 in which it could be
10 assigned to the same subscriber?
11 A Yes, that's correct.
12 MS. HARRIS: Your Honor, may I approach the witness?
13 THE COURT: Yes.
14 BY MS. HARRIS
15 Q Handing you what's been marked as Government's Exhibit 57
16 for identification.
17 (Whereupon document was tendered to the witness.)
18 Q Do you recognize Exhibit 57?
19 A I do.
20 Q What is Government's Exhibit 57?
21 A These are the documents provided by Comcast in response to
22 the subpoena for telephone number (415)891-8371, and it is a
23 list of all incoming and outgoing phone calls to that number
24 for the time period May 1st, 2010 through June 8th, 2011.
25 Q And are the entries you just referred to, specifically the

1 incoming and outgoing phone calls for the phone number
 2 (415)891-8371, are those made at or near the time of the events
 3 reflected on Exhibit 57?
 4 A They are.
 5 Q Was Exhibit 57 maintained in the ordinary course of
 6 Comcast's business?
 7 A Yes, it was.
 8 MS. HARRIS: Your Honor, I offer Government's
 9 Exhibit 57 into evidence.
 10 THE COURT: Any objection?
 11 MR. DRESSLER: No objection.
 12 THE COURT: Admitted.
 13 (Trial Exhibit 57 received in evidence)
 14 BY MS. HARRIS
 15 Q Does Exhibit 57 reflect all incoming and outgoing calls
 16 from May 2010 through June 2011 made from the landline
 17 [REDACTED] ?
 18 A Yes, it does.
 19 MS. HARRIS: No further questions, your Honor.
 20 THE COURT: All right. Thank you.
 21 Cross?
 22 MR. DRESSLER: No questions.
 23 THE COURT: All right. Thank you.
 24 THE WITNESS: Thank you, your Honor.
 25 THE COURT: You may step down.

1 (Witness excused.)
 2 THE COURT: The Government may call its next witness.
 3 MR. FARNHAM: Yes, your Honor. We call Jonathan
 4 Hallford.
 5 THE COURT: Okay.
 6 (Brief pause.)
 7 THE COURT: We'll proceed. We have to swear the
 8 witness.
 9 MR. FARNHAM: Your Honor, if I could? Before we call
 10 this witness, I would like to move into evidence some of the
 11 exhibits that are subject to stipulations.
 12 THE COURT: Okay.
 13 MR. FARNHAM: Exhibit 22, those are Merrill Lynch
 14 account records.
 15 Exhibit 55, Moneris Solutions account records.
 16 And Exhibit 81, Barclays account records.
 17 THE COURT: No objection, I assume?
 18 MR. DRESSLER: No, your Honor.
 19 THE COURT: All right. Those three will be admitted,
 20 21, 44 and 81.
 21 (Trial Exhibits 22, 55, 81 received in evidence)
 22 JONATHAN HALLFORD,
 23 called as a witness for the Government herein, having been
 24 first duly sworn, was examined and testified as follows:
 25 THE WITNESS: Yes, I do.

1 THE CLERK: Would you please state your name and
 2 spell your last name for the record?
 3 THE WITNESS: Jonathan Andrew Hallford,
 4 H-A-L-L-F-O-R-D.
 5 THE COURT: Okay, Mr. Hallford.
 6 You may proceed, Mr. Farnham.
 7 DIRECT EXAMINATION
 8 BY MR. FARNHAM
 9 Q Good morning, Mr. Hallford. Where do you currently work?
 10 A I currently work for Chase Paymentech.
 11 Q And how long have you worked for that company?
 12 A Just under eight years.
 13 Q And what's your current position?
 14 A I'm the risk manager of the Risk Management Department.
 15 Q Do you supervise people in that position?
 16 A Yes.
 17 Q How many?
 18 A Thirteen.
 19 Q And how long have you been in that role?
 20 A Just under three years.
 21 Q What are your responsibilities in your current position as
 22 risk manager?
 23 A Oversee day-to-day tasks for our transaction monitoring
 24 risk analyst staff.
 25 Q What types of things do the risk analyst staff do?

1 A They monitor our internal proprietary risk management
 2 systems that review the transaction activity of the merchant
 3 accounts on our portfolios.
 4 Q Maybe you could just explain to us generally what "risk"
 5 means in the context of your job?
 6 A Generally, risk will be the overall liability that Chase
 7 Paymentech assumes for the processing activities of a merchant
 8 account.
 9 Q Potential losses?
 10 A Yes.
 11 Q As a risk manager, have you received any sort of trainings
 12 or certifications relating to your job?
 13 A I am a certified fraud examiner.
 14 Q What was your -- what was your policies before you were
 15 the risk manager?
 16 A In the 2011 time frame I was a senior level risk analyst.
 17 Q And I want to talk about the business of Chase Paymentech
 18 and what they do. Maybe you could tell us, what does the
 19 "Chase" part of the Chase Paymentech name mean?
 20 A Could you rephrase that question?
 21 Q What does the "Chase" part of the Chase Paymentech Company
 22 name mean?
 23 A It's essentially the branding of the merchant services
 24 portion in the line of business under Chase Bank.
 25 Q So Paymentech is affiliated with Chase Bank?

- 1 A That is correct.
- 2 Q And can we call it Paymentech today for, to make it
- 3 easier?
- 4 A Yes.
- 5 Q In the course of your role as the risk manager at
- 6 Paymentech, have you become familiar with the business?
- 7 A I have.
- 8 Q Generally, what is the business of Paymentech?
- 9 A We facilitate the processing of credit card transactions
- 10 for our customers, which are merchant businesses.
- 11 Q What types of businesses would be customers of Paymentech?
- 12 A We have a myriad of types that include retail
- 13 face-to-face, eCommerce merchants as well.
- 14 Q Is there a particular size of merchant that would be a
- 15 customer of Paymentech?
- 16 A All sizes.
- 17 Q Give me a range, a range of the sizes; the types of
- 18 businesses and the sizes that might be customers?
- 19 A We can have all the way from a single location, small
- 20 business type merchant account, up to a nationwide big box
- 21 recognizable merchant, merchant account.
- 22 Q And for those merchants, for those customers at
- 23 Paymentech, are there different types of processing accounts?
- 24 A Yes, there are.
- 25 Q What are those?

- 1 A They would be the retail face-to-face environment. They
- 2 would also be mail order, telephone order type of account as
- 3 well as an Internet merchant or an e-commerce merchant account.
- 4 Q For some of those types of accounts is there a credit card
- 5 machine involved in the Paymentech business?
- 6 A Yes, there is.
- 7 Q What's that called? What do you call that?
- 8 A It can be referred to as the merchant terminal or a point
- 9 of sale terminal.
- 10 Q And is that the credit card swiper machine that we see at
- 11 stores all the time?
- 12 A It's exactly that.
- 13 Q And then if a customer does open an account, if a merchant
- 14 customer opens an account with Paymentech, what does the
- 15 customer get out of that?
- 16 A They get the services that we provide, which is the actual
- 17 facilitation of processing the credit cards, where we will take
- 18 that data that's at the merchant terminal location and turn it
- 19 into money that goes into that merchant's bank account.
- 20 Q Maybe you could just tell me who -- just briefly who the
- 21 players are, who the entities are that are part of that whole
- 22 process.
- 23 A So, Chase Paymentech would be the payment processor. We
- 24 have the payment brands which are typically Visa, MasterCard
- 25 and Discover, as well as what we refer to as the issuing bank

- 1 for the individual credit cards that the customers may -- may
- 2 present. Citibank would be an example of an issuer.
- 3 Q And then would there be the -- you mentioned the
- 4 merchants, the stores.
- 5 A Correct.
- 6 Q And then, who else is involved?
- 7 A Could you clarify what you're --
- 8 Q I'll withdraw that question. We will get some more detail
- 9 in a minute.
- 10 I want to talk for just a minute about how Paymentech
- 11 processes credit card transactions.
- 12 A Okay.
- 13 Q Maybe we could walk through a sample, just a sample credit
- 14 card purchase. You could walk us through that, and tell us the
- 15 steps.
- 16 Do you maybe have an example in mind we can talk about?
- 17 A I could, and do.
- 18 Q Okay. Tell me what this example would be.
- 19 A So, to outline the -- the -- how the process flow of the
- 20 transaction would work, so you have a customer that would go
- 21 into a jewelry store, and that individual would like to
- 22 purchase a watch. And let's say that watch is \$200.
- 23 Should that customer choose to use credit card as their
- 24 method of payment, they would present that credit card to the
- 25 merchant, and that credit card would be swiped through the

- 1 merchant terminal.
- 2 And what that would do is begin the authorization process
- 3 where the data for that \$200 sale would be sent through the
- 4 channels up to the issuer bank, where they would make the
- 5 decision on if that transaction would be approved or not.
- 6 Q Let's break that down a little bit.
- 7 A Okay.
- 8 Q Tell me about the swipe -- when the card is swiped to the
- 9 point of sale terminal, what are the steps that happen at that
- 10 point?
- 11 A So the merchant -- in a face-to-face scenario, the
- 12 customer would physically hand their card to the merchant or
- 13 whomever is behind the terminal. They would swipe the credit
- 14 card into the terminal, and they would enter the dollar amount
- 15 that they would like for the sale.
- 16 Q What does the swipe do?
- 17 A It captures the magnetic-stripe data that is stored in the
- 18 credit card.
- 19 Q Including the number on the card?
- 20 A Yes, it does.
- 21 Q And then you said, enter the amount. What is that part of
- 22 the process for?
- 23 A So it would be to identify specifically what the charge
- 24 that is attempting to be authorized would be for. In this
- 25 case, \$200 for the watch.

- 1 Q And then what happens after the amount is entered and the
2 card is swiped?
3 (Reporter interruption)
4 BY MR. FARNHAM:
5 Q What happens after the amount is entered and the card is
6 swiped?
7 I'll speak slower, too.
8 A So in the three-second time frame from the card being
9 swiped and the receipt printing, the transaction amount for
10 that sale, \$200, will travel through the payment brands, Visa
11 and MasterCard respectively for the brand of the card, on to
12 the issuer of that credit card, so, let's say Citibank.
13 And then Citibank would review the dollar amount of that
14 sale transaction, make their decision on if they are going to
15 approve it, based on the creditworthiness of the card holder,
16 and then send that approval, if it's approved, back through the
17 terminal. And then that is when the receipt will come out.
18 And that will be presented for the card holder to sign.
19 Q And what is that, what is that step called? What do you
20 call that?
21 A That would be the authorization process.
22 Q After the charge is authorized and the receipt is printed
23 and signed, what happens after that?
24 A At that point, that transaction along with others
25 throughout the day would be stored in the merchant's terminal.

- 1 Q When the slip is signed, has the merchant, the jewelry
2 store in this case, been paid for the transaction yet?
3 A No, they have not.
4 Q When does that happen?
5 A That would occur during what we refer to as the settlement
6 process.
7 Q When does that happen?
8 A At the point that the merchant would manually send us the
9 batch of credit card data. So the transactions from that day's
10 processing, they would send all that data to Chase Paymentech.
11 And that would initiate the settlement process.
12 Q Could that, that process of the point of sale of the
13 credit card terminal sending the information, how does that
14 happen?
15 A Typically, depending on the setup of the terminal -- let's
16 say if the terminal is set up for dial. There would be a phone
17 line that connects into the bottom or the back side of the
18 terminal.
19 And then, the merchant would manually dial in to a Chase
20 Paymentech phone number to present that data, to essentially
21 transmit that data to us to begin the processing process.
22 Q Then tell me what happens -- after the data has been sent
23 to Paymentech about those transactions, how does the settlement
24 happen?
25 A So the settlement process typically will happen overnight.

- 1 And, there's a few things that happen simultaneously.
2 So, for the case of the \$200 for the watch, the two things
3 that ultimately need to be done is we need to pay the merchant
4 the \$200 into their bank account for the goods or services,
5 which in this case is a watch. And we also need to request
6 that \$200 from the respective issuing bank of the credit card.
7 Q And both those things happen in the settlement process?
8 A They do.
9 Q When you say "pay the merchant," how does that happen?
10 A So since we are doing these two processes at the same
11 time, simultaneously, we will refer back to one of our two
12 Chase Paymentech bank accounts. One is in Ohio, and one is in
13 Texas.
14 So to pay the merchant, to put that \$200 into their bank
15 account, we will take that money from one of the two Chase
16 Paymentech bank accounts.
17 Q So, you talked about a couple of payments, money coming
18 from the card issuers and going to the merchant. It doesn't go
19 directly; it goes through Paymentech?
20 A Yes.
21 Q And what's the process by which the merchant is paid? How
22 do they get money in their account?
23 A It would be deposited into a bank account via -- via the
24 ACH.
25 Q Is that a Chase or a Paymentech account?

- 1 A It's respective to the linked account of the merchant
2 account. So that can be any account, any brand of account.
3 Q How does Paymentech know the linked account?
4 A It's -- it is first stipulated in the merchant agreement
5 and application.
6 Q So there will be a particular linked account for a
7 merchant?
8 A Yes.
9 Q Would there be more than one?
10 A No.
11 Q Can it change over time?
12 A Yes.
13 Q How does Paymentech make its money in this process of
14 credit card processing?
15 A Paymentech will keep a portion of the fees that are
16 assessed for each individual transaction.
17 Q I also want to ask briefly how refunds work. In your
18 example, what if a customer wants to return that watch?
19 A A refund is simply the reversing of a sale. So if I
20 purchase that \$200 watch and I don't like it, I would then go
21 back to the merchant's location, present the watch back to
22 them, and request a refund.
23 Again, the same process would ensue as far as the credit
24 card swipe and whatnot with the terminal.
25 Q So, just break that down for me. What happens at the

1 terminal if the customer wants a refund for that watch?
 2 A So then, the merchant would again accept the credit card
 3 from the card holder, the customer. And then they would code
 4 the terminal that this would be a refund, rather than a sale.
 5 The card would be swiped. The dollar amount would be entered.
 6 And then, at that point, the refund has been facilitated.
 7 There's no authorization in the process.
 8 Q And I would ask that you slow down, again, for the
 9 reporter. You are doing great; just a little slower.
 10 You mentioned "code for refund." What does that mean?
 11 A It would simply be a button on the terminal that
 12 identifies a refund is to be processed.
 13 Q After the terminal -- after the refund is coded and keyed
 14 into the point of sale machine, what happens after that?
 15 A A receipt will print that will be given to the customer.
 16 And that refund data is then stored in the merchant terminal.
 17 Q And then is it transmitted to Paymentech?
 18 A It would be transmitted to Paymentech in the same manual
 19 fashion as the batch-out process. So, that transaction would
 20 live in the batch inside the terminal until the merchant
 21 manually sends us that data.
 22 Q How does the transaction get completed after the
 23 information is sent to Paymentech?
 24 A It would be completed during the settlement process.
 25 Q What does that entail for a refund?

1 A Again, the same process flow of the settlement would
 2 occur. For a refund, however, the two simultaneous things that
 3 will occur is that Chase Paymentech will pay the respective
 4 issuing bank, because we want to put the money back on the
 5 credit card of the customer. And then we will withdraw the
 6 respective dollar amount from the merchant's linked bank
 7 account.
 8 Q Same, but in reverse?
 9 A Correct.
 10 Q So, I do want to turn your attention back to 2011. In
 11 that year, was there a time that you learned about a company
 12 called Jones Moore & Associates?
 13 A Yes.
 14 Q How did that company come to your attention?
 15 A I was brought in to an ongoing investigation.
 16 Q What was the investigation about?
 17 A The investigation was a case created regarding a
 18 significant amount of refund transactions.
 19 Q Why did that generate a case?
 20 A With our proprietary risk management systems, this
 21 particular case was generated due to the dollar amount size of
 22 the batch submitted to us, as well as the size of some of the
 23 individual transactions inside the batch.
 24 Q And was this -- these significant refund transactions,
 25 what was the account that those related to?

1 A It was related to the Jones Moore & Associates merchant
 2 account.
 3 Q Just generally, what are some of the steps you took when
 4 this was brought to your attention and you were involved in
 5 that case?
 6 A When I was brought in to the case, I was essentially
 7 needed to retrace the steps that had already been completed by
 8 the initial analyst, as well as take an in-depth review as to
 9 all of the processing of the merchant account, in addition to,
 10 obviously, the refunds.
 11 Q Was there information that you were able to access
 12 regarding the account and the transactions?
 13 A Yes.
 14 Q What type -- generally, what types of information did you
 15 pull from Paymentech records?
 16 A I was able to review every single transaction processed
 17 with a batch detail report.
 18 MR. FARNHAM: May I have permission to approach with
 19 an exhibit?
 20 THE COURT: Yes.
 21 BY MR. FARNHAM:
 22 Q Mr. Hallford, you have been handed what's been marked for
 23 identification as Exhibit 24. Do you recognize this document?
 24 (Witness examines document)
 25 Q And yes, please review it.

1 A I do.
 2 Q What is Exhibit 24?
 3 A This is the merchant application agreement for a merchant
 4 account.
 5 Q And what's the entity on this account?
 6 A Jones Moore & Associates.
 7 Q And is this application maintained in Paymentech's
 8 records?
 9 A Yes.
 10 Q As part of its normal business activity?
 11 A Yes.
 12 MR. FARNHAM: I would move Exhibit 24 into evidence.
 13 THE COURT: Any objection?
 14 MR. DRESSLER: No objection.
 15 THE COURT: Admitted.
 16 (Trial Exhibit 24 received in evidence)
 17 MR. FARNHAM: And I would like to publish it,
 18 Your Honor.
 19 THE COURT: Go ahead.
 20 (Document displayed)
 21 BY MR. FARNHAM:
 22 Q Just generally tell me what the purpose of Exhibit 24 is.
 23 What's the purpose of this document?
 24 A This is a requirement for all merchant accounts being
 25 boarded. This is an application for approval of a merchant

1 account with Chase Paymentech.
 2 Q Where does this document fit in the process of opening a
 3 merchant account?
 4 A This is the initial document completed in the first
 5 portion of the boarding steps of a merchant account.
 6 (Reporter interruption)
 7 THE WITNESS: B-O-A-R-D-I-N-G, yes.
 8 BY MR. FARNHAM:
 9 Q And what do you mean by "boarding"?
 10 A The on-boarding of an account. So, so we have an account
 11 that has approached us for an application, and receives an
 12 application, and they complete that application. And then we
 13 go through an approval process through the credit and
 14 underwriting piece.
 15 And then upon approval, then the merchant would be boarded
 16 on to the Chase Paymentech platforms.
 17 Q And they would be able to process credit cards like you
 18 mentioned, like you discussed?
 19 A Correct.
 20 Q If we could look at the -- zoom in on the upper left
 21 portion of Exhibit 24.
 22 (Document displayed)
 23 Q Could you read the name of the entity this agreement
 24 relates to?
 25 A "Jones Moore & Associates."

1 Q And could you see, could you read the address for that
 2 entity?
 3 A 1521 Concord Pike, No. 301, Wilmington, Delaware, 19803.
 4 Q And if we could look at the primary merchant contact name
 5 and email address, right below the that. What do those say?
 6 A Primary merchant contact name says "David Lowe." Email
 7 address states "david@jonesmoore.com."
 8 Q When these applications are submitted, does the business
 9 identify what type of work it does?
 10 A Yes.
 11 Q Is that on Page 1?
 12 A Yes, it is.
 13 MR. FARNHAM: If we could zoom in on the middle where
 14 it says "Tax consulting."
 15 (Document displayed)
 16 BY MR. FARNHAM:
 17 Q What did this entity say its business was?
 18 A According to this merchant agreement, that the business
 19 was a tax consulting, audit, business tax company.
 20 MR. FARNHAM: If we could go to the second page of
 21 Exhibit 24, and zoom in on the top portion.
 22 (Document displayed)
 23 BY MR. FARNHAM:
 24 Q What is the information that is being sought by this part
 25 of the application?

1 A This would be the owner and officer information for the
 2 business.
 3 Q And who is listed as the first owner of this business?
 4 A "Jim Murray."
 5 Q And what's his title?
 6 A "CFO."
 7 Q What does that stand for?
 8 A Chief financial officer.
 9 Q And what's the address that is identified here for that
 10 person?
 11 A It's 505 Montgomery Street, Suite 1100, San Francisco,
 12 California, 94111.
 13 Q I would like to ask you to look at the owner name. Who is
 14 that?
 15 A It is "David Lowe."
 16 Q And what is his title, according to this document?
 17 A "President."
 18 Q And underneath that, there is the address. What does that
 19 say?
 20 A "1521 Concord Pike, Suite 301, Wilmington, Delaware,
 21 19803."
 22 Q If we could look at Page 3 of this document.
 23 (Document displayed)
 24 Q And I want to draw your attention to the signature block
 25 there.

1 Who signed this document on behalf of Jones Moore?
 2 A It appears to be Jim M. Murray.
 3 Q And what is the date -- how is this document dated?
 4 A It was signed and dated May 5th, 2010.
 5 MR. FARNHAM: If we could just go back to Page 2 for
 6 a minute.
 7 (Document displayed)
 8 BY MR. FARNHAM:
 9 Q And I would like to draw your attention to the portion
 10 that we read for the second owner, "David Lowe." Do you see
 11 that part?
 12 A Yes.
 13 Q What is listed for this document under the Social Security
 14 number for David Lowe?
 15 A It's a passport number.
 16 Q What does that say?
 17 A [REDACTED]
 18 Q And do you know why it says "Passport#" and not a Social
 19 Security number, as requested?
 20 A That would be the form of identification that would be
 21 presented at the time of the application being completed.
 22 MR. FARNHAM: If we could look at Page 7 of this
 23 document.
 24 (Document displayed)
 25

1 BY MR. FARNHAM:
 2 Q I wanted to ask you just generally, what's this portion of
 3 the document?
 4 A These are all of the terms and agreements and conditions
 5 under the merchant agreement that is specific to the processing
 6 parameters of the merchant account.
 7 Q Are these the terms that govern the relationship?
 8 A Yes.
 9 Q And how about, starting on Page 13 of this document, what
 10 is that portion?
 11 A These are the general operating guidelines and rules that
 12 are specific to individual transactions processed on a merchant
 13 account.
 14 MR. FARNHAM: If I could approach with an exhibit?
 15 THE COURT: All right.
 16 BY MR. FARNHAM:
 17 Q Mr. Hallford, I have handed you what's been marked for
 18 identification as Exhibit 42, and I would like you to review
 19 that. When you are ready, tell me if you recognize that
 20 document.
 21 (Witness examines document)
 22 A I do. I recognize these.
 23 Q What is Exhibit 42?
 24 A These are printouts for the general setup of the Jones
 25 Moore & Associates merchant account, along with banking

1 financials.
 2 Q Is this a document that Paymentech maintains as part of
 3 its business?
 4 A Yes.
 5 Q And are these records that relate to the Jones Moore
 6 account specifically?
 7 A Yes.
 8 MR. FARNHAM: I would move to admit Exhibit 42.
 9 THE COURT: Any objection?
 10 MR. DRESSLER: No objection.
 11 THE COURT: Admitted.
 12 (Trial Exhibit 42 received in evidence)
 13 BY MR. FARNHAM:
 14 Q Let's start with the first page of Exhibit 42.
 15 (Document displayed)
 16 Q And I just would draw your attention to the top portion,
 17 "General Info."
 18 Do you see that part?
 19 A I do.
 20 Q What is the name of the account, according to this?
 21 A "Jones Moore & Associates."
 22 Q And the address, do you recognize that address?
 23 A I do recognize it.
 24 Q What is that?
 25 A It is the 1521 Concord Pike address that's also on the

1 merchant agreement.
 2 Q The right-hand column here, third item down, it says,
 3 "Bank Merchant Number."
 4 A Yes.
 5 Q What is that?
 6 A It's simply a unique identifier for the merchant account.
 7 Q Is that like an account number?
 8 A Yes, it is.
 9 Q And if you look at the little further down, there's
 10 "Toll-free" and "HCS Contact." What do those things mean?
 11 A That is the contact for the merchant account, the
 12 individual and their phone number.
 13 Q And what is the name and phone number listed there?
 14 A David Lowe, at [REDACTED]
 15 Q If we could turn to Page 3.
 16 (Request complied with by the Witness)
 17 MR. DRESSLER: I'm sorry; you said Page 3?
 18 MR. FARNHAM: 3.
 19 (Document displayed)
 20 BY MR. FARNHAM:
 21 Q What is Page 3?
 22 A This is a continuance of the same report with just
 23 additional merchant information for this account.
 24 Q And if we could look at the second -- near the top, second
 25 column, there's an item, a line, says "Hardware," about six

1 down. Do you see that?
 2 A Yes.
 3 Q What does that mean and what is -- what's the -- what do
 4 the letters mean there?
 5 A That is the model of the terminal that's programmed to
 6 process transactions for this merchant account. And the
 7 letters VX570 is the model of that particular brand of
 8 terminal.
 9 Q And if you look, second column, further down, the bottom
 10 right paragraph there, the top line says "Connectivity type."
 11 What does "Connectivity type" mean?
 12 A This connectivity type is listed as "Dial," which means
 13 this particular terminal must plug into a phone line to
 14 transmit payment transactions to Chase Paymentech.
 15 Q If we could go to Page 5 of Exhibit 42.
 16 (Document displayed)
 17 Q What is Page 5 of this exhibit?
 18 A These are financials for Jones Moore & Associates,
 19 provided at the time of the merchant application.
 20 Q And are these -- how are these maintained by Paymentech?
 21 A They are maintained in our electronic filing cabinet.
 22 Q So if they're submitted as part of an application, they
 23 would be in that file -- in that electronic filing cabinet, and
 24 maintained there?
 25 A Yes, they would.

1 Q If you look at this bank account, who is the issuing bank
2 for this Page 5?
3 A According to this document, it's US Bank.
4 Q And according to this document, who is the account holder?
5 A Jones Moore & Associates, Ltd.
6 Q And, just briefly look at Page 6.
7 (Document displayed)
8 Q Was this also a document that was submitted with the
9 application?
10 A Yes, it was.
11 Q And then Page 7.
12 (Witness examines document)
13 (Document displayed)
14 Q Same for this document?
15 A Yes, sir.
16 Q And what is the purpose, why are these in the file?
17 A I don't know.
18 Q Were these requested by Paymentech, or part of the on --
19 part of the boarding process? If you know.
20 A I -- I'm not a part of that process, so I don't
21 specifically know.
22 MR. FARNHAM: I would like to approach with another
23 exhibit.
24 THE COURT: All right. We're coming up on a break
25 shortly. Is this going to be fairly --

1 MR. FARNHAM: This is a longer one.
2 THE COURT: Why don't we go ahead and take a break,
3 then. We will take our lunch break, and resume at 12:15 today.
4 And just a reminder to the jury: Please do not discuss
5 this case with anyone, including amongst yourselves; do not
6 attempt to do any research; and please keep an open mind
7 throughout this trial.
8 Thank you.
9 THE CLERK: All rise for the jury.
10 (Jury excused)
11 (The following proceedings were held outside of the
12 presence of the Jury)
13 MR. DRESSLER: Your Honor, is it possible for
14 Mr. Murray to remain here with me so we can continue to discuss
15 some things?
16 THE COURT: You mean during the lunch period?
17 MR. DRESSLER: Yes.
18 THE COURT: That would be up to the marshal.
19 (Off-the-Record discussion between Counsel and
20 Marshal)
21 THE COURT: Okay?
22 MR. DRESSLER: All right.
23 THE COURT: All right, as long as it's okay with the
24 marshal.
25 Mr. Farnham, do you expect to be able to finish with

1 Mr. Hallford today?
2 MR. FARNHAM: I certainly do. I would hope, another
3 45 minutes.
4 THE COURT: All right. I hope so, too. Thank you.
5 MR. FARNHAM: (Nods head)
6 (Recess taken from 11:45 a.m. to 12:19 p.m.)
7 (The following proceedings were held outside of the
8 presence of the Jury)
9 THE COURT: Ready to start? Okay, let's bring the
10 jury in.
11 (The following proceedings were held in the presence
12 of the Jury)
13 THE CLERK: All rise for the jury.
14 Please be seated.
15 THE COURT: All right. Welcome back, ladies and
16 gentlemen. We are going to resume with the direct testimony of
17 Mr. Hallford.
18 You may continue, Mr. Farnham.
19 MR. FARNHAM: Thank you, Your Honor.
20 DIRECT EXAMINATION RESUMED
21 BY MR. FARNHAM:
22 Q Mr. Hallford, before we broke for lunch we were talking
23 about your -- your investigation into this case. I think you
24 called it a "case," is that right?
25 A Yes.

1 Q I wanted to hand you what's been marked as Exhibit 43.
2 It's up there's on the podium.
3 Was Exhibit 43 part of the information that you looked at
4 when you were trying to figure out what happened here?
5 (Witness examines document) he
6 A Yes, it is.
7 Q What is Exhibit 13?
8 A This is our batch detail report.
9 Q And, what is that?
10 A This is a report that identifies every transaction
11 processed on this merchant account for the time that it was
12 active.
13 Q And it is -- is it for the particular merchant account for
14 Jones Moore & Associates?
15 A Yes, it is.
16 Q How do you know that?
17 A It states so on the report. Additionally, as identified
18 by the merchant number.
19 Q Does Paymentech regularly store and keep this type of
20 information?
21 A Yes.
22 Q Why is that?
23 A It's a purpose to maintain every transaction that's
24 processed for all merchants on all platforms within Chase
25 Paymentech.

1 Q When is it stored or put into the database that it's
2 stored in?
3 A In real time, as the transactions are processed.
4 MR. FARNHAM: I would move Exhibit 43 into evidence,
5 Your Honor.
6 THE COURT: Any objection?
7 MR. DRESSLER: No objection.
8 THE COURT: Admitted.
9 (Trial Exhibit 43 received in evidence)
10 MR. FARNHAM: And I would like to publish that
11 exhibit.
12 THE COURT: You may.
13 (Document displayed)
14 BY MR. FARNHAM:
15 Q So you mentioned the title there, "BATCH DETAIL REPORT" on
16 the top, is that the title that you mentioned?
17 A It is.
18 Q And you mentioned that it relates to the Jones Moore &
19 Associates account. Is the upper left -- does that indicate
20 that?
21 A Yes, it does.
22 Q What's the merchant ID -- what does the "MID" stand for?
23 A That's the unique identifier for this particular account,
24 which is also listed on the previous document we looked at from
25 the CST report.

1 Q And you recognize that as the Jones Moore number?
2 A Yes, I do.
3 Q I want to quickly go through the columns to this chart to
4 understand what they mean.
5 (Document displayed)
6 Q What's the column -- what does the "MERCHANT" column mean?
7 A This is the unique identifier for this particular system
8 that is a merchant number for the Jones Moore & Associates
9 account.
10 Q And how about "TID"? What does that mean?
11 A That's the terminal identification number.
12 Q So for both the MERCHANT column and the TID column, if you
13 flip through your pages, are those the same for all
14 transactions here?
15 (Witness examines document)
16 A Yes, they are.
17 Q And what about the TIME column?
18 A This is the exact time that the credit card was swiped for
19 the respective transaction on each row.
20 Q And what time zone do those times in that column
21 correspond to?
22 A Eastern Standard Time.
23 Q And then what about the AMOUNT column?
24 A This is the individual transaction dollar amount for the
25 respective sale or refund transaction.

1 Q And what about the ACTION column?
2 A This is a coding column that identifies whether the
3 transaction is a sale or a refund.
4 Q And in this report, for this merchant, what types of
5 action codes appear?
6 A The action code 1, action code 3.
7 Q What do those mean?
8 A Action code 1 is a sale. Action code 3 is a refund.
9 Q And those correspond to the transaction that's talked
10 about earlier about credit card processing?
11 A Yes, sir.
12 Q What is the CARD column?
13 A This is the unique 16-digit credit card number for each
14 respective transaction.
15 Q How does the information get in that column? How does it
16 get populated?
17 A When the transaction is swiped through the terminal.
18 Q The AUTHOR -- the ERROR and AUTHOR# columns, what do those
19 mean?
20 A The ERROR column will identify if an authorization attempt
21 receives a "declined" code from the issuing bank for each of
22 the respective transactions. And the AUTHOR# column simply
23 identifies the payment brand of the credit card, whether it's
24 Visa or MasterCard or Discover.
25 Q If there's nothing in the ERROR column for a particular

1 transaction, what does that mean?
2 A It was a successful transaction.
3 Q What does the KEYED? column mean?
4 A This is a column to identify if the transaction was
5 manually hand-keyed into the terminal or if it was swiped.
6 Q Does that refer to how the machine obtains the credit card
7 number?
8 A Yes, sir.
9 Q And so, what does an "N" in the KEYED? column mean?
10 A That indicates that the transaction for that respective
11 line item was not keyed.
12 Q And then how about the last column, ANI? What does that
13 mean?
14 A This is the phone number that was plugged in and connected
15 to the merchant terminal to transmit these transactions to
16 Chase Paymentech.
17 Q So, I want to ask about some particular transactions. But
18 what's the first regular charge, date of the first regular
19 charge on this account?
20 A According to this document, the first successful
21 transaction was on June 9th, 2010, at 7:00 p.m., in the amount
22 of \$200 on AMEX card ending [REDACTED].
23 Q And when that transaction was completed, how did the
24 payment -- how did the terminal connect to Paymentech?
25 A The terminal connected to Chase Paymentech through phone

1 number [REDACTED].

2 Q So we need to look at a few particular transactions, and
3 maybe could you walk us through those. I want to start on
4 Page 4.

5 (Document displayed)

6 Q And there's a transaction -- there's a lot of them here,
7 but the transaction, it's about a third of the way down,
8 January 27, 2011, 7:05 a.m. Do you see that one?

9 A Yes, sir.

10 Q Can you walk me through what this line of information is
11 telling you?

12 A So I read this line as: On January 27, 2011, at 7:05 a.m.
13 Eastern time, merchant account ending in [REDACTED] processed a
14 \$20,000 sale transaction on Visa card ending 607 -- 6017. It
15 was a successful transaction. It was swiped, and it connected
16 to Chase Paymentech through phone number [REDACTED].

17 Q Let's move down to about halfway down this page. There's
18 one that starts -- that is dated February 1, 2011, 10:18 p.m.
19 Do you see that one?

20 A Yes, sir.

21 Q Tell me what that line tells you about this transaction.

22 A This line tells me that for merchant account ending [REDACTED],
23 on February 1st, 2011, at 10:18 p.m., a \$20,000 sale
24 transaction was processed on Visa card ending 9415. It was a
25 successful authorization. It was a swiped transaction, and it

1 was transmitted to Chase Paymentech through phone number
2 [REDACTED]

3 Q I would like you to look at February 2nd, 2011. It's
4 about an inch down. February 2nd, 2011, 7:45 p.m. Maybe you
5 could just summarize this transaction, what this tells you.

6 A Again, on this date and time, February 2nd, 2011, at 7:45
7 p.m., a \$20,000 successful sale transaction was processed on
8 Visa card ending 6017. And that connected to Chase Paymentech
9 through phone number [REDACTED]

10 Q Two lines down. February 12th, 2011, 4:48 p.m. What does
11 that line tell you?

12 A On that date and time, a \$20,000 sale transaction was
13 successfully processed on Visa card ending [REDACTED]. It was a
14 swiped transaction, and it connected to Chase Paymentech
15 through the same number I identified in the previous
16 transaction.

17 Q So I want to talk a little bit about that, that
18 connection. At one end of this connection there is a point of
19 sale machine. You've talked about that, right?

20 A Yes, sir.

21 Q And then, that point of sale machine is communicating to
22 who? Or what?

23 A That point of sale machine is communicating to the
24 Paymentech network service's front-end network, which is in
25 Tampa, Florida.

1 Q And what, sort of, what's the method of communication?
2 How are those two things communicating?

3 A Through the dial connection with the terminal.

4 Q With electronic signals?

5 A Yes.

6 Q What is the purpose for that? What happens after this --
7 after this -- the information gets transmitted to Tampa,
8 Florida?

9 A Then the information is conveyed on to the payment brand,
10 so the respective Visa and MasterCard for these transactions,
11 on to the issuing bank for these respective transactions to
12 obtain that authorization or respective decline.

13 Q So we talked about the first regular purchase that was
14 processed through this account. Maybe you could find for me --
15 and I think it is on Page 5 -- the last purchase that was made
16 through this account.

17 (Document displayed)

18 (Witness examines document)

19 A According to this document, it appears that the very last
20 sale transaction was processed on March 30th, 2011, at 3:38
21 a.m.

22 Q Let's look at the very next line after what you are
23 looking at there on Page 5.

24 I'm sorry; let me ask you this first: Have you -- when
25 you were looking at this case and investigating this issue, did

1 you tally up the amount of purchases that were made through
2 this point of sale machine?

3 Did you add them up?

4 A I did.

5 Q Can you give me an approximate number, if you recall, of
6 the purchases made on this point of sale -- the sale
7 transactions?

8 A For the sale transactions, approximately around \$650,000.

9 Q Then if you look at, on Page 5 of Exhibit 43, the line
10 that is dated March 30th, 2011, 10:26 p.m. Do you see that
11 one?

12 A Yes, sir.

13 Q What does this line of the batch detail report tell you?

14 A It tells me on this date and time, March 30th, 2011, 10:26
15 p.m., a \$20,000 refund was processed on Visa card ending 6017,
16 connecting to Chase Paymentech through the same phone number
17 identified in the previous transactions.

18 Q Do you recognize the card number this's involved in that
19 refund transaction?

20 A I do.

21 Q What is it?

22 A It's the same card number that was previously used to
23 process sale transactions.

24 Q And then, why is there no information in the AUTHOR# or
25 AUTH# column?

1 A Those three columns are respective to authorization
2 transactions for sales. In a refund transaction, there is no
3 authorization required.

4 Q And then again, the KEYED column here, what does that "N"
5 there mean?

6 A It indicates that that transaction was not keyed, and
7 therefore swiped.

8 Q When you were looking at this document as part of your
9 investigation, part of your figuring out what happened, did you
10 notice anything about the activity on the account that started
11 on March 30th, 2011, at 10:26 p.m.?

12 A I did.

13 Q What did you notice?

14 A Looking forward from that time, the proximity within
15 sequence that each transaction was processed within each other.

16 Q And, if you look at the times, you can look down. What is
17 it about the sequence that you noticed?

18 A That each one of these swiped refund transactions was
19 processed within 45 seconds to a minute and a half of each
20 other.

21 Q Maybe you can tell me, this group of close transactions
22 that were in very close proximity to each other, how far do
23 they go? How long do they go?

24 Maybe you can identify the end.
25 (Witness examines item)

1 A According to this document, the first refund started at
2 10:26 p.m. and the last refund was at 11:59 p.m. So, roughly
3 an hour and a half.

4 Q I see -- if you look at the March 31, 2011 at 12:03 a.m.
5 transaction -- do you see that? It's on Page 6.

6 (Witness examines document)

7 A I see that.

8 Q Is that part of the same group that's in close proximity,
9 if you can tell?

10 A It would be, based on the moving into the next day.

11 Q So it's a few minutes into March 31st?

12 A That's correct.

13 Q Is that the end of the group that you noticed was in close
14 proximity?

15 A That would be the end, the 12:03 transaction.

16 Q When you were looking into this issue, investigating this
17 case, did you add up approximately how much those return or
18 refund transactions added up to?

19 A Yes.

20 Q What's that, approximately?

21 A This subset of refunds was \$349,895.

22 Q In your experience with Paymentech, was that unusual
23 activity?

24 A Yes, it is.

25 Q Why is that?

1 A The high amount of refund transactions, all of which were
2 swiped, and a majority of the processing of sales transactions
3 over the previous year.

4 Q Was that -- anything there cause you concern as a risk
5 manager or a risk analyst?

6 A Yes. At the time, as a risk analyst, that surge and
7 velocity of refund activity was very alarming.

8 Q If you see a couple of lines from there, the line that
9 starts "APRIL 12, 2011, 5:37 A.M."

10 THE COURT: April 2nd or April 12th?

11 MR. FARNHAM: April 2nd; I'm sorry.

12 BY MR. FARNHAM:

13 Q Just a couple of lines down from the March 31st
14 transaction, still on Page 6.

15 (Document displayed)

16 Q Is that -- what does that line tell you about what
17 happened that date and time?

18 A For the 5:37 a.m. on April the 29th?

19 Q Yes.

20 A That particular line tells me that a \$19,150 refund was
21 processed against MasterCard 7866, and connected to Chase
22 Paymentech with the same phone line identified in the previous
23 transactions.

24 Q And following that, on this batch detail report, is there
25 a line, a string of refunds processed through this merchant?

1 A Yes, there is.

2 Q And does it continue on to Page 7?

3 A Yes, it does.

4 Q In the course of your work on this, did you tally up the
5 total amount of refunds, at least approximately, that were
6 processed through this account?

7 A The total amount for all dates?

8 Q Correct.

9 A Approximately \$600,000 in refunds.

10 Q And how does that compare to the total amount of sales
11 transactions you remember tallying up?

12 A It's a close majority of all trans- -- of all sale
13 transactions for the merchant account.

14 Q So, just briefly, I want to show you the statements for
15 this account. But, what -- did you learn what happened with
16 some of those refund transactions that were processed through
17 that point of sale machine?

18 MR. DRESSLER: Can I object? (Inaudible)

19 (Reporter interruption)

20 THE COURT: Rephrase. He said "Vague." Sustained.

21 Rephrase the question, please.

22 BY MR. FARNHAM:

23 Q Mr. Hallford, do you know what happened with regard to
24 those refund transactions that were sent to Paymentech by this
25 point of sale machine during the time period we talked about?

1 A A portion of them were stopped and withheld from
2 processing.
3 Q And what about the other portion?
4 A They were additionally stopped and subsequently released.
5 Q What do you mean by "released"?
6 A The initial analyst that reviewed those transactions
7 conducted due diligence in order to release them for
8 processing.
9 Q Release the funds, you mean?
10 A Yes.
11 Q So, I want to ask you about the card column here in the
12 batch detail report.
13 As part of your investigation, were you able to find any
14 information about the identity of the card holder or the name
15 of the card holder associated with these numbers that you saw
16 on the batch detail report?
17 A Yes, I was.
18 Q How did you do that?
19 A Through querying internal transactional historical data
20 stored within Chase Paymentech.
21 Q And were you able to match those card numbers that are on
22 this form on this document with any card holder or business --
23 card holder names or businesses?
24 A Yes, I was.
25 Q Do you remember what some of those names and businesses

1 were that you identified?
2 A I do recall.
3 Q What were those?
4 A The businesses I recall were Pareto Capital, Market
5 Neutral Trading. And the names that I recall were David Lowe,
6 Tim Palm, and Lisa Murray.
7 MR. FARNHAM: I would like to approach with another
8 exhibit.
9 THE COURT: Okay.
10 BY MR. FARNHAM:
11 Q Mr. Hallford, you have been handed what's been marked as
12 Exhibit 45. If you could leaf through that, and when you're
13 ready, tell me if you recognize it, and what it is.
14 (Witness examines document)
15 A These appear to be each of the monthly statements for the
16 credit card processing on the Jones Moore & Associates accounts
17 that was sent to the merchant.
18 Q In this case, "the merchant" meaning Jones Moore?
19 A Yes, sir.
20 Q And does this cover the time frame of May 2010 through
21 April, 2011?
22 A Yes, it does.
23 MR. FARNHAM: I would move Exhibit 45 into evidence.
24 THE COURT: Any objection?
25 MR. DRESSLER: No objection.

1 THE COURT: Admitted.
2 (Trial Exhibit 45 received in evidence)
3 MR. FARNHAM: I would like permission to publish
4 pages from this document.
5 THE COURT: All right.
6 (Document displayed)
7 BY MR. FARNHAM:
8 Q Just quickly, on the first page, Page 1, the upper left
9 where it says "Jones Moore & Associates," do you see that?
10 A Yes, sir.
11 Q What's that portion of the statement?
12 A That is the address that the statements are sent to for
13 the merchant to receive.
14 Q And what types of information generally is contained in
15 the statements that are sent to the merchant?
16 A All processing activity for the respective month that's
17 being sent.
18 Q If we could turn to Page 13 of this document.
19 (Request complied with by the Witness)
20 (Document displayed)
21 Q What does that page indicate?
22 A This particular page identifies that on June the 22nd of
23 2010, the merchant was billed for a Verifone VX570DM, which was
24 the merchant terminal linked to this merchant account for
25 processing transactions.

1 Q And what's the purpose of this line item appearing in the
2 statement?
3 A This is when Chase Paymentech charged the merchant the
4 \$595 for the terminal.
5 Q If we could look at Page 52.
6 (Document displayed)
7 Q This page that says "DEPOSIT SUMMARY" at the top, what
8 does this page mean?
9 A This identifies all of the transaction processing dollar
10 amounts for all of the respective days of the month that the
11 trans- -- that the data was batched out and sent to Chase
12 Paymentech.
13 Q Does this indicate the -- the sales activity on that point
14 of sale machine for that month?
15 A Yes, it does.
16 Q And then if we look at the next page, Page 53.
17 (Document displayed)
18 Q This one, it says "Funding Summary." What does this page
19 indicate? What is it?
20 A This indicates the dollar amount of liquid funds that are
21 paid into the merchant's settlement bank account for the
22 respective month.
23 Q If we could look at the lower right number in this chart.
24 (Document displayed)
25 Q What does that number say?

- 1 A That number is \$160,927.27.
 2 Q And what does that signify?
 3 A That is the exact dollar amount transferred to the Jones
 4 Moore & Associates bank account linked to the merchant account
 5 at the time.
 6 Q Does this page tell you any information about that linked
 7 merchant account?
 8 A Yes, it does.
 9 Q Where is that?
 10 A On the bottom left of this particular page, the last four
 11 digits of the associated bank account that's linked will
 12 appear.
 13 MR. FARNHAM: If we could just zoom in on that,
 14 briefly.
 15 (Document displayed)
 16 BY MR. FARNHAM:
 17 Q So for this time period, for this statement date, what
 18 were the last four digits of the account number that was
 19 linked?
 20 A 2049.
 21 Q If we could move to Page 68 of this document.
 22 (Document displayed)
 23 Q What's the time period of the statement -- what is the
 24 statement period for this document, this page?
 25 A This is for the month of February, 2011.

- 1 Q And then, looking at the deposit summary, the bottom
 2 number on the left, what does that signify?
 3 Well, first, maybe you could read that number to me.
 4 A That number is \$110,700.
 5 Q What does that mean?
 6 A That is a net amount of sales and refunds processed on
 7 this merchant account for this respective time period.
 8 Q And then one more page, Page 69.
 9 For this funding summary page, if we could zoom in on the
 10 bottom right number.
 11 (Document displayed)
 12 Q Tell me that number, and what it signifies.
 13 A The number is \$108,675.21. And this dollar amount
 14 signifies the exact amount of money transferred into the Jones
 15 Moore & Associates linked bank account via ACH.
 16 Q At this time, could we look at the lower left of the same
 17 page, and identify the last four of the bank account we're
 18 talking about?
 19 (Document displayed)
 20 A For this period?
 21 Q Yes.
 22 A The last four of the bank account are 0762.
 23 Q If we could go to Page 76.
 24 (Request complied with by the Witness)
 25 (Document displayed)

- 1 Q This page has some black and some red numbers. I'm
 2 wondering if you can tell me what these numbers tell you about
 3 what happened in this account on March 31st.
 4 A According to this statement, on March 31st, a total of
 5 \$349,895 were submitted in refunds.
 6 Q And then, what, what happened after those were submitted?
 7 A They were withheld from processing.
 8 Q And why were they withheld?
 9 A Due to the dollar amount of the batch submitted, as well
 10 as some of the dollar amounts of the refunds within the batch.
 11 Q So tell me in sort of more practical terms, what does
 12 "withheld" mean? What does that mean?
 13 A That means due to the size of the transactions in batch, a
 14 proprietary risk management system stopped this activity and
 15 required a human being to review it before it moves on to
 16 settlement.
 17 (Document displayed)
 18 Q And in your investigation about this case, did you learn
 19 what happened after the funds were withheld from settlement?
 20 A Yes, I did.
 21 Q What did happen?
 22 A The initial analyst that reviewed these particular
 23 transactions conducted due diligence in order to release the
 24 transactions for settlement. At which point, she did so.
 25 Q What was the effect -- how did the money flow after the

- 1 transaction was released for settlement?
 2 A At the point that it was released for settlement, the
 3 \$349,895 were paid to all of the issuing banks for the
 4 respective credit cards for each refund in that batch,
 5 simultaneously as Chase Paymentech made an attempt to withdraw
 6 that money from the Jones Moore & Associates linked bank
 7 account.
 8 Q As part of your investigation, did you learn what happened
 9 when Chase Paymentech tried to pull that amount of money from
 10 the linked Jones Moore account?
 11 A Yes, I did.
 12 Q What happened?
 13 A The money was not present.
 14 Q Was any of that money retrieved or recovered from that
 15 account?
 16 A No, it was not.
 17 Q Has Paymentech ever recouped the amount of money that it
 18 put on the card holders' accounts on -- what day was that?
 19 A March 31st.
 20 Q March 31st. Was Paymentech ever able to recoup the amount
 21 of money that they put back on the card holders' accounts?
 22 A No, it was not.
 23 Q I want to ask about Page 87 of this document.
 24 (Document displayed)
 25 Q Before we get to that, there were other refunds you talked

- 1 about. There was, I think you said there were \$607,000 in
2 total refunds processed but approximately 350,000 got settled
3 and paid to the card holders.
- 4 What happened to the other refund requests, transactions?
5 (Witness examines documents)
- 6 A On April the 3rd and April the 7th, a total of additional
7 refunds which is \$257,525 were submitted to Chase Paymentech
8 for processing, and subsequently withheld by the same system.
- 9 Q And those were never released for payment.
- 10 A That is correct.
- 11 Q Paymentech didn't pay the card holders back that amount
12 for those refunds.
- 13 A That is correct.
- 14 Q Okay. Page 87, also in Exhibit 45.
15 (Witness examines document)
- 16 Q What does this page mean? It says "Chargebacks and
17 Reversals" at the top. What is this page for?
- 18 A This particular page will identify every chargeback that
19 would come in to this merchant account within the respective
20 month.
- 21 Q What is a chargeback?
- 22 A A chargeback is essentially a disputed sale or refund
23 transaction by the card holder.
- 24 Q Who initiates the chargeback process for a transaction?
- 25 A The card holder or customer of the merchant.

- 1 Q And what does this page indicate to you about the Jones
2 Moore & Associates account?
- 3 A That during the month of April, \$41,900 came in, in total
4 chargebacks.
- 5 Q What happens, what happens when a chargeback request comes
6 in? How is that handled by Paymentech?
- 7 A Paymentech is essentially the intermediary between the
8 issuing banks and the payment brands, Visa and MasterCard and
9 then that of the merchant.
- 10 With the rule -- the -- the agreements and contracts that
11 we, Chase Paymentech, have with Visa and MasterCard, we are
12 obligated to pass these chargebacks on to the merchant.
- 13 Q What does it mean, pass it on to the merchant?
- 14 A Make an attempt to withdraw via ACH from the merchant's
15 linked bank account the total dollar amount of each of the
16 chargebacks.
- 17 Q So, similar to a refund, it would be the money flowing
18 from the merchant back to the card holder?
- 19 A That's correct.
- 20 Q What about -- like, when does that happen in the process?
21 Is there -- this is a dispute, right?
- 22 A Yes.
- 23 Q When does Paymentech have to reverse that transaction and
24 transfer that money?
- 25 A In real time, as they come in.

- 1 Q And does this page indicate that chargebacks were actually
2 processed by Paymentech?
- 3 A Yes.
- 4 Q In the total amount shown at the bottom?
- 5 A That's correct.
- 6 Q And in this situation, did you learn what happened with
7 these chargebacks in the course of your investigation?
- 8 A Yes, I did.
- 9 Q Tell me how the money flowed here.
- 10 A As soon as each of the individual chargebacks were to come
11 in, Chase Paymentech will send the positive money, the dollars
12 back to the credit cards for the respective chargeback amounts,
13 while simultaneously making a withdrawal attempt on the linked
14 bank account for the merchant.
- 15 Q And in this case, was Paymentech ever able to recover from
16 the merchant the \$41,000 subject to these chargebacks?
- 17 A No, it was not.
- 18 MR. FARNHAM: If I can approach with an exhibit,
19 Your Honor?
- 20 THE COURT: All right.
- 21 BY MR. FARNHAM:
- 22 Q I have handed you what's been marked, Mr. Hallford, as
23 Exhibit 46. I would ask you to review it, and when you are
24 ready, tell me if you recognize it.
25 (Witness examines document)

- 1 A These are the chargeback documents that Paymentech
2 receives from Visa and MasterCard, respectively.
- 3 Q And then how does -- Paymentech receives them from Visa
4 and MasterCard. What happens to them after that?
- 5 A We move forward with the movement of monies, as previously
6 identified.
- 7 Q And does Paymentech retain the documents related to the
8 chargebacks that it receives?
- 9 A Yes, it does.
- 10 Q If I could ask you to turn to Page 3 of this document.
11 What is that page?
- 12 A This page appears to be a letter that was provided with
13 this particular chargeback to Chase Paymentech.
- 14 Q And is this how chargebacks would be initiated, is a
15 request from the card holder?
- 16 A Typically, yes.
- 17 Q And then, how does this document make its way into Chase
18 Paymentech records?
- 19 A It is a part of the package that Chase Paymentech would
20 receive from the respective payment brands, Visa or MasterCard.
- 21 Q After the -- after the large refund requests on March 31st
22 and then you got involved with the case, what happened with
23 this account?
- 24 A Ultimately, the account was closed.
- 25 Q Were any other sale or refund transactions permitted on

1 this account?
 2 A No, they were not.
 3 Q Were there additional chargebacks that went through this
 4 account?
 5 A Yes, there were.
 6 MR. FARNHAM: If I could approach with an exhibit?
 7 THE COURT: All right.
 8 (Witness examines document)
 9 (Off-the-Record discussion between Counsel)
 10 MR. FARNHAM: Your Honor, I apologize for a
 11 procedural mistake. Exhibit 46 I did not move into evidence.
 12 That is the chargeback documents that Chase Paymentech
 13 retained.
 14 I would like to move Exhibit 46 into evidence.
 15 THE COURT: Any objection?
 16 MR. DRESSLER: No objection.
 17 THE COURT: Admitted.
 18 (Trial Exhibit 46 received in evidence)
 19 MR. FARNHAM: Thank you.
 20 BY MR. FARNHAM:
 21 Q Mr. Hallford, you have been handed what's been marked for
 22 identification as Exhibit 49. Have you had a chance to look at
 23 that?
 24 A I have.
 25 Q What is Exhibit 49?

1 A These are merchant account monthly statements for the
 2 Jones Moore & Associates merchant account.
 3 Q What is the time period for these?
 4 A According to the documents, the time period is from May,
 5 2011, through September, 2011.
 6 Q And are these documents that are maintained by Chase
 7 Paymentech in the course of its business?
 8 A Yes, sir.
 9 MR. FARNHAM: I would move to admit Exhibit 49.
 10 THE COURT: Any objection?
 11 MR. DRESSLER: No objection.
 12 THE COURT: Admitted.
 13 (Trial Exhibit 49 received in evidence)
 14 MR. FARNHAM: May I publish it to the jury?
 15 THE COURT: Yes.
 16 BY MR. FARNHAM:
 17 Q In Exhibit 49, if you could look at Page 2.
 18 (Request complied with by the Witness)
 19 Q This says "Deposit Summary" at the top. What is this
 20 page?
 21 A This would be a total of all sale and refund transactions
 22 processed during the respective time frame.
 23 Q This shows zeroes all the way across. What does that tell
 24 you?
 25 A That the merchant processed no sale and refund

1 transactions during this time frame.
 2 Q Why was that?
 3 A The merchant account was in terminated status.
 4 Q So if a card was swiped at the point of sale terminal, and
 5 an amount was typed in, it was keyed as a sale, what would
 6 happen?
 7 A At the time of termination, the merchant terminal is
 8 deactivated.
 9 Q If you could look at Page 5 of this document, Exhibit 49.
 10 MR. DRESSLER: Excuse me --
 11 (Document displayed)
 12 BY MR. FARNHAM:
 13 Q And we'll start with Page 5.
 14 (Document displayed)
 15 Q What is Page 5?
 16 A Page 5 is a total amount of chargebacks received on the
 17 Jones Moore & Associates merchant account during the time frame
 18 of May, 2011.
 19 Q So if you look at the bottom right number in this table,
 20 what is that number?
 21 A \$110,875.
 22 Q And what does that amount signify?
 23 A That would be the total dollar amount, as each one of
 24 these chargebacks were to come in, that Chase Paymentech would
 25 pay back to the issuing bank of the card holders, and make a

1 withdrawal attempt against the bank account linked to the Jones
 2 Moore & Associates merchant account.
 3 Q And what happened with this 110,875? Tell me about the
 4 money flow for this amount.
 5 A As each of the chargebacks come in during this month time
 6 frame, Chase Paymentech will pay, from either their Ohio or
 7 Texas Chase Paymentech bank account, the money for this
 8 respective chargeback into the issuing bank for the card
 9 holders. At the same time, making a withdrawal attempt against
 10 the bank account linked to the Jones Moore & Associates
 11 merchant account.
 12 Q Now, I'm trying to understand that, because you said the
 13 account was closed. How -- why was that -- why were those
 14 chargeback amounts still being transferred back to the card
 15 holders?
 16 A This is considered trailing activity. And our obligation
 17 to make the issuing banks whole on chargeback transactions
 18 exists after the closure of a merchant account.
 19 Q If you could turn to Page 13.
 20 (Request complied with by the Witness)
 21 Q Is this the chargeback summary page for June of 2011?
 22 A Yes, sir.
 23 Q And if you could look at the bottom right number, what
 24 does that signify?
 25 A \$41,337.67.

1 Q And what happened to that amount?
 2 A It follows the same process flow previously identified for
 3 the last month.
 4 Q Paid to the card holders, even though the account's
 5 closed?
 6 A Yes, sir.
 7 Q And was Paymentech ever able to recoup that money from
 8 Jones Moore?
 9 A No, sir.
 10 Q Then quickly to Page 20, the bottom right number there.
 11 What is that, and what does it signify?
 12 A During the month of July, 2011, a total amount of
 13 chargebacks came in for \$8,800.
 14 Q If you look through the rest of these statements, is that
 15 the last chargeback that Paymentech had to process?
 16 A Yes, sir.
 17 Q There is a lot of math here, but I did my own math adding
 18 up the chargebacks that we just looked at. And you can tell me
 19 if this fits what you found in your investigation:
 20 \$212,912.87.
 21 A That's correct.
 22 Q What is that amount?
 23 A That is the total amount of all chargebacks received on
 24 the Jones Moore & Associates merchant account.
 25 Q What is the total amount of money that Chase Paymentech

1 sent, either in refunds or chargebacks back to card holders,
 2 that it was never able to recover from the Jones Moore linked
 3 account, approximately?
 4 A Approximately \$50,000.
 5 Q And that would be the addition of the 349,895 you
 6 mentioned, plus the 202,000 we just talked about?
 7 A Yes, sir.
 8 Q I would like you to look at what's been previously
 9 admitted into evidence as Exhibit 57.
 10 MR. FARNHAM: And if we could publish that to the
 11 jury, the first page of Exhibit 57.
 12 (Off-the-Record discussion)
 13 MR. FARNHAM: Okay. Can we switch to the ELMO,
 14 Betty?
 15 THE CLERK: Okay.
 16 (Document displayed)
 17 BY MR. FARNHAM:
 18 Q Mr. Hallford, on the screen is the first page of Exhibit
 19 57. I would ask you if you recognize the telephone number
 20 that's in the fourth line at the top of this document.
 21 (Witness examines document)
 22 A Uh, which number, specifically?
 23 Q [REDACTED]
 24 A I do recognize that number.
 25 Q What is that number?

1 A That's the same phone number from the batch detail report
 2 that was used to transmit the data between the merchant's
 3 terminal for Jones Moore & Associates to Chase Paymentech.
 4 Q I would like to show you Page -- excuse me -- Page 48 of
 5 that same exhibit.
 6 (Document displayed)
 7 Q And, ask you to look at the line for January 27, 2011.
 8 4:05 is the time listed.
 9 After that time, what's that first number?
 10 A That's the [REDACTED] phone number.
 11 Q Is that the same one you just mentioned?
 12 A Yes, it is.
 13 Q Then the next number after that, [REDACTED]4, do you
 14 recognize that number?
 15 A Yes, I do.
 16 Q What is that?
 17 A That is an 800 number owned by Chase Paymentech for
 18 terminals to dial in to process transactions.
 19 Q Is that how the terminals would connect to Paymentech's
 20 systems?
 21 A Yes, sir.
 22 MR. FARNHAM: I would like to show the witness what's
 23 been previously admitted as Exhibit 81. And I would like to
 24 look at Page 34 of that document.
 25 (Document displayed)

1 BY MR. FARNHAM:
 2 Q If we could look at the -- do you know what this document
 3 is, generally?
 4 A It appears to be a bank statement.
 5 Q If you could look at the middle bunch of transactions
 6 there, and look at the top line. I'm wondering if you --
 7 MR. FARNHAM: I think you have to zoom in.
 8 BY MR. FARNHAM:
 9 Q Do you recognize that account number that ends [REDACTED] do
 10 you recognize those last four digits?
 11 A Yes, I do.
 12 Q And then, do you see a transaction there that starts
 13 "JONESMOORE&ASSOCIATES"?
 14 A Yes, I do.
 15 Q And then if we could move over and see the amount of that.
 16 (Document displayed)
 17 MR. FARNHAM: And I'm sorry; it's the Jones Moore
 18 transaction at the bottom that we're looking at.
 19 (Document displayed)
 20 MR. FARNHAM: Thank you.
 21 BY MR. FARNHAM:
 22 Q That transaction for \$20,000, do you -- from your
 23 investigation, do you recognize that transaction?
 24 A Yes, I do.
 25 Q What -- tell me how you recognize it.

1 A This appears to be the same transaction that was
 2 identified on the batch detail report.
 3 Q And the last four digits of the account number match.
 4 A Correct.
 5 Q And is there anything else that tells you that it would be
 6 a processing -- Paymentech processing transaction?
 7 A I would look at the convention in which
 8 "JONESMOORE&ASSOCIATES" is written, as there are no spaces
 9 between the ampersand. And that is how the account was entered
 10 on the merchant application and agreement.
 11 Q So it matches the account information for the Jones Moore
 12 Paymentech account?
 13 A Yes.
 14 Q If I could ask you to look at, briefly, what's been
 15 previously admitted as Exhibit 22. And again, that will be up
 16 on the screen in just a moment.
 17 (Document displayed)
 18 Q I would like you to look at Page 84 of that exhibit.
 19 (Document displayed)
 20 Q And do you know generally what this page shows?
 21 A This appears to show a check that was written.
 22 Q Can you identify the account number that pertains to that
 23 check, and tell me what it is?
 24 A I can. The account number is [REDACTED].
 25 Q Do you recognize that number?

1 A I do.
 2 Q What is it?
 3 A The last four digits also appear as the linked bank
 4 account for the Jones Moore & Associates merchant account, as
 5 listed on the monthly statements.
 6 MR. FARNHAM: If I could have just one moment,
 7 Your Honor.
 8 THE COURT: Yes.
 9 (A pause in the proceedings)
 10 MR. FARNHAM: Almost finished. I would like to show
 11 the witness Exhibit 122, which is a physical exhibit.
 12 THE COURT: Go ahead.
 13 MR. FARNHAM: I'll ask the agent to bring that up.
 14 And if we could just take that to the witness.
 15 (Witness examines item)
 16 BY MR. FARNHAM:
 17 Q And you can look at that, you can take it out of the bag
 18 if you need to. Are you able to see it through the bag?
 19 A Yes, I am.
 20 Q What is that item that's been marked for identification as
 21 Exhibit 122?
 22 A This appears to be a Chase Paymentech-branded merchant
 23 terminal or point of sale terminal.
 24 Q How do you know it is a Chase Paymentech terminal?
 25 A It states "Chase Paymentech" directly on the front of it.

1 Q Printed on the plastic there?
 2 A Yes.
 3 Q And what type, what model number or version of machine is
 4 that?
 5 A This appears to be a Verifone VX570 merchant terminal.
 6 Q And are you able to tie that merchant terminal to any
 7 particular merchant account?
 8 A Yes, I am.
 9 Q How do you do that?
 10 A By the serial number and part number on a sticker on the
 11 back of the terminal.
 12 Q Tell me how that matches a particular merchant.
 13 A The serial number 210-847-856 matched the order detail
 14 report that Chase Paymentech has on file for the shipping of
 15 this terminal to the merchant location for Jones Moore &
 16 Associates.
 17 The part number is also listed as the -- the part number
 18 for the June 22 transaction of when Chase Paymentech billed the
 19 Jones Moore & Associates merchant account for this terminal.
 20 Q Based on that information, is that the terminal that would
 21 have been used to process the transactions that we have talked
 22 about today?
 23 A Yes, it is.
 24 MR. FARNHAM: Your Honor, I would move Exhibit 122
 25 into evidence.

1 THE COURT: Any objection?
 2 MR. DRESSLER: No objection.
 3 THE COURT: Admitted.
 4 (Trial Exhibit 122 received in evidence)
 5 BY MR. FARNHAM:
 6 Q One last couple of questions. I would like to ask you to
 7 look at what's been previously admitted as Exhibit 55.
 8 And just looking at that first page of Exhibit 55, do you
 9 know what Moneris Solutions is?
 10 A It's another payment processor.
 11 Q And who is the entity or account holder listed on this
 12 Moneris Solutions document?
 13 MR. DRESSLER: Your Honor, I apologize, I'm going to
 14 object to this. (Inaudible)
 15 (Reporter interruption)
 16 MR. DRESSLER: I'm objecting. He's showing him a
 17 business record from a company that he doesn't work for, and
 18 asking him to testify as to the veracity of what's on the
 19 document.
 20 THE COURT: All right. 55, itself, has already been
 21 admitted. Right?
 22 MR. DRESSLER: Yes.
 23 THE COURT: Okay.
 24 MR. DRESSLER: But I'm saying that --
 25 THE COURT: So your objection is: Commenting on a

1 business record that doesn't belong to Chase.
 2 MR. DRESSLER: Correct.
 3 THE COURT: Well, let me hear what the question is,
 4 and I'll keep your objection in mind.
 5 BY MR. FARNHAM:
 6 Q One question: Can you tell the entity account holder for
 7 this document? And what is it?
 8 A According to this document --
 9 THE COURT: Hold on. So is your objection --
 10 MR. DRESSLER: Yes.
 11 THE COURT: Well, unless you lay a foundation, that's
 12 not an appropriate question. So, sustained.
 13 MR. FARNHAM: Thank you. No further questions.
 14 THE COURT: All right. Thank you.
 15 Cross examination, Mr. Dressler?
 16 CROSS EXAMINATION
 17 BY MR. DRESSLER
 18 Q Good afternoon.
 19 A Good afternoon, sir.
 20 Q I just have a couple questions.
 21 A Yes, sir.
 22 Q With regard to the refunds that were processed -- I'm
 23 referring to Exhibit 43 just generally, all right? You don't
 24 have to look at it right now. It's a general question. But
 25 the March 30th refunds.

1 A Yes, sir.
 2 Q Between the time that those refunds were picked up -- in
 3 realtime, those refunds were picked up in realtime by your
 4 internal software, correct?
 5 Does that question make any sense?
 6 A If you could rephrase? I think I know where you're going,
 7 but...
 8 Q Okay. Well, maybe you could tell me? No. Joking...
 9 The March 30th refunds, my understanding is that this
 10 batch detail report, that is what I'm referring to, all right,
 11 that picks up those refunds in realtime, correct?
 12 A Correct. When they are swiped.
 13 Q When they are swiped?
 14 A Yes, sir.
 15 Q And then at some point an analyst, an analyst reviewed
 16 those, correct?
 17 A At the point that the batch was submitted to Chase
 18 Paymentech, that is when the internal system would generate a
 19 case and that would be the point that the analyst would review
 20 it.
 21 Q Okay. And, in fact, that's what happened, correct?
 22 A Correct.
 23 Q Okay. And this all occurred before you were notified or
 24 brought into this investigation?
 25 A Yes, sir. That's correct.

1 Q Okay. And how much time transpired between the batch
 2 report information generating an investigation and an analyst
 3 looking at the -- at the file?
 4 A I don't know specifically.
 5 Q How many days after March 30th did you get called?
 6 A I came in approximately on April the 4th.
 7 Q That's about five days?
 8 A Yes, sir.
 9 Q Okay. And had -- when you got called in, had the refunds
 10 been processed already?
 11 A The initial set of refunds from March the 30th had, yes,
 12 sir.
 13 Q Okay. And part of your investigation, I take it, was
 14 determining the due diligence that was conducted by the
 15 analyst?
 16 A That was a portion, yes.
 17 Q Okay. And did you identify that person?
 18 A Yes, I did.
 19 Q You knew who that was?
 20 A Yes, I do.
 21 Q Okay. And do you remember her name?
 22 A I do.
 23 Q What's her name?
 24 A Latanya Jackson.
 25 Q And did you determine what her due diligence was?

1 A Yes, I did.
 2 Q And that involved a telephone conversation?
 3 A As I understand it, yes.
 4 Q And that involved a telephone conversation with
 5 Mr. Murray, correct?
 6 A I'm aware of a telephone conversation with a bank
 7 representative.
 8 Q Okay. And that was a bank representative of the bank
 9 that -- where the merchant account was, correct?
 10 A That is correct.
 11 Q And, in fact, it was an inquiry into the availability of
 12 funds -- it was an inquiry to determine whether there was
 13 sufficient funds in the merchant account to process those
 14 March 30th refunds, correct?
 15 A In the bank account, yes, sir.
 16 Q Yes. And, in fact, and that was -- that was between
 17 Paymentech and the bank itself, correct?
 18 A That's correct.
 19 Q And the bank said there were sufficient funds, correct?
 20 A As I was informed, yes.
 21 Q And then how much time elapsed between the bank verifying
 22 sufficient funds and the attempt to collect those funds from
 23 that bank account?
 24 A It would have been at the point that the transactions were
 25 released and then the settlement process begins.

1 Q In this case are we talking -- how many days after the
2 31st -- after the 30th?
3 A If I can review the bank statements?
4 Q Go ahead.
5 (Brief pause.)
6 A It appears, based on the bank statements, that the
7 settlement process began on April the 1st. That would be the
8 point in which we would make the attempt to collect on that
9 bank account.
10 Q Okay. And let me step back a little bit.
11 Latanya Jackson, the analyst, she had a conversation with
12 Mr. Murray before she called the bank, isn't that correct?
13 A I'm not completely familiar with the conversation she had
14 with Mr. Murray.
15 Q In any event, around the 1st did you say an attempt was
16 made to access the bank and collect the March --
17 A Yes, sir.
18 Q I'm sorry. Yeah. The March 30th funds, correct?
19 A Yes, sir.
20 Q And there were not sufficient funds, correct?
21 A As we later found out, yes, sir.
22 Q Okay. And did anyone, after that happened, attempt to
23 contact Mr. Murray -- strike that.
24 After that happened, did anyone from Paymentech try to
25 contact Mr. Murray with regard to following up on why the funds

1 were not there at the time Paymentech attempted to take those
2 funds out of the account?
3 A Our department isn't aware of when ACH rejects occur based
4 on non-sufficient funds for a bank account.
5 Q Well, my question is: Paymentech became aware that there
6 were insufficient funds, correct?
7 A At a later date, yes, sir.
8 Q Okay. And what you're saying is it's not --
9 MR. DRESSLER: I'm hearing things.
10 THE COURT: Is there a problem?
11 MR. DRESSLER: No.
12 THE COURT: Okay. Go ahead.
13 BY MR. DRESSLER
14 Q In any event --
15 THE COURT: You said --
16 BY MR. DRESSLER
17 Q You're saying it's not your -- your department doesn't
18 have responsibility to do that, correct?
19 A Correct.
20 Q Is that what you're saying?
21 A Yes, sir.
22 Q And is there someone at Paymentech that has responsibility
23 in this kind of situation to follow-up with the merchant and
24 see what the problem is?
25 A The Collections Department.

1 Q Okay. And do you know whether or not the Collections
2 Department did that?
3 A I don't recall.
4 Q One second.
5 (Discussion held off the record between the defendant
6 and his counsel.)
7 MR. DRESSLER: I have no further questions.
8 THE COURT: All right. Thank you, Mr. Dressler.
9 Any redirect?
10 MR. FARNHAM: Just briefly, your Honor.
11 REDIRECT EXAMINATION
12 BY MR. FARNHAM
13 Q Mr. Hallford, you talked about the Collections Department
14 becoming involved. Do you remember how or do you know how long
15 after the rejected transfers the Collection Department would
16 have been involved?
17 A Typically, it is a redeposit attempt to collect the money
18 from the bank account automatically within a 72-hour time
19 frame. And upon the third failure, a collections case would be
20 automatically generated for a Collections rep to review.
21 Q And was a collections case generated for this incident?
22 A Yes.
23 Q And was the money ever able to be recovered through that
24 collections process?
25 A No.

1 MR. FARNHAM: No further questions.
2 THE COURT: All right. Anything further on recross?
3 MR. DRESSLER: No, your Honor.
4 THE COURT: All right. Thank you, Mr. Hallford. You
5 are excused and you may step down.
6 THE WITNESS: Thank you, your Honor.
7 (Witness excused.)
8 THE COURT: The Government's next witness.
9 MS. HARRIS: Thank you, your Honor. The United
10 States called Corinna Seibt.
11 THE CLERK: How do you spell the last name?
12 MS. HARRIS: S-E-I-B-T.
13 CORINNA SEIBT,
14 called as a witness for the Government herein, having been
15 first duly sworn, was examined and testified as follows:
16 THE WITNESS: Yes.
17 THE CLERK: State your full name and your last name.
18 Spell your last name, too.
19 THE WITNESS: Corinna Seibt. S-E-I-B, as in boy, T,
20 as in Tom.
21 THE COURT: Thank you, Ms. Seibt.
22 You may proceed, Ms. Harris.
23 DIRECT EXAMINATION
24 BY MS. HARRIS
25 Q Good afternoon, Ms. Seibt. Where do you currently live?

- 1 A San Francisco.
 2 Q How long have you lived in San Francisco?
 3 A Since 1988.
 4 Q Do you live in an apartment in San Francisco?
 5 A I live in a studio apartment, yes.
 6 Q Do you live there with anyone?
 7 A No. I live alone.
 8 Q Are you married?
 9 A No. I'm single.
 10 Q Where do you currently work?
 11 A I'm a professional organizer. I have clients.
 12 Q Where did you work in 2009?
 13 A I was a school teacher.
 14 Q Where did you work before you were a school teacher?
 15 A Levi Strauss and Company.
 16 Q Okay. How long did you work at Levi Strauss?
 17 A Fourteen years.
 18 Q When you worked at Levi, did they have any type of IRA
 19 program?
 20 A Yes. They had an investment portfolio that we could put
 21 our -- a percentage of our paychecks in.
 22 Q Did you participate in this program?
 23 A Yes.
 24 Q Do you know someone named James Murray?
 25 A Yes.

- 1 Q When did you first meet James Murray?
 2 A We were swimmers together in a masters swim program here
 3 in San Francisco. It was about, roughly, '95, '96.
 4 Q And where was that masters swim program?
 5 A It was in San Francisco. It was the Olympic Club.
 6 Q Was James Murray married at the time you met him?
 7 A Yes. He was married to Dre.
 8 Q Is that Mr. Murray's wife at the time's first time?
 9 A Yes.
 10 Q Okay. And did Mr. Murray stay married to Dre?
 11 A No.
 12 Q Did you stay in touch with Mr. Murray through the Olympic
 13 Club?
 14 A It was there, and then afterwards we stayed in touch
 15 through social barbecues. Just kind of through the swimming
 16 world.
 17 Q Do you know someone named Lisa Brigulio?
 18 A Yes.
 19 Q Who is Lisa Brigulio?
 20 A She was Jim's second wife.
 21 Q When did you first meet Lisa Brigulio?
 22 A I met her when I swam at the Olympic Club and they were
 23 dating.
 24 Q What did Lisa Brigulio do for a living?
 25 A She was a school teacher.

- 1 Q At the time you met Lisa Brigulio, were you a school
 2 teacher?
 3 A No, but she almost inspired me to want to be one.
 4 Q Why is that?
 5 A Umm, I always wanted to be a school teacher, and we talked
 6 about it. And she actually ended up giving me -- offering me
 7 my first teaching job after I got my credential.
 8 Q Do you know what grade Lisa Brigulio teaches?
 9 A Third grade.
 10 Q That was the grade she taught at the time you knew her?
 11 A Yes, when I knew her.
 12 Q Did Mr. Murray and Lisa Brigulio marry at some point?
 13 A Yes. I knew them when they were dating and then they got
 14 married.
 15 Q Were you invited to their wedding?
 16 A Yes.
 17 Q Did you go?
 18 A Yes, I did.
 19 Q Do you see the person that you know as James Murray
 20 sitting in this courtroom?
 21 A Yes.
 22 Q Can you point to him and identify him for the record by
 23 what he is wearing?
 24 A Jim Murray is over there in a white shirt with either a
 25 black or dark blue stripe and glasses, horn rimmed glasses.

- 1 MS. HARRIS: Your Honor, may the record reflect that
 2 the witness has identified the defendant?
 3 THE COURT: So reflected.
 4 BY MS. HARRIS
 5 Q When you met Mr. Murray through the Olympic Club masters
 6 swimming program in -- was it the mid-1990's? Is that your --
 7 A '95 or '96.
 8 Q -- best estimate?
 9 Did you know what Mr. Murray did for a living?
 10 A Not at the time, no.
 11 Q At some point after you met Mr. Murray, did you learn what
 12 he did --
 13 A Yes.
 14 Q -- for a living?
 15 When did you --
 16 THE COURT: You have to pause a little bit so that
 17 the court reporter can catch up with you after the question is
 18 asked. It's a little hard for her to do both at the same time.
 19 Thank you.
 20 BY MS. HARRIS
 21 Q Okay. When did you first learn what Mr. Murray did for a
 22 living?
 23 A When we got to know each other personally. Through the
 24 team and social events, people talk about what they do, and
 25 going over to their house and seeing the computer set-up that

1 he had.
 2 Q And did you actually visit Mr. Murray's home?
 3 A Yes, for the -- for the wedding shower, or there was an
 4 engagement party. I can't remember. There was a barbecue at
 5 their house.
 6 Q When you say "the engagement party," what engagement are
 7 you referring to?
 8 A To Jim and Lisa's.
 9 Q What house was the engagement party held at?
 10 A It was a house in -- it was an apartment in Belvedere.
 11 Q Do you remember the address?
 12 A No.
 13 Q And is this apartment in Belvedere where the engagement
 14 party was held?
 15 A Yes.
 16 Q And at some point after Mr. Murray and Lisa Brigulio got
 17 married, did they move from the apartment in Belvedere to
 18 somewhere else?
 19 A Yes.
 20 Q Where was that?
 21 A Larkspur.
 22 Q You mentioned that you left your employment with Levi
 23 Strauss. Approximately, when was that?
 24 A 2008 I was laid off.
 25 Q What did you do with the money that you had in your IRA at

1 Levi when you left?
 2 A Well, Levi let us keep in it there for awhile. Then
 3 eventually contacted me saying I could no longer be a part of
 4 that program, I think it was six months to a year, and they
 5 said we had to either roll it over or cash it out.
 6 Q And at the point that you learned from Levi that you
 7 needed to roll over or cash out your IRA, what did you do?
 8 A I kind of started figuring out where do I put it, because
 9 I didn't really know anyone. I worked at Reebok and at Esprit
 10 and Levi, only in the corporate world where they these programs
 11 and I never invested money myself.
 12 So, you know, I asked a couple friends, but I did know
 13 that Jim was an investor and since he was a friend, you know, I
 14 approached him to do so, rather than looking in the Yellow
 15 Pages or just trying to find someone, you know, out of the
 16 blank.
 17 Q So at some point in 2009, did you consider investing with
 18 the defendant?
 19 A Yes.
 20 Q What type of investment opportunity were you looking for?
 21 A I was looking for a -- kind of more of a not high-swinging
 22 high-risk type. Because in 2008 I had lost some money and so I
 23 was a little skeptical to be high risk, you know.
 24 And even though I was younger, I had put 15 percent of my
 25 paycheck for every paycheck. And so I was very, very diligent

1 about building that, and I didn't want to risk losing, you
 2 know, more. So I wanted a kind of moderate type of investment,
 3 not to lose any money again.
 4 Q In early 2009 when you were considering investing with
 5 Mr. Murray, was your primary friendship relationship with Lisa
 6 Brigulio or Mr. Murray?
 7 A Lisa.
 8 Q Did you even have contact information at that point for
 9 Mr. Murray in terms of email?
 10 A No, because I wasn't swimming any more. You know, it was
 11 just socially. Like, we would see each other at barbecues.
 12 But I had gone on walks with Lisa and -- you know, we were
 13 friends. So I was mainly in contact with her, but when I saw
 14 her, I would see Jim.
 15 Q And in terms of the contact that you maintained with Lisa
 16 Brigulio in early 2009, can you describe the general nature of
 17 the types of items you had in common?
 18 A Oh, as far as we would go on walk -- we would go on walks
 19 and we'd talk. It was mainly girl talk, you know, about dating
 20 or with her at the time, you know, how things were going with
 21 Jim and their plans for the -- for the wedding, or then
 22 eventually when she got pregnant, you know, baby. It was
 23 mainly girl talk, but she was -- she was like a good girlfriend
 24 and confidante.
 25 Q Did you ever discuss investing with Lisa Brigulio?

1 A No. I mean, not as far as any advice or anything about my
 2 investments. It was mainly just girl talk.
 3 MS. HARRIS: Your Honor, may I approach the witness?
 4 THE COURT: All right.
 5 BY MS. HARRIS
 6 Q I'm handing you what's been marked as Government's
 7 Exhibit 219, and I would ask whether you recognize Exhibit 219.
 8 (Whereupon document was tendered to the witness.)
 9 A Yes.
 10 Q Is Exhibit 219 an email chain between you and Lisa
 11 Brigulio in April of 2009?
 12 A Yes.
 13 Q And did you print out the emails that were on Exhibit 219
 14 and keep it in a file?
 15 A Yes.
 16 Q And did you keep it in a file shortly after you received
 17 these emails?
 18 A Yes.
 19 Q Is all of the handwriting that we see on Exhibit 219, do
 20 you recognize that handwriting?
 21 A Yes, it's mine.
 22 Q And did you put that handwriting on Exhibit 219 on or
 23 about the time that you received the emails that are on
 24 Exhibit 219?
 25 A Yeah, on or about that time.

1 MS. HARRIS: Your Honor, I offer Government's
2 Exhibit 219 into evidence.
3 THE COURT: Any objection?
4 MR. DRESSLER: No objection.
5 THE COURT: Admitted.
6 (Trial Exhibit 219 received in evidence.)
7 MS. HARRIS: Your Honor, may I publish Exhibit 219?
8 THE COURT: Yes.
9 MS. HARRIS: If we could put it up.
10 (Document displayed)
11 BY MS. HARRIS
12 Q If we could look at the email that begins at the bottom of
13 the first page of Exhibit 219? Is this an email from you to
14 Lisa Brigulio on April 16, 2009?
15 A Yes.
16 Q And what are you asking Lisa Brigulio in this email?
17 A I'm asking for Jim's information.
18 Q And drawing your attention to the section that -- the
19 second sentence you say, "How are you?" And then you say, "How
20 is the tummy growing?"
21 What were you referring to?
22 A Well, she was pregnant and I was just asking her how, you
23 know, her pregnancy is going and -- you know, because she was a
24 friend and...
25 Q Then you say also:

1 "Can you please ask Jim if he takes on clients
2 (me?) I do not have his email or phone number. And
3 if so, would like to talk to him about handling any
4 investments. Thanks if you can and let's catch up
5 soon."
6 Do you see that?
7 A Yes.
8 Q Shortly after you wrote that email to Lisa Brigulio, did
9 you receive a response?
10 A Yes.
11 Q Is that what we see the top half of Page 1 of Exhibit 219?
12 A Yes.
13 Q Okay. And did Lisa Brigulio respond to you at about 4:12
14 in the afternoon on April 16th?
15 A Yes.
16 Q Okay. And what is the "Re" line? What does it say for
17 "Subject"?
18 A Oh, "Client for you."
19 Q And then is anybody -- who is the email written to?
20 A Jim and Corinna.
21 Q Who is the "To" and then colon?
22 A Oh, it's written to Jim and then copied to Corinna, me.
23 Q And did Lisa Brigulio connect you and Jim Murray by email
24 with the response on April 16th?
25 A Yes.

1 Q Okay. Was the email that you got from Lisa Brigulio on
2 April 16th the only involvement that she had with any of your
3 decision making in terms of investing with Mr. Murray?
4 A Yes.
5 Q Okay. There is a handwritten entry where it says "W,"
6 then colon, and there appears to be a number. Whose writing is
7 that?
8 A That's my handwriting.
9 Q What were you referring to?
10 A That's the work number for Jim.
11 Q After you received the email on April 16, 2009, did you
12 have a discussion with Mr. Murray about him taking over your
13 investment portfolio?
14 A Yes.
15 Q Can you describe what you and Mr. Murray discussed?
16 A Mainly, his strategy. And I have notes on the bottom, you
17 know, "make money regardless." The benefit was between long
18 and short.
19 I was fairly not familiar with, you know, technicalities
20 of how all that worked, but the number one thing that he said
21 that drew me to it was it was market neutral. He told me there
22 wouldn't be large swings and that it would -- the benefit
23 between the long and the short would be -- it wouldn't be a
24 high risk.
25 And then he explained the performance fee I would pay.

1 And then I told him I only had 90,000. I didn't have the
2 minimum of 250,000. He said that would be fine. He would
3 waive that minimum.
4 Q And what is the 22 percent at the bottom of your notes?
5 A Well, the performance fee was usually 25 percent and, as I
6 can recall, maybe it was only 22 percent depending on how it
7 performed.
8 Q And then there to the left is there some highlighting in
9 green. Is that your highlighting?
10 A That's my highlighting.
11 Q What did you say there?
12 A "Promises made in meeting with Jim."
13 Q And then if we could take a look at Page 2 of Government's
14 Exhibit 219?
15 (Document displayed)
16 Q Did Mr. Murray get back to you on May 16, 2009 after you
17 discussed investing your IRA with Mr. Murray?
18 A Yes.
19 Q At the top there is some handwritten notes above the email
20 text. Is that your handwriting?
21 A Yes.
22 Q What does it say there?
23 A "After Jim calls."
24 Q Okay. And what were you supposed to do after Jim calls?
25 A Oh, this is -- I had to do some work with the company

- 1 called Pensco to fill out the actual forms and application to
2 open up the account and then he would trade that account.
- 3 Q So what was Pensco?
- 4 A Pensco is actually an IRA. It's a company. He introduced
5 me to the -- something I didn't know about; that you could
6 actually trade an IRA account, rather than what I had been
7 doing at Levi, just contributing a paycheck or a percentage of
8 my paycheck.
- 9 And I didn't know how to trade. So he said, no, you can
10 -- as long as it's kept in the custodian account, he would
11 trade it, but Pensco had to hold onto it. And that's how it
12 fell under the IRA regulations, you know, to be tax deferred
13 and it was -- it was legal, like, you could do it rather than
14 a savings trading account.
- 15 Q When you say "he would trade it," who are --
- 16 A Jim.
- 17 Q -- you referring to?
- 18 A Jim.
- 19 Q Okay. And there are some notes. Did Mr. Murray tell you
20 what you should do to get your IRA under his control?
- 21 A Yes.
- 22 Q Okay. And is that reflected in the handwritten notes that
23 we see on Page 2 of Exhibit 219?
- 24 A Yes.
- 25 Q Can you tell us what your notes reflect from your

- 1 conversation with Mr. Murray?
- 2 A Number one, set up account with Pensco that is qualified
3 and there will be no taxes. So it was tax deferred.
- 4 Number two, get the account number. Then Fidelity was who
5 I was with with Levi. Fidelity sends the check to them to --
6 you know, to roll it over into the Pensco account. And then
7 Pensco would issue the check to Market Neutral Trading, which
8 was the custodian of my account.
- 9 And then for myself, make copies of the Pensco papers.
10 And then the fees were \$100. It says 100-plus a year. It
11 was right around \$100.
- 12 And then K-1. It was an investment, you know, minus the
13 fees, and the fees were \$100.
- 14 Then I had the Pensco 800 number, and then I called them
15 to open the account.
- 16 And then Fidelity. I believe, I called Jim again to ask
17 if Fidelity -- you know, it goes to him or to -- excuse me,
18 goes to -- yeah, to him or to me regarding the check. How do
19 they make it out, you know, as far as once it rolls over.
- 20 Q After you had this initial contact in April and May of
21 2009, were you interested in learning more about Mr. Murray's
22 investment?
- 23 A Yes.
- 24 Q Did you arrange to meet with Mr. Murray to learn more
25 about investing in Market Neutral Trading?

- 1 A Yes.
- 2 Q Did you actually meet with him?
- 3 A Yes.
- 4 Q Where did this meeting take place?
- 5 A Over in his office in Belvedere.
- 6 Q Do you remember where in Belvedere the office was at that
7 time?
- 8 A It was right across from the San Francisco Yacht Club in a
9 shingled building. I don't remember the address.
- 10 Q Was anyone else present at the meeting besides you and
11 Mr. Murray?
- 12 A Yes. It was a long, skinny office. And I believe there
13 was one or two women in the front at desks, and there was a
14 gentleman in the back that stood up and, you know, introduced
15 himself as, you know, sharing the office with Jim.
- 16 Q Was it your understanding that these people that you
17 described were in any way associated with Market Neutral
18 Trading?
- 19 A No. Jim introduced them as they shared the office and
20 sometimes the women helped with, you know, the office duties,
21 but not at all part of the trading or his company.
- 22 Q During this meeting that you had in Belvedere, did
23 Mr. Murray say anything about the historical rate of return for
24 Market Neutral Trading?
- 25 A Yes.

- 1 Q What were you told?
- 2 A Well, he -- he had this chart and he told me, you know,
3 the rates of return compared to, you know, the other -- the
4 other parameters of the stock market and such.
- 5 And, again, he emphasized how it was market neutral; not
6 just the name, but it stays in the middle. It doesn't go too
7 high and it doesn't go too low and it stays in the middle. And
8 that he -- the way he traded it, you know, selling or buying,
9 that it would stay in the middle and it wasn't high risk.
- 10 Q Were you ever given any information from Mr. Murray
11 concerning whether you could get your money out if you invested
12 with him?
- 13 A Yes. I specifically told him every once in a while, one
14 or twice a year, I might -- I might actually want some cash
15 out. You know, if it's -- if it's -- kind of I used it
16 sometimes as a savings account, but it wouldn't be more than
17 that. And he said that was fine, just give him two or three
18 days, you know, to trade and make it so it's either -- how do
19 you say it? You know, to play off the capital, bringing it
20 down, or that it would be a good trade to get the cash out.
- 21 Q Were you specifically told by James Murray that you could
22 get your money out --
- 23 A Yes. Just give him two to three days. He said just to
24 give him a little bit of warning. Not to expect it, you know,
25 the same day.

1 Q And with regard to your investment with Market Neutral
2 Trading, from this point forward did you deal directly with
3 James Murray?
4 A Yes.
5 MS. HARRIS: Your Honor, may I approach the witness?
6 THE COURT: Yes.
7 BY MS. HARRIS
8 Q Handing you what's been marked as Government's
9 Exhibit 221?
10 (Whereupon document was tendered to the witness.)
11 Q Can you take a look at Exhibit 221 and tell me whether you
12 recognize Exhibit 221?
13 A Yes.
14 Q Is Exhibit 221 an email chain between you and Mr. Murray
15 between April of 2009 and July of 2009?
16 A Yes.
17 Q There is also an attachment to -- that's at Page 2 of
18 Exhibit 221. Did you receive the attachment on Page 2 of
19 Government's Exhibit 221 on July 27, 2015?
20 A Yes.
21 Q And did you put the email and attachment that we see on
22 Government's Exhibit 221 into your file on Market Neutral
23 Trading shortly after you received the email and attachment?
24 A Yes.
25 MS. HARRIS: Your Honor, I offer Government's

1 Exhibit 221 into evidence.
2 THE COURT: Any objection?
3 MR. DRESSLER: No objection.
4 THE COURT: All right. Admitted.
5 (Trial Exhibit 221 received in evidence.)
6 BY MS. HARRIS
7 Q Okay. If we could look at the first page of Government's
8 Exhibit 221, and specifically the email that is at the bottom
9 of the page?
10 (Document displayed.)
11 Q Who is the email from that's at the bottom of the page?
12 A From Jim Murray.
13 Q And what email account was Mr. Murray using on April 29,
14 2009?
15 A jmurray@marketneutraltrading.com.
16 Q The email that Mr. Murray sent to you, what does he say in
17 the first line?
18 A "Please ignore first one sent. It was a draft."
19 Q And what does the second sentence say?
20 A "Also, it doesn't have February and March numbers, which
21 were plus .21 percent and negative 1.67 percent."
22 Q And then if we could look at the signature line underneath
23 the email where it says "CIO." How does Mr. Murray identify
24 his position with Market Neutral Trading in this email?
25 A CIO.

1 Q And of what company?
2 A Oh, Market Neutral Trading.
3 Q Now, if we could look at the email that's at the top of
4 Page 1 of Government's Exhibit 221.
5 (Document displayed)
6 Q Is this an email to you that you received on July 27th --
7 when did you receive the email at the top?
8 A I forwarded the emails to me, because it was an old
9 account that I forwarded to my new email to then print them
10 out.
11 Q Okay. And so what are you -- what is reflected at the
12 top? When did you actually receive the email that has the
13 attachment for the Market Neutral Trading Performance Summary
14 2009?
15 A I received it on April 29, 2009.
16 Q And the attachment that's Page 2 of Government's
17 Exhibit 221, when did you receive that from Mr. Murray?
18 A On April 29, 2009. And this is also what he had shown me
19 in our meeting.
20 Q Okay. So is Page 2 of Government's Exhibit 221 something
21 that Mr. Murray actually physically showed you when you met
22 with him --
23 A Yes.
24 Q -- before you invested?
25 And did he also email you a copy?

1 A Yes.
2 Q Okay. Let's take a look at Page 2.
3 (Document displayed.)
4 Q And specifically if we could go to the top right-hand
5 corner, the part that begins, "Since fund inception."
6 And do you see the line where it says:
7 "Since fund inception, since August 1st, 2006,
8 Market Neutral Trading, LLC has a net annualized
9 return of 36.75 percent."
10 Were you given that information about the rate of return
11 by Mr. Murray in April of 2009?
12 A Yes.
13 Q Okay. Now, if we could look at the middle section
14 where -- we're now at the middle underneath the graph, where it
15 says, "Senior portfolio manager for Market Neutral Trading,
16 LLC."
17 Who is listed as the senior portfolio manager?
18 A James Murray.
19 Q And what is listed as the minimum investment?
20 A 250,000.
21 Q Did Mr. Murray offer you some type of special entry into
22 Market Neutral Trading based on your friendship?
23 A Yes.
24 Q Can you describe what you were permitted to do?
25 A Because I told him my savings was only 90,000. He said he

1 would waive the minimum.
 2 Q Then if we could look to the right there is a section that
 3 says "Auditor" colon.
 4 MS. HARRIS: And if we could blow that up?
 5 (Document enlarged.)
 6 BY MS. HARRIS
 7 Q Who is the auditor that's listed on the performance
 8 summary that you received in 2009?
 9 A Jones Moore & Associates, Ltd.
 10 Q Okay. And then there is some handwritten notes next to
 11 that. Whose handwriting is that?
 12 A Umm, that's my handwriting.
 13 Q And did you write those notes in 2009 after you received
 14 this performance summary?
 15 A Yes.
 16 Q And what did do your notes say?
 17 A "Auditor, to me third party valuator."
 18 Q What does that mean?
 19 A It validated to me that someone either was a CPA or a firm
 20 that actually was, like, confirming these numbers. They are
 21 actually saying these numbers are what they are and they are
 22 valid.
 23 Q Did you think that Jones Moore & Associates had actually
 24 audited the books of Market Neutral Trading and validated the
 25 numbers that you were seeing on Page 2 of Exhibit --

1 A Yes.
 2 Q -- 221?
 3 Okay. And then underneath the -- oh, there is a section
 4 that says "Administrator" in that same box. Who is listed as
 5 the "Administrator"?
 6 A Oh, CCS Financial Services.
 7 Q And then if we look at the bottom of Page 2?
 8 (Document displayed)
 9 Q There is also some handwritten --
 10 MS. HARRIS: If we could blow that up? The bottom
 11 box? Can we blow that up?
 12 (Document enlarged.)
 13 BY MS. HARRIS
 14 Q Okay. What is the handwritten entry? Is that your
 15 handwriting?
 16 A "Promise made in meeting."
 17 Q And when you say "promise made in meeting," what do you
 18 mean?
 19 A That's what he promised: Moderate standard deviation.
 20 Not high risk. Not to lose all my money or to steal it.
 21 Q And are these notes that you made in 2009?
 22 A Yes.
 23 Q And the promises that were made to you by Mr. Murray, what
 24 were those promises that you were relying on when you decided
 25 to invest?

1 A That it would not be high risk. I remember telling him
 2 over and over in 2008, I lost a lot of money. I didn't want to
 3 do that. I wanted to stay and just steadily build my portfolio
 4 and have enough money so I can take care of myself when I'm
 5 older.
 6 Q And with regard to the auditor that you saw, Jones Moore &
 7 Associates, did that factor into your decision to invest your
 8 money with Mr. Murray?
 9 A Yes. It validated not only that someone checked it. It's
 10 like when up double check your work or you proofread a paper.
 11 It showed me that someone else looked at it and that these
 12 numbers were not only accurate, they made sense. And it was
 13 also, you know, a validation. I even looked them up online.
 14 Q Was that important to you that there was --
 15 A Yes.
 16 Q -- an auditor?
 17 MS. HARRIS: Your Honor, I have a number of more
 18 documents. I don't know what the Court is thinking.
 19 THE COURT: Well, we're at the 2:00 o'clock hour, so
 20 this is a time that we will adjourn. So we will be in recess
 21 until Thursday.
 22 As I mentioned, unlike the usual schedule, we will be off
 23 tomorrow, but back on Thursday, day after tomorrow, at 8:30.
 24 So all right? Today is Tuesday, right? Okay. I want to make
 25 sure I have that right. So we'll be back Thursday morning at

1 8:30 to resume the trial.
 2 In the meanwhile, please, again, do not conduct any
 3 research in this case. Do not discuss this case with anyone.
 4 And please keep an open mind until this case is submitted to
 5 you for deliberation.
 6 Thank you, ladies and gentlemen. We'll see you in two
 7 days.
 8 THE CLERK: All rise for the jury.
 9 (Jury exits courtroom at 2:01 p.m.)
 10 THE COURT: All right. Thank you.
 11 (Witness steps down.)
 12 THE COURT: Maybe the Government can give me their
 13 perspective line-up for Thursday?
 14 MS. HARRIS: Yes, your Honor. We'll be finishing
 15 with Corinna Seibt. We anticipate calling Lisa Brigulio, Paul
 16 Eckel, a --
 17 MR. DRESSLER: I'm sorry. I'm sorry. Lisa?
 18 MS. HARRIS: Brigulio. Paul Eckel. And a witness
 19 from Wells Fargo. We'll also be playing some recordings of
 20 phone calls from Fidelity.
 21 MR. DRESSLER: Your Honor, speaking of recordings --
 22 MR. FARNHAM: There is one more witness. I'm sorry.
 23 Glenn Guterrez, a Wells Fargo witness will testify.
 24 G-L-E-N-N, Guterrez.
 25 MS. HARRIS: And we anticipate that that will carry

1 us through Thursday.

2 THE COURT: Okay.

3 MR. DRESSLER: Can we have a hint about Friday?

4 MS. HARRIS: I don't have my notes here, but we'll

5 just be moving along with more investors. We'll be moving into

6 the investor fraud portion.

7 THE COURT: So the MNT investors probably?

8 MS. HARRIS: Probably. We may also be playing the

9 deposition of David Lowe at that time and that's quite lengthy.

10 THE COURT: And that's been -- I don't know if it's

11 been edited, but, I mean, you'll just play that straight. The

12 parties agree --

13 MS. HARRIS: We are playing everything except the

14 portion where the Court sustained the objection.

15 THE COURT: Right, right. Everything has been edited

16 to conform with that.

17 MS. HARRIS: Correct.

18 (Discussion held off the record between the Court and

19 the Courtroom Deputy.)

20 THE COURT: All right. I don't know if you heard

21 this, but Alternate Juror No. 2, is that right, Mr. Foroughi,

22 indicated his father-in-law is [REDACTED]

23 [REDACTED]

24 which means he would be late on Thursday and Friday. [REDACTED]

25 [REDACTED]

1 out.

2 Did he say when he could get here?

3 THE CLERK: No, but he's right here. Let me ask him.

4 THE COURT: Shall we ask him?

5 MS. HARRIS: Yes.

6 (Juror Faroughi enters the courtroom.)

7 THE COURT: Hi, Mr. Faroughi. So Betty has informed

8 us about your [REDACTED].

9 JUROR FAROUGH: Yes. [REDACTED]

10 [REDACTED]. He's 90 years old and he [REDACTED]

11 and, you know, over the past week it's [REDACTED]

12 My wife is on call kind of to -- you know, if anything

13 happens, she -- you know, she's also a physician [REDACTED]

14 [REDACTED].

15 THE COURT: [REDACTED]

16 JUROR FAROUGH: [REDACTED]

17 THE COURT: Okay. [REDACTED]?

18 JUROR: [REDACTED] And I think

19 [REDACTED]

20 [REDACTED]

21 THE COURT: Okay. [REDACTED]

22 [REDACTED]

23 JUROR FAROUGH: So we -- yes. So typically during

24 this trial, we had thought about her [REDACTED]

25 [REDACTED] so I could make it here. We live in San Carlos area.

1 So it's about an hour of commute using BART and all that.

2 She was thinking of going up this Thursday or Wednesday,

3 depending. I mean, based on all this trial as well.

4 [REDACTED] I -- to make

5 it here on time, I have to be at Millbrae at 7:30, the BART

6 station, or I could just drive up here from 7:30, hopefully,

7 make it here by 8:30.

8 But I don't want to be the cause to hold everybody up,

9 so...

10 THE COURT: I don't know what commute time is like

11 driving up from San Carlos because [REDACTED]

12 [REDACTED]

13 JUROR FAROUGH: I don't know. I haven't done it.

14 I've taken BART so far.

15 THE COURT: Okay.

16 MS. HARRIS: Your Honor, can we have a sidebar?

17 THE COURT: Yeah.

18 (Proceedings held at sidebar.)

19 MS. HARRIS: I think we're making a fairly good

20 timing. You wouldn't know it from today, but a number of our

21 witnesses are going to be shorter.

22 And four alternates, I think we could go down to three

23 rather than holding the other 15 people up based on an

24 alternate's schedule. I would feel differently if he was

25 actually in the box, but this is the second alternate and given

1 that we have three others.

2 If Mr. Dressler agreed, I think we would agree to just let

3 him go.

4 THE COURT: What's your view? Do you have a view?

5 MR. DRESSLER: Yeah. I don't -- I don't really have

6 one.

7 THE COURT: One thing we could do is see if he gets

8 here -- if it's 10 minutes, that's okay. At some point we just

9 call it quits. If he's not here by, I don't know, 8:40 maybe

10 8:45, we'll just say we're going to proceed and let him go.

11 MS. HARRIS: He has the situation with the father.

12 THE COURT: That's true. We don't know what's going

13 to happen. I just hate to lose somebody on day one. It makes

14 me nervous.

15 MR. DRESSLER: What I would suggest is that we let it

16 go on Thursday. If he's really late on Thursday, we'll just

17 let him go.

18 THE COURT: We'll agree amongst ourselves. If he's

19 not here by, say, 8:45, we will get on the horn. If he gets

20 here and it's okay, maybe it will work out.

21 MS. HARRIS: That's right.

22 THE COURT: Okay, we'll try it.

23 (Proceedings held in open court.)

24 THE COURT: Okay. Mr. Faroughi, we would like you to

25 make your best effort to get here. You know, obviously if it

1 becomes apparent that you can't get here until quite late, then
2 we may have to proceed. But, you know, if you can get here
3 close to 8:30, even if it's a few minutes late, we'll wait
4 during this period.

5 If something happens with your father-in-law, that changes
6 everything. You let us know.

7 JUROR FAROUGH: I will, yes.

8 THE COURT: So that's an unknown. I hope it
9 doesn't... Let's see how everything goes with him and your
10 commute.

11 And, you know, we would like to keep you here, obviously.
12 You have been selected.

13 JUROR FAROUGH: Yes.

14 THE COURT: So let's see. If you make your best
15 effort after you drop your child off to get here.

16 And we pay for parking, right, Betty?

17 THE CLERK: We do pay for parking. You get the stamp
18 from upstairs and you park in the underground tunnel --
19 underground parking at McAllister.

20 JUROR FAROUGH: In this building?

21 THE CLERK: On McAllister. You can go back on the
22 19th floor --

23 JUROR FAROUGH: I don't mind paying for parking
24 myself either. It's just --

25 THE COURT: Just time.

1 JUROR FAROUGH: I talked to the -- their school and,
2 unfortunately, they can't accept anybody before 7:30. Assuming
3 that I drop him at 7:30 and leave right away, hopefully, one
4 hour is enough to drive up and not take BART, because I know it
5 won't work with BART.

6 But for that day or two, that may have to be my approach.
7 And I apologize if I'm late.

8 THE COURT: I appreciate your effort and we'll see if
9 we can make it work.

10 JUROR FAROUGH: I will try.

11 THE COURT: Thank you. Appreciate it.

12 (Juror Faroughi exits the courtroom.)

13 THE COURT: Okay.

14 MR. DRESSLER: A long time ago in a galaxy far, far
15 away, we had a discussion about the jail calls, which are -- I
16 think I underestimated how voluminous the pertinent jail calls
17 were that have been identified by the Government before I was
18 even involved in the case.

19 And as of today's date, we have had no clarity with regard
20 to what jail calls they are going to play.

21 My helper, paralegal helper, has been reviewing hours and
22 hours and hours and hours. And she's made a dent in the
23 pertinent ones, but I think it would be very helpful if we
24 could have some better idea from the Government --

25 THE COURT: Well, you know, if the calls are

1 anticipated to come up within the next couple of days, court
2 days, I -- I thought by now you would have figured out which
3 ones you're going to play and let defense know.

4 MS. HARRIS: They are not going to come up in the
5 next couple of days, and we think that we would only have four
6 or five that we would play in our case-in-chief. We can give
7 those to Mr. Dressler tonight or tomorrow.

8 THE COURT: That would be great.

9 MR. DRESSLER: That would be wonderful.

10 THE COURT: If you can do that, I think we're all
11 square.

12 MS. HARRIS: We still reserve the right to use
13 others, if it should come up in cross-examination of defense
14 witnesses.

15 THE COURT: Right. But in case-in-chief, that's what
16 he wants to know at this point.

17 MR. DRESSLER: Yes.

18 THE COURT: All right. Great.

19 MR. DRESSLER: Thank you.

20 THE COURT: Within the next day, let's say, if you
21 let him know which calls you intend to play in your
22 case-in-chief, that would be good.

23 MS. HARRIS: We can do that.

24 THE COURT: Okay. Thank you.

25 MR. DRESSLER: Okay. All right.

1 THE COURT: All right. Well, we'll see you on
2 Thursday.

3 (Whereupon at 2:13 p.m. further proceedings were
4 adjourned until Thursday, September 24, 2015 at
5 8:15 a.m.)
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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

_____/s/ Debra Pas_____

Debra L. Pas, CSR 11916, CRR, RMR, RPR

_____/s/ Belle Ball_____

Belle Ball, CSR 8785, CRR, RMR, RDR

Tuesday, September 22, 2015

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDWARD M. CHEN

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) NO. CR 12-0278 EMC
JAMES MURRAY,)
Defendant.) San Francisco, California
) Thursday
) September 24, 2015
) 8:15 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:
For Plaintiff: MELINDA HAAG
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: ROBIN HARRIS, AUSA
LLOYD FARNHAM, AUSA

For Defendant: ALAN A. DRESSLER, ESQ.
400 Montgomery Street
Suite 200
San Francisco, California 94104

Also Present: USSS AGENT ANTHONY SIMS, JR.
FBI AGENT BRIAN C. WEBER

Reported By: Debra L. Pas, CSR 11916, CRR, RMR
Belle Ball, CSR 8785, CRR, RMR
Official Reporters - US District Court

PROCEEDINGS

1 SEPTEMBER 24, 2015 8:25 A.M.
2 (Defendant present, in custody.)
3 (Proceedings held in open court, outside the presence
4 and hearing of the jury.)
5 THE CLERK: Come to order.
6 THE COURT: Okay, good morning, everyone. We are on
7 the record.
8 MS. HARRIS: Good morning.
9 THE COURT: And I understand there is an issue that
10 needs to be addressed.
11 MS. HARRIS: Yes, Your Honor. Good morning. Robin
12 Harris for the United States.
13 Your Honor, we anticipate that Mr. Murray's estranged
14 wife, Lisa Brigulio, will be testifying this morning. And
15 there were a couple of issues we wanted to raise with the Court
16 outside of the presence of the jury.
17 THE COURT: All right.
18 MS. HARRIS: And Ms. Brigulio is represented by Nanci
19 Clarence who is here, and I think is going to address the
20 substance of the issues.
21 But just to flag what they are for the Court, one of them
22 concerns the marital privilege and how -- when that privilege
23 ends, based on the filing of legal separation and then the
24 filing for divorce.
25

1 And then the second issue relates to CloudMagic. And I
2 think Ms. Clarence is going to address that in more detail.
3 But, there was a prior hearing before Judge Cousins relating to
4 bail, and Ms. Brigulio testified at that hearing.
5 Mr. Dressler was not yet the attorney. In fact, it was
6 Mr. Zelen, who was two defense attorneys ago. But in reviewing
7 the cross examination that Mr. Zelen did, it was -- actually,
8 Ms. Brigulio was called by the defense.
9 This was in a period of time when the Government did not
10 know about CloudMagic. But it became apparent through reading
11 the transcript and preparing for trial that Mr. Zelen had the
12 benefit of CloudMagic in cross-examining Ms. Brigulio. We
13 don't know whether he knew that that's where his information
14 was coming from, but the questions that were asked now in
15 retrospect appear to us that either Mr. Murray or Mr. Zelen had
16 the benefit of Ms. Brigulio's email in asking the questions.
17 So we raise that for the Court because I have a long
18 history with Mr. Dressler, and complete trust and confidence in
19 his integrity. But we don't know whether he maybe fed
20 information from Mr. Murray that Mr. Murray garnered from
21 CloudMagic that could be used to impeach Ms. Brigulio or
22 otherwise be used in cross-examination. In our view that would
23 be an improper use of the CloudMagic device. So I wanted to --
24 THE COURT: As sort of a fruit of the poisonous tree
25 or violates of the spousal privilege? Or on what theory would

1 it be --
2 MS. HARRIS: Well, all of that. That he intruded her
3 private email without her consent, based on, you know,
4 violating the Court's order to get access to the internet in
5 the first place. And then to be able to use the fruits of that
6 violation when the Government isn't even going to be able to
7 put on proof of that in its case-in-chief unless it calls the
8 informant, which raises some issues for us.
9 It doesn't seem that he should be able to benefit from the
10 violation of the Court's order in cross-examining his estranged
11 wife.
12 I think Ms. Clarence is going address the substance of all
13 of this.
14 THE COURT: All right.
15 MS. HARRIS: But I just wanted to flag the issues for
16 the Court.
17 THE COURT: All right. Why don't I hear from
18 Ms. Clarence, then, and then I'll find out what Mr. Dressler's
19 intent is.
20 MS. CLARENCE: Thank you, Your Honor. Nanci Clarence
21 on behalf of witness Lisa Brigulio.
22 Thank you for accommodating me this morning, what I hope
23 will just be a small footnote to the trial.
24 THE COURT: Sure.
25 MS. CLARENCE: Essentially, Ms. Harris has outlined

1 the issue for the Court. I'm here simply as Ms. Brigulio's
 2 counsel to inform the Court that we have reasserted and
 3 continuously maintained the attorney/client privilege of
 4 Ms. Brigulio's emails, not only with me --
 5 THE COURT: You mean the spousal privilege?
 6 MS. CLARENCE: No, I'm sorry, the attorney/client
 7 privilege. I'm concerned about the attorney/client privileged
 8 communications that may have been invaded by this proffered
 9 CloudMagic incident.
 10 Ms. Brigulio was represented not only by me, but by family
 11 law counsel and perhaps other counsel during the pendency of
 12 that potential incursion. I simply wanted to post a footnote
 13 that this issue was perhaps in the background.
 14 I have communicated with Mr. Dressler -- again, for whom I
 15 have nothing but admiration -- about this issue, in writing.
 16 And notified him that we do stand on the attorney/client
 17 privilege, continue to assert it, and object in advance to any
 18 incursion or use of that privileged material in
 19 cross-examination as, yes, fruits of the poisonous tree.
 20 THE COURT: Has there been an identification of the
 21 specific emails that are subject to the privilege? Or is that
 22 obviously clear? Or what's --
 23 MS. CLARENCE: I have reviewed my communications with
 24 Ms. Brigulio, as well as other counsels' communications with
 25 her during this time period. There are a cache of emails that,

1 if invaded, would have given the person invading the privileged
 2 information that was conveyed through privilege.
 3 THE COURT: So my question is if it comes up -- and
 4 I'll ask Mr. Dressler his intent. Maybe it's all moot at this
 5 point.
 6 But if it does come up, how should it be adjudicated? You
 7 will raise an objection, I take it.
 8 MS. CLARENCE: (Nods head)
 9 THE COURT: Will it be apparent? In other words,
 10 will I have to have a whole side hearing as to whether or not
 11 this falls within the scope or whether this was out of time?
 12 Are we going to have any factual disputes about -- or is it
 13 relatively clear?
 14 MS. CLARENCE: I wish I could be clearer with the
 15 Court about that, because I don't know that it will be clear.
 16 THE COURT: So you don't have a list of specific
 17 email strings that you think are covered by the privilege that
 18 you could readily demonstrate to the Court, for instance, that:
 19 Hey, this one's out of bounds; this one's in bounds?
 20 MS. CLARENCE: I possess my attorney/client
 21 communications with my client, but I don't know which of those,
 22 if any, were viewed by the Defendant.
 23 THE COURT: But you'll know it when you hear it.
 24 MS. CLARENCE: I believe that's the best
 25 characterization --

1 THE COURT: What about with the family law attorney?
 2 Will you know it when you hear that?
 3 MS. CLARENCE: I have reviewed those similarly, and
 4 will be willing to make objections on behalf of Ms. Brigulio to
 5 maintain her privilege of that.
 6 THE COURT: All right. Why don't we find out what
 7 your intent is at this point.
 8 MR. DRESSLER: First of all, Your Honor, I've read
 9 the transcript of the hearing before Judge Cousins. I have no
 10 idea what Ms. Harris is talking about.
 11 This is the first I have heard, ever, in the year and a
 12 half I have been on this case, that there's some allegation
 13 that Mr. Zelen or Mr. Murray had access to Lisa Brigulio's
 14 emails around the time of that hearing. I have no idea what
 15 they are talking about.
 16 THE COURT: So you have no idea that something that
 17 was the subject of cross-examination by Mr. Zelen could have
 18 only come as a result of Mr. Murray's employment of the
 19 CloudMagic.
 20 MR. DRESSLER: Right. And it would have been
 21 appropriate if that was the concern, that it was raised by the
 22 Government, you know --
 23 THE COURT: So how will we know?
 24 MS. HARRIS: Well, Your Honor --
 25 MR. DRESSLER: Can I finish this?

1 MS. HARRIS: Can I explain?
 2 THE COURT: Let him finish.
 3 MR. DRESSLER: Can I finish?
 4 So that's the kind of the front end of this.
 5 THE COURT: Yeah.
 6 MR. DRESSLER: The back end of this, you know, the
 7 Court's reviewed or we litigated the CloudMagic in my 403(b)
 8 motion. All right? And during those arguments, there was one
 9 family law document that was apparently downloaded. But there
 10 was nothing in the forensic analysis that indicated that
 11 Mr. Murray invaded Ms. Brigulio's attorney/client privilege.
 12 So, there's nothing that I'm aware of.
 13 And the Court asked the Government if they had any -- any
 14 evidence that attorney/client-privileged documents were viewed.
 15 So, there isn't any, that I'm aware of.
 16 And frankly, I don't expect that I'm going to be asking
 17 any questions that are going to be -- I mean, you know, some
 18 politician once said, "You don't know what you don't know." So
 19 I'm in that position. But, I don't think that's going to be an
 20 issue in my cross-examination of Ms. Brigulio.
 21 However, what I am concerned about is -- and I did review
 22 the hearing before Judge Cousins, and there's a dispute, which
 23 I just discovered two minutes ago. I think there's no dispute
 24 as to when the marital privilege began. They were married
 25 October 11th of 2008. There is a dispute with regard to when

1 it ended.

2 And there's -- and Ms. Brigulio filed a separation
3 agreement, a separation -- petition for separation on
4 December 8th, 2011.

5 And --

6 THE COURT: And when was the divorce final?

7 MR. DRESSLER: The divorce was filed some time in
8 January, I believe, after he was arrested.

9 MS. HARRIS: No, the divorce -- Your Honor, Ms.
10 Brigulio filed for legal separation in December of 2011. And
11 from the transcript of her prior testimony, it was because she
12 didn't realize she wasn't filing for divorce. She thought she
13 was.

14 When she got a lawyer and realized she had only filed for
15 legal separation, she filed for divorce in March of 2012.

16 THE COURT: That's her dissolution petition at this
17 point?

18 MS. HARRIS: Correct. I believe that's --

19 MR. DRESSLER: January 13th was the dissolution
20 petition.

21 MS. HARRIS: January 13th.

22 MR. DRESSLER: I actually haven't finished what I was
23 saying.

24 THE COURT: All right. January 13th, petition for
25 dissolution. Go on.

1 MR. DRESSLER: Yeah. So, in my review of
2 Judge Cousins' hearing of the questions that were asked, he --
3 Judge Cousins -- I don't remember whether it was Mr. Zelen or
4 Mr. Hemann who was the Government attorney at that hearing.

5 Judge Cousins sustained a number of objections to
6 questions that sought -- sought information about confidential
7 communications between Mr. Murray and Lisa Brigulio between --
8 these were conversations between December 8th and January 13th.
9 So basically, Judge Cousins ruled that the period that was
10 covered by the privilege was January 13th.

11 And in terms of what Ms. Harris is saying about she didn't
12 file -- she didn't know what a separation was, you know, the
13 standard is whether --

14 THE COURT: So is the dispute -- let's cut to the
15 chase. Is the dispute the one-month period between 12-8-11 and
16 1-13-12?

17 MR. DRESSLER: Yes.

18 THE COURT: Is that the dispute?

19 MR. DRESSLER: Correct. And I can file --

20 THE COURT: So the Government takes the position that
21 her filing a separation petition ends the privilege, even
22 though it was not a petition for dissolution, because she
23 thought it was a dissolution.

24 MS. HARRIS: That's correct.

25 MR. DRESSLER: I'm --

1 THE COURT: What's the law?

2 MS. HARRIS: We filed a brief in front of
3 Judge Cousins on that. And I believe I have the brief with me,
4 and I can get that.

5 MR. DRESSLER: The law is basically that -- that --
6 I'm going to not be very articulate about this, but the law is
7 that it has -- that the wife in this case had decided the
8 relationship was completely over, completely irreparably over.
9 And it was no longer a marriage --

10 THE COURT: And does that have to be manifest by a
11 legal filing? Or is that a subjective-state-of-mind criteria?

12 MR. DRESSLER: It's a subjective state of mind. And
13 I believe it's in the docket. Docket 87 has the transcript of
14 that hearing.

15 And --

16 MS. HARRIS: Your Honor, I do have the law for the
17 Court.

18 MR. DRESSLER: It is subjective.

19 THE COURT: Well.

20 MR. DRESSLER: It's not just filing --

21 THE COURT: Well, if it's subjective, then the legal
22 question would be: What was he thinking on December 8 of 2011?
23 Not necessarily what she filed. Is that right?

24 MR. DRESSLER: Yes. And based on what she said,
25 Judge Cousins sustained objections to questions that went

1 beyond --

2 THE COURT: Because Judge Cousins concluded that she
3 didn't think that she was seeking a total termination?

4 MR. DRESSLER: That's my reading of the transcript,
5 Your Honor.

6 MS. HARRIS: No, Your Honor. I was actually present
7 at the hearing. And first, I want to give the Court what the
8 law is. I have the brief the Government filed in October of
9 2012 (As read):

10 "The marital communications privilege does not
11 apply if the couple was separated and the marriage
12 was irreconcilable at the time of the communication."
13 And I can give the Court the Ninth Circuit case on that.
14 It's *United States v. Robertson*, 859 F.2d, 1376, at Page 1381.
15 And here are the factors that guide the Court's
16 determination about whether a marriage is irreconcilable.
17 (Reporter interruption)

18 MS. HARRIS: Quote (As read):

19 "The duration of the separation, the stability
20 of the marriage at the time of the communication,
21 whether a divorce action had been filed, and the
22 conduct of the parties since that filing, whether a
23 property settlement had been proposed, and finally,
24 any statements by the parties regarding
25 irreconcilability or the reasons for the separation."

1 And those are the factors in the *Murphy* case.
 2 So, Your Honor, I don't know that it's necessary to have a
 3 hearing outside the presence of the jury, but Lisa Murray filed
 4 for a legal separation. She didn't just consider herself
 5 separated. She actually thought she was filing for divorce,
 6 but she did not have a lawyer at the time.
 7 When she learned that the filing that she made in December
 8 was actually for legal separation, not divorce, she immediately
 9 thereafter, when she consulted counsel, filed for divorce.
 10 And so those are the factors that relate to that one-month
 11 period that we're talking about.
 12 THE COURT: Well, what you just read listed about
 13 five factors. I'm hearing, like, two out of those, so I'm in
 14 the dark as to others.
 15 But I'm not in the dark to the fact that whatever the
 16 resolution was, we have already had one judicial officer -- I
 17 take you don't dispute this -- find that the privilege ended on
 18 January 13th, 2012, not December 8, 2011, notwithstanding your
 19 brief.
 20 Is that correct?
 21 MS. HARRIS: I have not looked at that portion in the
 22 transcript that Mr. Dressler is referring to. And I would like
 23 to see that.
 24 What I recall happening -- and this goes to CloudMagic,
 25 Your Honor, and this is why I wanted to address -- we haven't

1 finished the CloudMagic discussion. At the time, the
 2 Government did not know about CloudMagic. And obviously, we
 3 didn't know that Mr. Murray had the ability to spy on
 4 Ms. Brigulio's email.
 5 But the questions that were being asked by Mr. Zelen at
 6 that hearing to us, in retrospect, now appear to have been
 7 based on some type of review of Ms. Brigulio's private email.
 8 THE COURT: Are we shifting to CloudMagic now?
 9 MS. HARRIS: Yes.
 10 THE COURT: I'm not done with this.
 11 MS. HARRIS: Okay.
 12 THE COURT: Do you have a definitive part of the
 13 transcript that backs up what you just said, Mr. Dressler, that
 14 Judge Cousins found, after all the briefing and discussion,
 15 that the privilege ended on December 8th, as opposed to
 16 January 13th?
 17 MR. DRESSLER: He didn't specifically find it. What
 18 I'm saying is there were questions that were asked by the
 19 Government that were passed --
 20 THE COURT: He sustained objections based on marital
 21 privilege because they pertained to things that -- they were --
 22 he sustained objections --
 23 (Off-the-Record discussion between counsel)
 24 THE COURT: Did he overrule objections after -- as to
 25 discussions after December 8th? In other words, show me

1 something where he operated under the operative assumption that
 2 the privilege ended in December.
 3 MS. HARRIS: Your Honor, the questions I believe
 4 Mr. Dressler is referring to are questions before that
 5 privilege that we say start -- the end of the privilege, which
 6 we say is in December. And there were not -- the objections
 7 that were sustained were -- in fact, Judge Cousins overruled
 8 them, as I see it in the transcript here.
 9 But be that as it may, I think the Court -- Judge Cousins
 10 did not make the finding that Mr. Dressler says he did.
 11 THE COURT: Okay.
 12 MS. HARRIS: I think this Court needs to make that
 13 finding, one way or the other. And, I do want to address
 14 CloudMagic in connection with that finding.
 15 THE COURT: All right.
 16 MS. HARRIS: Because --
 17 THE COURT: While he's looking for any other -- what
 18 I'm interested in is any sustaining of an objection, or
 19 overruling or sustaining objections, with respect to
 20 conversations that occurred between December 8 and January 13.
 21 But, go on with the CloudMagic.
 22 MS. HARRIS: Your Honor, in regard to CloudMagic, it
 23 now looks to us Mr. Zelen was trying to establish that the
 24 privilege should extend much longer than when Ms. Brigulio
 25 filed for legal divorce in January, and was trying to play into

1 the factor of the marriage not being irreconcilable, and was
 2 asking questions such as: "Did you communicate with
 3 Mr. Murray's mother that you still loved him?" Things that we
 4 now in retrospect believe could only be fed to Mr. Zelen by
 5 Mr. Murray, from reviewing Ms. Murray's private email.
 6 And, I want to remind the Court as to how the hearing
 7 before Judge Cousins started in the first place. So,
 8 Mr. Murray attempted to schedule a haircut exactly adjoining
 9 Ms. Murray's --
 10 THE COURT: I remember that.
 11 MS. HARRIS: Now it appears to us that he knew about
 12 that haircut through monitoring Ms. Brigulio's email and
 13 private calendar on her computer. And so, all of this is why
 14 we are so concerned.
 15 Even in the attempt to establish -- when Mr. Zelen tried
 16 to have Judge Cousins find that the privilege extended beyond
 17 the filing for legal divorce, the questions he asked at that
 18 evidentiary hearing to us, now that we know about CloudMagic,
 19 seem to us to have been fed to Mr. Zelen based on an improper
 20 intrusion into Ms. Brigulio's email. And we believe also that
 21 that haircut was scheduled based on that. The whole chain of
 22 events happened because of CloudMagic.
 23 And why I'm raising this with the Court is: Beyond just
 24 the Court's finding of whether the privilege applies or doesn't
 25 apply during the one month we're talking about, I'm concerned

1 about cross-examination of Ms. Brigulio today, unwittingly
 2 based on the improper use of CloudMagic.

3 THE COURT: How am I supposed to make that
 4 determination?

5 MS. HARRIS: Well, now that the Court is aware of
 6 what has gone on with CloudMagic --

7 THE COURT: Well, one would have to make a
 8 determination what the source -- first of all, I would to have
 9 to make a determination that the exclusionary rule applies,
 10 which is not obvious to me.

11 I could understand the logic of it, but you haven't given
 12 me any case law at this point that one who violates another's
 13 privacy under privacy laws, for instance, a wiretap law or
 14 something like that, that the exclusionary rule applies in a
 15 criminal proceeding. I don't know if that's the case. I know
 16 it's the case if it's a Fourth Amendment governmental
 17 violation. I don't know that when a private party violates the
 18 privacy rights, whether the exclusionary rule applies.

19 Number two, then I have to determine: What is the source?
 20 What if there's a dispute, and he says: No, I knew that from
 21 another -- because we had a side conversation. I didn't get it
 22 through CloudMagic.

23 So then I've got to resolve that dispute as a predicate?

24 MS. HARRIS: Well, actually --

25 THE COURT: And, furthermore, I thought I had ruled

1 that you are going to be allowed to bring in CloudMagic,
 2 provided you have -- in your case-in-chief, provided you have
 3 established the predicate foundation.

4 MS. HARRIS: Your Honor, let me --

5 THE COURT: So, all that suggests to me that this is
 6 a morass that I'm not sure I want to get into.

7 MS. HARRIS: I understand that, Your Honor, but I do
 8 want to answer some of the Court's questions.

9 I don't think the analysis necessarily has to be the
 10 Fourth Amendment. The analysis is the violation of this
 11 Court's order, which is: Do not use the internet.

12 THE COURT: And there are going to be sanctions for
 13 that. That's why we have Count 23; that's why it's part of
 14 this case.

15 MS. HARRIS: But he's going to profit from that
 16 violation.

17 THE COURT: Well, do you have some case that says a
 18 proper sanction is exclusion of fruits -- evidentiary fruit
 19 from a violation of a court order?

20 MS. HARRIS: I don't with me right now, Your Honor.
 21 I do not.

22 But it seems to me that to allow the Defendant to profit
 23 by trying to impeach his estranged wife through his improper
 24 intrusion in her email, which was a violation of the Court's
 25 order, would completely eviscerate the purpose the Court issued

1 the order in the first place.

2 THE COURT: That is a bit of an overstatement,
 3 because there are sanctions for violating my court order. And
 4 one of them is Count 23 of this indictment, as well as a
 5 potential Form 12 proceeding. You can go to jail for that. So
 6 I wouldn't say it completely eviscerates --

7 MS. HARRIS: But it does. There is no Form 12
 8 proceeding. He wasn't out on supervised release.

9 THE COURT: Well, there could have been.

10 MS. HARRIS: No; he was on pretrial release, not
 11 supervised release, Your Honor.

12 THE COURT: Well, all right. There was a sanction
 13 available, and that is revocation of supervised -- of bail at
 14 that point.

15 MS. HARRIS: But the crime will pay.

16 THE COURT: And there is a contempt proceeding.
 17 There's a sanction sitting here right now.

18 MS. HARRIS: Well, I understand that, for the actual
 19 violation. But wouldn't the calculus be for a defendant:
 20 Well, you know, I'll take my lumps with the contempt as long as
 21 I can get this improper --

22 THE COURT: What about my second point? How do I
 23 make a factual determination whether it is, in fact, a fruit,
 24 or whether it was collaterally available under something
 25 analogous to the inevitability doctrine or whatever you want to

1 call it?

2 MS. HARRIS: Well, I don't know the questions that
 3 Mr. Dressler intends to ask.

4 For us, it's very obvious now in retrospect what Mr. Zelen
 5 was doing. So I think -- I hope that we'll have an indication
 6 from the content of Mr. Dressler's questions.

7 I understand the position it puts the Court in. But the
 8 Government didn't put the Court in this position; the Defendant
 9 did.

10 THE COURT: What's your response, Mr. Dressler?

11 MR. DRESSLER: My response is: I think this is a
 12 tempest in a teapot. I really don't -- I don't think that any
 13 of the questions I ask are going to go anywhere near what the
 14 U.S. Attorney is talking about. So, that's my position.

15 And if they want to make -- if they -- if I say something
 16 that they think came from CloudMagic, they can make an
 17 objection, and we'll deal with it. But I really don't -- I
 18 mean, I understand what they're saying, Your Honor. But I
 19 don't have any information or intent to do anything that --

20 THE COURT: When are we expecting the testimony of
 21 Ms. Brigulio?

22 MR. DRESSLER: Some time this morning, I guess. So,
 23 could we go back to the extent of the privilege?

24 THE COURT: Yeah.

25 MR. DRESSLER: I misspoke. The divorce was in March.

1 THE COURT: March.
 2 MR. DRESSLER: Yeah. And on Page 87 -- on Page 51 of
 3 Docket 87, I think we agree that Mr. Murray went to Monaco in
 4 January of 2012.
 5 And Mr. Hemann asked the question (As read):
 6 "QUESTION: When Mr. Murray was in Monaco, did he
 7 encourage you to relocate there with your son?"
 8 That was the objected-to question. The following question
 9 is:
 10 "QUESTION: Did he talk to you about how he might
 11 do so surreptitiously?"
 12 Objection, sustained. Now, the next question:
 13 "QUESTION: When Mr. Murray was in Monaco, did he
 14 talk to you about renouncing his United States
 15 citizenship?"
 16 "MR. ZELEN: Objection."
 17 "THE COURT: Sustained."
 18 Next question:
 19 "Ms. Murray, when you learned in March of 2012
 20 that Mr. Murray was returning to the United States
 21 for from Monaco, did you do anything?"
 22 "ANSWER: Yes."
 23 "QUESTION: What did you do?"
 24 "ANSWER: I went to the Larkspur police station to
 25 let them know about the situation, that I was concerned

1 for my safety and -- I was concerned for my safety.
 2 And then my son and I went and stayed with some
 3 friends.
 4 "QUESTION: Why did you do that?"
 5 "ANSWER: Because I had told Mr. Murray that...
 6 "ZELEN: Objection. That's confidential marital
 7 communication information that's not appropriate.
 8 "THE COURT: I will sustain."
 9 And there were a number --
 10 THE COURT: So your interpretation is Magistrate
 11 Judge Cousins sustained objections up to the period of
 12 dissolution.
 13 MR. DRESSLER: Which was in March.
 14 THE COURT: In March. So we have one
 15 determination -- I understand it's not binding here, but we
 16 have one judicial officer who's made that determination, who's
 17 heard the full airing of this.
 18 And I'm reluctant to find the contrary. Specifically,
 19 also, because it seems clear to me that to base it on a
 20 separation petition, we're going to have to get into a whole
 21 lot of facts beyond just the filings, whereas the filing for
 22 petition for dissolution -- even though arguably, as Zelen must
 23 have argued, is, itself, not necessarily dispositive -- is
 24 certainly a clear marker.
 25 And so, I'm going to start with that presumption. If

1 between now and she gets on stand you've got something else you
 2 want to present me with outside the hearing of the jury, I will
 3 take it.
 4 But at this point, I'm going to take the same position and
 5 adopt the position that Magistrate Judge Cousins took, that the
 6 privilege extended until the petition for dissolution was filed
 7 in March of 2012. And therefore, the privilege obtains to that
 8 point.
 9 With respect to the CloudMagic, I'm just going to have to
 10 take the objections as they come. But, until I see some
 11 authority that suggests the exclusionary rule is an appropriate
 12 sanction for a violation of court order by a private party in a
 13 criminal case, that I -- I'm likely to overrule that objection.
 14 But I'll take it as it comes.
 15 MR. DRESSLER: There's one other matter, Your Honor.
 16 THE COURT: Yep.
 17 MR. DRESSLER: And that is in order for me to get
 18 here in a timely fashion, I've been getting up -- I live in
 19 Petaluma now. I've been getting up at 4:00 in the morning.
 20 And the first thing I do after I have coffee is go to my home
 21 office and check my email.
 22 When I did that this morning at around -- there was an
 23 email from the Government that was sent to me at 6:00 last
 24 night. I was in the jail with Mr. Murray at that time. So I
 25 didn't see it. But I didn't get home until, like, 11:00. I

1 went right to sleep.
 2 And there is a -- I think it's about 15 or 20 pages,
 3 including an interview and some documents and some emails and
 4 some statements by Paul Eckel, who I believe is the witness
 5 after Ms. Brigutio. So, so I have these documents.
 6 There are other interviews included that involve witnesses
 7 that are not going to be testifying today, so I'm not objecting
 8 to that. But I have this material. Some of it appears to be
 9 new information. I haven't been able to review it with my
 10 client. And, so, if they're going to call Mr. Eckel today, I
 11 am not going to be in a position to cross-examine him.
 12 So --
 13 THE COURT: What are these documents?
 14 MR. DRESSLER: What are they?
 15 THE COURT: These are statements?
 16 MR. DRESSLER: There is a 302 of an interview which
 17 apparently occurred yesterday. There's also some emails
 18 between Mr. Eckel and the Government. And there's a
 19 statement -- it's hard to -- it's a statement, apparently, of
 20 -- that Mr. Eckel made summarizing his involvement with MNT.
 21 And it has information in there that was not contained in any
 22 of the other reports that I have gotten from the Government
 23 with regard to Mr. Eckel.
 24 So, I'm not asking that they be precluded from calling
 25 him. But I am asking that I'm going to need some time to go

1 over this material with my client.
 2 THE COURT: What's the plan about calling Mr. Eckel?
 3 MS. HARRIS: Your Honor, Mr. Eckel we do anticipate
 4 will be called today. It was provided to Mr. Dressler as soon
 5 as we received it. The Government received those materials;
 6 they were actually e-mailed to us late Tuesday night. I didn't
 7 see them until Wednesday morning.
 8 A 302 was prepared of an interview that was done with
 9 Mr. Eckel yesterday. It's about two paragraphs, I believe.
 10 And there's a -- a five-line supplement to that (Indicating).
 11 Mr. Dressler can easily digest that if we take a break. It is
 12 not --
 13 THE COURT: All right, let's cut to the chase. Give
 14 me the stuff that you sent to Mr. Dressler last night. I'll
 15 look at it.
 16 And if I feel that it's something that he can deal with
 17 over the lunch break, I'll rule one way. If I think it's
 18 something that's not, I'll rule another way.
 19 MS. HARRIS: And Your Honor, I understand the Court's
 20 request to be with regard to the materials that pertain to
 21 Mr. Eckel, not other witnesses. Correct?
 22 THE COURT: Yeah. The other stuff, he's not
 23 objecting to that. You're calling Eckel today.
 24 MS. HARRIS: Right.
 25 THE COURT: And he got something late yesterday.

1 MS. HARRIS: Right. And you'll see that most of the
 2 emails revolve around Mr. Eckel trying to figure out his plane
 3 reservations to San Francisco.
 4 MR. DRESSLER: It was sent yesterday. No one called
 5 me; no one texted me.
 6 THE COURT: Well, and let me make that clear. I
 7 mean, I know you have to review things, but we're not going to
 8 get into this game of: Well, I had to review it, and by the
 9 time we got out of trial, we had to summarize it, and wait for
 10 the 302, and I couldn't send him anything until whatever
 11 o'clock last night.
 12 MS. HARRIS: That isn't what happened, Your Honor.
 13 Mr. Eckel was interviewed in the early afternoon yesterday.
 14 The 302 was prepared shortly thereafter.
 15 THE COURT: It sounds like there were other things
 16 beside the 302.
 17 MS. HARRIS: The emails that relate to Mr. Eckel's
 18 plane reservations and --
 19 THE COURT: So are you saying the only thing that's
 20 really relevant is the 302?
 21 MS. HARRIS: No, no. Mr. Eckel also prepared a
 22 little statement, not at the Government's request, that he
 23 emailed to the Government. We provided that with the 302
 24 yesterday.
 25 It's not on us that Mr. Dressler isn't checking his email.

1 If we had called him at 6:00 at night, we wouldn't have reached
 2 him. He said he was at the jail. It is incumbent on him to
 3 check his email during trial.
 4 THE COURT: What I'm saying is: Given the pace of
 5 this case, I do not want things to be withheld even for two
 6 hours, if it's for a witness the next day. It should be handed
 7 over immediately, even if piecemeal.
 8 If you don't have the 302, if you've got other emails that
 9 you know are going to go over there, just send it over in
 10 batches or *ad seriatim*.
 11 MS. HARRIS: We will certainly do that, Your Honor.
 12 There is no intent in any way --
 13 THE COURT: All right. Let's move on. Give me the
 14 stuff.
 15 MR. DRESSLER: I have it.
 16 MS. HARRIS: That's going to contain other documents.
 17 MR. DRESSLER: This is the Eckel material that you
 18 sent me. You can take a look at it.
 19 THE COURT: You can give it to me during the break.
 20 But we need to get going. All right?
 21 So let's check if the jury is here, because they've now
 22 been waiting over 20 minutes. Let's hope Mr. Foroughi, who was
 23 going to be late, made it.
 24 (Off-the-Record discussion between counsel)
 25 MR. DRESSLER: They have just given me (Indicating),

1 I mean, some material that hasn't been sent to me yet.
 2 THE COURT: What is this?
 3 MS. HARRIS: It's a five-sentence 302 that was
 4 prepared about midnight last night, or maybe this morning. I'm
 5 not sure.
 6 THE COURT: Include that in the stuff that you're
 7 going to give me.
 8 MS. HARRIS: It is.
 9 MR. DRESSLER: This is my only copy, Your Honor.
 10 THE COURT: Well, maybe someone else -- I don't want
 11 to take your copy, because you may need to look at it. Let's
 12 get another copy of everything.
 13 MR. FARNHAM: Here it is (Indicating).
 14 (Off-the-Record discussion between counsel)
 15 THE COURT: The stuff that was sent last night.
 16 MR. DRESSLER: Your Honor -- I'm not going to be able
 17 to look at it until the break anyway, so --
 18 THE COURT: That's when -- I'm not going to be able
 19 to look at it. So you should keep it, and the Government will
 20 give it to me during the break.
 21 MR. FARNHAM: We will have one brought up, and give
 22 it to you during the break.
 23 (Off-the-Record discussion between the Court and
 24 Clerk)
 25 (The following proceedings were held in the presence

1 of the Jury)
 2 THE COURT: All right, everyone may be seated.
 3 Good morning and welcome back, ladies and gentlemen. I
 4 apologize for the delay. We had some legal matters to take
 5 care of. But we are going to resume.
 6 As you will recall, Ms. Seibt was on the stand. And the
 7 Government was conducting its direct examination.
 8 And just to remind the witness, that you are still under
 9 oath. All right?
 10 So, good morning. And you may commence, recommence.
 11 MS. HARRIS: Good morning, ladies and gentlemen.
 12 Good morning again, Ms. Seibt.
 13 CORINNA SEIBT,
 14 called as a witness for the Government herein, having been
 15 previously sworn, resumed the stand and testified further as
 16 follows:
 17 DIRECT EXAMINATION RESUMED
 18 BY MS. HARRIS:
 19 Q When we broke for the recess on Tuesday we were discussing
 20 Exhibit 221.
 21 MS. HARRIS: And I would ask if we can bring up on
 22 the screen Exhibit 221, Page 2.
 23 MR. DRESSLER: I'm sorry, 222 or --
 24 THE COURT: 221, Page 2.
 25 MS. HARRIS: 221, Page 2.

1 (Document displayed)
 2 (Off-the-Record discussion between the Court and
 3 Clerk)
 4 BY MS. HARRIS:
 5 Q Ms. Seibt, if you could look at the section at the very
 6 top right-hand corner, that's highlighted in yellow.
 7 What were you promised by Mr. Murray -- when you received
 8 Exhibit 221 -- was the rate, annualized rate of return for
 9 Market Neutral Trading since its inception on August 1st 2006?
 10 THE WITNESS: Excuse me. I don't have a copy.
 11 MR. DRESSLER: Objection, Your Honor. Assumes
 12 facts -- it assumes a fact not in evidence, "analyzed." She --
 13 THE COURT: Why don't you rephrase the question.
 14 MS. HARRIS: It says "annualized," not "analyzed,"
 15 Your Honor. That's what the document says, "Net annualized
 16 rate of return."
 17 THE COURT: The question was "annualized," not
 18 "analyze." You may answer the question.
 19 THE WITNESS: I don't have a copy in front of me.
 20 THE COURT: Oh, is that screen not working? You have
 21 to --
 22 THE WITNESS: There we go. Thank you.
 23 BY MS. HARRIS:
 24 Q Let me restate the question so you have it in mind.
 25 When you received Page 2 of Exhibit 221 from the Defendant

1 before you invested in Market Neutral Trading, what were you
 2 promised by the Defendant was the net annualized return, since
 3 the inception of the fund on August 1, 2006?
 4 A Well, the document stated that it was +36.75 percent, so
 5 that gave me the impression that he got a good return.
 6 Q And then drawing your attention to the middle portion of
 7 Page 2, you have an arrow next to, and some handwritten
 8 entries. What do those handwritten entries say?
 9 A "Auditor to me"; it was a third party valuator. That was
 10 kind of a note to myself that that was a confirmation that
 11 these numbers were actually done by or confirmed by that
 12 company, which was either a CPA or accounting firm, I don't
 13 recall. And --
 14 Q Which company are you referring to?
 15 A Oh, Jones Moore & Associates, Limited. They were out of
 16 Delaware, and there was a website:
 17 Q And then there's an administrator that is listed under the
 18 name of the auditor. Who is that?
 19 A CCS Financial Services.
 20 Q And then if we could go to the bottom portion of Exhibit
 21 221, Page 2. And, if we could specifically blow up the
 22 handwriting, I wanted to ask you what you were referring to
 23 when -- what does your handwriting say?
 24 A "Promises made in meeting."
 25 Q Was this a meeting with Mr. Murray?

1 A Yes.
 2 Q What promises were made to you about Market Neutral
 3 Trading in the meeting?
 4 A It was numerous times. It was not just verbal, but it was
 5 also in writing and also when we met in person.
 6 And basically, the whole strategy for me was I had lost
 7 money in the market in 2008, and I did not want high risk. And
 8 I kept saying, "I don't want of high risk and a lot of
 9 fluctuality, fluctuation."
 10 So he kept saying it's market neutral, that there would be
 11 moderate deviation. And that to me meant in layman's terms
 12 that I wasn't going to lose that much money or go up and down
 13 and fluctuate like before. With Levi and with the other funds,
 14 I did higher-risk type investing. And with my limited
 15 knowledge, I trusted that market neutral and moderate deviation
 16 would keep me more in the middle and gradually grow my
 17 retirement and my savings for when I got older.
 18 Q Did you rely on the promises that were made to you by
 19 Mr. Murray?
 20 A Yes. I trusted him as a friend and as a professional
 21 expert. And his words he told me.
 22 Q Did you rely on the fact that Exhibit 221, Page 2, said
 23 that there was an auditor, Jones Moore & Associates?
 24 A Yes. That's actually what helped me understand that
 25 someone else who understood those numbers more than me said

1 that these numbers were accurate, and that those were numbers
2 that I could believe were true.

3 Q At some point after you received Exhibit 221 from the
4 Defendant, Page 2, did you decide to invest in Market Neutral
5 Trading?

6 A Yes.

7 Q Was that in June of 2009?

8 A Yes.

9 Q What was your decision based on?

10 A My decision was based on knowing -- knowing Jim for many
11 years, as a friend and as a comrade on the swim team, and
12 knowing his wife and trusting that, you know, he also had a
13 professional background as such. So it was built on a personal
14 decision, as well as professionally trusting that the numbers
15 were what they were.

16 Q When you say "the numbers were what they were," what are
17 you referring to?

18 A The sheet, in specific. And then also, the conversations
19 we had.

20 I keep going back to that point that he said it was market
21 neutral, and that it was not going to be a high-risk type
22 investment, because that is exactly what I didn't want. That
23 was what I was interviewing for. I didn't want to take a high,
24 high risk. I want to gradually build my portfolio for
25 retirement.

1 A Yes.

2 Q Was one of those your savings?

3 A Yes.

4 Q And was the other your IRA?

5 A The IRA retirement.

6 Q And was that all of the money you had, all the --

7 A All the money I had in the world, besides just my -- my
8 money that I had to live on in my bank account was maybe about
9 5,000. And then -- oh, sorry.

10 Q I'm sorry. Let's discuss the IRA. How much money was in
11 the IRA?

12 A 72,000, and 262, I believe.

13 Q And I believe on Tuesday, before we broke, you mentioned
14 that you had just left your company, Levi.

15 A Yes. I got laid off in 2008.

16 And the retirement, also the company would match. If you
17 put money in, they would match. And so, that built over time.

18 Q When you left Levi, did you receive any instructions about
19 what to do with your IRA that you held?

20 A Yes. They let me keep the money in there for about a
21 year. And then right around the deadline was when I approached
22 Jim because they no longer -- they said: You can't have this
23 benefit. You could either roll it over to a Fidelity, you
24 know, personal IRA and trade it, yourself. Or you have to cash
25 out, or roll it over to -- you know, another institution.

1 Q How much money did you invest initially with the
2 Defendant?

3 A In total, it was 162,262, around there, between the IRA
4 and my savings, which were two different accounts.

5 Q Okay. Let's break it down. You had a total investment of
6 \$162,000. Can you tell us where that money came from?

7 A The 90,000, the 90,000 came from -- well, gosh, I started
8 when I was about six, saving money. My parents taught me how
9 to keep a ledger, and I just started saving my money when I was
10 a very young child. My parents are refugees from World War II,
11 and they taught me to save for my future and take care of
12 myself.

13 And then as I joined companies, I had programs that I was
14 fortunate enough where the corporations actually would let you
15 put part of your paycheck. And the highest you could actually
16 contribute was 15 percent. And I would put that 15 percent
17 aside before I could even touch it, so it went directly into
18 the investment portfolio that the company would offer. And
19 that was Reebok, Esprit, and Levi.

20 So throughout my corporate world, I would just contribute
21 15 percent of my salary, and it built over the years.

22 (Reporter interruption)

23 BY MS. HARRIS:

24 Q So were there two pots of money that you invested with
25 Mr. Murray?

1 And that's when I didn't know what to do with it because I
2 couldn't trade it, myself, and I didn't have the knowledge, you
3 know.

4 Q What did Mr. Murray tell you to do with your IRA?

5 A He told me that there was a new option. Rather than just
6 kind of having -- how do you say -- a company handle it like
7 Fidelity and they trade it, you could trade it yourself. Or,
8 you know, he could trade it, and it was legal -- because I
9 thought that you could only do that with savings -- and it
10 could be tax-deferred.

11 And it was protected, you know, until retirement, when you
12 roll it over. So, I couldn't cash it out. But it would roll
13 over to Pensco. And Pensco was this company that was like an
14 IRA custodian. And that, you know, he would be my custodian,
15 but it would go through Pensco.

16 MS. HARRIS: Your Honor, may I approach the witness?

17 THE COURT: Yes.

18 BY MS. HARRIS:

19 Q I am handing you what's been marked as Government Exhibit
20 222 and 223 for identification. Can you please take a look at
21 Exhibit 222, first.

22 (Request complied with by the Witness)

23 Q And tell us whether you recognize Government Exhibit 222.

24 A Yes.

25 Q What is Exhibit 222?

1 A It's an email.
 2 Q And, who is the email from?
 3 A The email is from Jim Murray to me.
 4 Q And did you receive Exhibit 222 on July 10th, 2009?
 5 A Yes.
 6 Q Did you also place it in your file on your investment with
 7 James Murray?
 8 A Yes.
 9 Q There is an attachment to Government Exhibit 222. Did
 10 that attachment also accompany the email in Exhibit 222?
 11 A Yes.
 12 MS. HARRIS: Your Honor, I offer Government Exhibit
 13 222 into evidence.
 14 THE COURT: Any objection?
 15 MR. DRESSLER: No objection.
 16 THE COURT: Admitted.
 17 (Trial Exhibit 222 received in evidence)
 18 MS. HARRIS: Permission to publish, Your Honor?
 19 THE COURT: Yes.
 20 (Document displayed)
 21 MS. HARRIS: If we could bring up Page 2 of
 22 Government's Exhibit 222.
 23 (Document displayed)
 24 BY MS. HARRIS:
 25 Q Can you please tell us what we are looking at on Page 2?

1 A This is my first statement, which was the initial
 2 investment of my personal -- this was the account he would
 3 trade that was, quote-unquote, my savings. So it was \$90,117.
 4 And at the bottom he has the percentage returns of, you
 5 know, year to date, and quarterly return, which told me he was
 6 doing pretty well. You know, 4 percent, compared to the Dow
 7 Jones which was -3.75, and the other, you know, institutions
 8 that he was measuring the return against.
 9 Q So as of June 30th, 2009, based on Page 2 of Exhibit 222,
 10 what did you think the year-to-date return of Market Neutral
 11 Trading was for June of 2009?
 12 A +4.43 percent.
 13 Q And then in the upper right corner, there's a capital
 14 account balance that says "\$90,117." What is that number?
 15 A That was actually my balance at the time, which was my
 16 initial investment, what I had given him.
 17 Q Was that a lot of money to you?
 18 A That was my life savings. Literally since I was a little
 19 child.
 20 Q Now, if you could take a look at Government's Exhibit 223,
 21 and tell us whether you recognize it.
 22 (Request complied with by the Witness)
 23 A It's an email from Jim to me.
 24 Q And did you receive that email on or about March 9, 2010?
 25 A Yes.

1 Q And there's some attachments that accompany the email. Do
 2 you recognize those?
 3 A Yes.
 4 Q And did those attachments also accompany the email you
 5 received on --
 6 A Yes.
 7 Q Can you let me finish the question so we have a complete
 8 record?
 9 Did you also receive those attachments on or about
 10 March 9, 2010?
 11 A Yes.
 12 MS. HARRIS: Your Honor, I offer Government's Exhibit
 13 223 into evidence.
 14 MR. DRESSLER: No objection.
 15 THE COURT: Admitted.
 16 (Trial Exhibit 223 received in evidence)
 17 BY MS. HARRIS:
 18 Q Now if we could take a look at Page 2 of Government's
 19 Exhibit 223.
 20 THE CLERK: Do you want to publish it?
 21 MS. HARRIS: Yes. Can we publish it to the jury,
 22 Your Honor?
 23 THE COURT: Yes.
 24 (Document displayed)
 25

1 BY MS. HARRIS:
 2 Q If you look at the left-hand corner next to "Member Name,"
 3 it says "Pensco IRA, FBO Corinna Seibt."
 4 What does that refer to?
 5 A That is the Pensco IRA account. I forget what "FBO" --
 6 for benefit of Corinna Seibt.
 7 Q And was Page 2 an example of a quarterly statement you had
 8 been receiving from Market Neutral Trading?
 9 A Yes.
 10 Q If you look at the performance comparison portion of the
 11 exhibit, which is the bottom half, are there any numbers?
 12 A No.
 13 Q Is it the situation that you received a quarterly
 14 statement where there were no numbers concerning your return on
 15 your investment?
 16 A Yes. And I questioned Jim about that.
 17 Q What did Mr. Murray say?
 18 A He told me he was very busy because he was trading, and he
 19 didn't have those two assistants or the women that I had met in
 20 the Belvedere office anymore, and that, you know, he would get
 21 back to me later, or he just didn't have time to fill them in
 22 anymore.
 23 Q Did you ask him how your account was performing?
 24 A Yes. I asked him for a meeting, because I was fairly
 25 upset that there was a huge loss.

1 MS. HARRIS: Your Honor, may I approach the witness?
 2 THE COURT: Yes.
 3 BY MS. HARRIS:
 4 Q Showing you what has been marked as Government's Exhibits
 5 224 and 225 for identification.
 6 Can you please take a look at Government's Exhibit 224 and
 7 let us know if you recognize it.
 8 A Yes.
 9 Q What is Government's Exhibit 224?
 10 A It's an email from -- originally from me to Jim, and then
 11 from -- Jim's response to me.
 12 Q And there's also an attachment to the email. Did you
 13 receive the attachment on or about April 21st, 2010?
 14 A Yes.
 15 Q And did you receive the attachment from Mr. Murray?
 16 A Yes.
 17 MS. HARRIS: Your Honor, I offer Government's Exhibit
 18 224 into evidence.
 19 THE COURT: Any objection?
 20 MR. DRESSLER: No objection.
 21 THE COURT: Admitted.
 22 (Trial Exhibit 224 received in evidence)
 23 MS. HARRIS: Permission to publish?
 24 THE COURT: Yes.
 25 (Document displayed)

1 asking Mr. Murray?
 2 (Witness examines document)
 3 A Oh, because I got the quarterly charge from Pensco and I
 4 wanted to know -- I wanted to get the update and statement from
 5 him as well.
 6 Lots of times I would have to ask him or remind him, you
 7 know, when the quarter came up because I want to see how it was
 8 doing. He had told me not to react, and not to check it every
 9 week and every month, but just every quarter we could have an
 10 update, so that way I wouldn't respond or react too drastically
 11 if things were moving up and down.
 12 Q Now, if we could look at the email that you received back
 13 from Mr. Murray which is on the top portion of Page 1 of
 14 Exhibit 224.
 15 (Document displayed)
 16 Q What did Mr. Murray tell you about your investment on
 17 April 21, 2010?
 18 A We had met when I realized the -- there was a loss of
 19 about, I think, 29 or \$39,000. And we met at Starbucks in Mill
 20 Valley. And he'd explained that -- the reasons that it had
 21 dropped, and that he was doing this strategy with B of A. And
 22 he said it was down to six to eight, but once it came up to 18
 23 or such, the way the strategy was -- and I was a part of this
 24 package with other people -- that that would gain my money back
 25 again.

1 BY MS. HARRIS:
 2 Q If we could bring up the email at the very bottom of Page
 3 1 of Government's Exhibit 224, it says that it's sent from you
 4 on April 21st, 2010, to Jim & Lisa Murray. Can you explain
 5 what that means?
 6 A Oh. I actually send Christmas cards every year, and the
 7 way the program works is you can't separate the names for the
 8 labels. So, it would be Jim's email but then it says "Jim &
 9 Lisa Murray," so it prints out on the label for the Christmas
 10 cards, you know, both their names. But the emails can be
 11 separated out. It's just how the -- how the labeling is on the
 12 program.
 13 Q Was this email that we are looking at on Exhibit 224
 14 specifically sent to Jim Murray?
 15 A Specifically sent to Jim. Yes.
 16 (Reporter interruption)
 17 THE WITNESS: Yes, only to Jim.
 18 BY MS. HARRIS:
 19 Q Was Lisa Murray sent this email?
 20 A No.
 21 Q Now, if you could look at Page 2 of Exhibit 224, the text
 22 of your email.
 23 (Document displayed)
 24 Q And if we could go to the bottom sentence that starts with
 25 "I received my quarterly charge from Pensco." What were you

1 So I watched B of A very carefully. When I saw it rise to
 2 18 I said, "Well, it's gone up to 18. How come my -- my
 3 account hasn't raised the way you said it would?"
 4 And then, that was his response. Because I said if it
 5 goes up to 18 or above 20, there should be a -- a correlation
 6 in my account. And my account didn't go up.
 7 And he said, "Oh, yeah, yeah, it's supposed -- it was down
 8 from 50 and moved to 68, ranged to 18 pretty easily." But
 9 still there was no direct correlation, as he had said in our
 10 meeting, that it would affect my account.
 11 Q Did Mr. Murray send you some account statements with the
 12 email in Exhibit 224?
 13 A Yes.
 14 Q If we could look at Page 3 of the Exhibit.
 15 (Document displayed)
 16 Q What is the snapshot date on Page 3 of your account?
 17 A December 31st, 2009.
 18 Q And what is the capital account balance?
 19 A 57,468.41.
 20 Q Were you actually asking for information about 2009 or
 21 about 2010 when you emailed Mister --
 22 A I was asking for --
 23 Q You've got to let me finish.
 24 (Reporter interruption)
 25

1 BY MS. HARRIS:
 2 Q Okay. Were you asking for information about 2009 or 2010?
 3 A I was asking for the statements of March, 2010.
 4 Q What did you receive?
 5 A December 31st, 2009.
 6 Q And did the statement on Page 3 of Exhibit 224 show that
 7 your personal savings account had suffered a loss in the six
 8 months you had invested it with Mr. Murray?
 9 A Yes, a large loss.
 10 Q How much?
 11 A Was it 29- or 39,000. Sorry. I can't do the math in my
 12 head.
 13 Q Was it approximately \$40,000?
 14 A Yes. Yes.
 15 Q And also, if we could look at Page 4 of Exhibit 224.
 16 (Document displayed)
 17 Q What is Page 4 of Exhibit 224?
 18 A It is another statement.
 19 Q What's the date on this statement?
 20 A March 31st, 2010.
 21 Q And is this your IRA?
 22 A This is from Pensco, my IRA, correct.
 23 Q Did that also show a loss as of March 31, 2010?
 24 A Yes.
 25 Q Okay. Is there any performance comparison data on these

1 financial statements?
 2 A No.
 3 Q Now, if we could take a look at Government's Exhibit 225.
 4 (Document displayed)
 5 Q Do you recognize Exhibit 225?
 6 (Witness examines document)
 7 A Yes.
 8 Q What is Exhibit 225?
 9 A It's an email.
 10 Q Is it an email from James Murray to you?
 11 A Yes.
 12 Q Is it dated April 21st, 2010?
 13 A Yes.
 14 Q And was there an attachment with the email in Government's
 15 Exhibit --
 16 A Yes.
 17 Q You've got to let me finish.
 18 Was there an attachment on the email that was Government's
 19 Exhibit 225?
 20 A Yes.
 21 Q Did you receive that attachment also on April 21st, 2010?
 22 A Yes.
 23 MS. HARRIS: Your Honor, I offer Government's Exhibit
 24 225 into evidence.
 25 MR. DRESSLER: No objection.

1 THE COURT: Admitted.
 2 (Trial Exhibit 225 received in evidence)
 3 MS. HARRIS: Permission to publish?
 4 THE COURT: Yes.
 5 (Document displayed)
 6 BY MS. HARRIS:
 7 Q Okay. If we could look at the email on Page 1 of Exhibit
 8 225 from Mr. Murray to you, what does Mr. Murray say to you on
 9 April 21, 2010?
 10 A I'm sorry; can you repeat the question?
 11 Q What does the email say, the April 21st, 2010 email to
 12 you?
 13 MS. HARRIS: If we could blow up that line?
 14 THE WITNESS: (As read)
 15 "Hi Corinna. We're doing well, thanks."
 16 BY MS. HARRIS:
 17 Q No, the April 21st. What's the sentence in the email?
 18 A Oh, on the 225. I apologize.
 19 "Opps (sic), sorry. Wrong statement sent."
 20 Q What's underneath that?
 21 A "Correct attached."
 22 Q Let's take a look at the attachment which is Page 3 of
 23 Exhibit 225.
 24 What's the snapshot date on Page 3 of Government's Exhibit
 25 225?

1 (Document displayed)
 2 A Can you repeat the question?
 3 Q What's the date of the statement Mr. Murray sent you on
 4 April 10, 2010 -- sorry, April 21st, 2010? What is the
 5 snapshot date of your investment?
 6 A March 31, 2010.
 7 Q Okay. And then if you look at Page 4 of Exhibit 225,
 8 what's the snapshot date of the statement on March 31, 2010,
 9 for your personal account?
 10 A 57,468.41.
 11 Q What is the date?
 12 A March 31st, 2010.
 13 Q And then if we look at your email on Exhibit 225, Page 1,
 14 there's some handwritten entries --
 15 (Document displayed)
 16 Q -- highlighted in green. Is that your handwriting?
 17 A Yes.
 18 Q What did you write?
 19 A "He just changed months & not numbers." So it's the same
 20 capital account balance with just a different date.
 21 Q What were you referring to?
 22 A The capital account balance for --
 23 (Reporter interruption)
 24 BY MS. HARRIS:
 25 Q Yes. What were you referring to with your handwritten

1 notation "He just changed months & not numbers?"
 2 A I was referring to the statement, the personal one. The
 3 capital account balance remained the same. And just the date
 4 had changed.
 5 Q The date had changed. Were you referring to the date we
 6 just looked at in Exhibit 224, that was December of 2009?
 7 A Correct.
 8 Q And are you -- were you indicating that it was the exact
 9 same statement, except that the date was now March of 2010?
 10 A Correct.
 11 Q And not one number had changed?
 12 A The number had not changed. He just changed the date.
 13 MS. HARRIS: Your Honor, may I approach the witness?
 14 THE COURT: Yes.
 15 BY MS. HARRIS:
 16 Q Showing you what's been marked as Government's Exhibits
 17 226 and 227 for identification.
 18 THE COURT: Ms. Harris, did you move 223 into
 19 evidence?
 20 MS. HARRIS: I intended to, Your Honor. I offer
 21 Exhibit 223 into evidence if I haven't already.
 22 THE COURT: Any objection?
 23 MR. DRESSLER: No, Your Honor.
 24 THE COURT: Admitted.
 25 (Trial Exhibit 223 previously admitted)

1 BY MS. HARRIS:
 2 Q If you could look at Exhibit 226, and tell us whether you
 3 recognize Exhibit 226.
 4 A Yes.
 5 Q What is Government's Exhibit 226?
 6 A It's an email from Jim to me.
 7 Q Did you receive the email in Government's Exhibit 226 on
 8 October 22, 2010?
 9 A Yes.
 10 Q And there are two attachments to Exhibit 226. Did you
 11 also receive those with the email on Exhibit 226?
 12 A Yes.
 13 MS. HARRIS: Your Honor, I offer Exhibit 226 into
 14 evidence.
 15 THE COURT: Any objection?
 16 MR. DRESSLER: No, Your Honor.
 17 THE COURT: Admitted.
 18 (Trial Exhibit 226 received in evidence)
 19 MS. HARRIS: Permission to publish?
 20 THE COURT: Yes.
 21 (Document displayed)
 22 MS. HARRIS: If we could bring up the email on
 23 Exhibit 226.
 24 (Document displayed)
 25

1 BY MS. HARRIS:
 2 Q And, did you receive two quarterly statements on
 3 October 22, 2010, from Mr. Murray?
 4 A Yes.
 5 Q If we could take a look at Page 2 of Government Exhibit
 6 226.
 7 (Request complied with by the Witness)
 8 Q On September 30, 2010, what was the balance, according to
 9 the statement of your Pensco IRA account, that you had invested
 10 with Market Neutral Trading?
 11 A 74,586.93.
 12 Q What did this mean to you when you received this quarterly
 13 statement after you had the quarterly statements we've just
 14 discussed?
 15 A I was happy.
 16 Q Why?
 17 A Well, we had regained the loss, and then made a little
 18 bit. Even though it was probably a small percentage from 2009
 19 to 2010. At least it was going in the right direction, and
 20 made a little -- you know, growth.
 21 Q And if we could also look at Page 3 of Exhibit 226.
 22 (Document displayed)
 23 Q Was this a snapshot on September 30th, 2010, of your
 24 personal savings account that you had invested with Mr. Murray?
 25 A Yes.

1 Q What was the capital account balance according to Exhibit
 2 226 of your personal savings account in September of 2010?
 3 A \$74,019.07.
 4 Q Let's look at the bottom of the statement for your
 5 personal account where it has a performance comparison.
 6 (Document displayed)
 7 Q Did Mr. Murray have any numbers on the quarterly statement
 8 that you were sent in September of 2010?
 9 A No.
 10 Q Now I would ask you to take a look at Government's Exhibit
 11 227. And ask you if you recognize Exhibit 227.
 12 (Witness examines document)
 13 A Yes.
 14 Q What is Exhibit 227?
 15 A An email from Jim Murray to me.
 16 Q And what is the date of Exhibit 227?
 17 A January 12, 2011.
 18 Q There are some attachments to Exhibit 227. Did you
 19 receive those attachments with the January 12, 2011 email?
 20 A Yes.
 21 MS. HARRIS: Your Honor, I offer Government's Exhibit
 22 227 into evidence.
 23 THE COURT: Any objection?
 24 MR. DRESSLER: No objection.
 25 THE COURT: Admitted.

1 (Trial Exhibit 227 received in evidence)
 2 MS. HARRIS: May we publish the first page of Exhibit
 3 227?
 4 THE COURT: Yes.
 5 (Document displayed)
 6 MS. HARRIS: And then if we could just zoom in on the
 7 sentence after "Hi Corinna."
 8 (Document displayed)
 9 BY MS. HARRIS:
 10 Q Were you requesting a meeting with Mr. Murray in January
 11 of 2011?
 12 A Yes.
 13 Q Why?
 14 A Just to discuss, again, the strategy and what was going
 15 on.
 16 Q Did you actually have a meeting with Mr. Murray?
 17 A We probably talked on the phone. I don't recall.
 18 Q Do you recall what you discussed with Mr. Murray in
 19 January of 2011?
 20 A Just about the strategy and the numbers and how they were
 21 changing.
 22 Q Did Mr. Murray tell you how the fund was performing?
 23 A Yes. He had discussed, you know, that the strategy was
 24 working, but just to still hang in there and not to pull out,
 25 because I felt like -- I don't know, I wasn't getting the

1 return. And my other account, my personal account still wasn't
 2 even back to what I had originally invested.
 3 MS. HARRIS: Your Honor, may I approach?
 4 THE COURT: Yes.
 5 BY MS. HARRIS:
 6 Q Showing you what's been marked as Government's Exhibit
 7 228, for identification.
 8 Do you recognize Government's Exhibit 228?
 9 A Yes.
 10 Q What is Exhibit 228?
 11 A An email chain between Jim -- myself and Jim Murray.
 12 Q And was that email chain in October of 2011?
 13 A Yes.
 14 Q And, did you print out these emails and attachments and
 15 put them in your -- your file on your investment with Market
 16 Neutral Trading?
 17 A Yes.
 18 MS. HARRIS: Your Honor, offer Government's Exhibit
 19 228 into evidence.
 20 THE COURT: Any objection?
 21 MR. DRESSLER: No objection.
 22 THE COURT: Admitted.
 23 (Trial Exhibit 228 received in evidence)
 24 MS. HARRIS: If we could publish Page 1 of
 25 Government's Exhibit 228.

1 (Document displayed)
 2 MS. HARRIS: And if we could go to the bottom email
 3 and the last two sentences that start "Also," and highlight
 4 those.
 5 THE WITNESS: (As read)
 6 "Also, I finally have some time and would like
 7 to talk with you about status on how my account is
 8 doing. I realize I've said that twice now in the
 9 past six months, and to be perfectly honest, I'm
 10 afraid to call you...as it seems just to be bad news.
 11 Unless you can put a more positive spin on it to help
 12 me keep or regain the faith, thanks! Happy belated
 13 bday to RJ too!"
 14 RJ is his son.
 15 "And hi to Lisa as well..."
 16 BY MS. HARRIS:
 17 Q Why did you feel like you needed to have your faith
 18 restored by Mr. Murray?
 19 A Well, the year prior we'd had a meeting at Starbucks, and
 20 Jim had apologized, saying he was going through some hard
 21 times. And he actually said that he had been drinking, and he
 22 was having difficulty in his personal life, and that he felt
 23 bad. That I was a good friend, and he had lost all that money
 24 for me. And that he would -- to trust him, and to hang in
 25 there, and that he would turn it around, and he would win it

1 back with the Bank of America deal.
 2 Then as I kept trying to, you know, ask how the strategy
 3 was doing, he kept saying "Hang in there." And I trusted him,
 4 and believed he was a friend; that he meant what he said.
 5 And every time I wanted to pull out or do other things, he
 6 kept saying "No, you've gotta hang in there, you pulled out in
 7 2008, and look what happened. You never made it back." And so
 8 I kept believing and hanging in there because of what happened
 9 in 2008.
 10 I believed his expertise, that if I just hung in there
 11 eventually it would turn around. And it still now wasn't
 12 turning around. And I was losing the faith, and I was no
 13 longer trusting that the strategy was working or that -- I
 14 really didn't know what to believe.
 15 MS. HARRIS: Your Honor, may I approach?
 16 THE COURT: Yes.
 17 BY MS. HARRIS:
 18 Q Showing you what's been marked as Government's Exhibit 229
 19 and 230, can you take a look at Government's Exhibit 229 and
 20 tell us whether you recognize Exhibit 229?
 21 A Yes.
 22 Q What is Exhibit 229?
 23 A It's an email chain between myself and Jim Murray.
 24 Q And -- is it an email chain from February of 2012?
 25 A Yes.

1 Q And did you receive an attachment with Exhibit 229, the
2 email?
3 A Yes.
4 MS. HARRIS: Your Honor, I offer Government's Exhibit
5 229 into evidence.
6 THE COURT: Objection?
7 MR. DRESSLER: No objection.
8 THE COURT: Admitted.
9 (Trial Exhibit 229 received in evidence)
10 MS. HARRIS: If you could publish Page 1 of Exhibit
11 229.
12 (Document displayed)
13 BY MS. HARRIS:
14 Q And look at the bottom email that starts with the subject
15 line "Hi Jim."
16 Can you read to us what you wrote to Mr. Murray on
17 February 11, 2012?
18 (Reporter interruption)
19 BY MS. HARRIS:
20 Q And if you could read it slowly, so the court reporter can
21 take down your words.
22 A (As read)
23 "here is my email so you can send me 4th quarter
24 2011. And also, all of 2011 for tax reporting
25 purposes. Thanks! Corinna."

1 Q Did your email address change at some point?
2 A No, I think I was just kind of getting tired of always
3 having to ask for the quarterly reports, so it was like:
4 Here's my email so you can send it to me quicker.
5 Q At this point, had you stopped receiving quarterly reports
6 on your account?
7 A Yes. I always kind of had to remind Jim right around that
8 time. And --
9 Q Did you -- excuse me. Are you finished?
10 A Yes.
11 Q Okay. Did you receive a quarterly account -- accounting
12 statement with the email that you received back from Mr. Murray
13 on February 11, 2012?
14 A Yes.
15 MS. HARRIS: And if we could go up to that email on
16 Page 1.
17 (Document displayed)
18 BY MS. HARRIS:
19 Q There's some handwritten -- handwriting highlighted in
20 green. Is that your handwriting?
21 A Yes.
22 Q Is that also your highlighting?
23 A Yes.
24 Q What did you say? What is your handwriting? What are you
25 writing?

1 A "Last statement sent."
2 Q What did you mean by that?
3 A I did that for a reason. Because later on, Pensco said I
4 had zero in the account.
5 MR. DRESSLER: Objection. Objection. Hearsay.
6 THE COURT: All right. Sustained. The jury is to
7 disregard that last comment.
8 BY MS. HARRIS:
9 Q Can you take a look at Page 2 of Government's Exhibit 229
10 and tell us what your -- the statements you received from
11 Mr. Murray as of December 31st, 2011, showed was in your IRA
12 account?
13 A \$72,541.11.
14 Q At some point did you later learn that information was
15 false?
16 A Yes.
17 Q Who did you learn that from?
18 A Pensco.
19 Q Now, if we can look at the second --
20 MR. DRESSLER: Objection, hearsay.
21 MS. HARRIS: She didn't say what she was told, only
22 what --
23 THE COURT: I'm going to sustain the objection. You
24 have to lay a foundation. So, again, the jury is to disregard
25 that last comment.

1 BY MS. HARRIS:
2 Q Did you make inquiries with Pensco about your account at
3 some point after you received the statement we have just looked
4 at?
5 A Yes.
6 Q When did you make those inquiries?
7 A In March of 2012.
8 Q And, how did you make those inquiries?
9 A By email.
10 Q And did you receive a response from Pensco concerning the
11 status of what was actually in your IRA account?
12 A Yes.
13 Q And, did you learn that it was different than the
14 statement you got from Mr. Murray?
15 A Yes.
16 Q What did you learn?
17 A That the amount was zero.
18 Q Now, if we could look at Page 3 of Exhibit 229.
19 (Document displayed)
20 Q As of December 31st, 2011, what did the statement you
21 received from Mr. Murray say was in your personal savings
22 account with Market Neutral Trading?
23 A \$71,407.32.
24 Q Were the statements that we're looking at in Exhibit 229
25 the last statements you ever received from Mr. Murray

1 concerning the money you invested with him?
 2 A Yes.
 3 Q Was it your understanding that you could withdraw cash
 4 from your Market Neutral Trading investment any time you wanted
 5 to?
 6 A Yes. That was one of the parameters in our original
 7 interview, and necessary in order for me to invest with him, is
 8 that I had the ability to withdraw money.
 9 Q Why was that important to you?
 10 A Because every once in a while if I went over my budget,
 11 the savings part would be kind of my emergency money. Not the
 12 retirement part.
 13 Q Did Mr. Murray tell you whether you would be able to
 14 withdraw money any time you wanted to?
 15 A He said I could withdraw, and just to give him two or
 16 three days to find the best trade or the best way to withdraw
 17 the money or do a trade that was to the benefit of my account.
 18 Q Did you ever try to get cash back from the money you
 19 invested with Mr. Murray?
 20 A Yes.
 21 Q If you could take a look at Government's Exhibit 30, and
 22 tell me whether you recognize Exhibit 30.
 23 MR. DRESSLER: I'm sorry, 30 or 230?
 24 MS. HARRIS: Government's Exhibit 230.
 25 THE COURT: 230.

1 BY MS. HARRIS:
 2 Q Do you recognize the email chain in Government's Exhibit
 3 230?
 4 A Yes.
 5 Q Are these emails between you and Mr. Murray in March of
 6 2012?
 7 A Yes.
 8 MS. HARRIS: Your Honor, I offer Government's Exhibit
 9 230 into evidence.
 10 THE COURT: Any objection?
 11 MR. DRESSLER: No objection.
 12 THE COURT: Admitted.
 13 (Trial Exhibit 230 received in evidence)
 14 BY MS. HARRIS:
 15 Q Ms. Seibt, before you invested with Market Neutral
 16 Trading, did you understand that investing in the stock market
 17 included some risk to you?
 18 A Yes.
 19 Q Did you understand that nothing was guaranteed in your
 20 investment?
 21 A Yes.
 22 Q Did you -- were you willing to bear that -- that type of
 23 risk?
 24 A Yes.
 25 Q Did you undertake a risk that the information that you

1 would be provided about your investment would be untrue?
 2 A I'm sorry; can you repeat the last question?
 3 Q Did you think that the information you were relying on in
 4 determining whether to make your investment was true, the
 5 written representations and the oral representations?
 6 MR. DRESSLER: Objection.
 7 THE WITNESS: I --
 8 THE COURT: Hold on.
 9 MR. DRESSLER: Assumes a fact not in evidence.
 10 THE COURT: Overruled. You can answer.
 11 BY MS. HARRIS:
 12 Q Let me ask the question to you again: Did you think that
 13 the representations that were made to you in the performance
 14 data you were given by Mr. Murray, as well as his oral
 15 representations, did you believe those to be true?
 16 A I believed those to be true.
 17 Q Now, if we could take a look at Exhibit 230, and
 18 specifically, the email dated March 16, 2012, from you to
 19 Mr. Murray.
 20 If we could zoom in and highlight the line that starts "I
 21 also need to take out \$10,000."
 22 Were you attempting to remove \$10,000 from your investment
 23 with Mr. Murray?
 24 A Yes.
 25 Q Why were you doing that?

1 A I had another opportunity that I wanted to invest in.
 2 Q Did Mr. Murray respond to your email when you requested to
 3 remove \$10,000 from your investment?
 4 A No.
 5 Q What did you do after Mr. Murray did not respond?
 6 A I emailed him again.
 7 Q Did you also try to phone Mr. Murray?
 8 A Yes.
 9 Q Did Mr. Murray respond to your phone call?
 10 A No.
 11 Q What did you do after you sent another email -- let's take
 12 a look at Page 2 of Exhibit 230. And the lower email that's
 13 dated March 19. And it says "Hi Jim."
 14 And then if we could highlight:
 15 "Have emailed and not heard back. Tried to
 16 call, and no answer or voicemail. Can you please let
 17 me know about tax papers & also I need the \$10K by
 18 the end of this week. Thanks! Please let me know if
 19 you have a new phone number or how to contact you."
 20 Up until this point, had Mr. Murray not responded to your
 21 request in March to remove money from your account?
 22 A I had no response.
 23 Q What did you do after you sent the email on Monday,
 24 March 19?
 25 A I kind of went outside my own rules. I don't mix -- I

1 didn't want to involve Lisa because it wasn't her business, but
 2 I got a little nervous, I got a little scared. And I just
 3 contacted her because not hearing back, I thought something had
 4 happened.
 5 So I emailed Lisa just to ask, and then she responded.
 6 Q If we could draw your attention to the upper right-hand
 7 corner of Page 2 of Exhibit 230. There is some handwriting
 8 there. Is that your handwriting?
 9 A Yes.
 10 Q Did you make those handwritten entries on March 19, 2012?
 11 A Yes.
 12 Q What did you say?
 13 A (As read)
 14 "Lisa emailed me 1:24 p.m. after I sent this
 15 email again looking for Jim."
 16 I had a bad feeling in my stomach.
 17 Q Why did you have a bad feeling?
 18 A Because he wasn't responding, and he always responded.
 19 Q You also mentioned you were scared. What were you scared
 20 about?
 21 A I was just scared, because when I didn't hear from him,
 22 something in my gut was saying something was wrong.
 23 Q Now if we could look at Page 3 of Exhibit 230, and the
 24 e-mail dated March 30th, 2012.
 25 Was this the first time you heard back from Mr. Murray

1 after you tried to get money out of your account?
 2 A Yes.
 3 Q Okay. What did Mr. Murray say in the e-mail of March
 4 30th, 2012?
 5 A "Please give me a call, 415-393-4507."
 6 Q What did you do after you received the email from
 7 Mr. Murray on March 30th, 2012?
 8 A I pretty much had a complete hysterical breakdown.
 9 Q Why was that?
 10 A Because I had already heard from Lisa.
 11 Q What was the basis for your hysterical breakdown?
 12 A Lisa told me --
 13 MR. DRESSLER: Objection.
 14 BY MS. HARRIS:
 15 Q No, without saying what you were told, only what caused
 16 you to be -- to break down.
 17 A The ultimate fear that I -- that everything was gone.
 18 Q Did you actually try to call Mr. Murray after you received
 19 this e-mail?
 20 A Yes.
 21 Q What happened?
 22 A I was actually out of the country. I was at a friend's
 23 wedding. And she was holding my hand. And, I tried to talk to
 24 him and ask him what was going on. And he kept deferring me to
 25 meet me in person.

1 And I kept telling him I just want to get my money out, I
 2 wanted to do the exchange. And he said "Lets meet in person.
 3 When you get back, let's meet in person."
 4 Q Did Mr. Murray tell you anything about his circumstances?
 5 A No.
 6 Q Did you ask him any questions?
 7 A Yes.
 8 Q What did you ask?
 9 A "We'll talk about it when you get back."
 10 Q But what specifically did you ask Mr. Murray about his
 11 circumstances?
 12 A That he had been arrested, and he was in jail, and
 13 "Where's my money?"
 14 Q What did Mr. Murray say?
 15 A "We'll talk about it when you get back."
 16 Q Did you eventually return to the United States?
 17 A Yes.
 18 Q Was that shortly after you had the phone call with
 19 Mr. Murray?
 20 A Yes.
 21 Q When you returned to the United States, did you make
 22 contact with Mr. Murray?
 23 A Yes.
 24 Q Can you describe to us what happened?
 25 A He told me to meet him in his office.

1 Q Did he tell you where his office was?
 2 A Yes. And it was also at the address at the top of the
 3 statements. He had moved to Montgomery Street.
 4 Q Did you actually meet with Mr. Murray some time in early
 5 April of --
 6 A Yes.
 7 Q -- 2012? Did you meet with him in April of --
 8 A Yes.
 9 Q -- 2012?
 10 MR. DRESSLER: Excuse me, Your Honor. Can we have a
 11 brief sidebar?
 12 THE COURT: All right.
 13 (Sidebar discussion held on the record.)
 14 MR. DRESSLER: Your Honor, there's a report, a 302
 15 that goes with the meeting. And in there, she says she
 16 confronts him. And I don't have a problem with her confronting
 17 him and asking him questions or what he answered.
 18 But she adds on that she became afraid that he was going
 19 to do physical violence to her. And there's no indication -- I
 20 think that is highly inflammatory, and there is no basis for
 21 it.
 22 MS. HARRIS: There was a basis, Your Honor, and she
 23 is going to testify to that.
 24 MR. DRESSLER: And what was that? It's not in the
 25 report.

1 MS. HARRIS: Well, she will tell you, it was that he
 2 -- he looked at her in a physically intimidating way. I think,
 3 I think it's fair. She invested all her money with him, she is
 4 telling about a personal meeting with the Defendant, what he
 5 did, and her observations.
 6 It may be inflammatory, but it's also highly probative of
 7 what went down with this investment and what the Defendant did.
 8 We can't sanitize the truth.
 9 MR. DRESSLER: I'm not asking to sanitize the truth,
 10 Your Honor. But she -- she lost money. All right. There's no
 11 evidence that she lost all her money. And she's recreating the
 12 past in support of a victim impact statement that she filed.
 13 THE COURT: You can cross-examine her on all that.
 14 That is not a basis to exclude.
 15 MR. DRESSLER: Okay, but I'm just saying that -- that
 16 it's totally subjective on her part. Like, based on a facial
 17 expression.
 18 THE COURT: Well, it goes to his state of mind.
 19 MR. DRESSLER: Well, okay, all right.
 20 THE COURT: Overruled.
 21 (Conclusion of sidebar discussion; the following
 22 proceedings were held in the presence and hearing of
 23 the Jury:)
 24 BY MS. HARRIS:
 25 Q Ms. Seibt, we were just discussing the meeting you had in

1 person with Mr. Murray at his office. Can you tell us exactly
 2 what happened at that meeting?
 3 First, was anyone else present?
 4 A No.
 5 Q What happened when you met with Mr. Murray about your
 6 investment in 2012?
 7 A Well, I walked in, and it was one of those offices where
 8 people share offices, so you go into the main area, and they
 9 share the receptionist, and no one was there. And then Jim
 10 came out to meet me. We went back into his new office.
 11 And I was fairly worked up, I was scared, I was panicked.
 12 I wish I had gone with a friend or something. But I just
 13 wanted to know the answers. I wanted to know the truth, and I
 14 wanted to get my money out.
 15 And I walked into his office, and I was shocked to see all
 16 the computers running and up, and he was just doing business as
 17 normal. And I said, "How can you still be working?"
 18 Q What did Mr. Murray say to you?
 19 A He had a very different energy. He was not apologetic, he
 20 was not kind, he was not warm, he was not like "Oh, I'm so
 21 sorry, and I want to explain it to you."
 22 His energy had shifted, and my energy probably had shifted
 23 because I no longer trusted him. So I was on the defense, and
 24 I was very much pragmatic, and maybe a little bit more direct.
 25 And he was used to me being a little bit more, "Oh, okay, I'll

1 trust you."
 2 And he turned around, and the energy was very much -- I
 3 could just read it. It was not just defensive, but it was
 4 patronizing. And it was, "Oh, well, you know, what are you
 5 doing here?"
 6 And I said, "I just want to get my money out."
 7 "Oh, you can't. It's frozen."
 8 I said, "What do you mean, 'It's frozen?'"
 9 "Everything's frozen because of the investigation."
 10 I said, "How can you be working? You were in jail."
 11 Like, "How can you still be doing this?" And then --
 12 Q Let me stop you there. Did you ask Mr. Murray back --
 13 A Yes.
 14 Q Let me finish the question. Did you ask Mr. Murray
 15 back -- for your money back during this meetin-?
 16 A Yes.
 17 Q What did Mr. Murray say to you about your money?
 18 A It was frozen.
 19 Q Did Mr. Murray tell you he was under investigation?
 20 A Yes.
 21 Q What did he say?
 22 A He started making fun of the FBI agents, asking who
 23 contacted me. That it was a big joke. He had them running
 24 around in circles.
 25 Q Did you ask Mr. Murray when you would get your money back?

1 A Yes.
 2 Q What did he say?
 3 A "It's frozen, and the accounting records are frozen," and
 4 there's nothing he could do, and I just had to wait. And I
 5 kept pushing for answers. And he -- he just kept avoiding.
 6 Q Did you ask Mr. Murray any other questions about his
 7 situation?
 8 A I don't recall, other than why is he still working, why is
 9 he still practicing, with all the computer screens, and still,
 10 you know, working, if he had no money and everything was
 11 frozen.
 12 Q What did he say to you?
 13 A All I remember, he said he couldn't do anything. There
 14 was nothing he could do. I just had to wait.
 15 Q Why were you scared?
 16 A I was scared because I felt helpless. I felt like I had
 17 -- I didn't know what to do. I was just going on instinct and
 18 reacting, trying to -- I was in survival mode.
 19 I was -- I was -- basically, I had fears and anxiety, I
 20 was going to be homeless, that I had no money any more. I had
 21 no retirement. I had nowhere to turn. I just -- I didn't know
 22 what to do. I was just trying to figure it out and piece it
 23 together. You know, my next step was just approach him.
 24 Q Did you ever get any of the money you invested with
 25 Mr. Murray back?

1 A No.
 2 Q Did you ever see Mr. Murray again after this meeting in
 3 2012?
 4 A Yes.
 5 Q Where did you see Mr. Murray again?
 6 A Outside this courtroom.
 7 Q What happened when you saw Mr. Murray outside this
 8 courtroom?
 9 A I was sitting on the bench because I kept getting the
 10 little emails saying, you know, what was going on with the
 11 case. And it kept getting postponed and postponed, and I
 12 didn't really understand the system, why it wasn't going to
 13 court. So I wanted to come and see, you know, what the update
 14 was.
 15 And I was sitting on the bench outside, and he kind of
 16 walked over, dazed, and had this kind of glossy look in his
 17 eye, and said, "What are you doing here?"
 18 And I said, "What do you mean, what am I doing here? I'm
 19 here to find out what where my money is. I'm here to find out
 20 the truth."
 21 And then he kind of looked at me, and he goes, "Oh, you're
 22 going to be fine. Your daddy's a doctor."
 23 And I said, "That has nothing to do with anything. The
 24 refugees -- besides, that has nothing to do with anything.
 25 You've just admitted to me you stole my money." Justifying it.

1 MS. HARRIS: Your Honor, I have no further questions.
 2 THE COURT: All right, thank you. Cross?
 3 MR. DRESSLER: Yes, Your Honor.
 4 CROSS EXAMINATION
 5 BY MR. DRESSLER:
 6 Q Good morning, Ms. --
 7 A Good morning.
 8 Q Would it be fair to state that you sent many -- many --
 9 strike that.
 10 You have had over -- from the time in April of 2009 when
 11 you first contacted Mr. Murray until 2012, there were many,
 12 many emails between you and Mr. Murray, correct?
 13 A Between 2009 and 2012?
 14 Q Yes.
 15 A Yes.
 16 Q And, you have provided numerous emails to the Government
 17 that have been offered -- strike that.
 18 The emails -- during your testimony, the Government asked
 19 you about various emails. Correct?
 20 A Yes.
 21 Q But actually, you sent him many more emails that were not
 22 introduced in evidence here today. Correct?
 23 A Correct.
 24 Q Okay. And with regard to the communication that you say
 25 you had with Pensco, where they said all your money was gone,

1 that came in an email, I believe was your testimony. Correct?
 2 A Yes.
 3 Q Have you provided that email to the Government?
 4 A I assume I did. I sent them everything.
 5 Q You assume you did?
 6 A Yes.
 7 Q Do you have a copy of that --
 8 A I would, at home, on my computer. I kept everything.
 9 Q Okay. So you assume you did, but you are not 100 percent
 10 sure? Would that be a fair statement?
 11 A I'm 100 percent sure it's on my computer at home. I'm not
 12 100 -- I forwarded over 250, 300 -- I don't remember if I did
 13 every single one going through my files.
 14 Q That would have been an important email to send them,
 15 wouldn't it?
 16 A Yes. Maybe they have it. I don't know.
 17 Q Let's go back to April of 2009. You were the one that
 18 approached Mr. Murray about possibly having him manage your
 19 money, or helping you manage your money. Correct?
 20 A Yes.
 21 Q Okay. And that was around April 16th of 2009?
 22 A Yes.
 23 Q So between April 16 of 2009 and the end of June, a little
 24 bit over two months, you met with him?
 25 A Yes.

1 Q You exchanged emails with him?
 2 A Yes.
 3 THE COURT: Keep that mic close to you.
 4 MR. DRESSLER: I'm sorry.
 5 BY MR. DRESSLER:
 6 Q And you indicated -- I'm going to refer you to Exhibit
 7 221. That was the chart that you testified to, here.
 8 MR. DRESSLER: May I approach?
 9 THE COURT: Yes.
 10 MR. DRESSLER: 219 and 220. Is 219 part of her
 11 testimony?
 12 MS. HARRIS: (Nods head)
 13 BY MR. DRESSLER:
 14 Q So, look at Exhibit 221.
 15 You can put it down for a second. I'm going to ask you
 16 some other questions.
 17 When you went to Mr. Murray, you did so because he was a
 18 friend. Correct?
 19 A Yes.
 20 Q You trusted him?
 21 A Yes.
 22 Q You were seeking his help. Correct?
 23 A Yes.
 24 Q Okay. And you didn't sign up with him right away.
 25 Correct?

1 A Correct.

2 Q All right. You had discussions with him about the pros
3 and cons of different kind of investing?

4 A Yes.

5 Q And in April, you had no reason to distrust him at all,
6 did you? Of 2009? April of 2009?

7 A No.

8 Q Okay. And with regard to -- if you look at Exhibit 221,
9 No. 2 -- Page 2, I believe it was your testimony yesterday that
10 the handwritten notes on that exhibit were placed there by you
11 on -- around August -- April -- around April 16th?

12 A Yes.

13 Q Okay. And in the middle you said (As read):
14 "Auditor to me, third party valuator."
15 Correct?

16 A Yes.

17 Q Okay. And did you write that because you didn't trust
18 Mr. Murray?

19 A No. It's just doing my due diligence.

20 Q Okay. In other words, doing your due diligence, were you
21 anticipating that you might be suing Mr. Murray if he lost you
22 -- if he lost money?

23 A No. It's like anything. When you get a car, you ask for
24 the mechanic to look under the engine. That's all I was doing.

25 Q Okay. When you do something like ask the mechanic to look

1 under the engine, and he says the engine is fine, you -- you
2 make a record of that in some kind of diary or something?

3 A Yes. I'm German.

4 Q Okay. All right. Okay. And on the bottom:
5 "Promise made in meeting."
6 Same kind of thing. Right?

7 A Yes. I make notes to myself because sometimes I don't
8 recall conversations or whatever in that way. It spurs on what
9 -- what things were said, or -- it's a reconfirmation for
10 myself, too. It's my thought process.

11 Q Do those notes reflect that you were anticipating that
12 something might go wrong, and you wanted a record so that if
13 Mr. Murray lost money, you would be able to, at some later
14 time, indicate what you were relying on in making that
15 investment?

16 A No. It's my decision process for me to reassure myself
17 I'm making the right decision.

18 Q Okay.

19 A I cross -- criss-cross five or ten times before I make a
20 final decision.

21 Q Okay.

22 A To confirm that I actually am making the right decision
23 for myself.

24 Q With regard to the exhibit that I'm talking about, 221,
25 Page 2, do you have any independent information right now that

1 the performance numbers for January, February and March that
2 were in Exhibit 221 at Page 2 were incorrect?

3 A I didn't understand the first part of your question. Your
4 voice faded.

5 Q As you sit here right now --

6 A Yes.

7 Q Mr. Murray sent you Exhibit 221 on Page 2, along with an
8 email saying (As read):
9 "Please ignore the first one sent; it was a
10 draft. Also it doesn't have February and March
11 numbers which were +2.1 percent (sic) and
12 -1.67 percent."
13 Correct?

14 A Yes.

15 Q All right. As you sit here right now, do you have any
16 independent information that those numbers were false in any
17 way?

18 A The numbers on this sheet?

19 Q Yes.

20 A Yes.

21 Q What is that?

22 A After he was arrested, I tried find Jones Moore &
23 Associates online, and the website didn't exist.

24 Q And when did you do that?

25 A After he was arrested in March of 2012.

1 Q Okay. How about the -- what I'm asking you is the
2 February and March numbers, +2-point -- .21 percent and --
3 (Reporter interruption)

4 BY MR. DRESSLER:

5 Q I think my question was -- and if it wasn't, I'll ask this
6 question -- the numbers on that sheet that you received for
7 February and March were +.21 percent, and -1.67 percent.
8 Correct?

9 A Correct.

10 Q As you sit here now, do you know that those numbers are
11 wrong?

12 A I don't believe or trust them now. At the time, I did.

13 Q My question is -- please listen to my question. All
14 right?

15 Do you have any independent information that those numbers
16 were incorrect at the time you received them?

17 A Now that the company doesn't exist, I don't believe those
18 numbers are right.

19 Q So, the only -- I guess your answer is --

20 A I'm sorry if I don't understand the question.

21 Q The question is: You were sent an email that said "In
22 February the numbers were .21 percent."
23 Do you understand that?

24 A Yes.

25 Q All right. Other than the fact that Mr. Murray was

1 arrested, do you have any basis for believing that that number
2 was incorrect?
3 A Yes. Jones Moore & Associates doesn't exist.
4 Q And you determined that by information you received from
5 the Government --
6 A After he was arrested.
7 Q Could you --
8 THE COURT: Okay. Let him finish the question, and
9 then you can answer.
10 BY MR. DRESSLER:
11 Q You learned from Government allegations, that Jones Moore
12 did not exist.
13 A No.
14 MS. HARRIS: Objection.
15 THE WITNESS: You're insinuating that.
16 MS. HARRIS: Objection.
17 THE COURT: Hold on. First of all, that misstates
18 the evidence.
19 MS. HARRIS: Correct.
20 THE COURT: Restate the question. That's not what
21 she said.
22 BY MR. DRESSLER:
23 Q How did you determine -- when did you -- I want to make
24 sure I'm understanding what you're saying. Okay?
25 Are you telling us that in March of 2012, based on the

1 fact that Mr. Murray was arrested, and based on the fact that
2 -- and around that time, you heard or someone told you that
3 Jones Moore didn't exist, that based on that, you're stating
4 that the .21 --
5 MS. HARRIS: Objection, Your Honor. It is a compound
6 question. It is unintelligible and part of it misstates the --
7 THE COURT: Sustained. She testified that she went
8 to the internet. I don't know if you heard that.
9 BY MR. DRESSLER
10 Q You went to the internet in 2012, correct?
11 A Right after I started frantically Googling and trying to
12 figure out how I could -- how I could rectify the situation
13 myself.
14 Q And what did you see?
15 A It didn't exist any more.
16 Q Meaning, there was no website?
17 A Correct.
18 Q Okay. You indicated yesterday that in 2009 or 2010 you
19 went to the website -- you went to the internet and you did
20 find a website for Jones Moore & Associates, correct?
21 A Yes.
22 Q Yes?
23 A Yes.
24 Q Okay. So the fact that there was no longer a website in
25 2012, from that you concluded that the figures in the document

1 that we're talking about were not true?
2 A Yes.
3 Q All right. When you contacted Mr. Murray --
4 (Alarm interrupts the proceedings.)
5 MR. DRESSLER: Objection sustained.
6 THE COURT: I think that means it's time for a break.
7 So that means there is going to be some public announcement
8 about something.
9 It's 10:00 o'clock, normally when we take our break.
10 Let's take a 15-minute break at this point and we'll resume at
11 10:15.
12 (Jury exits courtroom at 10:01 a.m.)
13 THE COURT: All right. Do you have that, those block
14 of documents that you want me to look at?
15 MR. FARNHAM: Yes, your Honor. What I have -- if I
16 may approach?
17 (Whereupon, documents were tendered to the Court.)
18 MR. FARNHAM: There is one additional. There's the
19 two 302s. They are emails that were provided last night. And
20 then there's a small additional stack of --
21 (Court reporter interruption.)
22 MR. FARNHAM: There is one small additional stack
23 that is still being brought up. And that's the -- it's sort of
24 a three-page memo from Mr. Eckel that he was provided last
25 night at 6:00 p.m.

1 THE COURT: So that's not included in what you just
2 gave me?
3 MR. FARNHAM: I'm trying to get it as soon as
4 possible.
5 MR. DRESSLER: Your Honor, let me get mine so the
6 Court can see what I --
7 THE COURT: Do you want to look at it over the break?
8 Because I have a bunch of documents.
9 MR. DRESSLER: I need to discuss some things with
10 Mr. Murray about this witness's testimony, so --
11 THE COURT: You're not going to be looking at those
12 anyway.
13 MR. DRESSLER: I'm not going to be looking at it
14 anyway.
15 THE COURT: I mean, it's up to you, because I have
16 some of the documents --
17 MR. DRESSLER: You don't have the ones that I'm
18 talking about.
19 THE COURT: All right.
20 (Whereupon documents were tendered to the Court.)
21 THE COURT: Thank you.
22 Okay. See you in 10 minutes.
23 (Whereupon there was a recess in the proceedings
24 from 10:02 a.m. until 10:18 a.m.)
25 THE COURT: We're on the record. We did get a note

1 from a juror who asked the following question:
 2 "Why won't we receive transcripts of the
 3 testimony? The trial is expected to last four weeks,
 4 which is quite a bit of information to absorb and
 5 retain."
 6 THE COURT: Unless someone objects, I will -- when
 7 the jury is all here, I will just simply indicate that we did
 8 receive this note and that the rules are, as I stated, that the
 9 transcript is not available to the jury; that they should -- if
 10 they want to take notes, I've already indicated that they may
 11 take notes.
 12 MS. HARRIS: That's fine with the Government, your
 13 Honor.
 14 THE COURT: Is that okay with you? Is that all right
 15 with you, Mr. Dressler?
 16 MR. DRESSLER: I'm going to start screaming into this
 17 microphone, your Honor. If I talk too loud --
 18 THE COURT: I would rather you do that.
 19 So do you mind if I just reiterate that transcripts are
 20 not available?
 21 MR. DRESSLER: No, your Honor.
 22 THE COURT: I will say it would be helpful -- you
 23 started examining this witness about a document, and I don't
 24 know if you intended to or not, but the jury doesn't have the
 25 document. So it's going to be doubly hard for them to follow

1 unless -- if you're talking about a particular document, you
 2 might ask the Government to put it up, unless you have a
 3 specific reason not to put it up.
 4 Just make it simple for the jury. We've got so many
 5 documents and so many witnesses, my recommendation is if you're
 6 going to talk extensively about a document, they are not going
 7 to remember 221 from 222 or anything else by numbers.
 8 MS. HARRIS: All he has to do is let us know and
 9 we'll bring it up.
 10 THE COURT: All right. All right. Okay. And I hope
 11 that we can move this along. I know this is an important
 12 witness, but -- and I have looked at those documents.
 13 But let's cross this bridge when we get there because at
 14 this rate I'm not sure how far along we're going to get there.
 15 You may have the evening anyway before you cross.
 16 But I will give this back to you right now. I didn't go
 17 through all of it. I looked at some. I don't want to deprive
 18 you of that.
 19 (Whereupon document was tendered to counsel.)
 20 So let's resume. And you can have Ms. Seibt come back and
 21 resume the stand.
 22 (Jury enters courtroom at 10:22 a.m.)
 23 THE COURT: All right. Thank you.
 24 I want to respond to, at least, the first note that I
 25 received from the jury about transcripts.

1 I do want to reiterate what I said in my opening
 2 instructions, that transcripts are not available to the jury.
 3 I understand it is a long trial. The rules are that
 4 transcripts are not made for jury purposes.
 5 You do have the right and the ability to take notes, as
 6 I've indicated. I've also explained the role of notes and how
 7 they should and shouldn't be used.
 8 So all I can ask is that you continue to pay as close
 9 attention as you can. I've also -- am going to make every
 10 effort to make sure if we're talking about exhibits, that you
 11 have it up on the screen. If for some reason you can't see
 12 something, let me know. But, unfortunately, transcripts are
 13 not available.
 14 So I have another note, but I haven't had a chance to look
 15 at that. We'll get to that after we continue in this session,
 16 all right?
 17 MR. DRESSLER: Thank you, your Honor.
 18 Also, ladies and gentlemen, I'm not a loud talker, so I'm
 19 doing the best I can. If you don't hear me, please let me know
 20 and I'll -- I need to be reminded sometimes to speak up.
 21 BY MR. DRESSLER
 22 Q Ms. Seibt, would it be fair to state that the only time
 23 you asked Mr. Murray for cash out of your accounts with him was
 24 after you learned he was arrested?
 25 A No.

1 Q There was another occasion?
 2 A When I emailed him for the \$10,000.
 3 Q And when was that?
 4 A That was before I knew he was arrested.
 5 Q Do you remember the date?
 6 A I believe it was March 12th.
 7 Q Of 2012?
 8 A Yes.
 9 Q Okay. And at that time you knew that the SEC had frozen
 10 all of the money that Mr. Murray had under his control,
 11 correct?
 12 A I didn't know anything. I was contacting him for that and
 13 for my tax papers. I had no idea.
 14 Q When you finally did contact him, he told you, did he
 15 not --
 16 A No.
 17 MR. DRESSLER: Your Honor, could you instruct --
 18 A Lisa Murray's email told me.
 19 MR. DRESSLER: I haven't even asked the question.
 20 THE COURT: All right. So I'm going to strike that
 21 answer. It wasn't in response to a question. So the jury will
 22 disregard that.
 23 And what are you asking for?
 24 MR. DRESSLER: I was asking you to please instruct
 25 the witness to please let me finish my question before she

1 answers.
 2 THE COURT: All right. So, again, we have to go one
 3 at a time. So if you would pause after every question just for
 4 a second or two, and you can complete your question.
 5 Go ahead.
 6 BY MR. DRESSLER
 7 Q My question is that when you met Murray, Mr. Murray, at
 8 his office and asked him for money and asked him for what was
 9 going on, that kind of thing, he told you, did he not, that the
 10 SEC had frozen all the funds that were under his control and
 11 that he couldn't give you any money back because all those
 12 funds were frozen?
 13 A Correct.
 14 Q When you say a meeting at his office on Montgomery Street,
 15 you saw computers, computer screens that were lit up?
 16 A Yes.
 17 Q And this was in an office that Mr. Murray shared with
 18 other people?
 19 A No. On Montgomery Street, it was his own office.
 20 Q I thought you said that there were other people that he
 21 shared that office with when you went and spoke to him in 2012?
 22 A It was an office with other offices, but he didn't share
 23 his office with anyone.
 24 Q Okay. In any event, you saw -- he was there and there was
 25 one or two computers and their screen was on?

1 Q Okay. And they told you you couldn't keep your IRA in
 2 that Fidelity account?
 3 A Correct.
 4 Q And so what were your options, as you understood them?
 5 A My options was I could have my own Fidelity account and
 6 trade it or cash out.
 7 Q Okay. And you started the Pensco process, correct?
 8 A Yes.
 9 Q All right. And Mr. Murray was helping you with that?
 10 A Yes.
 11 Q And he told you, did he not, that you could check that
 12 account via email -- strike that, the internet?
 13 A No.
 14 Q He didn't tell you --
 15 A I did everything through Jim. He was my custodian, or
 16 whatever it was, the word they used.
 17 Q Well, you had direct contact with Pensco, didn't you?
 18 A Afterwards I contacted them out of desperation. I did
 19 everything through Jim. I trusted him as a friend.
 20 Q Isn't it a fact that you had conversations with Pensco and
 21 you were upset at the fees they were going to charge you?
 22 A I called them either before or after I contacted Jim
 23 asking what the fees were because Jim said to call them,
 24 because they changed. And he had told me the fees wouldn't be
 25 that high. And he didn't -- he didn't tell me that they were

1 A No. It was the -- when you're trading, computers, there's
 2 a bunch of them up. And from my understanding when he
 3 explained it before, when he had it his home when I first saw
 4 it, like, that's how he does the trades because -- I can't
 5 remember, three, four, five, screens and then they compare, and
 6 they were all up and on.
 7 Q Okay. And from that you concluded that he was actually
 8 working and trading?
 9 A Yes.
 10 Q All right. You never received any audits from JMA, did
 11 you?
 12 A No.
 13 Q Mr. Murray never told you that JMA was auditing the funds
 14 that you had invested with him, correct?
 15 A No.
 16 Q And when you were considering investing with Mr. Murray,
 17 he didn't put pressure on you to invest with him, did he?
 18 A No pressure.
 19 Q Okay. In fact, the process started in April, and at some
 20 point you began an application process to roll over your funds
 21 into the Pensco Company, correct?
 22 A Yes.
 23 Q And my understanding is that your IRA with Levi, was that
 24 a Fidelity IRA?
 25 A Yes.

1 going up or anything. That's when I contacted him and he told
 2 me to contact Pensco because he wasn't sure about why the fees
 3 had changed.
 4 Q And then you did contact Pensco?
 5 A Yes.
 6 Q And you were not happy about the fees?
 7 A No.
 8 Q And at some point you indicated to Mr. Murray that those
 9 fees were so high, along with his fee, that you were going to
 10 stop the process, correct? In other words, you were going to
 11 stop, withdraw your application at Pensco?
 12 A Withdraw my application?
 13 Q Yes.
 14 A But I ended up having the account with Pensco.
 15 Q That's not my question, Ms. Seibt.
 16 My question is: Isn't it a fact that you started the
 17 process sometime in April, and then sometime in early May you
 18 put a hold on your application because you were considering
 19 some other way of investing?
 20 A No.
 21 (Brief pause.)
 22 A I wanted to be clear on the fees before I invested.
 23 MR. DRESSLER: Your Honor, I'm going to show the
 24 witness Defendant's Exhibit 533 for identification purposes
 25 only at this time. It is not --

1 THE COURT: Exhibit 533?
 2 MR. DRESSLER: It's not -- it's an impeachment
 3 document and it's not on my --
 4 MS. HARRIS: Objection, your Honor. I object to any
 5 characterization of the document.
 6 MR. DRESSLER: I apologize. I apologize. I withdraw
 7 that.
 8 THE COURT: Any objection to showing the witness this
 9 document?
 10 MS. HARRIS: No, your Honor.
 11 THE COURT: Go ahead.
 12 (Whereupon, document was tendered to the witness.)
 13 BY MR. DRESSLER
 14 Q Why don't you take a moment and read it. I believe that
 15 it starts -- the email chain starts on the second page.
 16 THE COURT: Do you have a copy for the Court?
 17 MR. DRESSLER: I do, your Honor.
 18 (Whereupon, document was tendered to the Court.)
 19 BY MR. DRESSLER
 20 Q All right. If you look at the first -- those two pages
 21 contain, and tell me if I'm wrong, two emails that you sent to
 22 Mr. Murray and then his response to those two emails, correct?
 23 A Yes.
 24 Q Okay. And the first one is dated Saturday, May 30th,
 25 2009, correct?

1 A Yes.
 2 Q At 2:39 p.m.?
 3 A Yes.
 4 Q All right. And you say:
 5 "Thanks for understanding. Pensco" --
 6 MS. HARRIS: Objection, your Honor. I object to any
 7 reading from the email.
 8 THE COURT: Sustained.
 9 MR. DRESSLER: All right. All right.
 10 BY MR. DRESSLER
 11 Q In that email -- is that, in fact, an email that you sent
 12 to Mr. Murray?
 13 A Yes.
 14 Q Does that email indicate that you told Pensco that -- told
 15 Mr. Murray that you told Pensco to put a hold on the rollover?
 16 A Correct.
 17 Q So, in fact -- in fact, you did put a stop on the
 18 Pensco --
 19 A It's all a part of the process. It is -- it's my decision
 20 process to open the account. It wasn't opened yet. A "hold"
 21 means it wasn't opened. It means I was deciding: Wait a
 22 minute. There's other fees I didn't know about.
 23 It's the process of making a decision, and in that process
 24 I had more information that I didn't have before. Now I found
 25 out new information, so I wanted to think about it. That's all

1 it means.
 2 Q Okay. Fair enough.
 3 In that same email you indicated to Mr. Murray that you
 4 were considering keeping your money at Fidelity in a Levi's
 5 401(k) program?
 6 A It wouldn't have been Levi's. It's the Fidelity account,
 7 that it could roll over into my own trading. I was asking him
 8 to trade it, since I didn't have the capacity to trade it on my
 9 own. I didn't know how to trade on my own.
 10 Q Didn't you say:
 11 "If I keep it at Fidelity in a Levi's 401(k),
 12 maybe you can help me figure out how to balance my
 13 portfolio and I can pay you a consulting fee for
 14 making suggestions every quarter once a year."
 15 A That's a label. Levi's 401(k) is just what I'm calling
 16 it. I was no longer part of Levi's. I was let go. It can't
 17 be a 401(k) with Levi's any more. That's the reason I
 18 approached him.
 19 Q Did you put those words in your email that I just read?
 20 A No. But the email is also short. I'm not going to
 21 explain everything. I'm explaining it to you now.
 22 Q I'm not asking for an explanation now --
 23 A It's a label. It's what I called it, the Levi's 401(k),
 24 because that's what it was --
 25 Q I'm just asking you --

1 THE COURT: All right. Hold on. He's asking you a
 2 specific question. You can explain it, but he's asking you a
 3 specific question.
 4 Ask the question again.
 5 BY MR. DRESSLER
 6 Q (As read)
 7 "If I keep it at Fidelity in Levi's 401(k), maybe
 8 you can help me figure out how to balance my
 9 portfolio and I can pay you a consulting fee for
 10 making suggestions every quarter or once a year."
 11 Did you put those words in the email? That's what the
 12 email says, correct?
 13 A Yes. But you're insinuating that that means something
 14 different than it does. That's what I would like to clarify.
 15 Q Fine.
 16 THE COURT: So the answer is "yes" and you've already
 17 explained the reasoning. Let's move on.
 18 MR. DRESSLER: Okay.
 19 BY MR. DRESSLER
 20 Q And so you were -- at this point you're telling Mr. Murray
 21 that you're considering not investing with him and suggesting a
 22 different possibility of -- just let me finish the question.
 23 You're considering a different way of having Mr. Murray
 24 help you?
 25 A Correct.

1 Q And the second email you sent to Mr. Murray at 3:50 p.m.,
2 correct?

3 A Pardon? Which one?

4 Q There was a second email. The first one we have been
5 talking about was at 2:39 p.m. The second one was at
6 3:50 p.m. on the same day.

7 MS. HARRIS: Objection, your Honor. That
8 mischaracterizes the document and it's not in evidence.

9 The email that Mr. Dressler is referring to is dated
10 May 30th, 2009. That's the second one.

11 MR. DRESSLER: I'm sorry. That's correct.

12 THE COURT: You're talking about Page 1?

13 MR. DRESSLER: I have it backwards. I apologize.

14 BY MR. DRESSLER

15 Q The first email you sent was May 29 at 3:50 p.m., correct?
16 A Correct.

17 Q That one also talked about keeping your money at Fidelity?
18 A I believe the fees of \$800 and .025 of the market is for
19 Pensco.

20 Q All right. Do you see in that email:
21 "Maybe to keep it at Fidelity and to put in a
22 couple good options there," question mark.
23 This is the May 29th, 3:50 p.m. email.

24 A Correct. But I'm still asking Jim to help me invest in
25 Fidelity. I wasn't going to keep it there if I had to invest

1 it myself.

2 Q Did I correctly represent what the -- what the words were
3 in the email there?

4 A I'm sorry. I'm not understanding your question.

5 Q In other words, did you say in that email:
6 "Maybe to keep it at Fidelity and to put it in a
7 couple good options there."
8 Calls for a "yes" or "no" answer. Did you say that in the
9 email?

10 A Yes.

11 Q And then -- so on that same day, May 29th, at 4:58
12 Mr. Murray responded --

13 MS. HARRIS: Objection, your Honor. This is going to
14 be hearsay. The document is not in evidence.

15 MR. DRESSLER: I move it into --

16 THE COURT: Are you intending to read from it?

17 MR. DRESSLER: I'll move it into evidence now.

18 THE COURT: All right. Any objection?

19 MS. HARRIS: No.

20 THE COURT: All right. Admitted. 533 is admitted.
21 Now you can read it.

22 MR. DRESSLER: Yes.
23 (Trial Exhibit 533 received in evidence.)

24 BY MR. DRESSLER

25 Q On Friday, May 29, 2009 at 4:58 p.m. Mr. Murray responded:

1 "And, yes, if it's too expensive, you can, of
2 course, keep it at Fidelity. Have a great weekend,
3 Jim."
4 Correct?

5 A Yes.

6 Q And so there he was telling you, if you don't like what
7 I'm suggesting, keep it at Fidelity and invest your money some
8 other way. He wasn't saying you had to invest with him,
9 correct?

10 A No.

11 MS. HARRIS: Objection, your Honor. That question is
12 compound and it misstates exactly what's in there.

13 THE COURT: Well, it's compound. Rephrase it.

14 MR. DRESSLER: All right.

15 BY MR. DRESSLER

16 Q He was telling you, was he not, that you could keep your
17 money at Fidelity and not send it to Pensco?

18 A I already had given him the 90,000. Now I'm asking to
19 help me with my IRA. So he already had 90,000.

20 Now we're going through the Fidelity process, and it's a
21 back-and-forth until I made my decision. And if I kept it at
22 Fidelity, I was going to have him help me.

23 So he's still involved. I was not excluding him from the
24 decision.

25 Q I appreciate that, all right, but he wasn't -- at

1 Fidelity, it would be a different kind of account where he
2 would not be -- he wouldn't be trading it on a daily basis,
3 correct?

4 A At that point it might have been better. Then he couldn't
5 have stolen my money.

6 MR. DRESSLER: May that be stricken, please?

7 THE COURT: That response is non-responsive. It is
8 stricken from the record. The jury is to disregard it.
9 Please answer the question, the specific question.
10 So ask it again.

11 MR. DRESSLER: I hate to do this. Can the court
12 reporter read it back?

13 (Whereupon the record was read as requested.)

14 THE COURT: So the answer is "yes" or "no."

15 THE WITNESS: Oh.

16 BY MR. DRESSLER

17 Q When you suggested the alternate in one of the other
18 emails we have been talking about today, all right, the
19 suggestion was that if you kept it at Fidelity, he wouldn't be
20 trading it. He would just be advising you maybe once or twice
21 a year with advice on how to trade it, correct?

22 A As I wrote:
23 "How to balance my portfolio and I can pay you a
24 consulting fee for making suggestions every quarter
25 or once a year."

1 So it's to help me manage it, and I would pay him.
 2 Q Okay. But you didn't do the Fidelity -- that particular
 3 option that you were considering didn't happen, did it?
 4 A Correct.
 5 Q But you considered that at one time?
 6 A Correct.
 7 Q And Mr. Murray was saying: Fine, whatever you --
 8 basically, what he was saying: Whatever you want to do. If
 9 you want my help fine. If you don't want my help, fine.
 10 A Correct.
 11 MR. DRESSLER: May I approach the witness?
 12 THE COURT: Yes.
 13 (Whereupon document was tendered to the witness.)
 14 THE COURT: Do you have a copy for the Court?
 15 (Whereupon, document was tendered to the Court.)
 16 BY MR. DRESSLER
 17 Q All right. I've placed before the witness a document
 18 entitled Defendant's Exhibit 534.
 19 Would you take a look at that?
 20 A Yes.
 21 Q All right. That's dated May 15, 2009 the first page?
 22 (Brief pause.)
 23 Q Is there an email from Jim Murray to you dated May 15th,
 24 2009 on the first page?
 25 A Yes.

1 Q And you received that document on or about May 15, 2009?
 2 A Yes.
 3 Q Okay. And there was a document called an Offering Memo
 4 attached to that email, correct?
 5 A Yes.
 6 Q All right. And you reviewed that document?
 7 A Yes.
 8 MR. DRESSLER: I offer this document, Defendant's
 9 Exhibit 534, in evidence.
 10 MS. HARRIS: I object, your Honor. It's an
 11 incomplete document. There are only a few pages excerpting.
 12 MR. DRESSLER: Yes. That's true, your Honor.
 13 MS. HARRIS: The Offering Memorandum is not attached
 14 to it, so it's an incomplete document.
 15 MR. DRESSLER: It is an incomplete document and I'm
 16 only going to ask her about the parts that are attached.
 17 MS. HARRIS: I object, your Honor. The entire
 18 memorandum needs to be attached. This is --
 19 THE COURT: I will allow the Government to
 20 counter-submit the complete document, but I'm going to admit
 21 this document with the understanding that this is -- the
 22 attachment is not complete. The Government will have an
 23 opportunity to submit.
 24 And I will admit upon its motion, and I assume without
 25 objection --

1 MR. DRESSLER: I won't object to it.
 2 THE COURT: All right.
 3 MR. DRESSLER: It's a 30-page document and I'm not
 4 asking any questions about it.
 5 THE COURT: All right. So for purposes of moving on
 6 today, I'm going to admit 534.
 7 (Trial Exhibit 534 received in evidence)
 8 BY MR. DRESSLER
 9 Q You reviewed that memorandum, did you not?
 10 A Yes.
 11 Q And on the second page of this exhibit it says, does it
 12 not:
 13 "Investment in this limited liability company
 14 involves a moderate degree of risk."
 15 Correct?
 16 A Page 2?
 17 Q Second page of the exhibit.
 18 A Yes.
 19 Q All right. You read that --
 20 A Yes.
 21 Q -- did you not?
 22 And then the third page of the exhibit is a table of
 23 contents, correct?
 24 A Yes.
 25 Q And the table of contents is two pages long and it

1 starts -- table of contents is Page 2 of the document and the
 2 last page of the document is Page 34, correct?
 3 A Yes.
 4 Q All right. And on Page 28 of the document, if you look at
 5 the second page of the table of contents, it says "risk
 6 factors," correct?
 7 A Yes.
 8 Q You read -- and then -- if you turn -- there's three pages
 9 of table of contents, correct?
 10 A Yes.
 11 Q Okay. So if you go to the first page after that, you see
 12 Page 28 of the document, do you not?
 13 A Yes.
 14 Q And there follows there four pages of risks that are
 15 involved in this type of investment, correct?
 16 A Yes.
 17 Q All right. And you knew, did you not, when you met that
 18 Mr. Murray was a hedge fund manager, correct?
 19 A Yes.
 20 Q You knew that hedge funds were not like ordinary money
 21 market or IRA-type of things that people invest in. They sit
 22 there and maybe add to them or sell some, correct?
 23 A Yes.
 24 Q You knew that this type of investment involved trading,
 25 correct?

1 A Yes, market neutral trading.
 2 Q Okay.
 3 A Not high risk.
 4 Q And -- well, who it be fair to state that, also, you
 5 understood that whatever trading Mr. Murray was going to do was
 6 at his discretion?
 7 A Yes.
 8 Q Okay. You were hoping he would make money for you?
 9 A The numbers he showed me would. Not that my account would
 10 go to zero.
 11 Q That was not my question, ma'am. My question was: You
 12 were hoping that he would make money for you, correct?
 13 A Yes.
 14 Q And the document you received from Mr. Murray in April,
 15 Government's Exhibit 221, basically indicated that had in
 16 February and March -- in February there was a profit of
 17 .21 percent, correct?
 18 A Correct.
 19 Q And in March there was a loss of 1.67 percent?
 20 A Correct.
 21 Q So for the -- at least those two months, based on your
 22 understanding of what that meant, the company -- or the hedge
 23 fund had lost a certain percentage, correct?
 24 A Correct.
 25 Q All right. And the month before that there was a profit?

1 A Excuse me?
 2 Q The month before that, January, the document on the -- the
 3 Exhibit 221, Page 2, there was a -- the January figure was,
 4 there was a profit, correct?
 5 A It's kind of blurred out on my copy. If it says
 6 2 percent, I believe. I can't read it.
 7 Q Well, if I say 5 percent, around 5 percent, does that ring
 8 a bell? In January there was a 5 percent profit?
 9 A Nothing rings a bell that I remember the number. I just
 10 can't read it.
 11 Q Okay. You -- in late May, you decided to commit funds to
 12 the Pensco account, correct?
 13 A Well, first it was the savings and then Pensco.
 14 Q My question is: In May, late May of 2009 you agreed and
 15 rolled over your money into a Pensco account, correct?
 16 A I believe it was May or June.
 17 Q And Government's Exhibit 233, which you discussed, which
 18 was a December 31st, 2009 financial statement -- do you have
 19 that up there?
 20 THE COURT: 223 or 233?
 21 MR. DRESSLER: 223.
 22 THE COURT: You want them to put that up on the
 23 screen?
 24 MR. DRESSLER: Sure.
 25 (Document displayed)

1 BY MR. DRESSLER
 2 Q Can you see that on the screen?
 3 A Oh, I'm just looking at the hard copy. That's very
 4 blurry.
 5 There we go. Thank you.
 6 Q Why don't you look at the hard copy?
 7 A Okay.
 8 Q Anyway, you testified that the December 31st, 2009
 9 statement on 223, Page 2 -- is that what we have up there?
 10 Yes -- showed a substantial loss, correct?
 11 A Correct.
 12 Q Mr. Murray did not try and hide the fact that he had
 13 lost -- that your account had suffered a substantial loss,
 14 correct?
 15 A No.
 16 Q And Exhibit 224, Page 4.
 17 (Document displayed)
 18 Q That was the March 31st, 2010 financial statement,
 19 correct?
 20 A Correct.
 21 Q And there was still a substantial loss?
 22 A Correct.
 23 Q He didn't try and hide that from you, did he?
 24 A No.
 25 Q And if I understand your testimony, through the balance of

1 2010 and into the fall of 2011, the documents you received from
 2 Murray indicated that maybe there was some improvement, but,
 3 still, the money you gave him to invest had suffered a
 4 substantial loss, correct?
 5 A Yes.
 6 Q And he didn't try and hide that, did he?
 7 A No. But he kept promising me it would come back, and it
 8 didn't.
 9 Q All right. So he was telling you, hopefully, it will come
 10 back.
 11 A "Hang in there. Hang in there and the strategy would
 12 work."
 13 Q Excuse me?
 14 A "The strategy would work."
 15 Q Right. His strategy?
 16 A Yeah. And it wasn't working.
 17 Q It wasn't working, right? But he said that -- when you
 18 got into this, he said, "I have a strategy and I believe it
 19 will work," correct? Yes?
 20 A Yes.
 21 Q Okay. And it didn't work, correct?
 22 A Can you repeat the last --
 23 Q It didn't work?
 24 A It didn't work, correct.
 25 Q You lost money?

1 A Correct.

2 Q And I'm not trying to diminish that fact, but you've

3 indicated that losing that money was a big thing for you,

4 correct?

5 A Correct.

6 Q And then at some point you learned that there was an SEC

7 action, correct? Like, in late 2011, early 2012?

8 A Again, when I asked for the 10,000, I had no idea. I

9 thought it was liquid. I could get the 10,000 out and I didn't

10 hear back from him. So, no, I did not know about the SEC

11 action.

12 Q You knew he was arrested at some point, correct?

13 A After that.

14 Q I'm asking you: Did you know he was arrested --

15 A Correct.

16 Q -- at some point?

17 And that was in March of --

18 A Of 2012.

19 Q -- of 2012?

20 And you were emailing him, in fact, for -- during the

21 period that you were emailing him, in fact, he was in jail,

22 correct?

23 A Yes.

24 Q And you knew that, right?

25 A Yes.

1 (Brief pause.)

2 Q And you were aware in early 2012, or sometime between,

3 let's say, January and March of 2012, that, in fact, a very

4 large sum of money was frozen and ultimately seized by the

5 Government, correct, from Mr. Murray?

6 MS. HARRIS: Objection. There is no foundation for

7 that, your Honor.

8 MR. DRESSLER: I'm asking --

9 THE COURT: He's asking the question. Overruled.

10 A No, I was not aware it.

11 BY MR. DRESSLER

12 Q You're not aware that at \$1.8 million was seized from

13 Mr. Murray's MNT accounts?

14 A No.

15 Q You never heard that until I told you?

16 A Just until this moment. I didn't know the amount. I

17 didn't know anything --

18 Q Okay.

19 A -- about that.

20 Q All right. So you don't know whether -- as you sit here,

21 whether any of your money is still in that money that was

22 seized by the Government, correct?

23 A Correct.

24 MR. DRESSLER: One moment.

25 THE COURT: Yes.

1 (Discussion held off the record between the defendant

2 and his counsel.)

3 MR. DRESSLER: Thank you. I have no other questions.

4 THE COURT: Thank you, Mr. Dressler.

5 Any redirect?

6 REDIRECT EXAMINATION

7 BY MS. HARRIS

8 Q Good morning again, Ms. Seibt.

9 MS. HARRIS: If we could pull up again Government's

10 Exhibit 224? And specifically Page 3.

11 (Document displayed.)

12 BY MS. HARRIS

13 Q Ms. Seibt, on cross examination you were asked some

14 questions about whether you were told in -- that there was a

15 loss in your account as of December 31st, 2009.

16 Do you recall that, that line of questioning?

17 A No, I didn't find out until I received the statements.

18 Q And when you received the statement that's attached as

19 Page 3 of Exhibit 224, it showed a loss of about \$40,000, is

20 that right?

21 A Correct.

22 Q Okay. Is there anything in Exhibit 224 that shows nearly

23 100 percent loss?

24 A No.

25 Q Was it your expectation, based on Exhibit 224, that your

1 investment had lost 40 percent, not 100 percent?

2 MR. DRESSLER: Objection, your Honor. Assumes a fact

3 not in evidence.

4 THE COURT: Overruled.

5 BY MS. HARRIS

6 Q You can answer the question.

7 A Can you repeat it, please?

8 Q Was it your expectation when you received Exhibit 224,

9 Page 3, that the actual loss of your investment was \$40,000,

10 not 100 percent?

11 A Correct. I didn't expect it to be that much.

12 Q You knew -- you knew based on what you received that there

13 was a loss?

14 A There was a loss, correct.

15 Q Did you know that the loss was 100 percent?

16 A No.

17 Q You were asked some questions about an offering memorandum

18 that Mr. Murray provided to you on May 15th, 2009. Do you

19 recall that line --

20 A Correct.

21 Q -- of questions?

22 And you were given an exhibit marked Defendant's Exhibit

23 534. If you could turn to Page 2 of that exhibit --

24 A Which one? I'm sorry.

25 THE COURT: 534.

1 THE WITNESS: I don't have 534 in here.
 2 THE COURT: You'll have to show her which one it is.
 3 (Whereupon document was tendered to the witness.)
 4 BY MS. HARRIS
 5 Q The exhibit that Mr. Dressler showed you on cross
 6 examination, what is the date on the memorandum you were given
 7 by Mr. Murray in 2009?
 8 A May 1st, 2006.
 9 Q Were you given any offering memorandum for the information
 10 for Market Neutral Trading as it existed as of May 2009?
 11 A Can you repeat the question? I'm not understanding.
 12 Q Were you given anything that looked like what Mr. Dressler
 13 showed you that is dated any later than May of 2006?
 14 A I remember an Offering Memorandum. I don't remember the
 15 date.
 16 Q You were also shown an incomplete document, is that
 17 correct?
 18 A Correct.
 19 Q You were only shown a few pages of a much longer document?
 20 A Correct.
 21 Q Okay. And the much longer document is the one dated May,
 22 2006?
 23 A Correct.
 24 (Discussion held off the record between Government
 25 counsel.)

1 MS. HARRIS: Your Honor, may I be permitted to use
 2 the Elmo? We have now the complete exhibit and I want to show
 3 Ms. Seibt some pages from the actual Offering Memorandum.
 4 THE COURT: Well, it's not -- can't be published if
 5 it's not been admitted. If you want to move to admit it, and I
 6 said I would allow it if it's complete.
 7 MS. HARRIS: Your Honor, I --
 8 MR. DRESSLER: Excuse me. I'm going to object to the
 9 actual memorandum. I made it very clear that it was a
 10 partial --
 11 THE COURT: All right. The complete memorandum.
 12 Any objection to admitting the complete, all pages of what
 13 was part of Exhibit 534.
 14 MR. DRESSLER: No, your Honor.
 15 THE COURT: All right. We'll admit -- what do you
 16 want to call it?
 17 MS. HARRIS: I want to just show some information
 18 that was in the Offering Memorandum concerning Mr. Murray's
 19 background.
 20 THE COURT: This is from the complete memorandum?
 21 MS. HARRIS: Correct.
 22 THE COURT: And we're going to call it what number?
 23 MS. HARRIS: This would be Exhibit 235, since
 24 Mr. Dressler's was Exhibit 234.
 25 THE COURT: Okay. 235 will be admitted.

1 (Trial Exhibit 235 received in evidence)
 2 THE COURT: And now you can publish whatever you want
 3 to publish and show whatever you want to show the witness.
 4 MS. HARRIS: May I use the Elmo?
 5 THE COURT: Yes.
 6 (Document displayed)
 7 (Discussion held off the record between Government
 8 counsel.)
 9 MS. HARRIS: Your Honor, may we mark this as Exhibit
 10 396 instead of 235? There is already a 235.
 11 THE COURT: 396 is the new exhibit number and it is
 12 admitted.
 13 (Trial Exhibit 396 marked for identification and
 14 received in evidence)
 15 BY MS. HARRIS
 16 Q Ms. Seibt, if you could look at Page 16 of what -- of the
 17 complete document that you were provided by Mr. Murray, do you
 18 see the portion that says:
 19 "There has never been any material civil or
 20 criminal actions, suits or proceedings against the
 21 company or its investment manager."
 22 A Yes.
 23 Q Is that information you were provided by Mr. Murray in
 24 2009?
 25 A Yes.

1 Q Did you rely on that information in making your
 2 investment?
 3 A Yes.
 4 Q There is a section entitled "Investment Manager of the
 5 Company." Do you see that?
 6 A Yes.
 7 Q Okay. It says:
 8 "James Murray is the investment manager of the
 9 company."
 10 Do you see that?
 11 A Yes.
 12 Q And do you see where it says:
 13 "Mr. Murray received his B.S. cum laude in
 14 economics from the University of Arizona."
 15 A Yes.
 16 Q Did you rely on that information to be true when you made
 17 your investment?
 18 A Yes.
 19 MS. HARRIS: I have no further questions, your Honor.
 20 THE COURT: All right. Recross?
 21 MR. DRESSLER: No questions.
 22 THE COURT: All right. Thank you, Ms. Seibt. You
 23 are excused and may step down. Thank you.
 24 (Witness excused.)
 25 THE COURT: The Government may call its next witness.

1 MR. FARNHAM: Your Honor, the Government calls Glenn
2 Gutierrez.
3 THE COURT: Okay.
4 GLENN GUTIERREZ,
5 called as a witness for the Government herein, having been
6 first duly sworn, was examined and testified as follows:
7 THE WITNESS: I do.
8 THE CLERK: Okay. Please state your full name for
9 the record.
10 THE WITNESS: Glenn Gutierrez.
11 THE CLERK: Spell your last name.
12 THE WITNESS: Sure. G-U-T-I-E-R-R-E-Z.
13 THE COURT: Thank you, Mr. Gutierrez.
14 You may proceed Mr. Farnham.
15 DIRECT EXAMINATION
16 Q Good morning, Mr. Gutierrez. Where do you currently work?
17 A Wells Fargo Bank.
18 Q And how long have you worked there?
19 A Fifteen years.
20 Q And what's your current position?
21 A Investigator with the bank.
22 Q How long have you worked in that role?
23 A Investigation, 16. 16 years total.
24 Q What are your general responsibilities in your role as an
25 investigator?

1 BY MR. FARNHAM
2 Q Mr. Gutierrez, I've handed you what's been marked as
3 Exhibit 370. If you could take a look at that?
4 A Okay.
5 Q And tell me, do you recognize that exhibit?
6 A I do.
7 Q Are these records of Wells Fargo Bank?
8 A They are.
9 Q What type of records are they?
10 A These are bank statements, account applications and looks
11 like copies of items associated with the account.
12 Q And are these records created and maintained by Wells
13 Fargo in its normal course of business?
14 A They are, yes.
15 MR. FARNHAM: Your Honor, I would offer Exhibit 370
16 into evidence.
17 MR. DRESSLER: I don't have my evidence book with me
18 for those particular exhibits.
19 Could we have a date of when it was opened and when it was
20 closed?
21 THE COURT: When what was opened, the account?
22 MR. DRESSLER: That account.
23 MR. FARNHAM: I can ask the witness for the date of
24 the document, if you would like.
25 THE COURT: Okay.

1 A As an investigator I'm -- I'm really there to protect the
2 assets of the bank, the assets of our customers, and assist law
3 enforcement with cases that they are working with.
4 Q In what ways do you typically assist law enforcement with
5 cases that they are working on?
6 A With evidence.
7 Q Responding to requests?
8 A Yes, exactly.
9 Q Subpoenas?
10 A Subpoenas.
11 Q And are you familiar with the various types of records
12 that Wells Fargo keeps about its business?
13 A I am.
14 Q And does your job typically involve accessing those
15 records?
16 A They do, yes.
17 MR. FARNHAM: Your Honor, may I approach with an
18 exhibit?
19 THE COURT: Yes.
20 MR. DRESSLER: May I take a look at that, please?
21 (Whereupon, document was shown to counsel.)
22 THE COURT: Was it previously marked as an exhibit
23 number?
24 MR. FARNHAM: It was, your Honor. It's on our list.
25 (Whereupon document was tendered to the witness.)

1 BY MS. HARRIS
2 Q Mr. Gutierrez, what's the -- what's the -- you mentioned
3 that these were account applications. What's the date of that
4 application?
5 A August 29th, 2013.
6 Q And just approximately, what's the date that the
7 statements and detail documents relate to?
8 A These statements for the checking account are dated
9 August 29, 2013 through September 20th, 2013.
10 MR. FARNHAM: Your Honor, I would move again for
11 Exhibit 370 into evidence.
12 THE COURT: Any objection?
13 MR. DRESSLER: No objection.
14 THE COURT: Admitted.
15 (Trial Exhibit 370 received in evidence.)
16 MR. FARNHAM: And I would like to publish it, your
17 Honor.
18 THE COURT: All right.
19 (Document displayed)
20 BY MR. FARNHAM
21 Q If we could look at the first page briefly. This is the
22 first page of that document?
23 A Yes.
24 Q What is that?
25 A This is a declaration of records that were produced.

- 1 Q If we could look at Page 2 of the document?
2 (Document displayed.)
- 3 Q What's the document that begins on Page 2?
4 A This is the account application.
- 5 Q And where was this -- this document prepared?
6 A This document was prepared at a Wells Fargo branch.
7 Q Where is that branch?
8 A Branch No. 23. I'm not familiar with it.
- 9 Q I'm sorry. You're not familiar with that branch?
10 There is a -- the top line there is a "Store Name"
11 portion. Do you see that?
12 A Oh, sorry. Market-California.
- 13 Q What does that indicate to you?
14 A That is the store name, so it's actually located on Market
15 Street and the intersection of California.
- 16 Q And what city is that in?
17 A The City of San Francisco.
- 18 Q And are you familiar with that branch, the one that's at
19 Market and California?
20 A I am.
- 21 Q And is that near the Embarcadero in San Francisco?
22 A It is.
- 23 Q In this document who is it that's applying for an account?
24 A The related customer is James M. Murray.
25 Q And what sort of accounts are being applied for?

- 1 A There is a checking account and a savings account.
- 2 Q If you look at the bottom section of this form it says,
3 "Checking/Savings Statement Mailing Information." What is that
4 area of the form for?
5 A This is the mailing address information that the customer
6 requested. So this would be the actual address that the
7 statements would be mailed to.
- 8 Q And who provided the information regarding the address
9 there?
10 A That would be the customer, James Murray.
- 11 Q And what information was provided? What's the address?
12 A The address is [REDACTED],
13 San Francisco, California [REDACTED].
- 14 Q If we could look at the second page of this document --
15 I'm sorry, third page.
16 (Document displayed)
- 17 Q Is this a continuation of that same document?
18 A It is.
- 19 Q In the Customer Information section, do you know who
20 provided the information that was in that section?
21 A That would be the customer, James Murray.
- 22 Q How would this have been provided? How would it have been
23 filled out?
24 A The customer is asked for identification. So typically
25 that would be a state I.D., driver's license. And then the

- 1 banker that's opening the account for the customer would enter
2 this information on the bank systems.
- 3 Q You mentioned "the banker." What's the banker doing with
4 regard to this form?
5 A I'm sorry. Repeat the question?
- 6 Q The banker that you referred to, who is that?
7 A That would be Christopher Mark Service.
- 8 Q And what was his role with regard to this form? What was
9 he doing?
10 A He was opening the account for the customer, James Murray,
11 and entering the information.
- 12 Q And, again, what information was provided regarding the
13 street address for this customer?
14 A The address of [REDACTED]
15 San Francisco, California [REDACTED].
- 16 Q And then you mentioned that identification was requested.
17 What type of identification was shown here?
18 A The identification is a driver's license, and second I.D.
19 was a Kaiser medical card.
- 20 Q And is the -- under the -- next to the -- tell me where it
21 says that there is a driver's license provided? I'm sorry.
22 A Oh, so under "Primary I.D. Type" on the form on Page 3, it
23 says "DLIC." And then the description of [REDACTED] The
24 state issuing the I.D. is California. And the expiration date
25 is July 31st, 2015.

- 1 Q Did this customer provide any information about his
2 employment?
3 A Let's see. On the application it indicates that the
4 customer is employed by Pillsbury.
- 5 Q If I could ask you to turn to Page 8 of this document?
6 (Document displayed)
- 7 Q Is this another version of that same account application?
8 A It is.
- 9 Q And if you look at Page 9, is that another second page of
10 the account application?
11 (Document displayed)
- 12 A It is.
- 13 Q And is this page signed?
14 A Page 9 is signed, yes.
- 15 Q How did that signature get on this form, if you know?
16 A The signature was obtained manually. Bankers or customers
17 either provide the signatures either electronically or
18 manually. This one is indicated as being provided manually.
- 19 Q And by "manually," what does that mean?
20 A It means the application was printed out and given to the
21 customer to sign.
- 22 Q And then the next page, Page 10.
23 (Document displayed)
- 24 Q Same situation for that signature?
25 A Yes.

1 Q And that was obtained manually?
 2 A Manually, correct.
 3 Q If we could go to page 14?
 4 (Document displayed)
 5 Q What's the document that starts on this page?
 6 A This is the checking account statement for James Murray.
 7 Q And would that be for the account that we just looked at
 8 the application for?
 9 A 7976, yes.
 10 Q And if you look at Page 15 of that exhibit, is that the
 11 second page of this statement?
 12 (Document displayed.)
 13 A Yes.
 14 Q If you could look at some of the items in that Transaction
 15 History, what does the 8/29 Date line tell you?
 16 A That Date line tells me the account was funded. There was
 17 an opening deposit of \$1,566.38.
 18 Q What does the second line tell you that's dated 8/30?
 19 A That there was an ATM withdrawal at machine 00231.
 20 Q Does it indicate where that machine is?
 21 A California Street, San Francisco.
 22 Q And the line that begins 9/19, what does that line tell
 23 you?
 24 A That Wells Fargo Bank Closed out the account.
 25 Q Do you know why the account was closed?

1 A That I do not know.
 2 MR. FARNHAM: I would like to approach with a second
 3 exhibit, your Honor.
 4 THE COURT: All right.
 5 (Whereupon document was tendered to the witness.)
 6 BY MR. FARNHAM
 7 Q Mr. Gutierrez, you have been handed what's been marked as
 8 Exhibit 25, and I would ask you to take a look at that.
 9 (Witness complied.)
 10 MR. DRESSLER: I apologize, your Honor. Can I just
 11 take a quick look at that?
 12 THE COURT: Yes. Do you have an extra copy?
 13 MR. DRESSLER: I -- I wasn't expecting -- should have
 14 been expecting, but I wasn't expecting this witness and I have
 15 10 binders and I didn't bring all of them today.
 16 THE COURT: Sure.
 17 (Whereupon, document was shown to counsel.)
 18 MR. DRESSLER: Thank you very much. I apologize to
 19 the witness.
 20 (Whereupon document was tendered to the witness.)
 21 BY MR. FARNHAM
 22 Q Mr. Gutierrez, do you recognize Exhibit 25?
 23 A I do.
 24 Q What is it?
 25 A It's a record of ATM transactions from one of our systems.

1 Q What system were these records obtained from?
 2 A It's a system called ATM Facts GWY, is what I refer to it
 3 as. The header says, "Fact - ATM POS Transaction Search."
 4 Q Does the header also have your name in it?
 5 A It does.
 6 Q Why is that?
 7 A Because I was the user pulling up the information on the
 8 system.
 9 Q Is this information that Wells Fargo typically stores in
 10 its regular business?
 11 A Yes.
 12 Q And is it stored at the time of the transactions?
 13 A Correct.
 14 MR. FARNHAM: I would move Exhibit 25 into evidence.
 15 THE COURT: Any objection?
 16 (Brief pause.)
 17 THE COURT: Any objection?
 18 MR. DRESSLER: No objection.
 19 THE COURT: Admitted.
 20 (Trial Exhibit 25 received in evidence.)
 21 BY MR. FARNHAM
 22 Q Looking at page --
 23 MR. FARNHAM: If I could publish it, your Honor?
 24 THE COURT: Yes.
 25 (Document displayed)

1 BY MR. FARNHAM
 2 Q Looking at that first page of the exhibit, Page 1, what is
 3 this screen or what is this page?
 4 A This screen shows a search that I ran on a specific ATM
 5 and a specific date and time.
 6 Q What is the date and what is the time range for the
 7 search?
 8 A The search range was for June 11th, 2010 between the hours
 9 of 7:20 and 7:50 a.m.
 10 Q And was it a search for a particular ATM?
 11 A It was, yes.
 12 Q How do you know the ATM?
 13 A Under ATM I.D. in the right-hand side of the screen, upper
 14 right-hand side, is number 2469C, as that Charlie.
 15 Q And why did you run this particular search?
 16 A Because of an inquiry I received.
 17 Q And then what is the list below those -- looks like your
 18 search criteria. What is that list?
 19 A That is the output of my search.
 20 Q So those are the transactions that fit that search
 21 criteria?
 22 A Yes.
 23 Q In that list what does the Card Number column mean? "Card
 24 Num," N-U-M, column mean?
 25 A That would be the card number that was used for the

1 transaction.
 2 Q What type of card would that be?
 3 A This is a Visa card.
 4 Q And have you added up the numbers in the Amount column in
 5 this page?
 6 A I did.
 7 Q What does it add up to?
 8 A 12,000.
 9 Q As you look at that list of numbers, did you notice
 10 anything in particular about them?
 11 A They were all issued by the same issuing bank.
 12 Q How can you tell that?
 13 A The big number, that's the first six digits of card. In
 14 this instance it was number [REDACTED] which belongs to E*Trade
 15 Bank. And when you do a search, it comes back that this is a
 16 platinum debit card for E*Trade.
 17 Q If we could look at Page 2 of this document?
 18 MR. FARNHAM: And if we could first zoom on the top
 19 portion?
 20 (Document displayed)
 21 BY MR. FARNHAM
 22 Q What is this top box in this document?
 23 A So this is one of the individual transactions from the
 24 original search also from Page 1. This would be a screenshot
 25 of the first transaction.

1 Q And what types of information does this screen tell you
 2 about that transaction?
 3 A It provides me with the date and time of the transaction,
 4 the card number associated with the transaction, and the dollar
 5 amount that was associated with the withdrawal or
 6 transaction -- in this case it was a withdrawal -- and the
 7 location of the ATM.
 8 Q What's the location of this ATM?
 9 A That is 433 Hegenberger Road in the City of Oakland,
 10 California.
 11 Q Are you familiar with where that ATM is?
 12 A Vaguely, yes.
 13 Q Was there any information about whether the transaction
 14 was completed or successful?
 15 A The transaction was completed.
 16 Q How can you tell that?
 17 A The transaction amount is 800 and that's in the upper
 18 right-hand corner. And then the transaction codes down below
 19 in the lower left corner would show the authorizations and the
 20 completion codes.
 21 Q That's the transaction codes in the lower left you're
 22 referring to?
 23 A Yes.
 24 Q And then what does the sequence number in the bottom
 25 middle of that box tell you?

1 A The sequence number in the bottom middle?
 2 Q Or what does that mean?
 3 A Oh, sorry. That is number [REDACTED] That is the transaction
 4 number for the -- for that particular withdrawal, transaction.
 5 Q If we could look at the bottom half of this document?
 6 (Document displayed.)
 7 Q What is this portion?
 8 A This is the video surveillance snapshot for the ATM.
 9 Q And does it correspond to the box above?
 10 A It does.
 11 Q How do you know that?
 12 A In the video surveillance photo it captures transaction
 13 information. Again, date, time, the last four digits of the
 14 card number, and the transaction sequence number, which is
 15 8031.
 16 Q And does that match the transaction information we were
 17 just looking at?
 18 A Yes. Above, yes.
 19 Q Now, you mentioned -- well, if you could look at the first
 20 page, I don't know if I asked you this, how many transactions
 21 were there that were brought up by your search?
 22 A Twenty-four.
 23 Q And are the pages behind that summary of the front page,
 24 are they all photos and transactions that are from that search?
 25 A Yes.

1 Q If we could just look at Page 3?
 2 (Document displayed.)
 3 Q Is this the documentation and photo from one of the
 4 transactions that you found in your search?
 5 A It is.
 6 Q And if we could look at Page 4?
 7 (Document displayed)
 8 Q And then Page 5?
 9 (Document displayed)
 10 Q Page 6?
 11 (Document displayed)
 12 Q These are all the same -- these are all information
 13 retrieved from your search?
 14 A Correct.
 15 Q Page 9?
 16 (Document displayed)
 17 Q Also from the search?
 18 A Yes.
 19 Q Page 10?
 20 (Document displayed)
 21 A Yes.
 22 Q Page 11?
 23 (Document displayed)
 24 THE COURT: Why don't you ask him for a summary?
 25 We're not going to go through every page, are we?

1 MR. FARNHAM: Last one. I apologize.
 2 THE COURT: Okay.
 3 A Yes.
 4 BY MR. FARNHAM
 5 Q For Page 11 if we could look at the top of the box there?
 6 (Document displayed.)
 7 Q And this one indicates the credit card number that was
 8 used in that transaction?
 9 A The card number?
 10 Q I'm sorry. The card number. This indicates the card
 11 number?
 12 A Yes.
 13 MR. FARNHAM: If I could ask to also bring up on the
 14 screen a document that's been previously admitted, Exhibit
 15 23 -- I'm sorry, 27. Previously admitted document Exhibit 27.
 16 And I want to look at Page 13.
 17 (Documents displayed)
 18 MR. FARNHAM: If would could zoom in on the card on
 19 Exhibit 27, Page 13? Even a little less zoom, please. The
 20 whole thing is fine.
 21 And on the left if we could zoom in on the credit card
 22 number in the upper box --
 23 (Document enlarged.)
 24 BY MR. FARNHAM
 25 Q Mr. Gutierrez, are those two card numbers the same?

1 A Yes, they are.
 2 Q And then the other pages of Exhibit 25, are those also
 3 similar photos that you pulled up from this search?
 4 A Yes.
 5 Q I don't have any further questions. Thank you.
 6 THE COURT: Thank you.
 7 Cross?
 8 MR. DRESSLER: No questions, your Honor.
 9 THE COURT: Great. Thank you Mr. Gutierrez. You may
 10 step down. Thank you, you're excused.
 11 THE WITNESS: Thank you, your Honor.
 12 (Witness excused.)
 13 THE COURT: Government's next witness.
 14 MS. HARRIS: Thank you, your Honor.
 15 The Government calls Lisa Brigulio. And, your Honor
 16 before Ms. Brigulio testifies, the Government would offer
 17 Exhibit 10 into evidence. This exhibit is pursuant to a
 18 stipulation the parties have reached as to its admissibility.
 19 THE COURT: All right. No objection, I assume?
 20 MR. DRESSLER: No. I didn't hear what it was.
 21 THE COURT: All right. 10 is admitted.
 22 (Trial Exhibit 10 received in evidence.)
 23
 24
 25

1 LISA BRIGULIO MURRAY,
 2 called as a witness for the Government herein, having been
 3 first duly sworn, was examined and testified as follows:
 4 THE WITNESS: I do.
 5 THE CLERK: Thank you.
 6 Please state your full name for the record.
 7 THE WITNESS: Lisa Brigulio Murray.
 8 THE COURT: All right. Thank you, Ms. Brigulio
 9 Murray.
 10 You may proceed, Ms. Harris.
 11 MS. HARRIS: Thank you, your Honor.
 12 DIRECT EXAMINATION
 13 BY MS. HARRIS
 14 Q Good morning, Ms. Brigulio. Where do you currently work?
 15 A Bel Aire School in Tiburon.
 16 Q What do you do there?
 17 A I teach fourth grade.
 18 Q How long have you been an elementary school teacher?
 19 A I have been at Bel Aire since 2002, and prior to that I
 20 taught for six years in Missouri.
 21 Q I didn't hear the last part of that.
 22 A Oh, prior to Bel Aire I taught six years in Missouri.
 23 About 20 years.
 24 Q You have been an elementary teacher for around 20 years?
 25 A Around there, yes.

1 Q Can you tell me your general duties and responsibilities
 2 as a fourth grade teacher at Bel Aire in Tiburon?
 3 A Sure. I teach math, science, social studies, reading,
 4 language arts, writing; all the elementary school subjects.
 5 Q Can you pull the microphone a little closer to you so we
 6 can all hear you?
 7 A Sorry.
 8 Q Can you briefly describe your educational background?
 9 A I have a Bachelor's degree in elementary education, and a
 10 Master's degree in early childhood education, and a teaching
 11 credential in Missouri and California.
 12 Q Are you a certified public accountant?
 13 A No.
 14 Q Do you have any background in accounting?
 15 A No.
 16 Q Do you have any background in finance?
 17 A No.
 18 Q Is elementary school teacher the only job you have had as
 19 an adult?
 20 A Yes.
 21 Q Do you know someone names James Murray?
 22 A Yes.
 23 Q How do you know James Murray?
 24 A We were married.
 25 Q When you did first meet James Murray?

- 1 A October, 2002.
 2 Q How did you meet Mr. Murray?
 3 A We were at a party in the Marina. It was Fleet Week.
 4 Q How long did you date Mr. Murray before you got engaged?
 5 A Hmm, probably four or five years.
 6 Q When did you get married?
 7 A October, 2008.
 8 Q What was your maiden name?
 9 A Brigulio.
 10 Q Did you legally change your last name when you married James Murray?
 11 A About six months after the wedding.
 12 Q Was your legal name when -- in December of 2008 Lisa Brigulio?
 13 A Yes.
 14 Q What last name do you currently use?
 15 A Brigulio.
 16 Q Did you and James Murray live together before you got married?
 17 A Yes.
 18 Q What was the address of the residence you first lived at with James Murray?
 19 A [REDACTED].
 20 Q What city was that in?
 21 A Belvedere, California.

- 1 Q How long did you and Mr. Murray live at [REDACTED]
 2 A Umm, about five years.
 3 Q What address did you and Mr. Murray move to after the Bayview address in Belvedere?
 4 A [REDACTED]
 5 Q What city is that in?
 6 A Larkspur, California.
 7 Q How long did you live at the address [REDACTED] in Larkspur?
 8 A Until April, 2012. So about two-and-a-half years.
 9 Q Which did you first move to [REDACTED]?
 10 A New Year's Eve of 2011. So basically January 1st, 2012 -- I mean -- sorry, 2009. We moved in December 31st, 2009.
 11 Q And you lived at 206 Larkspur [sic] until April of 2012?
 12 A Yes.
 13 Q So I just want to make sure I have the dates correct. You and -- you resided at [REDACTED] from December 31st, 2009 through April of 2012?
 14 A Correct.
 15 Q Okay. Can you describe physically what the structure -- what the house at [REDACTED] in Larkspur looked like?
 16 A Umm, it was a one story, three bedroom, two bath house with a gated front yard and a gated backyard, with a separate unit in the back.
 17 Q You mentioned a separate unit in the back. Can you

- 1 describe that for us?
 2 A It was just one room. It had a TV and some -- a lot of storage cabinets.
 3 Q Who primarily used the structure in the backyard?
 4 A Initially Mr. Murray used it as an office.
 5 Q Did that change?
 6 A The summer of 2011, I think it was, when he got an office in the city and moved the desks and things he had, computers and things from the home office to his office in the city.
 7 Q You've referred to it as a "home office." Was that primarily what the back shed was used for?
 8 A Yes.
 9 Q Did Mr. Murray continue to use the back shed for business purposes after he got the office in San Francisco?
 10 A I'm not sure. We had moved some toys out there, but he still had a TV and a leather chair and things and would go spend time out there.
 11 Q Was there a phone jack in the back shed?
 12 A Yes.
 13 Q Who arranged for this?
 14 A Mr. Murray.
 15 Q Did he tell you why he wanted a phone jack in the shed?
 16 A It was shortly after we moved in and he had the home office and wanted a landline back there.
 17 Q Did you and Mr. Murray have a landline at [REDACTED]

- 1 Avenue?
 2 A Yes.
 3 Q Who primarily used that landline?
 4 A Mr. Murray.
 5 Q What did you use to make telephone calls?
 6 A My cell phone.
 7 Q Did you and Mr. Murray have any children?
 8 A Yes.
 9 Q Which did you have your child?
 10 A Our son was born October 3rd, 2009.
 11 Q Are you legally separated from James Murray?
 12 A Yes.
 13 Q When did you file for legal separation?
 14 A December, 2011.
 15 Q And have you filed for divorce from Mr. Murray?
 16 A Yes.
 17 Q Approximately, when did you do that?
 18 A March, 2012.
 19 Q Why did you file for divorce?
 20 A Because it had become apparent that he was under federal investigation, and I was not sure who he is. He wasn't the person that I thought he was, and he was leading a duplicitous life, and I just felt like I -- I didn't know this person.
 21 Q Do you see the person that you were married to sitting in this courtroom?

1 A Yes.
 2 Q Can you point to him and identify what he's wearing?
 3 A He's wearing a white striped shirt.
 4 MR. DRESSLER: I'll stipulate she's identified
 5 Mr. Murray.
 6 THE COURT: All right. So noted for the record.
 7 BY MS. HARRIS
 8 Q Drawing your attention to the time period before you were
 9 married to Mr. Murray, and specifically the years of 2004 and
 10 2005, did you run a credit check on yourself?
 11 A Yes.
 12 Q Why did you do that?
 13 A Because I had noticed some bills in the mail with my name
 14 on them that I wasn't familiar with.
 15 Q What type of bills did you notice in the mail that you
 16 were unfamiliar with?
 17 A Credit card statements.
 18 Q Were these credit card statements for credit cards that
 19 you did not know existed?
 20 A Yes.
 21 Q What was the result of the credit card check that you ran
 22 on yourself?
 23 A There were a handful of credit cards that came up that I
 24 had not opened and was unaware of.
 25 Q Did you discuss what you learned with Mr. Murray?

1 A Yes.
 2 Q What did Mr. Murray say to you about the credit cards that
 3 were opened in your name that you didn't know about?
 4 A That he needed them for business and he would pay them
 5 off.
 6 MS. HARRIS: Your Honor, may I approach the witness?
 7 THE COURT: Yes.
 8 (Whereupon document was tendered to the witness.)
 9 BY MS. HARRIS
 10 Q Showing you what's been marked as Government's Exhibit 132
 11 for identification. Do you recognize Exhibit 132?
 12 A Yes.
 13 Q What is Exhibit 132?
 14 A A document I typed up in 2005 listing the credit cards
 15 that were opened without my permission.
 16 Q Did you prepare Exhibit 132 on July 25th, 2005?
 17 A Yes.
 18 Q What did you do with Exhibit 132 after you prepared it?
 19 A I presented it to Mr. Murray and had him sign it.
 20 Q Why did you draft Exhibit 132?
 21 A Because the credit cards were opened without my permission
 22 and as a teacher, I was afraid I was going to end up with debt
 23 that I couldn't pay, and I wanted to make sure that he was
 24 going to take care of all this.
 25 Q And when you gave Exhibit 132 to Mr. Murray, did he agree

1 to sign it?
 2 A Yes.
 3 Q And did you keep a copy -- a copy of the unsigned version
 4 of Exhibit 132?
 5 A I kept a copy of the signed version.
 6 Q Were you able to locate that for this proceeding?
 7 A No.
 8 Q Were you able to locate a copy of the unsigned version?
 9 A On my computer.
 10 MS. HARRIS: Your Honor, I offer Government's
 11 Exhibit 132 into evidence.
 12 THE COURT: Any objection?
 13 MR. DRESSLER: No objection.
 14 THE COURT: Admitted.
 15 (Trial Exhibit 132 received in evidence.)
 16 MS. HARRIS: Permission to publish?
 17 THE COURT: Yes.
 18 (Document displayed.)
 19 BY MS. HARRIS
 20 Q Did you draft all of the language on Exhibit 132?
 21 A Yes.
 22 Q Let's look at the first sentence. Did you -- and if we
 23 could highlight that? You drafted the words:
 24 "I, James Murray, assume full financial
 25 responsibility for past, present and future charges

1 on the following credit cards."
 2 Are the credit cards that you listed on Exhibit 132 credit
 3 cards that were opened in your name by Mr. Murray that you did
 4 not know about?
 5 A Yes.
 6 Q How did you determine which credit cards to include on
 7 Exhibit 132?
 8 A I had only ever had a Discover card and a -- one other
 9 card, a MasterCard or Visa. And so when I saw all these other
 10 cards in business names, I knew I hadn't opened them.
 11 Q Did you authorize Mr. Murray to open any of the credit
 12 cards that are listed on Exhibit 132?
 13 A No.
 14 Q Did you authorize Mr. Murray to use any of the cards that
 15 are listed on Exhibit 132?
 16 A No.
 17 Q If we could go to the third credit card, the one that's
 18 listed "Lisa M. Brigulio" and then it says Pareto Capital,
 19 LLC."
 20 A Yes.
 21 Q Do you know what Pareto Capital, LLC is?
 22 A No.
 23 Q Did you know what Pareto Capital, LLC was on July 25th,
 24 2005?
 25 A No.

1 Q Had you ever heard of a business that started with the
2 name Pareto?

3 A Pareto Media.

4 Q What is Pareto Media?

5 A Online marketplace for music CDs.

6 Q How did you know about Pareto Media?

7 A Mr. Murray had thousands, I guess, of CDs shelved in the
8 lower level of our home that he sold in an online marketplace
9 through Amazon and eBay and other websites.

10 Q Was that the business that Mr. Murray had when you were
11 living with him in 2004 and 2005?

12 A Yes.

13 Q And what was the name of that business?

14 A Pareto Media.

15 Q You also mentioned in the document that you drafted for
16 Mr. Murray to sign:

17 "I also assume full responsibility for the Audi
18 A6 lease that is in Lisa Brigulio's name."
19 Why did you include that on the document you drafted on
20 July 25th, 2005?

21 A I already had a car, and Mr. Murray wanted to get a car,
22 and so we purchased it in my name because he thought that I had
23 better credit and we would get better financing.

24 Q Did you purchase or lease the car?

25 A Leased and then purchased.

1 Q Why did you do that?

2 MR. DRESSLER: Objection, irrelevant.

3 THE COURT: Overruled.

4 BY MS. HARRIS

5 Q Why did you go forward with marrying Mr. Murray even
6 though you knew that he had opened credit cards in your name
7 and used them without your permission?

8 A To the best of my knowledge, he had paid off these cards
9 and the Audi. And I also was in my 30s and had spent a lot of
10 time with him and was ready to move forward and get married and
11 have a child, and I just -- that was where I was focused in my
12 life.

13 Q What was the financial arrangement you had with Mr. Murray
14 when you were married concerning bank accounts?

15 A We kept separate bank accounts. And I kept track of the
16 household expenses and would pay them and then let him know
17 what portion he owed.

18 Q Did you have any joint bank accounts with Mr. Murray
19 during the time you were married?

20 A No.

21 Q Why not?

22 A He had been married previously and I knew there had been a
23 lot of financial issues in that relationship and I just didn't
24 want to have to deal with that.

25 Q How did you file your tax returns when you were married to

1 Q Was the lease in your name?

2 A Yes.

3 Q Were you concerned about payments on the lease?

4 A Yes.

5 Q And then the last sentence --

6 MS. HARRIS: If we could zoom in on that and
7 highlight it?
8 (Document enlarged and highlighted.)

9 BY MS. HARRIS

10 Q You end the document you drafted for Mr. Murray with
11 the -- can you read us the sentence that you ended with?

12 A You would like me to read it?

13 Q Yes.

14 A (As read)

15 "I agree to only use these existing credit cards
16 and will not open any more cards in Lisa Brigulio's
17 name."

18 Q Why did you draft that language?

19 A Because I was beginning to get scared that there were
20 these five cards that I didn't know about and I wanted to make
21 sure that this behavior ended.

22 Q Now, at some point, three years approximately, a little
23 more than three years after you drafted Exhibit 132, you went
24 forward with marrying Mr. Murray?

25 A Yes.

1 Mr. Murray?

2 A I believe initially I filed married filing separately, and
3 then he amended a return.

4 Q Now, some of the credit cards that we've looked at on
5 Exhibit 132 were issued in the name of Pareto Capital. At some
6 point after July 25th, 2005, did you hear the name Pareto
7 Capital?

8 (Brief pause.)

9 Q Let me ask a better question. Did you ever work for
10 something called Pareto Capital?

11 A No.

12 Q Did James Murray ever work for something called Pareto
13 Capital?

14 A It's possible.

15 Q Do you know?

16 A I don't know.

17 Q Have you ever heard the name Tim Palm before?

18 A No.

19 Q Did you ever know someone named Tim Palm to be
20 Mr. Murray's boss at Pareto Capital?

21 A No.

22 Q Were you ever employed by the CD selling business Pareto
23 Media?

24 A No.

25 Q Was Pareto Media primarily Mr. Murray's business?

- 1 A Yes.
- 2 Q Do you know how long Mr. Murray had the CD selling
3 business?
- 4 A Three or four years.
- 5 Q Did Mr. Murray start some type of investment fund while
6 you were involved with him?
- 7 A Yes.
- 8 Q What was it called?
- 9 A Market Neutral Trading.
- 10 Q When did you first hear about Market Neutral Trading?
- 11 A Hmm, around 2008.
- 12 Q Do you know anything about how the Market Neutral Trading
13 fund was supposed to work?
- 14 A Umm, not necessarily.
- 15 Q Do you know anything about it?
- 16 A Not really, no.
- 17 Q Did you ever give Mr. Murray any of your money to invest
18 in Market Neutral Trading?
- 19 A Yes.
- 20 Q How much did you give him?
- 21 A \$20,000.
- 22 Q Where did this money come from?
- 23 A My Smith Barney investment account.
- 24 Q Did you ever get back any of the money you invested with
25 Mr. Murray?

- 1 A No.
- 2 Q Do you know anyone else who invested in Market Neutral
3 Trading?
- 4 A Yes.
- 5 Q Who is that?
- 6 A Two people, Corinna Seibt and my friend Karen Kelly.
- 7 Q How do you know Ms. Seibt?
- 8 A She was a friend of Jim's that I met through him.
- 9 Q Did you become friends with Ms. Seibt?
- 10 A Yes.
- 11 Q Did you have anything at all to do with Ms. Seibt's
12 investment in Market Neutral Trading?
- 13 A No.
- 14 Q Have you ever been employed by a company called Jones
15 Moore & Associates?
- 16 A No.
- 17 Q Have you ever used any Jones Moore credit card?
- 18 A No.
- 19 Q Were you ever again a gas card in the name of Jones Moore
20 & Associates?
- 21 A Yes.
- 22 Q Who gave you this gas card?
- 23 A Mr. Murray.
- 24 Q Did you ever try to use the gas card that was issued in
25 the name of Jones Moore & Associates?

- 1 A Once.
- 2 Q What happened?
- 3 A It was declined.
- 4 Q Did you ask Mr. Murray about that?
- 5 A Yes.
- 6 Q What did he say?
- 7 A It was a company he was consulting for.
- 8 Q Did he give you a replacement gas card?
- 9 A I don't recall.
- 10 Q Do you know someone named Richard Jones?
- 11 A No.
- 12 Q In 2008 were you the administrative assistant to a
13 R. Jones?
- 14 A No.
- 15 Q Have you ever been the administrative assistant to
16 R. Jones?
- 17 A No.
- 18 Q Do you know someone named Eve Nelson?
- 19 A No.
- 20 Q Do you know someone named David Lowe?
- 21 A No.
- 22 Q Have you ever heard of David Lowe before June of 2012?
- 23 A No.
- 24 Q If we could bring up what was already been admitted as
25 Government's Exhibit 1, and I'm going to ask you some questions

- 1 about Exhibit 1.
(Document displayed)
- 2 Q Looking at the first page of Exhibit 1, which is a Virtual
3 Office Agreement for Jones Moore & Associates dated
4 December 22nd, 2008. Is any of the handwriting on Page 1 your
5 handwriting?
6 handwriting?
- 7 A No.
- 8 Q Have you ever seen Page 1 of Exhibit 1 before you were
9 interviewed by the U.S. Secret Service in June of 2012?
- 10 A No.
- 11 Q Do you recognize the handwriting on Page 1 under the
12 section that says "Virtual Office Agreement"?
- 13 A Yes.
- 14 Q Whose handwriting is that?
- 15 A Mr. Murray's.
- 16 Q Now, if we could look at Page 2 of Government's Exhibit 1?
17 (Document displayed)
- 18 Q And I want to draw your attention to the handwriting in
19 the left-hand box.
20 MS. HARRIS: To the extreme left. Yes. And if we
21 could blow that up?
22 (Document enlarged.)
- 23 BY MS. HARRIS
- 24 Q Specifically, the handwriting where it says, "Client -
25 Jones Moore & Associates, Limited."

- 1 A Uh-huh.
 2 Q Is that your handwriting?
 3 A No.
 4 Q Do you recognize who's handwriting it is?
 5 A Yes.
 6 Q Whose is it?
 7 A Mr. Murray's.
 8 Q Underneath that there appears to be the signature of a
 9 Lisa M. Brigulio. Is that your signature?
 10 A No.
 11 Q And then there is a title that says, "Administrative Asst
 12 to R. Jones." Do you recognize that handwriting?
 13 A Yes.
 14 Q Whose handwriting is that?
 15 A Mr. Murray's.
 16 Q And then Page 2 is dated December 20th, 2008. Did you
 17 sign Page 2 of Exhibit 1?
 18 A No.
 19 Q Had you ever seen Page 2 of Exhibit 1 before June of
 20 2012 when you were --
 21 A No.
 22 Q You have to let me finish.
 23 -- when you were interviewed in connection with this
 24 investigation?
 25 A No.

- 1 Q Had you ever heard of Jones Moore & Associates before June
 2 of 2012?
 3 A No.
 4 Q Except for the gas --
 5 A Except for the gas card. Yes, you're right.
 6 Q Now, if we could look at Page 3 of Government's Exhibit 1,
 7 the Client Data Information Sheet?
 8 (Document displayed)
 9 Q Can you take a look at on the screen?
 10 A Uh-huh.
 11 Q Is any of that handwriting yours?
 12 A No.
 13 Q Specifically where it says your name, "Lisa Brigulio," did
 14 you write that?
 15 A No.
 16 Q Do you recognize that handwriting?
 17 A Yes.
 18 Q Whose handwriting is that?
 19 A Mr. Murray's.
 20 Q Is any of the handwriting on Page 3 of Exhibit 1 your
 21 handwriting?
 22 A No.
 23 Q Do you recognize who's handwriting it is?
 24 A Yes.
 25 Q Whose handwriting is all of the writing on Page 3 of

- 1 Exhibit 5?
 2 A Mr. Murray's.
 3 Q Okay. And then where it says, "Who is authorized to pick
 4 up messages?" This is towards the middle of Page 3.
 5 A Uh-huh.
 6 Q It says "Lisa Brigulio" and then a "Richard Jones."
 7 A Uh-huh.
 8 Q Have you ever heard of Richard Jones?
 9 A No.
 10 Q Did you ever receive any messages for Jones Moore &
 11 Associates?
 12 A No.
 13 Q If we could turn to Page 4 of Exhibit 1?
 14 (Document displayed)
 15 Q There is some email information that says -- toward the
 16 middle box that says, "richard@jonesmoore.com." Have you ever
 17 heard of that email address before?
 18 A No.
 19 Q And then there is a signature on the lower left-hand
 20 corner of Exhibit -- of Page 4. Is that your signature?
 21 A No.
 22 Q Did you sign Page 4 of Exhibit 1 on December 20th, 2008?
 23 A No.
 24 Q Do you know who did?
 25 A James Murray.

- 1 Q How do you know that?
 2 A Because that resembles his handwriting.
 3 Q Now, if we could take a look at Page 6 of Exhibit 1?
 4 (Document displayed)
 5 Q Can you take a look at that? Is any of the handwriting on
 6 Page 6, the Authorization for Automatic Credit Card Charges, is
 7 any of that your handwriting?
 8 A No.
 9 Q You see the part where it says:
 10 "I, Lisa Brigulio, authorize Brandywine Executive
 11 Center to charge the exact amount of each invoice."
 12 Do you see that?
 13 A Yes.
 14 Q Did you write that handwriting, "Lisa Brigulio"?
 15 A No.
 16 Q Do you recognize that handwriting?
 17 A Yes.
 18 Q Whose writing is that?
 19 A Mr. Murray.
 20 Q Now, if we could take a look at the part that says, "Name
 21 As It Appears On Credit Card." Did you write "Lisa Brigulio"?
 22 A No.
 23 Q Has your billing address ever been 4040 Civic Center
 24 Drive, San Rafael, California?
 25 A No.

- 1 Q Do you know what that address is?
- 2 A No.
- 3 Q There is a telephone number underneath the billing
- 4 address. Is that your telephone number?
- 5 A No.
- 6 Q Do you recognize who's handwriting is in the section that
- 7 we've just been going over?
- 8 A Yes.
- 9 Q Whose handwriting is that?
- 10 A Mr. Murray's.
- 11 Q Now, there's a signature, and it appears to be your
- 12 signature. Is that your signature?
- 13 A No.
- 14 Q And then it has a title under what -- what is signed "Lisa
- 15 Brigulio" and it says, "Admin Assistant to R. Jones." Do you
- 16 have any idea what that means?
- 17 A No.
- 18 Q At any point at any time were you ever an admin assistant
- 19 to an R. Jones?
- 20 A No.
- 21 Q Did you sign any portion of Exhibit 1 in December of 2008?
- 22 A No.
- 23 Q And then it has a business name, "Jones Moore &
- 24 Associates." In December of 2008 had you ever heard of Jones
- 25 Moore & Associates?

- 1 A No.
- 2 Q Now if we could look at the next page, which is Page 7 of
- 3 Exhibit 1, there is a credit card.
- 4 (Document displayed)
- 5 Q The credit card appears to be in your name. Do you
- 6 recognize this credit card?
- 7 A No.
- 8 Q It says "Lisa M. Brigulio" and then it's "Pareto Media"?
- 9 A Uh-huh.
- 10 Q Were you employed by Pareto Media?
- 11 A No.
- 12 Q Was that Mr. Murray's CD business that he was running from
- 13 your home?
- 14 A Yes.
- 15 Q Now, if we could take a look at Page 8 of Exhibit 1?
- 16 (Document displayed)
- 17 Q Do you recognize what's on Page 8?
- 18 A Yes.
- 19 Q What is it?
- 20 A My driver's license.
- 21 Q Is that your true signature on the California driver's
- 22 license that we see?
- 23 A Yes.
- 24 Q Did you ever authorize anyone to use your California
- 25 driver's license in connection with opening an office, a

- 1 virtual office for Jones Moore & Associates in 2008?
- 2 A No.
- 3 Q Did you ever authorize James Murray to use your California
- 4 driver's license for any reason?
- 5 A No.
- 6 Q Did you ever authorize Mr. Murray to use your California
- 7 driver's license in connection in any way with Exhibit 1?
- 8 A No.
- 9 Q Did you ever authorize anyone to swipe any credit card in
- 10 your name on a Chase Paymentech credit card swiping machine?
- 11 A No.
- 12 Q Now, I want to draw your attention to November 3rd, 2011.
- 13 Was a search warrant executed at [REDACTED] in
- 14 Larkspur?
- 15 A Yes.
- 16 Q Were you home when Federal agents executed that search
- 17 warrant?
- 18 A Yes.
- 19 Q Was Mr. Murray home when the search warrant was executed?
- 20 A No.
- 21 Q Do you know whether anyone notified Mr. Murray about the
- 22 search warrant?
- 23 A No.
- 24 Q Did you notify Mr. Murray after it was over?
- 25 A Yes.

- 1 Q Okay. What happened? Did you --
- 2 MR. DRESSLER: Your Honor, objection. Privileged.
- 3 MS. HARRIS: Just whether she notified him?
- 4 THE COURT: Whether?
- 5 MS. HARRIS: Whether Ms. Murray notified Mr. Murray
- 6 that a search warrant had -- not what was said, just whether
- 7 there was notification.
- 8 THE COURT: Sustained.
- 9 Also at our lunch break time. I don't know how much
- 10 longer you have.
- 11 MS. HARRIS: This would be a good time to break. I
- 12 have a little bit more, your Honor.
- 13 THE COURT: Why don't we go ahead and take that break
- 14 because we are at the noon hour. Take a half hour, come back
- 15 at 12:30.
- 16 Just a reminder. Please do not discuss this case amongst
- 17 yourselves or anybody else. Do not do any even research or
- 18 form any opinions. And we'll see you back here in 30 minutes.
- 19 (Jury exits courtroom at 11:59 a.m.)
- 20 THE COURT: Before you go on a break, let me read a
- 21 note, second note I got from the jury. Let me get Mr.
- 22 Dressler's attention. Mr. Dressler?
- 23 MR. DRESSLER: Excuse me, your Honor.
- 24 THE COURT: I'm going to read the note. It says:
- 25 "Judge, you said in our first day that we would

1 not have the evidence -- that we would not have the
2 evidence later. When we are in deliberations, may we
3 request a specific piece of evidence if we need to
4 review."

5 So this, apparently, was misheard. I don't think I said
6 they are not going to get any evidence, but I will certainly
7 clarify that they will get all of the evidence during their
8 deliberation. I certainly can say that, correct?

9 MR. DRESSLER: Yes.

10 MS. HARRIS: Yes.

11 THE COURT: You know, there are some judges and
12 lawyers who sometimes make a binder of evidence, rather than
13 just putting it up on the screen, that the jurors can sort of
14 look at. Not take back, but just have it.

15 I don't know if you -- given the length of this trial, the
16 number of exhibits, whether you all want to talk about
17 something like that or just continue the way we're going. But
18 I would be open to anything you want to do in that regard.

19 MS. HARRIS: Then, your Honor, I think we would not
20 be getting to Paul Eckel today because, as I understand it, the
21 Court is breaking at 1:00. So that should obviate
22 Mr. Dressler's issues with the material. He'll have the entire
23 afternoon.

24 THE COURT: That handles that problem.

25 MR. DRESSLER: Withdraw my objection.

1 THE COURT: All right. I gave you back the
2 documents, right? So you have them.

3 MR. DRESSLER: You did, yes.

4 THE COURT: So you're going to -- you have a few
5 more questions for Ms. Brigulio.

6 MS. HARRIS: I have a few more exhibits to go
7 through.

8 THE COURT: A few more exhibits. Are we going to be
9 through with her today?

10 MS. HARRIS: I don't know, but I will do my best,
11 your Honor. She's an important witness, as the Court can see.

12 THE COURT: All right. Okay. See you in half hour.

13 (Whereupon at 12:02 p.m. proceedings
14 were adjourned for noon recess.)

1 PROCEEDINGS

2 September 24, 2015 12:33 p.m.
3 (Proceedings resumed pursuant to noon recess.)

4 THE CLERK: All rise.

5 THE COURT: Okay, you may be seated. Welcome back.

6 Before we get started, I did receive a note from one of if
7 jurors asking about exhibits and your access to exhibits. And
8 let me clarify that you will have all exhibits that have been
9 admitted when you deliberate. They will be given to you.

10 So, all the documents, all the things that are admitted in
11 this case will be at your disposal. So you don't have to worry
12 about that.

13 And, part of the purpose of displaying them now, so that
14 you can see them now, but at the end of the process, you will
15 get all of the exhibits. Okay?

16 So, you may continue, Ms. Harris.

17 MS. HARRIS: Thank you, Your Honor.

18 DIRECT EXAMINATION RESUMED

19 BY MS. HARRIS:

20 Q Good afternoon again, Ms. Brigulio.

21 At some point after the search warrant was executed on the
22 residence you lived at with Mr. Murray, did Mr. Murray leave
23 the country?

24 A Yes.

25 Q Approximately when was that?

1 A December 1, 2011.

2 Q Where did Mr. Murray go?

3 A Monaco.

4 Q Did Mr. Murray return from Monaco at some point?

5 A Yes.

6 Q When was that?

7 A A day or two before Christmas that December.

8 Q Did Mr. Murray remain in the United States? Or did he go
9 back to Monaco?

10 A In January he returned to Monaco.

11 Q Okay. And, as far as you know, had Mr. Murray ever
12 traveled to Monaco before the search warrant was executed on
13 your house?

14 A Not to my knowledge, no.

15 Q How long did Mr. Murray remain in Monaco the second time
16 he went?

17 A Through March.

18 Q I would now like to play Exhibit 10, which is a series of
19 recorded phone calls that have already been admitted into
20 evidence. And I'm going to stop the recording and ask you some
21 questions.

22 But before we start, have you ever heard of somebody named
23 David Lowe before June of 2012?

24 A No.

25 Q Okay.

1 MR. DRESSLER: Excuse me, Your Honor.
 2 (Off-the-Record discussion between counsel)
 3 (Portion of audio recording played in open court, not
 4 reported)
 5 MS. HARRIS: Stop it.
 6 BY MS. HARRIS:
 7 Q Do you recognize the voice on the Fidelity call that
 8 identified himself as David Lowe?
 9 A Yes.
 10 Q Whose voice was that?
 11 A Mr. Murray.
 12 MS. HARRIS: Okay. Can we play the next call?
 13 (Portion of audio recording played in open court, not
 14 reported)
 15 MS. HARRIS: If you could stop it.
 16 BY MS. HARRIS:
 17 Q Do you recognize the name -- the voice on the phone call
 18 that identified himself as David Lowe?
 19 A Yes.
 20 Q Whose voice is that?
 21 A Mr. Murray.
 22 MS. HARRIS: If we could play the next call.
 23 (Portion of audio recording played in open court, not
 24 reported)
 25

1 BY MS. HARRIS:
 2 Q Ms. Brigulio, do you recognize the voice of the person who
 3 identified himself in this call as Mr. Lowe?
 4 A Yes.
 5 Q Whose voice is that?
 6 A Mr. Murray.
 7 (Portion of audio recording played in open court, not
 8 reported)
 9 BY MS. HARRIS:
 10 Q Do you recognize the voice in the call we've just played,
 11 who identified himself as David Lowe?
 12 A Yes.
 13 Q Whose voice is that?
 14 A Mr. Murray.
 15 (Portion of audio recording played in open court, not
 16 reported)
 17 Q Ms. Brigulio, do you recognize the voice of the person who
 18 identified himself as David Lowe?
 19 A Yes.
 20 Q Whose voice is that?
 21 A Mr. Murray.
 22 (Portion of audio recording played in open court, not
 23 reported)
 24 Q Ms. Brigulio, do you recognize the voice that identified
 25 himself as David Lowe in this phone call?

1 A Yes.
 2 Q Whose voice is that?
 3 A Mr. Murray.
 4 MS. HARRIS: If we could play the next phone call.
 5 (Portion of audio recording played in open court, not
 6 reported)
 7 BY MS. HARRIS:
 8 Q Ms. Brigulio, do you recognize the voice in this phone
 9 call that identified himself as David Lowe?
 10 A I do.
 11 Q Whose voice is that?
 12 A Mr. Murray.
 13 MS. HARRIS: If you can play the next tape.
 14 (Portion of audio recording played in open court, not
 15 reported)
 16 BY MS. HARRIS:
 17 Q Ms. Brigulio, do you recognize the voice of the person who
 18 identified himself as David Lowe in this phone call?
 19 A Yes.
 20 Q Whose voice is that?
 21 A Mr. Murray.
 22 (Portion of audio recording played in open court, not
 23 reported)
 24 Q Ms. Brigulio, do you recognize the voice of the person who
 25 identified himself as David Lowe in this phone call?

1 A Yes.
 2 Q Whose voice is that?
 3 A Mr. Murray.
 4 (Portion of audio recording played in open court, not
 5 reported)
 6 Q Ms. Brigulio, do you recognize the voice of the person
 7 that identified himself as David Lowe in this phone call?
 8 A Yes.
 9 Q Whose voice is that?
 10 A Mr. Murray.
 11 (Portion of audio recording played in open court, not
 12 reported)
 13 Q Ms. Brigulio, do you recognize the voice of the person who
 14 identified himself as David Lowe in this phone call?
 15 A Yes.
 16 Q Whose voice is that?
 17 A Mr. Murray.
 18 (Portion of audio recording played in open court, not
 19 reported)
 20 Q Ms. Brigulio --
 21 (Portion of audio recording played in open court, not
 22 reported)
 23 Q Ms. Brigulio, do you recognize the voice of the person who
 24 identified himself as David Lowe with Jones Moore & Associates?
 25 A Yes.

- 1 Q Whose voice is that?
 2 A Mr. Murray.
 3 Q Has Mr. Murray ever had, as far as you know, a business at
 4 1521 Concord Pike, Wilmington, Delaware?
 5 A No.
 6 (Portion of audio recording played in open court, not
 7 reported)
 8 Q Ms. Brigulio, do you recognize the voice that identified
 9 himself as David Lowe in the call we just heard?
 10 A Yes.
 11 Q Whose voice is that?
 12 A Mr. Murray.
 13 (Portion of audio recording played in open court, not
 14 reported)
 15 Q Ms. Brigulio, do you recognize the voice that identified
 16 himself as David Lowe in this phone call?
 17 A Yes.
 18 Q Whose voice is that?
 19 A Mr. Murray.
 20 (Portion of audio recording played in open court, not
 21 reported)
 22 Q Ms. Brigulio, do you recognize the voice of the person who
 23 identified himself as Dave Lowe?
 24 A Yes.
 25 Q Whose voice is that?

- 1 A Mr. Murray.
 2 (Portion of audio recording played in open court, not
 3 reported)
 4 Q Ms. Brigulio, do you recognize the voice of the person who
 5 identified himself as Dave Lowe, trying to set up an
 6 after-hours trading account?
 7 A Yes.
 8 Q Whose voice was that?
 9 A Mr. Murray.
 10 (Portion of audio recording played in open court, not
 11 reported)
 12 Q Ms. Brigulio, do you recognize the voice of the person in
 13 this call that identified themselves as David Lowe?
 14 A Yes.
 15 Q Whose voice is that?
 16 A Mr. Murray.
 17 Q I would now like to bring up what's been previously
 18 admitted as Government Exhibit 25, bring it up on the screen,
 19 and specifically ask you to look at Page 2. It will come up on
 20 your screen.
 21 (Document displayed)
 22 Q And, ask you if you recognize the person shown in the
 23 photograph.
 24 A Yes.
 25 Q Who is that?

- 1 A Mr. Murray.
 2 Q How do you recognize that it's Mr. Murray?
 3 A I recognize the shirt and I recognize his face.
 4 Q When you say you recognize the shirt, can you tell us what
 5 you mean?
 6 A It was a blue and red striped rugby he wore often.
 7 Q Now if we could look at Page 3 of Exhibit 25.
 8 (Document displayed)
 9 Q Do you recognize the person in this photograph?
 10 A Yes. It's Mr. Murray.
 11 Q How do you recognize Mr. Murray?
 12 A Again, by the shirt and his face.
 13 Q And is that a shirt you specifically recall Mr. Murray
 14 wearing?
 15 A Yes.
 16 Q And if we can now look at Page 4 of Exhibit 25.
 17 (Document displayed)
 18 Q Do you recognize the person in that photograph?
 19 A Yes.
 20 Q Who is it?
 21 A Mr. Murray.
 22 Q And again, how do you recognize him?
 23 A Face and shirt.
 24 Q Now if we could look at Page 5 of Exhibit 25.
 25 (Document displayed)

- 1 Q Do you recognize the person in Page 5 of Exhibit 25?
 2 A Yes.
 3 Q Who is that?
 4 A Mr. Murray.
 5 Q If we could look at Page 6 of Exhibit 25.
 6 (Document displayed)
 7 Q Who is that?
 8 A Mr. Murray.
 9 Q How do you know?
 10 A By the shirt and the profile.
 11 Q I'm actually going to hand you a physical copy of Exhibit
 12 25, and ask you if you could thumb through the pages and tell
 13 me if you recognize the person in each of the photographs.
 14 A Okay.
 15 MS. HARRIS: Oh, Your Honor, may I approach?
 16 THE COURT: Yes.
 17 (Witness examines document)
 18 THE WITNESS: Do you want me to go through --
 19 BY MS. HARRIS:
 20 Q Yes, if you could go through that, and tell us if you
 21 recognize the person in each of the photographs in Exhibit 25.
 22 A By each page? Or after I flip through the entire
 23 document?
 24 Q I think if you just look at the document, and then let us
 25 know if it's the same person.

1 (Witness examines document)
 2 A Yes. It's all Mr. Murray.
 3 Q Are all of the photographs in Government Exhibit 25 the
 4 photographs of Mr. Murray?
 5 A Yes.
 6 Q And how do you recognize Mr. Murray in the photographs?
 7 A By his facial appearance and by the shirt.
 8 MS. HARRIS: Your Honor, may I approach the witness?
 9 THE COURT: Yes.
 10 BY MS. HARRIS:
 11 Q I'm showing you a document that has not yet been admitted
 12 into evidence. It is Government Exhibit 100.
 13 Have you ever seen the photograph -- have you ever seen
 14 the item that is photographed in Government Exhibit 100 before
 15 today?
 16 (Witness examines document)
 17 A No.
 18 Q Have you ever seen the -- the passport that's depicted on
 19 Page 4 of Government Exhibit 100? Have you ever seen that
 20 before today?
 21 (Witness examines document)
 22 A No.
 23 MS. HARRIS: Your Honor, may I approach the witness?
 24 THE COURT: All right.
 25

1 BY MS. HARRIS:
 2 Q I'm handing you what's been marked as Defendant's Exhibit
 3 103. Do you recognize Exhibit 103?
 4 (Witness examines item)
 5 A Yes.
 6 Q What is Government Exhibit 103?
 7 A Mr. Murray's briefcase.
 8 Q Did you ever use the briefcase that is Government Exhibit
 9 103?
 10 A No.
 11 Q Where did -- was that exclusively Mr. Murray's briefcase?
 12 A Yes.
 13 Q Was it kept locked?
 14 A I would believe so. I never tried to open it.
 15 Q When agents searched your house at 206 Larkspur, did they
 16 ask you if you had the combination to open the briefcase?
 17 A Yes.
 18 Q Did you have the combination?
 19 A No.
 20 Q Was the briefcase locked?
 21 A I assume, because they asked me for the combination, it
 22 was locked.
 23 Q Has anyone besides Mr. Murray ever used that brief case,
 24 to your knowledge?
 25 A No.

1 Q Was it exclusively Mr. Murray's while you and he resided
 2 at 206 Larkspur Avenue?
 3 A Yes.
 4 (Off-the-Record discussion between counsel)
 5 MS. HARRIS: Your Honor, I have no further questions.
 6 THE COURT: All right. Thank you.
 7 Cross?
 8 MR. DRESSLER: Can we approach?
 9 (Whereupon, the following proceedings were held at
 10 sidebar.)
 11 MR. DRESSLER: Your Honor, I have gone over a lot of
 12 documents with regard to Ms. Brigulio, and based on the direct,
 13 I need to consult with my client. I'm hopeful that he will
 14 follow my advice, even though it is ultimately my decision, and
 15 not ask her any questions.
 16 But -- I hate to just bring her back for that purpose
 17 tomorrow morning, but it might be worth it because it will
 18 shorten the proceedings.
 19 MS. HARRIS: Can we take just a brief break? She's a
 20 schoolteacher, and it's very difficult for her to get off work,
 21 Your Honor.
 22 MR. DRESSLER: I mean, it's going to be more than a
 23 one-minute conversation with the client.
 24 MS. HARRIS: It's --
 25 THE COURT: Well --

1 MR. DRESSLER: I'm just suggesting that it might be
 2 worth it in the long run.
 3 MS. HARRIS: Well, is there any way we could take
 4 just a very short break, and we'll all vacate the courtroom?
 5 Because --
 6 MR. DRESSLER: How about this? What I would like to
 7 do is go talk to him upstairs. And I'll advise -- if it's okay
 8 with the Court, if I'm not going ask her any questions, I could
 9 advise the U.S. Attorney this afternoon and they could call her
 10 off for tomorrow.
 11 THE COURT: Well, if you decide to call her, she'll
 12 have to come back.
 13 MR. DRESSLER: Right. And if I do what I was going
 14 to do --
 15 THE COURT: It's going to take --
 16 MR. DRESSLER: She's going to have to come back
 17 anyway.
 18 THE COURT: Because we're going to have to adjourn
 19 pretty soon.
 20 MR. DRESSLER: That's why I'm suggesting this.
 21 THE COURT: All right. We're going to go ahead and
 22 adjourn. But I want you to tell the U.S. Attorney this
 23 afternoon.
 24 MR. DRESSLER: I will.
 25 THE COURT: And let me know, because you can line

1 your witnesses up.
 2 MS. HARRIS: Okay.
 3 MR. DRESSLER: After everybody's excused, can we
 4 discuss who's coming next?
 5 THE COURT: Yes.
 6 MR. DRESSLER: Thank you.
 7 (Conclusion of sidebar discussion; the following
 8 proceedings were held in the presence and hearing of
 9 the Jury:)
 10 THE COURT: Ladies and gentlemen, as I indicated at
 11 the beginning of the week, today's schedule is a little bit
 12 odd, and so -- we had scheduled today to go just until 1:00
 13 because I have a calendar this afternoon, and so we are now at
 14 that, so close to it we might as well go ahead and take a
 15 break, rather than try and hold you over.
 16 We will resume first thing tomorrow morning. Tomorrow
 17 morning will be a normal day, from 8:30 to 2:00. So we will
 18 see you back here, sharp, and we will commence at 8:30.
 19 So again, please do not do any research, do not talk about
 20 this case with anyone, or form any opinions until this case is
 21 submitted to you for deliberation.
 22 MR. DRESSLER: Your Honor?
 23 THE COURT: Yes.
 24 MR. DRESSLER: I apologize. Can I ask her one
 25 question? Just one? I promise, one question.

1 THE COURT: All right. We'll wait -- one question.
 2 CROSS EXAMINATION
 3 BY MR. DRESSLER:
 4 Q Ms. Brigulio, were you aware during your marriage that Ms.
 5 -- Mr. Murray went to business -- went to Canada for business
 6 purposes?
 7 A No.
 8 Q He never told you that?
 9 A (No audible answer)
 10 MS. HARRIS: Objection.
 11 (Reporter interruption)
 12 THE COURT: The answer was "No."
 13 MR. DRESSLER: I'll withdraw the question.
 14 THE COURT: Okay. So the second question, withdrawn.
 15 MR. DRESSLER: Second question, yes.
 16 THE COURT: So you got your answer, and the answer
 17 was "No."
 18 MR. DRESSLER: Thank you.
 19 THE COURT: Thank you. With that, we will adjourn
 20 until tomorrow morning. Thank you.
 21 (Jury excused)
 22 (The following proceedings were held outside of the
 23 presence of the Jury)
 24 THE COURT: Okay.
 25 MR. DRESSLER: So, Your Honor, I asked the marshal --

1 I think they're going to keep him here for -- long enough for
 2 me to have a conversation with him?
 3 THE MARSHAL: Sure.
 4 THE COURT: All right.
 5 MR. DRESSLER: Thank you.
 6 MR. FARNHAM: Should we excuse the witness,
 7 Your Honor?
 8 THE COURT: For now. But she is subject to
 9 continuing examination, depending on what happens.
 10 (Witness excused)
 11 THE CLERK: So, you did not want 100 and 103
 12 admitted?
 13 MS. HARRIS: Correct. That will get admitted through
 14 another witness.
 15 THE CLERK: Thank you.
 16 MS. HARRIS: Your Honor, we were going to advise the
 17 Court and Counsel of our lineup tomorrow. We have Dulce
 18 Marroquin from Bank of America. That should be a relatively
 19 short witness.
 20 THE COURT: Okay.
 21 MS. HARRIS: Paul Eckel; that will be a lengthy
 22 witness. Tina Moran, Keena Willis, and Val Hornstein. And we
 23 think that will definitely take us through tomorrow.
 24 And then, Your Honor, the Government had a request we
 25 wanted to make to the Court. If Mr. Dressler is going to show

1 exhibits that we have not seen in cross-examination that are
 2 not complete documents, we would like to be notified in advance
 3 if the Court is going to admit excerpts of documents, because
 4 we need to be prepared.
 5 It can be very misleading to a witness if they're not
 6 shown the complete document. And we have no way of pulling it
 7 up, if we haven't marked it or scanned it. So we need to know
 8 if that's going to happen.
 9 THE COURT: All right. That's a fair request. So,
 10 any further documents that have not already been premarked --
 11 it should be a complete document. If it's going to be a
 12 partial document, you should give the Government advance notice
 13 so they can prepare.
 14 MR. DRESSLER: I will, Your Honor.
 15 THE COURT: All right. How are we doing on time? I
 16 mean --
 17 MS. HARRIS: We are moving forward. Especially if
 18 what we discussed at sidebar is the way that we proceed.
 19 I did want to advise the Court and Mr. Dressler, we also
 20 anticipate calling Jody Payne from the University of Arizona
 21 tomorrow. That will be a very brief witness. I don't think
 22 that could take more than five minutes.
 23 MR. DRESSLER: With regard to Tina Moran, I don't
 24 quite remember how we left that. That's the person, I think,
 25 is going to give expert testimony and they have not given me

1 notice of that.

2 THE COURT: Well, you raised that. And what was

3 represented to me was that she was hired to do the audit of

4 MNT. She was there during the full course of that, whether

5 supervising somebody or doing it herself. And if that, in

6 fact, is the testimony, then this is a 701, not a 702 witness.

7 Unless she starts -- it depends what the questions are.

8 If the question is: What did you do? What did you see?

9 What was reported to you in your supervisorial and what

10 conclusions were drawn from that? I think that's fair because

11 it relates to, really, her role as a percipient type expert.

12 But if it starts to get into some kind of analysis that

13 was not part of her job at the time and opining on things that

14 go beyond what she was actually doing, then we get into a gray

15 area.

16 MR. DRESSLER: If it would be possible before she

17 testifies, I want to review some materials and, also, some case

18 law and if we could have five or ten minutes tomorrow before

19 she's called, I would like to make a presentation to the Court.

20 THE COURT: When is she scheduled to be -- she's

21 third up? Is that your --

22 MR. FARNHAM: Approximately. She would be

23 mid-morning. I think that we should probably do it before

24 court to save time, your Honor.

25 THE COURT: Yep. We'll --

1 THE CLERK: This might work out perfectly. Juror

2 No. 14, Mr. Foroughi, said tomorrow he's driving and he might

3 be delayed.

4 THE COURT: Okay. Well, let's reconvene at 8:15 to

5 discuss this issue.

6 It sounds like Mr. Foroughi, because of the problems he

7 indicated yesterday, may be a little late again. I don't want

8 to lose him, but if he's very, very late -- as it is, we took

9 so much time this morning, it kind of made it academic.

10 Hopefully, that won't happen again. But let's take it up at

11 8:15 tomorrow.

12 MR. FARNHAM: Your Honor, Ms. Moran is here from

13 Illinois. She will be flying in today. So I just wanted to

14 let you know that. She's from the Chicago area.

15 MR. DRESSLER: Can I ask out of an abundance of

16 caution, is there going to be another interview of her before

17 she testifies?

18 MR. FARNHAM: Not anticipated, no.

19 THE COURT: So no midnight or late-hour 302s?

20 MR. FARNHAM: No, your Honor.

21 MS. HARRIS: And we would also make the request that

22 Mr. Dressler check his email until he goes to bed. We do that

23 during trial.

24 THE COURT: Well, you know, I'm not going to make

25 any -- obviously, if something comes in at a reasonable hour

1 and he doesn't see it, that will be taken into account with

2 respect to any motion.

3 On the other hand, things should be transmitted as soon as

4 possible, as I say, even if it's piecemeal, when you've got

5 something late-breaking with a witness.

6 So with that, we'll see you tomorrow.

7 MR. DRESSLER: Thank you, your Honor.

8 MR. FARNHAM: Thank you.

9 (Whereupon at 1:06 p.m. further proceedings were

10 adjourned until Friday, September 25, 2015 at

11 8:15 a.m.)

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I N D E X

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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

_____/s/ Debra Pas_____

Debra L. Pas, CSR 11916, CRR, RMR, RPR

_____/s/ Belle Ball_____

Thursday, September 24, 2015

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDWARD M. CHEN

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) NO. CR 12-0278 EMC
JAMES MURRAY,)
Defendant.) San Francisco, California
) Friday
) September 25, 2015
) 8:15 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:
For Plaintiff: MELINDA HAAG
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: ROBIN HARRIS, AUSA
LLOYD FARNHAM, AUSA

For Defendant: ALAN A. DRESSLER, ESQ.
400 Montgomery Street
Suite 200
San Francisco, California 94104

Also Present: USSS AGENT ANTHONY SIMS, JR.
FBI AGENT BRIAN C. WEBER

Reported By: Debra L. Pas, CSR 11916, CRR, RMR
Belle Ball, CSR 8785, CRR, RMR
Official Reporters - US District Court

PROCEEDINGS

1 SEPTEMBER 25, 2015 8:17 A.M.
2
3 (Defendant present, in custody.)
4 (Proceedings held in open court, outside the presence
5 and hearing of the jury.)
6 THE CLERK: Please come to order.
7 THE COURT: Okay. Good morning, everyone.
8 MR. DRESSLER: Good morning, Your Honor.
9 MS. HARRIS: Good morning, Your Honor. Robin Harris
10 and Lloyd Farnham for the United States.
11 THE COURT: Thank you.
12 MR. FARNHAM: Good morning.
13 MR. DRESSLER: Alan Dressler for Mr. Murray. He is
14 in the courtroom.
15 THE COURT: All right. Good morning, everyone.
16 So, we have a matter to take up this morning.
17 MR. DRESSLER: Yes.
18 THE COURT: About Tina Moran. Is that right?
19 MR. DRESSLER: Yes. So, the witness that they
20 propose to call is Tina Moran, Your Honor. And, Government
21 Exhibit 145, I believe, has emails between Tina Moran and
22 Mr. Murray.
23 THE COURT: 140 --
24 MR. DRESSLER: I think it's 145.
25 THE COURT: 145?

1 MR. DRESSLER: I believe it's 145. I'm sorry; 144.
2 THE COURT: 144?
3 MR. FARNHAM: That's right.
4 MR. DRESSLER: 144.
5 THE COURT: 144. Okay.
6 MR. DRESSLER: Yes. And, last night I went through
7 all of the emails between CSS and Mr. Murray.
8 And basically, between approximately February of 2009 when
9 the account was first opened, and July 7th, '09, there are
10 emails between Mr. Murray and Tina Moran, some of which contain
11 attachments and records that were submitted to CSS.
12 And on July 7th, Mr. Murray receives an email from Jackie
13 Melamed, who is an employee of some kind at CSS, saying "Your
14 accounting is done and has been through final review."
15 I'm not reading the whole thing, but --
16 MR. FARNHAM: And that's not a portion of the
17 exhibit, I don't believe.
18 THE COURT: I don't see that in here.
19 MR. DRESSLER: It is not -- no, it is not a portion
20 of the exhibit.
21 THE COURT: Oh.
22 MR. DRESSLER: This is a portion of an exhibit that I
23 will -- I am describing now what I found last night
24 (indicating). I apologize.
25 And I have given the Government a copy and I can give the

1 Court a copy, also, because it's --
2 THE COURT: So it says "Audit is complete"? Is that
3 what you just said?
4 MR. DRESSLER: It says --
5 MR. FARNHAM: "Accounting is done."
6 MR. DRESSLER: "Accounting is done."
7 MR. FARNHAM: "And has been through final review."
8 (Document handed up to the Court)
9 THE COURT: Yeah.
10 MR. DRESSLER: Then -- giving you two sets of
11 documents.
12 THE COURT: Thank you.
13 MR. DRESSLER: It obviously refers to some six-month
14 period of accounting. It doesn't say what it is.
15 And I haven't seen in the discovery a six-month accounting
16 from --
17 MR. FARNHAM: Well, I certainly take issue with that,
18 but I'll let Mr. Dressler finish.
19 MR. DRESSLER: -- from July 7th through the end of
20 the year, and into the beginning of 2010. All of the
21 communications between Mr. Murray and CSS are between
22 Mr. Murray and a person named Jackie Melamed. And you have
23 them there. They are numerous. And, on not one of those
24 emails is Tina Moran cc'd. They are all between Jackie Melamed
25 and Mr. Murray.

1 And I don't know, based on the state-- one, two
 2 paragraphs, a very short statement that they provided with
 3 regard to Tina Moran. It appears from to me from these emails
 4 that whatever was prepared starting in July of 2009, for the
 5 rest of 2009, and then I assume the -- the documents that the
 6 Government has submitted is a -- a -- some kind of financial
 7 document that covers the whole year and another kind of
 8 financial compilation that only goes through October. Those
 9 are two Government exhibits.

10 So my concern is that under 701, there is a very recent --
 11 *United States versus Aubrey* that was decided on September 8th
 12 of 2015. 2015 U.S. App. Lexis, 15927. That involves summary
 13 charts, it involved an issue similar to what we have here. But
 14 it was not -- similar. I'll just leave it at that. All right?

15 And the case that the Ninth Circuit relied on, in reaching
 16 their --

17 THE COURT: What is the holding? You said a summary
 18 chart?

19 MR. DRESSLER: Yes. I'm prefacing my -- they talked
 20 about 701, and when a person is -- the difference between 701
 21 and 702 with regard to lay testimony.

22 In the *Aubrey* case, it was an -- an investigator collected
 23 a bunch of documents and put them in a summary, and summarized
 24 the documents.

25 THE COURT: For trial?

1 MR. DRESSLER: At trial.

2 THE COURT: Not for purposes of an actual
 3 transaction.

4 MR. DRESSLER: No, it was part of a person's job. It
 5 was an investigative audit of a government agency -- by a
 6 government agency. That case is not irrelevant.

7 But, in that case, the Ninth Circuit cites another case, a
 8 Third Circuit case, *Teen-Ed* -- T-E-E -- T-E-E -- or two E's,
 9 T-E-E-N E-D -- *Inc. versus New Jersey Piano and Organ Company*.
 10 And they relied on that case.

11 And that case involved an accountant for a company who was
 12 not qualified as an expert, but was allowed to testify with
 13 regard to profit and loss, based on documents that the
 14 accountant had prepared.

15 One of the sides in this case was arguing that it was
 16 expert testimony. The Court said it was not, because he had
 17 personal knowledge of the matter, basically. In other words,
 18 he had prepared the documents from which he was testifying.
 19 And they held that under those circumstances, it was not -- it
 20 was 701 testimony.

21 My concern here is -- and I don't know --

22 THE COURT: They held what? What did the Court hold?

23 MR. DRESSLER: They held that the accountant's
 24 testimony was 701 testimony because he had personal knowledge
 25 of the documents because he was the accountant --

1 THE COURT: Right.

2 MR. DRESSLER: -- for the company.

3 THE COURT: Right.

4 MR. DRESSLER: All right?

5 MR. FARNHAM: Do we have a citation for that case?

6 MR. DRESSLER: I'm sorry. 620 Fed 2d., 399, 1980,
 7 Third Circuit.

8 So --

9 THE COURT: What's the cite again? 3 --

10 MR. DRESSLER: 620, Fed 2d., 399. It's a 1980 case.

11 THE COURT: Okay.

12 MR. DRESSLER: So my concern here, Your Honor, is
 13 based on reviewing these emails, is that -- and I don't know
 14 because the discovery doesn't tell me. It appears that Tina
 15 Moran had nothing to do with whatever was done at the end of
 16 the year, whatever accounting was done. She had nothing to do
 17 with it. Didn't do the accounting, didn't prepare the
 18 documents, didn't --

19 THE COURT: Let me hear the Government's proffer in
 20 light of these documents.

21 MR. FARNHAM: Certainly. So Ms. Moran will testify
 22 that she began directly working on the Market Neutral Trading
 23 account in her role as the head accountant supervising a number
 24 of staff accountants at CCS. She continued in that role,
 25 supervised and reviewed all the work of accountants that went

1 out throughout 2009.

2 So, even though she did not necessarily collect the
 3 information past July, 2009, she reviewed everything that the
 4 accountants at CCS, all the work that they did. So she does
 5 have firsthand knowledge about the documents that were
 6 prepared.

7 She certainly has -- can authenticate the documents, as
 8 the head accountant at CCS. And she can also testify about
 9 what they contain and the work that went into them, because she
 10 reviewed them.

11 THE COURT: So everything that she's going to -- when
 12 she talks about the substance of any document, she will testify
 13 that she reviewed -- had reviewed that document in her capacity
 14 as accountant supervisor.

15 MR. FARNHAM: Correct. And I do think that the
 16 extent of her personal knowledge is a subject for cross, and
 17 shouldn't affect her testimony about the documents. Because
 18 she can certainly authenticate them, and she can certainly talk
 19 about what they are, and the scope of her review.

20 MR. DRESSLER: Well, first of all, authenticating
 21 them and what they purport to be is one issue.

22 The other issue --

23 THE COURT: Yeah. That's a separate issue. And I'm
 24 confident she will be able to authenticate them.

25 The question is whether she can testify consistent with

1 Rule 26 disclosure requirements, and Rule 702. And if, in
 2 fact, a predicate foundation is laid and she testifies that she
 3 did, in fact, review any document that is going to be submitted
 4 here and discussed, that she actually personally reviewed that
 5 as her capacity, even though she's not shown as a cc on this --
 6 I mean, you can cross-examine her.
 7 If you want to voir dire her, I'll let you voir dire her
 8 during that. And I'll have to make a determination. But --
 9 MR. DRESSLER: I would like to do that, because --
 10 MR. FARNHAM: So --
 11 MR. DRESSLER: Can I finish, for a second?
 12 I would like to do that, Your Honor, because there's a
 13 difference between reviewing -- I don't know what the answers
 14 are going to be, obviously. But there's a difference between
 15 reviewing a draft of a document and actually reviewing the line
 16 items, the spreadsheets, whatever, to determine whether those
 17 were, in fact, correct, and correctly --
 18 THE COURT: What's the ultimate testimony that's
 19 going to be elicited?
 20 MR. FARNHAM: Well, that is a good point, Your Honor.
 21 She is not offering an opinion about the veracity of these --
 22 of the documents that she got from Market Neutral Trading.
 23 THE COURT: She's going to say what these documents
 24 say?
 25 MR. FARNHAM: Right. These are not audits. So this

1 is a much more mechanical process. I mean, certainly, in other
 2 cases, auditors, percipient-witness auditors have been allowed
 3 to testify about the work that they do. This is certainly a
 4 lesser below that. It's much more mechanical. They calculate
 5 the net asset value, the partner ownership percentages. It is
 6 far less than an audit.
 7 Ms. Moran is not a CPA; she's not providing an opinion
 8 about the audit steps that were taken or the reasonableness or
 9 the correctness of the materials she prepared. It is
 10 specifically not an audit. She's not --
 11 THE COURT: She's going to describe the methodology
 12 used to derive the numbers, essentially?
 13 MR. FARNHAM: Uh --
 14 THE COURT: Or where the numbers came from? How
 15 they're calculated? Is that part of her testimony?
 16 MR. FARNHAM: Certainly. Although, I mean, she's not
 17 going to testify about accounting principles in general.
 18 That's not her role --
 19 THE COURT: But she will describe how they got X
 20 number.
 21 MS. HARRIS: In general terms, that they're based on
 22 the materials, the accounts -- primarily, the account
 23 statements and the bank statements, and then followup
 24 information from Jim Murray.
 25 THE COURT: And is she going to testify that she

1 reviewed those numbers? I mean, she knew -- she reviewed them
 2 close enough to look at the numbers and have -- be a percipient
 3 witness --
 4 MR. FARNHAM: (Nods head)
 5 THE COURT: -- in that regard.
 6 MR. FARNHAM: I believe she will testify to that.
 7 THE COURT: I'll allow a short voir dire if you want
 8 to voir dire her, her ability to so testify. That keeps her
 9 out of the 702 realm.
 10 Or even if it's 702, it's really a Rule 26 disclosure
 11 issue more than anything, because if she's giving percipient
 12 testimony, even if it contains -- like a treating physician. A
 13 treating physician can testify without a full-on Rule 26
 14 report, even though he or she will say "I examined the patient,
 15 and I found they had a broken leg" or blah, blah, blah, which
 16 is different from hiring a forensic.
 17 So it's really as much a Rule 26 issue as it is a 701,
 18 702. So whether you call it 701 or 702, I don't know if that
 19 is really the sole issue. But I understand the gist. If she's
 20 going to give expert testimony that's outside her
 21 percipient-witness range, they've got to do a disclosure.
 22 MR. DRESSLER: Thank you, Your Honor.
 23 THE COURT: So --
 24 MR. FARNHAM: Your Honor?
 25 THE COURT: Yeah.

1 MR. FARNHAM: I'm concerned about this voir dire,
 2 because we are not offering her as an expert, not having her
 3 testify about her opinions about accounting or opinions about
 4 the veracity of this material.
 5 This was a -- this was work that she did for her firm,
 6 hired by Mr. Murray, using information provided by Mr. Murray.
 7 It's not expert opinion. And, I'm concerned about --
 8 THE COURT: Well, does it involve any expertise?
 9 Does any of her testimony involve any expertise at all outside
 10 the ordinary lay witness realm?
 11 MR. FARNHAM: Only, only to the extent that she's
 12 describing the work they did in order to get the numbers. It's
 13 a fairly mechanical process. It's like bookkeeping. But she
 14 will describe generally how the numbers got to where they were.
 15 And not --
 16 THE COURT: So the way we are going to do this is you
 17 go ahead and elicit the direct testimony.
 18 You can object at some point if you feel it's 702, and
 19 I'll decide at that point whether it really is opinion expert
 20 testimony utilizing expertise, or whether she's just
 21 mechanically saying, "Oh, well, this is what we do. We take
 22 the number from X Column and add it to Y Column and that is how
 23 you get the Z Column."
 24 And if that's all she says --
 25 MR. DRESSLER: My problem is that when we get to that

1 point, there's going to be a bell that has rung that I can't
 2 unring, because they're going to be talking about whether --
 3 you know, her ultimate statement is that it was a loss in 2009.
 4 So what I would ask -- and it won't take that long -- is
 5 that I be allowed to voir dire out of the presence of the jury.
 6 Otherwise, there's prejudice to Mr. Murray if he --
 7 THE COURT: All right. We will do that before you
 8 call her. We'll take a short break. I'm going to allow a
 9 short voir dire.
 10 In the end, it may be immaterial. But at least I'll have
 11 that information as we go in, and wouldn't have to interrupt in
 12 the middle.
 13 MR. DRESSLER: Thank you.
 14 MR. FARNHAM: Your Honor, she is our first witness we
 15 intend to call today.
 16 THE COURT: Well, let's get her on right now.
 17 MS. HARRIS: Your Honor, before she comes in, can I
 18 raise something completely different just before the jury
 19 comes?
 20 THE COURT: Does it need to be addressed now?
 21 MS. HARRIS: No, I don't think it does, actually.
 22 THE COURT: I don't want to keep delaying --
 23 MS. HARRIS: Okay, okay.
 24 THE COURT: Let's -- let's do this short voir dire.
 25

1 TINA MORAN,
 2 called as a witness for the Government herein, having been
 3 first duly sworn, was examined and testified as follows:
 4 THE CLERK: Please be seated. State your full name
 5 and spell your last name, please.
 6 THE WITNESS: Tina Moran, M O-R-A-N.
 7 THE COURT: All right. Thank you, Ms. Moran.
 8 What we are doing this morning is what we call voir dire.
 9 The attorneys are going to ask you some very short questions
 10 for me to make some evidentiary rulings. So, this is not your
 11 testimony in front of the jury. It's your answers to very
 12 short questions that we are going to do.
 13 So I don't need to get into the whole background stuff.
 14 Let's get right to it.
 15 MR. FARNHAM: Certainly.
 16 VOIR DIRE EXAMINATION
 17 Q Good morning, Ms. Moran.
 18 A Good morning.
 19 Q Did you work at a company called CCS Financial during
 20 2009?
 21 A Yes, I did.
 22 Q What was your position during that time?
 23 A Head accountant.
 24 Q And what were your job responsibilities as head accountant
 25 at that time?

1 A Overseeing all the internal and external accounting.
 2 Q And what was the business of CCS Financial at that time?
 3 A Financial preparation for alternative investment
 4 companies.
 5 Q Including hedge funds?
 6 A Yes.
 7 Q And what was the primary service that CCS provided to
 8 hedge funds?
 9 A Compilation of financial statements.
 10 Q Were those audited?
 11 A No.
 12 Q Were any audit services performed by CCS Financial?
 13 A No.
 14 Q For anyone?
 15 A No.
 16 Q And did you supervise staff?
 17 A Yes.
 18 Q And how many accountants were there that you supervised in
 19 2009?
 20 A In 2009, I can't say. Over the course of time, anywhere
 21 from one to five.
 22 Q And are you a CPA?
 23 A No.
 24 Q We are going to talk about the work that you did for
 25 Market Neutral Trading. Do you remember that company?

1 A Yes.
 2 Q For Market Neutral Trading, what was the service that CCS
 3 provided?
 4 A Compilation of financial statements.
 5 Q And what was the information that was used to do that
 6 service?
 7 A Any representation from management, whether it be verbal
 8 or financial statements that supported the information.
 9 Q And in the case of Market Neutral Trading, where did that
 10 information come from?
 11 A It would have come from Jim Murray.
 12 Q Was there anyone else that CCS got information from?
 13 A Not that I recall.
 14 Q And, do you recall your role in the beginning of that
 15 engagement?
 16 A Yes.
 17 Q What was that?
 18 A I dealt with the setup of the company on our end for the
 19 financial statements, as well as prepared the accounting for a
 20 significant portion of time. And then moved on to supervise
 21 the preparation of the accounting.
 22 Q And supervising it, what did that entail?
 23 A That would be another staff accountant preparing the
 24 financial documents. They would come to me for final review.
 25 Q And what was the end result of the work that CCS did for

1 Market Neutral Trading?
 2 A I'm not sure I understand your question.
 3 Q So, let's say financial compilation work. How often did
 4 that happen?
 5 A That would be monthly.
 6 Q So, for each -- was there a report that was generated each
 7 month?
 8 A Yes, they would have received several reports. A
 9 financial package with a balance statement. An income
 10 statement. Statements for each individual investor. And all
 11 the backup detail that was associated with it.
 12 Q And, just to be clear, did Jim Murray hire the firm in
 13 2009?
 14 A I believe it was 2009, yes.
 15 Q And did Jim Murray provide you the materials used for all
 16 the work that CCS did?
 17 A Yes.
 18 Q Tell me about the review that you did when you didn't do
 19 the work yourself for Market Neutral Trading. Tell me what
 20 that entailed.
 21 A That would be going over the financial statements that
 22 were prepared versus all the original source documentation,
 23 confirming everything was correct. And that all the accounting
 24 was appropriate to the documentation we received.
 25 Q And, would you do that for every monthly package that was

1 prepared for MNT?
 2 A Yes.
 3 (Off-the-Record discussion between counsel)
 4 MR. FARNHAM: I'll pass the witness, Your Honor.
 5 THE COURT: All right. Go ahead, Mr. Dressler.
 6 VOIR DIRE EXAMINATION
 7 BY MR. DRESSLER:
 8 Q With regard to Mr. Murray's account, would it be fair to
 9 state that some time in July, the hands-on preparation of
 10 documents was done by a person named Jackie Melamed?
 11 A I can't attest to the time period, based on my memory.
 12 But I think that would be fair to say.
 13 Q Okay. And with regard to -- just assuming that it was
 14 some time mid-year, she would be responsible for communicating
 15 with the client?
 16 A Yes.
 17 Q Okay.
 18 A Primarily.
 19 Q Right. And she would be responsible for creating
 20 spreadsheets based on the documents that were received?
 21 A Correct.
 22 Q Okay. And, are you saying that you would compare all of
 23 the documents that she received, line by line, with regard to
 24 the spreadsheets that were compared?
 25 A Yes.

1 Q Okay. And, with regard to -- you -- were you involved in
 2 the communications between Mr. Murray and Jackie Melamed with
 3 regard to e-mails and their --
 4 A Most likely. That would depend on whether or not Jackie
 5 was having trouble getting the information she needed.
 6 Q Do you have any recollection now that you reviewed any
 7 e-mails between her and Mr. Murray?
 8 A Yes, I am sure I did.
 9 Q And --
 10 A Specific accounting questions, individual transactions,
 11 things of that nature.
 12 Q Okay. But you don't have any specific memory of doing it
 13 on any particular occasion. Correct?
 14 A No.
 15 Q You were not cc'd on those emails, correct?
 16 A Probably not.
 17 Q Okay. And, if there were telephone conversations and
 18 verbal -- strike that.
 19 If there were verbal communications, you would not have
 20 been privy to those, correct?
 21 MR. FARNHAM: Your Honor, I would object. This is
 22 going beyond the scope of the 701-702 issue.
 23 THE COURT: I'll allow this question, but not much
 24 more. Go ahead.
 25 THE WITNESS: If they were verbal communications with

1 Jackie, then that would be correct.
 2 BY MR. DRESSLER:
 3 Q And, once -- let's say year-end documents, a compilation
 4 that would cover an entire year. Would there be some
 5 indication in any of the CSS documents that you, in fact,
 6 reviewed it?
 7 A No.
 8 MR. DRESSLER: That's all I have.
 9 THE COURT: All right. Thank you. All right. I
 10 have got a good picture of things. Thank you.
 11 MR. DRESSLER: Yes.
 12 THE COURT: All right. Let's check and see if the
 13 jury is --
 14 MS. HARRIS: Excuse me, Your Honor.
 15 THE COURT: Yes. Are you going to call her back?
 16 MS. HARRIS: Yes.
 17 THE COURT: You are excused for a moment. You can
 18 step down.
 19 (Witness excused)
 20 MS. HARRIS: Your Honor, while we have a brief moment
 21 before the jury comes in?
 22 THE CLERK: Everyone is here. The jurors are here.
 23 THE COURT: All right. Hold on just one second.
 24 MS. HARRIS: We anticipate calling Paul Eckel today,
 25 and introducing numerous documents with him. I wondered if it

1 would be okay, rather than asking the Court each time to
 2 approach the witness, if I could approach him with a batch of
 3 exhibits, I'll label them --
 4 THE COURT: Fine.
 5 MS. HARRIS: Just to expedite the process.
 6 THE COURT: Fine. These are all documents that
 7 Counsel has seen, right?
 8 MS. HARRIS: Oh yes.
 9 THE COURT: No problem.
 10 MR. DRESSLER: No objection.
 11 THE COURT: Okay, let's bring them in.
 12 (The following proceedings were held in the presence
 13 of the Jury)
 14 THE CLERK: Calling Case CR-12-278, United States of
 15 America versus James Murray.
 16 THE COURT: Good morning, ladies and gentlemen.
 17 Welcome back. We are going to continue with the Government's
 18 case this morning.
 19 And, you may call your next witness.
 20 MR. FARNHAM: Thank you, Your Honor. The Government
 21 calls Tina Moran.
 22 THE COURT: Okay.
 23
 24
 25

1 TINA MORAN,
 2 called as a witness for the Government herein, having been
 3 first duly sworn, was examined and testified as follows:
 4 THE CLERK: State your full name and spell your last
 5 name.
 6 THE WITNESS: Tina Moran, M-O-R-A-N.
 7 THE COURT: All right. You may proceed, Counsel.
 8 MR. FARNHAM: Thank you, Your Honor.
 9 DIRECT EXAMINATION
 10 Q Good morning, Ms. Moran.
 11 A Good morning.
 12 Q What is your current occupation?
 13 A I'm an accountant.
 14 Q And where do you work as an accountant, currently?
 15 A I work at Mackie Consultants.
 16 Q And what is that?
 17 A An engineering firm.
 18 Q And what city do you live in?
 19 A Roselle, Illinois.
 20 (Reporter interruption)
 21 BY MR. FARNHAM:
 22 Q What part of Illinois is that in?
 23 A Western suburbs of Chicago.
 24 Q Have you ever worked at a company called CCS Financial
 25 Services?

1 A Yes.
 2 Q When did you start working there?
 3 A April of 2002.
 4 Q And what was your position when you started?
 5 A Staff accountant.
 6 Q And when did you stop working at CCS Financial?
 7 A November of 2012.
 8 Q You said you started as a staff accountant. Did that
 9 position change while you were employed by CCS Financial?
 10 A Yes, it did.
 11 Q What, how did that change?
 12 A I became the head accountant.
 13 Q When was that?
 14 A Approximately 2007.
 15 Q While you were employed at CCS Financial Services -- did I
 16 get the name right?
 17 A Yes.
 18 Q What was its business?
 19 A Compilation of financial statements for alternative
 20 investment companies.
 21 Q What do you mean by "alternative investment companies"?
 22 A Hedge funds, commodity traders, some stock traders,
 23 investment products that required high net worth.
 24 Q Why did those clients, those types of clients hire CCS
 25 Financial to do that work?

1 A That was our specialty.
 2 Q Why did they need it?
 3 A For their own reporting purposes, as well as federal
 4 requirements, generally.
 5 Q When you say "reporting requirements" what do you mean?
 6 A Most of the time the alternative investments involved
 7 would have standards to adhere to, whether it be from the
 8 National Futures Association or the Securities and Exchange
 9 Commission on what information they needed to report to their
 10 investors.
 11 Q As part of the services that CCS Financial would provide,
 12 was there any preparation of investor statements?
 13 A Yes, there was.
 14 Q Tell me how that -- how that was part of the services.
 15 A We would prepare investor statements with each monthly
 16 financial package for distribution to the individuals. That
 17 would include their performance on a monthly basis.
 18 Q I want to get back to that in just a minute. But first,
 19 tell me generally what was your -- what were your job
 20 responsibilities as the head accountant at CCS Financial?
 21 A Internal and external accounting, preparation and
 22 supervision of. And, tax preparation.
 23 Q Okay. Did you supervise any employees?
 24 A Yes, I did.
 25 Q And, in the time that you were head accountant, how many

1 employees did you supervise?
 2 A Approximately one to five, at any given period.
 3 Q And what were those employees?
 4 A Generally, staff accountants.
 5 Q So you talked about financial compilation. And I want to
 6 talk a little bit more about that. Tell me what that means.
 7 A We would receive the source documentations, bank
 8 statements, brokerage statements, and put together a picture of
 9 the financial condition of the company each month.
 10 Q And, after you -- after CCS Financial prepared that
 11 compilation, what did you do with it?
 12 A We would send it to Jim for his records and distribution
 13 to his investors.
 14 Q Okay. Talking more generally for a minute, after CCS
 15 Financial would do the work of preparing financial
 16 compilations, what happened to it?
 17 A Most of the time it would go back to the client.
 18 Q And, when you were -- when you were the head accountant,
 19 did you have responsibilities for reviewing work of your
 20 subordinates?
 21 A Yes.
 22 Q Tell me about that.
 23 A They would prepare the work; I would go through the
 24 monthly financial statements in detail to confirm that
 25 everything was correct, and that the proper accounting

1 transactions were being used for the source documentation.
 2 Q What are some of things that your hedge fund clients were
 3 most interested in knowing from those reports that CCS
 4 Financial prepared?
 5 A Their monthly performance numbers in percentage form,
 6 usually.
 7 Q And how about the asset values of the funds?
 8 A Yes.
 9 Q And why were those important to your clients?
 10 A That was often used for marketing material as well as
 11 financial regulations.
 12 Q And then again for those items, the monthly performance
 13 and the assets, how did CCS determine those numbers?
 14 A Based on the source documentation.
 15 Q Give me some examples of that source documentation.
 16 A Bank statements, brokerage statements, statements from
 17 management on any individual transactions or any missing
 18 information.
 19 Q Was what CCS did, could that be called an audit?
 20 A No.
 21 Q Why not?
 22 A It is not audited at all. The financial statements were
 23 based on the representation of management. We did not verify
 24 any of the individual accounts or any of the transactions
 25 within the accounts.

1 Q During 2009, did CCS Financial Services have a client
 2 named Market Neutral Trading?
 3 A Yes.
 4 MR. FARNHAM: Your Honor, may I approach with an
 5 exhibit?
 6 THE COURT: Yes.
 7 BY MR. FARNHAM:
 8 Q Ms. Moran, I have handed you what's been marked as
 9 Exhibit 144. And I would ask you to take a look at the pages
 10 of that document so I can ask you a few questions about it.
 11 (Witness examines document)
 12 A Okay.
 13 Q Are the pages in Exhibit 144, are these e-mail
 14 conversations that involve -- involve you?
 15 A Yes.
 16 Q And that you sent or received them?
 17 A Yes.
 18 Q And do the dates on these conversations range between
 19 approximately February and March of 2009?
 20 (Witness examines document)
 21 A Yes.
 22 Q Do they appear to relate to CCS Financial's work for
 23 Market Neutral Trading?
 24 A Yes.
 25 Q And were these e-mails kept in the company's records?

1 A Yes.
 2 Q Who is the -- sending these e-mails on behalf of Market
 3 Neutral Trading?
 4 A Jim Murray.
 5 MR. FARNHAM: Your Honor, I would offer these
 6 conversations, these e-mails as evidence.
 7 THE COURT: Any objection?
 8 MR. DRESSLER: No, Your Honor.
 9 THE COURT: 144 is admitted.
 10 (Trial Exhibit 144 received in evidence)
 11 MR. FARNHAM: Your Honor, if I may publish portions of
 12 it?
 13 THE COURT: Yes.
 14 MR. FARNHAM: If we could look at Page 5.
 15 (Document displayed)
 16 THE WITNESS: Okay.
 17 BY MR. FARNHAM:
 18 Q If we could look first at the -- it's in the middle
 19 portion of the page. There appears to be an e-mail from you,
 20 dated February 9, 2009, to a J. Murray.
 21 Do you see that?
 22 A Yes.
 23 Q If you could read the first sentence of your e-mail.
 24 A Okay.
 25 "I am still in need of a few items to finish the

1 setup for your accounting.”

2 Q Do you know what you are referring to when you say “setup

3 for your accounting?”

4 A Yes, this would have been our initial setup for the

5 company and our first set of financial statements.

6 Q So approximately when did MNT retain CCS Financial?

7 A I would say in that case, approximately February.

8 Q And what was the first work that CCS Financial did for

9 Market Neutral Trading?

10 A That would be January, 2009 statements.

11 Q And what was the -- you talked about various services that

12 CCS Financial provided. What was MNT retaining CCS Financial

13 for?

14 A For the compilation of the financial statements.

15 Q And at this point, February, 2009, what was your role with

16 the Market Neutral Trading account?

17 A At the beginning, February, I would have been preparing

18 this accounting.

19 Q Does that include gathering the information from the

20 client?

21 A Yes.

22 Q If we could look at Page 1 of Exhibit 144.

23 (Document displayed)

24 A Okay.

25 Q I want to ask you first sort of what this e-mail

1 represents. Let's look at the -- it appears to be an e-mail

2 from J. Murray to you, dated March 4th, 2009.

3 Do you see that?

4 A Yes.

5 Q And then it starts with:

6 “I have gone through all the cash information

7 you sent over, and have some additional questions.”

8 Can you tell from this who has the questions?

9 A Yes. That's me.

10 Q And, is that -- is this e-mail primarily your questions?

11 A Yes. Everything that is not in bold appears to be me.

12 And the bolded information after each statement is the

13 response.

14 Q And this would be a response with information from who?

15 A From Jim Murray.

16 Q Is this a typical way that you might get information from

17 the client?

18 A Yes.

19 Q And what is the purpose of asking these questions and

20 getting this information?

21 A To clarify that we are looking at all the transactions

22 correctly so that the proper accounting is provided.

23 Q And how to categorize certain of the items on the

24 statements?

25 A Yes. Uh-huh.

1 Q And then if we could look at Page 2 briefly.

2 (Document displayed)

3 Q And if we could just zoom in on -- I guess the e-mail, and

4 your e-mail and response.

5 A Okay.

6 Q Just generally, what is happening in this e-mail?

7 A It looks like I'm confirming a minor transaction in the

8 brokerage account, requesting additional information for the

9 brokerage account, for a separate brokerage account. And,

10 confirming when additions and withdrawals from investors

11 happened, timing-wise.

12 Q From the date of the e-mail, can you tell what you are

13 working on at this point?

14 A This would have been February, 2009 statements.

15 Q And is this typical of the interaction you might have with

16 clients?

17 A Yes.

18 MR. FARNHAM: Your Honor, may I approach with an

19 exhibit?

20 THE COURT: Yes.

21 BY MR. FARNHAM:

22 Q Handing you what's been marked as Exhibit 141, do you

23 recognize Exhibit 141?

24 A Yes, I do.

25 Q What is that?

1 A This would be the compilation of financial statements that

2 CCS put together for Market Neutral.

3 Q And --

4 A And also some associated statements that we would have

5 based that information on.

6 Q Did you review those statements?

7 A Yes.

8 Q And, were those maintained in the records of CCS?

9 A Yes.

10 Q And then did you prepare the financial information that's

11 on the front of that document?

12 A Yes.

13 MR. FARNHAM: Your Honor, I would offer Exhibit 141

14 into evidence.

15 THE COURT: Any objection?

16 MR. DRESSLER: No, no, no objection.

17 THE COURT: Admitted.

18 (Trial Exhibit 141 received in evidence)

19 MR. FARNHAM: Then Your Honor, if I may publish the

20 exhibit?

21 THE COURT: Yes.

22 MR. FARNHAM: If we could look at Page 1.

23 (Document displayed)

24 BY MR. FARNHAM:

25 Q What is Page 1?

1 A Page 1 is the balance sheet for the company which would
2 include the financial balances of all assets, liabilities, and
3 equity.
4 Q And who prepared this?
5 A That would be me.
6 Q Let's look at Page 12.
7 (Document displayed)
8 (Request complied with by the Witness)
9 Q And I know I asked you about it before we were looking at
10 the document, but I want to ask you, what are these documents
11 that begin on Page 12 of Exhibit 141?
12 A This is the monthly bank statement for the company.
13 Q And where did you get these materials?
14 A From Jim Murray.
15 Q And what other kind of documents are behind that US Bank
16 bank statement?
17 A We also have some questions on individual transactions
18 behind the bank statement. A brokerage statement. A summary
19 of another brokerage statement, along with a cover page of that
20 statement.
21 Q And what is the time period that those materials and your
22 work cover there?
23 A It's all January of 2009.
24 MR. FARNHAM: Your Honor, if I could approach with
25 another exhibit?

1 THE COURT: All right.
2 BY MR. FARNHAM:
3 Q Ms. Moran, I have handed you what's been marked as Exhibit
4 142.
5 A Okay.
6 Q Do you recognize Exhibit 142?
7 A Yes, I do.
8 Q What is that?
9 A That is October 2009 financial statements, along with
10 investor statements. And some of the source documentation from
11 that period.
12 Q And the first part of that, is that work that CCS
13 Financial prepared on behalf of Market Neutral Trading?
14 A Yes.
15 Q And the last part of it, is that the information that CCS
16 Financial collected for that work?
17 A Yes.
18 Q And where did you obtain the information?
19 A From Jim Murray.
20 Q And when was this document prepared?
21 (Witness examines document)
22 A To the best of my knowledge, I would say November of 2009.
23 Q Shortly after October, 2009?
24 A Yes.
25 Q And was it prepared as part of the normal business of CCS

1 Financial?
2 A Yes.
3 MR. FARNHAM: Your Honor, I would offer Exhibit 142
4 into evidence.
5 MR. DRESSLER: Your Honor, I would object, based on
6 my previous --
7 THE COURT: All right. Objection overruled. 142 is
8 admitted.
9 (Trial Exhibit 142 received in evidence)
10 MR. FARNHAM: Your Honor, I would like to publish
11 portions of this exhibit.
12 THE COURT: Okay.
13 (Document displayed)
14 BY MR. FARNHAM:
15 Q If we could look at Page 1. And if we could zoom in on
16 the top portion.
17 Ms. Moran, what is Page 1 of this document?
18 A This is a performance table of the activity on a monthly
19 basis.
20 Q And why does CCS prepare this document?
21 A Generally, this is required as some kind of federal
22 regulation. This is also used for marketing purposes and
23 general informational purposes for the company.
24 Q When you say "marketing purposes," whose marketing
25 purposes?

1 A Market Neutral's marketing purposes.
2 Q And how is this summary prepared?
3 A This is taken from the financial statements and compiled
4 that way.
5 Q So the packet of information that's Exhibit 142, what time
6 period does that work cover, the work that CCS Financial did
7 and the statements that are behind it? What is the time
8 period?
9 A October, 2009.
10 Q And then, why does this chart on Page 1 that we are
11 looking at have January through October represented?
12 A It's a running table. So each month, every new month
13 performance would be added on to it.
14 Q Okay, so this was a typical -- typical page that was
15 prepared each month?
16 A Yes.
17 Q And each month it would have a new line.
18 A Correct.
19 Q If we could look at Page 13 of this document, please.
20 (Document displayed)
21 Q Was this part of the documents prepared by CCS Financial?
22 A Yes. It is.
23 Q What is it?
24 A This is a summary of each individual investor's activity
25 on a monthly basis.

1 Q And where did CCS Financial get the information about the
 2 investors?
 3 A From Jim Murray.
 4 Q On this page -- I'm sorry. What is the date of this
 5 document?
 6 A This is October 31st, 2009.
 7 Q And what time period would it relate to the investors for
 8 Market Neutral Trading?
 9 A This would cover October as a whole.
 10 Q Do you see the name "Corinna Seibt," S-E-I-B-T, on this
 11 list?
 12 A No.
 13 Q If we could look at Page 16.
 14 (Document displayed)
 15 BY MR. FARNHAM:
 16 Q What is this document?
 17 A This would be the individual investor's statement that
 18 also had their monthly performance on it.
 19 Q And is this something that CCS Financial prepared?
 20 A Yes.
 21 Q Why is that?
 22 A This is meant for distribution to the investor on a
 23 monthly basis.
 24 Q After CCS Financial prepared these, what was done with
 25 them?

1 A They would have been returned to Jim Murray.
 2 Q They weren't sent directly to the investors?
 3 A Correct.
 4 Q For these investor statements, what type of information
 5 was used?
 6 A The same information that was used to prepare the
 7 financial statements, so bank statements, brokerage statements,
 8 any other information that would have come directly from
 9 management.
 10 Q Does this document also include some of the bank
 11 statements and brokerage statements that were obtained from
 12 Market Neutral Trading?
 13 A Yes.
 14 Q So I want to ask you about that. In the services that CCS
 15 Financial provided in this time period, 2009, did CCS Financial
 16 have any authority over bank accounts of the clients?
 17 A No.
 18 Q Did CCS Financial control any of the ins and outs,
 19 withdrawals or additions?
 20 A No.
 21 Q If we could look briefly at Page 41. And zoom in on the
 22 middle e-mail with the header.
 23 (Document displayed)
 24 Q I just wanted to ask, who is Jackie Melamed, who this
 25 e-mail is from?

1 A She was a staff accountant.
 2 Q With CCS Financial?
 3 A Yes.
 4 Q Did she work for you in 2009?
 5 A Yes.
 6 Q And what was her role with regard to the Market Neutral
 7 Trading client work?
 8 A At this time, she would have been preparing the financial
 9 statements.
 10 Q At this time, what would your role have been with regard
 11 to Market Neutral Trading?
 12 A I would have reviewed her preparation.
 13 Q And, did you review every monthly statement that was
 14 prepared?
 15 A Yes.
 16 Q Regardless of which accountant or which client?
 17 A Yes.
 18 Q And what did that review entail?
 19 A Confirming all the line item balances on the financial
 20 statements were correct and properly accounted for, based on
 21 the transactions in the accounts.
 22 Q So for Exhibit 142, after Ms. Melamed -- M-E-L-A-M-E-D --
 23 completed the work and you reviewed it, what would happen with
 24 the information in Exhibit 142?
 25 A It would be returned to Jim Murray.

1 MR. FARNHAM: If I could approach with an Exhibit?
 2 THE COURT: All right.
 3 BY MR. FARNHAM:
 4 Q Ms. Moran, I have handed you what's been marked as Exhibit
 5 140.
 6 (Witness examines document)
 7 A Okay.
 8 Q I would ask if you recognize Exhibit 140.
 9 A Yes.
 10 Q What is that?
 11 A This would be the December, 2009 financial statements.
 12 Q For which client?
 13 A Market Neutral.
 14 Q And what time period does Exhibit 142 cover?
 15 A It would be the month of December.
 16 Q And is that December 2009?
 17 A 2009, yes.
 18 Q And, was this document prepared as part of CCS Financial's
 19 normal business?
 20 A Yes.
 21 Q And, was this document then kept in CCS Financial's
 22 records?
 23 A Yes.
 24 Q And then what happened to this after it was prepared by
 25 CCS Financial accountants and reviewed by you?

1 A This would have been returned to Jim Murray.
 2 MR. FARNHAM: Your Honor, I would offer Exhibit 140
 3 into evidence.
 4 MR. DRESSLER: Same objection made previously.
 5 THE COURT: All right. Objection overruled. 140 is
 6 admitted.
 7 (Trial Exhibit 140 received in evidence)
 8 MR. FARNHAM: If we could turn to Page 16,
 9 Your Honor, if I may publish that?
 10 THE COURT: Okay.
 11 (Document displayed)
 12 BY MR. FARNHAM:
 13 Q We had talked about this, but I wanted to show an example.
 14 What is Page 16 in this document?
 15 A This is a brokerage statement.
 16 Q And why is it in the materials here?
 17 A This would have been one of the source documents we used
 18 to prepare the financial statements.
 19 Q And who provided the source documents in this case?
 20 A Jim Murray.
 21 Q And then just another -- one more example, Page 24.
 22 (Document displayed)
 23 Q This document, is it similar?
 24 A Yes, it is.
 25 Q And where would you have gotten this brokerage account for

1 Market Neutral Trading?
 2 A Jim Murray.
 3 Q Did CCS Financial clients have bank statements sent
 4 directly to them from banks?
 5 A Yes.
 6 Q Did that -- what was the situation for Market Neutral
 7 Trading? What was the arrangement there?
 8 A We received the information from Jim directly.
 9 Q Why would clients have bank statements sent directly to
 10 CCS Financial?
 11 A Usually ease and convenience on their end, and for us to
 12 be able to get them at the immediate time they are published.
 13 Q For the Market Neutral Trading engagement, did you ever
 14 deal with anyone other than Jim Murray?
 15 A Not that I recall.
 16 Q Do you know if anyone on your staff dealt with anyone
 17 other than Jim Murray?
 18 A Not to my knowledge.
 19 Q If we could look at Page 11 of Exhibit 140.
 20 (Document displayed)
 21 Q Ms. Moran, what is Page 11 of Exhibit 140?
 22 A This is the individual investor's summary of their
 23 performance in December of 2009.
 24 Q And, where does the information come from to prepare this?
 25 A From the source documentation that Jim provided.

1 Q And, is Corinna Seibt listed here as an investor in Market
 2 Neutral Trading?
 3 A No.
 4 MR. DRESSLER: I'm sorry; what page are we on?
 5 MR. FARNHAM: Page 11.
 6 BY MR. FARNHAM:
 7 Q So I would like to go back to Page 1 for a minute.
 8 (Document displayed)
 9 Q What is the time period that this summary table covers?
 10 A The year of 2009.
 11 Q For the other -- so this -- you said that Exhibit 142 is a
 12 December time frame document, right?
 13 A Yes.
 14 Q Where does the information come for the other months
 15 there?
 16 A That is all from the financial statement packages from the
 17 previous months.
 18 Q And how does it get into this, this document?
 19 A That would have been manual entry.
 20 Q This looks like a spreadsheet. Is that how it's --
 21 A Yes.
 22 Q -- electronically stored?
 23 A Yes.
 24 Q If you could describe for me, what does the Beginning
 25 Equity column mean in this table?

1 A On any monthly basis, that is the amount of the net asset
 2 value of the fund.
 3 Q Where does that information come from?
 4 A That would come from the income statement, which would be
 5 Page 3.
 6 Q And the information for the income statement, where does
 7 that come from?
 8 A That would be generated from the source documentation.
 9 Q While we are on equity, I want to talk about the fifth
 10 column over.
 11 It says "Ending Equity," see that one?
 12 A Yes.
 13 Q What is that column?
 14 A That would be the ending balance on any given month of the
 15 net asset value of the fund.
 16 Q Then what about the Additions column, the second one over?
 17 What is that?
 18 A That would be contributions to the fund by individual
 19 investors.
 20 Q And how do you get the information, how does CCS Financial
 21 staff get the information for that column?
 22 A That would come from source documentation, most often
 23 verified with management.
 24 Q And then the Withdrawal column, what is that?
 25 A That would be cash withdrawals taken from investors.

1 Q So this is a record of money in and money out?
 2 A Yes.
 3 Q What about Net Performance? What is that column?
 4 A That is investment performance as well as general
 5 transactions of the fund on a monthly basis.
 6 MR. DRESSLER: Objection, Your Honor.
 7 Previously-based objection.
 8 THE COURT: Objection overruled.
 9 BY MR. FARNHAM:
 10 Q And then, what is the Monthly Rate of Return column?
 11 A That is the percentage value of the gains and losses of
 12 the account on a monthly basis.
 13 MR. DRESSLER: Same objection, Your Honor.
 14 THE COURT: Overruled.
 15 BY MR. FARNHAM:
 16 Q Tell me the information that the monthly rate of return
 17 number there -- what kind of information is it based on?
 18 A It's based on the net performance column, and its relation
 19 to the beginning equity and additions and withdrawals.
 20 Q Okay. And then for -- you talked about the basis for that
 21 information. Where does that come from?
 22 A It's all coming from the financial statements we prepared,
 23 based on the source documentation.
 24 Q And if you could read for me, what is the monthly rate of
 25 return on this document for September 2009?

1 A Negative --
 2 MR. DRESSLER: Excuse me. Same objection.
 3 THE COURT: All right, thank you. Overruled.
 4 THE WITNESS: Negative 44.03 percent.
 5 BY MR. FARNHAM:
 6 Q And if you could read the monthly rate of return for
 7 October, 2009?
 8 A Negative 44.5 percent.
 9 MR. DRESSLER: Same objection, Your Honor. And I
 10 apologize, could the rest --
 11 THE COURT: You can make a standing objection.
 12 MR. DRESSLER: Thank you.
 13 THE COURT: Thank you. And those objections are
 14 overruled.
 15 BY MR. FARNHAM:
 16 Q And then if you could read the November, 2009 monthly rate
 17 of return.
 18 A Negative 80.75 percent.
 19 Q And then finally the December, 2009 monthly rate of
 20 return.
 21 A Negative 19.23 percent.
 22 Q So I want to understand a little bit more about the net
 23 performance and monthly rate of return columns.
 24 Let's look at the -- you want to look at the line that is
 25 August, 2009 for a minute.

1 A Okay.
 2 Q Now, that has -- you see that has an -- some additions and
 3 withdrawals?
 4 A Yes.
 5 Q Is the net performance, does it take into account those
 6 additions and withdrawals?
 7 A Yes.
 8 Q How does it do that?
 9 A The additions are counted as value added at the beginning
 10 of the month. The withdrawals are counted as equity removed at
 11 the beginning of the month.
 12 So, the net performance -- I'm sorry, the rate of return
 13 is based on the net performance in relation to all three of the
 14 beginning columns for the equity.
 15 Q So, let me ask it this way: Would a large withdrawal
 16 affect the net performance?
 17 A Yes.
 18 Q How would it do that?
 19 MR. DRESSLER: Same objection, Your Honor.
 20 THE COURT: Overruled.
 21 THE WITNESS: It would likely create a percentage
 22 variance.
 23 BY MR. FARNHAM:
 24 Q Well, let me ask this. The net performance for August, do
 25 you see that?

1 A Yes.
 2 Q It's -- what does it say?
 3 A .36 percent.
 4 Q I'm sorry, the net performance column?
 5 A Oh, I'm sorry. \$7,287.
 6 Q Why is there a net performance when there seemed to be
 7 more withdrawals than additions?
 8 A That is only the trading activity and any other associated
 9 expenses.
 10 Q So is that number independent of the additions and
 11 withdrawals that happened that month?
 12 A Yes, it is.
 13 Q And then the same for the monthly rate of return. What's
 14 that number for August?
 15 A .36 percent.
 16 Q And is that number independent of the withdrawals and
 17 additions that happened that month?
 18 A It takes into account the additions and withdrawals. But
 19 it is not related to them.
 20 MR. DRESSLER: Same objection, Your Honor.
 21 THE COURT: Overruled.
 22 BY MR. FARNHAM:
 23 Q Tell me the, the monthly rate of return, at the bottom of
 24 that column, under -- in between the two lines. What does that
 25 number represent?

1 A That is the monthly rate of return compounded on an annual
2 basis.
3 MR. DRESSLER: Same objection, Your Honor.
4 THE COURT: Overruled.
5 BY MR. FARNHAM:
6 Q And what is that number?
7 A Negative 94.89 percent.
8 Q What is the column that is at the top, it says "\$1,000
9 Index," do you see that?
10 A Uh-huh. That is a calculation where if you put in \$1,000
11 into this investment product at the beginning of the year, and
12 held that money in the investment product until December, you
13 would have \$51 left. It's a reflection of the monthly rate of
14 return on an example of \$1,000.
15 MR. DRESSLER: Same objection, Your Honor.
16 THE COURT: Overruled.
17 BY MR. FARNHAM:
18 Q I'm sorry; what did you say that December, \$1,000 index
19 number was?
20 A \$51.
21 MR. FARNHAM: Thank you, Your Honor. No further
22 questions.
23 THE COURT: All right. Thank you.
24 Cross?
25

1 CROSS EXAMINATION
2 BY MR. DRESSLER:
3 Q Your company does not do audited returns of hedge funds,
4 correct?
5 A CCS did not do any audit work.
6 Q Okay. And would it be fair to state that to do an audited
7 return of a hedge fund is somewhat different than what you were
8 doing?
9 A Yes.
10 Q Much more complicated?
11 A Um, I wouldn't say complicated, but more involved.
12 Q When you say "more involved," what do you mean?
13 A There would be confirmations from banks and brokerage
14 statements directly on the balances.
15 Q And, with regard to Exhibit 142, Page 13 --
16 MR. DRESSLER: If you want to put it up, that would
17 be fine.
18 (Document displayed)
19 THE WITNESS: Okay.
20 BY MR. DRESSLER:
21 Q I believe you were asked if you saw the name Corinna
22 Seibt, S-E-I-B-T, there. And you indicated you didn't.
23 Correct?
24 A Correct.
25 Q Do you see below the last name, "Guernsey," it says "Total

1 for A Class?
2 A Uh-huh.
3 Q Would it be fair to state that Exhibit 142 was based on a
4 class of the managing member and three other individuals or
5 entities?
6 A Yes.
7 Q Okay. So, you didn't do a financial compilation for a
8 Class B, did you?
9 A No. To our knowledge, there was only a Class A.
10 Q Okay.
11 THE COURT: Counsel, I'm going to have to take a
12 break for a moment.
13 MR. DRESSLER: Certainly.
14 THE COURT: Let's take a ten-minute break.
15 (Whereupon there was a recess in the proceedings
16 from 9:21 a.m. until 9:26 a.m.)
17 (The following proceedings were held outside of the
18 presence of the Jury)
19 MR. FARNHAM: Your Honor, we are waiting for our
20 paralegal. This is a key part of our document presentation
21 system. If we can have one more minute?
22 THE COURT: Okay. Is she on her way?
23 MR. FARNHAM: I'm sure she is.
24 MR. DRESSLER: While we are doing that, I need to put
25 this on the record.

1 THE COURT: Okay. Wait a minute.
2 THE CLERK: They're not there.
3 THE COURT: Okay.
4 MR. DRESSLER: This morning, I gave the Court two
5 exhibits that were not -- without an exhibit number. And also
6 gave it to the Government. These are the emails that we talked
7 about (Indicating).
8 So, one set starts with JMSEC730. I have marked that as
9 Defendant's Exhibit No. 540.
10 THE COURT: All right. Give that to the clerk,
11 please.
12 MR. DRESSLER: And then, the second exhibit which
13 begins with JMSEC 491 I have marked as 541. And, if it's okay,
14 I'll give it to the witness to review now just to save time,
15 she can --
16 THE COURT: Okay.
17 (Off-the-Record discussion between counsel)
18 MR. FARNHAM: We are ready on the Government's end,
19 Your Honor.
20 THE COURT: All right. If you can check with them
21 again and see if they're --
22 (The following proceedings were held in the presence
23 of the Jury)
24 THE COURT: Okay, great. Thank you. I apologize for
25 the interruption.

1 And why don't we go ahead and pick up where we left off.
 2 Mr. Dressler?
 3 BY MR. DRESSLER:
 4 Q Ms. Moran, at the beginning of your testimony, you
 5 indicated that there were certain governmental requirements
 6 with regard to preparing these kind of statements?
 7 A Yes.
 8 Q And, you don't advise your clients -- strike that.
 9 Do you give -- when someone comes to you, do you indicate
 10 to them what, if any, governmental requirements require a
 11 specific type of document, a compilation that you are
 12 preparing?
 13 A Um, not really. We consider it the client's
 14 responsibility to know what their requirements are, because
 15 they vary for each investment product. But should someone ask
 16 directly, we would work with them to help them figure out what
 17 they are.
 18 Q And with regard to Mr. Murray's company that you did work
 19 for, isn't it true that if the company has less than
 20 \$40 million under management, there is no SEC requirement to
 21 file these kind of reports?
 22 A I believe that's the case.
 23 Q Thank you. So in other words, would it be fair to state
 24 that for a company the size of Mr. Murray's company, these kind
 25 of compilations are voluntary, in terms of they can do it if

1 they want to, and if they don't want to, they don't really have
 2 to?
 3 A I do not think that is fair to say. It depends on the
 4 products they're trading, and who they're registered with. If
 5 he was trading any futures products, it's very possible that
 6 would have been a requirement with a different agency.
 7 Q You don't know if he was trading any futures, do you?
 8 A I would have to look at his brokerage statements in
 9 detail.
 10 Q Now, you were shown -- I don't remember the exact exhibit,
 11 but you were shown an email for from Jackie Melamed to
 12 Mr. Murray?
 13 A Uh-huh.
 14 Q All right. Your involvement, hands-on involvement in
 15 terms of Mr. Murray's -- the compilations that you have
 16 testified to, those were prepared -- strike that.
 17 You indicated that your hands-on involvement was the first
 18 six months, approximately --
 19 A Approximately, yes.
 20 Q -- of 2009. Correct?
 21 A Correct.
 22 Q And after that, you were supervised -- strike that.
 23 You reviewed work that other -- someone else did.
 24 Correct?
 25 A Correct.

1 Q And in this case, it would be Jackie Melamed. Correct?
 2 A Yes.
 3 Q Okay. And, I put two exhibits before you. The first --
 4 the thinner one (indicating), if you could look at the back, it
 5 has a number on it.
 6 A 540.
 7 Q All right. That appears to be emails between you and
 8 Mr. Murray during approximately the first six months of 2009.
 9 Correct?
 10 (Witness examines document)
 11 A Yes, it does.
 12 Q Okay. And then, the other exhibit, is it 241? I gave all
 13 my copies away.
 14 THE COURT: 541.
 15 THE WITNESS: 541.
 16 BY MR. DRESSLER:
 17 Q 541, I'm sorry. Those are emails between Jackie Melamed
 18 and Mr. Murray for the balance of the year. Correct?
 19 A Yes. They appear so.
 20 Q Okay. And, would it be fair to state that you don't have
 21 any specific memory of reviewing any of those particular
 22 emails?
 23 A Um, all of those would have been included with the source
 24 documentation.
 25 Q Uh-huh.

1 A So I can't say I remember the individual emails exactly,
 2 but I would have seen the documentation.
 3 Q So, are you saying you reviewed each and every email?
 4 A Yes, if it related to the accounting materials.
 5 Q Do you remember testifying earlier today that you -- you
 6 can't say that you reviewed every one of those emails?
 7 A Um, that is true. I cannot say that I saw every
 8 communication between the two of them. But if there was
 9 something that related to the financial statements, it would
 10 have been printed in hard copy and included with the file.
 11 Q All right. And with regard to Jackie Melamed's work that
 12 you reviewed, --
 13 A Uh-huh.
 14 Q -- can you give me an idea of an -- how many -- roughly,
 15 if you can, how many hours she would have spent to produce the
 16 statements that were prepared, end-of-the-year statements that
 17 were prepared for MNT?
 18 A That would depend on the amount of communication needed.
 19 But for the actual financial statements, after she had all of
 20 the information she would have needed for them, I would say
 21 probably one to two hours, on a monthly basis.
 22 Q At the time that you -- strike that.
 23 How long did Jackie Melamed work for CCS Services?
 24 A I don't know exactly, but I would approximate four to six
 25 years.

1 Q And does CCS Services still exist as a company?
 2 A Not to my knowledge.
 3 MR. DRESSLER: Thank you. Oh, one second.
 4 (Off-the-Record discussion between Defendant and
 5 Counsel)
 6 MR. DRESSLER: No further questions. Thank you.
 7 THE COURT: Okay, thank you.
 8 Anything on redirect?
 9 MR. FARNHAM: Briefly, Your Honor.
 10 REDIRECT EXAMINATION
 11 BY MR. FARNHAM:
 12 Q Ms. Moran, why did CCS Financial go out of business, if
 13 you know?
 14 A A lot of it had to do with the market conditions, and
 15 several companies losing quite a bit of money.
 16 Q Mr. Dressler asked about your hands-on involvement with
 17 this, and you testified that ended in about the middle of 2009?
 18 A It appears so.
 19 Q And then, your review continued until when?
 20 A It would have continued all the way through December,
 21 2009.
 22 Q Did it continue after that?
 23 A Not to my knowledge. I don't believe any further
 24 accounting was prepared.
 25 Q Why is that?

1 A Um, I can't say with certainty.
 2 Q Was Market Neutral Trading still a client of CCS Financial
 3 after that?
 4 A I do not believe so.
 5 Q If we could look briefly at Exhibit 140, Page 1.
 6 (Document displayed)
 7 Q And is this document, Page 1 of this exhibit, is this part
 8 of the material that you would have reviewed that Ms. Melamed
 9 initially prepared?
 10 A Yes.
 11 Q And what is the purpose of your review?
 12 A To make sure everything is accurate, and all of the
 13 necessary pieces of information are there, so no assumptions
 14 are made.
 15 Q How about checking for mistakes?
 16 A Yes.
 17 Q What types of mistakes?
 18 A It would have been any kind of entry mistakes, or any kind
 19 of transactional errors in the accounting transactions.
 20 Verifying anything that I saw that there was no solid answer to
 21 why it looked that way or why it was treated that way would
 22 have required additional information from Jackie to me.
 23 Q And I think Mr. Dressler asked how long that review would
 24 take, typically. How long do you think it would take in this
 25 case?

1 A I would say probably about an hour.
 2 Q And for the Monthly Rate of Return column there, is that
 3 part of the material that you would have reviewed to ensure
 4 that you thought Ms. Melamed did it right?
 5 A Yes.
 6 Q And according to the work that Ms. Melamed did and you
 7 reviewed, what was the monthly rate of return for Market
 8 Neutral Trading in -- for the year 2009?
 9 A -94.89 percent.
 10 Q And based on the review you did, is that the -- and is
 11 that CCS Financial's calculation of the loss to that fund?
 12 A Yes.
 13 MR. FARNHAM: Thank you.
 14 MR. DRESSLER: No questions.
 15 THE COURT: All right. Ms. Moran, you are excused.
 16 You may step down. Thank you.
 17 THE WITNESS: Okay.
 18 (Witness excused)
 19 THE COURT: Government's next witness?
 20 MR. FARNHAM: Yes, Your Honor. The Government calls
 21 Keena Willis, K-E-E-N-A, Willis.
 22 MR. DRESSLER: Your Honor, while she's coming in, I
 23 want to set up my computer. I have the exhibits on a disk. I
 24 don't have hard copies. So --
 25 THE CLERK: I'm sorry?

1 MR. DRESSLER: I'm going to set up my laptop.
 2 THE COURT: Go ahead.
 3 KEENA WILLIS,
 4 called as a witness for the Government herein, having been
 5 first duly sworn, was examined and testified as follows:
 6 THE CLERK: Please be seated, and state your name.
 7 Can you spell your last name?
 8 THE WITNESS: Sure. It's Keena Willis, W-I-L-L-I-S.
 9 THE COURT: Thank you, Ms. Willis.
 10 You may proceed, Mr. Farnham.
 11 MR. FARNHAM: Thank you.
 12 DIRECT EXAMINATION
 13 BY MR. FARNHAM:
 14 Q Good morning, Ms. Willis.
 15 A Good morning.
 16 Q Where do you work?
 17 A I work for GoDaddy.com.
 18 Q How long have you worked for GoDaddy.com?
 19 A Eleven years this week.
 20 Q And what is your position there?
 21 A I'm senior paralegal compliance manager.
 22 Q And generally, what are your job responsibilities in that
 23 position?
 24 A Generally, I manage the Compliance Department. And the
 25 Compliance Department receives and processes document requests.

- 1 Q When you say "document requests," what do you mean?
 2 A Orders, subpoena -- court, court requests, subpoenas,
 3 search warrants. That sort of thing.
 4 Q And, what does GoDaddy.com do in response to those
 5 requests? Or what do you do in response to those requests?
 6 A We review the requests, gather the responsive information,
 7 compile them, and then prepare them for production. And then
 8 provide them to the requesting parties.
 9 Q And where is the office that you work out of?
 10 A I work out of the Scottsdale, Arizona office.
 11 Q If you could just tell us, what's the business of
 12 GoDaddy.com?
 13 A The business of GoDaddy is primarily a domain name
 14 registrar. Basically, GoDaddy provides tools and products that
 15 allow individuals or entities the ability to have a presence on
 16 the internet.
 17 Q Posting websites?
 18 A Yes.
 19 Q And what about email, what does GoDaddy.com do for --
 20 A We do provide email service, yes.
 21 Q And, just briefly, what is a domain name?
 22 A A domain name is a combination of letters that allows you
 23 to have an address. It's basically the equivalent to a home
 24 address. Like a home street address, bullet on the internet.
 25 Q And can a domain name pertain to both a website and email?

- 1 A You can have an email address with -- that contains the
 2 domain name, yes.
 3 Q And would GoDaddy.com provide customers with both of those
 4 services?
 5 A We can, yes.
 6 MR. FARNHAM: I would like to approach with a
 7 document.
 8 THE COURT: Yes.
 9 BY MR. FARNHAM:
 10 Q Ms. Willis, I have handed you what has been marked as
 11 Exhibit 67. Do you recognize that document?
 12 (Witness examines document)
 13 A Yes. It's documents that we produced.
 14 Q And what is it?
 15 A It is a production containing customer account records.
 16 Q And, at the very top of that document there's a shopper ID
 17 number. What is a shopper ID number?
 18 A The shopper ID number is [REDACTED].
 19 Q And what does that represent?
 20 A Same as a customer number. We use shopper number or
 21 shopper ID or customer number.
 22 Q Do the pages of the document that I handed you, do they
 23 all pertain to that shopper ID or customer number?
 24 A Yes.
 25 Q And are these records from GoDaddy's, GoDaddy.com records?

- 1 A Yes, they are.
 2 Q And are these kept in the normal course of GoDaddy.com's
 3 operation?
 4 A Yes, they are.
 5 MR. FARNHAM: Your Honor, I would offer Exhibit 67
 6 into evidence.
 7 THE COURT: Any objection?
 8 MR. DRESSLER: No objection.
 9 THE COURT: Admitted.
 10 (Trial Exhibit 67 received in evidence)
 11 (Document displayed)
 12 MR. FARNHAM: Your Honor, if I could, I would like to
 13 publish the first page of Exhibit 67.
 14 THE COURT: Okay.
 15 MR. FARNHAM: And if we could zoom in on the top
 16 portion that has the information.
 17 BY MR. FARNHAM:
 18 Q What is this page, Ms. Willis?
 19 A This is the contact information for the -- for Shopper
 20 [REDACTED].
 21 Q And what is the customer name for this account?
 22 A The customer name is Richard Jones, the company is J.M.
 23 and Associates.
 24 Q And what's the address there?
 25 A Is -- the address is [REDACTED], Third

- 1 Floor, Wilmington, Delaware 19803.
 2 Q For that information how does GoDaddy.com get that
 3 information?
 4 A It is provided to us by the customer.
 5 Q If you look at the last line of that information, it says
 6 "Date Created." What does that mean?
 7 A Typically that means the date that the account was created
 8 or when the shopper or customer made the first purchase or
 9 opened their account.
 10 Q If we could look at Page 2 of this document?
 11 (Document displayed)
 12 Q What is this page?
 13 A Pardon me?
 14 Q What is this page?
 15 A This page is a list of the domain names that -- and their
 16 statuses that have been and were at the time of production
 17 associated with this customer account.
 18 Q With this customer account, how many domain names were
 19 registered?
 20 A For this at the time of production was one.
 21 Q And what is the domain name?
 22 A Jonesmoore.com.
 23 Q I want to ask about some of the other materials that are
 24 in this document. If we could go to Page 22?
 25 (Document displayed.)

1 Q I apologize. Let me go back to Page 3 just very quickly.
 2 MR. FARNHAM: If we could zoom in on just the top
 3 segment there?
 4 (Document displayed)
 5 BY MR. FARNHAM
 6 Q Is this information regarding the domain name associated
 7 with this account?
 8 A Yes, it is.
 9 Q What does the Create Date line mean?
 10 A The Create Date is when the domain name was first
 11 registered.
 12 Q And what is that date here?
 13 A That date is December 6, 2008.
 14 Q If we could move to Page 22?
 15 MR. FARNHAM: I'd like to zoom in on the last line.
 16 (Document displayed.)
 17 BY MR. FARNHAM
 18 Q But first, generally, what is this page of this document?
 19 A This is customer notes. It is notations made in the
 20 customer account, the shopper account, that identifies movement
 21 in the account, something that the customer did or something
 22 that GoDaddy did for the customer or to the account.
 23 Q That last line, what does that last line in this document
 24 tell you?
 25 A It's a note.

1 Q Looking at the one that starts July 16, 2010?
 2 A Yes.
 3 Q What is the -- and that appears to be the date.
 4 The second column, what is that -- what does that mean?
 5 What does that mean happened on that date?
 6 A That the email address david@jonesmoore.com was created.
 7 Q And what does "created" mean?
 8 A What does "created" mean? That the customer asked for the
 9 email address david@jonesmoore.com.
 10 Q And then if we look at Page 29?
 11 (Document displayed)
 12 Q In the middle there is a row that starts December 6, 2008,
 13 7:24 a.m. And I apologize, sometimes paper is easier to look
 14 at.
 15 I'm asking about that line that says "Created Email
 16 Address richard@jonesmoore.com." Do you see that line?
 17 A Yes.
 18 Q What does that indicate to you happened on December 6,
 19 2008?
 20 A That the customer logged in and created the email address
 21 jones at -- excuse me, richard@jonesmoore.com.
 22 Q If we could go to Page 40?
 23 (Document displayed)
 24 Q What is Page 40 of this document?
 25 A Page 40 is a capture of the IP addresses, essentially when

1 the customer logs in to their email address.
 2 Q When you say "log in to the email address," what does that
 3 mean?
 4 A When the customer goes through the GoDaddy interface,
 5 enters their customer account and then their email address.
 6 Q So would this capture every time a customer accessed their
 7 email?
 8 A Through the GoDaddy.com website, yes.
 9 Q What about other ways, iPhones or --
 10 A We don't capture that.
 11 Q What is the IP Address column here?
 12 A The IP Address is the capture of the IP addresses that
 13 logged in at the time.
 14 Q Whose IP address does that column represent?
 15 A Whoever has access to the customer account.
 16 Q If we could look at Page 42?
 17 MR. FARNHAM: And zoom in on a row about halfway down
 18 that starts "2011-01-01 14:02."
 19 MR. DRESSLER: I'm sorry. What page is this?
 20 MR. FARNHAM: 42.
 21 MR. DRESSLER: 42.
 22 BY MR. FARNHAM
 23 Q And do you see the 14:02 row I'm referring to?
 24 A Yes. 14:02:57?
 25 Q Yes.

1 A Yes.
 2 Q And what's the IP address that's listed there?
 3 A The IP says is 71.202.117.49.
 4 Q And what does that line indicate to you?
 5 A That IP address 71.202.117.49 accessed the account on
 6 January 1st, 2011 at 14:02:57 hours.
 7 Q And if we could just go to Page 44?
 8 MR. FARNHAM: And zoom in on the last three lines on
 9 that page.
 10 (Document displayed.)
 11 Q Those three last lines, what's the IP address there?
 12 A 71.202.117.49.
 13 Q And what do those last three lines indicate to you about
 14 this account?
 15 A That IP address accessed the account on January 1, 2011 at
 16 14:06:33, 14:08:03 and 17:36:59.
 17 Q If we could go to Page 52 of this document?
 18 (Document displayed.)
 19 Q What is this page of Exhibit 67?
 20 A This is a receipt or invoice for a purchase.
 21 Q And what's the customer for this invoice?
 22 A The customer number or the --
 23 Q Well, let me ask this: Is it the same customer that we
 24 have been talking about --
 25 A Yes.

1 Q -- at the beginning?
 2 A Yes.
 3 Q And can you tell in this document how the -- how this bill
 4 was paid?
 5 A Yes, I can. It's not on the screen, but it was paid with
 6 a credit card.
 7 Q How can you tell that?
 8 A In the middle of the page there is a notation that
 9 captures the IP address that made the transaction, and it shows
 10 the "Paid By Credit Card" and then the "American Express." The
 11 expiration date is October, 2013 and the credit card number
 12 ending in 2039.
 13 Q So there is a line that says "Paid Credit Card." Do you
 14 see that?
 15 A Yes.
 16 Q And what's underneath that?
 17 A It's a name of the credit card, I believe -- oh, actually
 18 it might be -- that's a name on the credit card.
 19 Q What's the service that this credit card was used to pay
 20 for, or what product?
 21 A What product was --
 22 Q Yes.
 23 A -- was purchased?
 24 It was a registration, actually, a domain name renewal for
 25 jonesmoore.com. It was a two-year renewal.

1 Q And, briefly, Page 255.
 2 MR. FARNHAM: If we could zoom in on the credit card
 3 information?
 4 (Document displayed.)
 5 BY MR. FARNHAM
 6 Q Is this page also a receipt for a paid bill?
 7 A Yes, it is.
 8 Q And what's the credit card that was -- tell me about the
 9 credit card that was used for this one?
 10 A Credit card is American Express expiring August, 2010.
 11 Last four digits of the credit card is 2021 and it was for a
 12 renewal, a one-year renewal for jonesmoore.com.
 13 Q What was the name on that credit card that was used?
 14 A Pareto Capital.
 15 MR. FARNHAM: If I could approach with another
 16 exhibit?
 17 THE COURT: Yes.
 18 (Whereupon document was tendered to the witness.)
 19 BY MR. FARNHAM
 20 Q Ms. Willis, you have been handed Exhibit 68. Do you
 21 recognize that?
 22 A Yes.
 23 Q Is this GoDaddy records for a different shopper I.D. and
 24 customer?
 25 A Yes, it is.

1 Q Who is the customer that these records relate to?
 2 A The Contact Information provides Market Neutral Trading,
 3 LLC as the first, middle and last name, and as the company name
 4 as well, Market Neutral Trading, LLC.
 5 Q And is Exhibit 68 documents from the records of
 6 GoDaddy.com?
 7 A Say that again.
 8 Q Is -- is Exhibit 68 a document from the records of
 9 GoDaddy.com?
 10 A Yes.
 11 MR. FARNHAM: Your Honor, I would offer Exhibit 68
 12 into evidence.
 13 THE COURT: Any objection?
 14 MR. DRESSLER: No objection.
 15 THE COURT: Admitted.
 16 (Trial Exhibit 68 received in evidence.)
 17 BY MR. FARNHAM
 18 Q If we could go to Page 24?
 19 MR. FARNHAM: I would like to publish that.
 20 THE COURT: All right.
 21 (Document displayed)
 22 BY MR. FARNHAM
 23 Q What is this page?
 24 A This is similar to the pages from the other. It shows the
 25 email login for jmurray@marketneutraltrading.com.

1 Q Is this email address, is that an address that's being
 2 provided by GoDaddy.com?
 3 A Yes, it is.
 4 Q And does this indicate the logins like you testified
 5 before?
 6 A Yes.
 7 Q And if you could look at the last line of that? What's
 8 the date and log- -- and IP address for that login?
 9 A The last one is 71.202.117.49.
 10 MR. FARNHAM: I would like to approach with another
 11 exhibit?
 12 THE COURT: Okay.
 13 (Whereupon document was tendered to the witness.)
 14 BY MR. FARNHAM
 15 Q I'm handing you what's been marked as Exhibit 69. And if
 16 you could tell me if you recognize that?
 17 A Yes.
 18 Q What is that document?
 19 A It is GoDaddy records for shopper [REDACTED]
 20 Q What's the customer name on that?
 21 A First name is listed as Pareto, last name Capital, LLC.
 22 Company name is Pareto Capital, LLC.
 23 MR. FARNHAM: I would move Exhibit 69 into evidence.
 24 THE COURT: Any objection?
 25 MR. DRESSLER: No objection.

1 THE COURT: Admitted.
 2 (Trial Exhibit 69 received in evidence.)
 3 MR. FARNHAM: And I would like to publish it, your
 4 Honor.
 5 THE COURT: All right.
 6 (Document displayed)
 7 MR. FARNHAM: And if we could zoom in on the top?
 8 (Document enlarged.)
 9 BY MR. FARNHAM
 10 Q What's the email address associated with this account?
 11 A The email address is sales@paretomusic.com.
 12 Q And when was this account created?
 13 A February 17, 2004 at 11:05:22 a.m.
 14 Q And if we could look at Page 3 of this Exhibit?
 15 (Document displayed)
 16 Q What is this document?
 17 A What is this --
 18 Q What is this page? I'm sorry.
 19 A This page is the domain contact information, the domain
 20 information for the domain name paretomusic.com.
 21 Q And if you look at the -- they all look the same. Why
 22 don't we look at the Registrant Contact portion of this?
 23 A Okay.
 24 Q What's the name of the company that's in this Registrant
 25 Contact information?

1 A Registrant Contact is Pareto Capital, LLC.
 2 Q And what's the address that's listed?
 3 A 4040 Civic Center Drive, Suite 200.
 4 Q Where does GoDaddy.com get this information?
 5 A This would be provided by the customer.
 6 MR. FARNHAM: If I could approach with another
 7 exhibit?
 8 THE COURT: All right.
 9 (Whereupon document was tendered to the witness.)
 10 BY MR. FARNHAM
 11 Q Ms. Willis, I've handed you what's went marked as Exhibit
 12 70. Do you recognize that document?
 13 A Yes, I do.
 14 Q What is that?
 15 A It's customer -- GoDaddy customer information for Shopper
 16 I.D. 25041913.
 17 Q And are these GoDaddy.com records?
 18 A Yes, they are.
 19 MR. FARNHAM: I would offer Exhibit 70 into evidence.
 20 THE COURT: Any objection?
 21 MR. DRESSLER: No objection.
 22 THE COURT: Admitted.
 23 (Trial Exhibit 70 received in evidence.)
 24 BY MR. FARNHAM
 25 Q If we could look briefly at the first page of Exhibit 70?

1 MR. FARNHAM: And zoom in on the top portion.
 2 (Document displayed)
 3 BY MR. FARNHAM
 4 Q Ms. Willis, what is the login name for this shopper I.D.?
 5 A It is hfundadministration.com -- sorry, just
 6 administration, no dot com.
 7 Q And what's the -- who's name is the account under?
 8 A First name H. Middle name F. Last name Administrators.
 9 Company is H.F. Administrators, Ltd.
 10 Q And what's the email address that was provided for this
 11 account?
 12 A Email address is gary@hfundadministration.com.
 13 Q And what date was this created?
 14 A December 14, 2008.
 15 Q And, I'm sorry. What does that date reference again?
 16 A This is the date the customer created the account.
 17 Q If we could look at Page 2?
 18 (Document displayed)
 19 Q What does Page 2 of this document show?
 20 A Page 2 provides the list of domain names that were
 21 associated with this customer account.
 22 Q What does the Created column mean?
 23 A Created is the date the domain name was registered.
 24 Q Are these domain names that were associated with that
 25 account?

1 A Yes.
 2 Q What's the first one there?
 3 A What is the first --
 4 Q The first domain name? I'm sorry.
 5 A The first domain name is hfundadministration.com.
 6 Q And then what about the second domain name?
 7 A Anderson-assoc -- A-S-S-O-C -- ltd.com.
 8 Q And when was hfundadministration.com created?
 9 A December 14, 2008.
 10 Q And how about anderson-assoc-limited.com?
 11 A That is April 17, 2010.
 12 Q If we could look at Page 13 for a moment?
 13 MR. FARNHAM: And if we could zoom in about a third
 14 of the way down?
 15 (Document displayed.)
 16 BY MR. FARNHAM
 17 Q February 5, 2011, 7:22 a.m.? What is this portion of the
 18 document? What is this page?
 19 A This is the customer notes, activity in the customer
 20 account.
 21 Q Activity by who?
 22 A GoDaddy or a customer themselves.
 23 Q If you could look at the line that starts "February 5,
 24 2011, 7:22 a.m." You see that one?
 25 A Yes.

1 Q There is -- in that line it says "Client IP." What does
2 that mean?
3 A This is the IP address that was captured when the
4 customer, somebody with access to the customer account, logged
5 into the account.
6 Q Do you know what activity occurred at that time?
7 A They entered the account, looks like it was -- they
8 entered the email area of the customer account.
9 Q What was the IP address used to access that?
10 A The IP address is 71.202.117.49.
11 Q If we could go to Page 37 of this document?
12 (Document displayed.)
13 Q And I want to talk about some of these email addresses in
14 here, but, first, what is this page?
15 A This is a list of email addresses associated with the
16 account.
17 Q And if we could look at the second one on that list? What
18 is that email address that's associated with this account?
19 A The second one is dlowe@anderson-assoc-ltd.com.
20 Q And what about the second email address?
21 A Dlowe@hfundadministration.com.
22 Q And about a third of the way down there is one that starts
23 "jmurray." Do you see that?
24 A Yes.
25 Q I'm sorry, two-thirds of the way down.

1 What -- read that one for me?
2 A jmurray@nanóquantsolutions.com.
3 Q Is that also an email address that was associated with
4 this customer I.D.?
5 A Yes.
6 Q If we could look at Page 46?
7 (Document displayed)
8 Q What is this page of the document?
9 A It is the login activity for eve@hfundadministration.com.
10 Q And what is eve@hfundadministration.com?
11 A An email address that was associated with this customer
12 account.
13 Q If we could look at the bottom, couple of the bottom
14 entries here. The second from the bottom and the fourth from
15 the bottom, what do those two lines indicate to you?
16 A They indicate that on February 5th, 2011 at 9:07:13 hours
17 IP address 71.202.117.49 logged into the account.
18 And, again, on February 9, 2011, 20:48:37 hours the IP
19 address 71.202.117.49 logged in.
20 Q If we could turn to Page 63?
21 (Document displayed)
22 Q Is this a payment receipt similar to the ones we've looked
23 at before?
24 A Yes, it is.
25 Q And what's this -- what's being -- what was the product

1 that was purchased with this receipt?
2 A The product is the deluxe email account, and a group
3 calendar, and mini online file folder.
4 MR. FARNHAM: And if we could zoom in to the credit
5 card information here?
6 (Document enlarged.)
7 BY MR. FARNHAM
8 Q What was the credit card credit card used to pay for this?
9 A An Amex ending in 3029. Name was Pareto Capital.
10 MR. FARNHAM: May I approach with the last exhibit,
11 your Honor?
12 THE COURT: All right.
13 (Whereupon document was tendered to the witness.)
14 BY MR. FARNHAM
15 Q Ms. Willis, you have been handed what's been marked as
16 Exhibit 71. Do you recognize that document?
17 A Yes, sir.
18 Q And what is that?
19 A It is GoDaddy account information for shopper I.D.
20 48348315.
21 Q And are these GoDaddy.com records related to this account?
22 A Yes, they are.
23 MR. FARNHAM: I would offer Exhibit 71 into evidence.
24 THE COURT: Any objection?
25 MR. DRESSLER: No objection.

1 THE COURT: Admitted.
2 (Trial Exhibit 71 received in evidence.)
3 MR. FARNHAM: And if I may publish, your Honor?
4 THE COURT: Yes.
5 BY MR. FARNHAM
6 Q I would like to first look at Page 1.
7 (Document displayed)
8 MR. FARNHAM: And if we could zoom in on the top
9 information there.
10 (Document enlarged.)
11 BY MR. FARNHAM
12 Q What's the customer name for this account?
13 A First name is listed as MNT. Middle, Master. Last name,
14 Fund, Ltd. The company name is MNT, Master Fund, Limited.
15 Q And what address is listed for this client, customer?
16 A Harbour Centre, 42 North Church Street, P.O.Box 1348,
17 Grand Cayman.
18 Q And when was this account created?
19 A This account was created December 7th, 2011.
20 Q And if we could look at Page 24 of this document?
21 (Document displayed)
22 Q What is this Page of Exhibit 71?
23 A This page is a list of the email addresses that were
24 associated with this customer account.
25 MR. FARNHAM: If you could zoom out for a second?

1 (Document displayed.)
 2 BY MR. FARNHAM
 3 Q Why is this in a different format than some of the other
 4 ones that we saw?
 5 A Just changes in the way we captured the data.
 6 Q If we could look at the email addresses that are
 7 associated with account? Tell me what this box is?
 8 A This is a the box containing their email addresses and the
 9 status at the time of production.
 10 Q If you would read for me the email addresses that start
 11 halfway down? "James" is the first one. What is -- excuse me.
 12 What is that email address?
 13 A james@event-trading-fund.com.
 14 Q And the second one, the one, right after that?
 15 A james.m@event-trading-fund.com.
 16 Q And the one after that?
 17 A jim@event-trading-fund.com.
 18 Q What does the "Active" in the account status mean for
 19 these?
 20 A That the email addresses were active. They were
 21 functioning.
 22 Q And they have been set up on this account?
 23 A Yes.
 24 Q Thank, your Honor. That's all.
 25 THE COURT: All right. Any cross?

1 CROSS EXAMINATION
 2 BY MR. DRESSLER
 3 Q All right. I ask you to look at Exhibit 67, starting at
 4 Page 20.
 5 A Twenty? Two, zero?
 6 Q Yes.
 7 THE COURT: You want that displayed?
 8 MR. DRESSLER: Yes. Thank you.
 9 (Document displayed)
 10 BY MR. FARNHAM
 11 Q And this page indicates what?
 12 A It indicates access and notes in the customer account.
 13 Q And if we could go to Page 21?
 14 (Document displayed)
 15 Q If you look at the first line on the top of Page 21, the
 16 date is 1/19/2011?
 17 THE COURT: No.
 18 BY MR. DRESSLER
 19 Q I'm sorry. Page 6. Exhibit 67, Page 6. I'm looking at
 20 the wrong set of numbers.
 21 (Document displayed)
 22 THE COURT: 6, Page 6?
 23 MR. DRESSLER: Page 6. My apologies.
 24 A There's a couple different numbers on there. I did the
 25 same thing earlier.

1 BY MR. FARNHAM
 2 Q That indicates -- does that indicate that on
 3 1/19/2011 someone entered the account?
 4 A Yes.
 5 Q Okay. And that would be a customer, correct?
 6 A Somebody with access to the customer account, yes.
 7 Q And the IP address of the computer that was used to enter
 8 the account on that date is on that same line, correct?
 9 A Yes, it is.
 10 Q If you look at that page, there were -- the entries on
 11 that page came from a number of different computers. Would
 12 that be a correct statement based on the IP addresses?
 13 A There are two -- two IP addresses that accessed that
 14 account on that day.
 15 Q Okay.
 16 A Or on that page, I should say.
 17 Q Right. And I'm going to try and make this as quick as
 18 possible.
 19 But on Page 22, if you look at that -- I'm sorry.
 20 A On GD-22?
 21 Q I'm sorry. On Page 7, Page 7. All right. I apologize.
 22 Exhibit 67, Page 7 there are a bunch of entries and dates, and
 23 they are all --
 24 THE COURT: Page 7, not 17.
 25 MR. DRESSLER: 7.

1 THE COURT: She's got the wrong page displayed.
 2 BY MR. DRESSLER
 3 Q Page 7, same thing. Someone with the password to get into
 4 the account entered the account on those dates, correct?
 5 A Yes.
 6 Q And, again, the purpose appears to be checking for emails?
 7 A I don't know what the purpose is.
 8 Q Okay. Well, when you check into -- use a password to get
 9 into your account, what kind of tasks can you do making entry
 10 into the account?
 11 A Into the customer account?
 12 Q Yes.
 13 A Any number of things. Anything from entering your hosting
 14 account, your email addresses, making changes to your account,
 15 registering domain names, changing contact information.
 16 We try to capture -- we actually capture quite a bit of
 17 entries. These indicate that they logged into the email
 18 portion of the account, but it doesn't indicate exactly what
 19 they did in that.
 20 Q So if -- if they were checking to see what emails were
 21 sent to, in this case Jones Moore & Associates, that would be
 22 how you do it?
 23 A One of the ways.
 24 Q Okay.
 25 A Yes.

1 Q And -- all right. Now, Page 8. If you look at the last
2 entry on Page 8, it says:
3 "Orion Email_Remove_Pack. Remove email address
4 richardjones@jones -- richard@jonesmoore.com."
5 Does that indicate that -- what does that indicate, if you
6 can tell me?
7 A Sure. That the email address was deleted.
8 Q Okay. And the Orion in front of that, do you know what
9 that means?
10 A It's one of our servers.
11 Q One of your servers?
12 A Yes.
13 Q Have you reviewed -- before you testified today, did you
14 review all of Exhibit 67?
15 A Yes.
16 Q Okay. And if we could go to Page 22 of Exhibit 67, I
17 believe at the bottom, the bottom line there indicates, "Create
18 email address david@jonesmoore." Correct?
19 A Yes.
20 Q Page 67, Page 23, second line, again -- and that would be
21 7/16/2010, and it says, "Remove email address
22 jason@jonesmoore."
23 A Yes.
24 Q So time prior to July 16, 2010 there was a Jason at Jones
25 Moore email?

1 A Yes.
2 Q And there are some other entries on that. Are those
3 entries that were made by employees of GoDaddy?
4 A Which entries?
5 Q On that same page, 67?
6 A Yes. There are some, yes.
7 Q Okay. Now, if you could go to -- well, let me ask you
8 this generally, all right?
9 When you open a domain name account with GoDaddy, you get
10 a domain name, correct, whatever domain -- in this case Jones
11 Moore & Associates?
12 A If you wish, yes.
13 Q Okay. And if you want to set up an actual website that
14 goes with that domain name, does GoDaddy do that?
15 A Do we --
16 Q Do you set up -- in other words, assuming that there was a
17 website with pictures and information and names in a certain
18 format, could the customer hire GoDaddy to help them set up
19 that website?
20 A To create the website?
21 Q Yes.
22 A Yes.
23 Q Okay. And is it also possible that someone could just, if
24 they had the technical skills -- which I would love to have
25 because if I did, I would set one up, but I don't.

1 Could someone with the technical skills set up their own
2 website in, you know, whatever format they wanted?
3 A Yes.
4 Q Can you tell from these records, assuming a website was
5 set up, a Jones Moore website was -- the actual website was set
6 up, can you tell when that occurred or what entry -- would this
7 document contain information as to when an actual website was
8 set up?
9 A I would have to --
10 Q Could you? If you don't mind...
11 THE COURT: While she's doing that, Mr. Dressler, how
12 much longer do you have? Because -- if you're going to take
13 awhile, we're going to take a break.
14 MR. DRESSLER: It depends, but it might be better to
15 take a break now so she can have time to review that. I think
16 it might be a more efficient use of time.
17 THE WITNESS: I actually do have the answer.
18 BY MR. DRESSLER
19 Q Okay.
20 A On December 6th, 2010, Exhibit 67, Page 50.
21 Q December?
22 THE COURT: December 6, 2010.
23 (Document displayed)
24 BY MR. DRESSLER
25 Q So between the -- thank you. All right. Maybe I'll

1 finish with her then.
2 So between the domain name was obtained in 2008, correct?
3 A Yes. December 6, 2008.
4 Q But there was no website until 2010?
5 A I don't know that. You don't have to host a -- host your
6 website with us. You can register your domain name and host on
7 the server in your garage, quite honestly.
8 Q So maybe I misunderstood. On Page 50, it indicates that a
9 website was set up?
10 A It indicates that there was a hosting account created or a
11 hosting account purchased for jonesmoore.com, which allowed the
12 ability to store the data that would create the website.
13 Whether there was a -- there was a website or not, I do
14 not know. There would be no way for me to know whether or not
15 there was a specific site active on the internet for
16 jonesmoore.com in any of our records.
17 Q Okay. So, but if -- before -- is there anything in those
18 records prior to December 6, 2010 that would indicate one way
19 or another whether there was a website?
20 A No.
21 Q And so when you say -- I'm just trying to understand.
22 December 6th, 2010, what does that reflect?
23 A It reflects there was a hosting account created. The
24 customer actually assigned it an IP -- excuse me, a domain
25 name. And the domain name is jonesmoore.com.

1 Q Okay. So before that date, was there a domain name
2 associated with this account?
3 A Yes. Jonesmoore.com.
4 MR. DRESSLER: Maybe we'll take a break because I'm
5 not -- I don't think I'm -- I need to clarify what you're
6 saying.
7 THE COURT: All right. Let's go ahead and take a
8 15-minute break. We'll see you in 15 minutes.
9 (Jury exits courtroom at 10:27 a.m.)
10 THE COURT: All right. We'll see you in 15 minutes.
11 (Whereupon there was a recess in the proceedings
12 from 10:28 a.m. until 10:42 a.m.)
13 MR. DRESSLER: I'm trying to finish my examination of
14 this witness and I'm just going to have to -- I don't
15 understand what the answers to the last questions were and I'm
16 going to try and clarify that and I'm going to stop.
17 THE COURT: All right.
18 MR. DRESSLER: I just wanted to let the Court know.
19 THE COURT: All right. There is a question from the
20 jury, but without the defendant here, I'm -- I think we should
21 wait.
22 So they are waiting for him, is that right?
23 MS. HARRIS: Your Honor, may the witness be excused
24 while the Court reads the question, or does it not matter?
25 THE COURT: Doesn't pertain to this witness.

1 MS. HARRIS: Okay.
2 (Defendant enters the courtroom, in custody.)
3 THE COURT: Okay. Here is a question from Juror
4 No. 2, Ms. Deleon:
5 "Can we know what Mr. Dressler's -- or what Mr.
6 Dressler objection was to Tina Moran's testimony
7 regarding financial statements from CCS? If so, what
8 was it?"
9 That's exactly what I instructed them, that they are not
10 to be concerned with -- well, I guess they hear an objection,
11 but here we had pre-cleared that.
12 So I think I should answer it and say that the basis, the
13 nature of the objection is not a concern of the jury. It's
14 something that the Court has ruled on. And a reminder that
15 when there is an objection, objections are not evidence and you
16 are not to guess as to what the answer might have been.
17 MS. HARRIS: That's fine, your Honor.
18 THE COURT: Is that all right, Mr. Dressler?
19 MR. DRESSLER: Yes, your Honor.
20 THE COURT: Okay. I will answer that as soon as they
21 come back and you can resume your cross.
22 So let's bring the jury back.
23 (Jury enters courtroom at 10:47 a.m.)
24 THE COURT: Okay. Everyone may be seated, and
25 welcome back, ladies and gentlemen.

1 Before we resume the cross examination, I did get a note
2 from one of you asking about the nature of an objection that
3 was posed, and I -- let me answer it this way.
4 The nature of any objection and the ruling on the
5 objection is really a matter for the Court. There are
6 complicated Rules of Evidence.
7 I have here a manual on evidence (indicating). As you can
8 see, it's several hundred pages thick. If you're interested,
9 after this trial I can give you a tutorial on evidence. But
10 for now that is a matter for the Court's concern and you need
11 not be concerned with the nature of an objection or the
12 arguments for and against an objection.
13 The critical question is whether I overrule or sustain the
14 objection. And, again, any objection made is not evidence and
15 you are not to guess. If I sustain an objection, you're not to
16 guess at what the answer might have been. I think I gave that
17 instruction earlier.
18 So with that explanation, why don't we continue?
19 Mr. Dressler?
20 MR. DRESSLER: Yes.
21 BY MR. DRESSLER
22 Q If we could go back to page -- Exhibit 67, Page 21.
23 (Document displayed)
24 Q And at the bottom of that page -- we looked at it before,
25 but I just want to try and clarify here.

1 At the bottom of the page it says "Web Hosting," correct?
2 A Yes, at the bottom. Bottom entry, yes.
3 Q All right. It says 7/26/2010 and 5:33, correct?
4 A Yes.
5 Q Okay. And then directly above that same date it says:
6 "Database, Jones Moore. Created for jonesmoore.com."
7 Do you see that?
8 A Yes.
9 Q And what -- what does that mean to you, "Database,
10 jonesmoore. Created for jonesmoore"?
11 A That a -- inside the hosting account, a file by the name
12 of "jonesmoore" was created in the hosting account.
13 Q And could that file have been an actual website with
14 pictures and things like that on it?
15 A Could it have been?
16 Q Yes.
17 A Not to my knowledge.
18 Q Again, the bottom line where it says "Web Hosting," to the
19 best you can, what does that mean to you in terms of what you
20 see?
21 A What does the note say?
22 Q What does -- the note "Web Hosting," what does that mean?
23 A The note itself shows that a customer utilizing IP address
24 188.27.148.151 on July 26th, 2010 at 5:33:37 a.m. accessed
25 their account, entered their account for web hosting.

1 Q What I'm saying is: What does the term "Web Hosting"
2 actually mean? "For Web Hosting?"
3 A The "Web Hosting" is the area in the customer account for
4 web hosting.
5 Q Could that indicate setting up an actual website with
6 pictures and information on it?
7 A No, that does not.
8 Q Is there anything, any entry with regard to the series of
9 entries we have been looking at here, you know, pages of which
10 Exhibit 67, Page 21 is, is there anything on any of those
11 entries that would indicate when an actual website with
12 information that people browsing the internet would see?
13 A No.
14 Q Okay. So is there any other document that GoDaddy has
15 that's been produced in this case this would indicate when a
16 website -- strike that.
17 Is there anything that -- in these documents that
18 indicates, in fact, a website was set up?
19 A Not to my knowledge.
20 Q Okay. So in terms of Go Daddy's knowledge of what was
21 done with the domain name, GoDaddy doesn't know whether a
22 website, in fact, was set up; and if it was, when it was set
23 up?
24 Would that be a fair statement?
25 A We wouldn't be able to tell when it was live on the

1 internet for people to see.
2 Q What does that -- I know we're talking a different
3 language here, but --
4 A I could create a website and put it on my hosting account,
5 but until I tell it to be active and live to the internet, you
6 won't see it.
7 Q Okay. And does GoDaddy have records that can tell if
8 there was a website when it went live? That's I guess what I'm
9 asking?
10 A To my knowledge, no.
11 Q I saw somewhere in here a notation that said "DNS Server."
12 Do you know what that means?
13 A Yes.
14 Q What does that mean?
15 A I was going to tell you the -- the words that go along
16 with DNS, but I can't -- it's not on coming to me right now.
17 DNS is basically how -- where you point the traffic going
18 to a particular domain name. So where -- if I type in
19 "kwillis.com," I tell the DNS to go to a certain place that
20 shows where my content is or where I want it to point. I can,
21 quite honestly, forward it to any domain name on the web.
22 Q So you can forward your website or information in your
23 website?
24 A My domain name.
25 Q Oh, your domain name, okay. All right. Thank you.

1 THE COURT: Anything on redirect?
2 MR. FARNHAM: A few questions, your Honor.
3 THE COURT: Okay.
4 REDIRECT EXAMINATION
5 BY MR. FARNHAM
6 Q Ms. Willis, if a domain name is registered through
7 GoDaddy.com, where could it be hosted?
8 A Anywhere.
9 Q And are there other services that provide hosting other
10 than GoDaddy.com?
11 A Yes.
12 Q And so does anything in the records you see indicate that
13 there was no website at the domain name jonesmoore.com prior to
14 the time that there was a hosting account.
15 (Brief pause.)
16 Q Sorry. Let me try to ask that again.
17 We looked at documents that showed a hosting account was
18 created for that customer, correct?
19 A Yes.
20 Q And you testified that that didn't -- that didn't tell
21 you -- even that didn't tell you if a website was live for the
22 public, right?
23 A Correct.
24 Q Now, is there anything in the information that you looked
25 at about that web hosting service that was purchased that would

1 tell you when or if a jonesmoore.com website was available to
2 the public?
3 A No. Quite honestly, it could have been before that.
4 Q Thank you.
5 MR. DRESSLER: No further questions.
6 THE COURT: All right. Thank you, Ms. Willis. You
7 may step down. You're excused.
8 (Witness excused.)
9 THE COURT: The government's next witness.
10 MS. HARRIS: Thank you, your Honor. The United
11 States calls Jody Payne.
12 JODY PAYNE,
13 called as a witness for the Government herein, having been
14 first duly sworn, was examined and testified as follows:
15 THE WITNESS: I do.
16 THE CLERK: Please state your name, and spell your
17 last name, please?
18 THE WITNESS: Yes. Jody Payne, P-A-Y-N-E.
19 DIRECT EXAMINATION
20 BY MS. HARRIS
21 Q Good morning, Ms. Page. Where do you work?
22 A I work at the University of Arizona.
23 Q Where is that located?
24 A In Tucson, Arizona.
25 Q What do you do there?

1 A My title is Assistant Registrar.
 2 Q What are your general duties and responsibilities as
 3 Assistant Registrar?
 4 A I oversee student athlete academic eligibility for
 5 certification, as well as transfer credit and graduation
 6 services.
 7 Q Do your duties include searching for records in response
 8 to document subpoenas?
 9 A Yes.
 10 Q How long have you worked for the University of Arizona?
 11 A Just over six years.
 12 Q Does the University of Arizona maintain scholastic records
 13 of all students who attended the university?
 14 A Yes.
 15 Q Do your responsibilities include overseeing the
 16 maintenance of these records?
 17 A They do.
 18 Q And does the University of Arizona keep transcripts for
 19 all University students who have graduated?
 20 A Yes.
 21 Q Is it the regular practice of the University of Arizona to
 22 keep these transcripts of all students who have attended the
 23 University?
 24 A Yes.
 25 Q And do the records the University maintains reflect what

1 degree a particular student received?
 2 A Yes.
 3 Q Can you talk a little louder?
 4 A Yes.
 5 Q Were you involved with coordinating a search for the
 6 University of Arizona's records for James Michael Murray?
 7 A Yes.
 8 Q Did your department locate scholastic records for James
 9 Michael Murray?
 10 A We did.
 11 MS. HARRIS: Your Honor, may I approach the witness?
 12 THE COURT: Yes.
 13 BY MS. HARRIS
 14 Q I'm handing you what's been marked as Government's
 15 Exhibit 139 for identification.
 16 (Whereupon document was tendered to the witness.)
 17 Q Do you recognize Exhibit 139?
 18 A Yes.
 19 Q What is Government's Exhibit 139?
 20 A A Grand Jury subpoena that I signed.
 21 Q And are the records attached to the subpoena?
 22 A Yes.
 23 Q And are the records that are in Exhibit 139 kept in the
 24 ordinary course of business for the University of Arizona?
 25 A Yes.

1 Q And are the entries on Exhibit 139 made at or near the
 2 time of the acts and events appearing on it?
 3 A Yes.
 4 Q And is Exhibit 139 a University of Arizona transcript for
 5 James Michael Murray?
 6 A Yes.
 7 MS. HARRIS: Your Honor, I offer Government's
 8 Exhibit 139 into evidence.
 9 THE COURT: Any objection?
 10 MR. DRESSLER: No objection.
 11 THE COURT: Admitted.
 12 (Trial Exhibit 139 received in evidence.)
 13 MS. HARRIS: May we publish Exhibit 139, Page 5?
 14 THE COURT: All right.
 15 (Document displayed)
 16 MS. HARRIS: And if we could just zoom in on the
 17 upper left-hand corner.
 18 (Document enlarged.)
 19 BY MS. HARRIS
 20 Q Does Exhibit 139 reflect whether James Murray received a
 21 degree from the University of Arizona?
 22 A Yes, it does.
 23 Q What degree did James Murray receive?
 24 A He earned a Bachelor of Arts degree.
 25 Q And when did Mr. Murray receive the Bachelor of Arts

1 degree?
 2 A In December of 1991.
 3 Q Did James Murray graduated cum laude?
 4 A No, he did not.
 5 Q Did James Murray graduate with any honors?
 6 A No.
 7 Q Did James Murray take any graduate courses at the
 8 University of Arizona?
 9 A No, he did not.
 10 Q Did James Murray receive a Master's degree in finance or
 11 anything from the University of Arizona?
 12 A No.
 13 MS. HARRIS: Your Honor, I have no further questions.
 14 THE COURT: All right. Thank you. Any cross?
 15 MR. DRESSLER: No, your Honor.
 16 THE COURT: All right. Thank you, Ms. Payne. You're
 17 excused. You may step down.
 18 (Witness excused.)
 19 THE COURT: Next witness.
 20 MR. FARNHAM: Your Honor, at this point we would like
 21 to read a fact stipulation that the parties have entered
 22 regarding the New York Stock Exchange.
 23 THE COURT: Okay.
 24 MR. FARNHAM: In a proceeding before a hearing panel
 25 of the New York Stock Exchange, James Murray was charged with:

1 One, effecting one or more unauthorized transactions in
2 the accounts of one or more customers of his member firm
3 employer.
4 Two, effecting one or more transactions in the accounts of
5 one or more customers of his member firm employer that were
6 unsuitable for the customers.
7 And, three, exercising discretionary power in the accounts
8 of one or more customers without first obtaining written
9 authorization from the customer.
10 The charged conduct occurred in January of 1998. At that
11 time Murray was employed by New York Stock Exchange member firm
12 Bear Stearns and Company, Inc.
13 After a hearing on the charges, the hearing panel made
14 factual findings and by unanimous vote found Murray guilty of
15 the three charges.
16 The hearing panel ordered that Murray be censured and
17 barred from employment or association with any member or member
18 organization of the New York Stock Exchange for a period of six
19 months.
20 The decision was titled "Exchange Hearing Panel Decision
21 02134 James Michael Murray" and was dated November 1st, 2002.
22 Thank you.
23 THE COURT: All right. Ladies and gentlemen, these
24 are facts that the parties have agreed to, that have been
25 stated to you, and you should, therefore, treat these facts as

1 having been proved. Okay?
2 All right. Next witness.
3 MS. HARRIS: Thank you, your Honor. The United
4 States calls Paul Eckel.
5 PAUL ECKEL,
6 called as a witness for the Government herein, having been
7 first duly sworn, was examined and testified as follows:
8 THE WITNESS: Yes, I do.
9 THE CLERK: Please be seated.
10 State your name and spell your last name, please.
11 THE WITNESS: Name is Paul Eckel. Last name is
12 E-C-K-E-L.
13 DIRECT EXAMINATION
14 BY MS. HARRIS
15 Q Good morning, Mr. Eckel. Can you pull the microphone
16 close to you so we can all hear you?
17 Where do you currently work?
18 A I work at -- my firm is called Emerging Manager.
19 Q Is this your own business?
20 A Yes, it is.
21 Q How long have you worked for Emerging Managers?
22 A We launched about nine years ago.
23 Q What is your job title?
24 A My job title is Managing Member or President.
25 Q What type of work does Emerging Managers do?

1 A Primarily, capital raising for hedge fund managers and
2 futures managers.
3 Q What is a broker dealer?
4 A A broker dealer is a registration that FINRA requires. So
5 it's a -- FINRA is the financial industry regulatory authority.
6 It's a non-governmental private company that regulates all
7 security firms that deal with the public.
8 So if you're dealing with the public, if you're raising
9 capital or if you're trading securities, you have to become
10 registered as a broker dealer, and you have to take certain
11 licenses, and every quarter you have to do certain reporting of
12 your financials.
13 And they track you. If you move from address to address,
14 you have to tell them. So it's like sort of a regulatory
15 authority.
16 Q Are you a registered broker dealer?
17 A Yes, I am.
18 Q Is Emerging Managers regulated by FINRA?
19 A Emerging Manager Advisors, which is -- Emerging Manager is
20 the parent. The subsidiary, Emerging Manager Advisors, is a
21 broker dealer that has been registered with FINRA since 2009.
22 Q Where did you work before Emerging Managers?
23 A Royal Bank of Canada.
24 Q What is a hedge fund?
25 A A hedge fund is a structure where investors pool their

1 capital into a fund. The fund might be an LLC or limited
2 partnership, but it's a pooling of capital, and then they --
3 the pool of capital gives trading authorization to a hedge fund
4 manager or investment manager to buy or sell securities, buy or
5 sell currencies, buy or sell gold.
6 Q What are some of the hedge funds that you have provided
7 marketing services to during the time that you have been the
8 president of Emerging Manager?
9 A I primarily deal with quantitative managers, who use
10 computers and who are people like from, like, the Ivy League
11 leading, very smart individuals, who program computers to buy
12 stocks, buy iPhone -- buy Apple, sell Dell at certain times.
13 Some of the names are Black Box Group, Quansoft, QRT, Global
14 Sigma, different firms like that.
15 Q Can you briefly describe for us your educational
16 background?
17 A Sure. I have a finance degree from University of
18 Washington.
19 Q Do you have any graduate degree?
20 A No.
21 Q Have you taken any formal courses in marketing investments
22 or securities?
23 A Well, as a broker dealer you have to pass a number of
24 different licenses. That's a Series 7 license for equities. A
25 Series 3 for futures. And then there is a Series 65. A Series

1 24, if you have management responsibility. And then there is a
 2 Series 66. So a number of different licenses that you have to
 3 pass by a certain percentage to obtain a license.
 4 And then every couple years you have to take continuing
 5 education. In case there has been industry changes, you have
 6 to acknowledge that you know about them. Then there is ethics
 7 courses and things like that. So that's all part of becoming
 8 and maintaining your broker dealer status.
 9 Q And these series -- series of licenses that you just
 10 mentioned, are these all special certifications that you hold?
 11 A Yes.
 12 Q Do you know someone named James Murray?
 13 A Yes, I do.
 14 Q When did you first learn about someone named James Murray?
 15 A I think it was early 2000- -- I think mid-2010.
 16 Q How did you learn about someone named James Murray?
 17 A A large investment firm based in San Francisco, who I
 18 know, knew I was coming out to San Francisco. I used to live
 19 here. And they said: Why don't you meet up with this one
 20 quantitative manager since you specialize in quantitative
 21 managers? He's based in San Francisco and he has a great track
 22 record. And, you know, we've met him and we think he's pretty
 23 good.
 24 Q Where is Emerging Managers based?
 25 A My office is in New York City, but I also have a satellite

1 office in Jersey City, New Jersey.
 2 Q And at the time that we're discussing, which is mid-2010,
 3 were you physically located in New York City?
 4 A Yes.
 5 Q Okay. After you got a referral to Mr. Murray, did you
 6 obtain an email address for Mr. Murray?
 7 A Yes, I did.
 8 Q Did you send Mr. Murray an email after you got his email
 9 address?
 10 A Yes, I did.
 11 MS. HARRIS: Your Honor, I would ask permission to
 12 approach the witness with a series of exhibits.
 13 THE COURT: Okay.
 14 (Whereupon documents were tendered to the witness.)
 15 BY MS. HARRIS
 16 Q Mr. Eckel, if you could keep these exhibits in the exact
 17 order I handed them to you.
 18 Could you take a look at what's been handed to you and
 19 identified as Government's Exhibit 158 and let me know if you
 20 recognize Exhibit 158?
 21 A Yes, I do. It's an initial email that I sent Jim Murray.
 22 Q Is Exhibit 158 an email chain between you and Mr. Murray
 23 from July and August of 2010?
 24 A Yes, it is.
 25 Q And are these emails that you sent Mr. Murray and that you

1 received from Mr. Murray that are on Exhibit 158, were they
 2 transmitted at or near the time and date they bear?
 3 A Yes.
 4 MR. FARNHAM: Your Honor, I offer Government's
 5 Exhibit 158 into evidence.
 6 THE COURT: Any objection?
 7 MR. DRESSLER: No objection.
 8 THE COURT: Admitted.
 9 (Trial Exhibit 158 received in evidence.)
 10 MS. HARRIS: Your Honor, may I publish Page 1 of
 11 Government's Exhibit 158?
 12 THE COURT: Yes.
 13 MS. HARRIS: And specifically, if we could look at
 14 the bottom email?
 15 (Document displayed.)
 16 BY MS. HARRIS
 17 Q Mr. Eckel, the email we see is dated July 24th, 2010. Is
 18 that the date that you first reached out to Mr. Murray?
 19 A Yes.
 20 MS. HARRIS: And if we could just highlight the last
 21 sentence?
 22 (Document highlighted.)
 23 BY MS. HARRIS
 24 Q Did you ask Mr. Murray for a presentation and June
 25 performance report to determine if there was a potential fit

1 for you and Mr. Murray?
 2 A Yes.
 3 Q And then if we could go to the top of Page 1 of Exhibit
 4 158?
 5 (Document displayed)
 6 Q It says -- did you receive an email back from Mr. Murray
 7 on July 15th, 2010?
 8 A Yes, I did.
 9 Q And did Mr. Murray say to you, "Attached are documents per
 10 your request"?
 11 A Yes.
 12 Q What documents did Mr. Murray send to you on July 15th,
 13 2010?
 14 A There were three documents. The first one in PDF format
 15 was an MNT summary called "June 2010." Basically it had the
 16 net performance of the fund that he was trading from its
 17 inception to June of 2010.
 18 The second document, also in PDF format, named "J. Murray
 19 2010 Resume" was his resume, which included his educational
 20 background and his work experience and his address.
 21 And the last one called "MNT Strategy" in PowerPoint
 22 format was a -- I think, like, a 12-page PowerPoint
 23 presentation that included returns, but, also, kind of his
 24 general approach to investing in the stock market.
 25 Q And you mentioned that You received a summary, is that

1 correct?
 2 A Yes, I did.
 3 Q That was one of the attachments? Okay.
 4 And did you -- if you could take a look at Page 158,
 5 Page 5 of Exhibit 158, which is a one-page document. And if we
 6 could bring that up.
 7 (Document displayed.)
 8 Q Do you see Page 5 where it says, "July 2010 Monthly
 9 Performance Update"?
 10 A Yes, I see it.
 11 Q Was this Monthly Performance Update something which you
 12 also received from Mr. Murray by email?
 13 A Yes.
 14 Q If we could just blow up what Mr. Murray sent to you from
 15 Market Neutral Trading's performance since its inception? It's
 16 in the box in the upper right-hand corner.
 17 What does it say, "Since fund inception..."
 18 A Oh, that corner, okay.
 19 Q We're going to blow it up.
 20 A Should I wait? Okay. Upper left-hand corner.
 21 THE COURT: Upper right-hand corner, I think.
 22 A You want me to read?
 23 (Document enlarged.)
 24 BY MS. HARRIS
 25 Q Yes. "Since fund inception on..."

1 A Okay.
 2 "Since fund inception on August 15, 2006, Market
 3 Neutral Trading, LLC has returned a net annualized
 4 positive 29.53 percent."
 5 Q Okay. And then if we could take a look at what is to the
 6 left of that box, where it has the last 24-month net return.
 7 What did the material you received from Mr. Murray say the last
 8 24 months had been, a return for Market Neutral Trading?
 9 A The net return was 41.47 percent.
 10 Q Now, if we could look at the lower half of Page 5. And
 11 specifically the table, where it says "Market Neutral Trading."
 12 (Document enlarged.)
 13 Q Did Mr. Murray send you a table with Market Neutral
 14 Trading's rate of return for various years as compared with
 15 other index funds?
 16 A Yes, that was included.
 17 Q Now, let's take a look at 2009 and the material you were
 18 given by Mr. Murray. What was the annual rate of return you
 19 were told Market Neutral Trading had in the year, 2009?
 20 A 13.44 percent net.
 21 Q Now, if we could look at the lower right-hand corner?
 22 Lower right-hand corner, yes.
 23 (Document enlarged.)
 24 Q Okay. Who is listed as the senior portfolio manager for
 25 Market Neutral Trading?

1 A James Murray.
 2 Q And what -- who is listed as the auditor?
 3 A Jones Moore & Associates, Ltd.
 4 Q And who is listed as the administrator?
 5 A H.F. Administrators, Ltd.
 6 Q Now, you also mentioned that when you received the email
 7 back from Mr. Murray on July 15, 2010, you received a copy of
 8 Mr. Murray's resume?
 9 A That's correct.
 10 Q If you could take a look at Page 147 and tell me if you
 11 recognize Government's Exhibit -- first, you also received a
 12 Monthly Performance Update for June, 2010, is that correct?
 13 MR. DRESSLER: This is Exhibit 158?
 14 MS. HARRIS: We're actually at 147, Exhibit 147.
 15 MR. DRESSLER: Oh, okay.
 16 BY MS. HARRIS
 17 Q What is Exhibit 147?
 18 A It's a Monthly Performance Update for June 2010.
 19 Q Did you receive Government's Exhibit 147 with the email
 20 that we've just talked about from Mr. Murray on July 15th, 2010?
 21 Was this one of the attachments?
 22 A Yes, it is. Yes, I did.
 23 MS. HARRIS: Your Honor, I offer Government's
 24 Exhibit 147 into evidence.
 25 THE COURT: Any objection?

1 BY MS. HARRIS
 2 Q Now, if we could publish Government's Exhibit --
 3 THE COURT: Wait a minute.
 4 MS. HARRIS: Oh.
 5 MR. DRESSLER: No objection.
 6 THE COURT: Admitted.
 7 (Trial Exhibit 147 received in evidence.)
 8 MS. HARRIS: If we could publish Government's
 9 Exhibit 147, and specifically look at the Market Neutral
 10 Trading, LLC benchmarks?
 11 (Document displayed)
 12 BY MS. HARRIS
 13 Q Again, is this a document you received from Mr. Murray in
 14 July of 2010?
 15 A Yes, I did.
 16 Q Okay. And if we could look at the graph on Exhibit 147?
 17 Does the blue line refer to Market Neutral Trading's cumulative
 18 return?
 19 A Yes, it does.
 20 Q Okay. And is that line significantly higher than all of
 21 the other indexes that Market Neutral Trading has been compared
 22 with?
 23 A Yes.
 24 Q And if we could look at Table 1 for Market Neutral
 25 Trading, and specifically if we could look at the calendar year

1 2009?
 2 A Uh-huh.
 3 Q Again, what is the annual rate of return that was listed
 4 on the document you received from Mr. Murray on -- in July of
 5 2010? What was the rate of return listed for Market Neutral
 6 Trading for the year?
 7 MR. DRESSLER: Objection. I object.
 8 THE COURT: You have to speak into the mic.
 9 MR. DRESSLER: I don't see annual rate of return on
 10 the document.
 11 MS. HARRIS: If we could blow up the section that
 12 says "Annual"?
 13 (Document enlarged.)
 14 BY MS. HARRIS
 15 Q Mr. Eckel, what did you understand --
 16 THE COURT: All right. So -- go ahead.
 17 BY MS. HARRIS
 18 Q Is that the annual rate of return as you were being told
 19 by Mr. Murray?
 20 A Yes. That's what I understood. That's the industry
 21 standard to list it like that. YTD, Year To Date.
 22 THE COURT: Objection is overruled.
 23 BY MS. HARRIS
 24 Q What was the annual rate of return for Market Neutral
 25 Trading that you received from Mr. Murray for 2009?

1 A 13.44 percent net.
 2 Q Okay. And then if you could look at December, just the
 3 month of December for 2009? What rate of return did Mr. Murray
 4 list for the month of December, 2009 Market Neutral Trading
 5 had?
 6 A It's positive 5.43 net percent.
 7 Q Okay. And then if we could look in the lower right-hand
 8 corner. Who did Mr. Murray list was the administrator for
 9 Market Neutral Trading?
 10 A CCS Financial Services.
 11 Q Okay. And who is listed as the auditor?
 12 A Jones Moore & Associates, Ltd.
 13 Q Was the administrator on Exhibit 147 CCS Financial
 14 Services, was that different than the performance update you
 15 received for July 2010?
 16 A Yes, it is.
 17 Q Did you ask Mr. Murray about the fact that July 2010
 18 contained a different administrator than the June performance
 19 update?
 20 A Yes, I did.
 21 Q What did Mr. Murray tell you?
 22 A He said he fired him.
 23 Q He fired who?
 24 A CCS Financial Services.
 25 Q Did he say who he retained?

1 A It was sort of -- yeah, H.F. Administrators. In several
 2 different documents they appeared as the new administrator.
 3 Q Based on what you received from Mr. Murray in July of 2010
 4 as reflected on Exhibit 147, what did you think the rate of
 5 return Market Neutral Trading had made for 2009 was?
 6 A The annual return?
 7 Q Yes.
 8 A 13.44 net.
 9 Q And what did you think the rate of return for Market
 10 Neutral Trading was for the first six months of 2010?
 11 A 18.74 percent, through June.
 12 Q You also mentioned that on July 15th, 2010 you received a
 13 resume by email from Mr. Murray.
 14 Can you take a look at Government's Exhibit 148 and tell
 15 us if you recognize Exhibit 148?
 16 A Yes, I recognize it. It's a resume that was contained in
 17 that email, the second attachment.
 18 Q When you say it was "contained in that email," are you
 19 referring to the email from Mr. Murray on July 15th, 2010?
 20 A Yes, I am.
 21 MR. FARNHAM: Your Honor, I offer Government's
 22 Exhibit 148 into evidence.
 23 THE COURT: Any objection?
 24 MR. DRESSLER: No objection.
 25 THE COURT: Admitted.

1 (Trial Exhibit 148 received in evidence.)
 2 MS. HARRIS: Can we, please, publish Exhibit 148,
 3 Mr. Murray's resume?
 4 (Document displayed.)
 5 BY MR. FARNHAM
 6 Q Specifically let's look at Mr. Murray's Professional
 7 Experience. He says from July 2006 through the 20 he's the
 8 Chief Investment Officer for Market Neutral Trading, LLC.
 9 Do you see that?
 10 A Yes, I do.
 11 Q And then underneath that, what did Mr. Murray list as his
 12 employment before Market Neutral Trading?
 13 A He was the Chief Investment Officer of Pareto Capital from
 14 2002 to 2006.
 15 Q And then where did Mr. Murray say he worked before Pareto
 16 Capital?
 17 A At Murray -- he was a Chief Investment Officer for Murray
 18 Partners, LP from 2000 to 2002.
 19 Q What did Mr. Murray say was his experience at Pareto
 20 Capital after he lists his job title?
 21 A Head of Trading and, also, Chief Investment Officer.
 22 Implies that he was the top portfolio manager. So he was head
 23 of trading. He implemented virtual parallel processing
 24 systems. So he was in charge of technical development and
 25 database management.

1 Q Is there anything on the resume that you received from
2 Mr. Murray that refers to Pareto Media?
3 A No, never heard of it.
4 Q Is there any experience that's listed on the resume you
5 received from Mr. Murray that refers to his business as selling
6 music CDs out of his house?
7 A No.
8 Q Now, if we could take a take a look at the Education
9 section of the resume?
10 MS. HARRIS: If we could scroll down? It's Page 2.
11 And if we could blow that up?
12 (Document displayed)
13 BY MS. HARRIS
14 Q Okay. Let's look first at the bottom, the "1991
15 education." Where did Mr. Murray say he -- what did Mr. Murray
16 say his degree was in?
17 A B.S. in economics and finance.
18 Q Did Mr. Murray graduate with any academic honors,
19 according to his resume?
20 A Cum laude.
21 Q Did Mr. Murray have an advanced degree, according to his
22 resume?
23 A Yes. A Master's in economics.
24 Q What year did Mr. Murray receive the Master's in
25 economics?

1 A '93.
2 Q What university did Mr. Murray receive his Master's in
3 economics, according to his resume?
4 A The University of Arizona.
5 Q Was the fact that Mr. Murray had a Bachelor's degree with
6 honors of cum laude and a Master's degree in economics of any
7 importance to you when you reviewed the resume Mr. Murray
8 provided you?
9 A Yes, it did. It is significant, especially in the field
10 that he presented himself that he was trading in, and that was
11 quantitative trading, which involves computer programming and
12 you have to know statistics and math. You have to be pretty
13 sharp to -- and usually all the people I work with have kind of
14 Ivy League or advanced degrees.
15 Q So was it important to you that Mr. Murray's resume
16 contained a graduate degree, as well as an undergraduate degree
17 with honors?
18 A Yes, it was.
19 Q You've also indicated that you received a Market Neutral
20 Trading Strategy Presentation with the email you got from
21 Mr. Murray in July of 2010.
22 Can you take a look at Government's Exhibit 151 and let me
23 know if you recognize Exhibit 151?
24 A Yes, I do. It was the third attachment from the email
25 from July 15, 2010 called MNT Strategy Presentation.

1 Q And did you receive Exhibit 151 on July 15th, 2010 from
2 Mr. Murray by email?
3 A Yes, I did.
4 MS. HARRIS: Your Honor, I offer Government's
5 Exhibit 151 into evidence.
6 THE COURT: Any objection?
7 MR. DRESSLER: No objection.
8 THE COURT: Admitted.
9 (Trial Exhibit 151 received in evidence.)
10 MS. HARRIS: If we could publish Page 3 of Exhibit
11 151, and specifically highlight the Section that says "Current
12 Total Assets"?
13 (Document displayed)
14 MR. DRESSLER: I'm sorry. What page are we at?
15 MS. HARRIS: We're on Page 3 of Government's
16 Exhibit 51.
17 BY MS. HARRIS
18 Q What did Mr. Murray represent to you were the current
19 total assets of Market Neutral Trading, LLC in July of 2010?
20 A \$10 million.
21 Q Okay. And how much did Mr. Murray indicate were actually
22 the assets in Market Neutral Trading in July 2010?
23 A In the fund vehicle 5.7 million. And then in a separate
24 vehicle under the control of MNT was 4.3 million. So that
25 totaled 10 million.

1 Q And then there is a listing on the same page you received
2 from Mr. Murray saying "Auditor/Accountant." Who did
3 Mr. Murray tell you was the Auditor/Accountant for Market
4 Neutral Trading?
5 A Same one that was on the summary page, the latest one,
6 Jones Moore & Associates, Ltd.
7 Q And who is listed as the administrator?
8 A H. Funds -- Hedge Fund Administrators, Incorporated.
9 Q Had you ever heard of an accountant called Jones Moore &
10 Associates before you received Exhibit 151 from Mr. Murray in
11 July 2010?
12 A No, I never had.
13 Q Were they known in your industry as accountants for hedge
14 funds?
15 A No.
16 Q Had you ever heard of an administrator called Hedge Fund
17 Administrators before?
18 A No.
19 Q Now, if we could take a look at Page 5 of Government's
20 Exhibit 151, which is entitled Historical Performance?
21 (Document displayed.)
22 Q What does Mr. Murray refer to in the top first bullet
23 point as the Historical Performance for Market Neutral Trading?
24 A "25 percent audited compounded annual rate of return since
25 August 2006 net of fees."

1 So 25 percent net on average every year.
 2 Q After you received Mr. Murray's resume and the
 3 information, the performance summaries he sent you for Market
 4 Neutral Trading, did you have further email contact with
 5 Mr. Murray in August of 2012?
 6 A Yes, I did.
 7 Q Could you take a look at Government's Exhibit 160, and let
 8 me know if it's an email chain between you and Mr. Murray that
 9 contains some attachments?
 10 A Yes. I do recognize it.
 11 Q And did you receive the email that's dated August 12, 2010
 12 and the attachment to Government's Exhibit 160 on or about
 13 August 12, 2010?
 14 A Yes, I did.
 15 MS. HARRIS: Your Honor, I offer Government's
 16 Exhibit 160 into evidence.
 17 THE COURT: Any objection?
 18 MR. DRESSLER: No objection.
 19 THE COURT: Okay. Admitted.
 20 (Trial Exhibit 160 received in evidence.)
 21 MS. HARRIS: If we could take a look at Page 1 of
 22 Government's Exhibit 160, and can we focus on the bottom email
 23 first?
 24 (Document displayed)
 25

1 Q And did you also receive that DDQ?
 2 A Yes, I did.
 3 Q Okay. Is that what we see as attached to Government's
 4 Exhibit 160?
 5 A Yes. It's dated the following day.
 6 Q If we could pull up Page 2 of Government's Exhibit 160?
 7 (Document displayed.)
 8 Q And specifically what is the date on the first page of the
 9 Manager Questionnaire?
 10 A It's August 11th, 2010.
 11 Q Okay. And, again, is this something you received from
 12 Mr. Murray by email?
 13 A Yes, I had.
 14 Q And what is the title of the document? If we could just
 15 focus in on that?
 16 A It's called "Manager Questionnaire." And then it has
 17 "MNT," which was the acronym, shortened name for Market Neutral
 18 Trading, LLC.
 19 Q If we could take a look now at Page 4 of Government's
 20 Exhibit 160, where we are in the Product Description. And
 21 specifically if we could look at the section that says:
 22 "Market Neutral Trading, LLC, Assets Under
 23 Management."
 24 (Document displayed.)
 25 Q What information did Mr. Murray provide to you in the DDQ

1 BY MS. HARRIS
 2 Q Is the bottom email an email you sent to Mr. Murray on
 3 August 12, 2010?
 4 A Yes, it is.
 5 Q What were you asking Mr. Murray to send you?
 6 A "Can you send me daily returns of the fund?"
 7 Q Okay. And then are you familiar with the term "DDQ"?
 8 A Yes. I wrote that email. It's a common term in the hedge
 9 fund investment world. It's an acronym for Disclosure Document
 10 Questionnaire.
 11 Q And you said, "Fariba asked for a DDQ." Who is Fariba?
 12 A Fariba is an investor contact of mine.
 13 Q And then you said:
 14 "I said we are working on it. I have create a
 15 few good ones in the past."
 16 Did Mr. Murray respond to your email --
 17 A Yes --
 18 Q -- within 45 minutes of you sending it?
 19 If you look at the top half of Exhibit --
 20 A Yeah, within 45 minutes. Yes, he did.
 21 Q Did Mr. Murray say:
 22 "Hi, Paul. Dailies attached. I did a rough
 23 update of an old DDQ I had. It's attached. Let me
 24 know your thoughts."
 25 A Yes, he did.

1 you received in August of 2010 about the total assets and the
 2 traditional assets of Market Neutral Trading?
 3 A Total assets, \$10.1 million. Traditional or fund assets,
 4 \$5.8 million.
 5 Q Okay. And then if we could look at Page 5 of Government's
 6 Exhibit 160, Background and Compliance.
 7 (Document displayed.)
 8 Q And it's Section 3, where it says:
 9 "Provide a short history of the firm."
 10 If you could read us the second sentence, the one that
 11 begins, "Jim Murray"?
 12 A (As read) .
 13 "Jim Murray, the manager of MNT owns 100 percent
 14 interest in Market Neutral Trading, LLC. Mr. Murray
 15 maintains 100 percent voting power and control of
 16 Market Neutral Trading, LLC."
 17 Q Okay. Thank you.
 18 Now, we're going to move to Page 160 -- Page 6 of
 19 Government's Exhibit 160 and question No. 10.
 20 (Document displayed.)
 21 Q Question No. 10 of the DDQ or the hedge fund questionnaire
 22 says:
 23 "Have any of the directors, officers, management
 24 or other employees of the fund or manager, ever been
 25 investigated, disciplined, suspended (including

1 revocation or suspension of licenses) subpoenaed,
 2 indicted, prosecuted or barred from investment
 3 activities by state or federal government regulatory
 4 authorities?"
 5 What answer did Mr. Murray provide you had to that
 6 question?
 7 A "No."
 8 Q Is the New York Stock Exchange, suspension from the New
 9 York Stock Exchange for a period of six months, would that have
 10 required a "yes" answer to No. 10?
 11 A Yes, it would.
 12 Q Now, if we could look at Box 15, which is on Page 7 of
 13 Government's Exhibit 160?
 14 (Document displayed)
 15 Q The question is:
 16 "Does the firm have any business relationships
 17 with any serious providers or professional counter --
 18 parties (custodians, administrators, auditors, legal
 19 advisors, external marketers, banks.)"
 20 Let's look at the answers. Who did Mr. Murray list as the
 21 administrator for Market Neutral Trading?
 22 A It listed H.F. Administrators.
 23 Q Is there a website for H.F. Administrators?
 24 A Yes.
 25 Q Can you read us the domain name?

1 A Hfadministration.com.
 2 Q Who is listed as the auditor for Jones Moore & Associates?
 3 A The auditor is listed as Jones Moore & Associates.
 4 Q Okay. And what is the address for Jones Moore &
 5 Associates?
 6 A 1521 Concord Pike, Wilmington, Delaware.
 7 Q What is the website domain name for Jones Moore &
 8 Associates?
 9 A Jonesmoore.com.
 10 Q And then who is listed as the legal advisor for Market
 11 Neutral Trading?
 12 A Hornstein Law Offices.
 13 Q Now, let's look at Question 16, which reads:
 14 "Are there any conflicts of interest of which the
 15 investor should be aware?"
 16 What did Mr. Murray say in response to that question?
 17 A "No."
 18 Q Is it a conflict of interest if the hedge fund is also --
 19 has -- the sole manager of the hedge fund has any involvement
 20 with Jones Moore & Associates? Is that a conflict of interest?
 21 MR. DRESSLER: Objection. Objection. Beyond -- it
 22 calls for expert testimony, I believe.
 23 BY MS. HARRIS
 24 Q Based on your experience in the hedge fund industry --
 25 MR. DRESSLER: Can I have my objection -- I'm sorry.

1 I apologize. I assume the question is withdrawn.
 2 MS. HARRIS: No.
 3 BY MS. HARRIS
 4 Q The question is: Based on your experience in the hedge
 5 fund industry -- do you understand what this question refers to
 6 about conflict of interest?
 7 A Yes, I do.
 8 THE COURT: Why don't you rephrase the question and
 9 then let him...
 10 MS. HARRIS: Okay.
 11 BY MS. HARRIS
 12 Q Are you familiar with the term conflict of interest?
 13 A Yes, I am.
 14 Q Okay. And is that something that needs to be avoided in
 15 the hedge fund industry?
 16 A Yes. It's very important.
 17 Q Okay. Is it a conflict of interest if the sole manager of
 18 a hedge fund is -- also has any involvement with what is listed
 19 as the auditor? Is that a conflict of interest?
 20 MR. DRESSLER: Objection, your Honor. It assumes a
 21 fact not in evidence. It's asking him to render some kind of
 22 expert opinion.
 23 THE COURT: Objection overruled.
 24 BY MS. HARRIS
 25 Q Is it a conflict of interest if the sole manager of a

1 hedge fund has any involvement with what is listed as a service
 2 provider to the hedge fund?
 3 A In my experience 25 years --
 4 MR. DRESSLER: Objection.
 5 THE COURT: Wait a minute.
 6 MR. DRESSLER: I'd like to object because it's vague.
 7 "Any."
 8 THE COURT: You said "service provider." So that's
 9 different than auditor.
 10 MR. DRESSLER: Okay.
 11 MS. HARRIS: Okay. We can ask auditor first, but the
 12 question itself in the exhibit says "service provider." Let's
 13 first ask auditor.
 14 MR. DRESSLER: Excuse me. Excuse me. The nature of
 15 my objection is that she's asking "any" connection with the --
 16 MS. HARRIS: That is the question.
 17 MR. DRESSLER: That's very broad.
 18 THE COURT: Why don't you sharpen the question?
 19 BY MS. HARRIS
 20 Q If the manager of a hedge fund uses a credit card to pay
 21 for the domain name of an auditor, is that a conflict of
 22 interest?
 23 If the domain name for Jones Moore & Associates was paid
 24 for by a credit card associated with Market Neutral Trading, is
 25 that a conflict of interest?

1 A Yes, it is.
 2 Q Is it a conflict of interest if the domain name for Hedge
 3 Fund Administrators is paid for by a credit card controlled
 4 by -- by the sole manager for Market Neutral Trading?
 5 A Yes, it is.
 6 Q Now, if we could look at Page 10 of the hedge fund
 7 questionnaire that Mr. Murray sent to you in August of 2010.
 8 And specifically, if we could look at Question No. 3 (As read):
 9 "For the firm's key members of the portfolio
 10 management and investment research team, provide
 11 names, titles, number of years with the firm, and
 12 number of years of investment experience."
 13 What did Mr. Murray write in response to Question No. 3
 14 where it says "Jim Murray, President & CIO"? Does he say when
 15 he founded Market Neutral Trading?
 16 A Oh, okay.
 17 "Jim Murray, president & CIO, founded MNT in
 18 August of 2009."
 19 THE COURT: 2006.
 20 THE WITNESS: Excuse me, -6, yeah.
 21 BY MS. HARRIS:
 22 Q And then if you could look at the next paragraph in the
 23 answer to Question No. 2 it says:
 24 "Previously to managing MNT..."
 25 What does Mr. Murray say was his previous experience?

1 A (As read):
 2 "Jim was a portfolio manager at Pareto Capital,
 3 in an opportunistic long/short hedge fund, and Murray
 4 Partners."
 5 Q Is there anything about a company called Pareto Media
 6 listed in answer to No. 3?
 7 A No.
 8 Q Let's look at the fourth paragraph when Mr. Murray
 9 describes his educational background. What does Mr. Murray
 10 tell you his educational background is?
 11 A (As read)
 12 "Mr. Murray graduated Cum Laude in economics and
 13 finance from the University of Arizona in 1991 and a
 14 master's of economics in 1993."
 15 Q Now if we could look at Page 17 of the hedge fund
 16 questionnaire you received from Mr. Murray, in August of 2010
 17 where we're discussing the performance of the hedge fund.
 18 Let's look at Question No. 2. The question is:
 19 "Has the performance been reviewed and/or
 20 audited by a third party?"
 21 What did Mr. Murray say?
 22 A Answered "Yes."
 23 Q Okay. And then if we look at Question No. 5, the question
 24 is:
 25 "How often is performance information

1 generated?"
 2 Can you read the last sentence of Mr. Murray's answer?
 3 A (As read)
 4 "Our third-party administrator (HF
 5 administrators) calculates the monthly NAV..."
 6 Which is a net asset value.
 7 "...independently from the general partner."
 8 Q What does that mean, "independently from the general
 9 partner?"
 10 A MNT. Jim Murray.
 11 (Reporter interruption)
 12 THE WITNESS: It's general partner would be the owner
 13 of MNT.
 14 BY MS. HARRIS:
 15 Q Who is that?
 16 A Jim Murray.
 17 Q So what does it mean for the third party administrator to
 18 calculate the monthly NAV independently from Mr. Murray?
 19 A The process is the administrator would communicate with
 20 the broker and get the -- and collect the data and the trade
 21 information and the profit and loss information. And it would
 22 be independent from input from the general partner or the
 23 trading manager.
 24 Q And again, who is the general partner or trading manager
 25 in this case?

1 A That would be Jim Murray, MNT.
 2 Q All right. Now, if we could take a look at Page 19 of
 3 Government Exhibit 160, the hedge fund questionnaire,
 4 specifically Question 6.
 5 Question 6 is:
 6 "Do you perform due diligence on service
 7 providers? Briefly, describe your process for these
 8 checks."
 9 What did Mr. Murray respond to Question No. 6?
 10 A He responded:
 11 "All of our service providers are
 12 well-established organizations with 10 or more
 13 reputable years of experience in their field. We
 14 choose (sic) our vendors extremely conservatively.
 15 We value referrals from current customers the most."
 16 Q Had you ever heard of Jones Moore & Associates before July
 17 of 2010?
 18 A No. And I know 50 of them. No.
 19 Q You know -- what was your answer?
 20 A I know 50 different administrators in the industry.
 21 Q And you have never heard of Jones Moore & Associates or
 22 hedge fund administrators?
 23 A Not in 25 years in the industry.
 24 Q Okay. Now if we could look at Page 20 of Government
 25 Exhibit 160, where it says:

- 1 "How is the fund administered?"
 2 What did Mr. Murray say concerning how the fund is
 3 administered? The first line.
 4 A (As read)
 5 "Fund administration is outsourced."
 6 Q Okay. Then if we could skip down to the section in
 7 Question 10 where it says:
 8 "If administration is outsourced, which tasks
 9 are provided by the service provider?"
 10 What did Mr. Murray fill in next to that section?
 11 A (As read)
 12 "Yes, we use third-party administrators.
 13 Calculation of monthly capital accounts, calculation
 14 of quarterly high-water levels, generation of monthly
 15 statements."
 16 Q Then if you could read us slowly the next sentence that
 17 Mr. Murray had, saying "No tasks...?"
 18 A (As read)
 19 "No tasks are performed in-house."
 20 Q What does the next sentence say?
 21 A (As read)
 22 "Data is provided directly from our Prime Broker
 23 to our Fund Administrator."
 24 Q What does that mean?
 25 A That means the administrator, usually electronically,

- 1 dials in to the database of the prime broker, and for the
 2 trading fund extracts all the information, and then calculates
 3 the return, and then takes out certain fees and produces a net
 4 return.
 5 And that net return is then given to the hedge fund
 6 manager.
 7 Q Does this mean that none of the information relied on by
 8 the fund administrator was provided directly from Market
 9 Neutral Trading?
 10 A None at all.
 11 Q And then, let's look at Subpart C:
 12 "Has the firm ever terminated its relationship
 13 with any service providers, including auditors?"
 14 What is the answer Mr. Murray said in August, 2010?
 15 A "No."
 16 Q Is there any reference to CCS administrators anywhere in
 17 Government Exhibit 160?
 18 (Witness examines document)
 19 A I don't recall, and I don't see it now.
 20 Q Okay. Then let's look at No. 11:
 21 "Does an outside firm audit the financial
 22 statements of the fund? If so, provide name of the
 23 auditing fund." (Sic)
 24 Again, who did Mr. Murray list?
 25 A Jones, Moore & Associates, Ltd.

- 1 Q Okay. And then, if we could look at Page 22, the box
 2 entitled "Transparency."
 3 The question is:
 4 "What kind of information do you provide to
 5 investors on a regular basis?"
 6 What did Mr. Murray answer?
 7 A He answered:
 8 "Performance estimates monthly from MNT's
 9 internal estimates. Capital account updates directly
 10 to clients monthly from our third-party
 11 administrator. Annual audit."
 12 So the administrator e-mails the investors directly the
 13 account value, the official account net value, each month.
 14 Q Okay. And then Question No. 3:
 15 "Do you provide audited reports to investors?"
 16 What did Mr. Murray say?
 17 A (As read)
 18 "Our funds are audited annually each calendar
 19 year with audit results expected within 90 days of
 20 year end. We have sample audits available by email
 21 or overnight mail."
 22 Q Finally, if we could look at Page 24, the certification.
 23 (Document displayed)
 24 Q (As read)
 25 "Provide the name and title of the officer of

- 1 your firm who prepared and reviewed this
 2 questionnaire."
 3 Who prepared and reviewed the questionnaire we have just
 4 been talking about?
 5 A The name is "Jim Murray."
 6 Q And what is the date?
 7 A August 12, 2010.
 8 Q Do you rely on the information in a DDQ in determining
 9 whether to introduce an investor to an investment?
 10 A It's one of the most important documents. Yes.
 11 Q Why is that?
 12 A It gives you details of the operations and the
 13 relationships with service providers and fund vendors. And it
 14 gives you details about history. So, a very detailed version
 15 of the PowerPoint presentation. They sort of go hand in hand,
 16 but this is the detailed version (indicating), the more
 17 important one.
 18 Q The DDQ is even more important?
 19 A Yeah.
 20 Q Okay. Is it important that the information in a DDQ is
 21 truthful?
 22 A That's everything. Yes, is.
 23 Q I didn't hear your answer.
 24 A Yes. Yes.
 25 Q You said that's --

1 A That, that -- that's the key to the process. The reason
 2 for it. To get truthful information.
 3 Q Can you explain to us why it is so important that a
 4 manager provide you with truthful information in the DDQ?
 5 A Well, the investor and other service providers and people
 6 involved with that particular hedge fund manager are relying on
 7 this information, this key information, to determine if they're
 8 going to put their personal money or institutional money with
 9 this manager, to generate potential future profits.
 10 Q Now drawing your attention to the time period of August,
 11 2010, after you received the DDQ we have just discussed. Were
 12 you copied on emails between Mr. Murray and someone named
 13 Fariba, an investor named Fariba?
 14 This is Government Exhibit 159. If you could take a look
 15 at that, and tell me if you recognize the email chain in
 16 Government Exhibit 159.
 17 (Witness examines document)
 18 A Yes, I do.
 19 Q And, is there an email on August 12th, 2010, from
 20 Mr. Murray to you, containing some attachments?
 21 (Witness examines document)
 22 Q If you look at the first page of Exhibit 210, is that an
 23 email of August 12, 2010?
 24 A Yes. It looks like Fariba emailed Jim and Jim emailed me.
 25 Q And did you also receive copies of the attachments that

1 are listed on the email of August 12, 2010?
 2 A Yes, I did.
 3 Q And are those attachments contained in Government Exhibit
 4 159?
 5 A Driver's license, yes. 3, 4, yes, I recognize that.
 6 Certificate of formation. 5 is the PPM or the fund document,
 7 private placement memorandum.
 8 And, what else?
 9 Q Did you receive these attachments that you are reviewing
 10 on August 12, 2010 from Mr. Murray?
 11 A Yes, I did.
 12 MS. HARRIS: Your Honor, I offer Government Exhibit
 13 159 into evidence.
 14 THE COURT: Any objection?
 15 MR. DRESSLER: No objection.
 16 THE COURT: Admitted.
 17 (Trial Exhibit 159 received in evidence)
 18 BY MS. HARRIS:
 19 Q Now if we could look at Page 1 of Government Exhibit 159,
 20 specifically the email from Mr. Murray to you of August 12,
 21 2010.
 22 (Document displayed)
 23 Q Were you beginning your process of deciding whether to
 24 form some type of relationship with Market Neutral Trading, in
 25 August of 2010?

1 A Yes.
 2 Q And, was certain information requested by one of your
 3 investors, Fariba, of Market Neutral Trading?
 4 A Yes.
 5 Q Can you describe for us what we're looking at, at Page 1
 6 of Government Exhibit 159? Specifically, whether it's a series
 7 of questions and responses?
 8 A That's exactly that. Fariba has a list of about ten
 9 different things that she wants information on, in order to
 10 evaluate investment into a particular hedge fund like MNT.
 11 So there's driver's license, there's names of vendors,
 12 there's reference -- reference lists, and then, Social Security
 13 numbers. And then also the PPM, which is the fund document.
 14 Q Okay. If you could look at No. 5 of the request that's on
 15 Page 1 of Exhibit 159, was an investor requesting all the
 16 audited financial statements for the fund?
 17 Is that Page -- you see where we are?
 18 A Yes. No. 5.
 19 Q Yes.
 20 A All the audited financial statements for the fund.
 21 Q And in the bold, is that Mr. Murray's response to that
 22 bullet point?
 23 A "Yes, requested it to be sent."
 24 Q And then No. 6, the third party's -- third-party
 25 administrator's name and contact. Was Mr. Murray's response

1 right under 6?
 2 A Yes.
 3 Q Who did Mr. Murray list as the third-party administrator?
 4 A Gary Anderson, HF Administrators.
 5 Q Okay. Then, No. 7 is the professional reference. Who did
 6 Mr. Murray list as his professional reference?
 7 A Charles "Chip" Roame, of Tiburon Strategic Advisors.
 8 Q And then let's look at No. 8:
 9 "Contact information for one of the LPs in the
 10 fund or SMA account."
 11 What does that mean?
 12 A Fariba wanted to speak directly to a current investor in
 13 the fund or SMA, which is a separate managed account, which is
 14 an account that's owned by the investor. A fund is a group of
 15 investors pooled together and traded as one account.
 16 Q Who did Mr. Murray list in response to Question No. 8?
 17 A Listed Tim Palm, President of Pareto Capital.
 18 Q What is the address for Pareto Capital?
 19 A It is 4040 Civic Center Drive, San Rafael, California.
 20 Q And then, was the investor asking for the most recent DDQ
 21 of Market Neutral Trading?
 22 A Yes. Question No. 9.
 23 Q And is that the DDQ that we just discussed in detail,
 24 Exhibit 160?
 25 A Yes.

1 Q Now, if you -- if we could take a look at Page -- did you
2 receive actually a limited liability operating agreement with
3 the email of August 10 -- August 12, 2010? Did you receive an
4 attachment from Mr. Murray?

5 A Yes, it was a third attachment labeled "MNT PPM PDF."

6 Q What does "PPM" mean?

7 A Private placement memorandum. It's basically the document
8 for the fund. It discloses certain things -- bios, background,
9 regulation, regulatory requirements -- in a document.

10 And then the investor agrees to them, and signs it. And
11 then, basically, he or she is accepting the fund, and then
12 money is wired, then traded.

13 Q Is the private placement memorandum an important document
14 in terms of connecting the investor with the investment?

15 A Yes. It's the official document.

16 Q Okay. Now, if we could look at the private placement
17 memorandum Mr. Murray sent to you.

18 Let's take a look at Page 6 of Government Exhibit 159.
19 Was this part of the private placement memorandum?

20 A Yes.

21 Q Who is listed as the sole member of Market Neutral
22 Trading, LLC?

23 (Document displayed)

24 MR. DRESSLER: Excuse me for one second. May I
25 approach the U.S. Attorney?

1 THE COURT: Okay.
2 (Off-the-Record discussion between counsel)

3 BY MS. HARRIS:

4 Q If we can now look at Page 6 of Government Exhibit 159,
5 who is listed as the sole member of Market Neutral Trading in
6 the private placement memorandum?

7 A James M. Murray.

8 Q Now if we could look at Page 15 of Government Exhibit 159.
9 (Document displayed)

10 Q And specifically the execution of agreement. What date
11 did the agreement say it was executed on, and signed by
12 Mr. Murray?

13 A August 16, 2006.

14 Q Now, if we could go to Page 45 of Government Exhibit 159.
15 (Document displayed)

16 Q And specifically, if we could highlight the section
17 "MANAGEMENT OF THE COMPANY."

18 And then it says (As read):

19 "The company Market Neutral Trading LLC is a
20 Delaware limited liability company..."

21 When does it say that Market Neutral Trading was formed?

22 A It was formed in August, 2008.

23 Q Now, if we could look at the third paragraph.
24 Does the third paragraph of the private placement
25 memorandum that was to be given to investors of Market Neutral

1 Trading specifically say:

2 "A major factor in an Investor's decision to
3 invest in the Company is the Investor's opinion of
4 the Investment Manager, James M. Murray?"

5 A Yes, I do see that.

6 Q All right. Now if we could go to the section that says
7 "Investment Manager of the Company." And let's highlight the
8 first two sentences.

9 Does Mr. Murray's placement memorandum say (As read):

10 "James Murray is the Investment manager of the
11 company. Prior to this period, Mr. Murray was the
12 investment manager for the investment fund Murray
13 Partners LP, Pareto Capital LLC & worked as an
14 Investment Adviser at Murray Asset Management, LLC?"

15 A Yes, it does.

16 Q Is there anything about Pareto Media listed under
17 Mr. Murray's experience?

18 A I do not see that.

19 Q Is there anything about Mr. Murray's prior employment
20 being selling CDs from his home?

21 A No.

22 Q And then, it says -- there's some more information about
23 the manager, Mr. Murray.

24 Can you read us the last sentence before the "See
25 Conflicts of Interest section?"

1 If we could blow that up.

2 A (As read)

3 "Mr. Murray received his BS Cum Laude in
4 economics and MS of economics from the University of
5 Arizona."

6 Q Is the information about Mr. Murray's educational
7 background important in a private placement memorandum that
8 would be given to investors?

9 A Yes, it is very important. Especially --

10 Q Why is that? Why is that?

11 MR. DRESSLER: It's been asked and answered,
12 Your Honor.

13 THE COURT: I'll allow it one more time.

14 MS. HARRIS: Not with regard to this document,
15 Your Honor.

16 THE COURT: Well, but you have asked a general
17 question before. I'll allow you to do it one more time.

18 BY MS. HARRIS:

19 Q Is it important that the information be entirely truthful
20 in a placement memorandum, particularly with the background of
21 the sole manager of the company?

22 A Yes, it is very important. It's sort of an investor's
23 indication of the intelligence or capability of the manager.
24 And so that's kind of the first data point. Where did you go
25 to college, what was your degree, how well -- did you graduate?

1 How well did you do in that type environment?
 2 For example, they don't look at high school or grade
 3 school. It's -- college is the starting point of evaluation.
 4 Q And is a graduate degree important?
 5 A Yes, it is very important.
 6 Q Why?
 7 A Well, it shows certain academic discipline, work ethic.
 8 It's -- not everyone has a graduate degree, so you're putting
 9 yourself at a higher level, intelligence level. And you -- you
 10 may be interacting with a smarter group of people than you did
 11 in the undergraduate.
 12 So it's an important distinction from just having an
 13 undergraduate degree, especially in the finance world.
 14 Q Now, if we could look at the last sentence under the
 15 "Investment Manager of the Company."
 16 Could you read us what the last sentence says, the one
 17 that says "There has..."
 18 A (As read)
 19 "There has never been any material civil or
 20 criminal actions, suits, or proceedings brought
 21 against the Company, or its Investment Manager."
 22 Q Is an action brought by the New York Stock Exchange and a
 23 period of suspension for six months a proceeding that would be
 24 brought against -- considered a proceeding brought against an
 25 investment manager?

1 A Yes, it would.
 2 Q Is that something that would be important for a potential
 3 investor to know?
 4 A Yes. That's material and significant.
 5 Q Why is that?
 6 A Again, it's another data point for the manager to evaluate
 7 the truthfulness, the honesty, the character of the investment
 8 manager, who they're giving their money to.
 9 Q Now, if we could take a look at Page 63 of Government
 10 Exhibit 159. And specifically, the section that says
 11 "Litigation."
 12 Can you read us the last sentence of that section?
 13 (Document displayed)
 14 MR. DRESSLER: I'm sorry --
 15 THE WITNESS: It says -- Page 63?
 16 BY MS. HARRIS:
 17 Q Page 63 of Exhibit 159. Can you read us the last sentence
 18 of the box entitled "Litigation."
 19 And if we could just highlight that.
 20 A It states (As read):
 21 "The investment manager will notify all member
 22 owners..."
 23 Or the investor.
 24 "...within 30 days if the company is involved in
 25 any court proceeding."

1 MS. HARRIS: Your Honor, I was about to move to
 2 another exhibit.
 3 THE COURT: Let's go ahead and take our 30-minute
 4 break at this point, and resume at 12:30.
 5 Again, please do not discuss this case with anyone, or
 6 form any opinions, or do any research. We will see you in 30
 7 minutes. Thank you.
 8 (Whereupon at 12:01 p.m. proceedings
 9 were adjourned for noon recess.)
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1 PROCEEDINGS
 2 September 25, 2015 12:34 p.m.
 3 (The following proceedings were held outside of the
 4 presence of the Jury)
 5 THE CLERK: Please come to order.
 6 THE COURT: I have another question from -- note from
 7 the jury. And this is from Patricia Devi, who is Alternate
 8 No. 4 (As read):
 9 "Will the document about NYSE be available to
 10 jurors?"
 11 MR. DRESSLER: Nope.
 12 THE COURT: Hmm?
 13 MR. DRESSLER: I said "Nope."
 14 MR. FARNHAM: Well, it depends on whether it's the --
 15 not the decision, but maybe there's -- a stipulation could be
 16 admitted. Or it could be part of the instructions, but the
 17 stipulation's a fact --
 18 MS. HARRIS: Your Honor, we would move the
 19 stipulation into evidence as an exhibit, so the jury does have
 20 it. That seems reasonable.
 21 THE COURT: But the answer is: The actual NYSE
 22 documents will not be.
 23 MR. DRESSLER: Correct.
 24 MS. HARRIS: We had requested that. And I think the
 25 Court had urged the parties to stipulate.

1 MR. DRESSLER: Well, in any event, we have a
2 stipulation in lieu of that, so --
3 THE COURT: Right. So what do you want me to say at
4 this point?
5 MR. DRESSLER: In answer to -- could you read the
6 question again? Repeat the question.
7 THE COURT: "Will the document about NYSE be
8 available to jurors?"
9 MS. HARRIS: I think we should say that the
10 stipulation that was read into evidence will be a trial exhibit
11 and will be available to the jurors. And I think we should
12 mark it as an exhibit, and admit it in front of the jury.
13 So --
14 THE COURT: Should I further say that no other
15 documents will be available? Because that's --
16 MR. DRESSLER: Right.
17 THE COURT: I mean, there are no other --
18 MR. DRESSLER: That's why we have a stipulation.
19 THE COURT: Right.
20 MS. HARRIS: Um, I don't know that that's necessary.
21 But -- because --
22 MR. DRESSLER: Well, here's the thing. We're
23 standing here. I mean, if you submit a stipulation that
24 highlights, it's like giving them a transcript of testimony.
25 So --

1 MS. HARRIS: No, it was in lieu of the exhibit,
2 though. We had wanted to get that exhibit in. The Court had
3 said --
4 THE COURT: Well, if you're afraid that an actual
5 stipulation will somehow be prejudicial, I mean, we can also
6 put it in the final jury instructions. That's what I sometimes
7 do, is say "The parties have stipulated to the following
8 facts." So it's not an exhibit, per se. Maybe that's even
9 worse.
10 Somewhere -- there should not be a problem of enumerating
11 all the stips, given this is a four-week trial. So it could be
12 in the jury instruction; it could be in a separate document.
13 You could do each one as an exhibit.
14 MR. DRESSLER: What I would suggest is that we say
15 that they're not going to get the actual documents from the
16 SEC, and that we will address the issue of what they do receive
17 in terms of that at a later time. Something like that.
18 MS. HARRIS: Actually, Your Honor, we would want the
19 stipulation treated, both for the appellate record and for now,
20 as an exhibit. So the Court of Appeals knows exactly what it
21 is.
22 I think we should mark it as an exhibit, have it admitted,
23 and then let the jury know they'll get the actual exhibit. If
24 the Court wants to amplify on that and say "You will not get
25 anything beyond the stipulation," I don't object to that.

1 THE COURT: Okay.
2 MR. DRESSLER: The problem with that is it's like
3 saying "Can we have the testimony of Mr. X? Are we going to
4 get that?" It's more similar to testimony than anywhere else.
5 I don't have an objection to reading it to them as part of
6 a jury instruction, or the Court reciting what the stipulations
7 are.
8 Otherwise, to me, it's like giving them testimony. And
9 there's reason you don't give them -- there is a reason you
10 don't give them --
11 THE COURT: Well, the reason why testimony is
12 different is because it's often contextual. And you have to
13 figure out if -- you highlight that this is just a stipulation.
14 What I think we should do is simply say: We have read the
15 stipulation to the jurors. Those are assumed, as I instructed,
16 that those are facts in this case. And there will be no other
17 documents pertaining to the facts that were stipulated
18 regarding the New York Stock Exchange.
19 MS. HARRIS: One thing, though, Your Honor, is: It's
20 not like testimony. The Government had wanted to introduce it
21 as an exhibit, the actual exhibit. And the Court said that it
22 would permit the Government to do that, unless the parties
23 could reach a stipulation. So the stipulation is the exhibit.
24 It's in lieu of the larger exhibit.
25 We, in good faith, reached that stipulation. And if we

1 hadn't, the Court was going to let the actual exhibit in. So I
2 think the stipulation should be marked as an exhibit, and the
3 jurors will be told --
4 THE COURT: All right. I -- I do not find that
5 admission of a stipulation is -- has the dangers of being
6 prejudicial, as would be readbacks of particular segments of
7 testimony, because that, the latter, has contextual issues,
8 completeness issues and other things. And, emphasis questions.
9 And that is one reason why the courts are leery about
10 readbacks.
11 But a stipulation as to facts which have already been read
12 and deemed to be facts in this case, and the jury is so
13 instructed, to simply provide that in concrete form I think is
14 not sufficiently prejudicial to warrant its exclusion. So I'm
15 going to treat that as a trial exhibit.
16 I'm going to instruct the jury that the stipulation that
17 was read, as I already instructed, are deemed facts in this
18 case, and they will have a copy of that stipulation as part of
19 the trial exhibits. But no other documents will be submitted
20 to them in connection with that stipulation.
21 MS. HARRIS: Thank you.
22 MR. DRESSLER: The Court has ruled. That's why I'm
23 not saying anything. You have ruled; I accept the ruling.
24 THE COURT: Okay. Your objection is to the admission
25 as trial exhibits. But to the rest of what I've said, any

1 objection?

2 MR. DRESSLER: No.

3 MS. HARRIS: No objection from the Government.

4 THE COURT: All right. Let's bring them in. And

5 your witness can resume the stand.

6 (Jury enters the courtroom at 12:41 p.m.)

7 THE COURT: Okay. Thank you, ladies and gentlemen.

8 Before we continue, I did get a note from the jury, asking

9 about whether there will be documents available for the jury

10 pertaining to the NYSE, the New York Stock Exchange.

11 And as you will recall, we read a stipulation of facts in

12 the record. Those facts, that stipulation, will be part of the

13 exhibit list that you will get eventually.

14 In terms of whether there will be further documents in

15 that regard, the answer is no. The stipulation are the facts

16 that we have deemed to be submitted to you, and as I

17 instructed, will be the facts.

18 So, with that said, let's continue.

19 DIRECT EXAMINATION RESUMED

20 BY MS. HARRIS:

21 Q Good afternoon again, Mr. Eckel. Before we broke, we had

22 just finished reviewing the private placement memorandum you

23 received in August of 2010.

24 Did you request financial statements from Market Neutral

25 Trading from its independent auditor, Jones Moore & Associates?

1 A Yes, I did.

2 Q And did you receive auditors' reports for 2008 and 2009?

3 A Yes. From the auditor, I received the audits.

4 Q If you could take a look at Government Exhibit 155 and

5 tell us whether you recognize Exhibit 155.

6 (Request complied with by the Witness)

7 A Yes, I recognize it as the audit for 2008.

8 Q And was this something that you received in connection

9 with your attempt to determine whether you were going to

10 introduce investors to Market Neutral Trading?

11 A Yes. It's part of the normal due-diligence process.

12 MS. HARRIS: Your Honor, I offer Government Exhibit

13 155 into evidence.

14 THE COURT: Any objection?

15 MR. DRESSLER: No, Your Honor.

16 THE COURT: Admitted.

17 (Trial Exhibit 155 received in evidence)

18 BY MS. HARRIS:

19 Q If we could take a look at Page 1 of Government Exhibit

20 155.

21 (Document displayed)

22 Q Says:

23 "FINANCIAL STATEMENTS AND INDEPENDENT AUDITORS'

24 REPORT."

25 What is the date?

1 A The date is December 31, 2008.

2 Q Okay. And then if we can now look at Page 3 of Government

3 Exhibit 155.

4 (Document displayed)

5 Q And then in the upper right-hand corner, there's an

6 address for Jones Moore & Associates. What is the address on

7 the letterhead?

8 A The address is [REDACTED], Wilmington, Delaware,

9 [REDACTED]

10 Q And under the Jones Moore & Associates logo, what does it

11 say about the company? What kind of company is it?

12 A "CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS CONSULTANTS."

13 Q And then if we could just highlight the -- can we blow up

14 the next paragraph?

15 (Document displayed)

16 Q Okay. And, it says:

17 "INDEPENDENT AUDITORS' REPORT."

18 What did that mean to you?

19 A It's independent of the investment manager, in this case,

20 would be MNT. So, the auditor works with the administrator to

21 verify net returns and the amount of assets in a fund.

22 Q And then if we could look at the first paragraph, what was

23 the financial period of time that was -- this audit pertained

24 to for Market Neutral Trading?

25 A December 31, 2008.

1 Q Okay. Then if we could look at the second paragraph,

2 where it starts -- can you read us what the first sentence of

3 the second paragraph is?

4 A (As read)

5 "We conducted our audit in accordance with

6 auditing standards generally accepted in the United

7 States of America."

8 Q And then does it say:

9 "Those standards require that we plan and

10 perform the audit to obtain reasonable assurance

11 about whether the schedule of rates of return is free

12 of material misstatement?"

13 Do you see that?

14 A Yes, I see that.

15 Q What did that mean?

16 MR. DRESSLER: Well, excuse me. I have to object.

17 What, what does that mean to him?

18 BY MS. HARRIS:

19 Q What did that mean to you, being free of material

20 misstatement?

21 A The -- the numbers provided are accurate and true.

22 Q And then the last sentence, if we could highlight the last

23 sentence of Paragraph 2, and if you could tell us what it says.

24 A (As read)

25 "We believe that our audit provides a reasonable

1 basis for our opinion."
 2 Q And then can you read us the first sentence of Paragraph
 3 3?
 4 A (As read)
 5 "In our opinion, the financial statements
 6 referred to above present fairly in all material
 7 respects the financial position of Market Neutral
 8 Trading, LLC, as of December 31, 2008..."
 9 Q And then if we could look underneath the Jones Moore &
 10 Associates signature, where does it say the report was
 11 prepared, and on what date?
 12 A Wilmington, Delaware, April 1, 2009.
 13 Q Now, if we could look at Page 11 of Government Exhibit
 14 155.
 15 (Document displayed)
 16 Q What did Jones Moore & Associates say was the total return
 17 to investors from January 1, 2008, to December 31, 2008?
 18 A Net return of 20.1 percent.
 19 MR. DRESSLER: I object. Says "Total" -- that
 20 misstates what it says in there.
 21 THE COURT: All right. Why don't you read the whole
 22 thing.
 23 THE WITNESS: Oh, okay (As read):
 24 "Total Return after incentive reallocation to
 25 Managing Member, 20.1 percent."

1 BY MS. HARRIS:
 2 Q Does that refer to the return investors actually received?
 3 A Yes, it does.
 4 MR. DRESSLER: Objection, Your Honor. Calls for
 5 expert testimony as to what this means.
 6 BY MS. HARRIS:
 7 Q Do you understand what this means, based on the statements
 8 that were sent to you?
 9 A Yes, I do.
 10 Q What does it mean?
 11 A This is the auditor indicating what they believe the net
 12 return, the total return after incentive allocation, is that
 13 the that the investors received. The value of their account
 14 will go up by 20.1 percent by the end of the year,
 15 December 31st.
 16 Q And what does "incentive allocation" mean?
 17 A Incentive allocation are fees that are charged to the
 18 account that go back to the firm or the trading manager. It's
 19 usually made up of a management fee and an incentive fee.
 20 Q Did you also receive an audit from Market Neutral Trading
 21 from Jones Moore & Associates for the calendar year 2009?
 22 A Yes, I did.
 23 Q Could you take a look at Government's Exhibit 156, and
 24 tell us if you recognize Exhibit 156.
 25 (Request complied with by the Witness)

1 A Yes, I do.
 2 Q What is Government Exhibit 156?
 3 A It's an audit for Market Neutral Trading, December 31,
 4 2009.
 5 Q And is this something that you received in August of 2010
 6 in connection with your due diligence on Market Neutral
 7 Trading?
 8 A Yes, I received it from the auditor.
 9 MS. HARRIS: Your Honor, I offer Government Exhibit
 10 156 into evidence.
 11 THE COURT: Any objection?
 12 MR. DRESSLER: No objection.
 13 THE COURT: Admitted.
 14 (Trial Exhibit 156 received in evidence)
 15 BY MS. HARRIS:
 16 Q If we could take a look at Page 3 of Government Exhibit
 17 156.
 18 (Document displayed)
 19 Q Underneath the section that says "INDEPENDENT AUDITORS'
 20 REPORT" it says (As read):
 21 "To the Members of Market Neutral Trading, LLC."
 22 What does that mean, "Members of Market Neutral Trading,
 23 LLC"?
 24 A The investors.
 25 Q And then, what is the period of time that this audit

1 that's Government Exhibit 156, what is the period of time that
 2 Jones Moore & Associates was auditing Market Neutral Trading?
 3 A For the year 2009 through December 31st, 2009.
 4 Q Okay. And then at the bottom of Page -- of Page 3 of
 5 Exhibit 156, where was the audit prepared, and what is the date
 6 that the audit was prepared, based on Exhibit 156?
 7 A It was prepared in Wilmington, Delaware, March 15, 2010.
 8 Q Now if we could take a look at Page 11 of Government
 9 Exhibit 156. The financial highlights for calendar year 2009.
 10 (Document displayed)
 11 Q What were you told by Jones Moore & Associates was the
 12 total return for Market Neutral Trading in 2009 before
 13 incentive allocation to managing member?
 14 A 16.6.
 15 Q What was the total return after incentive reallocation to
 16 managing member for Market Neutral Trading's investors in the
 17 calendar year January 2009.
 18 A 12.5 percent.
 19 Q What does that mean?
 20 A 12.5 is the net return to the investors --
 21 Q For what period of time?
 22 A For the year 2009, from January 1 to December 31st.
 23 Q I'm now going to show you what's been previously admitted
 24 into evidence as Government Exhibit 140, and ask if we could
 25 bring up Page 1 of Exhibit 140, and have that side by side with

1 Page 11 of Government Exhibit 156.
 2 (Documents displayed)
 3 Q Okay. Now, if you could look to the right of your screen,
 4 where you're looking at Government Exhibit 140, Market Neutral
 5 Trading actual performance, in the lower corner, does it show
 6 the monthly -- the total rate of return for 2009 as being minus
 7 94.89 percent?
 8 A Yes, that's what I see.
 9 Q Did you ever receive any document from Mr. Murray
 10 indicating that Market Neutral Trading had lost 94 percent in
 11 2009?
 12 A No, I did not.
 13 Q Was your information as you received it, based on
 14 Government Exhibit 156, that in fact investors of Market
 15 Neutral Trading in 2009 had actually received a 12.5 percent
 16 positive return?
 17 A That's my understanding from what I received.
 18 Q Have you ever seen Government's Exhibit 40 (sic), Page 1,
 19 before right now?
 20 A No, I haven't.
 21 (Reporter interruption)
 22 MS. HARRIS: 140.
 23 BY MS. HARRIS:
 24 Q Did you ever meet James Murray in person?
 25 A Yes, I did.

1 Q Where did the meeting take place?
 2 A Trading office in San Francisco, on -- near California
 3 Street.
 4 Q And, was anyone else present at the meeting?
 5 A Yes, another individual. I -- like an office trade
 6 assistant/office manager, somebody who was sitting behind a
 7 computer, clicking on a computer.
 8 Q What was discussed at the meeting that you had with
 9 Mr. Murray?
 10 A The amount of assets in the fund, performance. And
 11 performance that day.
 12 Q What did Mr. Murray tell you about the amount of assets in
 13 the fund?
 14 A About \$5 million.
 15 Q And what did Mr. Murray tell you about the performance of
 16 the fund?
 17 A Well, I'd received the information that we discussed
 18 before, that averaged about 30 percent for about five years,
 19 30 percent each year, on average.
 20 Q And specifically for 2009, had you received information
 21 that investors in Market Neutral Trading had received a 12 1/2
 22 percent return?
 23 A Yes, I did. Approximately 12 1/2.
 24 Q All right. If you could take a look at Government Exhibit
 25 161, and tell me if you recognize Exhibit 161.

1 (Request complied with by the Witness)
 2 A Yes, I do recognize it.
 3 Q What is Government Exhibit 161?
 4 A Well, the first page is an email where I asked Jim Murray
 5 about an estimate for the month of August, 2010. And then
 6 later, I think a couple of hours later, he responded to me,
 7 +2.46 -- meaning 2.46 percent -- is his estimate.
 8 And then I received the performance report some time
 9 later, probably a couple of days later. And that should
 10 contain the official net return number that was determined by
 11 the administrator.
 12 Q And did you receive the performance update that you
 13 referred to a few days after you received the email that we see
 14 in Government Exhibit 161?
 15 A Yes, I did.
 16 MS. HARRIS: Your Honor, I offer Government Exhibit
 17 161 into evidence.
 18 THE COURT: Any objection?
 19 MS. HARRIS: If we can publish --
 20 (Reporter interruption)
 21 MR. DRESSLER: No objection.
 22 THE COURT: Admitted.
 23 (Trial Exhibit 161 received in evidence)
 24 MS. HARRIS: Can we now bring up Page 1 of Government
 25 Exhibit 161.

1 (Document displayed)
 2 BY MS. HARRIS:
 3 Q What did Mr. Murray tell you was the rate of return for
 4 Market Neutral Trading for August of 2010?
 5 A 2.46.
 6 Q And now, if you could look at the monthly performance
 7 update that you received a few days later for August of 2010.
 8 Specifically, if we could look at the box, Table 1 that refers
 9 to Market Neutral Trading.
 10 What did the information that you received in September of
 11 2010 tell you was the annual rate of return for Market Neutral
 12 Trading in 2009?
 13 A 13.44 percent.
 14 THE COURT: Are you -- it's not up on the screen, so
 15 if --
 16 MS. HARRIS: Oh, can we pull up -- thank Your Honor.
 17 Can we pull up Page 2 of Exhibit 161?
 18 (Document displayed)
 19 MS. HARRIS: And then next to Page 2 of Exhibit 161,
 20 can we also pull up Government Exhibit 140, Page 1?
 21 (Documents displayed)
 22 BY MS. HARRIS:
 23 Q Mr. Eckel, can you specifically look at Government Exhibit
 24 140, the months of August, September, October, and November,
 25 and compare that with the months of August, September, October,

1 and November of the 2009 summary you received in 2010 from
 2 Mr. Murray?
 3 A Sure.
 4 Q Specifically, let's first take a look at August of 2009 on
 5 Government Exhibit 140.
 6 What does it say the monthly rate of return was in August
 7 of 2009?
 8 A 0.36 percent.
 9 Q And what does it say the monthly rate of return on Exhibit
 10 140 is?
 11 A Uh -- which one?
 12 (Off-the-Record discussion)
 13 THE WITNESS: Okay, that's fine.
 14 MS. HARRIS: And if you could just blow up the bottom
 15 section here.
 16 (Document displayed)
 17 BY MS. HARRIS:
 18 Q Can you read us what the -- the September monthly rate of
 19 return was for Market Neutral Trading on Exhibit 140?
 20 A September?
 21 Q Yes.
 22 A Okay. Negative 44.03 percent.
 23 Q Okay. And what were you given as the rate of return for
 24 Market Neutral Trading in September of 2009?
 25 A Negative 1.59.

1 Q Now, let's look at October of 2009 on Government Exhibit
 2 140. What does it say was the rate of return for Market
 3 Neutral Trading in October of 2009?
 4 A Negative 44.5 percent.
 5 Q What were you told the actual -- the rate of return was
 6 for Market Neutral Trading in October of 2009?
 7 A Negative 0.59 percent.
 8 Q Now if you look at November, what was the rate of return
 9 for Market Neutral Trading according to Exhibit 140?
 10 A Negative 80.75 percent.
 11 Q What were you told the rate of return was for Market
 12 Neutral Trading in November of 2009?
 13 A Positive 3.91 percent.
 14 Q Now, if you could look at December on Exhibit 140, what
 15 does Exhibit 140 say that the rate of return was for December?
 16 A Negative 19.23 percent.
 17 Q What were you told Market Neutral Trading's rate of return
 18 was for December of 2009?
 19 A 5.43 percent.
 20 Q Is that positive?
 21 A Excuse me. Positive 5.43 percent.
 22 Q And then, what were you told was the annual rate of return
 23 for 2009, based on the performance update you received from
 24 Mr. Murray?
 25 A Positive 3.44 percent.

1 Q Is it 3.44 or --
 2 A Excuse me. Positive 13.44 percent.
 3 Q And then if you look at Government Exhibit 140, what does
 4 it show was the rate of return for Market Neutral Trading for
 5 the year 2009?
 6 A Negative 94.89 percent.
 7 Q At some point, did Emerging Managers enter into a business
 8 relationship with Market Neutral Trading?
 9 A Yes.
 10 Q Was that after you received the performance review
 11 information that we have just gone over as well as the DDQ for
 12 Mr. Murray?
 13 A Yes.
 14 Q Can you take a look at Government Exhibit 161, please.
 15 Actually, 162.
 16 (Request complied with by the Witness)
 17 Q Do you recognize Government Exhibit 162?
 18 A Yes, I recognize it.
 19 Q What is Exhibit 162?
 20 A It is a solicitation agreement or marketing agreement
 21 between my broker-dealer Emerging Manager advisors and the
 22 trading firm Market Neutral Trading.
 23 Q Okay. And did you and Mr. Murray enter into this
 24 agreement in September of 2010?
 25 A Yes.

1 Q Is that your signature on Page 6 of Government's Exhibit
 2 162?
 3 A Yes, it is.
 4 Q And above your signature, does that appear to be
 5 Mr. Murray's signature?
 6 A Yes.
 7 MS. HARRIS: Your Honor, I offer Government Exhibit
 8 162 into evidence.
 9 THE COURT: Any objection?
 10 MR. DRESSLER: No, Your Honor.
 11 THE COURT: Admitted.
 12 (Trial Exhibit 162 received in evidence)
 13 BY MS. HARRIS:
 14 Q I just wanted to draw your attention to Page 5 of
 15 Government Exhibit 162, and specifically Paragraph 9.
 16 What was your relationship with Market Neutral Trading,
 17 based on Paragraph 9 on Page 5 of Exhibit 162?
 18 MS. HARRIS: Can you bring it up?
 19 (Document displayed)
 20 BY MS. HARRIS:
 21 Q What did this mean, Paragraph 9?
 22 A Well, a market agreement is success-based. I get paid
 23 nothing if I don't raise capital. It's non-exclusive. I'm not
 24 an employee. I'm an independent contractor.
 25 Q What were you offering to do for Market Neutral Trading

1 based on the solicitation agreement that is Exhibit 162?
 2 A Basically, introduce my investor contacts for potential
 3 investment into the Market Neutral Trading fund.
 4 Q Okay. Did you also have a consultant proposal for Market
 5 Neutral Trading whereby you would serve as some type of
 6 consultant as to Market Neutral Trading?
 7 A Yes, I did.
 8 Q Can you take a look at Exhibit 163, and tell us if you
 9 recognize Exhibit 163.
 10 (Request complied with by the Witness)
 11 A Yes, I do.
 12 Q What is Exhibit 163?
 13 A Basically an outline, a consultant proposal, mainly to get
 14 paid for doing -- creating marketing materials, which is part
 15 of the capital-raising process.
 16 Q And, did you create Exhibit 163 in September of 2010?
 17 A Yes.
 18 MS. HARRIS: Your Honor, I offer Exhibit 163 into
 19 evidence.
 20 THE COURT: Any objection?
 21 Any objection, Mr. Dressler?
 22 MR. DRESSLER: No, Your Honor.
 23 THE COURT: Admitted.
 24 (Trial Exhibit 163 received in evidence)
 25 MS. HARRIS: If we could bring up Page 1 of

1 Government Exhibit 163.
 2 (Document displayed)
 3 BY MS. HARRIS:
 4 Q What was the initial term of the consultant proposal
 5 between your company and Market Neutral Trading?
 6 A It was six months.
 7 Q And how much were you proposing that you get paid by
 8 Market Neutral Trading?
 9 A \$4,500 a month.
 10 Q What does it mean, "paid in soft dollars"?
 11 A "Paid in soft dollars" is sometimes -- some trading firms
 12 can pay different service providers via commission. So the
 13 brokerage pays the manager -- pays the service provider.
 14 Q And did you have a proposed title for yourself?
 15 A Excuse me?
 16 Q Did you have a proposed title for yourself?
 17 A Yes.
 18 Q What title?
 19 A What I use with all these type of things is "COO
 20 consultant."
 21 (Reporter interruption)
 22 THE WITNESS: What I use for all these types of
 23 relationships is "COO consultant."
 24 BY MS. HARRIS:
 25 Q What does that mean?

1 A Well, it's a made-up -- so, I think I'm the only one who
 2 uses it in the industry, but it's -- kind of provide marketing
 3 services, plus also fund development services. Maybe
 4 introduction to a new -- a new law firm or different things
 5 like that.
 6 Q Let's take a look at the section that says "Objectives."
 7 And you have a bullet point that says (As read):
 8 "Discuss vendors (admin, et cetera.)"
 9 Why did you want to discuss the vendors with Market
 10 Neutral Trading?
 11 A Well, that they weren't well known. I didn't know them.
 12 They took a long time to get back to me, via email. So the
 13 initial response -- I had a couple of questions, and it took
 14 them a long time, and -- and I just didn't think it was a
 15 brand-A vendor firm.
 16 I don't think my potential investors would -- would feel
 17 confident dealing with -- I don't want to say "no-name," but a
 18 less-than -- I would say a less-than-popular firm.
 19 Q Now, if we could look at the box that's on Page 1,
 20 "Provide strategic guidance to MNT's operations," you have a
 21 section that says (As read):
 22 "Assume a COO consultant role in company."
 23 And then there's a bullet point:
 24 "Evaluate current prime broker, admin, audit and
 25 legal relationships."

1 Why did you want to evaluate Market Neutral Trading's
 2 vendors, specifically their prime broker, admin and audit?
 3 A Well, they weren't popular. I haven't heard of a lot of
 4 them. I haven't heard -- I'd heard of the prime broker, but I
 5 hadn't heard of the admin, the audit or the legal before.
 6 And a quick glance at some of the agreements, they didn't
 7 look too impressive. The PPM. They were in strange locations.
 8 Wilmington, Delaware. And they weren't New York or
 9 San Francisco or California.
 10 Q Okay. You said you had heard of the broker. Who was the
 11 prime broker?
 12 A Um, well, again, this is a template that I use for a lot
 13 of my relationships. So it was Interactive Brokers, and I
 14 think also Goldman Sachs was a -- was a consideration.
 15 But because I put -- again, this is a template, so I list
 16 all the vendors, and let's go down the list as we get to know
 17 each other over the couple of months, and maybe there's changes
 18 that need to take place.
 19 Q Had you heard of Interactive Brokers before you entered
 20 into your relationship with Mr. Murray's company?
 21 A Never -- just in the peripheral. Never worked with them,
 22 but I'd heard they're around. I heard -- they're not a tier 1
 23 or tier 2, I would consider. I think they're small, I think
 24 they're East Coast somewhere.
 25 Q But you had not heard of any of the other vendors.

1 A No.

2 Q Now, at some point after you put together the proposal
3 that we just looked at, did you have -- did you prepare some
4 draft marketing materials for Market Neutral Trading?

5 A Yes, I did.

6 Q And did you email those materials for review and comment
7 to Mr. Murray?

8 A Yes, I did.

9 Q Could you take a look at Government Exhibit 164, and tell
10 us if you recognize Exhibit 164?

11 (Request complied with by the Witness)

12 A Yes, I do.

13 Q What is Exhibit 164?

14 A Well, I have a certain template for market material. This
15 would be at the general presentation. And so from the material
16 that I received from Jim Murray initially, I kind of filled in
17 all the different areas of my template.

18 And then, I emailed to him, you know: This is a first
19 draft, what do you think?

20 And then usually the process of changes that are --
21 incorrect information that I may have in there takes place.
22 And then eventually, it's a more final draft that's sent to
23 potential investors.

24 Q Is Page 1 of Exhibit 164 the email back and forth between
25 you and Mr. Murray in September of 2010?

1 A Yes.

2 MS. HARRIS: Your Honor, I offer Government Exhibit
3 164 into evidence.

4 THE COURT: Any objection?

5 MR. DRESSLER: No, Your Honor.

6 THE COURT: Admitted.
7 (Trial Exhibit 164 received in evidence)

8 BY MS. HARRIS:

9 Q If we could take a look at Page 1 of Exhibit 164, and the
10 bottom email from you on September 19, 2010. If we can look at
11 the first two sentences, you say (As read):

12 "Jim, I have attached a presentation draft."
13 What is a presentation draft?

14 A It's -- basically, I have a template that I have for all
15 my different clients. It's not the final form. I filled it in
16 with data that he provided to me, and then I sent it to him for
17 his, kind of, review and evaluation.

18 Q And in the second sentence, you say:
19 "If I didn't know the information - I just
20 entered random numbers."
21 What did you mean by that?

22 A Well, in description of MNT, as I was told, had, like,
23 five different approaches, five different strategies within
24 their overall approach. And, the -- the strategies use
25 different weights or emphasis. Like, one month it might be

1 40 percent fundamental analysis, how many iPhones are sold.
2 And another month, might be 60 percent technical data, how much
3 Apple went up or down.

4 So that 40/60, I would just kind of, as a starting point,
5 put it in the strategy. And then I would ask Jim to adjust it.
6 But then next month it might be 30/70, 35/75 (sic).

7 So differing combinations of how to describe kind of what
8 went on during the month that produced the final net return for
9 investors.

10 Q And the presentation draft that you are referring to in
11 your email that we're looking at, is that also a part of
12 Government Exhibit 164?

13 A Yes, it was.

14 Q And did you send that presentation draft to Mr. Murray on
15 September 19, 2010?

16 A Yes, I did.

17 Q Let's take a look at the presentation draft. And
18 specifically, if we could pull up Page 4 of Government Exhibit
19 164.

20 (Document displayed)

21 Q Did you prepare this section that says "Biographies"?

22 A Yes, I did.

23 Q And let's look at the biography of Jim Murray. The second
24 sentence says (As read):
25 "The fund was seeded by Jim's prior employer,

1 Pareto Capital, a statistical arbitrage hedge fund."
2 Where did you get that information?

3 A That's what Jim told me.

4 Q I didn't hear you.

5 A That's what Jim Murray told me.

6 Q You're going to have to speak into the microphone, and
7 slowly, so we can all hear you.

8 A Okay. Jim Murray provided that information to me.

9 Q What does that mean, "The fund was seeded"?

10 A That means his prior employer, Pareto Capital, gave him,
11 he told me at the time, \$4 million to begin trading seed, like
12 a seed of a tree, day one capital to start, to launch money,
13 \$4 million.

14 Q Was that of any importance to you in determining whether
15 to introduce investors to Market Neutral Trading?

16 A Very, very significant for myself and for potential
17 investors.

18 Q Can you explain why?

19 A Well, investors and myself are looking for a simple story
20 -- we're looking for a kind of progressive simple story of a
21 manager's background.

22 And, if your prior employer gives you millions of dollars
23 to start a new fund, that says a couple of things. Says the
24 relationship ended well. You made the manager money at Pareto
25 Capital. And maybe he's going on to do different things. And

1 he has a vote of confidence with his own capital as you start
2 your new venture.

3 Q And then if we can look at the bottom section of the
4 biography you prepared for Mr. Murray, the section that says
5 "Jim graduated Cum Laude in economics and finance from the
6 University of Arizona in 1991 and with an M.S. in economics in
7 1993," where did you get that information?

8 A From Jim's resume, that he sent it to.

9 Q And why did you include that in the biography?

10 A Well, it's very important, especially for this type of
11 strategy, which is called "quantitative." You want very bright
12 people. And it's expected to have advanced degrees.

13 Q Now, if we could take a look at Page 8 of Government
14 Exhibit 164. The section entitled "Fund returns."
15 (Document displayed)

16 Q Where did you get the information that we're looking at on
17 Page 8 of Government Exhibit 164, specifically the returns for
18 Market Neutral Trading as compared with the Standard & Poor
19 index?

20 A That was the initial performance report that was sent to
21 me, I think July 10th -- July 15, 2010.

22 Q Was that -- was the information that we're looking at now
23 based on information you received directly from Jim Murray in
24 July of 2010?

25 A Yes, it was.

1 164. You have a section entitled "Service Providers and Fund
2 Terms."
3 Where did you get the information about administrators --
4 administration? Where did you get that information from?

5 A I got that from Jim Murray verbally, but also it was
6 contained in the performance summary report that he eventually
7 sent me.

8 Q Okay. And what about the information about the auditor
9 being Jones Moore & Associates? Where did you get that from?

10 A That was -- again, I saw in several places, including on
11 the audits. But it was -- I also saw it on the performance
12 reports that Jim Murray sent me.

13 Q Then there's a section that says "Legal." And you have
14 "Hornstein Law Offices." Where did you get that?

15 A From the documents that Jim Murray sent me. The
16 due-diligence documents, the presentation documents, the
17 one-page summary documents.

18 Q What does it mean to include a service provider, and then
19 have it say "Legal"? What does that mean?

20 A That means that is the firm who created the offering
21 memorandum, the fund document. Our PPM, private placement
22 memorandum.

23 Q If you could take a look at Exhibit 165, and tell me if
24 you recognize Exhibit 165.

25 MR. DRESSLER: Did you say 165?

1 Q And looking at the year 2009 fund returns, what where did
2 you get the 13.4 percent year-to-date return for 2009? Where
3 did you get that figure from?

4 A I got that figure directly from the report that he sent me
5 in July, 2010.

6 Q When you say "he," who are you --

7 A Jim Murray.

8 Q You've got to let me finish.

9 A Okay.

10 Q When you say "he," who are you referring to?

11 A Jim Murray.

12 Q And where did you get the information that you included on
13 Page 8 for the 2008 year-to-date return of 21.9 percent? Where
14 did you get that information?

15 A I received it from the report that Jim Murray sent me.

16 Q And then, let's look at 2010. Where did you get the
17 information that for the first eight months of 2010, Market
18 Neutral Trading had returned its investors a 22.7 percent
19 return?

20 A I received that from the report that Jim Murray sent me.

21 Q From the years 2006 through 2010, based on the information
22 that you received from Mr. Murray, had Market Neutral Trading
23 ever suffered a loss in any calendar year?

24 A No, it had not.

25 Q Now if we can take a look at Page 10 of Government Exhibit

1 MS. HARRIS: Yes, 165.

2 BY MS. HARRIS:

3 Q Mr. Eckel, do you recognize Government Exhibit 165?

4 A Yes, I do.

5 MR. DRESSLER: May I approach?

6 (Off-the-Record discussion between counsel)

7 MR. DRESSLER: All right.

8 BY MS. HARRIS:

9 Q Do you recognize Exhibit 165?

10 A Yes, I do.

11 Q What is Exhibit 165?

12 A It is an email to me from Jim Murray on October 5th, 2010.

13 MS. HARRIS: Your Honor, I offer Government Exhibit
14 165 into evidence.

15 MR. DRESSLER: No objection.

16 THE COURT: Admitted.
17 (Trial Exhibit 165 received in evidence)

18 MS. HARRIS: If we could just pull up Exhibit 165.
19 The subject line --
20 (Document displayed)

21 BY MS. HARRIS:

22 Q Okay. Mr. Murray says to you "Hi Paul," and then he's
23 looking at new presentation. Does that refer to the
24 presentation draft we just looked at?

25 A Yes, it does.

1 Q Mr. Murray, if we could go to the third line, he says:
 2 "For the MNT presentation, there are some typos,
 3 probably because it's a draft. I thought I'd mention
 4 them."
 5 Do you see that?
 6 A Yes, I do.
 7 Q And above that line, after, it says:
 8 "I saw a few typos and a sentence that begins
 9 with And."
 10 Do you see that?
 11 A Yes, I see that.
 12 Q Did Mr. Murray ever correct any of the annual rate of
 13 return for Market Neutral Trading in this email?
 14 A No, he didn't.
 15 Q Did he make any changes to the numbers that you included
 16 for the year-to-date return for Market Neutral Trading for each
 17 of the years that you used in the presentation material?
 18 A No, he didn't.
 19 Q Did he propose some language to describe the dividend and
 20 risk arbitrage box on Page 5.1?
 21 A Yes, he did.
 22 Q And then, let's take a look at the second-to-the-last
 23 sentence, and highlight that in the email from Mr. Murray.
 24 (Document displayed)
 25 Q Do you see the sentence that says "All else looks good"?

1 A Yes.
 2 Q Did Mr. Murray ever give you any correction or changes to
 3 the numbers you included in the presentation draft you sent
 4 him?
 5 A No.
 6 Q Can you take a look at Exhibit 166 and let me know if you
 7 recognize the email chain that's contained in Exhibit 166?
 8 A Yes, I do recognize it.
 9 Q And did you receive these emails in October of 2010?
 10 A Yes, I did.
 11 Q Okay.
 12 MS. HARRIS: Your Honor, I offer Government Exhibit
 13 166 into evidence.
 14 MR. DRESSLER: No objection.
 15 THE COURT: Admitted.
 16 (Trial Exhibit 166 received in evidence)
 17 BY MS. HARRIS:
 18 Q We have previously looked at some audits that you received
 19 from Jones Moore & Associates that pertain to 2009 and 2008.
 20 Did you ask Mr. Murray to have Jones Moore & Associates
 21 send you audits for Market Neutral Trading for 2006 and 2007?
 22 A I asked him for the audits. And he said he will have
 23 Jones Moore send them to me.
 24 MS. HARRIS: If we could pull up Page 1 of Government
 25 Exhibit 166.

1 (Document displayed)
 2 BY MS. HARRIS:
 3 Q Okay. If we can look at the bottom email.
 4 (Document displayed)
 5 Q Is this an email from you to Mr. Murray, with the subject
 6 line "Audits"?
 7 A Yes, it is.
 8 Q Okay. And then you say:
 9 "I have 09 and 08."
 10 What did you mean by that?
 11 A Well, Jones Moore already sent me the audits for '08 and
 12 '09. And then I made a second request to Jim for the '06 and
 13 '07 audits, and asked him: Can you have the auditor send them
 14 to me?
 15 Q Now, if we can take a look at the email at the top of Page
 16 1 of Exhibit 166.
 17 And if we can highlight the To, From and CC section.
 18 (Document displayed)
 19 Q Okay. Who is the email from?
 20 A It's from Jim Murray, Market Neutral Trading.
 21 Q And who is it to? And if you could read us the domain
 22 name as well.
 23 A Sure. It's to Richard Jones, richard@jonesmoore.com. And
 24 there's a cc to joseph@jonesmoore.com. And then I'm also
 25 included, my email is also included on the cc. Paul Eckel.

1 Q Who is the email to?
 2 A The two partners of Jones Moore, the auditing firm.
 3 Q What does it say?
 4 A The email says (As read):
 5 "Hi Michelle and/or Richard, Please send 06 and
 6 07 audits to Paul Eckel. His email is attached.
 7 Thanks. Jim Murray, CIO, Market Neutral Trading."
 8 Q And at some point, did you receive '06 and '07 audits from
 9 Jones Moore & Associates for Market Neutral Trading?
 10 A Yes, I did.
 11 Q Okay. Now, if we could look at Page 2 of Government
 12 Exhibit 166.
 13 (Document displayed)
 14 Q And if we could look at the bottom email on Page 2, it's
 15 from someone named Elliott Donnelley to you. Who is Elliott
 16 Donnelley?
 17 A He's a high-net-worth investor contact of mine.
 18 Q And were you attempting, as of October 21, 2010, to
 19 introduce Mr. Donnelley to the Market Neutral Trading hedge
 20 fund?
 21 A Yes, I did.
 22 Q And, the subject line, what does that say?
 23 A "Regarding MNT - offering documents."
 24 Q Okay. What was Mr. Donnelley asking you in the email of
 25 October 21st, 2010? Can you start with "I have not..."

1 A (As read):
 2 "I have not heard of the firm's legal counsel or
 3 auditor. Could you provide us with some sort of
 4 information about the reputation of these firms as
 5 well as how they were selected and why? Thanks."
 6 Q Was this also a concern of yours?
 7 A Yes.
 8 Q Now, if we could look at the middle email on Page 2 of
 9 Exhibit 166.
 10 (Document displayed)
 11 Q After you received Mr. Donnelley's email, did you write to
 12 Mr. Murray concerning the fact that you had not heard about the
 13 legal counsel or auditor?
 14 A Yes, I did.
 15 Q Let's look at the first line that you wrote. What did you
 16 say to Mr. Murray on October 22, 2010?
 17 A (As read)
 18 "Jim, I have run into a few concerns about the
 19 lack of brand name vendors. An investor of mine
 20 would have invested - if he knew the names."
 21 Q And then, what is the next sentence?
 22 A (As read)
 23 "Elliot (sic) is asking about how we decided to
 24 use the auditor and counsel - were they referrals?
 25 Or did you work with them before at other firms?"

1 Paul."
 2 Q Let's look at the top email now.
 3 What did Mr. Murray respond to you with regard to your
 4 concern about the lack of knowledge about the -- the auditor or
 5 legal? What did Mr. Murray say?
 6 A (As read)
 7 "They worked with my previous firm and seed
 8 investor. Counsel..."
 9 Q Let me stop you there. You previously told us what a seed
 10 investor is. Who did you think the seed investor was that was
 11 being referred to?
 12 A Pareto Capital.
 13 Q And then what does it say about the legal counsel?
 14 A (As read)
 15 "Counsel is also a referral that works here in
 16 San Francisco and he was cost effective for a start
 17 up fund."
 18 Q And then if we can take a look at Page 3 of Exhibit 166.
 19 (Document displayed)
 20 Q And specifically, the top part of the email chain, where
 21 you write back to Mr. Murray. You say "That's a good reason."
 22 And then you ask him another question.
 23 What were you asking? What's the next question you were
 24 asking?
 25 A I asked, "How did the admin" -- meaning administrator --

1 "come about?"
 2 Q Which administrator were you referring to?
 3 A HF Administrators.
 4 (Reporter interruption)
 5 THE WITNESS: HF, yeah.
 6 BY MS. HARRIS:
 7 Q And then, on the top of your email at the very top of Page
 8 3 of Exhibit 166, did Mr. Murray tell you how he came to have
 9 that administrator for Market Neutral Trading?
 10 A Yes, he did.
 11 Q What did he say?
 12 A He said "Referral also."
 13 Q Now, if we could take a look at Page 6 and 7 of Exhibit
 14 166, and if we could put them side by side.
 15 (Documents displayed)
 16 Q At the bottom of Page 6, did you send Mr. Murray an email
 17 on October 25th, 2010, where you were making an inquiry about
 18 the audit versus the return report, and some differences you
 19 noticed?
 20 A Yes, I did.
 21 Q Can you explain to us what you were trying to figure out
 22 with the email you sent on October 25, 2010?
 23 A The performance report that he initially provided me --
 24 Q Can you talk louder, and into the microphone, and slowly?
 25 A Yeah.

1 Q Thank you.
 2 A The annual return in the performance report that he
 3 initially provided me --
 4 Q Who's "he"?
 5 A I'm sorry, Jim Murray.
 6 Q Uh-huh.
 7 A It was a small difference between that and the final net
 8 return that was determined by the auditor.
 9 Q And which auditor are you referring to?
 10 A Jones Moore.
 11 Q Now, if we could take a look at Page 7 of 166, which is
 12 side by side. Is this the response you got from Mr. Murray?
 13 (Witness examines document)
 14 A Yes, it is.
 15 Q Okay. Did Mr. Murray have the fact sheet performance
 16 comparison with the audited performance comparison?
 17 A Can you repeat the question?
 18 Q What -- I'm sorry, it's at the top -- excuse me. It's at
 19 the top of Page 6 of 166.
 20 Did Mr. Murray explain to you how -- why the audited
 21 returns did not match the performance report?
 22 A Yes, he did.
 23 Q What did he say?
 24 A Well, the first line, Jim Murray said (As read):
 25 "The audit is asset weighted and done on the

1 entity as a whole. Not on an individual who did not
2 add or subtract dollars."
3 Q Then if we could take a look at the second-to-last line of
4 Mr. Murray's email to you, where it starts, "I believe it's
5 noted in the report..."
6 Can you read that for us?
7 A Oh, the second-to-last one?
8 Q Yeah. What did Mr. Murray say?
9 A Mr. Murray said:
10 "I believe it's noted in the report that the
11 audit is done for the fund as a whole, and that
12 returns for an individual would vary based on
13 contributions or withdrawals."
14 Q What did that mean to you?
15 A That the performance report is as if an investor put in
16 money January 1st, and did not add or subtract, and then on
17 December 31st, his return would be 13.6, let's say, in 2009.
18 The audit takes into account of all the money coming in
19 and going, and assigns -- and weights the return. So if a lot
20 of money came in during a good performing month, that would
21 affect the average. Whereas in the other one, it's assumed
22 that someone put in a million dollars, and it didn't change.
23 So, slight differences sometimes occur.
24 Q Now, if you could take a look at Government Exhibit 153,
25 and tell me if you recognize Exhibit 153.

1 (Witness examines document)
2 A Yes, I do.
3 Q What is Exhibit 153?
4 A It's the Market Neutral Trading audit for December 31st,
5 2006.
6 Q And did you receive this from Jones Moore & Associates?
7 A Yes, I did.
8 Q Okay. And did you receive this after the email that you
9 were copied on in October of 2010 -- or September of 2010,
10 excuse me?
11 A Yes.
12 MS. HARRIS: Your Honor, I offer Government Exhibit
13 153 into evidence.
14 THE COURT: Any objection?
15 MR. DRESSLER: No objection.
16 THE COURT: Admitted.
17 (Trial Exhibit 153 received in evidence)
18 MS. HARRIS: Can we please pull up Page 3 of Exhibit
19 153.
20 (Document displayed)
21 BY MS. HARRIS:
22 Q Specifically, if we could look at the right-hand corner,
23 what is the address of Jones Moore & Associates as of
24 April 20th, 2007?
25 A The address is [REDACTED] Wilmington, Delaware.

1 Q And at the bottom of Page 3 of Exhibit 153, where does it
2 say that this audit report was done?
3 A Wilmington, Delaware.
4 Q What date?
5 A April 20, 2007.
6 Q Was it your assumption that Jones Moore & Associates
7 actually existed at 1521 Pike Street, Wilmington, Delaware as
8 of April 20, 2007?
9 A Yes.
10 Q Now, if we could take a look at Page 10 of Government's
11 Exhibit 153, the Financial Highlights?
12 (Document displayed.)
13 Q What was the rate of return you were told investors in
14 Market Neutral Trading received after an incentive allocation
15 to the managing member for the period August 15, 2006 through
16 December 31st, 2006?
17 A 21 percent.
18 Q You also had requested that Mr. Murray have his auditor
19 send you an independent audit for the calendar year 2007. Did
20 you receive that?
21 A Yes, I did.
22 Q Can you look Government's Exhibit 154 and tell me if you
23 recognize Exhibit 154?
24 A Yes, I do.
25 Q What is Exhibit 154?

1 A It's the Market Neutral Trading audit for 2007.
2 Q And did you receive Exhibit 154 shortly after the email
3 chain we saw between you and Mr. Murray in September of 2010?
4 A Yes, from Jones Moore.
5 MS. HARRIS: Your Honor, I offer Government's
6 Exhibit 154 into evidence.
7 THE COURT: Any objection?
8 MR. DRESSLER: No objection.
9 THE COURT: Admitted.
10 (Trial Exhibit 154 received in evidence.)
11 BY MS. HARRIS:
12 Q Can we take a look at Page 1 of Exhibit 154?
13 (Document displayed)
14 Q What is the date for this Independent Auditor's Report?
15 A It's December 31st, 2007.
16 Q Now, if we could look at Page 3 of Government's
17 Exhibit 154?
18 (Document displayed)
19 Q What is the period of time that was covered by the audit
20 report you received that's Exhibit 154?
21 A For the year of 2007.
22 Q And where does it say the audit was completed?
23 A Completed in Wilmington, Delaware.
24 Q What was the date?
25 A March 28th, 2008.

- 1 Q Was it your understanding that Jones Moore & Associates
2 was located at 1521 Concord Pike in Wilmington, Delaware as of
3 March 28th, 2008?
4 A Yes.
5 Q Now, if we could take a look at Page 10 of Exhibit 54, the
6 Financial Highlights?
7 (Document displayed)
8 Q What did Jones Moore & Associates say was the total return
9 for Market Neutral Trading for the entire calendar year of 2007
10 before the incentive allocation to the managing member?
11 A 46 percent.
12 Q How much did investors in Market Neutral Trading,
13 according to the report you received, how much did the
14 investors receive for the calendar year January 1, 2007 through
15 December 31st, 2007?
16 A 35 percent.
17 Q Did you in November of 2010 request certain daily returns
18 for Market Neutral Trading for you to be able to give to
19 prospective investors?
20 A Yes, I did.
21 Q Can you take a look at Government's Exhibit 168 and tell
22 us if you recognize the email chain in Government's
23 Exhibit 168?
24 A Yes, I do.
25 Q And are these a series of emails between you and James

- 1 Murray in November of 2010?
2 A Yes, they are.
3 MS. HARRIS: Your Honor, I offer Government's
4 Exhibit 168 into evidence.
5 THE COURT: Any objection?
6 MR. DRESSLER: No objection.
7 THE COURT: Admitted.
8 (Trial Exhibit 168 received in evidence.)
9 MS. HARRIS: If we could bring up Page 1 of Exhibit
10 168?
11 (Document displayed)
12 BY MS. HARRIS
13 Q And if we could look at the bottom email from you to
14 Mr. Murray, what is the subject line?
15 A Subject line states, "Daily returns - is this to be
16 completed today?"
17 Also, "What is Oct" -- for October. "What is Oct net
18 return?"
19 Q And what did Mr. Murray respond to you? If we could now
20 turn to you to the top, the email in response from Mr. Murray?
21 A (As read)
22 "Attached are the daily returns. These are gross
23 before incentive fee, but also before credits and/or
24 interest debits."
25 And then the line below is -- states:

- 1 "October estimate is 3.39 percent net."
2 Q So that was a positive for October?
3 A Yes.
4 Q Now, if we could take a look at Page 2 of Exhibit 168?
5 And, first, your email of November 1st, 2010.
6 (Document displayed)
7 Q Can you explain to us what we're looking at? This is the
8 bottom half of --
9 A The bottom half?
10 Q Yes.
11 A It's an email that I sent to Jim Murray. And I said:
12 "Jim, for max monthly draw down we have negative
13 5.1 percent on the cover page."
14 And that was in the daily numbers that he sent me in the
15 Excel database. I added them up myself. But I -- but I made
16 the point:
17 "You've indicated negative 2.98 net is the max
18 draw down."
19 Q So did you notice a discrepancy?
20 A Yes, I did.
21 Q Okay. And then you say:
22 "I've attached the dailies for Jan '07 which
23 appears to include the DD."
24 What does that mean?
25 A The draw down, the 5.1.

- 1 Q And did you want Mr. Murray to explain the difference that
2 you had just observed in the numbers?
3 A Yes, I did.
4 Q Okay. And then if we could look at the -- did you excerpt
5 part of the spreadsheet and include that in your email?
6 A Yes, I did.
7 Q What is the column that says "False"? What are we looking
8 at there?
9 A I'm not sure. That means an Excel -- I cut and paste it
10 into the "Outlook and Incentive."
11 Q So does that category refer to the numbers or it's just a
12 cut and paste from Excel?
13 A I just cut and paste the whole thing. I see "False"
14 there, but...
15 Q Okay. And then what did you receive from Mr. Murray in
16 response?
17 A I received an email a half hour later where he said:
18 "The performance report is correct."
19 Meaning, the main one-page summary which shows down to
20 .98.
21 "The spreadsheet, which is below the Excel
22 spreadsheet, is incorrect. I will look at it later
23 today and see if I can get a revised one over
24 shortly."
25 MR. DRESSLER: Excuse me. I don't think that the

1 witness read the whole sentence.
 2 THE COURT: Okay. Do you want to re-read it?
 3 A (As read)
 4 "The performance report is correct. And I this
 5 spreadsheet formula is incorrect. I will look at it
 6 later today and see if I can get a revised one over
 7 shortly."
 8 BY MS. HARRIS
 9 Q Now, if we could take a look at Page 4 of Exhibit 168?
 10 (Document displayed)
 11 Q If we look at the bottom email, the one that you sent to
 12 Mr. Murray, what are you doing with regard to October
 13 commentary? What is this for?
 14 A Well, each month in the performance report there is some
 15 commentary. And so in order to get things started and sort of
 16 be the consultant, I format -- basically, I format the
 17 commentary. This is sort of my idea how it could be presented.
 18 And then I'm basically asking him for the final numbers
 19 that -- where each strategy contributed to the final return.
 20 We traded four or five strategies -- or he traded four or five
 21 strategies.
 22 Q Okay. And then if we could look at your last sentence in
 23 the email, in your parenthetical. What did you mean by that?
 24 A "I'm making this up." That one?
 25 Q Yeah.

1 A (As read)
 2 "I'm making this up, but if this is true, we want
 3 to stress the multi-strategy nature of the models."
 4 That means basically, you know, I'm -- I just put in
 5 random numbers for the performance. Let me know what the final
 6 ones are and if they are true, that -- the returns are very
 7 diverse, then that's an angle to present to investors.
 8 Investors like diverse contributions within a strategy. They
 9 don't want one strategy to make all the returns. They'd rather
 10 have it be diverse.
 11 Q And then did Mr. Murray make some edits to your commentary
 12 in the email he sent back to you?
 13 A Yes.
 14 Q Can we take a look at that?
 15 A Yeah. That's in the email on top. I put in the number
 16 4.3, and he corrected it to positive 1.24.
 17 And then I just put in the number negative 3.7, the mean
 18 reversion strategy, and he corrected it to positive 3.02.
 19 And I put the remaining return. Again, I was just doing
 20 addition. So I ended up -- we needed a 1.2, so I just put 1.2
 21 in. Came from the Dividend Risk Arbitrage components. And he
 22 gave me the exact/true figure where it was negative .86.
 23 Q Now, if we could look at Page 7 of Exhibit 168. Is this
 24 an email you sent to Mr. Murray on November 8th, 2010?
 25 A Yes, I recognize it.

1 Q Okay. You were outlining a series of questions you
 2 thought investors might ask about the fund, and specifically
 3 you say:
 4 "I anticipate that we will get asked about the
 5 redemptions from the fund (allocators will be curious
 6 why this occurred, especially when the fund performed
 7 well)."
 8 What were you concerned about?
 9 A Well, people would like to see asset appreciation just due
 10 to the profits in asset appreciation, and then they want to see
 11 other people before them adding to the fund, investing in the
 12 fund.
 13 So it's kind of like a crowd -- you know, people like
 14 partners investing alongside them with them. So if a fund does
 15 not grow, that's sort of a red flag, if you will.
 16 Q Okay. And then you ask:
 17 "When is the external explanation?"
 18 Is that referring to the sentence we just saw?
 19 A Yes.
 20 Q Okay. Then you also say:
 21 "Now, at 5.7 million down from 12.8 million in
 22 December 2009."
 23 Were you given information that Market Neutral Trading had
 24 \$12.8 million worth of assets in December 2009?
 25 A Yes, I did.

1 Q Okay. And where did you get that information?
 2 A I believe initially from the due diligence document that I
 3 received from Jim Murray.
 4 Q And when you say, "Now at 5.7 million," what are you
 5 referring to?
 6 A Verbally and, also, via the general presentation and the
 7 due diligence document had, you know, 5.6 or 5.4.
 8 Q And you also ask:
 9 "How much does Pareto have in the fund?"
 10 Was that -- what was that based on?
 11 A Pareto Capital, as we read earlier, was the seed investor
 12 in the fund, the day one investor. They invested \$4 million
 13 into the fund day one, I was told by Jim Murray.
 14 Q Now, if we could look at Page 6 of Government's
 15 Exhibit 168.
 16 (Document displayed.)
 17 Q Is this the response you received from Mr. Murray to your
 18 email we just looked at?
 19 A Yes, it is. The underlining is.
 20 Q Okay. What did Mr. Murray say about the reason people had
 21 left the fund? Can you read us the first underlining?
 22 A (As read)
 23 "Most of the fund decline has been due to shift
 24 in AUM to separate accounts, i.e., not really
 25 redemptions, just shifting in the way it's being

1 managed."

2 So an example would be an investor had 2 million in the

3 fund and then he said: I'm going to take 2 million out of the

4 fund and put 2 million into my Merrill Lynch account and you

5 trade it there. Separately managed account versus the fund.

6 Q And then what does Mr. Murray say concerning the reason he

7 left his previous place/seed investor?

8 A Jim Murray indicated:

9 "Reason I left previous place/seed investor" --

10 referring to Pareto Capital -- "was because they had

11 change in investment objective and were not

12 committing to funding any additional assets and/or

13 managers due to a change in investment strategy to

14 private funding. That continued over the next two

15 years and they have gradually taken profits out."

16 Q Now, if we could look at the section that says, "Now at

17 5.7 million?"

18 That's what you thought Market Neutral Trading's assets

19 were as of November 2010, is that correct?

20 A That's correct.

21 Q What did Mr. Murray write to you in response?

22 A "5.88 million."

23 Q So he wrote to you that it was actually more?

24 A Yes.

25 Q Okay. And then you asked:

1 "How much does Pareto have in the fund?"

2 What did Mr. Murray respond?

3 A He responded, "1.85 million."

4 Q Now, if we could take a look at Page 8 of Exhibit 165, and

5 specifically the bottom email from you to Mr. Murray on

6 November 16, 2010.

7 (Document displayed.)

8 Q And the subject line is "Re DDQ Green Cross."

9 Can you tell us what that means?

10 THE COURT: Sure.

11 MR. DRESSLER: I apologize. I didn't hear what

12 exhibit this is.

13 MS. HARRIS: We're at Page 8 of Government's

14 Exhibit 168, and it's up on the screen.

15 A I sent an email to Jim Murray. The disclosure due

16 diligence questionnaire from Green Cross, who is a potential

17 investor, was asking how many fund investors? And I sent that

18 email to Jim Murray, and he responded five fund investors.

19 BY MS. HARRIS

20 Q And what is Green Cross?

21 A Green Cross is an investment firm. They make investments

22 into hedge fund managers.

23 Q And were they requiring a DDQ before deciding whether to

24 invest in Market Neutral Trading?

25 A Yes.

1 Q Now, if we could take a look at Page 9 of Government's

2 Exhibit 168 and your email at the bottom? And specifically the

3 Re line says -- the Subject line says "References."

4 (Document displayed.)

5 Q On November 17, 2010 did you ask Mr. Murray for a

6 reference from "Pareto/contact details and someone else?"

7 Do you see that?

8 A I see that. Yes, I did.

9 Q Okay. And who is Larry?

10 A Larry is a potential investor in the fund.

11 Q And it says:

12 "Larry appears to be good for 500K to 1 million,

13 but he needs two references."

14 Is that why you were asking Mr. Murray to provide some

15 references?

16 A Yes.

17 Q Okay. Did you get a response from Mr. Murray?

18 A Yes, I did.

19 Q Can we take a look at the email at the top of Page 8?

20 (Document displayed)

21 Q Who did Mr. Murray give you as the reference from Pareto

22 Capital?

23 MS. HARRIS: If we could blow that up?

24 (Document enlarged.)

25 A He gave me -- Jim Murray gave me, one reference is Tim

1 Palm, Pareto Capital, the President, and he gave me his email

2 address and phone number.

3 Q And what was the second reference?

4 A Chip "Charles" Roame, Tiburon Strategic Advisors.

5 Q Now, if we could take a look at Page 10 of Exhibit 168?

6 (Document displayed)

7 Q Did you send Mr. Murray an email asking him, "How does

8 Chip know you?"

9 A Yes, I did.

10 Q What did Mr. Murray respond as to you on November 17,

11 2010?

12 A He responded, "Professional reference."

13 Q Then if we could look at Page 11 of Government's

14 Exhibit 168?

15 (Document displayed)

16 Q Did Mr. Murray provide you with a phone number for Chip?

17 A Yes, he did.

18 Q What was the phone number he provided?

19 A (415)789-2540.

20 Q Can you take a look at Government's Exhibit 169 and let me

21 know if you recognize Exhibit 169?

22 A Yes, I do recognize it.

23 Q What is Exhibit 169?

24 A It's the Green Cross Due Diligence Questionnaire. It's

25 their questionnaire that they have all potential fund managers

1 fill out before -- fill out as part of the evaluation process.
 2 Q Where is the investor Green Cross based?
 3 A It's based in Australia.
 4 Q And is Exhibit 169 something that Green Cross required
 5 potential investments to fill out before Green Cross would make
 6 a decision as to whether to invest?
 7 A Yes, it is.
 8 MS. HARRIS: Your Honor, I offer Government's
 9 Exhibit 169 into evidence.
 10 THE COURT: Any objection?
 11 MR. DRESSLER: No objection.
 12 THE COURT: Admitted.
 13 (Trial Exhibit 169 received in evidence.)
 14 BY MS. HARRIS
 15 Q Could we bring up Page 1 of Exhibit 169?
 16 (Document displayed.)
 17 Q Is Page 1 entitled Statement of Truth?
 18 A Yes, it is.
 19 Q And who is it signed by?
 20 A Jim Murray.
 21 Q What is the date that Mr. Murray signed the statement of
 22 truth?
 23 A November 18, 2010.
 24 Q Now, if we could take a look at Page 7 of Exhibit 169?
 25 (Document displayed.)

1 Q Specifically Question 1.4:
 2 "Please list the firm's total money under
 3 management for each year up to the last five years."
 4 What did bullet point number one, where it says
 5 "11 million," what did that refer to? What year?
 6 A 2006.
 7 Q What did "12 million" refer to?
 8 A 2007.
 9 Q What did "10.8 million" refer to?
 10 A 2008.
 11 Q What did "5.5 million" refer to?
 12 A 2009.
 13 Q And what did "4 million" refer to?
 14 A 2010.
 15 Q Now, if we could look at question 1.9, also on Page 7:
 16 "What is the size and dollars of the largest
 17 account your firm currently has open?"
 18 And it says:
 19 "\$5.7 million fund. \$4.3 million separate
 20 account."
 21 Where did that information come from?
 22 A It came from the presentation that Jim Murray sent me, the
 23 initially marketing PowerPoint presentation.
 24 Q Now, if we could look at Page 9 of Exhibit 69, where it
 25 says "Key Personnel and Service Providers."

1 (Document displayed)
 2 Q Who is listed as -- under 2.1 as the "Principal of the
 3 firm?"
 4 A "Jim Murray."
 5 Q Under 2.6:
 6 "Who has authority to make trading decisions?"
 7 A It states, "Jim Murray."
 8 Q Under 2.7:
 9 "All people authorized to enter orders?"
 10 A "Jim Murray."
 11 Q 2.8:
 12 "Who is responsible for dealing with errors and
 13 other reconciliation problems?"
 14 A "Jim Murray."
 15 Q 2.9:
 16 "Who is responsible for reconciling trades,
 17 balances and positions with carrying FCMs?"
 18 A "Jim Murray."
 19 Q No. 2.10:
 20 "Who is responsible for conducting account
 21 reviews to ensure that trading policies, margin
 22 limits and performance are consistent with the
 23 policies outlined in your Disclosure Document?"
 24 A "Jim Murray."
 25 Q Now, if we could go to Page 10 of Exhibit 169?

1 (Document displayed)
 2 Q 2.12:
 3 "Please provide the name and location of any
 4 outside representatives being used and describe their
 5 function."
 6 And then it has you listed as "Marketing and COO
 7 Consultant." What did that mean?
 8 A Sometimes investors like to speak to the marketing rep
 9 rather -- basically, asking who your outside marketer is or
 10 other people that you work with, and so my name was included.
 11 Q Now, if we could look at 2.15:
 12 "Please provide a list of service providers and
 13 the appropriate contact at each and authority for us
 14 to make contact."
 15 Who is listed as Law?
 16 A Val Hornstein.
 17 Q And what is the phone number and email address for
 18 Mr. Hornstein?
 19 A It's (415)454-1490.
 20 Q Okay. And then who is listed as the administrators?
 21 A H.F. Administrators, Eve Nelson.
 22 Q Is there a phone number for Eve Nelson?
 23 A Yes, it is. It's (302)884-6723.
 24 Q Okay. And then if you could give us the email domain for
 25 Eve Nelson?

- 1 A Hfundadministration.com.
- 2 Q Okay. Now, if we could take a look at No. 2.17. The
- 3 question is:
- 4 "Who is the attorney and firm who prepares and
- 5 reviews your documentation?"
- 6 Did that refer to documentation relating to the Market
- 7 Neutral Trading investment opportunity?
- 8 A Yes.
- 9 Q Okay. Who is the lawyer listed?
- 10 A Val Hornstein.
- 11 Q Question 2.8:
- 12 "Who is the CPA who prepares and reviews your
- 13 record?"
- 14 What is listed?
- 15 A Jones Moore Associates, Richard Jones.
- 16 Q Now, if we could look at Question 2.25? We're now at
- 17 Page 11 of Exhibit 169.
- 18 (Document displayed)
- 19 Q (As read)
- 20 "How could the resignation of a principal impact
- 21 the trading system or management strategy of the
- 22 firm?"
- 23 What is the answer in the DDQ?
- 24 A (As read)
- 25 "Jim Murray is the sole principal. MNT would

- 1 need to be closed if he resigned."
- 2 Q Now, if we could look at Question 2.26. The question is:
- 3 "Please tell the mitigants for your five most
- 4 significant key-man risk personnel?"
- 5 What is the answer?
- 6 A The answer is:
- 7 "The sole principal, Jim Murray, has greater than
- 8 80 percent of liquid net worth in the fund."
- 9 Q What does that mean?
- 10 A That means separate from certain assets, like your house
- 11 and car, 80 percent of the remaining assets is -- of the
- 12 manager, of Jim Murray, is invested in the fund alongside the
- 13 other investors.
- 14 Q Now, if we could bring up Page 15 and look at Question
- 15 5.2?
- 16 (Document displayed)
- 17 Q (As read)
- 18 "When were you last audited by an independent
- 19 auditor, such as a CPA firm?"
- 20 What was the answer?
- 21 A The answer was 2009.
- 22 Q Now, if we could bring up Page 18 of Exhibit 169 and look
- 23 at question 6.16?
- 24 (Document displayed.)
- 25 Q (As read)

- 1 "Please estimate the average percentage of
- 2 winning trades versus losing trades."
- 3 What's the answer?
- 4 A "62 percent winning. 38 percent losing."
- 5 Q Where did that information come from?
- 6 A Jim Murray gave that to me.
- 7 Q Now, if we could look at Page 19 and Question 6.20.
- 8 (Document displayed.)
- 9 Q The question is:
- 10 "Who designed the underlying trading systems?"
- 11 Q What is the answer?
- 12 A Jim Murray.
- 13 Q Now, if we could look at Page 33 of Exhibit 169, and
- 14 specifically Question 8.41?
- 15 (Document displayed)
- 16 Q The question is:
- 17 "What is the percentage breakdown of the top five
- 18 investors/allocators in the program?"
- 19 What is the answer?
- 20 A The answer is:
- 21 "One investor has over 45 percent. Four have 10
- 22 to 15 percent."
- 23 Q What does the "one investor has over 45 percent" refer to?
- 24 A One investor has over 45 percent of the current fund size,
- 25 which was about 5.4.

- 1 Q Was that the seed investor, Pareto Capital, as you
- 2 understood it?
- 3 A Yes, that was.
- 4 Q Now, if we could look at Page 35 of Exhibit 169?
- 5 MS. HARRIS: And can we also bring up Page 1 of
- 6 Exhibit 40 side-by-side?
- 7 (Documents displayed)
- 8 Q Question 8.10 says:
- 9 "Please describe your worst expensed month or
- 10 quarter." And there is a section -- what's the
- 11 answer there?
- 12 A The answer is, "Actual is January 2009."
- 13 Q 2007?
- 14 A Yeah, I'm sorry. "2007, down 2.98 percent." Then, "Worst
- 15 case scenario, probably down 10 percent."
- 16 Q If you could now look at Exhibit 140, which is next to
- 17 Government's Exhibit 169, do you see the entry for October of
- 18 2009 where there is a negative 44 percent loss in that month?
- 19 Do you see that?
- 20 A I see that one.
- 21 Q Were you ever given any information that Market Neutral
- 22 Trading had ever lost more than 2.9 percent in any given month?
- 23 A No.
- 24 MS. HARRIS: Your Honor, I don't know how much
- 25 further we're going to go ahead today.

1 THE COURT: We're at our break time.
 2 MS. HARRIS: Okay. Can I just -- okay. Can I just
 3 ask one more question about this document then?
 4 THE COURT: Yes.
 5 BY MS. HARRIS
 6 Q If we could move to Page 43 of Exhibit 169 and
 7 Paragraph 16, the "Statement of Truth"?
 8 (Document displayed)
 9 MR. DRESSLER: What exhibit?
 10 MS. HARRIS: Page 43 of Exhibit 169 entitled
 11 "Statement of Truth."
 12 BY MS. HARRIS
 13 Q Where it says:
 14 "The undersigned represents that the information
 15 and statements contained in this document and in any
 16 attachments are current, true and complete. If any
 17 information becomes materially incorrect, you will
 18 notify Green Cross Capital within 30 days, unless
 19 notification is required sooner."
 20 And then has:
 21 "Name of principal signing. Please print."
 22 Whose name is there?
 23 A Page 43 or 1?
 24 Q Page 43. It's also up on the screen.
 25 A Yes. Jim -- yeah, Jim Murray.

1 Q If you could look again at Page 1 of Exhibit 169, did
 2 Mr. Murray actually sign the Statement of Truth on
 3 November 18th, 2010?
 4 A Yes, he did.
 5 MS. HARRIS: Okay, your Honor. I'm finished with
 6 Exhibit 169.
 7 THE COURT: All right. Then we'll break for the day,
 8 and actually for the week. We'll resume on Monday.
 9 I think, as I indicated to you, our schedule Monday -- I
 10 hate to keep switching on you -- is a little bit off. We're
 11 going to have court from 11:00 a.m. to 3:00, instead of the
 12 normal 8:30 to 2:00. So you'll have a little more time in the
 13 morning, but it does extend a little bit into the afternoon.
 14 So until then, just a reminder again. Do not talk to
 15 anybody, including amongst yourselves, about this case or with
 16 anybody else. Do not do any research or form any opinions
 17 until this case is submitted to you for deliberation.
 18 Have a great weekend. We'll see you on Monday.
 19 (Jury exits courtroom at 2:06 p.m.)
 20 MR. FARNHAM: Your Honor, a quick clarification. For
 21 some reason I had in my notes it was until 3:30 on Monday. Can
 22 we go that long and should we tell the jury?
 23 THE COURT: Oh, okay.
 24 MR. FARNHAM: I'm not 100 percent.
 25 THE COURT: Can you let them know 3:30? I misspoke.

1 MR. FARNHAM: Just for their schedules.
 2 THE CLERK: 3:30? Okay.
 3 THE COURT: You may step down actually. Thank you.
 4 (Witness steps down).
 5 THE COURT: Okay. Do we need to cover anything at
 6 this point?
 7 MR. DRESSLER: I just was wondering if, both on
 8 behalf of myself and the Court, we could have some idea of who
 9 the witnesses are at the beginning of the week.
 10 THE COURT: Yes.
 11 MR. FARNHAM: Sure. I was going hand Mr. Dressler a
 12 list, but I can tell you this --
 13 MR. DRESSLER: I'll take a list. I can't read my own
 14 writing, so I will be safer that way.
 15 MR. FARNHAM: I will do both. John Pernell.
 16 THE COURT: Pernell?
 17 MS. HARRIS: P-E-R-N-E-L-L.
 18 THE COURT: Okay.
 19 MR. FARNHAM: Richard Russell, with two L's the end.
 20 Nathan Gorin, G-O-R-I-N.
 21 Heather Carava, C-A-R-A-V-A.
 22 Val Hornstein.
 23 And Jordyn Kramer, J-O-R-D-Y-N. K-A-R -- K-R-A-M-E-R.
 24 That's a little ambitious, but that was the list before we knew
 25 how far we had gotten with Mr. Eckel.

1 THE COURT: How much longer do you plan to spend on
 2 direct, Ms. Harris, with Mr. Eckel?
 3 MS. HARRIS: I have about five more exhibits to
 4 introduce with him. They will not be as long as what we've
 5 just gone through.
 6 THE COURT: All right. Okay. Let me ask whether
 7 there can be any further stipulations? I mean, this is a long
 8 list. I know you've engaged in quite a few stipulations, but
 9 in terms of, you know, some of the stuff I heard today, it
 10 seemed to me was not disputed. And there may be reasons why
 11 you want to go through some of this, but are there any more
 12 stipulations that can be reached to make this a little more
 13 efficient?
 14 MR. FARNHAM: Your Honor, there might be a couple
 15 more. We did have a Bank of America witness, who we were going
 16 to call. I think we may be able to reach a stipulation for
 17 those documents that wasn't on our initial request. I think if
 18 we stipulate, we could cut out that witness.
 19 THE COURT: Yeah.
 20 MR. FARNHAM: There is an additional E*Trade document
 21 that I had not -- it's on our exhibit list, but was not in our
 22 original stipulations and I wanted to have a chance to talk to
 23 Mr. Dressler about that. I think we can -- we can work through
 24 that. There is also a declaration for that, so I don't
 25 anticipate that E*Trade document to be a problem.

1 And then after that, we can look at our -- we can revisit
 2 our list and see if there is anything additional we can
 3 stipulate to.
 4 There are not that many, sort of more like custodian
 5 witnesses left.
 6 THE COURT: Okay. They all have some substantive
 7 testimony to give?
 8 MR. FARNHAM: Some of them are short, but yes.
 9 MS. HARRIS: And then, your Honor, we're about to get
 10 into the investors. So that, hopefully, we can go through a
 11 little quicker.
 12 THE COURT: And are we going to run into a problem of
 13 repetition? If you've got --
 14 MS. HARRIS: We have to go through each count. These
 15 are investors of charged counts. Unless Mr. Dressler is going
 16 to stipulate to the count.
 17 THE COURT: Okay. So each investor is necessary to a
 18 particular count.
 19 MS. HARRIS: Correct.
 20 THE COURT: Okay. What about -- let's go back to
 21 Oppenheimer witnesses, which are going to come at some point.
 22 There are several of those.
 23 MS. HARRIS: We anticipate calling four: Melanie
 24 Perricone, Mark Moskowitz, Paul Sportelli and John Benedetto.
 25 And each played a role in either clearing the account for

1 trading, releasing the funds for the wire transfer of the money
 2 to what we had charged as money laundering afterwards.
 3 MR. DRESSLER: As I indicated, on my witness list I
 4 had Andrew Palyvoda, who I have on the list.
 5 There was another person that is not on the list and
 6 wasn't on the list because when I got the returns from the
 7 Marshal -- I received fax returns from the Marshal -- it didn't
 8 appear they served him. But yesterday or the day before I got
 9 an email, I think from the Clerk's Office, that they had served
 10 also another Oppenheimer witness, who I would have put on
 11 there, Molokie.
 12 So, but my -- my position with regard to me calling
 13 Oppenheimer witnesses is really dependent on if I can obtain
 14 what I think I need from the other witnesses, I'm not going to
 15 call any of those witnesses.
 16 THE COURT: Okay. All right.
 17 MR. DRESSLER: So maybe it would also help if we
 18 could have a general idea where those witnesses are in the
 19 scheme of things based on the witnesses that are -- are
 20 outlined here today.
 21 THE COURT: All right. That's a fair question. When
 22 do you think, generally, they will be on.
 23 MS. HARRIS: After the investor fraud is completed,
 24 the hedge fund fraud with Market Neutral Trading, we'll move
 25 into the Oppenheimer fraud.

1 THE COURT: So that will be Tuesday.
 2 MS. HARRIS: I think Wednesday is a much better bet
 3 for that.
 4 THE COURT: All right.
 5 MR. DRESSLER: That would be helpful.
 6 THE COURT: All right. And are you still optimistic
 7 about the prosecution completing its case within -- sometime
 8 within the third week?
 9 MS. HARRIS: I am, your Honor.
 10 THE COURT: Well, you know, like I said, we promised
 11 the jury four weeks. I've got a scheduling problem in week
 12 five, if it goes into that. So we're going to have issues if
 13 we can't get this done in four weeks.
 14 MS. HARRIS: I understand. We really are doing our
 15 best. It's a very complicated case, as the Court can see, and
 16 we're doing our best to simplify it and explain it to the jury.
 17 THE COURT: Okay. All right.
 18 MR. DRESSLER: Thank you, your Honor.
 19 THE COURT: Have a good weekend. See you on Monday.
 20 MR. FARNHAM: Thank you.
 21 (Whereupon at 2:14 p.m. further proceedings were
 22 adjourned until Monday, September 28, 2015 at
 23 11:00 a.m.)
 24
 25

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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

_____/s/ Debra Pas_____

Debra L. Pas, CSR 11916, CRR, RMR, RPR

_____/s/ Belle Ball_____

Belle Ball, CSR 8785, CRR, RMR, RPR

Friday, September 25, 2015

Volume 4
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDWARD M. CHEN

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) NO. CR 12-0278 EMC
JAMES MURRAY,)
Defendant.) San Francisco, California
Monday
September 28, 2015
11:00 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:
For Plaintiff: MELINDA HAAG
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: ROBIN HARRIS, AUSA
LLOYD FARNHAM, AUSA

For Defendant: ALAN A. DRESSLER, ESQ.
400 Montgomery Street
Suite 200
San Francisco, California 94104

Also Present: USSS AGENT ANTHONY SIMS, JR.
FBI AGENT BRIAN C. WEBER

Reported By: Debra L. Pas, CSR 11916, CRR, RMR
Belle Ball, CSR 8785, CRR, RMR
Official Reporters - US District Court

PROCEEDINGS

1 SEPTEMBER 28, 2015 10:50 A.M.
2 (Defendant present, in custody.)
3 (Proceedings held in open court, outside the presence
4 and hearing of the jury.)
5 THE COURT: Okay. Let's come to order. I -- it's 10
6 minutes before the appointed hour and I got a request, I think,
7 from the Government to discuss some matters, so tell me what's
8 happening.
9 MR. FARNHAM: Just a few things, your Honor, to keep
10 things moving quickly.
11 We had talked last week about stipulations the parties had
12 entered and marking those as evidence, so I wanted to move the
13 three factual stipulations we have into evidence. We've marked
14 them as -- first, the NYC stipulation would be exhibit 400; the
15 stipulation regarding the interstate wires would be 401; and
16 the stipulation regarding the judicial proceedings events would
17 be 402. And we'd like to move those stipulations into
18 evidence.
19 THE COURT: Okay. You have voiced your objection
20 previously in terms of potential, I don't know, prejudicial
21 effect because they had become a piece of paper that is in
22 evidence, but I think I ruled on that.
23 MR. DRESSLER: You did.
24 THE COURT: Anything further?
25

1 MR. DRESSLER: Not on that.
2 THE COURT: Okay.
3 MR. DRESSLER: I have one brief thing and that is --
4 THE COURT: Before you do, let me say I will admit
5 400, 401 and 402 as so described.
6 (Trial Exhibits 400, 401 and 402 received in
7 evidence.)
8 MR. DRESSLER: Your Honor, I had two exhibits marked
9 last Friday, Defense Exhibits 540 and 541. The Government has
10 the ones I marked and we were -- we weren't clear when we left
11 on Friday whether -- I thought I offered them into evidence,
12 but out of an abundance of caution, I'm going to offer 540 --
13 Defense 540 and 541 into evidence. I don't believe there is
14 any objection.
15 THE COURT: All right.
16 MR. FARNHAM: No objection to those.
17 THE COURT: All right. Let me just check my notes,
18 I'm not sure that you actually did move. It will make it moot
19 now because I will admit 540 and 541 proffered by the defense.
20 Those are admitted.
21 (Trial Exhibits 540 and 541 received in evidence.)
22 MR. FARNHAM: And then the other thing we wanted to
23 raise is proposing -- if it's possible with the Court's
24 schedule and the jury's schedule, we'd like to play the
25 deposition of David Lowe starting tomorrow. That's going to be

1 about three to three-and-a-half hours.
2 We wanted to just inquiry about going late tomorrow. If
3 we could go, whatever is feasible, that would allow us -- it's
4 a big chunk of time. It would be nice to get through that.
5 THE COURT: Okay. How long -- how late is...
6 MR. FARNHAM: Well, it depends a little bit on how we
7 do today in terms of witnesses, but if we -- so it is about --
8 it will be about three to three-and-a-half hours, the edited
9 portion, the designated portions.
10 So, I don't know. If we go til 4:00, that would give us a
11 good buffer, but I don't know if that's feasible.
12 MR. DRESSLER: I would -- maybe we should revisit it
13 when we see how far we get today.
14 THE COURT: Why don't we see how long -- remind me,
15 though, before we reach the end of the day. I want to poll the
16 jury to see what their schedule is. If there is somebody that
17 has a medical appointment or something that's pressing, that
18 may dictate.
19 I can stay longer. I have to leave here a little before
20 4:00. I actually had a conference call at 3:30, which I can
21 just say I can't make that. This is more important.
22 MR. DRESSLER: I have someone coming into my office
23 at 4:30.
24 THE COURT: So maybe we can go extra hour, maybe an
25 hour and a half. Let's see what we can do.

1 MR. FARNHAM: Any bit helps.
 2 THE COURT: I'll raise that as soon as they come in,
 3 so I don't forget. Let me see, find out whether anybody has a
 4 problem staying til either, say, 3:30 or 4:00 tomorrow. If
 5 they have a question, I will voir dire them right here. Okay?
 6 MR. DRESSLER: That's fine.
 7 THE COURT: Okay. I do want to do everything we can
 8 to make sure we get this trial done on time.
 9 MR. FARNHAM: Understood.
 10 MR. DRESSLER: I'm speaking as quickly as I can.
 11 THE COURT: I appreciate that.
 12 And you've edited the video down, I assume, so that
 13 everything that is on there is really necessary to this case.
 14 MR. FARNHAM: Yes, your Honor. He's a critical
 15 witness. I'm sure you have heard his name many times.
 16 THE COURT: I understand. I understand.
 17 MR. FARNHAM: We have cut it down a few portions, but
 18 I know we want to have him talk about the documents that he
 19 talked about at that deposition. I know Mr. Dressler wants the
 20 full cross examination.
 21 THE COURT: How will that work? You're going to talk
 22 about documents. The deposition contains discussion of
 23 documents. Will you then show on a screen the documents or
 24 will the jury already know what they are talking about? How do
 25 you intend to handle that logistically?

1 MR. FARNHAM: It's not going to be ideal. The video
 2 will be playing through the court video system. I don't think
 3 there is a good way to show the documents.
 4 Many of them will -- the jury will have seen before, but I
 5 don't think we have a way to simultaneously show them.
 6 THE COURT: Is there a reason why, for instance, you
 7 couldn't make up a binder; not to be taken anywhere, but left
 8 here, but to have hard copies. I don't know how many exhibits
 9 he's going to talk about, but to have those exhibits available
 10 so they can look at it.
 11 MR. DRESSLER: (Indicating). Your Honor, my
 12 recollection, it was about a big pile, about -- a big pile.
 13 It's a pretty large pile of documents.
 14 MR. FARNHAM: I think we could -- let's see about
 15 that. That might work if the jury could leaf through them.
 16 They will -- I think they will all have been admitted by then.
 17 We're going to have, for example, the Secret Service agent
 18 who conducted the search and found many of those documents
 19 will -- where those documents were found will testify before
 20 the video, so most of those -- most of the documents will be
 21 admitted exhibits.
 22 If there's not, obviously, we won't show them to the jury
 23 in the binder, but I think we can see if that's feasible.
 24 THE COURT: Otherwise, it's -- and I don't know how
 25 document intensive this examination is, but if it's anything

1 like what we're doing here, the jury is going to be -- I mean,
 2 imagine if you're sitting there for the first time and they are
 3 talking about a document that you can't see, you don't
 4 remember.
 5 And I don't know if you've elicited testimony in a way
 6 that you don't have to see the documents, that things are read
 7 or something. But I think you should figure out a way to allow
 8 the document to be published; not taken into the room, but just
 9 published and taken back, at least published when it's relevant
 10 and being discussed so they know what the witness and the
 11 attorneys are talking about.
 12 MR. FARNHAM: I'm sure if we can make a binder. If
 13 it's not every page of every exhibit, if it's just the first
 14 few pages that are actually being talked about.
 15 THE COURT: Whatever you would normally publish. So
 16 normally you wouldn't publish the entire Exhibit X. You're
 17 going to show three pages. I mean, we can explain that to
 18 them: This is not the entire exhibit. We just -- for purposes
 19 of -- normally we would have another screen and you could show
 20 it. I mean, that would be the other way or split screen, but
 21 these are too small and we don't have that technology, so...
 22 Or if you can figure out a way of putting it on one of these
 23 big screens. That would have to be a separate hookup, and I
 24 don't know if we're capable of doing that.
 25 Some way of publishing to the jury those pages that are

1 being discussed, that's all I'm suggesting. If you do it hard
 2 copy wise, then you should have it so either everybody has one
 3 or two-to-one or somebody can look over somebody's shoulder or
 4 something.
 5 MR. FARNHAM: If it's binders, maybe we'll try every
 6 other -- half as many binders as jurors.
 7 THE COURT: Okay. And, obviously, they have to be
 8 admitted. Otherwise, you'll have to hand them out as they are
 9 being admitted or something.
 10 MR. FARNHAM: Right.
 11 MR. DRESSLER: I have one document at that
 12 deposition, which is in my exhibit -- in my exhibits.
 13 THE COURT: So, has it been admitted?
 14 MR. DRESSLER: Not yet.
 15 THE COURT: Okay.
 16 MR. DRESSLER: But I think that -- and I didn't
 17 object to any of those documents at the deposition.
 18 THE COURT: Right.
 19 MR. DRESSLER: I think they are all admissible.
 20 THE COURT: Well, if there is no objection and you
 21 anticipate they are going to be admitted anyway, then you can
 22 just get the binder together. If there is something that you
 23 think you had introduced that you intended to move into
 24 evidence, there is no objection, let's just have a complete
 25 set, at least select-portions-to-be-published set for the jury.

1 Especially for a three-and-a-half hour video.
 2 MR. FARNHAM: We will work on that.
 3 I will say that most of the questions -- Mr. Lowe does not
 4 know what these documents are, so he's not explaining the
 5 contents, but he is talking about them. So I get your point
 6 and we will work on that.
 7 THE COURT: Okay. I mean, I leave it to you. I
 8 haven't seen the depo. I, frankly, didn't read the transcript.
 9 MR. DRESSLER: I think you should instruct the jury
 10 to see that movie *Lost in Translation* before we show this.
 11 THE COURT: All right. You can so move.
 12 MR. FARNHAM: Thank you, your Honor. That was all we
 13 had.
 14 THE COURT: Is Mr. Eckel here? Let's get him on the
 15 stand and we can get started.
 16 (Brief pause.)
 17 THE COURT: Good morning.
 18 THE WITNESS: Good morning.
 19 THE COURT: Why don't you go ahead and get seated and
 20 we'll bring the jury in.
 21 (Jury enters courtroom at 11:01 a.m.)
 22 THE COURT: Okay. Good morning, everyone. Hope you
 23 had a great weekend. Thank you for being flexible in your
 24 schedule and coming at this hour.
 25 I did want to ask you about tomorrow. Tomorrow is a

1 normal day. We start at 8:30 and normally go til 2:00.
 2 Because of the witness scheduling and some video of a
 3 deposition we're going to play, we want to find out whether
 4 anybody would have any scheduling problem if we went longer
 5 than normal tomorrow, whether you have some appointments or
 6 things in the afternoon? If we went til, for instance, instead
 7 of 2:00 to either 3:00, 3:30 or 4:00? Does anybody have an
 8 urgent matter that would prevent that?
 9 (Jurors respond negatively.)
 10 THE COURT: Obviously, we're going to get as much
 11 done and make sure, you know, things move along and it's to
 12 everyone's benefit. So if that's okay with you, if we need to,
 13 we will probably go a little longer tomorrow.
 14 Great. I appreciate your cooperation. Thank you.
 15 Okay. So you will recall Mr. Eckel was on the witness
 16 stand being examined by the government and we're going to pick
 17 up where we left off.
 18 Just a reminder, Mr. Eckel. You're still under oath.
 19 Make sure you speak into the microphone.
 20 THE WITNESS: Okay.
 21 THE COURT: Thank you.
 22 Ms. Harris?
 23 PAUL ECKEL,
 24 called as a witness for the Government herein, having been
 25 previously sworn, resumed the stand and testified further as

1 follows:
 2 DIRECT EXAMINATION RESUMED
 3 BY MS. HARRIS
 4 Q Good morning, your Honor. Good morning again Mr. Eckel.
 5 When we broke before the weekend, we had just finished
 6 talking about the Statement of Truth that was submitted to
 7 Green Cross on behalf of Market Neutral Trading. And now I
 8 want to ask you some questions about the vendors that
 9 Mr. Murray related to you were working for Market Neutral
 10 Trading.
 11 When you were initially involved with Market Neutral
 12 Trading, did Mr. Murray represent that Market Neutral Trading
 13 had legal counsel?
 14 A Yes.
 15 Q Who was the lawyer that Mr. Murray said was Market Neutral
 16 Trading's attorney?
 17 A Val Hornstein.
 18 Q Had you ever heard of Val Hornstein?
 19 A No.
 20 Q Did you make any suggestions to Mr. Murray regarding
 21 Market Neutral Trading's outside providers?
 22 A Yes, I did.
 23 Q Did you specifically recommend a law firm for Market
 24 Neutral Trading?
 25 A Yes.

1 Q What firm was that?
 2 A Sadis and Goldberg.
 3 Q What type of law firm is Sadis and Goldberg?
 4 A It's a general law firm, but they specialize in hedge
 5 funds. They're -- I consider them probably top five in the
 6 U.S. as far as activity and brand name.
 7 Q Why did you recommend Sadis and Goldberg to Mr. Murray?
 8 A I'm from New York City. They are a popular New York City
 9 law firm, as well as on the west coast. They are large. They
 10 have did good reputation. They have been around for a long
 11 time and I have, like, five other clients that use them.
 12 Q Did you recommend that Mr. Murray retain an auditor other
 13 than Jones Moore & Associates?
 14 A Yes, I did.
 15 Q Why did you do that?
 16 A Well, again, the auditor that he has been using for five
 17 or six years wasn't familiar to me, didn't have a big brand
 18 name, and I think it would be best -- in every one's best
 19 interests, including investors' interests, to have a more
 20 established, well-known auditor and other service providers.
 21 MS. HARRIS: Your Honor, may I approach the witness?
 22 THE COURT: Yes.
 23 BY MS. HARRIS
 24 Q Handing you what's been marked as Government's Exhibit 170
 25 and 171 for identification.

1 (Whereupon documents were tendered to the witness.)
 2 Q Did you take a look at Government's Exhibit 170 and tell
 3 me if you recognize Exhibit 170?
 4 A Yes, I do recognize it.
 5 Q Is Exhibit 170 an email chain between you and Mr. Murray
 6 in April of 2011 concerning retaining Sadis and Goldberg as
 7 lawyers?
 8 A Yes, it is.
 9 Q And did you print out copies of the emails on Exhibit 170
 10 and keep them in your file on Market Neutral Trading?
 11 A Yes, I did.
 12 MS. HARRIS: Your Honor, I offer Government's
 13 Exhibit 170 into evidence.
 14 THE COURT: Any objection?
 15 MR. DRESSLER: No objection.
 16 THE COURT: Admitted.
 17 (Trial Exhibit 170 received in evidence.)
 18 MS. HARRIS: If we could pull up Exhibit 170, Page 3?
 19 (Document displayed)
 20 BY MS. HARRIS
 21 Q Is Page 3 of Exhibit 170 a retainer letter between
 22 Mr. Murray and Sadis and Goldberg?
 23 A Yes, it is.
 24 Q And were you copied by email on April 6, 2011 on that
 25 engagement letter?

1 A Yes, I was.
 2 Q Okay. And if we could take a look at Page 5 of Exhibit
 3 170?
 4 (Document displayed)
 5 Q Did Mr. Murray sign and accept and agree to the terms of
 6 the Sadis and Goldberg retention agreement?
 7 A Yes, he did.
 8 Q Now, if we could look at Page 1 of Exhibit 170 and
 9 specifically your email of April 7th?
 10 MS. HARRIS: If we could pull that up, Page 1?
 11 (Document displayed)
 12 BY MS. HARRIS
 13 Q Is this an email that you wrote to Mr. Murray on
 14 April 7th, 2011?
 15 A Yes, I did.
 16 Q Okay. And in the first paragraph you explain to
 17 Mr. Murray that you have reviewed the letter. Does that refer
 18 to the retention letter we've just looked at?
 19 A Yes, it does.
 20 Q And then if I could draw your attention down to the last
 21 sentence of your email to Mr. Murray, there is a sentence that
 22 says "Disclosures."
 23 Okay. Can you read to us what you told Mr. Murray in your
 24 email?
 25 A (As read)

1 "Disclosures: Sadis indicated that for your
 2 protection you should include past work 'speeding
 3 tickets,' otherwise you are assuming a big liability.
 4 They said they can word it in the best possible way."
 5 Q What does this refer to?
 6 MR. DRESSLER: Objection. Calls for speculation.
 7 MS. HARRIS: He wrote the email.
 8 THE COURT: Overruled.
 9 BY MS. HARRIS
 10 Q What were you referring to, Mr. Eckel?
 11 A The New York Stock Exchange infractions or situation that
 12 occurred a number of years earlier in his background.
 13 Q How did you learn about that?
 14 A Actually, an investor doing due diligence mentioned it to
 15 me.
 16 Q Did you learn that the law firm of Sadis and Goldberg
 17 wanted to do a background check on Mr. Murray in connection
 18 with doing any further work with Market Neutral Trading?
 19 MR. DRESSLER: Objection. Calls for hearsay.
 20 THE COURT: What's the hearsay exception? It's his
 21 state of mind, not --
 22 MS. HARRIS: It's not asking for any statement. It's
 23 asking whether he learned whether this happened. There is no
 24 statement being retold.
 25 THE COURT: Well, unless you lay a foundation for

1 that statement that's based other than hearsay, it's hearsay.
 2 So objection sustained.
 3 BY MS. HARRIS
 4 Q Did you have contact with Sadis and Goldberg on behalf of
 5 Market Neutral Trading?
 6 A Yes, I did.
 7 Q And during that contact, were you advised of certain
 8 information that Sadis and Goldberg needed in order to
 9 represent Mr. Murray?
 10 A Yes, that information is standard procedure.
 11 Q What standard procedures was Sadis and Goldberg looking to
 12 perform?
 13 A Well, I imagine they would perform general background --
 14 MR. DRESSLER: Objection.
 15 A -- evaluation.
 16 THE COURT: All right. Hold on.
 17 MR. DRESSLER: Objection, your Honor. "I imagine
 18 they would."
 19 THE COURT: Sustained.
 20 BY MS. HARRIS
 21 Q What did you actually learn --
 22 A They performed -- they indicated they're going -- like
 23 they did for all my other clients, and standard procedure in
 24 the hedge fund industry, they will perform a background check
 25 on any manager they work with.

1 Q And did you learn that Sadis and Goldberg wanted to
 2 perform a background check on Mr. Murray?
 3 A Yes, I did.
 4 Q Okay. Did you have a discussion with Mr. Murray about
 5 Sadis and Goldberg's request for a background check?
 6 A Yes, I did.
 7 Q What did Mr. Murray tell you?
 8 A He had objections to it.
 9 Q Was Mr. Murray willing to consent to a background check by
 10 the law firm Sadis and Goldberg?
 11 A No, he was not.
 12 Q Had you ever had a client before Mr. Murray that was
 13 unwilling to undergo a standard background check?
 14 MR. DRESSLER: Objection, irrelevant.
 15 THE COURT: Overruled. You can answer.
 16 A No, I haven't.
 17 BY MS. HARRIS
 18 Q Now, if you could take a look at Government's Exhibit 171
 19 and tell us whether you recognize Exhibit 171?
 20 A Yes, I do.
 21 Q What is Government's Exhibit 171?
 22 A It's an email chain between me and Jim Murray and, also,
 23 with the MNT's auditor Jones Moore and, also, with the
 24 administrator. Her name was Eve at H.F. Administration.
 25 Q Did you maintain copies of the emails that are on Exhibit

1 171 as part of your file on Market Neutral Trading?
 2 A Yes, I did.
 3 Q And can did you keep these in your file on Market Neutral
 4 Trading?
 5 A Yes, I did.
 6 MS. HARRIS: Your Honor, I offer Government's
 7 Exhibit 171 into evidence.
 8 THE COURT: Any objection?
 9 MR. DRESSLER: One moment, please.
 10 (Discussion held off the record between the defendant
 11 and his counsel.)
 12 MR. DRESSLER: No, your Honor.
 13 THE COURT: Admitted.
 14 (Trial Exhibit 171 received in evidence.)
 15 MS. HARRIS: Your Honor may we publish 171?
 16 THE COURT: Yes.
 17 BY MS. HARRIS
 18 Q If we could take a look at Page 2 of Exhibit 171, you're
 19 email dated April 15, 2011?
 20 (Document displayed.)
 21 Q Is this an email from you to Mr. Murray concerning the
 22 fund structure?
 23 A Yes, it is.
 24 Q When you say "fund structure," were you referring to
 25 Market Neutral Trading?

1 A Yes, I was.
 2 Q And then if we could go to the line where it starts --
 3 it's the second sentence, "They have advised us."
 4 MS. HARRIS: If we could highlight that line?
 5 (Document highlighted.)
 6 BY MS. HARRIS
 7 Q And if you could read that?
 8 A In the long paragraph?
 9 Q Yeah. And if you could just read the sentence that
 10 starts, "They have advised us."
 11 A Oh.
 12 "They have advised us that a separate and
 13 distinct general partner entity is needed for the
 14 Cayman Islands exempted limited partnership."
 15 Q Who is the "they" that you're referring to?
 16 A Sadis.
 17 Q And then can you take a look at the last sentence of your
 18 first paragraph and tell us what you wrote there?
 19 A (As read)
 20 "We can set up a call between Sadis and an
 21 auditor and administrator."
 22 Q Who were you referring to as "auditor" and
 23 "administrator"?
 24 A Auditor Jones Moore and administrator H.F. Administration.
 25 Q Okay. And what did you say after that?

1 A (As read)
 2 "If needed. Otherwise, they can send you an
 3 email agreeing to the new structure."
 4 Q Was there ever a call, as far as you're aware of, between
 5 Sadis and anyone at Jones Moore & Associates, a phone call?
 6 A No.
 7 Q Now, if we could take a look at Mr. Murray's response to
 8 you, which is in the upper half of Page 2 of Exhibit 171.
 9 (Document displayed.)
 10 Q Were you copied -- or did you receive an email from
 11 Mr. Murray to a michelle@jonesmoore.com, and an
 12 eve@hfadministration.com?
 13 A Yes, I did.
 14 Q Did you receive that copy on or shortly after April 15,
 15 2011?
 16 A Yes. On the 15th.
 17 Q And what did Mr. Murray say to Eve and Michelle?
 18 A (As read)
 19 "Hi, Eve and Michelle. I need your firm's review
 20 as to the below. If it's okay, I need an email
 21 confirmation. Thanks. Jim Murray, CIO MNT."
 22 MS. HARRIS: Now, if we could bring up Page 1 of
 23 Government's Exhibit 171?
 24 (Document displayed.)
 25

1 BY MS. HARRIS
 2 Q Did you receive -- were you copied on an email -- or was
 3 an email forwarded to you from Mr. Murray dated April 18, 2011
 4 from a michelle@jonesmoore.com to Jim Murray?
 5 A Yes, I was.
 6 Q Was there a cc on that email?
 7 A Yes, there was?
 8 Q Who is cc'd?
 9 A It was eve@hfadministration.
 10 Q What did the email say from michelle@jonesmoore.com?
 11 A It said:
 12 "We've seen this structure before and see no
 13 problem with it. Best regards, Michelle Lindsay."
 14 Q How did Michelle Lindsay end this email? What was she
 15 identified as?
 16 A She was identified as the staff accountant on behalf of
 17 the principle of Jones Moore, Joseph Moore.
 18 Q Where was the accounting firm that Michelle Lindsay worked
 19 for? Where was that accounting firm located?
 20 A Jones Moore & Associates. It was located at 1521 Concord
 21 Pike, Wilmington, Delaware.
 22 Q And then below that is there a domain name for Jones
 23 Moore?
 24 A Yes, there is.
 25 Q What is that?

1 A It's jonesmoore.com.
 2 Q Okay.
 3 MS. HARRIS: Your Honor, may I approach the witness?
 4 BY MS. HARRIS
 5 Q Handing you Exhibits 172 and 173 for identification. And
 6 I'd ask you to take a look at Exhibits 172 and 173. First, if
 7 you could look at Exhibit 172?
 8 (Whereupon documents were tendered to the witness.)
 9 BY MS. HARRIS
 10 Q Do you recognize Exhibit 172?
 11 A Yes, I do.
 12 Q And is Exhibit 172 an email chain between you and
 13 Mr. Murray along with an attachment?
 14 A Yes, it was.
 15 Q And was the attachment that we see in Exhibit 172
 16 contained in the emails that you received from Mr. Murray?
 17 A Yes, it was.
 18 Q Okay.
 19 MS. HARRIS: Your Honor, I offer Government's
 20 Exhibit 172 into evidence.
 21 THE COURT: Any objection?
 22 MR. DRESSLER: No objection.
 23 THE COURT: Admitted.
 24 (Trial Exhibit 172 received in evidence.)
 25 MS. HARRIS: If we could pull up Page 2 of Exhibit

1 172?
 2 (Document displayed.)
 3 BY MS. HARRIS
 4 Q Are we looking at an email that you received from
 5 Mr. Murray on May 20th, 2011?
 6 A Yes, that is.
 7 Q And what was the subject line?
 8 A "This is correct offshore agreement."
 9 Q If we could look at Page 4 of Exhibit 172?
 10 (Document displayed)
 11 Q Was this the offshore agreement that you received from
 12 Mr. Murray with the May 20th, 2011 email that we've just looked
 13 at?
 14 A Yes, it is.
 15 MS. HARRIS: If we could blow up the corner of that
 16 of that offshore agreement?
 17 (Document enlarged.)
 18 BY MS. HARRIS
 19 Q Who does the service agreement appear to be from -- with?
 20 A H.F. Administrators, Limited.
 21 Q And is there a person, its name next to the H.F.
 22 Administrators?
 23 A Yes, there is.
 24 Q And where is H.F. Administrators located?
 25 A 1201 North Orange Street, Wilmington, Delaware.

1 Q And then if you could look at the first paragraph of the
 2 service agreement? And if you could just read us what the
 3 first sentence says?
 4 A Starting with, "Thank you?"
 5 Q Yes.
 6 A (As read)
 7 "Thank you for selecting H.F. Administrators,
 8 Limited to perform certain accounting, tax,
 9 back-office, data processing and/or related services
 10 for your investment management business. In
 11 connection with our business relationship with you,
 12 (the Engagement), we and you agree that the agreement
 13 will be governed by the terms set forth below."
 14 Q Okay. If you could now take a look at Government's
 15 Exhibit 173 and tell me whether you recognize Exhibit 173?
 16 A Yes, I do recognize it.
 17 Q What is Government's Exhibit 173?
 18 A It's an email exchange between me and Jim Murray regarding
 19 an investor, our new invest- -- or additional investment into
 20 MNT that brought the total assets up to 25 million, which
 21 would -- which would be above the threshold for MNT to be
 22 registered in the State of California.
 23 Q And if we -- is Exhibit 173 the series of email chains
 24 between you and Mr. Murray in June of 2011?
 25 A Yes.

1 MS. HARRIS: Your Honor, I offer Government's
2 Exhibit 173 into evidence.
3 THE COURT: Any objection?
4 MR. DRESSLER: No objection.
5 THE COURT: Admitted.
6 (Trial Exhibit 173 received in evidence.)
7 MS. HARRIS: If we could pull up Page 4 of
8 Government's Exhibit 173?
9 (Document displayed.)
10 BY MS. HARRIS
11 Q Were we looking at a -- an investor named Mikah's interest
12 in investing in Market Neutral Trading?
13 A Actually, he's the counsel with Sadis and the investor is
14 Tim Palm.
15 Q Oh, Tim Palm is the investor?
16 A I think. Let me see.
17 (Brief pause.)
18 A Yeah. Tim from -- his boss at Pareto Capital.
19 Q Whose boss at Pareto Capital?
20 A I'm sorry. Jim Murray's old boss.
21 Q Let's look at Page 4 of Government's Exhibit 3.
22 (Document displayed.)
23 Q You mentioned that there are some kinds of requirements
24 with funds that have greater than 25 million assets. Were you
25 requesting proof from Mr. Murray about the assets of Market

1 Neutral Trading?
2 A Yes. Just to clarify. If you're above 25, you don't have
3 to register with the State of California as a registered
4 investment advisor.
5 Q Now, if we could look at the third sentence of your email
6 dated June 20th, 2011. You say:
7 "Can't show Liquid since not launched."
8 What is Liquid?
9 A Liquid is a New York City and British trading firm that
10 was considering allocating capital to the -- to MNT.
11 Q And were you involved with the effort to try and get
12 Market Neutral Trading assets from Liquid?
13 A Yes, I was.
14 Q And were you aware of a written agreement between Market
15 Neutral Trading and Liquid in January of 2011?
16 A Yes, I was.
17 Q Did anything come of this agreement while you were
18 involved with Market Neutral Trading?
19 A No.
20 Q Do you know whether any agreement between Liquid and
21 Market Neutral Trading actually came to fruition while you were
22 involved with marketing --
23 MR. DRESSLER: Objection, calls for hearsay.
24 A I was told --
25 THE COURT: Objection to hearsay. So at this point

1 it is a valid hearsay objection. Sustained.
2 MS. HARRIS: Okay.
3 BY MS. HARRIS
4 Q Did you have any direct contact with anyone involved with
5 the attempt to get Liquid to invest in Market Neutral Trading?
6 A Yes, I did.
7 Q When was that?
8 A I think that was in June -- let me see. It was the summer
9 of 2011. It may have been August.
10 Q And were you involved in actually trying to bring an
11 agreement with Market Neutral Trading and Liquid to fruition?
12 A Yes, I was involved.
13 Q Were you able to do that?
14 A No.
15 Q Did it ever happen?
16 A No. They told me it was dead in August.
17 MR. DRESSLER: Objection.
18 THE COURT: Sustained. Unless you have a hearsay
19 exception.
20 BY MS. HARRIS
21 Q So did there ever come to a period of time where Liquid
22 actually put assets under Market Neutral Trading's control?
23 A No.
24 MR. DRESSLER: Objection, asked and answered.
25 THE COURT: Okay. Overruled.

1 BY MS. HARRIS
2 Q What was the answer?
3 A The answer was no, it did not.
4 Q Did you communicate to Mr. Murray about Liquid?
5 A Yes, I did.
6 Q What did you tell Mr. Murray concerning whether the Liquid
7 deal was actually going to happen?
8 A I told him it was not going to happen, I think in email
9 and phone call around the third week of August, I think, 2011.
10 Q Drawing your attention to the phone call that you had with
11 Mr. Murray during the third week of August in 2011, what
12 specifically did you convey to Mr. Murray?
13 A I said Liquid is not going to make an investment. Because
14 Goldman Sachs, who would clear the trades, did a background
15 check on Jim Murray and decided not to deal with that
16 individual. And so I told Jim Murray that the deal is dead and
17 not going to happen.
18 MS. HARRIS: Your Honor, may I approach to show
19 Government's Exhibit 174 and 175?
20 THE COURT: All right.
21 (Whereupon documents were tendered to the witness.)
22 BY MS. HARRIS
23 Q If you could take a look at Exhibit 174 and tell us
24 whether you recognize Exhibit 174?
25 A Yes, I do recognize it.

1 Q What is Exhibit 174?
 2 A It's basically a Sadis and Goldberg, the -- who were going
 3 to be the counselor for the new fund, it's a letter -- it's a
 4 document they created, and James Murray attests to the fact
 5 that total assets of Market Neutral Trading were in excess of
 6 25 million.
 7 Q Now, and was -- were you given a copy of Exhibit 174?
 8 A Yes, I was.
 9 Q And did you put that in your file on Market Neutral
 10 Trading?
 11 A Yes, I did.
 12 MS. HARRIS: Your Honor, I offer Government's
 13 Exhibit 174 into evidence.
 14 MR. DRESSLER: No objection.
 15 THE COURT: It's admitted.
 16 (Trial Exhibit 174 received in evidence.)
 17 MS. HARRIS: May we publish Exhibit 174?
 18 THE COURT: Yes.
 19 MS. HARRIS: Okay.
 20 (Document displayed)
 21 BY MS. HARRIS
 22 Q Exhibit 174 is dated June 23rd, 2011 and it appears to
 23 bear the signature of Mr. James Murray. Can you read us what
 24 the "Re" line is?
 25 A "Confirmation of asset under management."

1 Q And then if you could look at subpart three of the
 2 confirmation. What does it say where it starts, "I will
 3 amend?"
 4 A (As read)
 5 "I will amend the Technology Service Agreement
 6 effective January 7th, 2011 by and [sic] Market
 7 Neutral Trading and Liquid Trading International, LLP
 8 to make MNT GP the counterparty to the Technology
 9 Service Agreement instead of Market Neutral Trading."
 10 Q As of June 23rd, 2011, did Market Neutral Trading have any
 11 assets under its management from Liquid Trading?
 12 A No.
 13 Q Is that also the case as of August of 2011 when you had
 14 the conversation you just relayed to us with Goldman Sachs?
 15 A Yes, that's also true.
 16 Q And is it the case that at no point during your
 17 involvement with Market Neutral Trading, did Market Neutral
 18 Trading ever have any executed deal for Liquid to place assets
 19 under the management of Market Neutral Trading?
 20 A No, they did not. And I would have heard about it post
 21 that time as well.
 22 Q At some point did you resign from having any involvement
 23 with Market Neutral Trading?
 24 A Yes, I did.
 25 Q Approximately when was that?

1 A July 17, 2011.
 2 Q Why did you go your separate ways from Market Neutral
 3 Trading?
 4 A It wasn't an enjoyable partnership and, also, it wasn't a
 5 revenue-generating one, profitable one.
 6 And, also, I'm a registered broker dealer and so I -- you
 7 know, I want to be very compliant and careful. And James
 8 Murray's refusal to allow Sadis to do a background check, I
 9 started losing interest.
 10 Q Why was the fact that Mr. Murray was refusing to allow the
 11 Sadis law firm to do a background check important to you?
 12 A I -- it meant to me that he was hiding something that I
 13 didn't know or more than...
 14 Q I didn't hear your answer.
 15 A It meant to me that he was hiding something more than what
 16 was publicly known.
 17 Q Drawing your attention to October of 2012, did you attend
 18 an investor conference?
 19 A Yes, I did.
 20 Q Where was this conference?
 21 A In Las Vegas, pretty sure.
 22 Q Did you meet someone at this investor conference who also
 23 knew about the Market Neutral Trading investment?
 24 A Yes, I did.
 25 Q What was the name of the person you met at this conference

1 who also knew something about Market Neutral Trading?
 2 A His name was Giovana de Francisci.
 3 Q Had you ever heard of Mr. de Francisci before you met him
 4 at this conference?
 5 A No.
 6 Q Without telling us what was said, did the two of you
 7 discuss Market Neutral Trading's rate of return when you met
 8 him in October of 2012?
 9 A Yes, we did.
 10 Q And after you had this discussion with Mr. de Francisci in
 11 October of 2012, did Mr. de Francisci send you a Market Neutral
 12 Trading audit from 2009?
 13 A Yes, he did.
 14 Q Could you take a look at Government's Exhibit 175 and tell
 15 us whether you recognize Exhibit 175?
 16 A Yes, I do recognize it.
 17 Q What is Government's Exhibit 175?
 18 A It's the -- let me check one page here.
 19 This is the audit report that I received via email from
 20 Mr. de Francisci. It's a Market Neutral Trading audit report
 21 from Jones Moore dated December 31st, 2009.
 22 Q And did you keep a copy of the Jones Moore & Associates
 23 2009 audit you received from Mr. de Francisci in your file on
 24 Market Neutral Trading?
 25 A Yes, I did.

1 Q And is that what we see as Government's Exhibit 175?
 2 A Yes, it is.
 3 MS. HARRIS: Your Honor, I offer Exhibit 175 into
 4 evidence.
 5 THE COURT: Any objection?
 6 MR. DRESSLER: No objection.
 7 THE COURT: Admitted.
 8 (Trial Exhibit 175 received in evidence.)
 9 BY MS. HARRIS
 10 Q If you could take a look at Page 3 of Government's
 11 Exhibit 175?
 12 (Document displayed)
 13 Q And tell us whether Jones Moore & Associates was auditing
 14 the financial condition of Market Neutral Trading as of
 15 December 31st, 2009?
 16 A Yes, they were.
 17 Q And in the last paragraph does the first sentence say:
 18 "In our opinion, the financial statements
 19 referred to above fairly in all material respects,
 20 the financial position" -- "present fairly, in all
 21 material respects, the financial position of Market
 22 Neutral Trading, LLC as of December 31st, 2009."
 23 A Yes, it does.
 24 Q Now, before you received Exhibit 175 from
 25 Mr. de Francisci, had you a year earlier received a Jones Moore

1 & Associates audited financial statement for the year 2009?
 2 A Yes.
 3 Q And did you review Exhibit 175 and notice significant
 4 discrepancies between the audited statement you received for
 5 2009 from Jones Moore & Associates and the one Mr. de Francisci
 6 emailed to you?
 7 A Yes. The difference was over 100 percent.
 8 Q Okay. If we could take a look at Page 5 of Government's
 9 Exhibit 175?
 10 (Document displayed.)
 11 Q Can you read us what the Net Loss on Investments was for
 12 the period January 1, 2009 to December 31st, 2009 according to
 13 the financial statement you received from Mr. de Francisci in
 14 October of 2012? What was the Net Loss on Investments?
 15 A \$6,755,947.
 16 Q Now, if we could look at Page 10 of Government's
 17 Exhibit 175?
 18 (Document displayed)
 19 Q What was the return for -- to investors for the period
 20 January 1, 2009 to December 31, 2009 according to the Jones
 21 Moore audit you received in October of 2012?
 22 A Negative 94.9.
 23 MS. HARRIS: Can we bring up Exhibit 156 and have it
 24 side-by-side with Exhibit 175?
 25 (Documents displayed)

1 MS. HARRIS: Can I get a hard copy of Exhibit 156?
 2 (Brief pause.)
 3 BY MS. HARRIS
 4 Q Mr. Eckel, Exhibit 156 is the financial statement you were
 5 provided when you first began your involvement with Market
 6 Neutral Trading. This was the 2009.
 7 And if we could pull up, actually it's Page 11, and I
 8 would ask you to compare what you were told was the total
 9 return to investors for the calendar year January 1st, 2009 to
 10 December 31st, 2009?
 11 (Documents displayed.)
 12 A The report that I received initially from the auditor,
 13 Jones Moore, the net return to investors was a positive
 14 12.5 percent. And then the one that Giovanni sent me,
 15 de Francisci, in 2011 --
 16 Q Was it 2012?
 17 A 2012, sorry. Corrected.
 18 The Net Return to Investors in the audit that he sent me
 19 showed a negative 94.9 percent.
 20 Q If we could also look at Government's Exhibit 175? And
 21 now if we could compare Page 3 of Exhibit 175 with Page 3 of
 22 Exhibit 156?
 23 (Documents displayed)
 24 Q Yes. Now, Exhibit 156, the audit that you received from
 25 Market Neutral Trading for 2009, what was the date it was

1 prepared by Jones Moore & Associates?
 2 A It was prepared in March 15th, 2010.
 3 Q And what was the date of the audit you received from
 4 Mr. de Francisci prepared by Jones Moore & Associates?
 5 A Dated April 13, 2011.
 6 Q After you -- did you notice the discrepancies as soon as
 7 you reviewed the audit report that you got from
 8 Mr. de Francisci?
 9 A Yes.
 10 Q And after you noticed these discrepancies, did you send
 11 Mr. de Francisci an email?
 12 A Yes, I did.
 13 MS. HARRIS: Your Honor, may I approach the witness
 14 with Government's Exhibit 177?
 15 THE COURT: Okay.
 16 BY MS. HARRIS
 17 Q I'm handing you Exhibit 177 for identification.
 18 (Document displayed.)
 19 Q Do you recognize Exhibit 177?
 20 A Yes, I do.
 21 Q What is Government's Exhibit 177?
 22 A It's an email between me and Giovanni de Francisci
 23 discussing the discrepancies between the audit that I received
 24 from the auditor and the audit that he received from either Jim
 25 Murray or the auditor.

1 Q And Exhibit 177 is dated October 27, 2011. Does that
 2 refresh your memory that the conference you went to was
 3 actually in the fall of 2011, not 2012?
 4 A Yes, it does.
 5 Q Okay. Did you keep a copy of the email that you sent to
 6 Mr. de Francisci on October 27, 2011?
 7 A Yes, I did.
 8 Q And did you place that in the file that you maintained on
 9 Market Neutral Trading?
 10 A Yes, I did.
 11 MS. HARRIS: Your Honor, I offer Government's
 12 Exhibit 177 into evidence.
 13 THE COURT: Any objection?
 14 MR. DRESSLER: No objection.
 15 THE COURT: Admitted.
 16 (Trial Exhibit 177 received in evidence.)
 17 BY MS. HARRIS
 18 Q Now, if we could look at the Subject line on Page 1 of
 19 Exhibit 177, what was the subject that you were writing to
 20 Mr. de Francisci on?
 21 (Document displayed.)
 22 A The subject was "MNT Audit."
 23 Q And then you -- in the text of your email you say as to
 24 Mr. de Francisci:
 25 "I would call the auditor and ask about the two

1 audits from 2009."
 2 And then if you could read us the parenthetical?
 3 A It states -- I wrote.
 4 "Same name, same beginning assets, very different
 5 results, and why your 2009 audit was completed later
 6 than the 2010 audit."
 7 Q What were you referring to?
 8 A I was -- I was referring to the audit that I received and
 9 Giovanni's audit and then, also, there was a 2000 [sic] audit
 10 that I received and I believe he had also a 2010 audit.
 11 Q So what did you mean when you said:
 12 "Why your 2009 audit was completed later than the
 13 2010 audit"?
 14 A It's very, very strange. It should be completed within
 15 three or four months after the month -- after the year closes.
 16 So no later than, like, April 2010.
 17 Q Did you refer Mr. de Francisci to Jones Moore &
 18 Associates?
 19 A Yes, I did.
 20 Q And did you provide certain contact information to him in
 21 Government's Exhibit 177?
 22 A Yes, I did.
 23 Q Okay. Where did you get the contact information for Jones
 24 Moore that you were passing on to Mr. de Francisci?
 25 A From Jim Murray.

1 Q Why were you referring Mr. de Francisci to Jones Moore &
 2 Associates?
 3 A I was trying too help him out, as far as determining if
 4 his loss of 94 percent is real and what's going on for his
 5 benefit.
 6 MS. HARRIS: Your Honor, may I approach the witness?
 7 THE COURT: Yes.
 8 BY MS. HARRIS
 9 Q Okay. I'm showing you what's been marked as Government's
 10 Exhibit 176 for identification.
 11 (Whereupon document was tendered to the witness.)
 12 Q Can you take a look at Exhibit 176 and tell us whether you
 13 recognize it?
 14 A Yes, I do recognize it.
 15 Q What is Government's Exhibit 176?
 16 A Well, in continuing to help out Giovanni, I wrote an email
 17 to Michelle, who was the office manager of Jones Moore -- or
 18 she was the representative of the founder at Jones Moore, the
 19 auditing firm.
 20 Q And did you write Exhibit 176 on November 7th, 2011?
 21 A Yes, I did.
 22 Q Did you keep a file and print a copy of Government's
 23 Exhibit 176?
 24 A Yes, I did.
 25 MS. HARRIS: Your Honor, I offer Government's

1 Exhibit 176 into evidence.
 2 THE COURT: Any objection?
 3 MR. DRESSLER: No, your Honor.
 4 THE COURT: Admitted.
 5 (Trial Exhibit 176 received in evidence.)
 6 MS. HARRIS: Okay.
 7 MS. HARRIS: If we could publish Exhibit 176, Page 1?
 8 (Document displayed)
 9 BY MS. HARRIS
 10 Q Were you also trying to get to the bottom of the two
 11 different audits that you had in your possession now for 2009
 12 for Market Neutral Trading?
 13 A Yes, I was.
 14 Q Did you write to Michelle at Jones Moore & Associates to
 15 try and find out why there were such significant discrepancies?
 16 A Yes, I did.
 17 Q Okay. And how did you know to write to
 18 michelle@jonesmoore.com?
 19 A She was the one who sent me the four or five years of
 20 audits. She emailed me the audits.
 21 Q When you say "she emailed me," do you mean you received
 22 audits from that particular email address?
 23 A Yes.
 24 Q Did you ever have any telephonic or in-person discussion
 25 with anyone at Jones Moore & Associates?

1 A Beside a call with Michelle.
 2 Q And now if we look at --
 3 MR. DRESSLER: I'm sorry. I didn't hear that.
 4 THE WITNESS: Yes.
 5 MR. DRESSLER: Something --
 6 THE WITNESS: Yes, I had a call with Michelle.
 7 MR. DRESSLER: Okay.
 8 BY MS. HARRIS
 9 Q Now, if you can look at Page 2, you say -- paragraph --
 10 the second sentence you say, "The II audits" -- or the,
 11 quote -- what are you saying in the first sentence?
 12 A Yeah. The audits of '09 -- wait. The "II," meaning the
 13 second version, the version from Giovanni I attached to this
 14 email.
 15 Q And you say:
 16 "The audits indicate that the '09 and the '10
 17 audits were completed in April of 2011."
 18 Was that of concern to you?
 19 A Yes. That was out of line with what to be expected and
 20 what's the norm for the industry.
 21 Q Was it also out of line with the audit that you received
 22 that's Government's Exhibit 156?
 23 A Yes, it would.
 24 Q And then you said:
 25 "Let's keep this discussion between us for now."

1 Why did you want that?
 2 A I didn't want her contacting Jim Murray.
 3 Q Why?
 4 A I was conducting due diligence and you want it to be on
 5 the -- you know, independent and on the down low. And I didn't
 6 know her relationship with Jim Murray and for him to know that
 7 Gio and I were performing this kind of due diligence.
 8 Q And your last line you say:
 9 "Thank you. I can be reached at," and you give a
 10 phone number.
 11 Did you ever receive a response to your email that was
 12 Government's Exhibit 176? Did you get an email back?
 13 A I don't think I got an email. I got a phone call.
 14 Q What was the general subject matter of the phone call?
 15 A Basically, I was looking for answers of what I -- of what
 16 my -- from my email.
 17 Q Did you get any answers?
 18 A Yes. She did give me an answer.
 19 Q What did she say?
 20 A She says: I'm not aware of the '94 loss. He made money
 21 and we're -- we like him and we're thinking about investing in
 22 the fund.
 23 Q Jones Moore & Associates was thinking about investing in
 24 Market Neutral Trading?
 25 A Yeah. That was strange when I heard that.

1 Q Why did you think that was strange?
 2 A There should be arm's length. There shouldn't be
 3 conflicts. That's unheard of in the industry, for an auditor
 4 to be invested in to the fund that its auditing.
 5 (Discussion held off the record between Government
 6 counsel.)
 7 MS. HARRIS: I have no further questions, your Honor.
 8 THE COURT: All right. Cross examination?
 9 CROSS EXAMINATION
 10 BY MR. DRESSLER
 11 Q Just starting with your last statement. In November of
 12 2011 basically Jones Moore was no longer the auditor and had
 13 been replaced by the other accounting firm Sadis, isn't that
 14 correct?
 15 A No.
 16 Q Isn't that a fact that starting in June of 2011, you
 17 prepared material to be sent out for investors saying that --
 18 A For the new fund, Spicer Jeffries would be the auditor.
 19 Q Right, right. So, but Spicer Jeffries was going to move
 20 forward as the auditor, correct?
 21 MS. HARRIS: Objection, your Honor. That misstates
 22 the testimony. He said "new fund."
 23 THE COURT: You should clarify.
 24 First of all, sustained. You should clarify what we're
 25 talking about.

1 BY MR. DRESSLER
 2 Q Going forward with the fund that you were raising money
 3 for, MNT, correct?
 4 A Documents were never finalized to raise money for.
 5 Q (Indicating)?
 6 A The fund was never launched. The documents were never
 7 finalized. They were in draft form. You can't launch a fund
 8 and have vendors without the subscription documents and the PPN
 9 being finalized.
 10 Q Well, wasn't money raised in late 2010 and early 2011 for
 11 MNT?
 12 A Fund, yeah. We -- with the old auditor, yeah.
 13 Q All right. So when you say there was no fund --
 14 A There was no new fund using the new vendors, Sadis and
 15 Spicer Jeffries.
 16 Q Well, you say there was no new fund using them. You were
 17 sending marketing material to prospective investors indicating
 18 that they were the law firm and the auditor for MNT. You
 19 didn't say --
 20 (Court reporter interruption.)
 21 Q The marketing materials didn't say --
 22 THE COURT: Why don't you come up to the microphone?
 23 BY MR. DRESSLER
 24 Q The marketing materials didn't say anything about a new
 25 fund, did they?

1 A I don't think so.
 2 MR. DRESSLER: All right. Let me get my materials.
 3 (Brief pause.)
 4 MR. DRESSLER: Might save a little time, your Honor,
 5 if we could take our lunch break early and come back early,
 6 then I could set up?
 7 THE COURT: I can't do it now. I have to break at
 8 12:30. I have a conference call, so it's key to the lunch
 9 hour.
 10 A You want me to clarify when an auditor officially becomes
 11 part of a fund?
 12 BY MR. DRESSLER
 13 Q I'll ask you.
 14 (Brief pause.)
 15 Q All right. I'm going to go back, start from the
 16 beginning, all right?
 17 When you -- in August of -- in 2010 when you first met
 18 Mr. Murray, how many clients did you have?
 19 A I had probably 10 in various forms.
 20 Q And have you ever heard of a hedge fund manager named --
 21 last name of Ackman?
 22 A Yes.
 23 Q Okay. He's a very famous hedge fund manager; would that
 24 be a fair statement?
 25 A Is he famous?

1 Q Well known?
 2 A Used to be, yeah.
 3 Q Well, for many years --
 4 A I'm not sure if he's still a hedge fund manager now.
 5 Q You were interviewed originally on this case August 19th
 6 of 2013; does that ring a bell?
 7 A (No answer.)
 8 Q Let me ask you this. Have you ever heard of a hedge fund
 9 manager named Michael Axeman?
 10 A Yes.
 11 MS. HARRIS: Objection, relevance on this, your
 12 Honor. I don't see what it has to do with the -- it's outside
 13 the scope of the direct and I don't see what it has to do with
 14 our case.
 15 THE COURT: You want to make at least a short
 16 proffer? What's the relevance?
 17 MR. DRESSLER: A short proffer. He said that he
 18 was --
 19 MR. FARNHAM: Your Honor, I object to any reading
 20 from a 302.
 21 MR. DRESSLER: I'm not reading from the 302.
 22 THE COURT: I'll let you lay a foundation for
 23 relevance, but if I don't see any relevance soon, I'm going to
 24 sustain.
 25

1 BY MR. DRESSLER
 2 Q You were -- you were referred to Mr. Murray, were you not,
 3 by someone named Michael Axeman?
 4 A No, I was not.
 5 Q Do you remember telling -- when you -- you were
 6 interviewed originally interviewed in August of 2013, yes?
 7 A I got a reference point, but he did not refer me. So I
 8 found out their involvement; that they knew of each other,
 9 like, I think, four or five months after I met James.
 10 Q I'm going to show you a document and see if it refreshes
 11 your recollection.
 12 MS. HARRIS: Your Honor, I object. He hasn't said
 13 his recollection needs to be refreshed. He said what his
 14 recollection is and that's the answer.
 15 THE COURT: Well, that's his answer. So it's not a
 16 proper refresh. You can impeach --
 17 MR. DRESSLER: Okay.
 18 THE COURT: -- but it's not a refreshment of
 19 recollection.
 20 BY MR. DRESSLER
 21 Q Isn't it a fact that on August 19th of 2013 you were
 22 interviewed by USA Robin Harris and a Secret Service Agent
 23 named Jessica Radd?
 24 A Yes.
 25 Q And didn't you tell them during that interview that you

1 met James Murray in San Francisco after people Eckel knew,
 2 including Michael Axeman, recommended that he meet Murray to
 3 discuss finances and potential investments?
 4 A When I met him in -- no, that's -- "recommended." I mean
 5 referrals and recommendation, I'm referring to, like, a group
 6 of people that I might have met over six months and knew Jim,
 7 but not -- it wasn't an initial referral.
 8 It was from Thomas Hunt from Persistent Asset, who's based
 9 in San Francisco, and they are an institution. But I did not
 10 go out. My first knowledge of MNT did not come from Michael
 11 Axeman.
 12 Q So I'm saying, in fact, that's --
 13 A Can you say the quote again? What is my quote again?
 14 Q Your quote is --
 15 MS. HARRIS: Objection, your Honor. There is no
 16 quote and he's just reading somebody else's report.
 17 MR. DRESSLER: That's true.
 18 THE COURT: You can reask the question again as a
 19 cross examination question.
 20 BY MR. DRESSLER
 21 Q Isn't it true, you told an agent named Jessica Radd and a
 22 U.S. Attorney named Robin Harris that Eckel met -- that you met
 23 James Murray in San Francisco after people you knew, including
 24 Michael Axeman, recommended that he meet Murray to discuss
 25 finances and potential investments?

1 A My point is, not every one made the referral the same day,
2 same time. So --

3 THE COURT: He's asking about a sequence.

4 BY MR. DRESSLER

5 Q My question is --

6 THE COURT: The statement he asked is about
7 whether --

8 THE WITNESS: A group of people including Michael
9 recommended I meet him; did I say that?

10 THE COURT: Prior to your actually meeting him.
11 That's the question.

12 Prior to actually meeting Mr. Murray, did Mr. Murray's
13 name come up through Mr. Axeman?

14 THE WITNESS: No.

15 BY MR. DRESSLER

16 Q So you never made that statement?

17 A I might have made that statement, but, again, it's worded
18 "a group of people" and referrals and references come at
19 different times.

20 But that's not for Michael. Michael wouldn't do that. I
21 know him, he's -- he wouldn't say: Go out to San Francisco,
22 you should meet with him. By accident I found out they knew
23 each other.

24 Q And is Michael Axeman someone that you respect as a person
25 in the hedge fund world?

1 marketing with --

2 A He hired marketers. The marketer who referred me to him
3 signed a marketing agreement with him. Tom Huang from
4 Persistent Asset.

5 Q That is not -- my question, sir, is: Did you form the
6 opinion he wasn't --

7 A Heavily marketing his --

8 Q Can I finish my question, please?

9 A Okay. Excuse me.

10 Q Thank you.

11 Do you remember -- you have been interviewed by the
12 government on a couple of occasions?

13 A Yes.

14 Q Okay. And one of those times, did you indicate that
15 Mr. Murray early on, when you met him, was not really doing any
16 marketing for his hedge fund?

17 A He wasn't heavily marketing. He was sending out his
18 information to, like, five or six people.

19 Q Okay. And when you met him, you had a face-to-face
20 meeting with him. When was your first face-to-face meeting
21 with him, roughly?

22 A I think in second quarter, 2010.

23 Q Okay. So that would be what months? Second quarter would
24 be --

25 A March, April, May -- I'm trying to remember. I'm thinking

1 A I used to.

2 Q Has he taught at the University of --

3 A Arizona.

4 Q -- Arizona?

5 A Yes.

6 Q He was a professor there?

7 A Yes.

8 Q And he knew James Murray. James Murray was a student of
9 his, correct?

10 A Yes.

11 Q Okay.

12 A I think.

13 Q When you first met Mr. Murray, would it be fair to state
14 -- well, strike that.

15 You contacted Mr. Murray, and eventually you had some
16 conversations with him about what he was doing around the time
17 that you first met him in terms of his fund. Correct?

18 A Yes, I received -- we spoke via email.

19 Q Okay.

20 A Primarily.

21 Q All right. And would it be fair to state that Mr. Murray
22 was not -- at the time you first met him, was not really trying
23 to even market his hedge fund?

24 A How are you defining "trying to market"?

25 Q Was he -- to your knowledge, was he engaging in any

1 it's the middle of 2010.

2 Q So, you -- you approached him, correct?

3 A I sent him an email. Yeah. Someone referred me to him,
4 yeah. A marketer, his marketer referred me to him.

5 Q You were soliciting business from -- strike that.
6 You wanted him to hire you to do marketing for him.
7 Correct?

8 A Yes.

9 Q Okay. And --

10 A Well, at first -- at first glance. I was just doing
11 initial research. And I said, you know, "I'm interested in --
12 someone referred me to you. Can I receive information?"
13 And based on that information, I form an opinion. And if
14 I'm interested, that usually takes a couple months.

15 Q And so, whatever information you got was information which
16 was sufficient to interest you in maybe getting Mr. Murray to
17 employ you for whatever -- the services that you did.

18 A Yes. Maybe.

19 Q Is that -- okay. And, did he indicate to you that he was
20 interested in obtaining -- and correct me, I always have a
21 problem with the names that are used in your industry, but a
22 separate management agreement where -- what I mean by that is
23 where someone hires a trader, someone like Mr. Murray, and
24 gives them control of certain assets, and then that person --
25 person trades the assets for the owner of the assets?

1 MS. HARRIS: Objection, Your Honor. Compound,
2 unintelligible and no foundation.
3 BY MR. DRESSLER:
4 Q Do you understand what I'm saying?
5 A We spoke about raising money --
6 THE COURT: Hold on. I'm going to sustain the
7 objection. Reformulate the question.
8 THE WITNESS: Separately managed accounts.
9 THE COURT: Hold on, no. He's got to reask the
10 question.
11 BY MR. DRESSLER:
12 Q He told you he was interested in maintaining
13 separately-managed accounts, correct?
14 A And I believe funds, as well.
15 Q Yeah. Both. Both?
16 A Yes.
17 Q All right. Could you just define for the jury what a
18 separately-managed account is?
19 A A separately-managed account is a single investor, not
20 pooled with other investors in a fund. Basically, an investor
21 owns an account at, let's say, Merrill Lynch, and gives power
22 of attorney to the hedge fund manager to trade it. But the
23 investor owns the account.
24 Q Under that kind of agreement, all the hedge fund manager
25 does is trade the account. Correct?

1 A He's responsible for -- yeah, trading the account, but if
2 there's problems, breaks in trading, technology issues, he
3 assumes responsibility for all that.
4 Q Okay. But, under that type of agreement, he would not be
5 hiring an audit company --
6 MS. HARRIS: Objection, Your Honor. This calls for
7 speculation. There is no agreement that we're seeing and no
8 foundation being laid for any particular agreement.
9 THE WITNESS: I'm --
10 THE COURT: Hold on. I'm -- going to overrule the
11 objection because that -- that question didn't call for
12 foundation, because right now the only question is what he
13 wanted to do. There's been no question what he actually did
14 do.
15 MS. HARRIS: Oh, is this related to Mr. Murray, this
16 question?
17 THE COURT: Yeah.
18 Isn't it?
19 MR. DRESSLER: Yes.
20 THE COURT: That's what I thought.
21 THE WITNESS: Okay.
22 THE COURT: Okay. So, go ahead and ask the question,
23 Mr. Dressler.
24 BY MR. DRESSLER:
25 Q With regard to separately-managed accounts that Mr. Murray

1 was interested in you obtaining for him, he wouldn't have to
2 hire auditors or law firms in the same way he would with regard
3 to a hedge fund where he was the actual sole manager and owner,
4 let's say.
5 A There's no requirement. But there are people who do.
6 Yeah.
7 Q There is no requirement --
8 A There's no industry regulation that requires the hedge
9 fund manager to provide an administrator, let's say. But
10 people do.
11 Q In other words, we're talking about -- talking about a
12 company like MNT that Mr. Murray had. All right?
13 A Uh-huh.
14 Q There is no requirement that he get an auditor, correct?
15 A No, there's no requirement.
16 Q There's no requirement that he get an auditor, correct?
17 A Correct.
18 Q And there's no requirement to have an outside
19 administrator. Correct?
20 A Correct.
21 Q And in fact, when you are talking about auditors, would it
22 be fair to state that if you have a hedge fund like
23 Mr. Murray -- let me ask you this. I'll withdraw that
24 question. And, only answer my questions if you know.
25 In terms of auditing hedge funds in general, all right,

1 would it be fair to state that it's not as simple as auditing
2 certain other businesses?
3 MS. HARRIS: Objection, Your Honor. This witness is
4 not an auditor. And there's no foundation laid for that.
5 THE COURT: Sustained. That means --
6 THE WITNESS: (Inaudible)
7 MR. DRESSLER: Well, the government has been asking
8 him about audits, and what they mean, and what you expect. I'm
9 just following up --
10 THE COURT: Well, yours is a very general question.
11 MR. DRESSLER: All right.
12 BY MR. DRESSLER:
13 Q One of the reasons -- strike that.
14 Would it be fair to state that early on in your
15 relationship with Mr. Murray and MNT, you suggested that he
16 obtain a new auditor?
17 A Yes.
18 Q Okay. And, in terms of your due diligence with regard to
19 JMA, did you determine whether or not they were a SAS 70
20 qualified auditing firm?
21 A No.
22 Q And one of the things that you told Mr. Murray was that
23 you should have affirmed that was SAS 70 qualified. Correct?
24 A You are referring to the administration, not the auditor.
25 Q I'm sorry. The administration.

1 A An investor, in order to invest, required that.
 2 Q Okay. And when you invest in a hedge fund -- and I think
 3 you stated this -- different people that may or may not know
 4 each other pool all their money together into one big pot.
 5 Correct?
 6 A Yeah. The manager, the structure pools the capital
 7 together.
 8 Q Right. And, so the hedge fund manager has -- has control
 9 over a large sum of money that belongs to a number of different
 10 people. Correct?
 11 A If the assets are large, yes, he has control over large
 12 amounts.
 13 Q And, so, would it be fair to state that one of the reasons
 14 people want an auditor is basically to make sure that -- strike
 15 that.
 16 The hedge fund manager generally has a lot of discretion
 17 as to what he or she does with the money in that pool.
 18 Correct?
 19 A Yes.
 20 Q Okay. You read the -- the documents with regard to MNT.
 21 And basically, would it be fair to state that Mr. Murray could
 22 do whatever he wanted with that money, other than steal it? I
 23 mean he could -- strike that. That was a bad question. All
 24 right.
 25 He could invest in whatever stocks or whatever trades he

1 wanted to do. It was totally at his discretion. Correct?
 2 A Whatever -- the private placement memorandum, the fund
 3 document gives certain latitudes to managers. I don't remember
 4 exactly what the specific document said, if he can do anything
 5 he wants.
 6 Q But, it gives wide latitude --
 7 A Yes, it does.
 8 Q -- to the manager, correct?
 9 A Typically the -- the law firms write it in such a fashion
 10 that allows for the manager to invest in a number of ways, with
 11 a number of different products.
 12 Q Right. And generally, before a manager makes an
 13 investment, he doesn't have to get permission from the
 14 investors, does he? He just does it. Correct?
 15 A That's correct.
 16 Q All right. And given that latitude, would it be fair to
 17 state that investors want to make sure that they can keep track
 18 of what happened to their specific funds that were invested in
 19 a hedge fund?
 20 A Yes.
 21 Q And the best way to do that is to have an auditor and an
 22 administrator. Correct?
 23 A Yes.
 24 Q All right. And so, in one sense, when you're talking
 25 about -- let's just say the auditor, all right? You're looking

1 at the auditor going forward.
 2 Is this an auditing company that's going to sufficiently
 3 protect the money that I'm thinking about putting into the
 4 hedge fund?
 5 A That's not their role, to protect it. Because they
 6 actually start doing their after the year end, and after all
 7 the trading is in. So they don't have a trade screen or
 8 approval process.
 9 Q I understand that. But what I'm saying is at the end of
 10 the year, they will determine what happened to a particular
 11 investor's money, and make sure that whatever happened to it is
 12 accurately reported in the audit that they prepare.
 13 A They work with the administrator who's been following the
 14 trading, typically on a daily or a monthly basis, and they will
 15 get the data from the administrator. So they're a check on the
 16 administrator's work, and the assets at the end of the year.
 17 Q Okay. So in that sense -- and I'm just asking these
 18 generally right now -- would it be fair to state that some of
 19 the people that you had contacted that were interested in
 20 investing in MNT were leery in investing their money because
 21 they didn't recognize JMA, nor did they recognize HF
 22 Administrators?
 23 A There are some potential people that didn't ultimately
 24 invest.
 25 Q That isn't my question. My question is: Were there some

1 people who were hesitant to invest because they didn't
 2 recognize JMA or HF Administrators?
 3 A That is true.
 4 Q And would it be fair to state that once the marketing
 5 material went out that identified Spicer Jeffries as the
 6 attorneys and Sadis and Goldberg as the auditors, some people
 7 then came around and actually did invest?
 8 MS. HARRIS: Objection. Foundation, Your Honor.
 9 There is no date for any of this at all, and no lead-up to when
 10 that happened.
 11 THE COURT: All right. Let's lay a foundation.
 12 MR. DRESSLER: Well, I -- I'm talking about at some
 13 point, the only information that potential investors had was
 14 JMA was the auditor, and HF Administrators was the
 15 administrators. Correct?
 16 A Yes.
 17 Q Okay. And, whatever date it was, at some point, you are
 18 aware, are you not, that the marketing material eliminated JMA
 19 and HF Administrators and put -- and in their place was Sadis
 20 and Goldberg, and Spicer Jeffries. Correct?
 21 A Yes.
 22 Q Okay. What I'm asking you is before JMA and HF
 23 Administrators was replaced on the marketing material, there
 24 were people that were leery of investing because they didn't
 25 recognize the names of JMA and HF Administrators. Correct?

1 A There was other reasons too, but not only that. Yeah.
 2 Q Well, didn't you just -- I just asked you that question a
 3 few minutes ago. Didn't you say that: Yes, there were some
 4 people that were leery of investing? That's my question.
 5 A Yeah, that is a true statement.
 6 Q Okay. And, whatever date it was, after the new marketing
 7 material went out that identified Spicer Jeffries and Sadis and
 8 Goldberg, there were people that saw that new material and then
 9 decided to invest. Correct?
 10 A I don't think that's true. The opt-in memorandum of Sadis
 11 and Goldberg that they created, I never sent out. I told the
 12 investor to hold off until --
 13 Q But didn't you tell some investors that Sadis and Goldberg
 14 were going to be the accountants, and based on that, they then
 15 invested?
 16 A Sadis and Goldberg is the law firm?
 17 Q I'm sorry. Spicer Jeffries.
 18 A I don't think that's true. They're not trigger-happy
 19 like, "Oh, you switched auditors, okay, let me wire the money,
 20 let's..."
 21 Again, I don't think new investment came in, um, once the
 22 new vendors were on there. I'm not sure -- maybe a quarter
 23 million? But not the initial five -- not the initial two
 24 million that came in.
 25 Q So --

1 A That's very late in the process of the year. That --
 2 they're -- the vendors -- again, I didn't send the document
 3 out, the Sadis document. It wasn't complete. They weren't
 4 fully engaged.
 5 But there's only five or six investors totally over the
 6 year and a half. And all of them, I think, were before --
 7 using the old materials. They all received the old private
 8 placement memorandum which had the other -- the original
 9 vendors.
 10 I think 100,000 came in from --
 11 THE COURT: 100,000 came in after the new vendors
 12 were identified? Is that what you are saying?
 13 THE WITNESS: Yes.
 14 BY MR. DRESSLER:
 15 Q Are you finished with your answer?
 16 A Yes.
 17 Q Okay. Yesterday (sic) you were asked -- you reviewed the
 18 government's Exhibit 160, which I believe was a DDQ. And it
 19 had questions.
 20 One of the questions was (As read):
 21 "Have any of the directors, officers, management
 22 or other employees of the fund or manager ever been
 23 investigated, disciplined, suspended, including
 24 revocation or suspension of licenses, subpoenaed,
 25 indicted, prosecuted or barred from investment

1 activities by state or federal government regulatory
 2 authorities?"
 3 Remember --
 4 A Yes, I do.
 5 Q And you were asked:
 6 "Is the New York Stock Exchange suspension
 7 from..."
 8 Strike that.
 9 You were asked:
 10 "Is the New York Stock Exchange, suspension from
 11 the New York Stock Exchange for a period of six
 12 months, would that have required a 'Yes' answer to
 13 No. 10?"
 14 A Yes, I do recall that.
 15 Q And isn't it a fact that the New York Stock Exchange is
 16 not a state or federal government regulatory authority? Isn't
 17 it, in fact, a self-governing organization of private
 18 individuals?
 19 A That sounds reasonable. Honestly, I don't know exactly
 20 that.
 21 Q Okay. So when you said "Yes" yesterday, you were wrong.
 22 Correct?
 23 A The question covers a lot of ground. So, I think it said
 24 any material or significant infraction or --
 25 Q I just read you the question. All right? Want me to read

1 it again?
 2 A Please do.
 3 Q Okay (As read):
 4 "Have any of the directors, officers, management
 5 or other employees of the fund or manager ever been
 6 investigated, disciplined, suspended, including
 7 revocation of or suspension of licenses, subpoenaed,
 8 indicted, prosecuted or barred for -- from investment
 9 activities by state or federal government regulatory
 10 authorities?"
 11 And you said Mr. Murray -- what answer did Mr. Murray
 12 provide to you as to that question? You said "No." And then
 13 you were asked (As read):
 14 "Is the New York Stock Exchange, suspension from
 15 the New York Stock Exchange for a period of six
 16 months, would that have required a 'Yes' answer to
 17 No. 10?"
 18 And you said:
 19 "Yes, it would."
 20 And, in fact, it didn't require a "Yes" answer, did it
 21 not? Because the New York Stock Exchange is not a state or
 22 federal government regulatory authority.
 23 A You're correct. Did not.
 24 Q Okay. And with regard to the same document we were just
 25 discussing, you were asked a question about Mr. Murray's

1 placement memorandum, where it said (As read):
 2 "James Murray is the investment manager of the
 3 company. Prior to this period, Mr. Murray was the
 4 investment manager for the investment fund Murray
 5 Partners, Pareto Capital, and worked as an investment
 6 adviser at Murray Asset Management, LLC."
 7 And you verified that, in fact, that was in the placement
 8 memorandum. Correct?
 9 A DDQ? Was it in the DDQ that we're talking --
 10 Q Yes.
 11 A Yes.
 12 Q Yes. And, in terms of what needs to go into the -- into
 13 that, does someone that's filling out the DDQ, someone like
 14 Mr. Murray, have to put his hobbies down? He has a hobby? In
 15 other words --
 16 A No. It's not a requirement.
 17 Q So if I'm a stamp collector, I have a hobby as a stamp
 18 collector, and I buy and sell stamps on the internet as part of
 19 my hobby, that doesn't have to go into the placement document,
 20 does it?
 21 A No, it doesn't.
 22 Q Okay. So if Mr. Murray had a hobby of collecting, buying
 23 and selling CDs from his home as a hobby, that would not have
 24 to go in a placement management, would it? Placement --
 25 A The DDQ. The placement agent is the fund document. DDQ

1 is the, kind of, disclosure doc, yeah. DDQ.
 2 Q So you wouldn't have to put your hobby in there?
 3 A No. There's no requirement of that, that I'm aware of.
 4 Q So when the U.S. Attorney asked you:
 5 "Is there anything about Mr. Murray's prior
 6 employment being selling CDs from his home?"
 7 You said "No." Correct?
 8 A Correct.
 9 Q And you don't know whether he was ever employed by someone
 10 at his home, selling CDs.
 11 A I never knew that.
 12 Q I'm asking you, you don't know whether he was -- whether
 13 he did this as a hobby, or whether someone was employing him as
 14 a --
 15 A I didn't know, either.
 16 Q Okay. In terms of your own background, you have a
 17 bachelor's degree from University of Washington?
 18 A Yes.
 19 Q University of Washington?
 20 A Yes.
 21 Q Okay. All right. And you don't have any advanced
 22 degrees?
 23 A No, I don't.
 24 Q And does that prevent you from obtaining the work, the
 25 kind of employment -- strike that.

1 The fact that you don't have an advanced degree, does that
 2 prevent you from being a registered broker-trader under FINRA?
 3 A No, it doesn't.
 4 Q And has that -- have you found that because you don't have
 5 an advanced degree, that you've not gotten clients that you
 6 thought maybe you should have gotten?
 7 A Marketing clients?
 8 Q Yes.
 9 A Marketing clients.
 10 Q Yes.
 11 A No.
 12 Q How about -- what other clients do you have?
 13 A Consulting clients.
 14 Q When you say "marketing clients," those are people that
 15 you want to do --
 16 A Raise capital for. Yeah.
 17 (Reporter interruption)
 18 THE COURT: Okay, one at a time.
 19 THE WITNESS: Okay.
 20 THE COURT: Go ahead.
 21 THE WITNESS: Can you repeat the question?
 22 BY MR. DRESSLER:
 23 Q I'll try. You have marketing clients under Emerging
 24 Managers. Correct?
 25 A Emerging Manager Advisors, yes.

1 Q And then you're a registered -- registered broker-trader?
 2 A Broker-dealer, yes.
 3 Q And as a broker-dealer, what do you do?
 4 A I'm sort of a matchmaker between investors and traders.
 5 Hedge fund managers. Introducing parties. A capital-raiser,
 6 if you will.
 7 Q So that's what you were doing for Mr. Murray, correct?
 8 A Yes.
 9 Q And in your other capacity, what do you do?
 10 A Well, sometimes, informally or formally or officially I
 11 act as a consultant, kind of make marketing materials. I get
 12 employed to make marketing materials.
 13 Q So that's as you're making marketing materials, but you're
 14 not trying to actually raise capital? Is that what you're
 15 saying?
 16 A No, they're one and the same. Sometimes they're separate.
 17 Sometimes I'm only hired as a consultant to do marketing
 18 materials and the marketing. Sometimes I'm only hired to do
 19 marketing. Sometimes I do both, kind of hand in hand,
 20 together.
 21 Q Okay. All right.
 22 THE COURT: We're going to have to take a break right
 23 at this point, then.
 24 Let's break until 1:00 for our lunch break, and resume at
 25 that point. Thank you.

1 (Jury exits the courtroom at 12:26 p.m.)
 2 MR. DRESSLER: Your Honor, I want to request that if
 3 Mr. Murray could remain in the courtroom so I could talk to
 4 him. I was going to talk to him this morning and then I got
 5 the email.
 6 THE COURT: I have no objection, as long as the
 7 marshals are okay.
 8 (Off-the-Record discussion)
 9 THE COURT: Okay. Thank you.
 10 (Whereupon at 12:27 p.m. proceedings
 11 were adjourned for noon recess.)
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1 PROCEEDINGS
 2 September 28, 2015 1:03 p.m.
 3 (The following proceedings were held outside of the
 4 presence of the jury)
 5 THE CLERK: Please come to order.
 6 THE COURT: Okay. Shall we have the witness resume
 7 the stand? The jurors are lined up and ready, raring to go.
 8 MS. HARRIS: I think they just went to get him.
 9 MR. DRESSLER: Your Honor, I had a -- I couldn't
 10 leave them here, and then I had to drag all my stuff up there.
 11 And it took me 15 minutes to get in to see him, for ten
 12 minutes. So my materials are a little discombobulated right
 13 now.
 14 THE COURT: Well -- okay. We're going the bring the
 15 jury in.
 16 (The following proceedings were held in the presence
 17 of the Jury)
 18 THE COURT: You may be seated.
 19 Let me note for the record that this jury is
 20 extraordinarily prompt and attentive. They were ready before I
 21 was, to come in here. I want the record to reflect that. So,
 22 thank you.
 23 Okay. We going to pick up with cross-examination.
 24 Mr. Dressler?
 25 MR. DRESSLER: Yes, Your Honor.

1 I have a document that I wasn't planning to use it right
 2 now, but I'm going to show it to the client and tentatively
 3 mark it as Defense, just to be safe, 247.
 4 And I'm going to --
 5 THE COURT: 247? That number's not been used?
 6 MR. DRESSLER: I don't think so.
 7 THE COURT: Okay.
 8 (Trial Exhibit 247 marked for identification.)
 9 MR. DRESSLER: And I'm writing on the back, "No. 247"
 10 by hand. And I will put it in the proper form when and if it's
 11 admitted.
 12 May I approach?
 13 THE COURT: Yes.
 14 MR. DRESSLER: Let the record reflect that I have
 15 just handed the witness, for identification only, Defendant's
 16 Exhibit 247.
 17 CROSS EXAMINATION RESUMED
 18 BY MR. DRESSLER:
 19 Q And, ask if you could just look through that.
 20 (Request complied with by the Witness)
 21 Q And let me know when you have had a chance to look through
 22 it.
 23 A I have.
 24 Q Okay. Does this appear to be the June marketing materials
 25 that you prepared? June of 2011?

1 A Yes.
 2 Q Okay.
 3 A Yes.
 4 Q All right. And, if you go to Page 9 which is the -- and
 5 did you -- you did prepare these materials that we're looking
 6 at right now?
 7 Yes?
 8 A Yes, I did.
 9 MR. DRESSLER: I'm going to offer this as Defendant's
 10 247. Offer it into evidence.
 11 THE COURT: Any objection?
 12 MS. HARRIS: No, Your Honor.
 13 THE COURT: 247 admitted.
 14 (Trial Exhibit 247 received in evidence)
 15 BY MR. DRESSLER:
 16 Q If you look at Page 9.
 17 A 9 of the final presentation page?
 18 Q 9 of the document you have in front of you, Page 9.
 19 Bottom right-hand corner. It is the next-to-the-last page --
 20 not -- it's the third page from the end.
 21 A Yes.
 22 Q See that?
 23 A (Nods head)
 24 Q Okay.
 25 A "Service Providers and Fund Terms."

1 Q Yes.
 2 A I see it.
 3 Q So, in that document, it still lists HF Administrators as
 4 the administrator for the hedge fund. Correct?
 5 A Yes.
 6 Q And it indicates that the auditor is Spicer Jeffries,
 7 correct?
 8 A Yes.
 9 Q And it indicates that the legal firm is Sadis and
 10 Goldberg. Correct?
 11 A Yes. Correct.
 12 Q So this would have been distributed, would it be fair to
 13 state, and correct me if I'm wrong, some time right after the
 14 end of -- end of June of 2011?
 15 A Well, the one-page summary is definitely distributed. The
 16 front page (indicating). This presentation, sometimes it's
 17 distributed and sometimes it's not.
 18 Q So --
 19 A Someone asks for it, "Can I get the presentation?" Yes,
 20 this would be sent.
 21 Q Okay.
 22 A But not everyone receives it.
 23 Q Okay. Thank you. That's my question. So both, would it
 24 be fair to state, at least as far as you knew, back then,
 25 Spicer Jeffries and Sadis and Goldberg were retained before the

1 end of June, correct?
 2 A Yes.
 3 Q And, with regard to Spicer Jeffries in particular, the
 4 agreement between Mr. Murray and Spicer was signed in early
 5 June of 2011. Correct?
 6 A I believe that's true. I don't have -- (Inaudible)
 7 (Reporter interruption)
 8 THE WITNESS: I believe that's true.
 9 (Off-the-Record discussion between Defendant and
 10 Counsel)
 11 BY MR. DRESSLER:
 12 Q And, would it be fair to state that the agreement with
 13 Spicer was that they would do the audit for 2011?
 14 In other words, they would perform services after -- or
 15 during -- during and after the end of the 2011 year, after --
 16 A After the year. After the year ends, yes.
 17 Q Right. Okay.
 18 MR. DRESSLER: And, I apologize to everyone. I was
 19 running around the building with a lot of this stuff and it got
 20 all mixed up.
 21 So, I'm looking for one more thing. There it is.
 22 BY MR. DRESSLER:
 23 Q Now, with regard to Sadis and Goldberg, all right, you
 24 were not the client of Sadis and Goldberg, were you?
 25 A Me? No.

1 Q So you weren't privy to all of the conversations that
 2 Mr. Murray had with Sadis and Goldberg.
 3 MS. HARRIS: Objection. There's no foundation that
 4 there were conversations.
 5 THE COURT: Overruled. You can answer the question.
 6 THE WITNESS: I made the introduction, but I wasn't
 7 -- initially, 90 percent of the communication was just me and
 8 Sadis. And then at a certain point, it was both of us.
 9 BY MR. DRESSLER:
 10 Q Okay.
 11 THE COURT: Why don't you finish the -- finish the
 12 sentence. You were going to say something.
 13 THE WITNESS: Oh. Ninety percent of the initial
 14 communication was just me and Sadis. And then I would send
 15 emails to Jim Murray. And then at a certain point, I think Jim
 16 and Sadis had conversations. But I wasn't aware of them.
 17 BY MR. DRESSLER:
 18 Q Okay. But you were aware that -- well, were you aware of
 19 the fact that Mr. Murray paid them, signed an agreement and
 20 paid them \$19,000?
 21 A Yes, I was.
 22 Q Okay. And that a dispute arose over a background check,
 23 right?
 24 A Yes.
 25 Q And would it be fair to state the dispute was not whether

1 to have a background check, but Mr. Murray thought that the
 2 price they were asking was outrageously high?
 3 A No. It was whether to have a background check.
 4 Disclosure.
 5 Q Well, then -- didn't Mr. Murray tell you that --
 6 MS. HARRIS: Objection, hearsay.
 7 THE COURT: Well, you can ask on cross, but you have
 8 to phrase it differently.
 9 BY MR. DRESSLER:
 10 Q Did you have conversations with Mr. Murray with regard to
 11 this dispute with Sadis?
 12 A Yes.
 13 Q Okay. Had you read the contract that was signed between
 14 Mr. Murray and Sadis?
 15 A I reviewed it.
 16 Q Okay. And there was nothing in there about a background
 17 check, correct? If you remember.
 18 A I don't remember.
 19 Q Okay. And did you ever have a conversation with
 20 Mr. Murray about how much they wanted to do a background -- to
 21 charge him for a background check?
 22 A I probably did.
 23 Q And when a background check is done, you have clients --
 24 not unusual to ask for a background check, is it?
 25 A No, it's not.

1 Q And do you -- and I take it a number of your clients have
2 gone through the background check.
3 A Yes.
4 Q Correct? All right. And, do you have any idea generally
5 how much those background checks -- how much that your clients
6 are charged for those background checks?
7 A Well, the investors ultimately pay for it. So, it's not
8 really a big outlier.
9 I don't -- I don't remember the charge for this one or
10 other ones.
11 (Reporter interruption)
12 THE WITNESS: I don't remember, yeah. I don't
13 recall.
14 BY MR. DRESSLER:
15 Q And you are a member of FINRA? You are a member of FINRA?
16 A Yes, yeah.
17 Q And they have a website, do they not?
18 A I'm sure they do.
19 Q Okay. And --
20 THE COURT: Why don't you remind everybody what
21 "FINRA" stands for.
22 THE WITNESS: Financial Industry Regulatory
23 Authority.
24 MR. DRESSLER: Thank you, Your Honor.
25

1 BY MR. DRESSLER:
2 Q Then you could do a background check on someone through
3 FINRA, can you not, if they are FINRA registered?
4 A You can do some kind of background check, yeah.
5 Q Let me go back to the JMA -- well, let me -- did you
6 provide the government with all the emails, all of your emails
7 regarding MNT and Mr. Murray?
8 A No.
9 Q Is there a reason? Well, let me ask you this.
10 You didn't provide them with the email that you received
11 from JMA which had the audits -- strike that.
12 When you first met Mr. Murray, all right, you indicated
13 you wanted to see the audits from JMA. Correct?
14 A I just asked him for the audits. I typically just get it
15 from the manager. I never get it from the auditor.
16 Q That was going to be my next question. You might be a
17 mind reader.
18 THE COURT: Stay close to the microphone, please.
19 BY MR. DRESSLER:
20 Q That was my next question.
21 A Okay.
22 Q You asked him, and in fact, he said that he thought --
23 MS. HARRIS: Objection, hearsay.
24 THE COURT: Well, I haven't heard the full question
25 yet. Go ahead and ask it.

1 BY MR. DRESSLER:
2 Q Did he -- did you ask Mr. Murray for the audits from JMA?
3 Correct?
4 A No.
5 Q You asked him for audits?
6 A Yes.
7 Q Okay. At some point, he told you that the audits were
8 done by JMA. Correct?
9 A Well, in the initial documentation that he sent me, it was
10 listed, Jones Moore & Associates.
11 Q Okay. And, you wanted to take a look at the audits as
12 part of your due diligence. Correct?
13 A Yes.
14 Q Okay. And, did Mr. Murray hand you audits?
15 A No.
16 Q He indicated that he would have the auditor send them to
17 you, correct?
18 A No. He just cc'd me on an email, of him e-mailing JMA.
19 Q Right. All I'm asking is: You received the audits via
20 email from JMA. Correct?
21 A Yes.
22 Q All right. And, where is that email? Did you produce
23 that to the government?
24 A Yes. Oh, um, I believe I do. I did.
25 Q But you are not absolutely sure?

1 A From Michelle? From Jamie?
2 Q Whoever -- what I'm asking specifically is: You received
3 audits by email from JMA. Yes or no?
4 A Yes, I did.
5 Q Okay. And isn't it a fact you did not turn over any of
6 those emails to the government?
7 A I don't believe that's true.
8 Q You think you did?
9 A Yes.
10 Q Okay. Before you prepared and started disseminating any
11 marketing agreements for JMA, you spoke --
12 THE COURT: Marketing agreements for JMA?
13 MR. DRESSLER: I'm sorry; thank you.
14 Absolutely wrong question.
15 THE COURT: Okay.
16 BY MR. DRESSLER:
17 Q Before you started distributing marketing materials for
18 MNT --
19 A Uh-huh.
20 Q All right? You called HF Administrators and verified --
21 let's just start with that.
22 Before you issued any marketing materials, you called HF
23 Administrators. Correct?
24 A I don't think it was before.
25 Q Excuse me?

1 A I don't think it was before.
 2 MR. DRESSLER: This is every lawyer's worst
 3 nightmare, losing a document that you had five minutes ago.
 4 THE COURT: Is this an exhibit already in evidence,
 5 Mr. Dressler? Maybe Counsel has --
 6 MR. DRESSLER: I don't think it is, Your Honor. But
 7 -- I'll look for it. If I can't -- I'll go on.
 8 THE COURT: Okay.
 9 MR. DRESSLER: Maybe I have it somewhere in this pile
 10 of materials. Take one more look in here.
 11 (A pause in the proceedings)
 12 BY MR. DRESSLER:
 13 Q With regard to JMA, as part of your due diligence, one
 14 part of that was obtaining the audits. Correct?
 15 A That's correct.
 16 Q And, did you also talk to some -- I'm talking about now
 17 before you made any marketing agreement -- materials. Did you
 18 speak with anyone from JMA?
 19 A No.
 20 Q You didn't speak with Michelle?
 21 A No.
 22 Q Did you email -- other than receiving the audits, did you
 23 receive any emails or send any emails to JMA, asking questions
 24 about their audits?
 25 A I asked someone to call me. Yes, I did.

1 Q And did someone call you?
 2 A No.
 3 Q Okay. And nevertheless, so when you made the marketing
 4 materials, you hadn't spoken to anyone from JMA?
 5 A No.
 6 Q You hadn't had any email communications with anyone from
 7 JMA.
 8 A I emailed them, "Can you give me a call?"
 9 Q Right. But what you're saying is: No one called you.
 10 All right?
 11 A Yeah. But then I got the audits, like, a day or two
 12 later.
 13 Q Okay. And that was sufficient for your purposes, in terms
 14 of your due diligence.
 15 A Well, there's -- due diligence could take six to nine
 16 months. It could be multi-level. It's not -- you don't start
 17 the market material until you've done this exhaustive due
 18 diligence.
 19 So it's kind of a -- I might send the market material to
 20 three or four people, just to get their sense if they're
 21 interested in this type of thing. And they would ask
 22 questions, and I would go ask the hedge fund manager.
 23 And then it's a better process, a kind of iterative
 24 process, than to try to do everything day one and make a
 25 100 percent decision.

1 There's many managers, I -- it takes a long time, and some
 2 people are shorter. Depends on if they have an audit or not.
 3 That changes things.
 4 Q All right. So, but you started soliciting investors in
 5 January, did you not, of 2011?
 6 A That's true.
 7 Q Okay.
 8 A This is five and a half years ago. I might have done a
 9 couple, via phone call. I might have sent Jim's material three
 10 or four months earlier.
 11 Q Did you send any of the -- starting, let's say -- do you
 12 remember when the first investor of yours invested in MNT?
 13 A I think it was early 2011.
 14 Q Okay. And, had you sent any marketing materials out at
 15 that point?
 16 A Yes.
 17 Q Okay. And, had you sent any audits out?
 18 A Probably not.
 19 Q And yesterday (sic) you were asked, with regard to Exhibit
 20 166, you were asked about an email that you sent on October 25,
 21 2010, to Mr. Murray. Correct?
 22 A Yes.
 23 Q And, you were asked (As read):
 24 "Can you explain to us what you were trying
 25 figure out with the email you sent on October 25th?"

1 And you answered:
 2 "The performance report that initially
 3 provided..."
 4 (Reporter interruption)
 5 BY MR. DRESSLER:
 6 Q The question you were asked was (As read):
 7 "Can you explain to us what you were trying
 8 figure out with the email you sent on October 25th,
 9 2010?"
 10 And you answered:
 11 "The performance report that he initially
 12 provided to me. The annual return and the
 13 performance report that he initially provided to me."
 14 And then you were asked:
 15 "Who's he?"
 16 And:
 17 "I'm sorry, Jim Murray."
 18 And then you said:
 19 "There was a small difference between that and
 20 the final net return that was determined by the
 21 auditor."
 22 "And which auditor were you referring to?"
 23 "Jones Moore."
 24 And then, at some point you were asked:
 25 "Did Mr. Murray explain to you why the audited

1 returns did not match the performance report?"
 2 And I believe you said:
 3 "The audit is asset-weighted and done on the
 4 entity as a whole, not on an individual who did not
 5 add or subtract dollars."
 6 Correct?
 7 A Yes.
 8 Q All right.
 9 THE COURT: Is there a question pending?
 10 MR. DRESSLER: Yes. It's coming.
 11 BY MR. DRESSLER:
 12 Q At a different time yesterday you were asked what
 13 Government Exhibit 156 was, and you said (As read):
 14 "It's an audit from Market Neutral Trading,
 15 December 31st, 2009."
 16 Remember that?
 17 A Yes.
 18 Q That was Exhibit 156. You indicated -- you looked at it,
 19 and you were asked (As read):
 20 "What was the total return after incentive
 21 reallocation to managing member for Market Neutral
 22 Trading's investors in the calendar year 2009?"
 23 And you answered:
 24 "12.5 percent."
 25 Remember that?

1 A Yes, I do.
 2 Q All right. And you were asked:
 3 "What does that mean?"
 4 And the answer was:
 5 "12.5 is the net return to the investors."
 6 MS. HARRIS: Your Honor, I just object to this entire
 7 line --
 8 THE COURT: What is the question?
 9 MS. HARRIS: There is no question.
 10 THE COURT: Unless --
 11 MR. DRESSLER: I'm getting to --
 12 THE COURT: Well, I'm not going to -- well, unless
 13 you ask a question --
 14 MR. DRESSLER: Well, I'm getting there. I apologize,
 15 Your Honor.
 16 THE COURT: Well, you'd better get to it soon.
 17 MR. DRESSLER: Let me ask this, and then I'll be able
 18 to ask a bunch of questions, Your Honor. I apologize.
 19 BY MR. DRESSLER:
 20 Q Again, with regard to 166, Page 6, you read what
 21 Mr. Murray said, which was (As read):
 22 "It's noted in the report that the audit is done
 23 for the fund as a whole and that returns for an
 24 individual would vary..."
 25 (Reporter interruption)

1 MR. DRESSLER: Yeah, I'm quoting now. All right,
 2 Mr. Murray said:
 3 "I believe it's noted in the report that the
 4 audit is done for the fund as a whole, and that
 5 returns for an individual would vary based on
 6 contributions or withdrawals."
 7 And then you were asked:
 8 "What did that mean to you?"
 9 And you answered that:
 10 "The performance report is as if an investor put
 11 in money January 1st, and did not add or subtract,
 12 and then on December 31st, his return would be 13.6,
 13 let's say, in 2009. The audit takes into account all
 14 of the money coming in and going -- and going, and
 15 assigns and weights the return. So if a lot of money
 16 came in during a good performing month, that would
 17 affect the average. Whereas in the other one, it's
 18 assumed that someone put in a million dollars and
 19 didn't change. So slight differences..."
 20 I'm quoting you. It's the -- this is the end of the
 21 quote:
 22 "So slight differences sometimes occur."
 23 All right. Now, Mr. Murray had told you, did he not, that
 24 he didn't want you to use the audit, the JMA audit as a
 25 marketing tool. Correct?

1 MS. HARRIS: Objection. Hearsay, Your Honor.
 2 THE COURT: You can phrase it in a different way,
 3 without assuming facts in evidence.
 4 BY MR. DRESSLER:
 5 Q Did you have a conversation with Mr. Murray about whether
 6 or not he wanted you to use the audits as a marketing tool?
 7 A I don't recall that. This is a phone conversation or
 8 email?
 9 Q Any conversation.
 10 A I don't recall that.
 11 Q All right. Do you remember him -- did you have a
 12 conversation with him about whether or not an audit was a true
 13 representation of historical performance?
 14 A No. Again, these days, very little phone conversation.
 15 So, in the email that you just read he explained the
 16 differences, which --
 17 Q All right. In this email, all right, you had received a
 18 message, an email from a client asking you to explain the --
 19 the difference for -- between the fact sheet performance and
 20 the audited performance for 2006, -7, -8 and -9. Correct?
 21 A That's correct.
 22 Q And in answer to that, Mr. Murray indicated that there was
 23 a difference because an audit report, an audit is a very
 24 different statement than the fact sheet performance.
 25 A It's asset-weighted. I don't believe it's very different.

1 Q Okay. Well, let me ask you this: Would it be fair to
2 state that you had a little trouble understanding what he was
3 saying about the difference between the two?
4 A No, I'm familiar with that.
5 Q Okay.
6 Well, your email, and this is Exhibit 166, Page 6, said
7 (As read):
8 "Can you explain to me again the reason for the
9 difference?"
10 Which would -- remember that in the email?
11 A Um, yes.
12 Q Okay. So, you were asking for another or a further
13 explanation, correct?
14 A Yeah, more information. Yeah.
15 Q Okay. All right. And he was trying to give you that
16 information.
17 A Yes, he was.
18 Q Correct? All right. Are you saying that it never came --
19 there was never a conversation between you and Mr. Murray about
20 whether or not and how the audit materials should be depicted
21 to potential investors?
22 A No. It's not used as a marketing tool. It is usually
23 just per investor request. That would be strange to use it as
24 a tool, an initial tool to --
25 Q Well, in Exhibit 166, Page 7, the email that you got was

1 from a client that, obviously, had the audits in the
2 performance --
3 A They requested it. Yeah.
4 Q Right?
5 A Yeah.
6 Q And you requested them.
7 A Yes.
8 Q All right.
9 A But if he said to me -- that'd be a red flag to me --
10 "Don't use the audits" -- that would be a red flag to me, if he
11 said "Don't use the audits" in part of marketing or if someone
12 asked for them.
13 Q Well, there is a reason for not using audits in marketing,
14 isn't there?
15 MS. HARRIS: Objection, Your Honor.
16 THE WITNESS: No.
17 MS. HARRIS: Misstated the witness's answer.
18 THE COURT: Rephrase the question.
19 BY MR. DRESSLER:
20 Q Is there a reason why --
21 A No.
22 Q -- you don't want to use audits?
23 A No.
24 Q Let me -- I want to give you --
25 MR. DRESSLER: Your Honor, I propose to ask the

1 witness a hypothetical question based on testimony he gave
2 yesterday about what the audits meant versus the performance
3 reports.
4 THE COURT: Well, is this to elucidate his
5 explanation?
6 MR. DRESSLER: Yes. His explanation, yesterday and
7 today.
8 MS. HARRIS: Your Honor, I'm going to object to
9 anything (Inaudible). This is not an expert witness. This is
10 a percipient witness. And he wasn't giving an explanation. He
11 was asked to give Mr. Murray's explanation.
12 THE COURT: Sustained.
13 MR. DRESSLER: Yesterday he was asked -- he was shown
14 the audit. He was asked what it meant in terms of what it
15 represented.
16 THE COURT: All right. To the extent he's testified
17 to his understanding of what those numbers represent, I will
18 allow, depending on what your hypothetical is.
19 MR. DRESSLER: All right.
20 THE COURT: If it's to illustrate aspects of his
21 understanding, I will --
22 MR. DRESSLER: I will -- so sorry.
23 THE COURT: Go ahead.
24 BY MR. DRESSLER:
25 Q Is it your understanding that an audit is asset-weighted

1 and done on the entity as a whole?
2 MS. HARRIS: Objection, Your Honor. This is totally
3 overbroad. We need to be confined to the audits in Market
4 Neutral Trading.
5 MR. DRESSLER: I --
6 THE COURT: Overruled. If you understand the
7 question, you can answer it.
8 THE WITNESS: Is it asset-weighted?
9 BY MR. DRESSLER:
10 Q Yes.
11 A Yes.
12 Q It's done for the entity as a whole.
13 A Yes.
14 Q All right. And in order to determine a total return
15 that's set forth in an audit, you have to take into
16 consideration the number of investors, the amount each made or
17 lost over the period of the audit -- correct?
18 MS. HARRIS: Your Honor, I'm going object to this,
19 too. He's not the auditor.
20 THE COURT: Overruled. It's based on his
21 understanding.
22 Go ahead.
23 MR. DRESSLER: All right.
24 THE COURT: You can answer the question.
25 THE WITNESS: Can you ask the question again?

1 BY MR. DRESSLER:
 2 Q I'm going to ask you a question, if I can find the piece
 3 of paper that I just had.
 4 THE COURT: Maybe you can explain -- you both have
 5 used the term "asset-weighted." Maybe you should ask him what
 6 that means.
 7 BY MR. DRESSLER:
 8 Q Yes. What does "asset-weighted" mean?
 9 A It's the net return at the end of the month for that
 10 particular month, divided by the beginning assets.
 11 THE COURT: So it's the denominator.
 12 THE WITNESS: Yes.
 13 THE COURT: When you say "asset-weighted," that
 14 number can change, depending on --
 15 THE WITNESS: Right.
 16 THE COURT: Okay.
 17 THE WITNESS: Your Honor, can I use the restroom for
 18 two minutes?
 19 THE COURT: Oh. All right.
 20 Why don't we go ahead and take our ten-minute break.
 21 We'll take a short break.
 22 THE WITNESS: Thank you.
 23 THE COURT: And then resume.
 24 (Jury excused)
 25 (The following proceedings were held outside of the

1 presence of the Jury)
 2 THE COURT: Mr. Dressler, I hope all your documents
 3 are in order so we can move more quickly.
 4 MR. DRESSLER: I apologize, Your Honor. I think they
 5 got shuffled when I went upstairs.
 6 (Recess taken from 1:41 p.m. to 1:49 p.m.)
 7 (The following proceedings were held in the presence
 8 of the Jury)
 9 THE COURT: Okay. Thank you. You may proceed,
 10 Mr. Dressler.
 11 MR. DRESSLER: Would you turn the ELMO on?
 12 THE CLERK: Sure.
 13 BY MR. DRESSLER:
 14 Q So, I think I asked this question, but let's just start
 15 there. So, make it faster.
 16 In order to determine the total return listed in the
 17 audit, you have to take into consideration the number of
 18 investors and the amount each investor has made or lost over
 19 the period of time of the audit.
 20 Would you agree with that?
 21 A Yes.
 22 Q Okay. And so, I just, I want to give you a hypothetical.
 23 MR. DRESSLER: Did you turn that on?
 24 THE CLERK: It's on.
 25 THE WITNESS: Am I seeing -- I have nothing.

1 THE COURT: You may have to --
 2 MS. HARRIS: I object to putting something up on the
 3 screen that's not admitted into evidence and not an exhibit.
 4 (Document displayed)
 5 THE COURT: All right. Well --
 6 MR. DRESSLER: I'm not going to offer it as an
 7 exhibit. It's going to illustrate the testimony, that is the
 8 purpose.
 9 MS. HARRIS: (Inaudible) The jury --
 10 THE COURT: Well --
 11 MR. DRESSLER: It's a hypothetical.
 12 THE COURT: All right, I'll allow a hypothetical with
 13 the understanding for the jury that these are part of Counsel's
 14 question, and if I stated earlier -- as I stated earlier, this
 15 is not evidence. Counsel's questions is not evidence. This
 16 hypothetical is not evidence. And what you're about to see is
 17 not evidence.
 18 BY MR. DRESSLER:
 19 Q All right. So, let's say, we're going, to instead --
 20 it'll take forever to go through a whole year, so I'm going to
 21 do a hypothetical of two months, and just assume the two months
 22 are the audit period. Okay?
 23 A (Nods head)
 24 Q All right. Let's say that on January 1st, Investor No. 1
 25 invests \$1 million. And he -- at that point, he's the only

1 investor in the fund. All right?
 2 A Right.
 3 Q All right. And, let's assume the fund loses 10 percent
 4 during that month. January 1st to January 31st. So, the fund
 5 as a whole, and the investor, would have lost \$100,000.
 6 Correct?
 7 A Uh-huh.
 8 Q All right. All right. Let's assume that on February
 9 1st --
 10 (Document displayed)
 11 Q -- Investor No. 2 invests \$3 million. All right?
 12 The fund now has two investors, and the total amount in
 13 the fund is \$3,900,000. That would be the 300,000 (sic) that
 14 the second investor put in and the \$900,000 that Investor No. 1
 15 has left in his investment. Correct?
 16 A Uh-huh.
 17 Q So let's assume that in February the fund makes a
 18 10 percent profit on the \$3,900,000 that's in the total pool,
 19 all right?
 20 Investor one -- both investors are equal, so they both get
 21 10 percent of the profits, correct?
 22 A Uh-huh. Yes.
 23 Q All right. So Investor No. 1, who has 900,000 at this
 24 point, makes 10 percent of that, which is 90,000, correct?
 25 A Correct.

1 Q Investor two makes 10 percent of 3 million, or 300,000,
2 correct?
3 A Correct.
4 Q So at the end of the month Investor No. 1 has the 900,000
5 he started with, plus his share of the profits, which was
6 90,000. So at the end of the month he has 990,000, correct?
7 A Correct.
8 Q All right. And at the end of February, he started with
9 1 million. He lost 100,000. He made 90,000 back. So at the
10 end of February Investor No. 1 has lost 1 percent of his
11 investment. In other words, 10 percent --
12 A Can you move it up? I can't see it on the screen.
13 Q Oh, sorry. I apologize.
14 (Document repositioned.)
15 Q All right. So Investor No. 1 at the end of February has
16 made back 90,000 of the 100,000 he lost in the first period.
17 So at the end of February he has a loss of 1 percent. \$10,000
18 is 1 percent of 1 million, correct?
19 A Yes.
20 Q All right. Investor No. 2 started with 3 million. He or
21 she made 300,000, or a gain of 10 percent, correct?
22 A Correct.
23 Q So that investor at the end of February has \$3,300,000,
24 correct?
25 A Correct.

1 Q All right. Now, when you have an asset weighted audit, it
2 would not be fair, I guess is the word, to treat the 3 million
3 invested in month two the same as if it were invested in month
4 one, correct? So you need to --
5 A Is there something to see?
6 Q No. I'm just asking you, all right?
7 In other words, in month one investor one invests a
8 million. In month two investor two invests 3 million. All
9 right? So if you want to do an asset weighted audit, you can't
10 treat the 3 million as if it was invested in January. You have
11 to take into consideration that the -- the difference in time
12 when that 3 million went into the fund, correct?
13 MS. HARRIS: Objection, your Honor. This is totally
14 compound. There's several different parts to the question.
15 It's assuming --
16 THE COURT: Let's break it down.
17 MR. DRESSLER: Okay.
18 BY MR. DRESSLER
19 Q If you want to do the average amount invested during the
20 time period of two months that we're talking about here, you
21 take the 3 million and invest it in month two, the 1 million
22 invested in month one, for a total of 4 million and divide it
23 by two. So the average investment per month for this period is
24 2 million.
25 Would that be a fair statement?

1 A That seems fair. I'll be honest, I'm not -- that seems
2 fair.
3 Q All right. The fund as a whole has made the \$300,000
4 earned by Investor No. 2, correct? And minus the 10,000 lost
5 by Investor No. 1, correct?
6 A 100,000 or 10,000?
7 Q 10,000. They lost one --
8 A This is month two --
9 MS. HARRIS: I'm going to just object on relevance.
10 This is --
11 THE WITNESS: Can you put that back up?
12 THE COURT: Hold on.
13 MS. HARRIS: This is a percipient witness and where
14 this is going and length of time --
15 THE COURT: This is now far beyond -- I thought you
16 were going to ask a simple hypothetical.
17 MR. DRESSLER: I'm getting to the end. It's
18 significant because, you know, he was asked --
19 MS. HARRIS: Your Honor, I object to any speeches,
20 too, and just renew the objection.
21 MR. DRESSLER: Can we approach?
22 THE COURT: No. I'm going to allow you to ask the
23 question, but you need to get to the point.
24 MR. DRESSLER: I'm getting there.
25

1 BY MR. DRESSLER
2 Q Investor No. 1 started with a million, lost 100,000, got
3 90,000 back. So he lost 10,000.
4 A Okay.
5 Q One percent, right?
6 A Okay.
7 Q The other investor made 300,000, right?
8 A Uh-huh.
9 Q So the fund as a whole made 290,000.
10 A Uh-huh.
11 Q All right? So, and the average investment was 2 million.
12 All right? If we divide -- if we divide the average
13 investment -- here. I'll put it up here. If we divide --
14 A Include the profits and losses with the average for the
15 month, too.
16 Q Yeah. If we divide the 2 million, which is the average
17 investment, by the amount of money that the fund made -- the
18 other way around.
19 If we divide 290,000, the money the fund made, by the
20 2 million average invested, the fund as a whole -- that is,
21 Investors No. 1 and No. 2 -- if you trust my math, the fund has
22 made a profit of 14.5 percent?
23 A Move it.
24 Q I'm sorry. All right.
25 (Document repositioned.)

1 MS. HARRIS: Your Honor, I object to this entire line
 2 of questioning.
 3 MR. DRESSLER: This is --
 4 THE COURT: I'm going to sustain the objection.
 5 MR. DRESSLER: I have two questions.
 6 THE COURT: I have no idea what average capital --
 7 you have not tied that to any accounting technique. I don't
 8 even know what that means.
 9 Over what period of time? Now you're taking the average
 10 over two months. There has been no testimony that says that's
 11 the -- that's the way that audits are done.
 12 Maybe you ought to ask him how it is done first before you
 13 introduce your hypothetical.
 14 MR. DRESSLER: All right.
 15 THE COURT: His understanding of how it's done. He's
 16 not an expert.
 17 MR. DRESSLER: Thank you.
 18 BY MR. DRESSLER
 19 Q In your understanding of how an asset weighted audit is
 20 done, would it be generally -- would it be done generally the
 21 way I'm outlining?
 22 In other words, it would be done over 12 months, I
 23 understand that. But basically you would look at the money
 24 that goes in, the money that goes out, the time it went in, the
 25 time it went out, what was made by an individual -- what was

1 made during various months and what was lost during various
 2 months, correct?
 3 MS. HARRIS: Your Honor, I object to this question.
 4 MR. DRESSLER: He said --
 5 MS. HARRIS: There are --
 6 THE COURT: Overruled.
 7 MS. HARRIS: It's totally compound.
 8 THE COURT: Okay. Overruled.
 9 A That seems generally the way you should do it. I'm not a
 10 CPA. Yeah.
 11 BY MR. DRESSLER
 12 Q Okay. All right. What I'm saying, though, is that in
 13 this hypothetical, all right, it appears, does it not, that the
 14 fund as a whole, all right, had a profit of 14.5 percent,
 15 assuming my math is correct?
 16 In other words, 290,000 is the profit that the fund made
 17 on an average investment of 2 million, two-month period.
 18 3 million plus 1 million divided by two equals 2 million.
 19 That's generally the way these audits are done. I mean, I'm
 20 simplifying it so we can --
 21 A That seems reasonable, yeah.
 22 Q Okay. All right. So at the end of the day, the fund has
 23 a profit of 14.5 percent. Investor one has suffered a
 24 1 percent loss and investor two has a 10 percent gain.
 25 Different numbers.

1 A Every hedge fund has this, yeah.
 2 Q Right. And in terms of the other document you saw
 3 yesterday that you were -- that they were asking you to
 4 compare, that wasn't an audit, was it? Exhibit 140? Remember
 5 the other --
 6 THE COURT: You need to show it to him so we know
 7 what he's --
 8 MR. DRESSLER: Can you put Exhibit 140 up?
 9 BY MR. DRESSLER
 10 Q Or I can just bring it to him.
 11 A It looks something like that (indicating)?
 12 Q No.
 13 A I think that was from the administrator.
 14 Q Can you put it up?
 15 MS. ARAUZHAASE: Just a minute.
 16 (Brief pause.)
 17 (Document displayed)
 18 BY MR. DRESSLER
 19 Q All right. That was the document you were asked to
 20 compare with the JMA audit for 2009, correct?
 21 A Yes.
 22 Q All right. And does that appear to you to be, based on
 23 your knowledge and experience, an audited -- asset weighted?
 24 A Yes.
 25 Q It appears to be?

1 A The administrator gives this to the auditor. It almost
 2 matches the audit, down 94.
 3 Q So you're saying that this -- you think this is an audited
 4 return; that this is audited information?
 5 MS. HARRIS: Actually, your Honor, he was asked about
 6 asset weighted, not --
 7 THE COURT: You asked two questions. It was
 8 compound. You said was it audited and asset weighted. Why
 9 don't you ask each one separately?
 10 THE WITNESS: Yeah, it's not an audit.
 11 MR. DRESSLER: I apologize.
 12 THE WITNESS: It's the monthly accounting by the
 13 administrators.
 14 MR. DRESSLER: Thank you.
 15 THE COURT: But is it asset weighted? That is the
 16 question.
 17 THE WITNESS: Yes.
 18 THE COURT: It is asset weighted.
 19 THE WITNESS: Yes, it is.
 20 BY MR. DRESSLER
 21 Q And how can you tell it's asset weighted?
 22 A I don't have the formulas in the Excel spreadsheet, but it
 23 does have beginning equity, additions, withdrawals and absolute
 24 net performance.
 25 And the return is probably -- looks asset weighted. I

1 mean, that's the way administrators work. The individual
2 investor gets exactly their return sent to them monthly from
3 the administrator.
4 Q Okay. I just want to be clear. This appears to be an
5 audited return?
6 A No. That's not the question.
7 THE COURT: You said not --
8 A You said asset weighted. It's asset weighted.
9 BY MR. DRESSLER
10 Q Okay. Thank you.
11 One of the communications that you had with -- do you
12 remember an email with Mr. Murray where you asked him why there
13 were two different employee identification numbers submitted to
14 you?
15 A I don't remember the exact date or push an email, four and
16 a half years ago, but it sounds like that would be a
17 question that would come up.
18 Q Right, right. But would it be fair to state that he had
19 two different employee identification numbers for two different
20 classes or -- of -- two different --
21 A Entity or employment?
22 Q Two different entities.
23 A Employment number or entity?
24 Q Entity employment number.
25 A EIN?

1 Q Yeah.
2 A Okay. And the question is? I'm sorry.
3 Q The question was: He had two different ones because he
4 had two different MNTs. One was MNT, LLC and one was MNTB,
5 correct?
6 A That sounds reasonable. I don't remember if that's
7 actually the case or if he had more. I don't remember.
8 Q Okay.
9 A If he had two entities and you wanted to get two numbers,
10 you'd have two numbers, yeah.
11 THE COURT: He's asking about your recollection, not
12 your opinion.
13 Do you recall that?
14 THE WITNESS: Oh. Yes.
15 THE COURT: If you don't recall it -- you do recall
16 it? Okay. Thank you.
17 (Discussion held off the record between the defendant
18 and his counsel.)
19 MR. DRESSLER: I have no other questions. Thank you.
20 THE COURT: All right. Thank you, Mr. Dressler.
21 Any redirect?
22 MS. HARRIS: Very briefly, your Honor.
23 REDIRECT EXAMINATION
24 BY MS. HARRIS
25 Q Good morning -- I guess it's good afternoon, Mr. Eckel.

1 You were asked a series of questions by Mr. Dressler that
2 were hypothetical questions relating to a hypothetical audit.
3 Would an audit accuracy depend on whether the audit -- the
4 auditor was given true and correct numbers in the first place?
5 A Yes.
6 Q So if completely false numbers were provided, does that
7 entire hypothetical go out the window?
8 A Yes.
9 Q If we could bring up Government's Exhibit 24? This is
10 something that's in evidence and I would ask you to take a look
11 at it.
12 Specifically we'll start with Page 1 of Exhibit 24. Can
13 you please bring up Exhibit 24, Page 1?
14 (Brief pause.)
15 Q And while we're waiting for that to come up, Mr. Eckel, do
16 you remember Exhibit 158 that you were shown last Friday, which
17 was your first email to Mr. Murray on July 14, 2010, do? You
18 recall Exhibit 158?
19 A Yes, I do.
20 Q And was July 14, 2010 the first time you that made contact
21 with Mr. Murray?
22 A Yes.
23 Q Okay.
24 (Document displayed)
25 Q We're looking at a Chase Paymentech Merchant Application

1 Agreement that's in evidence. And it's for Jones Moore &
2 Associates. Do you see that?
3 A Yes, I see it.
4 Q If we could scroll down to the bottom of Page 1 where it
5 says "May 10th, 2010."
6 Okay. And then if we could get to Page 2 of Government's
7 Exhibit 24, where it has Owner Information. Do you see the box
8 that has Jim Murray listed as the Chief Financial Officer for
9 Jones Moore & Associates?
10 A Yes, I do.
11 Q And then if we could look at Page 3 of Exhibit 24, do you
12 see Mr. Murray's -- let's get to Page 3.
13 (Document displayed)
14 Q Do you see Mr. Murray's signature on May 5th, 2010 listing
15 himself as the Chief Financial Officer of Jones Moore &
16 Associates on Government's Exhibit 24?
17 A Yes, I do.
18 Q If the Chief Financial Officer of Jones Moore & Associates
19 is also the manager of Market Neutral Trading, is it a conflict
20 of interest?
21 A Yes, major conflict.
22 Q Is it an independent audit if the auditor and the hedge
23 fund manager are the same person?
24 A No, it's not independent.
25 Q Did you have any idea before I showed you Government's

1 Exhibit 24 right now that Mr. Murray was the Chief Financial
 2 Officer of Jones Moore & Associates?
 3 A No, I didn't.
 4 Q Would you ever have gone forward with any relationship
 5 with Market Neutral Trading if you had known that Mr. Murray
 6 was listing himself as the Chief Financial Officer of Jones
 7 Moore & Associates before you ever contacted him?
 8 A Absolutely not.
 9 Q Why?
 10 A It's unheard of conflict of interest. It's a major red
 11 flag. There is no way to explain it being appropriate or close
 12 to ethical.
 13 Q You were also asked some questions on cross examination
 14 regarding the background check that the Sadis law firm wanted
 15 Mr. Murray to do. And I believe you said it's not unusual for
 16 a law firm to ask for a background check on a hedge manager.
 17 Do you remember that testimony?
 18 A Yes, I do.
 19 Q Is it unusual for a manager to refuse to submit to a
 20 background check?
 21 A Yes, it is.
 22 Q Has that ever happened in your experience in the hedge
 23 fund industry in 25 years?
 24 A No.
 25 (Discussion held off the record between Government

1 counsel.)
 2 MS. HARRIS: No further questions, your Honor.
 3 THE COURT: All right. Thank you.
 4 Anything on recess?
 5 MR. DRESSLER: No questions, your Honor.
 6 THE COURT: All right. Thank you, Mr. Eckel. You're
 7 excused. You may step down. Thank you.
 8 (Witness excused.)
 9 THE COURT: Government's next witness.
 10 MR. FARNHAM: Yes, your Honor. The Government calls
 11 John Pernel to the stand.
 12 JOHN CLEVELAND PERNELL,
 13 called as a witness for the Government herein, having been
 14 first duly sworn, was examined and testified as follows:
 15 THE WITNESS: Yes, I do.
 16 THE COURT: Thank you.
 17 You may proceed, Mr. Farnham.
 18 THE CLERK: Oh, please state your full name for the
 19 record and spell your last name, please.
 20 THE WITNESS: It's John Cleveland Pernel, Jr.
 21 That's P-E-R-N-E-L-L.
 22 THE COURT: All right.
 23
 24
 25

1 DIRECT EXAMINATION
 2 BY MR. FARNHAM
 3 Q Good afternoon, Mr. Pernel. I think you've come a long
 4 way to be here. Where do you live?
 5 A John's Island, South Carolina. It's part of Charleston.
 6 Q And what do you do for a living in Jones Island, South
 7 Carolina?
 8 A I'm an investment consultant. I value investment
 9 managers and investment strategies.
 10 Q And do you have a company?
 11 A Yes. Polaris Investment Partners.
 12 Q And what is your role at that company?
 13 A I'm the president and the founder.
 14 Q So tell me again -- you told me what you do. Tell me
 15 again what the company does, what its -- what its function is?
 16 A We have a handful of clients, including a trust company,
 17 one large family, probably 25 high net worth investors, and we
 18 go out and evaluate investment managers and investment
 19 strategies for their investment pool of assets.
 20 Q You assist them with their investments?
 21 A Their allocation, right.
 22 Q Do you make recommendations?
 23 A Of specific managers.
 24 Q When you say "managers," tell us more about what that
 25 means?

1 A We primarily work just exclusively with hedge funds or
 2 alternative investment managers.
 3 Q And is your company, Polaris Investments, does that have
 4 any registration with regulatory agencies?
 5 A Yes.
 6 Q What is that, what are those?
 7 A We have been registered with the Securities and Exchange
 8 Commission since November 1st, 1990. NFA, probably the last
 9 five years, I guess.
 10 Q You mentioned you were the founder of Polaris. When was
 11 it started?
 12 A November the 1st, 1990.
 13 Q Prior to starting Polaris Investments, what did you do?
 14 A I started originally with E.F. Hutton Consulting Services
 15 in North Carolina. I transferred to New York in '84 and I
 16 stayed in New York until '94.
 17 Q So overall, how long have you been in sort of the
 18 investing and financial industry?
 19 A Thirty-two years.
 20 Q In about January of 2011 did you advise one of your
 21 clients to invest with an entity called Market Neutral Trading?
 22 A Yes, I did.
 23 Q Tell me about -- first, tell us about the client that you
 24 advised to invest in that fund?
 25 A The client was First Federal Savings and Loan Trust

1 Department of Charleston, South Carolina.
 2 Q And what type of -- what type of assets or funds were
 3 those?
 4 A Specifically retirement plan assets, profit sharing plan,
 5 401(k)s, defined benefit plans, Keoghs; all ERISA assets.
 6 Q And maybe you could explain to the jury how -- why was a
 7 trust needed? What was First Federal's role? Could you
 8 explain that?
 9 A There is a series of investment protocols called a
 10 collective trust. They govern the Comptroller of Currencies
 11 regulations.
 12 As a collective trust, it can handle the retirement assets
 13 of multiple retirement plans in one trust and each trust may
 14 have multiple funds and, therefore, multiple managers. It's
 15 much like a mutual fund basically.
 16 Q So this collective trust, who controlled it then?
 17 A First Federal.
 18 Q And what was your role with regard --
 19 A We were the advisory consultant in the selection and
 20 determination of managers as our primary function. And our
 21 secondary function, we also served as a recordkeeping agent for
 22 First Federal Trust Department.
 23 Q Can you give us some examples of the businesses that have
 24 assets in that collective trust that you were advising?
 25 A Sure. It's small business owners. Could be a hardware

1 store. You know, CPA firm. Physician. Multi-physician
 2 office. Dentist. Larger medical groups. Individual
 3 attorneys. Small law firms. Across the spectrum of smaller
 4 investors, I would say.
 5 Q Can you tell us when you first heard about Market Neutral
 6 Trading and how you heard about it?
 7 A I received a -- I'm fairly certain it was either an email
 8 or a mailing from Paul Eckel in early December of 2010.
 9 Q And prior to that, did you know who Paul Eckel was?
 10 A Just knew the name. Knew he was a marketing, third-party
 11 marketing agent for various funds. He had been around for
 12 awhile.
 13 Q And what information did you receive from Mr. Eckel in
 14 that first mailing?
 15 A It was what I would call a brochure on the firm, the
 16 manager, the strategy. A typical -- we call it a pitch book or
 17 a brochure.
 18 Q What happened -- or let me ask it this way. What did you
 19 do after you received that brochure or pitch book from
 20 Mr. Eckel about Market Neutral Trading?
 21 A I called Paul and asked him to -- you know, we spent about
 22 probably 20 minutes on the phone, maybe 30, just going over the
 23 brochure, the portfolio manager Mr. Murray, the strategy. And
 24 after we set up a follow-up call with the portfolio manager
 25 Mr. Murray.

1 Q Do you remember approximately when that first -- it sounds
 2 like that was a telephone call to Mr. Eckel?
 3 A Right. Uh-huh.
 4 Q Do you remember approximately when that first telephone
 5 call with Mr. Eckel was?
 6 A That was December 22nd, 2010.
 7 Q And tell me again what you discussed with Mr. Eckel in
 8 that call?
 9 A We basically did a quick summary walk-through on the
 10 brochure. The background of Mr. Murray. His educational
 11 background. Where he had worked. How long he had been running
 12 MNT. The strategy itself. The track record. The basics.
 13 Q And was Mr. Eckel the only person representing Market
 14 Neutral Trading on that call?
 15 A Right.
 16 Q During that telephone conversation with Mr. Eckel, did you
 17 discuss next steps?
 18 A Yes. We left it, we set up a follow-up call with my
 19 office and Mr. Murray.
 20 Q And did that happen?
 21 A Yes.
 22 Q When was that, approximately?
 23 A January 21st, 2011.
 24 Q And who was on that telephone conversation?
 25 A Paul Eckel, Jim Murray, Dallas Main of my office and Jim

1 Miur of my office.
 2 Q From your perspective, what was the purpose of that call?
 3 A To go through the firm. The strategy. Get an
 4 understanding of how it was, you know, implemented.
 5 Mr. Murray's background. The usual stuff in an initial
 6 interview process.
 7 Q How long did that telephone call last approximately?
 8 A About an hour.
 9 Q And what types of things did you discuss with Mr. Murray
 10 on that telephone call?
 11 A You know, his prior history. Where he had worked. His
 12 former employers. His background. His evolving into -- coming
 13 from a trader focusing on a market neutral strategy, which
 14 encompassed, you know, several multi -- substrategies within
 15 that strategy. Peer trading and how that evolved. How he
 16 created statistical analysis. How he evaluated peer trading
 17 primarily.
 18 Q Other than Mr. Murray's background -- in addition to
 19 Mr. Murray's background and the fund strategy, did you discuss
 20 anything about the risks associated with this fund?
 21 A Yes.
 22 Q What did you discuss there?
 23 A Well, market neutral is a difficult strategy to execute
 24 and he appeared to have mastered it, so to speak. Market
 25 neutral is generally considered a low risk investment strategy.

1 Q So what did Mr. Murray tell you about the risk of loss
 2 that he said was associated with that fund?
 3 A Well, his track record demonstrated that he had a very
 4 good ability to control the risk, which is one of the key
 5 aspects you look for in a manager.
 6 Q Is that what he told you on the call?
 7 A Yes. We discussed risk for sure. Market neutral --
 8 market neutral in the industry is considered a low risk
 9 strategy, especially if you're not leveraging it. And he was
 10 not leveraging it, to my knowledge.
 11 Q What was your impression of Mr. Murray's background after
 12 he described it to you on that call?
 13 A His educational background is what you would sort of
 14 expect from what he was doing as a portfolio manager. Very
 15 quantitatively driven, statistically driven. And that's what
 16 his background was in, as I recall. Mathematics and economics,
 17 I believe.
 18 Q During that call, did Mr. Murray ever tell you that the
 19 fund had had losing years?
 20 A No.
 21 Q Did he ever tell you that the fund had lost 94 percent in
 22 2009?
 23 A No.
 24 Q What was the next step after that call?
 25 A We left it that I would come out and do an on-site visit

1 as soon as I could. And we said we would, you know, have an
 2 interest in starting with him with a small amount of capital,
 3 just to get started, to get used to the firm, the relationship,
 4 until we completed our due diligence process, which would have
 5 been that on-site visit.
 6 Q After that call, did you request additional information
 7 from Market Neutral Trading and Mr. Murray?
 8 A We received -- we always ask for audits. So we received
 9 the audits, annual audits, and a DDQ, or Due Diligence
 10 Questionnaire, which is pretty much like an operator's manual,
 11 owner's manual.
 12 MR. FARNHAM: Your Honor, if I could approach the
 13 witness with the exhibits I would like to discuss with him?
 14 THE COURT: All right.
 15 (Whereupon documents were tendered to the witness.)
 16 BY MR. FARNHAM
 17 Q So I've handed you a stack of exhibits, Mr. Pernell.
 18 We'll go through them one by one, so I'll refer to them by
 19 number.
 20 If I could ask you to look at what's been marked as
 21 Exhibit 145 and have you review that?
 22 A Okay.
 23 MR. DRESSLER: I'm sorry. What number was that?
 24 MR. FARNHAM: 145.
 25

1 BY MR. FARNHAM
 2 Q And, Mr. Pernell, do you recognize that document?
 3 A Yes. This is the brochure I received.
 4 Q And how did you -- from where did you receive the document
 5 such as 145?
 6 A Paul Eckel sent it to me.
 7 Q And did you retain it in the Polaris records after you
 8 received it?
 9 A Yes. We kept the hard copy, plus made a copy for our
 10 electronic files.
 11 MR. FARNHAM: Your Honor, I would offer Exhibit 145
 12 into evidence.
 13 THE COURT: Any objection?
 14 MR. DRESSLER: No, your Honor.
 15 THE COURT: 145 is admitted.
 16 (Trial Exhibit 145 received in evidence.)
 17 MR. FARNHAM: If we could publish it, your Honor? I
 18 would like to look at the first page.
 19 THE COURT: All right.
 20 (Document displayed)
 21 BY MR. FARNHAM
 22 Q Is this the first page of the document that you received?
 23 A Yes.
 24 Q And what is it -- what was it you referred to -- how did
 25 you refer to this document?

1 A Brochure or pitch book.
 2 Q And did you review it after you received it?
 3 A Yes.
 4 MR. FARNHAM: If we could look at Page 3 of this
 5 document. And if we could zoom in on the top portion, the top
 6 paragraph?
 7 (Document displayed)
 8 BY MR. FARNHAM
 9 Q If you could look at the "Jim Murray, Founder, CIO"
 10 paragraph there, did you review this paragraph regarding
 11 Mr. Murray?
 12 A Yes.
 13 Q Could you read for me the second sentence that starts on
 14 the first line? It starts, "The fund was seeded."
 15 A (As read)
 16 "The fund was seeded by Jim's prior employer,
 17 Pareto Capital, a statistical arbitrage hedge fund."
 18 Q What did you understand that sentence to mean?
 19 A That when Mr. Murray launched his new fund, that his
 20 former employer provided him sufficient capital, investment
 21 capital to start the fund.
 22 Q There is also a sentence near the end of that paragraph
 23 regarding education. Do you see that portion?
 24 A Yes.
 25 Q Could you read the sentence regarding education?

1 A (As read)
 2 "Jim graduated cum laude in economics and finance
 3 from the University of Arizona in 1991 and with an
 4 M.S. in economics in 1993."
 5 Q How did that education -- did that description of his
 6 education affect your decision to invest in the fund at all?
 7 A Well, I'd say it's just further background to support his
 8 strategy and how he has been executing it.
 9 Q What's the connection between his -- the execution of his
 10 strategy and that educational background?
 11 A Well, his process was very computer driven, using
 12 algorithms and statistical analysis. You wouldn't want an art
 13 history major doing that. So he had the right background,
 14 right education, training.
 15 Q When you reviewed this paragraph, what was your overall
 16 impression of Mr. Murray's background?
 17 A He had a very solid, experienced background.
 18 Q And was that overall impression, was that important to
 19 your decision to --
 20 A Yes, always is. Always is, as with any trader.
 21 Q I'm sorry, Mr. Pernell. You have to let me finish my
 22 question, so the reporter can get it all down.
 23 A Sorry. Sorry.
 24 Q I'd like to ask you to put that aside and look at what's
 25 been marked as Exhibit 201.

1 A 201?
 2 Q Two zero one -- I'm sorry. Yes, two zero one.
 3 A Okay.
 4 Q Looking at Exhibit 201, do you recognize this exhibit?
 5 A Yes. This is the Due Diligence Questionnaire that we
 6 received.
 7 Q Polaris Investments received this?
 8 A Correct.
 9 Q From Market Neutral Trading?
 10 A Yes.
 11 Q And it was maintained in your files after you received it?
 12 A Correct.
 13 MR. FARNHAM: Your Honor, I would offer Exhibit 201
 14 into evidence.
 15 THE COURT: Any objection?
 16 MR. DRESSLER: No objection.
 17 THE COURT: Admitted.
 18 (Trial Exhibit 201 received in evidence.)
 19 MR. FARNHAM: If we could look at the first page?
 20 Page 1, please?
 21 (Document displayed)
 22 BY MR. FARNHAM
 23 Q Mr. Pernell, looking at the first -- I'm sorry, the cover
 24 page. What's the date of this document, according to --
 25 A October, 2010.

1 Q And did you -- was this a document that you requested from
 2 Market Neutral Trading?
 3 A Yes.
 4 Q It says on the front, "Due Diligence Questionnaire." What
 5 is that?
 6 A It's basically an overview of the firm. The terms of the
 7 fund or it could be the terms of -- if they were managing
 8 separate accounts for a client. It generally goes into the
 9 background or the principles of the firm, the key personnel of
 10 the firm, the terms of the fund, fees, withdrawal privileges,
 11 when you could be admitted as an investor or partner. It's
 12 like an operator's manual, owner's manual to a firm. It gives
 13 you an overview of MNT and the people.
 14 Q How did you use this in your determination to recommend an
 15 investment?
 16 A It's just part of our normal process and delving into the
 17 finer points of the firm and how everything is structured.
 18 Q Did you rely on the information in it?
 19 A Sure. Of course.
 20 Q If we could look at Page 3 for a moment? And if we could
 21 zoom in on the Assets Under Management and Minimum Investment
 22 Portion?
 23 A little lower. A little lower, please.
 24 (Document displayed.)
 25

1 BY MR. FARNHAM
 2 Q What does it say under Assets Under Management there?
 3 What is the total amount given?
 4 A 10.1 million.
 5 Q It also notes a Minimum Investment. What does that mean?
 6 A The minimum amount they would accept from an investor.
 7 Q And what is the amount listed here?
 8 A 1 million.
 9 Q If we could go on to Page 5 of this document?
 10 MR. FARNHAM: And if we could zoom in on Question 15
 11 and the answer -- I'm sorry, 10. Question 10 and the answer.
 12 (Document displayed)
 13 BY MR. FARNHAM
 14 Q Question 10 here, what did you understand that question to
 15 be asking? What information was it seeking?
 16 A To determine whether or not any directors, officers or key
 17 personnel of the firm or fund ever had any incidents,
 18 situations that violated regulations or rules with various
 19 regulatory authorities.
 20 Q Is that question significant to you as an investment
 21 advisor?
 22 A Yes. A clean background is essential.
 23 Q And what's the answer to that question No. 10?
 24 A It says "No."
 25 Q And if you look within that question there, I want to draw

1 your attention to a few parts of it. There is -- Question 10
 2 says, "Ever been investigated of."
 3 Do you see that part?
 4 A Yes.
 5 Q What would that mean to you?
 6 A "Investigated" would be -- first thought would be the SEC.
 7 Q And how about "ever about been disciplined"?
 8 A Again, that's generally we're thinking about the SEC or
 9 the state itself, the state enforcement division.
 10 Q And what about "ever been suspended"?
 11 A Again, it would come back from a -- if it was suspended,
 12 you know, breaking some rules or regulations the SEC found
 13 serious enough to suspend you or revoke your investment
 14 management license.
 15 Q Would it have been significant to you, as an investment
 16 advisor, if a manager you were reviewing had been barred from
 17 the New York Stock Exchange?
 18 A That's a no go.
 19 Q Okay. Why is that?
 20 A Just wouldn't, wouldn't accept that.
 21 Q Would you consider that to be discipline or suspension?
 22 A Yes. That's a disqualifier.
 23 Q Would you consider it to be an answer to this question?
 24 I'm looking at Question 10 --
 25 A No, it's not.

1 Q It's not an answer to that question?
 2 A No.
 3 Q Would you have expected an investment manager to tell you
 4 that if they had been barred by the New York Stock Exchange?
 5 A Yes, I definitely would.
 6 Q How would they tell you that?
 7 A In this answer right here, this answer section.
 8 MR. DRESSLER: I'm sorry. I didn't hear that answer.
 9 THE WITNESS: It should have been disclosed as part
 10 of the answer to question No. 10.
 11 BY MR. FARNHAM
 12 Q If an investment advisor was providing you this document
 13 and they had been disciplined or barred by the New York Stock
 14 Exchange, how would you have expected this answer to read?
 15 A "Yes."
 16 Q Take a look at Page 6, and look at Question 15?
 17 (Document displayed)
 18 Q Question 15, could you review it? What is that asking
 19 for?
 20 A You're basically asking the manager, the investment
 21 manager, the CIO, CFO, COO of the firm what third-party service
 22 providers they are employing to operate their firm and their
 23 fund.
 24 Q And what did you -- when you reviewed this, was this
 25 information useful to you?

1 A Yes, it's critical.
 2 Q What's critical about it?
 3 A You need to have a third-party person. The administrator,
 4 they should be doing the monthly capital account statements and
 5 the return calculations.
 6 The prime broker needs to be totally independent of the
 7 manager and hold all the assets.
 8 The auditor is supposed to review all the books and
 9 records, calculating the tax consequences of the year and
 10 provide an audited statement that everything was, you know,
 11 correct. That's a confirmation of the annual performance as
 12 well.
 13 Q If we could go back to the administrator for a moment.
 14 What role does the administrator, in your mind, play in regard
 15 to a fund?
 16 A It's to ensure that you get a third-party evaluation of
 17 the assets at each month end. This was a monthly end
 18 evaluation. So you want a third-party person, separate and not
 19 connected to the investment manager of the fund, to provide
 20 that calculation in a statement, hard copy statement.
 21 Q Is it important that it not be connected to the manager?
 22 A Totally.
 23 Q Why?
 24 A You just can't have -- can't be any cross-over of those
 25 two roles.

1 Q Why is that?
 2 A Just a safeguard.
 3 Q Safeguard against what?
 4 A Theft. Theft and fraud.
 5 Q For the auditor, what role does that play in your decision
 6 as an advisor?
 7 A It's the same process. It's just the -- it's the total
 8 look for the entire year. And they get, you know, more
 9 involved in cross testing trades, cash movements and then
 10 providing that year-end report which, you know, everyone relies
 11 on and which is required under SEC regulations.
 12 Q If a fund did not have -- did not hire as a service
 13 provider an independent -- sorry, a third-party administrator,
 14 would you have advised anyone to invest in that fund?
 15 A No.
 16 Q What about an independent auditor? If a fund did not
 17 have an independent auditor, would you have advised anyone to
 18 invest --
 19 A We could not operate under that circumstance.
 20 Q Why is that?
 21 A We're required to get the audit -- SEC requires us to get
 22 an audited statement, the year-end audited report.
 23 Q And you wouldn't have advised your clients to invest in a
 24 fund that didn't have an auditor?
 25 A Never. No.

1 Q If you could put that aside and look at what's been marked
 2 as Exhibit 202?
 3 (Witness complied.)
 4 Q Do you recognize that document?
 5 A Yes. This is an update to the Due Diligence
 6 Questionnaire.
 7 Q Also received from Market Neutral Trading?
 8 A Yes.
 9 Q And, also, retained in Polaris Investment's files?
 10 A Yes.
 11 Q If we could --
 12 MR. FARNHAM: Your Honor, I would offer Exhibit 202
 13 into evidence.
 14 THE COURT: Any objection?
 15 MR. DRESSLER: No objection.
 16 THE COURT: Admitted.
 17 (Trial Exhibit 202 received in evidence.)
 18 BY MR. FARNHAM
 19 Q You said this was an updated due diligence document?
 20 A Yes.
 21 Q Did you review this at the time that you received it?
 22 A Yes. I looked at it.
 23 Q If we could look at a few of the pages in here. First,
 24 let's start with Page 5.
 25 MR. FARNHAM: If we could zoom in on the first three

1 lines there?
 2 (Discussion held off the record between Government
 3 counsel.)
 4 MR. FARNHAM: Your Honor, did I offer 202 into
 5 evidence?
 6 THE COURT: Yes.
 7 MR. FARNHAM: Okay. The first three lines of this
 8 Page, please?
 9 (Document displayed)
 10 BY MR. FARNHAM
 11 Q You see the -- next to "Fund Structure," what does that
 12 say there?
 13 A "Market Neutral Trading, LLC (Delaware, 3C1)."
 14 Q What did the "3C1" mean to you as you read this?
 15 A That's an SEC reg. "3C1" refers to the number of
 16 investors that can be admitted to either a limited partnership
 17 or a limited liability company. It's restricted to 99
 18 investors.
 19 Q Does it refer to the structure of the fund and the
 20 investment?
 21 A That really refers to the number of investors and their
 22 net worth requirements.
 23 Q Does this line tell you about what the structure of the
 24 fund is?
 25 A Yes. It's a limited liability company.

1 Q And what does that mean for an investor?
 2 A Well, you're investing as a member of the limited
 3 liability company.
 4 And if it was a limited partnership, you would be a
 5 limited partner in a limited partnership. Since this was an
 6 LLC, it's called a member.
 7 So you were an investment member of the LLC and then the
 8 investment manager would be the managing member of the LLC.
 9 There are two, two member types.
 10 Q So you stated an investor would be a member of Market
 11 Neutral Trading, LLC. Let me follow up on that.
 12 As an investor, would you want to be told if the money
 13 that had been invested was being transferred to a new entity
 14 with a different name and a different corporate structure?
 15 A Yes.
 16 Q Why?
 17 A Well, I wouldn't -- it's not permitted.
 18 Q Why is that?
 19 A You would never invest in something like that.
 20 Q You see Classes of Shares, the third line there?
 21 A Yes.
 22 Q What does that mean and what -- what does it say next to
 23 Classes of Shares?
 24 A "1 Share Class."
 25 Q What does that mean?

1 A There was only 1 Share Class. It was -- 1 Share Class you
 2 could purchase, which means everybody was paying the same fee,
 3 follow the same structure so far as admissions to, withdrawals
 4 from.
 5 If you -- as an example, a 2 Share Class is the -- 1 Share
 6 Class might be a fee of 2 percent and 20 percent, where a Share
 7 Class 2, if you agree to invest in fund number one longer
 8 terms, they might give you a discount, for example, where you
 9 might pay one-and-a-half percent management fee and 15 percent
 10 performance fee. So that would be an example of a 2 Share
 11 Class.
 12 Q What's this, this disclosure telling you about the classes
 13 of shares?
 14 A All members, you know, are treated equally under the same
 15 terms.
 16 Q And there's only 1 Share Class?
 17 A Correct.
 18 Q Did you rely on the information in this document, Exhibit
 19 203?
 20 A Yes.
 21 Q I'm sorry, 202. I'm sorry.
 22 A Yes.
 23 Q You did. And did you rely on its accuracy?
 24 A Yes, I did.
 25 Q If we could have you look at Exhibit 203, next one in your

1 stack?
 2 (Witness complied.)
 3 Q What is Exhibit 203?
 4 A It's a checklist that we developed, my firm, just to start
 5 the process of setting a manager up on our system for the very
 6 basic information of the manager, his firm, contacts, you know,
 7 phone numbers.
 8 Q And what's the -- I'm sorry. Did someone at Polaris
 9 prepare it?
 10 A Dallas Main.
 11 Q That's an employee there?
 12 A Yes. She's my compliance officer.
 13 Q Is it retained in Polaris' files after you prepare it?
 14 A Hard copy and file copy on the computer.
 15 MR. FARNHAM: I would offer Exhibit 203 into
 16 evidence.
 17 THE COURT: Any objection?
 18 MR. DRESSLER: No objection.
 19 THE COURT: Admitted.
 20 (Trial Exhibit 203 received in evidence.)
 21 BY MR. FARNHAM
 22 Q If we could look at the first page?
 23 (Document displayed)
 24 Q So the top says, "Initial Manager Due Diligence." Do you
 25 see that?

1 A Yes.
 2 Q And I know you probably use that term a lot, but could you
 3 tell us what the term "due diligence" means to you?
 4 A It's just going through the process of evaluating an
 5 investment manager and the investment strategy that the manager
 6 is employing.
 7 Q If we could look at the last line on that first page? Do
 8 you see that says, "Audited financials for all performance
 9 years"?
 10 A Yes.
 11 Q And what does it say next to that?
 12 A "2006-2009."
 13 Q Did Polaris receive audited financial statements for
 14 Market Neutral Trading, LLC?
 15 A Yes. One for each year. So four annual statements,
 16 annual reports.
 17 Q Did Polaris later receive a 2010 report also?
 18 A Later. Uh-huh.
 19 Q If I could have you put that aside and we'll look at
 20 Exhibit 204.
 21 (Witness complied.)
 22 Q Do you recognize that exhibit?
 23 A Yes. It's a copy of the financial statements in the
 24 auditor's report.
 25 Q And where did you -- where did you get this document?

1 A This was mailed to us.
 2 Q From?
 3 A MNT, Market Neutral.
 4 Q And why was it sent to you?
 5 A We requested it.
 6 Q What did you do with these documents after you received
 7 them from Market Neutral Trading?
 8 A We glanced through them. The main thing you're looking
 9 for in this report is to confirm assets. And, two, go to the
 10 page which states what the performance was for that specific
 11 year.
 12 So in, like, 2006 we would be looking in this report for
 13 what the auditor said the return was for that year and we would
 14 be cross checking that number against the brochure, the
 15 brochure/pitch book we received from the specific investment
 16 manager. So it's a confirmation process.
 17 Q Okay.
 18 MR. FARNHAM: Your Honor, I would offer Exhibit 204
 19 into evidence.
 20 THE COURT: Any objection?
 21 MR. DRESSLER: No.
 22 THE COURT: Admitted.
 23 (Trial Exhibit 204 received in evidence.)
 24 MR. FARNHAM: If we could bring up the document?
 25 (Document displayed)

1 BY MR. FARNHAM
 2 Q If we could look at the first page. Does this appear to
 3 be the first page of the 2006 year-end statement?
 4 A Yes.
 5 Q It says here:
 6 "Financial Statements and Independent Auditors'
 7 Report."
 8 What did you understand that document title to mean?
 9 A That it was prepared by a third party, an independent
 10 auditor, auditing firm, CPA firm.
 11 Q And then we talked about the dates you received. Why did
 12 you -- why did you request the dates, the date range that you
 13 did?
 14 A Well, the brochure was showing performance for a specific
 15 period of time. And we liked -- you know, if we're using that
 16 as part of our investment decision-making process, we would
 17 like to be able to confirm that the numbers we're basing things
 18 on can be confirmed by a third party.
 19 If we find a discrepancy, then we have to go back to the
 20 manager and try and clear it up and see what happened, if it
 21 was a simple mistake or whatever.
 22 Q So you used these to check the performance information
 23 that you were -- that you received?
 24 A Yes.
 25 Q Let's look at Page 34 of this document.

1 (Document displayed.)
 2 Q What is this Page of Exhibit 204?
 3 A It's just a cover page from the auditors for the calendar
 4 year 2009 report.
 5 Q Okay. And you see it says "Independent Auditors' Report"
 6 at the top?
 7 A Yes.
 8 Q And what did that mean to you?
 9 A That the auditors had completed the year-end report. And
 10 If you read through the cover page, it will tell you whether
 11 there's an issue or not.
 12 Q Okay. If we could look at the first sentence of the
 13 second paragraph?
 14 MR. FARNHAM: Zoom in on the second paragraph.
 15 (Document enlarged.)
 16 BY MR. FARNHAM
 17 Q And I would like you to read the sentence that begins, "We
 18 conducted our audit."
 19 A (As read)
 20 "We conducted our audit in accordance with
 21 auditing standards generally accepted in the United
 22 States of America."
 23 Q Did you understand what that meant when you reviewed it?
 24 A Yes.
 25 Q What's that?

1 A That transactions had been verified and cross-checked, and
 2 tested by the auditors, as a third-party vendor.
 3 Q And based on your years in the financial industry, do you
 4 know what type of professional can do an audit using
 5 generally-accepted accounting principles?
 6 A That would be at least a Certified Public Accountant, and
 7 also should have hedge fund auditing experience.
 8 Q Go to the next page, Page 35 of that document.
 9 (Document displayed)
 10 Q Do you see that "ASSETS" portion, the top half of this
 11 document?
 12 A Yes.
 13 Q Do you see the date of December 31, 2009?
 14 A Yes.
 15 Q Based on this document, what did you believe the assets of
 16 Market Neutral Trading, LLC to be as of December 31st, 2009?
 17 A \$15,802,504.
 18 Q And did you believe that to be accurate when you reviewed
 19 it?
 20 A Yes.
 21 MR. FARNHAM: If we could look at Page 42.
 22 (Document displayed)
 23 MR. FARNHAM: And if we could zoom in on the "Total
 24 Return" section.
 25

1 BY MR. FARNHAM:
 2 Q Do you see this portion of the audit report?
 3 A Yes.
 4 Q And is this the same time period ending December 31, 2009?
 5 A Correct.
 6 Q According to this, what was the return to investors for
 7 this fund?
 8 A The net return was 12.5 percent.
 9 Q And you're looking at the bottom number for that?
 10 A Yes.
 11 Q Why do you look at the bottom number to talk about --
 12 A Well, that's the net dollar that my client would have
 13 made, after fees and expenses.
 14 Q And that's what you believed the return for Market Neutral
 15 Trading was in 2009.
 16 A Yes. And that should -- that would have matched up to the
 17 brochure we were given, as well. It had to do -- at least
 18 within one- or two-tenths of 1 percent. We give everybody
 19 probably a two-tenths margin of error in the returns, but no
 20 more than that.
 21 MR. FARNHAM: If we could look at Page 52.
 22 (Document displayed)
 23 MR. FARNHAM: And if we could zoom in on the Total
 24 Return portion.
 25 BY MR. FARNHAM:

1 Q What's the time period for this page of Exhibit 204?
 2 A 2010.
 3 Q Is it the year ending December 31, 2010?
 4 A Yes.
 5 Q And what's the reported return to investors on this page?
 6 A 24.97 percent.
 7 Q And when you reviewed this, did you believe that investors
 8 would have received 24.97 percent return on their investment?
 9 A Yes.
 10 Q In 2010?
 11 A Yes.
 12 Q Does this number that was contained in these audited
 13 financial statements, these return numbers, was it significant
 14 to you?
 15 A Yes. It's our confirmation.
 16 Q And how did it affect your decision to recommend this
 17 investment?
 18 A It carries a great deal of weight.
 19 Q If I could ask you to look back at Exhibit 145 for just a
 20 moment.
 21 A Which one?
 22 Q 145. And, it was the first one in your stack you looked
 23 at.
 24 A Okay.
 25 (Request complied with by the Witness)

1 Q If we could turn to Page 7 of this document.
 2 (Document displayed)
 3 Q Do you see Page 7 of Exhibit 145?
 4 A Yes.
 5 Q And did you review it when you were making the decision
 6 about Market Neutral Trading?
 7 A We did.
 8 Q And what did this page tell you about this fund?
 9 A It -- it said to me that Mr. Murray had been able to do a
 10 phenomenal job executing on Market Neutral's strategy with well
 11 above average -- well above average risk controls. And there
 12 had been very few drawdowns or losses in any given month. And
 13 the annual returns were quite large.
 14 Q And was this information significant to you in your
 15 decision?
 16 A Yes.
 17 Q Why?
 18 A Market neutral trading is not an easy strategy, as I said,
 19 to execute. And he appeared to have found the secret sauce, so
 20 to speak.
 21 Q And you believed this information to be accurate?
 22 A Yes. We confirmed it back to the audit reports.
 23 Q I'm sorry; say that again?
 24 A We confirmed this back to the audit reports we were
 25 provided.

1 Q Okay. So you used the return numbers in those audit
 2 reports to compare them to this chart?
 3 A Right. You'll see, 2010, these were probably estimates
 4 made at the time they were published. But he was showing a
 5 return of 26.1. I believe the report we just went over said
 6 24.97. So about a one-percent difference, which is not that
 7 much. It's 8 base points a month. So it's not that
 8 significant. It's close enough.
 9 Q And, those audit reports and that chart, at the time, you
 10 believed them to be accurate?
 11 A Yes.
 12 Q If you could look at Page 9 of this document.
 13 (Request complied with by the Witness)
 14 Q I want to ask you about the middle line there that says
 15 "Legal." Do you see that?
 16 A Yes.
 17 Q What does it say next to that?
 18 A "Hornstein Law Offices."
 19 Q What did that mean to you?
 20 A That he had outside counsel.
 21 Q Was that something that was significant to you in your
 22 decision to recommend this investment?
 23 A Yes. I mean, operating and managing a hedge fund is quite
 24 onerous and complicated, from a regulatory perspective. And I
 25 think it's near impossible to operate without legal counsel,

1 just to keep it compliant with all the various regulatory
 2 authorities, which -- all the rules keep changing.
 3 Q So was the accuracy of this disclosure important to you in
 4 your decision?
 5 A Sure, uh-huh.
 6 Q If I could ask you to find Exhibit 205. It would have
 7 been the last document there in your stack, I think.
 8 (Request complied with by the Witness)
 9 Q What is Exhibit 205?
 10 A This is the request to wire out the initial investment to
 11 MNT. From the trust.
 12 Q What's the date of that document?
 13 A January 25th, 2011.
 14 Q And was this document part of Polaris's normal business
 15 procedures?
 16 A Yes. This went over to Mr. Curcio, Peter Curcio, the
 17 senior trust officer at First Federal Trust Department. He had
 18 already authorized the investment; he had already signed the
 19 subscription agreements to invest in MNT, LLC. And this was
 20 the last final step to transfer the money to the fund's broker
 21 custodian. And, that we would have been going in for the
 22 February 1st evaluation date.
 23 Q Is that your signature on that first page?
 24 A Yes.
 25 MR. FARNHAM: Your Honor, I would offer Exhibit 205

1 into evidence.
 2 THE COURT: Any objection?
 3 MR. DRESSLER: No objection.
 4 THE COURT: Admitted.
 5 (Trial Exhibit 205 received in evidence)
 6 (Document displayed)
 7 BY MR. FARNHAM:
 8 Q If you can just tell me, Mr. Pernell, what are the
 9 redactions there in this document? What's blacked out?
 10 A Account numbers.
 11 Q And you mentioned that this was -- tell me again the
 12 purpose of this document.
 13 A This (indicating)?
 14 Q Yes. Exhibit 205.
 15 A Well, that person, the person Steve Ulak on the letter --
 16 Q I'm sorry; say that again?
 17 A The other person on this letter, Mr. Ulak, he's the
 18 accountant. And I'm the consultant at Polaris. As I said, we
 19 serve two roles at the trust company. We do the recordkeeping,
 20 and also the consulting on the managers. So, you know, to give
 21 Steve credit, he keeps meticulous records.
 22 This is the final step after Mr. Curcio approved the
 23 investment, that we have documentation of the money being
 24 transferred from the trust company's specific fund to
 25 Mr. Murray's custodian or prime broker.

1 Q And, the first line --
 2 A It's just paperwork. You know, we've got to have it.
 3 Q The first line of this letter says:
 4 "This letter confirms or request to wire
 5 funds..."
 6 Do you see that?
 7 A Yes.
 8 Q What, what happened after this letter was signed by you
 9 and sent to Mr. Cooper at First Federal?
 10 A The wire department, Amanda at First Federal would have
 11 executed the federal wire transfer instructions. And the funds
 12 would have left First Federal's money market account and gone
 13 to Bank of New York to Barclays Wealth for further credit at
 14 Market Neutral Trading, which we were invested in.
 15 Q There's the "FBO," second-to-last line in this letter.
 16 A Yes.
 17 Q What does "FBO" stand for?
 18 A "For benefit of."
 19 Q And what does it say after that?
 20 A (As read)
 21 "The Pooled Employee Trust Funds, Diversified
 22 Strategies Fund."
 23 Q What is that?
 24 A One of the investment funds inside the trust.
 25 Q Is that the fund that was investing in Market Neutral

1 Trading?
 2 A Correct.
 3 Q The amount of this investment in the letter is what? What
 4 does it say?
 5 A The amount?
 6 Q Yes.
 7 A 250,000.
 8 Q The -- you testified a few minutes ago that there was a
 9 minimum investment of \$1 million for Market Neutral Trading.
 10 A Yes.
 11 Q Why is this \$250,000?
 12 A I wasn't comfortable sending out the full million until
 13 I'd had, as I said, done an on-site visit and met Mr. Murray,
 14 his trader, and his programmer face to face.
 15 Q So why the \$250,000, then?
 16 A It's a smaller amount, just to get started, get the
 17 process started.
 18 Q Further, furthering that, did you ever set up a meeting in
 19 San Francisco to visit Market Neutral Trading and Mr. Murray?
 20 A Yes.
 21 Q What -- tell me what the purpose of that meeting was, from
 22 your perspective.
 23 A It was twofold. To do the on-site visit, meet Mr. Murray,
 24 his trader. He referenced a programmer he'd hired, so it was
 25 to meet the -- the support staff at MNT.

1 (Document taken off display)
 2 Q And did that meeting take place?
 3 A No.
 4 Q How was the meeting arranged?
 5 A I e-mailed Mr. Murray a couple of times.
 6 Q Was it easy to arrange?
 7 A It was a bit difficult.
 8 Q Why?
 9 A He didn't seem to be, um, very specific about when he
 10 could see me or not see me. I got a little flustered,
 11 actually.
 12 Q When you were having the communications to set this
 13 meeting up, do you know where Mr. Murray physically was?
 14 A I assumed he was in his office, but he had -- he had
 15 intimated to me that -- email traffic, that he had some trips
 16 planned.
 17 Q And do you remember approximately when that meeting was
 18 finally set up for?
 19 A It was March the -- I believe it was March 13th, 2011.
 20 Q Let's get the year right. The letter we were --
 21 A I mean the 12th -- 2012. We invested in 2011. This was
 22 about 12 months later.
 23 Q So you believe that meeting was March 13th, 2012?
 24 A Right.
 25 Q And did you go to Mr. Murray's office on March 13th, 2012?

1 A Myself and Roy Callahan. It was -- Roy's an -- also an
 2 analyst who works for me.
 3 (Reporter interruption)
 4 THE WITNESS: He's an analyst, investment analyst.
 5 BY MR. FARNHAM:
 6 Q What happened when you and Mr. Callahan -- is that the
 7 right name?
 8 A Callahan.
 9 Q What happened when you and Mr. Callahan got to the office?
 10 A Mr. Murray was not there.
 11 Q Did you ever speak to or meet Mr. Murray after that?
 12 A No.
 13 Q Did he ever show up for that meeting?
 14 A No.
 15 Q After the day that Mr. Murray didn't show up for that
 16 meeting, did you ever try to contact any of the other service
 17 providers that were associated with Market Neutral Trading?
 18 A I flew home that night on the redeye. I was back in
 19 Charleston the next morning. And, Roy pinged me, probably
 20 early afternoon, letting me know that Mr. Murray had been
 21 arrested. And that's when I started calling.
 22 Q Who did you call?
 23 A I called the administrator and the auditing firm.
 24 Q You tried to call the administrator. What happened when
 25 you tried to call?

1 A Answering machine.
 2 Q Did you ever get a call back?
 3 A No.
 4 Q Any response?
 5 A No.
 6 Q What about the auditor?
 7 A No. No answer, no anything on that one.
 8 Q Have the -- has the collective trust, the pooled pension
 9 funds that you advised to invest in Market Neutral Trading,
 10 have they ever received any of the money back from MNT?
 11 MR. DRESSLER: Object to that, Your Honor.
 12 THE COURT: Overruled.
 13 BY MR. FARNHAM:
 14 Q Have they ever -- I'll ask it again.
 15 Have -- have -- has the pooled pension fund that you
 16 advised to invest in Market Neutral Trading ever received any
 17 of the money back from that investment?
 18 A No.
 19 MR. FARNHAM: Just a moment, Your Honor.
 20 (Off-the-Record discussion between counsel)
 21 MR. FARNHAM: Nothing further. Thank you.
 22 THE COURT: Thank you.
 23 Cross?
 24
 25

1 CROSS EXAMINATION
 2 BY MR. DRESSLER:
 3 Q Good afternoon.
 4 A How you doing?
 5 Q Since 2012, would it be fair to state that you have
 6 learned that \$1.7 million was seized by the United States
 7 Government from MNT's accounts?
 8 A I know a certain dollar amount was frozen.
 9 Q Okay. And, have you done anything to try and get that
 10 money back from the Government?
 11 A Yes. I have asked for it.
 12 Q Okay. And have you received any back?
 13 A I have been told it was frozen.
 14 Q Okay.
 15 MR. DRESSLER: Could we see 204, Page 52?
 16 BY MR. DRESSLER:
 17 Q While they are getting that up, did you ever talk to
 18 Mr. Murray at any time about him -- about separately-managed
 19 accounts?
 20 A That was the purpose -- that was part of the purpose of
 21 that meeting that day, was to discuss that possibility.
 22 Q Okay. And, could you just briefly tell the jury what your
 23 understanding was of a separately-managed account?
 24 A Well, a separately-managed account is we would not have
 25 been investing in the fund. We would have opened our own

1 account.
 2 (Document displayed)
 3 A And he would have been selected as the manager to that
 4 separate account.
 5 Q Okay. All right. So, we have Exhibit No. 204, Page 52.
 6 Could you look at the next-to-last paragraph?
 7 A Which page?
 8 Q Page 52.
 9 A Yes, sir.
 10 Q Okay. Next to the last paragraph, it says -- Could you
 11 read the second sentence?
 12 A (As read)
 13 "An individual member's return may vary from
 14 this return based on several factors, including
 15 profit share, incentive allocation fee level and
 16 timing of contributions and withdrawals."
 17 Q Okay. So, if I understood an answer to a question that
 18 was asked of you earlier, if you look at the total -- same
 19 page, under "Total Return," total return after incentive
 20 reallocation to managing member was 24.9 -- 24.97 percent.
 21 Correct?
 22 A Yes.
 23 Q All right. And, I believe you said -- and that is why I'm
 24 asking this question, correct me if I'm wrong -- that you said
 25 that your customer, if you -- you were asked if you would have

1 invested in that, you would expect your customer to have made
 2 how much. And I believe you said 24.97 percent.
 3 A Yes.
 4 Q Okay. Well, that wouldn't necessarily be true, would it,
 5 depending on when money was invested, when it was added or
 6 subtracted, correct?
 7 A Well, that's sort of common knowledge, that it's all
 8 dependent upon if you went for the full period, audit period.
 9 The full audit period begins January 1, ends December 31.
 10 So theoretically -- or not theoretically -- in actuality,
 11 you invested February 1st, like we did, we missed the first 60
 12 days. So therefore, we missed January and February
 13 performance. That's just standard operating procedure,
 14 standard generally accepted accounting.
 15 Q I understand that.
 16 A That's just one share class. The return's a return.
 17 Q But there is a return. But if, if the firm -- strike
 18 that.
 19 If MNT had a large gain in the first two months that you
 20 missed, all right, and then smaller gains or losses in the
 21 months that you did participate, you wouldn't be getting
 22 24.97 percent, because that's an average weighted return.
 23 Isn't it?
 24 A Well, you're splitting hairs with me here. I was talking
 25 about confirming his reported performance. That's from the

1 audit report. If you are an investor for the full calendar
 2 year, you would expect to receive 24.97 percent.
 3 If you were not in for the full calendar year, you would
 4 expect to receive whatever that portion was for that period of
 5 time, which could have been zero percent, or 2 percent, or
 6 whatever that number would be for the ten months.
 7 Q That -- that's the hair I was splitting.
 8 A Yeah.
 9 Q And, thank you for that answer. Okay.
 10 MR. DRESSLER: No other questions.
 11 THE COURT: Thank you. Any redirect?
 12 MR. FARNHAM: Nothing further, Your Honor.
 13 THE COURT: All right. Then, the witness is excused.
 14 Mr. Pernell, thank you. You may step down.
 15 (Witness excused)
 16 THE COURT: And the Government may call its next
 17 witness.
 18 MR. FARNHAM: Yes, Your Honor. We would call Richard
 19 Russell to the stand.
 20 I apologize, Your Honor. Mr. Russell is 83 years old;
 21 he's been waiting all day. I assume he's there.
 22 THE COURT: Looks like he's here.
 23
 24
 25

1 RICHARD RUSSELL,
 2 called as a witness for the Government herein, having been
 3 first duly sworn, was examined and testified as follows:
 4 THE COURT: All right, thank you, Mr. Russell.
 5 You may proceed, Mr. Farnham.
 6 MR. FARNHAM: Thank you.
 7 DIRECT EXAMINATION
 8 BY MR. FARNHAM:
 9 Q Mr. Russell, where do you live?
 10 A Mercer Island, Washington; Seattle, Washington.
 11 Q And are you retired?
 12 A I am.
 13 Q What did you do before you were retired?
 14 A I was a pilot in the Air Force, and taught at the Air
 15 Force Academy. I worked for Boeing Commercial Airplane in
 16 Seattle, Washington, for 23 years, and I retired at age 55.
 17 Q How old are you now?
 18 A Eighty-three.
 19 Q Since you retired, have you spent some of your time
 20 investing your savings and retirement funds?
 21 A I spend a considerable amount of time, yes.
 22 Q And tell me generally, what types of investments do you do
 23 with your retirement funds?
 24 A I like to invest in market time management programs. In
 25 order to avoid drawdowns. I like to have a combination of

1 somewhere between five and ten different programs in a package
 2 for diversification.
 3 Q Mr. Russell, if I could ask you to move that microphone,
 4 sort of point it toward your mouth. Doesn't have to be super
 5 close, but --
 6 (Request complied with by the Witness)
 7 Q Thank you. That's better. Thank you.
 8 A Yeah.
 9 Q You sound pretty sophisticated about some of your
 10 investing. How did you learn about that?
 11 A Became a hobby among a number of people that knew each
 12 other, and we traded stories and traded suggestions, traded
 13 ideas. Traded ways to analyze things.
 14 Q What do you look for in individual investments?
 15 A I look for defense against market loss or drawdowns.
 16 Q How do you do that? What do you look at?
 17 A Look for managers who have proven track records or proven
 18 analysis of what they do, and how they do it. I do not manage
 19 the money, myself. I hire managers that manage the money. I
 20 like to hire a diverse set of managers.
 21 Q So, if you look at -- do you look at the performance of a
 22 fund and/or manager?
 23 A Of a managed program, yes.
 24 Q And what do you look for in terms of performance?
 25 A I look at monthly performance, and I look at drawdowns; I

1 look at compound rate of return over a significant amount of
 2 time. And mainly, just looking for defense against losses.
 3 Q Are there particular time periods that you look at when
 4 you look at performance periods? Performance?
 5 A If I can ever -- if I can have it, I like to have at least
 6 performance in 2007, -8 and -9.
 7 Q Why is that?
 8 A In that recent time period, the S&P lost 50 percent in
 9 2008. And I'm looking for programs that can go through that
 10 time period without having losses, or without having very much
 11 loss.
 12 Q Tell me why you look at that time period.
 13 A Say again?
 14 Q Tell me why you look at that time period, in particular.
 15 A Because it's one of the most meaningful drops we have had
 16 in recent years. The market went down 50 percent in 2008, in
 17 round numbers. And it took us the following five years to
 18 recover.
 19 Q So when you look at that time period for a manager's
 20 performance, what are you looking for?
 21 A I'm looking for either minimum performance, or hopefully,
 22 no performance.
 23 For example, if I look at the portfolio I now have, I have
 24 nine managers in that portfolio. In looking at that,
 25 back-tested, it went through the time period with no loss. The

1 portfolio had no loss. Individual accounts might have.
 2 Q So you are looking for minimal losses during that time
 3 period?
 4 A And decent return, yes.
 5 Q We're going to talk about Market Neutral Trading in a
 6 minute. But prior to Market Neutral Trading, had you invested
 7 in what someone might call a hedge fund before?
 8 A I had been in several hedge funds.
 9 Q How did you first hear about the fund called Market
 10 Neutral Trading?
 11 A I had a manager I was working with at the time that I
 12 thought a lot of. And he mentioned Market Neutral Trading to
 13 me. In fact, suggested I look into it as a possible
 14 alternative investment.
 15 Q And did you have contact with someone after you got that
 16 recommendation?
 17 A Yes, I did. I believe it was Mr. Eckels (sic) I had
 18 contact with, among other people.
 19 Q And did you receive information and materials about this
 20 fund?
 21 A I did.
 22 MR. FARNHAM: I would like to approach, Your Honor.
 23 THE COURT: Yes.
 24 BY MR. FARNHAM:
 25 Q Mr. Russell, handing you what's been marked for

1 identification as Exhibit 193.
 2 A Okay.
 3 Q Do you see that this is a series of emails? And I draw
 4 your attention to the middle of the first page.
 5 Do you see that there's one from Paul Eckel?
 6 A I do.
 7 Q Do you see that that's addressed to a Robert Russell?
 8 A Yes, it is.
 9 Q Was there a name mix-up early on in this conversation?
 10 A To my knowledge, that was a typographical error that was
 11 fixed in the following communication.
 12 Q And so, is that email to you?
 13 A Yes, it is.
 14 Q And is it dated December 9, 2010?
 15 A It's dated December 9, yes.
 16 Q And you see the subject says:
 17 "Market Neutral Trading, LLC-November
 18 Performance."
 19 A I do.
 20 Q And if you would look at the third page of that document.
 21 (Request complied with by the Witness)
 22 A Okay.
 23 Q Is this attachment to this document some material you
 24 received regarding Market Neutral Trading?
 25 A Yeah, it looks exactly like what I received. Yes.

1 MR. FARNHAM: Your Honor, I would offer Exhibit 193
 2 into evidence.
 3 THE COURT: Any objection?
 4 MR. DRESSLER: No. No objection.
 5 THE COURT: 193 is admitted.
 6 (Trial Exhibit 193 received in evidence)
 7 MR. FARNHAM: Thank you. If we could publish it,
 8 Your Honor?
 9 THE COURT: Yes.
 10 MR. FARNHAM: I would like to bring up Page 3.
 11 (Document displayed)
 12 BY MR. FARNHAM:
 13 Q And Mr. Russell, you mentioned that this is the -- looks
 14 like one of the performance reports that you received.
 15 A Correct.
 16 Q If we could look at that performance chart at the bottom
 17 half of this document.
 18 What did this information in this chart and graph tell you
 19 about the performance of the MNT fund?
 20 A It looks like very ideal investment management. If you
 21 look at the right-hand column and look at 2007, 2008, and 2009,
 22 the performance each year was 40 percent, 21.9 percent,
 23 13.4 percent.
 24 In other words, the program came through one of the worst
 25 periods in history and was positive on all three -- three

1 years. The overall average annual return is 28.6 percent,
 2 which is outstanding.
 3 Q So you liked what you saw in this graph.
 4 A No question about it.
 5 Q What about the volatility of this fund?
 6 A There almost is no volatility. There are monthly losses
 7 noted with the shaded blocks, but the numbers are very small.
 8 Q Would you have invested in this fund if this chart showed
 9 a huge loss in 2009?
 10 A I would not.
 11 Q Why not?
 12 A I'm averse to losses.
 13 MR. FARNHAM: May I approach, Your Honor?
 14 THE COURT: Yes.
 15 BY MR. FARNHAM:
 16 Q Mr. Russell, handing you what's been marked for
 17 identification as Exhibit 194.
 18 (Witness examines document)
 19 Q And do you see that on the first page of this email,
 20 again, near the middle, there's an email from Paul Eckel?
 21 A I do, yes.
 22 Q And do you see that that's addressed to
 23 richardrussell@comcast.net?
 24 A It is.
 25 Q And you see it's dated January 3, 2011?

1 A Yes.
 2 Q And the subject is "Market Neutral Trading Presentation"?
 3 A Correct.
 4 Q If you would again look at the third page of this
 5 document.
 6 A Okay.
 7 Q Is this part of the materials that you received from
 8 Market Neutral Trading?
 9 (Witness examines document)
 10 A I can't say I remember this page exactly. But what's
 11 contained in here looks familiar, yes.
 12 MR. FARNHAM: Your Honor, I would offer Exhibit 194
 13 into evidence.
 14 THE COURT: Any objection?
 15 MR. DRESSLER: No, Your Honor.
 16 THE COURT: Admitted.
 17 (Trial Exhibit 194 received in evidence)
 18 MR. FARNHAM: For this, I would like to just briefly
 19 look at Page 11.
 20 (Document displayed)
 21 BY MR. FARNHAM:
 22 Q Using the little numbers at the bottom, the exhibit
 23 numbers.
 24 A Okay.
 25 Q Are you on Page 11?

1 A I am.
 2 Q What is this -- what does the top of this page say?
 3 A (As read)
 4 "Market Neutral Trading, MNT, Jim Murray, CIO.
 5 Paul Eckel, COO Consultant."
 6 Q I think we are on the wrong page.
 7 A Okay. You said 11?
 8 Q Let's do Page 9 of the original document page numbers.
 9 All these documents have many, many numbers.
 10 (Witness examines document)
 11 Q Original numbers, our numbers...
 12 MR. DRESSLER: Are you talking about 194, Page 9?
 13 MR. FARNHAM: I'm looking at 194-0011.
 14 THE WITNESS: Okay. I have that, and I'm at Page 9.
 15 BY MR. FARNHAM:
 16 Q Thank you. What does the top header of this document say?
 17 A Service Providers and Fund Terms."
 18 Q And next to the word "Auditor," what does this page tell
 19 you?
 20 A Jones, Moore & Associates.
 21 Q When you received this document, did you believe that
 22 Market Neutral Trading had an auditor?
 23 A I did.
 24 Q And, did that affect your decision to invest in this fund?
 25 A Yes, it did.

1 Q How?
 2 A Gave me confidence that the program had somebody else
 3 looking into the details to verify they were real.
 4 Q When you say "somebody else," who do you mean by that?
 5 A Well, "Jones, Moore & Associates" sounds to me separate
 6 from Market Neutral Trading.
 7 Q Independent?
 8 A Yes.
 9 Q And that was important to you prior to your investment?
 10 A Say again?
 11 Q That fact was important to you prior to your investment?
 12 A Oh, no question about it.
 13 MR. FARNHAM: May I approach, Your Honor?
 14 THE COURT: Yes.
 15 BY MR. FARNHAM:
 16 Q Mr. Russell, I have handed you what's been marked as
 17 Exhibit 192.
 18 A Okay.
 19 Q Again, in the middle of the page, of the first page, you
 20 see there is an email from Paul Eckel to Richard Russell? Do
 21 you see that?
 22 A I do, uh-huh.
 23 Q And it's dated May 5, 2011?
 24 A Yes.
 25 Q And the subject is "Market Neutral Trading DDQ"?

1 A Yes.
 2 Q And if you would look at the fourth page of this document.
 3 MR. DRESSLER: I apologize. What exhibit is this?
 4 MR. FARNHAM: 192.
 5 MR. DRESSLER: 192.
 6 (Request complied with by the Witness)
 7 THE WITNESS: Okay, I'm on Page 4.
 8 BY MR. FARNHAM:
 9 Q And is this -- you see that this is a Market Neutral
 10 Trading due diligence report, dated April, 2011? Do you see
 11 that?
 12 (Witness examines document)
 13 A Um, what I have on Page 4 is (As read):
 14 "Principal, Jim Murray; Trader, Thomas Hogan."
 15 A list of titles and names. Is that what you are
 16 referring to?
 17 Q I apologize. I'm referring to 192-0004. I always use the
 18 last, the bottom number there.
 19 A Okay.
 20 (Witness examines document)
 21 MR. DRESSLER: Maybe it would help, it's a two-sided
 22 page.
 23 THE WITNESS: Okay, I have found Page 4.
 24 THE COURT: Okay.
 25

1 BY MR. FARNHAM:
 2 Q And this says:
 3 "Market Neutral Trading Due Diligence Report,
 4 April 2011."
 5 A Yes, it does.
 6 MR. FARNHAM: Your Honor, I would offer Exhibit 192
 7 into evidence.
 8 THE COURT: Any objection?
 9 MR. DRESSLER: No objection.
 10 THE COURT: Admitted.
 11 (Trial Exhibit 192 received in evidence)
 12 BY MR. FARNHAM:
 13 Q Looking at that page, Due Diligence Report, what did you
 14 understand this document to be?
 15 (Document displayed)
 16 A It would be the report looking into the details of what
 17 Market Neutral Trading did. And how they did it. And, to
 18 report whatever they found by doing that.
 19 Q And was the information contained in this document
 20 important for your investment decision?
 21 A I think so, yes.
 22 Q If you could look at Page 19, again, 192-0019.
 23 (Request complied with by the Witness)
 24 A Okay.
 25 (Document displayed)

1 Q Can you read the title of this document?
 2 A (As read)
 3 "Market Neutral Trading, Financial Statements
 4 and Independent Auditors' Report. December 31, 2010"
 5 Q Did you look this over before you invested in Market
 6 Neutral Trading?
 7 A I believe I did, yes.
 8 Q And was it important to you that this was an independent
 9 auditors' report?
 10 A Yes.
 11 Q Why is that?
 12 A Again, an independent look at what the general partner was
 13 promoting or saying that he was doing. An outside cross-check.
 14 Q When you were deciding on whether or not to invest in
 15 Market Neutral Trading, did you rely on the truthfulness of
 16 what you received?
 17 A I believe I did, yes.
 18 Q And would you have invested if there was no outside
 19 independent auditor?
 20 A Probably not.
 21 Q Based on information you received, did you invest in
 22 Market Neutral Trading?
 23 A I did.
 24 Q How much?
 25 A A total of 190,000, \$189,000.

1 Q How many investments was that?
 2 A There was two pieces. One was 150,000. And then later I
 3 think it was another 49,000.
 4 Q What type of assets did you invest?
 5 A In this case, this was my own personal IRA money.
 6 Q When you're investing IRA money, did you have to use a
 7 custodian or a third party to help with you that?
 8 A I had to go through -- have the account registered with a
 9 third-party custodian. And that was Millennium Trust Company.
 10 Q And why did you need to do that through them for this type
 11 of assets?
 12 A You have to have a custodian of some sort to be the holder
 13 of an IRA investment.
 14 Q And so for this -- in this case, Millennium Trust was the
 15 custodian for your IRA funds.
 16 A Yes.
 17 Q But those funds you invested in Market Neutral Trading?
 18 A Right.
 19 MR. FARNHAM: May I approach with the last exhibit,
 20 Your Honor?
 21 THE COURT: Yes.
 22 BY MR. FARNHAM:
 23 Q Mr. Russell, handed you what's been marked as Exhibit 191.
 24 It's a two-page document, but it's double-sided there.
 25 A Okay.

1 Q And for that document, in the middle of that first page,
 2 do you see that there is an email from Eve Nelson, HF
 3 Administrators?
 4 A Okay.
 5 Q And it's to you, Richard Russell?
 6 A Yes.
 7 Q And do you see a cc? Who is that?
 8 A For Jim Murray.
 9 Q And the date is September 6, 2011?
 10 A Correct.
 11 Q And, the subject is:
 12 "August, 2011 Capital Account Statement."
 13 A Yes.
 14 Q And if you look at the second page of that document, the
 15 back page, what is that?
 16 (Witness examines document)
 17 A That's a monthly report for August of 2011 of my account
 18 with Millennium Trust Company. Shows a balance of \$149,900,
 19 which was the initial of the two investments.
 20 MR. FARNHAM: Your Honor, I would offer Exhibit 191
 21 into evidence.
 22 THE COURT: Any objection?
 23 MR. DRESSLER: No objection.
 24 THE COURT: Admitted.
 25 (Trial Exhibit 191 received in evidence)

1 (Reporter interruption)
 2 THE WITNESS: 149. \$149,900.
 3 MR. FARNHAM: If we could publish Page 2, please.
 4 (Document displayed)
 5 BY MR. FARNHAM:
 6 Q And I'm sorry; can you describe again what this page is,
 7 as the jury is looking at it?
 8 A I think it is a monthly report of -- by Millennium Trust
 9 Company to me of the account balance for that date, August 31,
 10 2011.
 11 Q Did you receive this from HF Administrators?
 12 A I imagine I received it from Millennium Trust Company,
 13 although I -- I can't be sure about that, because it probably
 14 would come from Market Neutral Trading. But it has the capital
 15 account at Millennium Trust Company noted on top.
 16 So my hunch is I got this from Market Neutral Trading, now
 17 that I look at it.
 18 Q Do you -- at this point, did you have an understanding who
 19 HF -- what the -- what HF Administrators was?
 20 A Say that again?
 21 Q What was HF Administrators?
 22 A Well, I guess it stands for "Hedge Fund Administrators."
 23 I -- I don't see what you're referring to on the page.
 24 Q If you could look at the first page of the document. The
 25 email, itself, is from the -- the email says "Eve Nelson, HF

1 Administrators."
 2 A Okay.
 3 Q When you received this, did you have an understanding what
 4 "HF Administrators" was, or meant?
 5 A I think it stood for Hedge Fund Administrators.
 6 Q Was it affiliated with Market Neutral Trading?
 7 A Yes.
 8 Q What role did it play?
 9 A I'm not 100 percent sure, but Eve Nelson was an assistant
 10 or a person in the office that the I dealt with occasionally.
 11 Q And did she send statements to you?
 12 A Yes.
 13 Q Did you ever ask anyone at Market Neutral Trading to get
 14 your money back from this investment?
 15 A I did.
 16 Q Why did you do that?
 17 A They stopped sending me monthly statements. And when I
 18 inquired why, I was told that they just simply were not putting
 19 those statements out anymore.
 20 Shortly after that, I think I had communication of some
 21 sort that Jim Murray was either in trouble or in jail. I don't
 22 remember which. But, both turned me against the investment.
 23 Q I'm sorry. Say that again?
 24 A Both of those turned me against the investment.
 25 Q And you wanted your money back.

1 A That's exactly.
 2 Q Did you ever receive any of your investment amount back
 3 from --
 4 A None.
 5 Q -- Market Neutral Trading?
 6 A None.
 7 MR. FARNHAM: Nothing further, Your Honor.
 8 THE COURT: All right. Thank you.
 9 Cross?
 10 CROSS EXAMINATION
 11 BY MR. DRESSLER:
 12 Q Good afternoon, Mr. Russell.
 13 A Hello.
 14 MR. DRESSLER: 191, Page 2, can we put that up?
 15 (Document displayed)
 16 BY MR. DRESSLER:
 17 Q Before I ask you a question about that, when did you make
 18 these two investments?
 19 (Document displayed)
 20 A Um, in August and also in November.
 21 Q Of 2011?
 22 A 2011.
 23 Q Okay. And at that time -- you are aware of the various --
 24 you invested in hedge funds before?
 25 A I had invested in hedge funds before, yes.

1 Q And, have you heard of a company called "Sadis and
 2 Goldberg"?
 3 A Not that I can recall.
 4 Q Did you become aware at the time you invested and you
 5 reviewed the materials that caused you to invest, were you
 6 aware that Sadis and Goldberg was going to be the -- be
 7 auditing the results of the fund for 2011?
 8 A If I knew it at the time, I don't remember it now.
 9 Q Okay. With regard to Exhibit 191, Page 2, it indicated
 10 that in August, 31st, 2011, there was an ending balance of
 11 \$154,000 -- \$154,262. Correct?
 12 A Correct.
 13 Q And as you sit here now, do you have any reason to believe
 14 that there was not -- those funds were not in your account with
 15 MNT?
 16 A I would say at that time, I had every reason to believe
 17 that they were there.
 18 Q Okay. And are you aware now that \$1.7 million was seized
 19 by the government in 2012 from MNT accounts?
 20 A I don't recall that at this time.
 21 Q Okay. But are you generally aware that the government has
 22 seized a large sum of money from MNT, and that your money might
 23 be in there?
 24 A I vaguely remember that, but the details, I don't.
 25 Q Have you ever asked anybody in the government about

1 getting your money back, that you invested in MNT?
 2 A Not that I can remember.
 3 Q Other than MNT, have you ever tried to get any of this
 4 money back?
 5 MR. FARNHAM: Objection. Vague.
 6 THE COURT: Rephrase that, please.
 7 BY MR. DRESSLER:
 8 Q Have you ever asked any other entity other than what you
 9 have described here today, what -- strike that.
 10 You testified that you made some efforts to get money back
 11 from MNT. Correct?
 12 A Correct.
 13 Q You found out that Mr. Murray had some issues. Correct?
 14 A Correct.
 15 Q You found -- didn't you also find out that the money that
 16 he was controlling was seized by a governmental entity?
 17 A I don't remember that specific detail.
 18 Q You don't remember that?
 19 A No.
 20 Q Okay.
 21 MR. DRESSLER: One moment.
 22 (Off-the-Record discussion between Defendant and
 23 Counsel)
 24 BY MR. DRESSLER:
 25 Q I'm sorry; I misspoke. When I asked you about who was

1 going to be the auditor for your investment, for 2011, the
 2 promotional material that you reviewed said Spicer Jeffries was
 3 going to be the auditor. I misspoke. I said "Sadis and
 4 Goldberg."
 5 Does that refresh your recollection?
 6 MR. FARNHAM: Objection, foundation.
 7 THE COURT: You need to lay a foundation, or you can
 8 ask it differently.
 9 MR. DRESSLER: All right.
 10 BY MR. DRESSLER:
 11 Q You reviewed various materials before you made your
 12 investment. Correct?
 13 A True.
 14 Q Okay. And, you spent a number of months deciding whether
 15 or not you were going to invest in MNT. Correct?
 16 A Yes.
 17 Q Okay. Would it be fair to say that the first set of
 18 promotional material that you saw had JMA as the auditor for
 19 2000 -- or a period of time ending in 2010?
 20 You saw a number of audits, correct?
 21 A Well, again, I do not remember the specifics --
 22 Q Okay.
 23 A -- of the audit process, at the time. I knew there was a
 24 -- I thought I knew there was an external auditor looking over
 25 the books. And that, I've found, something good to have.

1 Q Okay. So you don't remember Spicer Jeffries being the
 2 auditor that was going to actually edit your investment.
 3 A Could you say it again? It's hard for me to hear.
 4 Q Do you remember that when you invested -- actually made
 5 your investment in MNT, that the auditor was not going to be
 6 JMA, but rather, the auditor was going to be Spicer Jeffries?
 7 A Okay. Again, I do not recall that detail.
 8 Q Okay. And the -- in hedge funds, other hedge funds that
 9 you invested in, do you ever remember Spicer Jeffries being an
 10 auditor for other hedge funds?
 11 A The name rings a bell. I could not tie that firm to a
 12 specific hedge fund.
 13 Q Okay. And, but, you -- I don't want put words in your
 14 mouth, but prior to -- would it be fair to state that prior to
 15 investing in MNT, you had heard of an auditing company called
 16 Spicer Jeffries?
 17 Correct?
 18 A I know the name now. Whether I heard of it back then, I
 19 can't say.
 20 MR. DRESSLER: Okay. Thank you.
 21 MR. FARNHAM: Nothing further, Your Honor.
 22 THE COURT: All right. You may step down. You are
 23 excused, Mr. Russell. Thank you.
 24 (Witness excused)
 25 THE COURT: That brings us to the end of our session

1 today. Tomorrow, we will resume at 8:
 2 30. And as I mentioned earlier today, we are likely to go
 3 over, because we do have some witnesses and some videotaped
 4 testimony that needs to be played. So if you could count on
 5 the full day tomorrow, we can get a lot done. Appreciate your
 6 cooperation. Thank you.
 7 And, just a reminder, please do not discuss this case with
 8 anyone, including among yourselves or with anyone else; do not
 9 do any research on your own; and do not form any opinions until
 10 this case is submitted to you for your deliberation.
 11 Thank you, ladies and gentlemen.
 12 (Jury excused)
 13 (The following proceedings were held outside of the
 14 presence of the Jury)
 15 THE COURT: Okay. So the plan tomorrow, Counsel, is
 16 you are still calling Gorin, Gibson, and who else?
 17 MS. HARRIS: Heather Crarava.
 18 THE COURT: Okay. Then we are going to play the
 19 video? Or what's the plan?
 20 MS. HARRIS: We are playing the video of David Lowe.
 21 THE COURT: And that's -- is that going to take most
 22 of the day?
 23 MS. HARRIS: I think it will, Your Honor. If we get
 24 through that, then our next witnesses will be Melanie Perricone
 25 and Mark Moskowitz.

1 THE COURT: And what phase --
 2 MS. HARRIS: Oh, Your Honor, I made a mistake. We
 3 are actually going to call Jordyn Kramer tomorrow. I don't
 4 think we'll get to Moskowitz and Perricone until Wednesday.
 5 THE COURT: And that is going to begin the
 6 Oppenheimer transaction?
 7 MS. HARRIS: Correct. We have to get through -- the
 8 next victim investor is a charged count. And then, Millennium
 9 Trust, David Lowe, and then the search, which is Jordyn Kramer.
 10 And then we start the Oppenheimer fraud.
 11 THE COURT: All right.
 12 MR. DRESSLER: So just to be clear, Gorin, Gibson,
 13 Crarava, Kramer.
 14 MS. HARRIS: Lowe, Perricone, Moskowitz.
 15 MR. FARNHAM: Your Honor, we would like to start with
 16 Mr. Gibson. He's in Dallas, testimony by video. I think for
 17 his convenience, we would start with that one.
 18 THE COURT: Okay. All right. You'll have that all
 19 logistically arranged?
 20 MR. FARNHAM: (Crosses fingers)
 21 THE COURT: And how are you going to show documents,
 22 that sort of thing?
 23 MR. FARNHAM: He has the documents there with him.
 24 We will be able to show the documents to the jury here.
 25 THE COURT: Okay.

1 MR. FARNHAM: Once they're admitted.
 2 THE COURT: Will you switch back and forth between
 3 his image and the --
 4 MR. FARNHAM: No. I believe it's a separate device.
 5 THE COURT: That's separate, okay.
 6 MR. FARNHAM: So he will be on that (Indicating), and
 7 the documents will be able to be shown.
 8 THE COURT: Okay.
 9 MR. FARNHAM: He will have them in Dallas, and they
 10 will be able to be shown on the court system.
 11 THE COURT: All right. Okay. See you tomorrow.
 12 MR. FARNHAM: Thank you.
 13 (Whereupon at 3:39 p.m. further proceedings were
 14 adjourned until Tuesday, September 29, 2015 at
 15 8:15 a.m.)
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I N D E X

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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

_____/s/ Debra Pas_____

Debra L. Pas, CSR 11916, CRR, RMR, RPR

_____/s/ Belle Ball_____

Belle Ball, CSR 8785, CRR, RMR, RPR

Monday, September 28, 2015

Volume 5
Pages 794 - 939

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDWARD M. CHEN

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) NO. CR 12-0278 EMC
JAMES MURRAY,)
Defendant.) San Francisco, California
) Tuesday
) September 29, 2015
) 8:15 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:
For Plaintiff: MELINDA HAAG
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: ROBIN HARRIS, AUSA
LLOYD FARNHAM, AUSA

For Defendant: ALAN A. DRESSLER, ESQ.
400 Montgomery Street
Suite 200
San Francisco, California 94104

Also Present: USSS AGENT ANTHONY SIMS, JR.
FBI AGENT BRIAN C. WEBER

Reported By: Debra L. Pas, CSR 11916, CRR, RMR
Belle Ball, CSR 8785, CRR, RMR
Official Reporters - US District Court

PROCEEDINGS

1 SEPTEMBER 29, 2015 8:56 A.M.
2
3 (Defendant present, in custody.)
4 (Proceedings held in open court, outside the presence
5 and hearing of the jury.)
6 THE COURT: All right. Good morning, everyone. I
7 apologize for being late. Traffic.
8 So, are we going to start off with a video --
9 MR. FARNHAM: Yes, Your Honor.
10 THE COURT: -- transmission?
11 MR. FARNHAM: Yes. I think that's ready to go.
12 THE COURT: All right.
13 MR. FARNHAM: That will be our first witness.
14 THE COURT: All right.
15 MR. FARNHAM: Your Honor, yesterday -- there's one
16 other witness that we intended to call today. We told
17 Mr. Dressler about this yesterday. He was -- he was scheduled
18 for a previous day. But Val Hornstein, an attorney, is going
19 to be a witness. We would like to call him after Mr. Gibson.
20 THE COURT: Okay.
21 MS. HARRIS: And then, Your Honor, we have one issue
22 with the traffic issue that happened from the bridge and
23 getting the late start today. We have a witness that showed up
24 today but we are not going to be able to get to until tomorrow
25 morning.

1 And, we wonder if the Court could explain to her the
2 situation, and admonish her that she need to be here tomorrow.
3 She's not understanding it. And I think it would be a lot
4 better just to explain that there was a traffic situation that
5 affected the jurors and the Court.
6 THE COURT: Yeah.
7 MS. HARRIS: And, I think that will go a long way.
8 THE COURT: To tell her that she's got to appear
9 tomorrow?
10 MS. HARRIS: Yes, that she's under subpoena and needs
11 to be here tomorrow.
12 THE COURT: All right.
13 MR. DRESSLER: Who's --
14 MS. HARRIS: Melanie Perricone. We are not able to
15 call her today.
16 MR. DRESSLER: I thought that she was going to be
17 called on Wednesday anyway.
18 MS. HARRIS: Um, I don't think -- there's no way we
19 can get to her now.
20 THE COURT: All right.
21 MS. HARRIS: And so if she could just be told that
22 she's under subpoena, and she does need to be here tomorrow
23 morning.
24 THE COURT: All right.
25 MS. HARRIS: And then just for everybody's planning,

1 this morning we would go with the Texas witness, Mr. Gibson,
2 Val Hornstein, Nathan Gorin, and Heather Carava. And that will
3 probably take us through the lunch break, I think.
4 THE COURT: Okay.
5 MS. HARRIS: (Nods head)
6 MR. DRESSLER: We need to move this (indicating) so
7 that my client can see the witness.
8 THE COURT: Well, he can move.
9 MR. DRESSLER: Yeah, or whatever. Maybe we can do
10 that.
11 (Ms. Perricone enters the courtroom)
12 MS. HARRIS: Good morning, Your Honor. This is
13 Ms. Perricone, who is under subpoena.
14 THE COURT: All right. Good morning, Ms. Perricone.
15 And I appreciate your being here. I know you are under
16 subpoena. Because of the traffic mess this morning, a juror
17 was delayed, I was delayed, and so we're delayed. And it
18 appears that we will not be able to get you on today.
19 I know it's inconvenient for you, and I apologize for
20 that. But you are under a subpoena, and you will be testifying
21 tomorrow. So, I'm sorry. I don't know what else to say.
22 So --
23 MS. PERRICONE: Well, I have to take personal time
24 off of work. And I don't know that I can get -- at the last
25 minute.

1 THE COURT: Does this witness get witness fees?
 2 MS. HARRIS: Yes, Your Honor. And her employer is a
 3 public agency, BART. And we have made clear that our office
 4 will do whatever we can with BART to make sure that there is no
 5 need for personal time. And there should not be.
 6 MS. PERRICONE: But --
 7 MS. HARRIS: But they're also paid witness fees
 8 pursuant to federal code.
 9 MS. PERRICONE: They will only pay me if it's related
 10 to work. So I just have to take my own personal vacation time.
 11 THE COURT: Well, I'm really sorry for that. I wish
 12 I could do something. But this is a judicial case, and
 13 unfortunately we've got -- it's a complicated case with many
 14 witnesses. And we're doing what we can. And it happens from
 15 time to time. I apologize. But, you are under court subpoena,
 16 so you have to appear tomorrow.
 17 You don't have to appear today. I don't know if it's too
 18 late for you to go to work at this point. It's 9:00 now. But
 19 in any event, that's the schedule. So...
 20 MS. PERRICONE: Okay.
 21 THE COURT: But I apologize for that. That's where
 22 things stand.
 23 MS. PERRICONE: Okay.
 24 THE COURT: Thank you.
 25 MS. HARRIS: So we will need you back at 8:30

1 tomorrow.
 2 (Ms. Perricone leaves the courtroom)
 3 THE COURT: All right. Let's bring the jury out.
 4 MR. FARNHAM: Your Honor, if I could, just a few
 5 administrative things. I wanted to move some stipulated
 6 exhibits into evidence.
 7 THE COURT: Okay.
 8 MR. FARNHAM: Things that we'll be using today.
 9 First are the David Lowe exhibits. They were subject to the
 10 business records stipulation. It's Exhibits 3 through 9.
 11 THE COURT: Yep.
 12 MR. FARNHAM: 11 through 21.
 13 THE COURT: Yep.
 14 MR. FARNHAM: 23, 28 through 30. And 32 through 37.
 15 THE COURT: All right. No objection?
 16 MR. DRESSLER: No objection, Your Honor.
 17 THE COURT: All right, all those are admitted.
 18 (Trial Exhibits 3-9, 11-21, 23, 28-30 and 32-37 received
 19 in evidence)
 20 MR. FARNHAM: Additionally there is Exhibit 218,
 21 which will be referenced in the Gibson testimony and that's a
 22 stipulated exhibit.
 23 THE COURT: All right. No objection?
 24 MR. DRESSLER: No objection.
 25 THE COURT: All right. 218 is admitted.

1 (Trial Exhibit 218 received in evidence)
 2 THE COURT: All right. Can we start?
 3 MR. FARNHAM: Yes, Your Honor.
 4 MR. DRESSLER: When we take a break, I have something
 5 I'll bring up.
 6 THE COURT: All right. Let's get started.
 7 (The following proceedings were held in the presence
 8 of the Jury)
 9 THE COURT: Okay. You may be seated.
 10 Good morning, ladies and gentlemen. I apologize for the
 11 delay. There were a number of traffic incidents in the Bay
 12 area, and I did what my wife tells me not to do, which is to
 13 take surface streets, and I got myself in a total jam, and
 14 ended up just backtracking. So, I'm sorry for the delay. But
 15 we are going to forge ahead.
 16 A little bit unusual, we are going to have a witness
 17 testify via sort of satellite hookup, and the witness will
 18 appear on the screen. Not quite as close as the witness stand,
 19 but because of distance this is how everybody has agreed to
 20 proceed.
 21 So, why don't you go ahead and call your witness.
 22 MR. FARNHAM: Yes, Your Honor. We would call Richard
 23 Gibson from Dallas, Texas.
 24 THE COURT: All right.
 25 MR. CURL: He's on his way.

1 MR. FARNHAM: All right. I'm sorry, Your Honor. He
 2 should have been seated. We have told everybody, Court and
 3 Government side, but apparently he's not there.
 4 THE COURT: Is he -- do we know his whereabouts?
 5 MR. FARNHAM: He's in the building there, and he
 6 should have been ready.
 7 THE COURT: Okay. Well, sorry again for the delay,
 8 but hopefully this will only be momentarily.
 9 Can everybody see the screen all right?
 10 (The Jury indicates in the affirmative)
 11 MR. DRESSLER: If I'm blocking anyone, let me know,
 12 and I'll get out of the way.
 13 MR. FARNHAM: I do apologize. Everybody should have
 14 been standing by.
 15 Is anyone there in Dallas?
 16 MR. CURL: I muted it on our end, but they are on
 17 their way up.
 18 MR. FARNHAM: Your Honor, I hate to say this. The
 19 update I just got was: "Five minutes, bathroom." Mr. Gibson
 20 is also in his eighties.
 21 THE COURT: All right. So, what does that mean, he's
 22 in his --
 23 MR. FARNHAM: Your Honor, one thing we could do is we
 24 could call Mr. Hornstein, another witness who is in the hallway
 25 and ready to go.

1 THE COURT: Well, then, maybe we should do that,
2 since we've already lost a half an hour today.
3 MR. FARNHAM: I appreciate that.
4 THE COURT: I don't know how long that's going to
5 take.
6 (Off-the-Record discussion between counsel)
7 MR. FARNHAM: Your Honor, the Government would call
8 Val Hornstein.
9 THE COURT: All right. So, someone will let
10 Mr. Gibson know how long it will be before you are ready for
11 him? I assume somebody will communicate that.
12 MR. FARNHAM: Yes, Your Honor.
13 THE COURT: Okay.
14 MR. FARNHAM: It would all seem to be too good to be
15 true, when I saw the chair in Dallas.
16 THE COURT: Okay.
17 VAL HORNSTEIN,
18 called as a witness for the Government herein, having been
19 first duly sworn, was examined and testified as follows:
20 THE WITNESS: Yes.
21 THE CLERK: Please state your full name for the
22 record, and spell your last name, please.
23 THE WITNESS: My name is Val Hornstein. My last name
24 is spelled H-O-R-N-S-T-E-I-N.
25 THE COURT: All right. Thank you, Mr. Hornstein.

1 All right, Mr. Farnham, you may proceed.
2 MR. FARNHAM: Thank you.
3 DIRECT EXAMINATION
4 BY MR. FARNHAM:
5 Q Good morning Mr. Hornstein. What do you do for a living?
6 A I'm an attorney at law.
7 Q And where do you practice?
8 A San Francisco, primarily.
9 Q And, how long have you been an attorney?
10 A Since 1985, I think.
11 Q What type of law do you practice?
12 A Mostly business and intellectual property law. Some civil
13 litigation.
14 Q And do you work at your own firm or with other attorneys?
15 A I have my own firm.
16 Q And what do you call that law firm?
17 A Hornstein Law.
18 Q How long have you had that firm, your own practice?
19 A Since 1995.
20 Q Do you know someone named James Murray?
21 A I do.
22 Q How do you know him?
23 A He was a client of mine at one point.
24 Q And when did you first meet him?
25 A I believe it was in 2007. I think the end of that year,

1 third quarter, fourth quarter.
2 Q And what were the circumstances under which you met
3 Mr. Murray at the end of 2007?
4 A He called me, and asked me to see if I was interested in
5 representing him in a civil litigation case that he thought he
6 might have.
7 Q Prior to discussing that potential case, had you met
8 Mr. Murray before?
9 A Not prior to my meeting him after that call, no.
10 Q And do you know how he got your name?
11 A I do not.
12 Q So, after you discussed that potential case with him, did
13 you -- did he retain you?
14 A Yes.
15 Q And, who was the retention agreement with? Who retained
16 you, exactly?
17 A I believe it was James Murray, individually.
18 Q Were there any entities as part of that?
19 A I don't think that there were, no.
20 Q Tell me about type of case Mr. Murray retained you for in
21 2007.
22 A I'm not going to divulge any confidences, but what's
23 publicly known is that in the pleadings in the case, he
24 believed that in a banking transaction, that the Bank of
25 America had committed a libel or a defamation against him

1 during the course of a banking -- banking transaction or series
2 of banking transactions.
3 Q And what -- in the public documents, what were the
4 allegations in that lawsuit?
5 MR. DRESSLER: I'm going to object, to relevance.
6 THE COURT: Overruled.
7 THE WITNESS: Could you repeat the question, please?
8 BY MR. FARNHAM:
9 Q Just according to the publicly available documents, I
10 don't want you to disclose any attorney/client communications,
11 but in the public filings, what were the factual allegations in
12 that lawsuit?
13 A My recollection is that Mr. Murray was a stock trader or
14 hedge fund operator, something of the that nature. And that he
15 had instructed the Bank of America to send a wire transfer to
16 another financial institution, or I think an intermediary bank,
17 for the benefit of a financial trading institution in Chicago,
18 as I recall.
19 And at some point during the course of that process, the
20 Bank of America attempted to recall the wire transfer by
21 alleging or stating to the recipient bank that there may have
22 been some suspicious activity with the wire transfer. And, I
23 believe that the Bank of America was successful in retracting
24 the wire --
25 MR. DRESSLER: Excuse me. I apologize.

1 Your Honor, I think this is irrelevant.
 2 THE COURT: All right. At this point, I don't see
 3 the relevance of it. I think that's enough detail. So --
 4 MS. HARRIS: Fair enough. If I could ask one last
 5 question, clarifying?
 6 BY MR. FARNHAM:
 7 Q The lawsuit was actually filed against Bank of America?
 8 A Yes, it was.
 9 Q And you filed that on behalf of Mr. Murray.
 10 A Yes, that's right.
 11 Q What was the result of that lawsuit?
 12 MR. DRESSLER: Objection, irrelevant.
 13 BY MR. FARNHAM:
 14 Q And the timing --
 15 THE COURT: Well --
 16 MR. FARNHAM: It's relevant to the scope of the
 17 representation of Mr. Murray. And we're just about finished
 18 with it, Your Honor.
 19 THE COURT: Well, you can say how it ended. We don't
 20 need to know what the result was, unless you can demonstrate to
 21 me that the result is relevant. You can say when it
 22 terminated.
 23 MR. FARNHAM: I think it is relevant to the -- to how
 24 final that termination was. But, fair enough.
 25

1 BY MR. FARNHAM:
 2 Q When did that lawsuit end?
 3 A I believe it ended in a summary judgment in favor of Bank
 4 of America, in -- I believe it was the summer or early autumn
 5 of 2009.
 6 Q And did your representation of Jim Murray in connection
 7 with that lawsuit continue after that point?
 8 A My representation of Jim Murray with that lawsuit ended at
 9 that point.
 10 Q Did you ever do any legal work for any companies owned by
 11 Jim Murray?
 12 A I don't -- I don't believe so. There was one instance
 13 where Mr. Murray asked me to get involved in another bank
 14 problem that he was having with Wells Fargo, but I don't think
 15 -- I think that was personal for him, also.
 16 Q And what time frame was that?
 17 A That was during the course of my representation of him in
 18 the Bank of America case.
 19 Q So, prior to the middle of 2009.
 20 A Prior to the termination of the Bank of America -- yes.
 21 Q And did you ever do any legal work for a company called
 22 Market Neutral Trading?
 23 A No.
 24 Q At some point did you discuss a business venture with
 25 Mr. Murray?

1 A Yes, I did.
 2 Q Tell us about that, just briefly.
 3 A Repeat the question, please?
 4 Q Can you just tell us about that, briefly?
 5 A Yeah. I had another client that was interested in
 6 engaging in a with business transaction involving -- I believe
 7 it involved what's called life viaticals, which is a type of
 8 life insurance contract.
 9 MR. DRESSLER: Excuse me.
 10 THE WITNESS: And they --
 11 THE COURT: Okay, hold on.
 12 MR. DRESSLER: I object; irrelevant.
 13 THE COURT: This -- the question was whether or not
 14 Mr. Murray had suggested some kind of business relationship.
 15 And I don't -- and that that's -- that's relevant enough to go
 16 forward. I believe that's what subject of this is. Right?
 17 Of your -- the subject of your testimony is about a
 18 potential business relationship involving Mr. Murray? Between
 19 a client of yours and him? Is that what you are testifying
 20 about?
 21 THE WITNESS: Essentially, yes. That's one way of
 22 putting it.
 23 MR. FARNHAM: And two more questions, and I think
 24 we'll be finished with this line, Your Honor. And it does go
 25 to their relationship, which I think is a key point in this

1 case.
 2 MR. DRESSLER: I'm going to object to the commentary.
 3 THE COURT: All right. That commentary is stricken.
 4 And the jury is to disregard that comment by Counsel.
 5 BY MR. FARNHAM:
 6 Q Did anything happen with that possible business
 7 relationship between you and Mr. Murray?
 8 A I drew up a contract. And, I don't even know if it was
 9 ever signed. And I think nothing -- it was an aborted affair.
 10 Nothing ever happened to -- with it.
 11 Q Was that legal work? You, as a lawyer?
 12 A No. I made it explicitly clear that it was not legal work
 13 in any regard. It was a strictly arms-length business
 14 transaction that we were going enter into, possibly.
 15 MR. FARNHAM: Your Honor, I would like to show --
 16 publish to the jury and show Mr. Hornstein what's been
 17 previously admitted as Exhibit 145.
 18 THE COURT: All right.
 19 (Witness examines document)
 20 (Document displayed)
 21 BY MR. FARNHAM:
 22 Q Looking at Exhibit 145, I do want to draw your attention
 23 -- we should have it up on the screen in a minute.
 24 Do you see that first page, says "Market Neutral Trading"
 25 on the front?

1 A Yes.

2 Q If you could turn to Page 9 of this document, and if we
3 could show that on the screen?

4 A Yes.

5 (Document displayed)

6 Q You see that there's a line that says "Legal"?

7 A Yes.

8 Q What does it say after that?

9 A It has the name of my law firm.

10 Q Did you ever do legal work or -- let me ask it this way:
11 Were you ever a service provider to Market Neutral Trading,
12 providing legal services?

13 A No.

14 Q And did you know that your office, your firm name was
15 being used on a document like this?

16 A I was not aware of that.

17 MR. FARNHAM: If I could approach with a couple of
18 other --

19 THE COURT: All right.

20 MR. FARNHAM: -- previously admitted exhibits,
21 Your Honor.

22 BY MR. FARNHAM:

23 Q Mr. Hornstein, I have handed you what have been previously
24 marked and admitted as Exhibits 201 and 202. If we could first
25 look at Exhibit 201.

1 (Request complied with by the Witness)

2 Q And do you see the first page of that? What does that
3 say?

4 A The cover page says "Due Diligence Questionnaire." Dated
5 October, 2010. Market Neutral Trading.

6 Q And what is the date of this document?

7 A October, 2010.

8 Q If you could turn to Page 6.

9 (Request complied with by the Witness)

10 A Yes.

11 MR. FARNHAM: And if we could zoom in on the Question
12 15 there.

13 BY MR. FARNHAM:

14 Q You see, is your firm listed therein?
15 (Document displayed)

16 A It is.

17 Q And, do you see it's listed next to the question:
18 "Does the firm have any business relationships
19 with any...providers..."
20 Is that where your firm is listed next to?

21 A Yes.

22 Q Did you have any business relationship or legal
23 relationship as counsel for Market Neutral Trading in October,
24 2010?

25 A No.

1 Q And, did you know that you were listed -- your firm was
2 listed on this document?

3 A I did not know that.

4 Q What is the address that is listed for your offices there?

5 A The address listed there is 20 California Street, 7th
6 Floor, San Francisco --

7 Q Does that -- I'm sorry; go ahead. Was that ever your
8 office?

9 A Yes, it was.

10 Q Was it your office in October of 2010?

11 A No, it was not.

12 Q When did you move out of that office, approximately?

13 A June of 2009.

14 Q If I could ask you to look at Exhibit 202, which should
15 also be in front of you. That's been previously admitted.

16 A 202, yes.

17 Q What does the first page of Exhibit 202 say?

18 A This says "Market Neutral Trading Due Diligence Report,"
19 dated January, 2011.
20 (Document displayed)

21 Q If I could ask you first to look at Page 14.
22 (Document displayed)

23 Q And, do you see, what do you see under "Legal Counsel" on
24 that page?

25 A It has my firm name, and old address, my name, and my

1 email address and phone number.

2 Q And that address, that street address, was that the street
3 address of Market -- of your law firm in January, 2011?

4 A No.

5 Q Did you know that you were listed on a Market Neutral
6 Trading document like this?

7 A No.

8 Q And did you give permission to have your name used in any
9 way with regard to Market Neutral Trading?

10 A No.

11 Q If we could go back a few pages to Page 12 of Exhibit 202.
12 (Document displayed)

13 (Request complied with by the Witness)

14 Q Do you see the second paragraph on this page under "Blue
15 Sky Exemption Filings"?

16 A Yes.

17 Q What does it say there?

18 A It says (As read):
19 "Blue Sky Exemptions Filings."
20 Says:
21 "Hornstein Law Offices is responsible for
22 overseeing Blue Sky compliance for the MNT fund. The
23 GP notifies Hornstein with state residence details of
24 each new LP investor."
25 Q Hornstein Law Offices, is that your firm?

1 A It is, yes.
 2 Q Were you ever responsible for overseeing Blue Sky
 3 compliance for the MNT fund?
 4 A No.
 5 Q Have you ever done Blue Sky compliance for any hedge fund?
 6 A No.
 7 Q It said also:
 8 "The GP notifies Hornstein with state residence
 9 details of each new LP investor."
 10 Did you ever get any information or details about that?
 11 A No, never.
 12 Q Under "Filings: 13(d), (f) and (g)," there's another
 13 reference to your name. Do you see that?
 14 A Yes.
 15 Q What does it say there?
 16 A Says (As read):
 17 "Filings: 13(d), (f), and (g). The investment
 18 manager will utilize Hornstein to manage the filing
 19 process."
 20 Q Did you know that your name was being used in reference to
 21 managing filing processes for Market Neutral Trading?
 22 A No, I did not.
 23 MR. DRESSLER: I apologize. What page and what
 24 exhibit are we on right now?
 25 MR. FARNHAM: Exhibit 202, and that is Page 12.

1 BY MR. FARNHAM:
 2 Q Have you ever done work where you advised a hedge fund on
 3 drafting offering materials or reviewing offering materials?
 4 A No.
 5 Q And what about for Market Neutral Trading? Have you ever
 6 done any of that work?
 7 A Never.
 8 Q Did you ever -- have you ever advised a hedge fund
 9 regarding regulatory compliance?
 10 A No.
 11 Q And for MNT, Market Neutral Trading, did you ever provide
 12 that service?
 13 A No.
 14 Q At some point after your work on Mr. Murray's lawsuit
 15 ended in 2009, did you receive a phone call regarding Market
 16 Neutral Trading?
 17 A I did.
 18 Q Who called you?
 19 A I don't --
 20 MR. DRESSLER: Excuse me. Objection, hearsay.
 21 THE COURT: What is the hearsay exception?
 22 MR. FARNHAM: The first question was who called him.
 23 THE COURT: Well, all right. I'll allow him to
 24 answer that.
 25 THE WITNESS: I don't know the person's name.

1 BY MR. FARNHAM:
 2 Q Did you know him prior to that call?
 3 A I did not.
 4 Q He called you out of the blue?
 5 A Yes.
 6 Q When was this call --
 7 MR. DRESSLER: Objection to what's coming.
 8 THE COURT: Well --
 9 BY MR. FARNHAM:
 10 Q When was this call, as best you can recall?
 11 A I'm sorry; say again?
 12 Q When was this call, if you can recall?
 13 A I believe it was in late -- I'm just trying to recall what
 14 office I was in at the time. That is how I am placing it
 15 visually.
 16 So, I believe it would have been in late 2009 -- or mid to
 17 late 2009 or early 2010. But I think it was more in the late
 18 2009 time frame.
 19 MR. FARNHAM: Your Honor, I would like to ask what
 20 the call is about without asking for specifics for statements
 21 from the caller, and I think it's relevant to show
 22 Mr. Hornstein's actions after that call.
 23 MR. DRESSLER: I object, Your Honor. I mean, it's --
 24 he's obviously going to be asking the content of the call, and
 25 Mr. Hornstein's actions afterward (Inaudible).

1 THE COURT: Well, I'm not sure what the relevance is
 2 of his actions afterwards.
 3 MR. FARNHAM: Well, I'll lay a foundation for that,
 4 and we can get back --
 5 THE COURT: Why don't you lay a foundation for that
 6 first, before I rule on it.
 7 BY MR. FARNHAM:
 8 Q After you received this call from a person you did not
 9 know, what did you do?
 10 A After the call, I think I picked up the phone and called
 11 Jim Murray.
 12 Q And why did you do that?
 13 A Because I was quite upset.
 14 Q Why?
 15 A Because the caller --
 16 MR. DRESSLER: Well --
 17 THE WITNESS: -- had been --
 18 THE COURT: Right.
 19 MR. DRESSLER: Object to that. He can talk about
 20 what he was upset about with Mr. Murray, but not the content of
 21 the --
 22 THE COURT: Well, it's going to come out when he
 23 describes his call to Mr. Murray. So, I'm going to overrule
 24 the objection.
 25 You can go ahead and answer, Mr. Hornstein.

1 THE COURT: Would you repeat the question, please?
 2 BY MR. FARNHAM:
 3 Q I think you said that you were -- what was your state of
 4 mind at that point when you called Mr. Murray?
 5 A I was upset.
 6 Q And why is that?
 7 A Because the caller had called me, apparently having been
 8 told that I was a reference for one of Mr. Murray's companies,
 9 I think. That's the gist of the call, as I recall it.
 10 And, the fact is that I was not a reference for any of
 11 Mr. Murray's companies. Had never done any business with them.
 12 And I was quite upset that he had given my name as a reference
 13 for something I couldn't make a reference for.
 14 Q And did you make a request to Mr. Murray?
 15 A I believe I said "Please don't do it again."
 16 Q What did Mr. Murray say to you?
 17 A I don't recall.
 18 Q And generally how did you feel about this situation?
 19 MR. DRESSLER: Objection, irrelevant.
 20 THE COURT: Sustained.
 21 BY MR. FARNHAM:
 22 Q After that, did you have any other contact with Jim
 23 Murray?
 24 A I think I had one further contact. And that was the
 25 business transaction that you had inquired about previously.

1 Q And that was not -- was that a legal transaction or
 2 arrangement?
 3 MR. DRESSLER: Objection, asked and answered.
 4 THE COURT: Sustained.
 5 MR. FARNHAM: Just a moment, Your Honor.
 6 (Off-the-Record discussion between counsel)
 7 BY MR. FARNHAM:
 8 Q Mr. Hornstein, I asked you about a few documents that were
 9 exhibits there. Exhibit 145, Exhibit 201, Exhibit 202. Did
 10 you ever see any of those documents in 2011 when the Exhibits
 11 202 and -- 201 and 202 are dated?
 12 A No.
 13 Q And did you know that your name had been listed on
 14 documents related to Market Neutral Trading?
 15 A I did not know.
 16 Q And did you ever give Mr. Murray permission to use your
 17 name in connection with Market Neutral Trading in any way?
 18 A No, I never did.
 19 MR. FARNHAM: Thank you, Your Honor.
 20 THE COURT: Thank you.
 21 Cross-examination?
 22 CROSS EXAMINATION
 23 BY MR. DRESSLER:
 24 Q Good afternoon. Or good morning.
 25 A Good morning.

1 Q You still have the same telephone number throughout the
 2 last -- well, starting -- on the exhibits that you were showed
 3 that had an address that you had moved from, there was a
 4 telephone number.
 5 Do you still have the same telephone number?
 6 A Yes, I do.
 7 Q Okay. And, do you know what FINRA is?
 8 A I do.
 9 Q And as opposed to me butchering it, could you tell me what
 10 that stands for?
 11 A Stands for the Financial Industry Regulatory Authority.
 12 Q And you are an arbiter for FINRA from time to time,
 13 correct?
 14 A That is correct.
 15 Q Okay. And you also do complex securities disputes,
 16 including civil litigation relating thereto, correct?
 17 MR. FARNHAM: Objection. Relevance, and beyond the
 18 scope.
 19 MR. DRESSLER: Well, he's --
 20 THE COURT: Overruled.
 21 THE WITNESS: Yes, I do.
 22 MR. DRESSLER: I have no other questions. Thank you.
 23 THE COURT: Thank you.
 24 Anything further on redirect?
 25 MR. FARNHAM: Briefly, Your Honor.

1 REDIRECT EXAMINATION
 2 BY MR. FARNHAM:
 3 Q Other than the litigation that you handled for Jim Murray
 4 that ended in 2009, did you handle any complex securities
 5 litigation matters for him?
 6 A No.
 7 MR. FARNHAM: Thank you.
 8 THE COURT: All right. Anything further?
 9 MR. DRESSLER: No, Your Honor.
 10 THE COURT: All right. Mr. Hornstein, you are
 11 excused, and you may step down. Thank you.
 12 THE WITNESS: Thank you.
 13 (Witness excused)
 14 THE COURT: Is the Government prepared to call its
 15 next witness?
 16 MR. FARNHAM: Yes, Your Honor. Yes would call
 17 Richard Gibson from Dallas, Texas.
 18 THE COURT: All right. The record will reflect that
 19 Mr. Gibson is appearing via satellite hookup.
 20 RICHARD HEREFORD GIBSON,
 21 called as a witness for the Government herein, having been
 22 first duly sworn, was examined and testified as follows:
 23 THE CLERK: Please state your full name for the
 24 record, and spell your last name, please.
 25 THE WITNESS: Richard Hereford Gibson.

1 DIRECT EXAMINATION
 2 BY MR. FARNHAM:
 3 Q Good morning, Mr. Gibson.
 4 A Good morning.
 5 Q Thank you for appearing here by video from Dallas. Can
 6 you tell me, how old are you?
 7 A Seventy-eight.
 8 Q And, where do you live?
 9 A Longview, Texas.
 10 Q How long have you lived in Texas?
 11 A All my life.
 12 Q You are appearing from Dallas. I wanted to ask you
 13 briefly about that. Is it difficult for you to travel?
 14 A Yes, sir.
 15 Q And why is that?
 16 A My wife --
 17 MR. DRESSLER: Your Honor --
 18 THE COURT: Hold on.
 19 THE WITNESS: -- had open-heart surgery last year and
 20 had --
 21 THE COURT: All right.
 22 MR. FARNHAM: Mr. Gibson --
 23 THE COURT: All right, hold on for a second.
 24 MR. DRESSLER: Can we approach the bench? I
 25 apologize.

1 (Whereupon, the following proceedings were held at
 2 sidebar.)
 3 MR. DRESSLER: I apologize for the interruption, but
 4 I had no idea that they were going to be doing this. All
 5 right? He can't be here; they don't need to know the reason.
 6 And I don't think they should be entitled to get into his
 7 wife has been dying of some ailment for a period of time. It's
 8 irrelevant.
 9 MR. FARNHAM: It's purely just a explanation of
 10 context for the jury, why he's on the video screen and not live
 11 here.
 12 THE COURT: We don't need that. That's -- under 403,
 13 I'm going to exclude that. Let's not get into that. Let's
 14 move on.
 15 MR. FARNHAM: Thank you.
 16 (Conclusion of sidebar discussion; the following
 17 proceedings were held in the presence and hearing of
 18 the Jury:)
 19 THE COURT: All right. Thank you. You may proceed.
 20 MR. FARNHAM: Thank you.
 21 BY MR. FARNHAM:
 22 Q Mr. Gibson, I will ask for you to pause just a minute,
 23 before you answer, to let attorneys here object, and let the
 24 Judge rule on those. We will just have a back and forth. I'll
 25 ask you to just pause a minute before you answer.

1 And you are in Dallas, Texas, today, Mr. Gibson?
 2 A Yes, sir.
 3 Q And, do you understand that you are under oath, and
 4 obligated to tell the truth, just as if you were here in
 5 San Francisco?
 6 A Yes, sir.
 7 Q Mr. Gibson, are you retired?
 8 A Yes, sir.
 9 Q What did you do before you retired?
 10 A I was in the retail business.
 11 Q What type of stores?
 12 A Early on, discount stores, similar to Walmart. And later,
 13 drugstores.
 14 Q And how long have you been retired?
 15 A About 12 years.
 16 Q I want to talk about an investment you made in Market
 17 Neutral Trading, but first I want to just briefly ask, how long
 18 have you been investing your retirement and savings?
 19 A Well, I started investing probably 50 years ago.
 20 Q And what types of investments have you done over the
 21 years?
 22 A Stocks, oil and gas, real estate. And mutual funds, and
 23 hedge funds.
 24 Q And when did you start investing in hedge funds?
 25 A In 1993.

1 Q When you were finding hedge funds to invest in, how did
 2 you find out about them?
 3 A Word of mouth, and people sending me emails about --
 4 Q When you were investing in hedge funds, what types of --
 5 what was significant to you? What were you looking for?
 6 A I was looking for a decent return and somebody that could
 7 limit losses.
 8 Q Were you looking for any particular service providers or
 9 safeguards, safekeepers for the fund?
 10 A Yes, sir.
 11 Q What types of things did you look for?
 12 A The audited statements, a third-party administrator, and a
 13 broker that was a custodian for the money or the stocks, and --
 14 and of course, a bank would have to have the money.
 15 Q Tell me why an administrator was important to you.
 16 A They're the accounting, and they're a third-party
 17 administrator, so they're not related or a part of the fund,
 18 itself.
 19 Q And you mentioned auditors. Audited financial statements.
 20 Was that significant to you?
 21 A Yes, sir. Very.
 22 Q Why?
 23 A Because it gives you an honest and accurate -- of the
 24 numbers that the fund reports.
 25 Q And did funds you invested in prior to Market Neutral

1 Trading, did they have auditors and audited financial
2 statements?
3 A Yes, sir. Every one of them.
4 Q How did you first learn about Market Neutral Trading?
5 A I received an email from Paul Eckel in February of '11, I
6 believe it was.
7 Q How did you know Mr. Eckel?
8 A I didn't know him. He's a marketer -- or my understanding
9 was he was a marketer for some funds, and he sent me some
10 information on MNT.
11 Q After Mr. Eckel contacted you, did you request additional
12 information?
13 A Yes, sir.
14 Q What types of information did you request?
15 A I asked for the presentation of the fund, and I asked for
16 an audited statement.
17 Q Mr. Gibson, you should have there or someone should hand
18 you Exhibit 208.
19 A Yes, sir.
20 Q Do you recognize that document?
21 A Yes, sir.
22 Q What is it?
23 A It's a presentation by the fund.
24 Q And did you receive that from Mr. Eckel in the beginning
25 of 2011?

1 A Yes, sir.
2 Q And if you turn to Page 10 of this document, briefly, is
3 that your writing on it?
4 (Witness examines document)
5 Q It's actually the last page.
6 A Yes, sir.
7 Q That is your writing?
8 A Yes, sir.
9 MR. FARNHAM: Your Honor, I would offer Exhibit 208
10 into evidence.
11 THE COURT: Any objection?
12 MR. DRESSLER: No objection.
13 THE COURT: Admitted.
14 (Trial Exhibit 208 received in evidence)
15 MR. FARNHAM: And if we could publish that to the
16 jury, please, Your Honor.
17 THE COURT: All right.
18 (Document displayed)
19 BY MR. FARNHAM:
20 Q Mr. Gibson, did you review Exhibit 208 before you decided
21 to invest in Market Neutral Trading?
22 A Yes, sir.
23 Q If you could turn to Page 3 of that document.
24 (Document displayed)
25 (Request complied with by the Witness)

1 A Yes, sir.
2 Q Do you see that the top half of that is a biography of
3 Mr. James Murray?
4 A Yes, sir.
5 Q When you reviewed this portion of the document, what was
6 your impression of Mr. Murray's background and education?
7 A I thought it was -- I thought it was good.
8 Q How did the background and education of Mr. Murray play a
9 role in your decision to invest?
10 A Well, obviously, you want somebody investing your money
11 that's -- that has a good education, which would show that
12 they're smart.
13 Q And did you look at his list of prior employers, also?
14 A Yes, sir.
15 Q And what was your impression after looking at that?
16 A Well, it showed -- it showed what he did, and he worked
17 with some good firms.
18 Q If you could turn to Page 7 of Exhibit 208.
19 (Request complied with by the Witness)
20 (Document displayed)
21 Q And I'm referring to the --
22 A Yes, sir.
23 Q -- Exhibit 208-0007. What is this page?
24 A This is a sheet that shows his returns by month, and by
25 year.

1 Q And did you review this document before you invested?
2 A Yes, sir.
3 Q And, what did you -- what was your impression after you
4 reviewed Page 7 of this document?
5 A I liked the fund because it didn't have large losses,
6 which is what I was looking for. And in '08, which was a
7 disastrous year for the market, he made money.
8 Q Why were you looking at '08 in particular?
9 A Because the market was down 38 percent. And most money
10 managers were down quite a bit.
11 Q And did you rely on this performance information in making
12 your decision to invest?
13 A Yes, sir.
14 Q Did you rely on it being true?
15 A Yes, sir.
16 Q At the very top of that page, the title of this page says
17 "Fund Returns." Do you see that?
18 A Yes, sir.
19 Q When you read that, what did that mean to you?
20 A That meant to me how much the fund made and/or lost each
21 month and each year since its inception.
22 Q For its investors.
23 A Yes, sir.
24 Q If you could turn to Page 9 of Exhibit 208.
25 (Request complied with by the Witness)

1 A Yes, sir.
 2 (Document displayed)
 3 Q What is this page?
 4 A This page is -- shows his prime broker and the
 5 administrator and the auditor and the legal, then his fees.
 6 Q And was this --
 7 A And liquidity.
 8 Q The administrator and the auditor and the legal portions,
 9 were they important to you?
 10 A Yes, sir.
 11 Q Why is that?
 12 A Well, you want -- like I say, you want a prime broker
 13 because he's the custodian. You want the administrator because
 14 he's an independent accounting of the returns on the investment
 15 and (Inaudible). You want an auditor to verify the accuracy of
 16 everything. You want a law office to -- to make sure that all
 17 the documents are legal, proper.
 18 Q Did you request any audited financial statements before
 19 you invested in Market Neutral Trading?
 20 A Yes, sir.
 21 Q If you could look at what's been marked as Exhibit 215,
 22 215.
 23 A Yes, sir.
 24 (Request complied with by the Witness)
 25 Q And do you recognize Exhibit 215?

1 A Yes, sir.
 2 Q Is this a document from your files regarding Market
 3 Neutral Trading?
 4 A Yes, sir.
 5 Q And did you review it before you invested?
 6 A Yes, sir.
 7 MR. FARNHAM: Your Honor, I would offer Exhibit 215
 8 into evidence, and ask to publish it to the jury.
 9 THE COURT: Any objection?
 10 MR. DRESSLER: No objection.
 11 THE COURT: Admitted.
 12 (Trial Exhibit 215 received in evidence)
 13 THE COURT: You may publish.
 14 (Document displayed)
 15 BY MR. FARNHAM:
 16 Q If you look at the first page of Exhibit 215, you see it
 17 says "FINANCIAL STATEMENTS AND INDEPENDENT AUDITORS' REPORT"?
 18 A Yes, sir.
 19 Q What did that mean to you?
 20 A It was the -- financial statements are the value of the
 21 fund, and independent things that's -- it's third party.
 22 It's -- doesn't own any of it, nor would it be a relative.
 23 Q Did you --
 24 A No association there.
 25 Q Did you specifically ask for the 2010 audit reports?

1 A Yes, sir.
 2 Q Why?
 3 A I wanted to see the last year's audit.
 4 Q Why was that?
 5 A To verify that it was legit. Legitimate.
 6 Q And would you have invested in Market Neutral Trading if
 7 it did not have an independent auditor?
 8 A No, sir.
 9 Q Would you have invested in Market Neutral Trading if you
 10 had not received this independent auditors' report that you
 11 requested?
 12 A No, sir.
 13 Q Did you end up making an investment in Market Neutral
 14 Trading, based on the materials that you reviewed?
 15 A Yes, sir.
 16 Q What types of accounts or assets did you have that you
 17 invested in Market Neutral Trading?
 18 A In my -- in my IRA.
 19 Q And when you say "IRA," is that an individual retirement
 20 account?
 21 A Yes, sir.
 22 Q Did you have to use a custodian of some sort to do that
 23 investment?
 24 A Yes, sir.
 25 Q Who was that?

1 A Millennium Trust.
 2 Q If I could ask you to look at what's been marked as
 3 Exhibit 212, which should be in front of you.
 4 Do you see that exhibit -- I'm sorry. Do you see Exhibit
 5 212?
 6 A Yes, I've got it.
 7 Q Do you see that that's an email from someone named Gina
 8 Kivenas? G-I-N-A, K-I-V-E-N-A-S?
 9 A Yes, sir.
 10 Q Can you see it's dated April 21, 2011?
 11 A Yes, sir.
 12 Q Is this an email regarding your investment in Market
 13 Neutral Trading?
 14 A Yes, sir.
 15 Q And you received it about that time?
 16 A Yes, sir. On the 21st of April.
 17 MR. FARNHAM: Your Honor, I would offer Exhibit 212
 18 into evidence.
 19 MR. DRESSLER: No objection.
 20 THE COURT: All right. Admitted.
 21 (Trial Exhibit 212 received in evidence)
 22 MR. FARNHAM: And I would like to publish it to the
 23 jury.
 24 THE COURT: All right.
 25 (Document displayed)

1 BY MR. FARNHAM:
 2 Q If I could direct your attention, Mr. Gibson, to the first
 3 paragraph after "Dear Paul Eckel." Do you see that?
 4 A Yes, sir.
 5 Q And what does that first sentence say?
 6 A (As read)
 7 "Please be advised that funds in the amount of
 8 \$250,000 were wired to JP MorganChase today for a
 9 purchase of Market Neutral Trading, LLC for the
 10 following investor..."
 11 Q Was that the amount of your investment in Market Neutral
 12 Trading?
 13 A Yes, sir.
 14 Q Did you personally make any additional investments in
 15 Market Neutral Trading?
 16 A No, sir.
 17 Q If I could just have you look at Exhibit 213.
 18 A Yes, sir.
 19 Q What is Exhibit 213?
 20 A I'm sorry; repeat the question?
 21 Q Sure. What is Exhibit 213?
 22 A It's the statement that I received each month from Market
 23 Neutral Trading, showing the value of my account.
 24 Q And were these documents from your files regarding Market
 25 Neutral Trading?

1 A Yes, sir.
 2 MR. FARNHAM: Your Honor, I would offer Exhibit 213
 3 into evidence.
 4 MR. DRESSLER: No objection.
 5 THE COURT: Admitted.
 6 (Trial Exhibit 213 received in evidence)
 7 MR. FARNHAM: Thank you. And I would like to publish
 8 pages.
 9 THE COURT: All right.
 10 (Document displayed)
 11 BY MR. FARNHAM:
 12 Q There are a few months here, but if we could just look at
 13 the last month, which is on the last page, Page 8 of 213.
 14 A Yes, sir.
 15 (Document displayed)
 16 Q What is the date of this statement?
 17 A January 31st of 2012.
 18 Q Did you ever receive any statements from Market Neutral
 19 Trading after this date?
 20 A No, sir.
 21 Q If I could ask you to look at Exhibit 206.
 22 A Yes, sir.
 23 Q What is Exhibit 206?
 24 A It's the performance sheet of MNT Trading.
 25 Q And, did you receive this from Market Neutral Trading?

1 A I received that -- I believe, Paul Eckel.
 2 Q Is that your writing on the document?
 3 A Yes, sir.
 4 MR. FARNHAM: Your Honor, I would offer Exhibit 206
 5 into evidence.
 6 THE COURT: Any objection?
 7 MR. DRESSLER: No objection.
 8 THE COURT: Admitted.
 9 (Trial Exhibit 206 received in evidence)
 10 MR. FARNHAM: If we could just -- if I could publish
 11 that to the jury, Your Honor?
 12 THE COURT: All right.
 13 (Document displayed)
 14 BY MR. FARNHAM:
 15 Q Mr. Gibson, did you receive documents like this regularly
 16 from Market Neutral Trading?
 17 A Yes.
 18 Q How often?
 19 A Monthly.
 20 Q At some point, did they stop being sent to you?
 21 A Yes, sir.
 22 Q Did that concern you?
 23 A Yes, sir.
 24 Q Do you remember when they stopped?
 25 A I believe the last one I received was in January of

1 (Inaudible).
 2 (Reporter interruption)
 3 BY MR. FARNHAM:
 4 Q Can you repeat that date, please?
 5 A January -- the last one I received was January, 2012.
 6 Q Why don't we look at Exhibit 214, then.
 7 A Yes, sir.
 8 Q What is that document?
 9 A I'm sorry. Repeat.
 10 Q What is Exhibit 214?
 11 (Witness examines document)
 12 A It's a performance sheet showing the returns.
 13 Q And you received that from Market Neutral Trading?
 14 A Yes, sir.
 15 MR. FARNHAM: I would offer Exhibit 214 into
 16 evidence.
 17 MR. DRESSLER: No objection.
 18 THE COURT: Admitted.
 19 (Trial Exhibit 214 received in evidence)
 20 MR. FARNHAM: And if we could publish that to the
 21 jury briefly, Your Honor?
 22 THE COURT: All right.
 23 (Document displayed)
 24 BY MR. FARNHAM:
 25 Q And again, this is the type of document that you would get

1 monthly.
 2 A That's correct.
 3 Q And, you think this was the last one you received?
 4 A That was the last one I received.
 5 Q And did that, not getting any more performance reports
 6 from Market Neutral Trading, did that concern you?
 7 A Yes, it did.
 8 Q I want to ask you about an entity named Gibson GP. What
 9 is Gibson GP?
 10 A It's a partnership.
 11 Q Who runs that?
 12 A Well, my brother was the general partner of it.
 13 Q And what, what type of partnership is it? What's its
 14 purpose?
 15 A Investing.
 16 Q And who are the partners in GP -- sorry, Gibson GP?
 17 A My brother, my daughter, and my grandchildren.
 18 Q Are you a partner, per se, in Gibson GP?
 19 A No, sir.
 20 Q Do you receive information about the partnership?
 21 A Yes, sir.
 22 Q What type?
 23 A I receive a financial statement once a quarter.
 24 Q Did you advise your brother on potential investments for
 25 the Gibson GP investment partnership?

1 A Yes, sir.
 2 Q And did you advise him that you were investing in Market
 3 Neutral Trading in about April of 2011?
 4 A Yes, sir.
 5 Q And at this point, was your brother running that
 6 partnership?
 7 A Yes, sir.
 8 Q What did your brother do after you told him that you had
 9 invested in Market Neutral Trading?
 10 A He made an investment.
 11 Q And how did you learn about that investment?
 12 A When I received the quarterly statement.
 13 Q Did your brother do his own research about investments?
 14 MR. DRESSLER: Can I object to this as irrelevant?
 15 THE COURT: Unless you can show the relevance of
 16 this, I'm going to sustain the objection.
 17 MR. FARNHAM: Your Honor, Gibson GP is a count -- one
 18 of the charged counts in this case.
 19 THE COURT: All right. Then it's relevant.
 20 Objection overruled.
 21 BY MR. FARNHAM:
 22 Q Mr. Gibson, did your brother do his own investment
 23 research? Or did he rely on you?
 24 A On this investment, he relied on me.
 25 Q And did you give him advice to -- did you recommend that

1 he should invest in Market Neutral Trading?
 2 A Yes, sir.
 3 Q If I could have you look at Exhibit 218, which is an
 4 exhibit that's already been admitted into evidence.
 5 MR. FARNHAM: And I would like to show that, if we
 6 could publish that, Your Honor.
 7 THE COURT: Okay. Well, yeah. You may publish it.
 8 It's already been admitted.
 9 (Document displayed)
 10 THE WITNESS: Yes, sir.
 11 BY MR. FARNHAM:
 12 Q I want to ask you, on the first page, if we could look at
 13 the -- it's near the top left, there's an amount. Do you see
 14 that?
 15 A Yes, sir.
 16 Q What's that amount?
 17 A 250,000.
 18 Q And, two lines below that, there's a value date. What
 19 does it say next to that?
 20 A I'm -- excuse me, I'm not seeing that value date.
 21 Q Sorry, I'm going quickly. Same page, Page 1. Underneath
 22 the amount, two lines down, there's a line titled "Value Date."
 23 A Oh, "Value Date." Excuse me. 4/29 of 2011.
 24 Q And is that shortly after you made your investment in
 25 Market Neutral Trading?

1 A Yes, sir.
 2 Q If you look down in that same column, near the bottom,
 3 there is a section called "Originator." Do you see that?
 4 A Yes, sir.
 5 Q What's listed under "Originator"?
 6 A "Gibson GP."
 7 Q And what is the address under "Gibson GP"?
 8 A 519 Gibson Street, in Seagoville, Texas.
 9 Q Do you recognize that address?
 10 A Yes, sir.
 11 Q What is that?
 12 A That's where my office is.
 13 Q Is this -- does this relate to the -- let me ask this:
 14 What was the amount of your brother's Gibson GP investment?
 15 A 250,000, initially.
 16 Q Did he make an additional investment?
 17 A I believe he did.
 18 Q If you could look at Page 3 of Exhibit 218.
 19 A I see it.
 20 Q And you see at the top of this page, there's an amount.
 21 What is that?
 22 A 75,000.
 23 Q Is that the amount of your brother's additional investment
 24 in Market Neutral Trading?
 25 A Yes, sir.

1 Q And, their value date there, do you see that?
 2 A 12/23/2011.
 3 Q Is that about the time that you recall your brother made a
 4 Market Neutral Trading investment on behalf of Gibson GP?
 5 A Yes, sir.
 6 Q And down below the "Originator" on this document, is that
 7 the same, same as the previous, "Gibson GP"?
 8 A Yes, sir.
 9 Q With the same address?
 10 A Yes, sir.
 11 Q The investment that you made into Market Neutral Trading,
 12 have you ever received any of that money back?
 13 A No.
 14 Q And have you ever received any statements or performance
 15 reports after the January, 2012 documents you talked about?
 16 A No, sir.
 17 MR. FARNHAM: Just a moment, Your Honor.
 18 THE COURT: Okay.
 19 (Off-the-Record discussion between counsel)
 20 MR. FARNHAM: I don't have further questions.
 21 THE COURT: All right. Thank you.
 22 Cross-examination? Mr. Dressler?
 23 MR. DRESSLER: Yes.
 24
 25

1 CROSS EXAMINATION
 2 BY MR. DRESSLER:
 3 Q Good morning, Mr. Gibson.
 4 A Hello.
 5 Q Can you hear me?
 6 A Yes, sir.
 7 Q Okay. Could you go to Exhibit 213 again?
 8 (Request complied with by the Witness)
 9 A Yes, sir.
 10 (Document displayed)
 11 Q Those are the statements that you received from Market
 12 Neutral Trading. Correct?
 13 A Yes, sir.
 14 Q And, did you receive those actually from Market Neutral
 15 Trading or from Millennium Trust?
 16 A From Market Neutral Trading.
 17 Q Okay. And with regard to --
 18 A Excuse me, sir. I probably got them -- I presume I got
 19 them -- I didn't get them from Millennium, but I think we
 20 probably get them from the third-party administrator.
 21 Q Okay. Thank you. With regard -- there appears to be
 22 eight pages of statements. Correct?
 23 A Yes, sir.
 24 Q Do you have any reason to -- as far as you know, those --
 25 do you have any reason to believe that the information in there

1 is incorrect, as you sit here right now?
 2 A No, sir.
 3 Q And, if you could go to 208, Page 8. Whoops, wrong page.
 4 You were shown -- oh, here it is. If you could go, I'm sorry,
 5 206, Page 1. I apologize.
 6 A Page -- excuse me just a second.
 7 Q Sure.
 8 (Document displayed)
 9 A Okay. 206?
 10 Q Page 1.
 11 A Yes, sir.
 12 Q Okay. All right. There are figures for January through
 13 December of 2010 on there. Correct?
 14 A Actually, 2011.
 15 Q Okay. I'm just referring to 2000 and --
 16 A -10, okay.
 17 Q -10. Well, with regard to -- I'm sorry, you invested in
 18 2011. I apologize. In 2011, all right.
 19 When you got that, did you compare with it the statements
 20 that you had received from -- that we were just referring to in
 21 Exhibit 206?
 22 Do you understand what I mean? I mean, 208 --
 23 A Yes, sir.
 24 THE COURT: I'm confused. He's looking at 206.
 25 MR. DRESSLER: He is. All right.

1 BY MR. DRESSLER:
 2 Q The statements that you received from -- the monthly
 3 statements that I asked you about -- you can put it down for a
 4 second. You don't have to look at it.
 5 You received monthly statements that showed what the
 6 performance was of the money that you had invested in MNT.
 7 Correct?
 8 A Yes, sir.
 9 Q Okay. And when you got this document, which -- did you
 10 compare this document with the statements you received to see
 11 if the numbers matched up?
 12 A No, sir.
 13 Q Okay.
 14 A I -- I was spot-checking from time to time, but no, I did
 15 not look at them each month.
 16 Q Okay. The statements that you received from the monthly
 17 statements, those statements were unaudited statements,
 18 correct?
 19 (Document taken off display)
 20 A That is correct.
 21 Q Okay.
 22 MR. DRESSLER: One second.
 23 THE COURT: Okay.
 24 (Off-the-Record discussion between Defendant and
 25 Counsel)

1 MR. DRESSLER: Thank you, Mr. Gibson. I'm all done.
 2 THE WITNESS: Thank you. All right. Thank you.
 3 Any redirect?
 4 MR. FARNHAM: Nothing further, Your Honor.
 5 THE COURT: All right. Mr. Gibson, I appreciate your
 6 cooperation. And that concludes your testimony in this case.
 7 This is Judge Chen. Thank you for appearing today. All right?
 8 THE WITNESS: Thank you.
 9 THE COURT: Thank you.
 10 (Witness excused)
 11 THE COURT: So I don't know if we can -- turn that
 12 off. Thank you.
 13 And, Government prepared to call its next witness?
 14 MS. HARRIS: We are, Your Honor. The United States
 15 calls Nathan Gorin.
 16 THE COURT: Okay.
 17 NATHAN GORIN,
 18 called as a witness for the Government herein, having been
 19 first duly sworn, was examined and testified as follows:
 20 THE CLERK: Please be seated. Please state your full
 21 name for the record, and spell your last name, please.
 22 THE WITNESS: Nathan Gorin, G-O-R-I-N.
 23 THE COURT: Thank you, Mr. Gorin. If you could speak
 24 into that microphone. Pull your chair up, or move the mic
 25 closer to you.

1 THE WITNESS: Uh-huh.
 2 THE COURT: That would be great. Thank you.
 3 You may proceed, Ms. Harris.
 4 DIRECT EXAMINATION
 5 BY MS. HARRIS:
 6 Q Good morning, Mr. Gorin. Where do you currently work?
 7 A In New York City.
 8 Q Okay. And what is the company you work for?
 9 A Asset Alliance.
 10 Q Okay. And can you describe for us your general duties and
 11 responsibilities there?
 12 A I'm a financial officer.
 13 Q Is this also where you worked in 2011?
 14 A Yes.
 15 Q Did you also live in New York City in 2011?
 16 A Yes.
 17 Q Do you have a self-directed IRA with Millennium Trust?
 18 A Yes, I do.
 19 Q Is Millennium Trust a vehicle through which you can make
 20 investments using your retirement money?
 21 A Yes.
 22 Q Do you know someone named Paul Eckel?
 23 A Yes.
 24 Q Who is Mr. Eckel?
 25 A Someone, um, I had met who had introduced me to a certain

1 investment.
 2 Q In June of 2011, did you learn about a possible investment
 3 in Market Neutral Trading?
 4 A Yes.
 5 Q Did you learn about that from Mr. Eckel?
 6 A Yes, I did.
 7 Q Did Mr. Eckel provide you any documents to review about
 8 Market Neutral Trading?
 9 A Yes.
 10 Q Did you review those materials in paper form?
 11 A Yes, I did.
 12 MS. HARRIS: Your Honor, may I approach the witness?
 13 THE COURT: Yes.
 14 BY MS. HARRIS:
 15 Q I'm handing you what's been marked as Government Exhibit
 16 397 for identification. Could you take a look at Government
 17 Exhibit 397, and tell us whether you recognize Exhibit 397.
 18 (Witness examines document)
 19 A Yes, I do.
 20 Q What is Exhibit 397?
 21 A It's information that was given to me by -- by Mr. Eckel,
 22 regarding the Market Neutral Trading.
 23 Q And did you receive a copy of Exhibit 397 some time before
 24 August of 2011?
 25 A Yes.

1 MS. HARRIS: Your Honor, I offer Government Exhibit
 2 397 into evidence.
 3 THE COURT: Any objection?
 4 MR. DRESSLER: No objection.
 5 THE COURT: Admitted.
 6 (Trial Exhibit 397 received in evidence)
 7 BY MS. HARRIS:
 8 Q Did you invest money in Market Neutral Trading?
 9 A Yes, I did.
 10 Q How much money did you invest in Market Neutral Trading?
 11 A \$100,000.
 12 Q Did you fill out paperwork directing Millennium Trust to
 13 wire transfer \$100,000 from your self-directed IRA to Market
 14 Neutral Trading's bank account?
 15 A Yes, I did.
 16 Q Did you receive confirmation that on August 2, 2011,
 17 Millennium Trust wire-transferred \$100,000 from your IRA to
 18 Market Neutral Trading?
 19 A Yes.
 20 Q What factors did you base your decision to invest in
 21 Market Neutral Trading? What were you looking at?
 22 A I mean, the information that Paul provided to me.
 23 MS. HARRIS: Your Honor, if we could pull up
 24 Government Exhibit 397, may we be permitted to show that to the
 25 jury?

1 THE COURT: Yes.
 2 (Document displayed)
 3 BY MS. HARRIS:
 4 Q If we could look at the box, and specifically, the year
 5 2008, did you look at the box that showed a 21.9 percent
 6 year-to-date return for Market Neutral Trading in 2008?
 7 A Yes, I did.
 8 Q Was that important to you when you made your decision to
 9 invest?
 10 A Yes. Absolutely.
 11 Q Why?
 12 A It was -- it was a good return.
 13 Q Were you aware of what was happening in the stock market
 14 in 2008?
 15 A Um, broadly, yes.
 16 Q Was the return that you saw on Exhibit 397 significantly
 17 better than what was happening in the stock market in 2008?
 18 A I believe so.
 19 Q Did you also see that in 2009, based on Exhibit 397,
 20 Market Neutral Trading's year-to-date return was 13.4 percent?
 21 A Yes.
 22 Q Did you rely on that information before you decided to
 23 invest \$100,000 in Market Neutral Trading?
 24 A Yes, I did.
 25 Q Were you also shown some information about Mr. Murray and

1 his background as the manager of Market Neutral Trading?
 2 A Yes.
 3 Q Did you review Mr. Murray's biography before you invested
 4 in Market Neutral Trading?
 5 A Yes, I did.
 6 Q Was there anything about Mr. Murray's background that you
 7 saw that was significant to your investment decision?
 8 A Yes.
 9 Q Can you describe that?
 10 A Well, he had a good educational background; he had a
 11 degree in finance, in economics. Graduated with honors. Had a
 12 master's degree, I recollect, in finance. Plus, you know,
 13 experience. Many years of experience.
 14 Q When you described the undergraduate degree with honors,
 15 *cum laude*, was that important to you before you invested
 16 \$100,000?
 17 A Yes, it was.
 18 Q Why?
 19 A Because it indicated he had, you know, the -- you know,
 20 the educational experience and the background that was a
 21 foundation for doing what I thought he was doing.
 22 Q You also mentioned that you were given information that
 23 Mr. Murray had a master's degree in finance. Was that
 24 important to you in making your decision to invest \$100,000 in
 25 Market Neutral Trading?

1 A Yes, it was.
 2 Q Why was that?
 3 A Again, same as I said before, is that it's -- it was an
 4 advanced degree, and it was in the area that was relevant to --
 5 to the investment.
 6 Q Before you invested \$100,000 in Market Neutral Trading,
 7 were you ever told that James Murray had been disciplined by
 8 the New York Stock Exchange and suspended for six months?
 9 A No.
 10 Q If you had been given this information, would it have
 11 affected your decision to invest in Market Neutral Trading?
 12 A Yes.
 13 Q Why?
 14 A Well, I would have had reservation at that point.
 15 (Off-the-Record discussion between counsel)
 16 MS. HARRIS: No further questions, Your Honor.
 17 THE COURT: All right. Thank you.
 18 Cross-examination?
 19 MR. DRESSLER: No questions.
 20 THE COURT: All right. Then Mr. Gorin, thank you.
 21 You are excused. You may step down.
 22 (Witness excused)
 23 THE COURT: The length of your next witness?
 24 MR. FARNHAM: Approximately 30, 40 minutes, I think,
 25 Your Honor.

1 THE COURT: All right, why don't we go ahead and take
 2 our 15-minute break at this point, and we'll resume with your
 3 next witness.
 4 (Jury excused)
 5 (The following proceedings were held outside of the
 6 presence of the Jury)
 7 MR. DRESSLER: Your Honor?
 8 THE COURT: Yeah.
 9 MR. DRESSLER: You have behind your chair two binders
 10 full of defense exhibits. I want to give the Clerk a
 11 replacement for those. They are exactly identical to what you
 12 have there, except that each exhibit has individual page
 13 numbers now.
 14 THE COURT: Okay.
 15 MR. DRESSLER: For ease of everybody.
 16 THE COURT: All right. On your side.
 17 MR. DRESSLER: And one of these is tabbed with
 18 exhibit tabs.
 19 THE COURT: Okay.
 20 (Binders handed up to the Court)
 21 MR. DRESSLER: Thank you.
 22 THE COURT: Thank you.
 23 MR. DRESSLER: And, could we go off the Record for
 24 one second?
 25 THE COURT: Off the record?

1 MR. DRESSLER: Yes.
 2 THE COURT: All right.
 3 MR. DRESSLER: Yes.
 4 (Recess taken from 10:18 a.m. to 10:30 a.m.)
 5 THE CLERK: Please come to order.
 6 THE COURT: Counsel, I received a short note from a
 7 juror asking:
 8 "On Wednesday, tomorrow, will we end at 2:00? If
 9 not, when will we possibly end?"
 10 I will instruct them that we're ending at 2:00. All
 11 right?
 12 MR. DRESSLER: Yes.
 13 THE COURT: Okay. Thank you.
 14 (Jury enters courtroom at 10:31 a.m.)
 15 THE COURT: Okay. Welcome back, ladies and
 16 gentlemen.
 17 A question was raised by one of you about tomorrow's
 18 schedule. And we will have the normal schedule tomorrow,
 19 starting at 8:30 and end at 2:00. So I wanted to clarify that.
 20 So, thank you.
 21 Okay. Government will call its next witness.
 22 MR. FARNHAM: Thank you, your Honor. The Government
 23 calls Heather Carava.
 24 THE COURT: Okay.
 25

1 HEATHER ANN CARAVA,
 2 called as a witness for the Government herein, having been
 3 first duly sworn, was examined and testified as follows:
 4 THE WITNESS: Yes.
 5 THE CLERK: Please state your full name for the
 6 record and spell your last name, please.
 7 THE WITNESS: Heather Ann Carava, C-A-R-A-V-A.
 8 THE COURT: All right. Thank you, Ms. Carava.
 9 You may proceed, Mr. Farnham.
 10 MR. FARNHAM: Thank you, your Honor.
 11 DIRECT EXAMINATION
 12 BY MR. FARNHAM
 13 Q Ms. Carava, where do you work?
 14 A I work at Millennium Trust Company.
 15 Q How long have you worked there?
 16 A It will be four years this December.
 17 Q What's your position there?
 18 A I am Vice-President of Alternative Investments.
 19 Q The "alternative investments" in that -- in your title,
 20 what does that mean?
 21 A I manage three teams. The first team is the Operational
 22 Assessment Team. The second team is the Real Estate Team. And
 23 the third team is Alternative Investment Transaction Team.
 24 Q And, generally, what does "alternative investments" mean?
 25 A It means any investment that is not publicly traded, so it

1 could be hedge funds, private stock, private equity.
 2 Q And hedge funds is a part of the definition of
 3 "alternative investments"?
 4 A Yes.
 5 Q What is the business of Millennium Trust? What does that
 6 company do?
 7 A Millennium Trust is a custodian. We hold assets for the
 8 benefit of clients.
 9 Q And what type of assets does Millennium Trust hold for its
 10 clients?
 11 A Alternative assets.
 12 Q Are from -- what type of assets are the clients investing
 13 in those --
 14 A Hedge funds typically.
 15 Q And I'm sorry. The -- I'll ask a better question.
 16 The clients, what do they come to Millennium Trust with?
 17 What assets do they have?
 18 A They hold hedge funds and other alternative assets.
 19 Q Does Millennium Trust have anything to do with retirement
 20 funds?
 21 A Yes. Millennium Trust custodies assets mostly in accounts
 22 that are retirement funds.
 23 Q Tell me what types of assets you're talking about when you
 24 say "retirement funds"?
 25 A The types of accounts that we hold are IRA accounts,

1 roll-over accounts, Roth accounts, traditional IRA accounts.
 2 Q What does IRA stands for?
 3 A Individual Retirement Account.
 4 Q And what is that?
 5 A It's a tax-deferred account that a client can use. It's
 6 regulated by the IRS to maintain a tax-deferred status.
 7 Q So for these client accounts that are mostly IRA and
 8 retirement funds, what is the service that Millennium Trust
 9 provides to your clients?
 10 A A client cannot hold an IRA themselves in their name.
 11 They would need a qualified custodian, such as Millennium
 12 Trust. We would have to do all of the tax reporting to the IRS
 13 to keep its status as an IRA.
 14 Q Okay. Can you give me an example of a more traditional
 15 IRA custodian company?
 16 A So someone like Schwab and TD Ameritrade would be a
 17 brokerage firm that would hold traditional assets. Most of
 18 those firms cannot hold alternative assets, so a client would
 19 have to come to a company like Millennium Trust.
 20 Q So you mentioned Schwab as a company that could hold IRA
 21 funds. Are there limits to what a customer could do at Schwab?
 22 A Yes. They could trade stocks, mutual funds; but if they
 23 wanted to hold something like a hedge fund, they would not be
 24 able to do that at Schwab. Schwab would actually refer their
 25 clients to someone like Millennium Trust.

1 Q Okay. So you mentioned that Millennium Trust is the
2 custodian for its clients' retirement funds.
3 If a client wants to then invest in an alternative
4 investment, how does that actually work? How does the money go
5 in and out?
6 A So the client would first need to open an account, an IRA
7 account at Millennium Trust. And then once the account is
8 opened, they would need to fill out Investment Direction to
9 direct us to invest in the assets for them.
10 Q And when money is invested in or comes out of an
11 investment, how does it actually flow?
12 A So the account -- the client would have to fund their
13 account with Millennium. Typically, that would either be by
14 making an IRA contribution or they could do a transfer or a
15 roll-over from another IRA account and then Millennium would
16 have to send the funds to the hedge fund or investment sponsor.
17 Q So when a client wants to invest, the money goes from
18 Millennium Trust to the investment?
19 A That is correct.
20 Q Maybe you can give us some more examples of the
21 alternative assets that Millennium Trust would allow its
22 clients to invest in?
23 A So they could invest in a hedge fund. They could invest
24 in private debt offering. They could invest in private equity
25 or private stock.

1 Q Things that wouldn't be allowed in a traditional IRA?
2 A In a traditional brokerage firm, yes.
3 Q So you mentioned the customer, the client of Millennium
4 Trust opening an account and then funding the account.
5 What happens next if the client of Millennium Trust wants
6 to invest in a particular investment?
7 A They would send us Investment Direction, which is our
8 form, and we would then see to make sure that the investment is
9 on our platform; that it's an investment that we've worked with
10 before.
11 If it is, we would go ahead and send the funds to the
12 hedge fund, and the fund has an application or a subscription
13 agreement they would have to send in as well after the client
14 completes it.
15 Q So when you say on Millennium Trust's platform, what does
16 that mean?
17 A So what we do is we do an operational assessment of each
18 investment that we get, and that is just a review of the
19 documents to ensure it's an investment that's allowable in an
20 IRA.
21 Q Okay. So if it's not on the platform, those are the steps
22 required?
23 A Yes. We would get the documentation from the investment
24 sponsor and we would also get what's called a Private Placement
25 Certification Form, which is our own our own form, that we

1 would need them to sign.
2 Q You said "allowable." What do you mean by that?
3 A There are certain types of assets that are not allowed in
4 IRA accounts that the IRS spells out. Some examples would be
5 live insurance or art collectables.
6 Q And after Millennium Trust determines that an investment
7 is allowable, is there any other -- what else does Millennium
8 Trust do regarding the investment?
9 A Well, we just make sure we have the Private Placement
10 Certification Form. That form has things like the wire
11 instructions of where we would send the money and the contact
12 information for the fund.
13 It also spells out our duties as custodian that we would
14 require that investment sponsor to follow so that we could
15 maintain the IRA status.
16 Q Does Millennium Trust do any due diligence on the fund or
17 investment itself?
18 A We do not do any type of due diligence. All of our
19 accounts are self-directed, so the clients are making that
20 decision.
21 Q "Self-directed," tell me again what that means?
22 A That means that the client has done their own research or
23 has an advisor who has done the research and they are directing
24 us to make an investment.
25 Q Generally, who are Millennium Trust's clients? Are there

1 specific types of people or investors that Millennium Trust
2 serves?
3 A Most alternative assets require an investor to be
4 accredited, which means you have to have a certain net worth.
5 So typically most of our clients are accredited high net worth
6 investors.
7 Q Then if an investment is on the Millennium Trust platform
8 and a client wants to invest in that, what's that next step
9 then?
10 A They would fill out the Investment Direction Form, which
11 is our form, and they would complete the subscription documents
12 for that investment and send them to us.
13 Q And then once that's done and a client has a funded IRA
14 account with Millennium Trust and Investment Direction
15 submitted to Millennium Trust, what happens next?
16 A We would then wire the funds over to the fund and we would
17 sign the subscription documents and send those documents over
18 to the fund as well.
19 Q When you say "we," do you mean Millennium Trust?
20 A Yes.
21 MR. FARNHAM: Your Honor, may I approach with an
22 exhibit?
23 THE COURT: Yes. This has been admitted -- oh, it
24 will be admitted.
25 MR. FARNHAM: Not yet.

1 THE COURT: You're going to seek to admit it.
 2 (Whereupon, exhibit was tendered to the witness.)
 3 BY MR. FARNHAM
 4 Q Ms. Carava, I've handed you what's been marked for
 5 identification as Exhibit 180, 180. It's a large exhibit. I
 6 would like to let you look through it and make sure you're
 7 familiar with it.
 8 (Brief pause.)
 9 Q Do you recognize that exhibit?
 10 A Yes.
 11 Q What is it?
 12 A This was supplied by Millennium Trust to the SEC as when
 13 we were subpoenaed.
 14 Q And are these Millennium Trust records related to Market
 15 Neutral Trading?
 16 A Yes.
 17 Q And the three Millennium Trust clients who invested in
 18 that fund?
 19 A Yes.
 20 Q And are these records all retained by Millennium Trust as
 21 part of its normal business?
 22 A Yes.
 23 Q Do they also include materials that MNT, Market Neutral
 24 Trading, submitted to Millennium Trust?
 25 A Yes.

1 MR. FARNHAM: Your Honor, I would offer Exhibit 180
 2 into evidence.
 3 THE COURT: Any objection?
 4 MR. DRESSLER: No objection.
 5 THE COURT: Admitted.
 6 (Trial Exhibit 180 received in evidence.)
 7 MR. FARNHAM: I would like permission to publish
 8 portions of it, your Honor.
 9 THE COURT: Yes.
 10 (Document displayed)
 11 BY MR. FARNHAM
 12 Q You talked about how an investment gets on the Millennium
 13 Trust platform. Do you remember that?
 14 A Yes.
 15 Q I want to ask you a few questions about Market Neutral
 16 Trading and the materials they may have submitted to get on
 17 that platform.
 18 If we could turn to Page 196? And for this I'm referring
 19 to the very bottom number, 180-196.
 20 (Document displayed.)
 21 Q What is the document that starts on Page 196?
 22 A This is the Private Placement Certification Form that I
 23 was talking about.
 24 Q And what is that?
 25 A This is the form that the investment sponsor completes to

1 get the asset on our platform that lists the wire instructions
 2 and contact information. And the certifications spell out what
 3 they need to -- the rules that they have to file so that we can
 4 maintain the status of the IRA.
 5 Q If we can look at the top portion of that document, there
 6 is sort of check boxes for the "Description of Investment." Do
 7 you see that?
 8 A (No verbal response.)
 9 Q Above that, what's the name of the investment listed here?
 10 A Market Neutral Trading, LLC.
 11 Q And what type of investment is indicated?
 12 A Hedge fund.
 13 Q As Millennium Trust uses that term, what is a hedge fund?
 14 A It's basically an investment where multiple clients will
 15 invest their monies and they will be pooled together, and the
 16 hedge fund will have an investment objective and they will use
 17 all the pooled monies to invest in that strategy.
 18 Q And that's an alternative investment --
 19 A Yes.
 20 Q -- at Millennium Trust?
 21 A Uh-huh.
 22 Q If we could look at the next page, Page 197 of this
 23 document?
 24 (Document displayed.)
 25 Q In the middle of that document there is a portion that

1 says "Third Party Fund Administrator Contact." Do you see
 2 that?
 3 A Yes.
 4 Q What is Millennium Trust seeking in this part of the form?
 5 A So, some funds will have a third party administrator that
 6 is not the fund itself, but someone else that handles the
 7 paperwork or subscription documents. So that's where we
 8 request that information and we would know that we would send
 9 the subscription documents to that person.
 10 Q Does this form indicate that there is a third party fund
 11 administrator for Market Neutral Trading?
 12 A Yes.
 13 Q Can you tell the name of the company or the entity that
 14 that administrator works for?
 15 A It looks like it's H.F. Fund Administration.
 16 Q And you're looking at the email address there?
 17 A Yes.
 18 Q And if we could look at Page 199?
 19 (Document displayed)
 20 Q Is that also a page of the same document?
 21 A Yes.
 22 Q And who -- if we could look at the signature block, whose
 23 name is indicated as the Authorized Individual and who signed
 24 this?
 25 A Jim Murray.

- 1 Q And what's the date of that signature?
- 2 A April 1, 2011.
- 3 Q Starting on Page 200 there is what looks like another
- 4 document. What is that?
- 5 (Document displayed)
- 6 A These are the documents that the investment sponsor gave
- 7 to us. This is their offering memorandum.
- 8 Q What role does that play in Millennium Trust's work?
- 9 A These are the documents that we would be looking at to
- 10 make sure it's an allowable investment within an IRA. It
- 11 typically states the investment objective and what they would
- 12 be trading.
- 13 Q And who provided this to Millennium Trust, this document?
- 14 A Market Neutral Trading, Jim Murray.
- 15 Q If we could go to Page 252 in the same document, Exhibit
- 16 180?
- 17 (Document displayed)
- 18 Q Was this -- do you see this document that this page says
- 19 "MNT, Market Neutral Trading." Do you see that?
- 20 A Yes.
- 21 Q Was this the first page of a document that was submitted
- 22 to Millennium Trust?
- 23 A Yes.
- 24 Q Why was it submitted to Millennium Trust?
- 25 A We don't ask for things like this. A lot of times

- 1 investment sponsors will submit this. It's a firm profile and
- 2 gives a background.
- 3 Like I will said, it's not something that we ask for, but
- 4 he did submit it to us.
- 5 Q And when you say "he," who are you referring to?
- 6 A Jim Murray.
- 7 Q If we could look at the document that starts on Page 263?
- 8 (Document displayed)
- 9 Q What is the document that starts on Page 263?
- 10 A It's a due diligence report.
- 11 Q What is that?
- 12 A Well, a lot of times a due diligence report is something
- 13 that investment sponsors will go out and get that, you know,
- 14 does some research on the fund. But it's not something that we
- 15 look at.
- 16 Once again, we're just looking at the documentation to see
- 17 that it's an allowable investment in an IRA.
- 18 Q Was this document submitted to Millennium Trust about the
- 19 time that Market Neutral Trading was being put on the platform?
- 20 A Yes.
- 21 Q What happened with regard to Market Neutral Trading after
- 22 it submitted the information to Millennium Trust about the
- 23 fund?
- 24 A So we determined that it was an investment that would be
- 25 allowed within an IRA, so we put it on our trading platform.

- 1 Q And you would permit your clients to invest in it?
- 2 A Yeah. Any client that would come through, once it's on
- 3 our trading platform, would be able to make an investment.
- 4 Q I'd like to look at one of those. If we could turn to
- 5 Page 120 of this exhibit?
- 6 (Document displayed)
- 7 Q If we could -- it's hard to read.
- 8 MR. FARNHAM: If we could zoom in on just the top
- 9 portions, a few inches? A little bit more.
- 10 (Document enlarged.)
- 11 BY MR. FARNHAM
- 12 Q What is the document that starts on Page 120?
- 13 A This is our Investment Direction Form.
- 14 Q And what role does it play in an investment?
- 15 A It is the client giving us direction to make an investment
- 16 into a fund.
- 17 Q This particular Private Placement Investment Direction,
- 18 who's the customer, client?
- 19 A The customer is Jim Murphy -- or, I'm sorry. I'm sorry.
- 20 It's Richard Russell.
- 21 Q And can you read that account owner's name for me from
- 22 this form?
- 23 A "Richard Russell."
- 24 Q What about the part that begins "Millennium Trust"?
- 25 A Oh, "Millennium Trust, LLC Custodian FBO Richard Russell."

- 1 Q What does "FBO" mean?
- 2 A For the Benefit Of.
- 3 Q Why is the account named like that, that long time?
- 4 A All registrations, all investments that we do are titled,
- 5 "Millennium Trust For the Benefit Of," the client's name,
- 6 because it has to be in our name as an IRA.
- 7 Q This Investment Direction, do you see the investment
- 8 amount a few lines down?
- 9 A It's 150,000.
- 10 Q And was that the amount that Mr. Russell was directing
- 11 Millennium Trust to invest?
- 12 A Yes.
- 13 Q And what did Millennium Trust do after it received this
- 14 Private Placement Investment Direction?
- 15 A So after we got this, along with the completed
- 16 subscription documents, we wired the money over to Market
- 17 Neutral Trading and we sent them the subscription documents.
- 18 Q If we could look at the Part C of the same page, there is
- 19 a section titled "Investment Issuer/Sponsor Contact Details."
- 20 Do you see that?
- 21 A Uh-huh.
- 22 Q What is that section?
- 23 A That's the section where the client would put the contact
- 24 details of the fund. A lot of times when we get these
- 25 Investment Directions they are not on our platform yet, so if

1 we needed to do an operational assessment, we would use this
2 contact info.
3 Q And who is the contact listed for this fund?
4 A Jim Murray.
5 Q If we could just look they next page of this same
6 Investment Direction, 121.
7 (Document displayed.)
8 Q Is 121, Page 121 of Exhibit 180 the second page of
9 Investment Direction?
10 A Yes.
11 Q And who signs it?
12 A Robert Russell [sic].
13 Q And what's the date of Mr. Russell's signature here?
14 THE COURT: It says "Richard Russell," doesn't it?
15 MR. FARNHAM: I'm sorry.
16 THE WITNESS: I'm sorry. It is Richard Russell.
17 BY MR. FARNHAM
18 Q And what's the date of Mr. Russell's signature?
19 A It is July 15th of 2011.
20 Q As an example, let's say then there's an Investment
21 Direction. Millennium Trust -- excuse me, the investment is on
22 the platform. What does Millennium Trust do next?
23 A So we wire the funds over to Market Neutral Trading.
24 Q And then is there an additional form or paperwork that's
25 required --

1 A A subscription document, which is completed by the client.
2 We would then countersign that and send that off.
3 Q Send it off to who?
4 A To Market Neutral Trading.
5 Q And then what happens after that?
6 A And then we would also send along our Confirmation of
7 Purchase Form.
8 Q What is a Confirmation of Purchase Form?
9 A It's a form that the investment sponsor completes and
10 sends back to us to let us know that they did receive the money
11 and they invested it in the fund. It's our confirmation that
12 the purchase was complete.
13 Q Let's look at Page 133 of Exhibit 180.
14 (Document displayed)
15 Q Is that a Confirmation of Purchase Form?
16 A Yes.
17 Q What's the investor that this one is for, the client?
18 A This is for Richard Russell IRA.
19 Q And you see the dollar amount of investment there. What's
20 that?
21 A It's 149 -- \$149,900.
22 Q And who signed this confirmation on behalf of Market
23 Neutral Trading?
24 A Jim Murray.
25 Q What's the date of that signature?

1 A September 14th of 2011.
2 Q And what is this signature on this confirmation telling
3 Millennium Trust?
4 A It tells us that he received \$149,900 and he invested it.
5 Q And that's for an investment on behalf of Richard Russell?
6 A Yes.
7 Q If you could look at another example of that, it's on
8 Page 144?
9 (Document displayed)
10 Q What is this document?
11 A This is another Confirmation of Purchase for Mr. Russell.
12 He did an additional investment after the first investment.
13 Q And who signed this on behalf of Market Neutral Trading?
14 A Jim Murray.
15 Q And what was the date of that signature?
16 A That was September 22nd, 2011.
17 Q And is this telling Millennium Trust that that amount has
18 been invested in that fund?
19 A Yes.
20 Q If we could go to Page 148 of Exhibit 180?
21 (Document displayed)
22 Q What is this page?
23 A In is another Confirmation of Purchase for Richard Gibson.
24 Q Is that a different investor?
25 A Yes.

1 Q And one of the investors who invested through Millennium
2 Trust in Market Neutral Trading?
3 A Yes.
4 Q Who signed this and what's the date of that signature?
5 A Jim Murray signed this, and it's dated April 21st of 2011.
6 Q And did this confirm to Millennium Trust that that amount
7 had been invested on behalf of Mr. Gibson?
8 A Yes.
9 Q If we could turn to Page 174?
10 (Document displayed)
11 Q And I believe this is the third investor. What is this
12 document?
13 A This is another Confirmation of Purchase Form for Nathan
14 Gorin.
15 Q And what was the amount of investment on behalf of
16 Mr. Gorin?
17 A 100,000.
18 Q Who signed this document on behalf of Market Neutral
19 Trading and what's the date?
20 A Jim Murray, and he signed this September 14th of 2011.
21 Q So you mentioned that after an Investment Direction comes
22 in, Millennium Trust will wire money to the investment, is that
23 correct?
24 A Yes.
25 Q I want to ask you to look at documents that may relate to

1 that, starting at Page 187.
 2 (Document displayed)
 3 Q What is Page 187?
 4 A So this is a copy of the wire that went out for Richard
 5 Russell's account.
 6 Q And for which investment?
 7 A This was for the Market Neutral Trading.
 8 Q And how do you know that?
 9 A If you look down, about three-quarters of the way down the
 10 page, it says "Beneficiary Market Neutral Trading, LLC." That
 11 was the name of the account it went to.
 12 Q What does this tell you about the date and the amount of
 13 this wire transfer?
 14 A Up in the upper left-hand corner you can see that on
 15 August 11th of 2011 it was for \$149,900.
 16 Q If we could look at the next page, Page 188?
 17 (Document displayed)
 18 Q What is this page?
 19 A This is a screen shot of our internal Wire Out Form.
 20 Q And what is that?
 21 A It's basically a -- an administrator enters the wire
 22 information in and then after it's entered, our Cash Management
 23 Department would approve it with that Approval button to send
 24 the money out.
 25 Q This is part of the process of wiring funds out to an

1 investment?
 2 A Yes.
 3 Q And where was this wire going to be going to?
 4 A This wire was going to Market Neutral Trading, LLC.
 5 Q On behalf of which Millennium Trust client?
 6 A For Richard Russell.
 7 Q What would be the approximate date of this wire?
 8 A The date of this wire was September 21st of 2011.
 9 Q If we could look at the next page, Page 189?
 10 (Document displayed)
 11 Q What is Page 189?
 12 A This is a copy of the wire from the actual bank that was
 13 sending the wire, which was Cole Taylor Bank.
 14 Q What is Cole Taylor Bank?
 15 A Cole Taylor Bank is Millennium Trust's bank, so they send
 16 all of our wires.
 17 Q So all of the wires from Millennium Trust investments on
 18 behalf of that client would come from that bank?
 19 A Yes.
 20 Q And what -- which investor is this wire for?
 21 A This one is for Richard Gibson.
 22 Q And what's the amount and date?
 23 A The amount of this wire is 250,000, and the date was
 24 April 21st of 2011.
 25 Q If we could look at Page 191 of the same exhibit?

1 (Document displayed)
 2 Q This looks similar to the previous wire we saw. What is
 3 this document?
 4 A This is another copy of an outgoing wire for Nathan Gorin.
 5 Q And what investment was Mr. Gorin making?
 6 A Market Neutral Trading, LLC.
 7 Q And, again, in the upper left, I think you said you could
 8 tell the date and amount of this investment?
 9 A Yes. This was August 2nd of 2011 for 100,000.
 10 Q And, again, was this a wire that went from Cole Taylor
 11 Bank on behalf of Mr. Gorin?
 12 A Yes.
 13 MR. FARNHAM: Just a moment, your Honor.
 14 (Discussion held off the record between Government
 15 counsel.)
 16 MR. FARNHAM: If I can just make sure.
 17 (Brief pause.)
 18 MR. FARNHAM: I think that's what we need. No
 19 further questions, your Honor. Thank you.
 20 THE COURT: All right. Thank you.
 21 Cross?
 22 MR. DRESSLER: No questions.
 23 THE COURT: All right. Great. Ms. Carava, thank
 24 you. You're excused. You may step down.
 25 (Witness excused.)

1 THE COURT: Government's next witness.
 2 MR. FARNHAM: Yes, your Honor. The Government calls
 3 Jordyn Kramer.
 4 THE COURT: Okay.
 5 JORDYN BLAIR KRAMER,
 6 called as a witness for the Government herein, having been
 7 first duly sworn, was examined and testified as follows:
 8 THE WITNESS: Yes.
 9 THE CLERK: Please state your full name for the
 10 record and spell your full name, please.
 11 THE WITNESS: Jordyn Blair Kramer. J-O-R-D-Y-N.
 12 Blair, B-L-A-I-R. Kramer, K-R-A-M-E-R.
 13 THE COURT: All right. Thank you, Ms. Kramer.
 14 MR. FARNHAM: Thank you, your Honor.
 15 THE COURT: Proceed.
 16 DIRECT EXAMINATION
 17 BY MR. FARNHAM
 18 Q Good morning, Ms. Kramer. Where do you work?
 19 A I work at the U.S. Secret Service in San Francisco.
 20 Q What's your position there?
 21 A I'm a Special Agent.
 22 Q How long have you been an agent with the Secret Service?
 23 A Just over eight years.
 24 Q What did you do before you became an agent with the Secret
 25 Service?

- 1 A I was a pilot. I worked in the tech industry, and I also
2 worked in the sports marketing industry.
- 3 Q Tell me about your education after high school?
- 4 A I went to Stanford University for my undergraduate degree.
5 I earned a Bachelor's Degree in American Studies with honors.
6 And then I also am working towards a Master's Degree in
7 forensic psycho physiology.
- 8 Q And you're working on that currently?
- 9 A I am about midway through.
- 10 Q As an agent for the Secret Service, what types crimes have
11 you investigated?
- 12 A I have investigated counterfeit currency crimes, identity
13 theft crimes, wire fraud, bank fraud. Basically, any crimes
14 involving financial institutions within the United States.
15 Fraud of all different sorts.
- 16 Q Have you received training regarding the conduct of that
17 type of investigation?
- 18 A Yes, I have.
- 19 Q What about training regarding search warrants?
- 20 A I have also received training regarding search warrants,
21 both at FLETC, the Federal Law Enforcement Training Center,
22 and, also, the Secret Service Training Academy.
- 23 Q What about training regarding the collection and handling
24 of evidence?
- 25 A Yes. I received training at both those institutions.

- 1 Q Are you familiar with the investigation that led to the
2 charges against James Murray in this case?
- 3 A Yes.
- 4 Q In 2011 did you participate in the search of a residence
5 in connection with that investigation?
- 6 A I did.
- 7 Q Was that search on November 3rd, 2011?
- 8 A Yes.
- 9 Q And how -- what was the -- what was authorized in that
10 search?
- 11 A We were authorized to, upon entry, detain anybody that we
12 found within the residence. That's standard procedure for the
13 Secret Service when we execute a search warrant.
- 14 Following that, we secure the premises and then we were
15 authorized to search for items. It was a long list, but
16 essentially items representing evidence or information
17 pertaining to what the case agent believed would be evidence
18 for the case, and there is a long list of those items.
- 19 Q And was that all enumerated in the search warrant itself?
- 20 A Yes, it was.
- 21 Q And did you review the warrant before you helped with that
22 search?
- 23 A Yes, I did.
- 24 Q What was your role in that search that day?
- 25 A Initially I was assigned to rear coverage, just at sort of

- 1 the beginning or entry of the search warrant. And then I was
2 also assigned to search one or a couple of the rooms within --
3 within the premise.
- 4 Q How many agents were with you on the search that day?
- 5 A I would say approximately ten.
- 6 Q And you mentioned some of the things you were authorized
7 to do once you got there.
- 8 Why don't you just describe, generally, what the standard
9 procedure is when Secret Service agents are searching a house,
10 a residence?
- 11 A From the beginning, we have a brief before we ever execute
12 the warrant, somewhere local to where we're going to be.
- 13 We have a standardized procedure in terms of how we enter
14 a home or a premise. We knock and announce, as is law. If
15 someone comes to the door, then, obviously, we address that
16 individual and move forward.
- 17 Once we are inside the premise we -- we secure the
18 premise. So, obviously, we don't know who is going to be
19 inside the home or the premise when we get there. Generally
20 speaking, we would put into handcuffs anybody that we find
21 there because, of course, we don't know who they are or, you
22 know, if there is any weapons and we need to make the scene
23 secure before we can move on with a search.
- 24 Q What types of considerations are you thinking about when
25 you say "secure the premises"? What are you trying to do?

- 1 A We want to make sure that it's safe for all of us who are
2 coming into the home, as well as the other individuals who are
3 in the home because, again, we are, you know, walking in
4 blindly essentially.
- 5 So we want to make sure that everybody, both agents
6 walking in as well as individuals who are on the inside, are
7 safe and that everybody -- that there are no weapons that we
8 don't know of; that there is, you know, no animals we don't
9 know of, anything like that.
- 10 Q What about the preservation of evidence, is that a
11 consideration?
- 12 A Absolutely.
- 13 Q How is that?
- 14 A Once we are in and we deem that the area is safe, we've
15 identified all individuals or animals within the property, we
16 photograph whatever the premise is as it is in the state that
17 we found it in.
- 18 Then once we -- once we sort of move forward, we assign
19 two agents to each room that we are going to search and any
20 time that we -- that an agent finds what we deem evidence, they
21 do not move the evidence until someone has come by and taken a
22 photograph of that evidence in its place before it has been
23 moved and that that evidence is actually noted down in what we
24 call a 1544, which is essentially our chain of custody log. So
25 that information is photographed or that evidence is

1 photographed and noted on the 1544 draft before it is ever put
2 into an evidence bag or box and moved.

3 Q And you mentioned that you did review the search warrant
4 that was issued prior to this search, right?

5 A Yes, sir.

6 Q At the time of that search, was Lisa Murray a potential
7 suspect in these crimes?

8 A I believe that she was.

9 Q Can you describe generally the property that was being
10 searched that day?

11 A It was, I believe, a single family home. There was also a
12 house or a building in the backyard of the home that was
13 separate from the main structure.

14 Q And who searched the back house?

15 A I know that I was one of the individuals that searched the
16 back house. I recall being there. There was probably at least
17 two other agents in the back house searching.

18 It was, you know, a space that's bigger than sort of an
19 average, you know, small bedroom. There was a lot of -- there
20 were a lot of items in that back house. So I know there was at
21 least two of us, because that's our standard policy, and I
22 believe there was at least three.

23 Q And how far away was that back house from the main house,
24 approximately?

25 A I mean, not very -- very -- you know, 10, 15 yards maybe

1 is my recollection. It was awhile back.

2 Q Was it sort of in the backyard of the main house?

3 A Correct.

4 Q How big is the main house?

5 A Umm, I -- I don't recall.

6 Q And you mentioned that agents will take photographs during
7 the search?

8 A Yes, sir.

9 Q Or even before the search?

10 A Correct.

11 Q And why is that?

12 A We always want to document what the premise looked like
13 before we started searching just so that, you know, we know how
14 everything was found in place and that we can document that
15 before we start collecting any evidence and moving anything
16 from its original place.

17 Q Do you recall what the address was for this search?

18 A I believe it was [REDACTED] in Larkspur.

19 Q And is that Larkspur, California?

20 A Correct.

21 Q Up in Marin?

22 A Correct.

23 MR. FARNHAM: Your Honor, may I approach with an
24 exhibit?

25 THE COURT: Yes.

1 (Whereupon, exhibit was tendered to the witness.)

2 BY MR. FARNHAM

3 Q Ms. Kramer, Agent Kramer, I've handed you what's been
4 marked as Exhibit 101.

5 If you could look through that and tell me if you
6 recognize what these photos depict?

7 A Upon first look, this appears to be the inside of the --
8 the back structure on the property. So not the main house.

9 Q Were all of these photos taken at the house during the
10 search that day in November, 2011?

11 A I believe that they were, yes.

12 Q And did they, as far as you can remember, accurately
13 depict the rooms and some of the items that were found?

14 A Yes, I believe that they do.

15 MR. FARNHAM: Your Honor, I would offer Exhibit 101
16 into evidence.

17 THE COURT: Any objection?

18 MR. DRESSLER: No objection.

19 THE COURT: Admitted.

20 (Trial Exhibit 101 received in evidence.)

21 MR. FARNHAM: And may I publish some of the photos?

22 THE COURT: Yes.

23 MR. FARNHAM: Thank you.

24 BY MR. FARNHAM

25 Q If we could look at the first photo, Page 1 of Exhibit

1 101?

2 (Photograph displayed.)

3 Q And what does this photo show?

4 A This shows the inside of the -- again, what I'm going to
5 call the back structure, the structure that was separate from
6 the main home, as we found it when we came in.

7 Q And in that back house there were cabinets and drawers?

8 A Correct.

9 Q If we could look at the second page of this document?
10 (Photograph displayed.)

11 Q Is that another picture of the back house?

12 A Yes, it is.

13 Q Is that a different wall of cabinets?

14 A Yes, it is.

15 Q What does the third page show, Page 3?
16 (Photograph displayed.)

17 A It shows a drawer filled with some checkbooks.

18 Q Was this in the back house?

19 A Yes, I believe it was.

20 Q And if we could look at Page 4?
21 (Photograph displayed.)

22 A Again, this is a drawer in the back house. It appears to,
23 in the top drawer, have what we call a Point of Sale terminal
24 within it.

25 Q Why was an agent taking pictures of these drawers sort of

1 half open like that?

2 A Because that -- I believe that this is how we found the
3 back house. I think these are the primary pictures so that we
4 could establish that these items were in these locations before
5 we started moving anything.

6 Q So to document where you might have found some of these
7 things?

8 A Correct.

9 Q And if we could look at Page 8?
10 (Photograph displayed.)

11 Q Is that one of the items that was found in the back house?
12 A Yes, it is.

13 Q Can you tell who is in the photo there, the shoes?
14 A It's certainly another one of our agents, I know. Like I
15 said, there was approximately ten of us there. I don't know
16 specifically who that is.

17 Q And then Page 10?
18 A Okay.
19 (Photograph displayed.)

20 Q Is that additional items that were found in that back
21 house?
22 A Yes, they are.

23 Q And there is just one different view of the back house
24 that I think is helpful, Page 11.
25 (Photograph displayed.)

1 Q What is Page 11 showing?

2 A It appears to be the view looking in, into the room from
3 the doorway when entering.

4 I believe this may be at the -- it might be at the
5 conclusion, but, again, it's just the overall view of the room
6 from our perspective upon entering or leaving the building.

7 Q I want to talk about what happened after evidence was
8 collected that day.

9 As it was collected, what was happening to the evidence?
10 What were agents doing with it?

11 A Any time, like I said, that we collect evidence, there is
12 always two what we call finders or agents in each room. Their
13 job is to find items of evidence. We then have someone who
14 logs all the evidence. So they are separate. They would come
15 through to each room that we are searching.

16 Once agents in that room have found something they believe
17 to be evidence, the logger will come by with, again, what we
18 call a 1544. It's a standardized Secret Service form. It's an
19 evidence and chain of custody form.

20 While we're out at a search warrant, we create drafts of
21 1544s. So we note every item of evidence based on what room it
22 was found in and specifically in that room where it is found,
23 and then, obviously, a description of what the item is before
24 it's removed and put into some sort of either evidence bag or
25 box, depending on the size of the item.

1 Q You mentioned that 1544 form. What is that -- generally
2 what's that form for? What's its purpose?

3 A It's to log evidence, to describe items that we either
4 remove from a search warrant, an arrest warrant. Any item of
5 evidence that we are taking from an individual so that there is
6 a log and a chain of custody for where that evidence was found
7 and what happens to that evidence once it's removed from its
8 original location.

9 Q And after evidence was logged and placed in a bag or box
10 at the site, what happened after that?

11 A Once we're done there, we always leave an inventory of
12 what we've taken at the location where we have executed the
13 search warrant. So we note every item that has been removed.
14 We leave it there.

15 Then we take the items of evidence and we return it to our
16 field office. It's required to return those items immediately
17 following the search. They are brought back to the field
18 office and put into an evidence vault or they are continually
19 reviewed while finalized versions of 1544s are made through a
20 computer system.

21 Q Is there a process of cataloging -- sort of further
22 cataloging the evidence once it's back in the office?

23 A Yes. So, again, the draft 1544 is made while we're out in
24 the field or at the premise.
25 When we're back in the field office, the case agent or

1 other agents assigned to assist, along with the evidence
2 technician, will make finalized versions of the 1544s, again,
3 through a computer system instead of handwritten like we do out
4 in the field.

5 So that this information is logged in a computer system
6 and finalized versions can be -- can be made to accompany the
7 actual evidence into our evidence vaults, as well as copies are
8 made to go into the case file.

9 Q And then the evidence vault, why is it taken there?
10 A Per our policy, all evidence has to be stored in a vault.
11 Again, so that we can establish chain of custody and know
12 exactly who has access to evidence when and who those
13 individuals are.

14 Q If it is taken out of the evidence vault for any reason,
15 what happens?

16 A There is only the evidence technicians and supervisors
17 that have access to the evidence vault. So if an agent needs
18 to get in to review evidence, you know, for whatever reason,
19 either the evidence technician and a supervisor have to open
20 the vault.

21 When the vault is opened, there is a log book so that we
22 know exactly what date, what time that the evidence vault was
23 opened and by whom.

24 And then additionally once inside the evidence vault, we
25 have to note what case, what shelf the items were taken from,

1 for what case, what was reviewed and why it was reviewed or
2 removed.
3 Q Why is taking it out and putting it back into the evidence
4 vault tracked so carefully?
5 A Because, obviously, we want to ensure that we know exactly
6 where the evidence has been, why it's been removed, who's
7 had -- who's had the ability to review it, where it's been.
8 You know, again, to establish the chain of custody and make
9 sure that we have that all documented.
10 MR. FARNHAM: If I could approach, your Honor, with
11 two exhibits?
12 THE COURT: All right.
13 (Whereupon, exhibits were tendered to the witness.)
14 BY MR. FARNHAM
15 Q Ms. Kramer, first, I'd like you to look at what's been
16 marked as Exhibit 100 that I've handed to you.
17 Is Exhibit 100 photos that were taken back at the office
18 of the Secret Service?
19 A I believe that it is.
20 Q Do these photos depict items that were found during the
21 search of [REDACTED] in Larkspur?
22 A I believe that they are.
23 MR. FARNHAM: Your Honor, I would offer Exhibit 100
24 into evidence.
25 MR. DRESSLER: No objection.

1 THE COURT: Admitted.
2 (Trial Exhibit 100 received in evidence.)
3 BY MR. FARNHAM
4 Q If I could also ask you to look at Exhibit 102?
5 (Witness complied.)
6 Q Does Exhibit 102 look to be a larger collection of photos
7 of the evidence seized from [REDACTED] after it was
8 brought back to the Secret Service?
9 A Yes. These appear to be photographs of items that we
10 found at the premise back in our field office.
11 MR. FARNHAM: Your Honor, I would offer Exhibit 102
12 into evidence.
13 MR. DRESSLER: No objection.
14 THE COURT: Admitted.
15 (Trial Exhibit 102 received in evidence.)
16 MR. FARNHAM: If I could -- we could publish Exhibit
17 102?
18 (Photograph displayed.)
19 BY MR. FARNHAM
20 Q And Exhibit 102, Page 1, is the first of a series of
21 photos.
22 What's the purpose of taking these photos back in the
23 office of the Secret Service?
24 A Generally speaking, we take all the photos out in the
25 field at the location.

1 I believe for this case this item, which appears to be a
2 briefcase, was closed and I believe it was locked while we were
3 out in the field. So this would have been the first time that
4 we had seen the inside of it.
5 And, again, per policy we need to photograph and document
6 each item. So it would have been done back in the field office
7 because this is the first time that we're actually seeing the
8 inside of it.
9 MR. FARNHAM: Your Honor, I'd like to start having
10 Ms. Kramer talk about some of the physical exhibits. The first
11 one I'd like to talk about is what's been marked as Exhibit
12 103, which is a briefcase.
13 THE COURT: All right.
14 MR. FARNHAM: Would it be acceptable to your Honor to
15 have Secret Service Special Agent Sims sort of in the corner
16 with those physical exhibits to make it more efficient? He can
17 hand them to the witness.
18 THE COURT: Sure. Yes.
19 MR. FARNHAM: Thank you.
20 (Whereupon, exhibit was tendered to the witness.)
21 BY MR. FARNHAM
22 Q Ms. Kramer, do you recognize what's been marked as
23 Exhibit 103 in this proceeding?
24 A I do.
25 Q What is that?

1 A It's a silver briefcase.
2 Q Where was that briefcase found?
3 A I believe it was found in the master bedroom at the 206
4 Williams Avenue, Larkspur location during the search.
5 BY MR. FARNHAM
6 Q I think you mentioned it, but what state was the briefcase
7 in when the agents found it?
8 A I believe it was closed and locked.
9 Q I want to ask you about some of the items that were found
10 within that briefcase.
11 As you look at those, how are you going to be able to tell
12 whether or not they were found inside that briefcase?
13 A Again, for me, we document, again via photograph,
14 initially where we found those items.
15 And then, also, the 1544, which is the Certified Inventory
16 of Evidence, and the chain of custody identifies, again,
17 exactly where those items were found. They would list that
18 they were found within this briefcase inside the master bedroom
19 of this home.
20 Q Thank you.
21 MR. FARNHAM: Agent Sims, if I could ask you to bring
22 the exhibits up to the witness stand and we will go through
23 those as quickly as we can?
24 (Brief pause.)
25

1 BY MR. FARNHAM
 2 Q If I could ask you to hand Agent Kramer what's been marked
 3 as Exhibit 104?
 4 (Whereupon, exhibit was tendered to the witness.)
 5 MR. FARNHAM: Your Honor, while we're doing that, I
 6 would move Exhibit 103 into evidence.
 7 MR. DRESSLER: No objection.
 8 THE COURT: Admitted.
 9 (Trial Exhibit 103 received in evidence.)
 10 BY MR. FARNHAM
 11 Q Do you have Exhibit 104 in front of you?
 12 A I have the sealed bag, yes.
 13 Q We need to open it. Please, go ahead.
 14 (Brief pause.)
 15 Q And I think you can go ahead and do those as those are
 16 handed to you.
 17 What is Exhibit 104?
 18 A They appear to be multiple debit or credit cards.
 19 Q And where were those debit or credit cards found?
 20 A They were found within the silver briefcase.
 21 Q And how can you tell that?
 22 A I can tell that because, again, the 1544, which is the
 23 sheet that is associated with each item of evidence, states
 24 that these items came from within the silver briefcase.
 25 Q If we could also hand you Exhibit 105, 106 and 107?

1 Costco card bearing the name of Jim M. Murray and a photograph.
 2 Q Are they just credit cards and other identification cards?
 3 A They are various cards from different -- different
 4 businesses. From a golf course. From Costco. From Enterprise
 5 Rental Car. Essentially various -- Kaiser Permanente with the
 6 name Jas E. Murray.
 7 Q Those Exhibits 105, 106 and 107 that you just looked at,
 8 where were those found?
 9 A I believe they were found in the suitcase, the silver
 10 suitcase.
 11 MR. FARNHAM: Your Honor, I would offer Exhibits 105,
 12 106 and 107 into evidence.
 13 THE COURT: Any objection?
 14 MR. DRESSLER: No objection.
 15 THE COURT: Admitted.
 16 (Trial Exhibits 105, 106 and 107 received in evidence)
 17 MR. FARNHAM: Your Honor, if I could show on the Elmo
 18 Exhibit 106 briefly?
 19 THE COURT: All right.
 20 BY MR. FARNHAM
 21 Q I don't want to do anything wrong, but can I open this?
 22 A Uh-huh.
 23 (Exhibit displayed)
 24 Q This is Exhibit 106. Can you read on your screen the
 25 names and the companies that those cards are issued under?

1 (Whereupon, exhibits were tendered to the witness.)
 2 MR. FARNHAM: And, your Honor, I would move into
 3 evidence Exhibit 104.
 4 THE COURT: Any objection?
 5 MR. DRESSLER: No objection.
 6 THE COURT: 104 is admitted.
 7 (Trial Exhibit 104 received in evidence.)
 8 BY MR. FARNHAM
 9 Q Why are those envelopes sealed as they are coming into
 10 court? What's the purpose of that?
 11 A Because we want to know that nobody has been able to have
 12 access to them, other than those individuals that have signed
 13 off on the 1544s. And they are to be sealed at all times
 14 except while being reviewed.
 15 Q Exhibit 105, what is that?
 16 A It appears to be an Office Depot credit card.
 17 Q And Exhibit 106 -- I'm sorry, Exhibit 105 -- let's go
 18 through them. I'm trying to do this efficiently.
 19 Exhibit 106, what is that?
 20 A Is this 106?
 21 (Brief pause.)
 22 A These appear to be credit cards issued by Morgan Stanley
 23 Smith Barney.
 24 Q And Exhibit 107?
 25 A These are multiple cards, different cards. This is a

1 A Jason Cohen, a company named Anderson & Associates.
 2 (Court reporter interruption.)
 3 A First card, upper left, is in the name of Jason Cohen and
 4 the company name Anderson & Associates, LT.
 5 Next card. Steven Johnson, also from a company Anderson &
 6 Associates.
 7 Next card in the name of David Lowe, and the company name
 8 Anderson & Associates.
 9 And the fourth card is in the name of Gary Anderson, and
 10 the company name Anderson & Associates.
 11 Q And did agents consider these items to be evidence when
 12 they were found?
 13 A Yes, they did.
 14 Q If I could ask you to look at new exhibits. Let's go to
 15 110. Exhibit 110, please.
 16 (Whereupon, exhibit was tendered to the witness.)
 17 Q And I would go ahead and ask you to take it out of the
 18 inner bag?
 19 (Witness complied.)
 20 Q And what is Exhibit 110?
 21 A This appears to be color copies of a passport, a United
 22 Kingdom of Great Britain and Northern Ireland passport.
 23 Q What's the name on the passport?
 24 A The name is David Beresford Lowe.
 25 Q And where was that document found?

1 A I believe it was found in the silver suitcase.
 2 Q How do you know that?
 3 A From the 1544 and, also, from photographs taken of these
 4 items within the briefcase.
 5 MR. FARNHAM: Your Honor, I would offer Exhibit 110
 6 into evidence.
 7 THE COURT: Any objection?
 8 MR. DRESSLER: No objection.
 9 THE COURT: Admitted.
 10 (Trial Exhibit 110 received in evidence.)
 11 MR. FARNHAM: May I publish it briefly?
 12 THE COURT: Yes.
 13 (Document displayed)
 14 BY MR. FARNHAM
 15 Q Is this the first page of the document that we were just
 16 talking about, Exhibit 110?
 17 A I believe it is.
 18 Q And what's the name on this -- appears to be a passport?
 19 A Correct.
 20 Q Or a copy of a passport?
 21 A Correct.
 22 Q What's the name listed on there?
 23 A David Beresford Lowe.
 24 Q What country issued this, what looks to be a copy of a
 25 passport?

1 A United Kingdom of Great Britain and Northern Ireland.
 2 Q And can you read the expiration date there?
 3 A The expiration date appears to be September 8th of 2015.
 4 Q If we could go through Exhibits 111, 112 -- let's just
 5 start 111 through 118.
 6 MR. FARNHAM: Again, to do it efficiently, I think we
 7 need to do -- we do need to offer those, however.
 8 (Whereupon, exhibit was tendered to the witness.)
 9 BY MR. FARNHAM
 10 Q Do you have Exhibit 111?
 11 A Yes.
 12 Q And what is that?
 13 A It appears to be a single check from a TD Ameritrade bank
 14 account.
 15 Q And where was that item found?
 16 A I believe it was also found within the silver briefcase.
 17 Q And how about Exhibit 112?
 18 (Whereupon, exhibit was tendered to the witness.)
 19 Q What is that?
 20 A These appear to be checks from UNB Bank.
 21 Q What's the name of the account on those checks?
 22 A It says HPS.
 23 Q And where was that item found?
 24 A I believe these were also found within the silver
 25 briefcase.

1 Q All right. Let's keep going. 113.
 2 (Whereupon, exhibit was tendered to the witness.)
 3 Q What are those items?
 4 A They are checkbooks from UNB Bank.
 5 Q Were those items found in the briefcase?
 6 A Yes, they were.
 7 MR. DRESSLER: Can we have the name on the checks?
 8 MR. FARNHAM: Why don't I -- I'll offer them into
 9 evidence and we can show them on the Elmo.
 10 I'd like to offer Exhibits 111, 112 and 113 into evidence.
 11 THE COURT: Any objection?
 12 (Brief pause.)
 13 THE COURT: Any objection, Mr. Dressler?
 14 MR. DRESSLER: No objection.
 15 THE COURT: All right. Admitted.
 16 (Trial Exhibits 111, 112 and 113 received in
 17 evidence.)
 18 BY MR. FARNHAM
 19 Q If I could hand you what's been marked as Exhibit --
 20 MR. FARNHAM: Mr. Dressler, I can show you the
 21 Exhibit. It's sealed up. I don't know the name of the entity
 22 on those.
 23 MR. DRESSLER: Okay. That's fine.
 24 MR. FARNHAM: I would just like to keep moving.

1 BY MR. FARNHAM
 2 Q Take a look at Exhibit 114.
 3 (Whereupon, exhibit was tendered to the witness.)
 4 Q And what is that document? What is that -- oh, I'm sorry.
 5 A This is the last one?
 6 AGENT SIMS: 114 is this one.
 7 Q Oh, you looked at 114. I'm sorry.
 8 115.
 9 (Whereupon, exhibit was tendered to the witness.)
 10 THE COURT: Now I'm confused. Are we looking at 115?
 11 MR. FARNHAM: I believe I just asked about 114.
 12 THE COURT: The question was about 113. Those were
 13 the checkbooks.
 14 MR. FARNHAM: You're right, your Honor. I think that
 15 was the last question I asked.
 16 BY MR. FARNHAM
 17 Q Do you have Exhibit 114 in front of you, Ms. Kramer?
 18 A I'm not sure. It doesn't have a...
 19 AGENT SIMS: We're looking at 115 right now.
 20 BY MR. FARNHAM
 21 Q Let's go back to 114, just to make sure we're getting it.
 22 If you could look at Exhibit 114? Tell me what it is and
 23 where the item was found?
 24 A These items are the checkbooks from UNB Bank.
 25 Q So, I apologize. I think that was 114.

1 MR. FARNHAM: Your Honor --
 2 THE COURT: What was 113?
 3 MR. FARNHAM: Do you have Exhibit 113 up here?
 4 (Brief pause.)
 5 THE COURT: How many physical exhibits do you have,
 6 Mr. Farnham?
 7 MR. FARNHAM: Your Honor, there are, depending on
 8 which number we're on -- one, two, three, four -- five other
 9 items that were found in the briefcase. Then some larger
 10 physical items that are easier to identify.
 11 They were found in the back house, primarily credit card
 12 Point of Sale machines.
 13 THE COURT: Is there a reason why we can't stipulate
 14 to the admission of these? I mean, you all have pre-cleared
 15 this, I assume?
 16 MR. DRESSLER: Happy to stipulate, your Honor.
 17 THE COURT: Why don't we speed this up and not go
 18 through the mechanical process?
 19 Let's just stipulate that these are all of the -- why
 20 don't you read off the exhibit numbers you're going to go
 21 through that were in the briefcase?
 22 MR. FARNHAM: Certainly, your Honor. And then --
 23 MR. DRESSLER: Excuse me. I would just ask that they
 24 be identified, which ones were in the briefcase.
 25 THE COURT: Yeah. Yeah. I want to do that. I just

1 want to -- rather than going through the admissibility process,
 2 why don't you just state the numbers that you believe were in
 3 the briefcase? Which numbers are they? 114 through what else?
 4 MR. FARNHAM: Through 118.
 5 THE COURT: All right. And do we have a stipulation
 6 that those were items found in the briefcase?
 7 MR. DRESSLER: Yes, your Honor.
 8 THE COURT: Okay. And those are admitted.
 9 (Trial Exhibits 114, 115, 116, 117 and 118 received in
 10 evidence.)
 11 THE COURT: So we can short circuit that.
 12 MR. FARNHAM: Certainly.
 13 BY MR. FARNHAM
 14 Q I would like to show one of those documents at this point,
 15 Exhibit 117. And then we'll move on to the back house.
 16 (Whereupon, exhibit was tendered to the witness.)
 17 Q Agent Kramer, you have been handed what's been marked as
 18 Exhibit 117. It is admitted into evidence.
 19 Could you go ahead and open that bag and describe what
 20 that is?
 21 A You want me to open this?
 22 Q Yes, please.
 23 (Witness complied.)
 24 MR. DRESSLER: May I approach and look at it?
 25 THE COURT: Yes.

1 A It appears to be checkbooks from TD Ameritrade.
 2 MR. FARNHAM: And may I put those on the Elmo, your
 3 Honor?
 4 THE COURT: Okay.
 5 (Exhibit displayed)
 6 BY MR. FARNHAM
 7 Q Is this one of the checkbooks that was from Exhibit 117?
 8 A Yes.
 9 Q And we talked about this, but where was this item found?
 10 A Within the silver briefcase.
 11 Q And what's the account name and address for this
 12 checkbook?
 13 A It appears to be H.F. Administration, Limited. Attention,
 14 David Lowe.
 15 Q And what's the address there?
 16 A 1201 North Orange Street, Suite 7004, Wilmington, Delaware
 17 19801.
 18 Q And is this a page from this checkbook?
 19 A Yes, it is.
 20 MR. DRESSLER: Can I look at that for one second?
 21 (Exhibit was shown to the counsel.)
 22 BY MR. FARNHAM
 23 Q Could you also look briefly at 118 -- we'll do that later.
 24 I'm sorry. Let's keep moving.
 25 I'd like to start with the physical exhibits, items that,

1 I believe, were found in the back house and that would start
 2 with Exhibit 119.
 3 Why don't we go ahead and open and hand Agent Kramer 119
 4 through 125?
 5 MR. FARNHAM: And if it would speed things up, we
 6 could stipulate to the admissibility, if Mr. Dressler is
 7 amenable.
 8 THE COURT: All right. Any objection?
 9 MR. DRESSLER: I would be happy to if I hear what I'm
 10 stipulating to. I missed it. I wasn't --
 11 THE COURT: Okay. Why don't you repeat again what
 12 these are?
 13 MR. FARNHAM: Certainly. Exhibit 119, according to
 14 the records I have, it's a credit card -- sliding credit card
 15 imprinter for Jones Moore and Associates.
 16 Exhibit 120 is a credit card Point of Sale terminal with
 17 some identifying characteristics.
 18 121, credit card Point of Sale terminal.
 19 122, credit card Point of Sale terminal, which is actually
 20 already in evidence, but we'll look at that briefly.
 21 Exhibit 123 is a credit card Point of Sale terminal.
 22 Exhibit 124, credit card Point of Sale terminal.
 23 Exhibit 125 is a small metal plate for a credit card
 24 imprinter.
 25 THE COURT: All right. And you request stipulation

1 that these were found in the back house during the search?
 2 MR. DRESSLER: So stipulated.
 3 THE COURT: All right. So stipulated. Thank you.
 4 And admitted.
 5 (Trial Exhibits 119, 120, 121, 122, 123, 124 and 125
 6 received in evidence.)
 7 BY MR. FARNHAM
 8 Q Agent Kramer, you mentioned you participated in the back
 9 house search?
 10 A I did.
 11 Q Do you recall finding numerous Point of Sale terminals
 12 when you were searching?
 13 A I do.
 14 Q And when we say "Point of Sale terminal," what were
 15 these -- what were these things that you found?
 16 A They are small devices through which you can slide or
 17 swipe a credit card to make a transaction or a charge.
 18 Q It looks like in front of you have is Exhibit 119, is that
 19 correct? The slider?
 20 A Yes.
 21 Q Could you just hold that up and show the jury what that
 22 item was.
 23 (Witness complied.)
 24 Q And what does it say on the little metal part of that
 25 slider?

1 for the connection to be made from this, this device, through a
 2 phone wire instead of what we now use as internet.
 3 Q It's used for credit card transactions?
 4 A Correct.
 5 Q If you could look at Exhibit 121?
 6 (Whereupon, exhibit was tendered to the witness.)
 7 Q What's Exhibit 121?
 8 A It appears to be another of the same type of device, a
 9 credit card transaction processing device.
 10 Q And where was that item found?
 11 A I believe this was also found in the back house.
 12 Q Previously admitted Exhibit 122 -- oh, yes. I'm sorry.
 13 Well, let's skip to -- we'll do that next. I'm sorry.
 14 Exhibit 122 had already been admitted, but I would like
 15 you just to look at that and tell me if that was an item that
 16 was found during the search of [REDACTED] in the back
 17 house?
 18 (Whereupon, exhibit was tendered to the witness.)
 19 A I believe it was, yes.
 20 Q What is that?
 21 A This is also a Point of Sale terminal through which credit
 22 card transactions are made.
 23 Q And what company is listed on terminal?
 24 A Chase Paymentech.
 25 Q If I could, Exhibit 123, have you look at that.

1 A It has what appears to be an account number under which it
 2 says "Jones Moore and Associates, Wilmington, Delaware" and
 3 then two other account numbers or numbers following that as
 4 well.
 5 Q And did agents who were searching the house, including
 6 yourself, consider that evidence?
 7 A Yes, we did.
 8 Q Do we have Exhibit 120?
 9 (Whereupon, exhibit was tendered to the witness.)
 10 Q And that is admitted, but if you could just hold that up
 11 so the jury can see what that is?
 12 (Witness complied.)
 13 Q What is that device?
 14 A I believe that this is also a Point of Sale terminal.
 15 Q And what's that wire that's wrapped around it?
 16 A It's a phone cord.
 17 Q Are you familiar with how those machines operate
 18 generally?
 19 A Generally speaking.
 20 Q How do they work?
 21 A I believe before when -- when there wasn't merchant
 22 services and payments were done through the internet, you would
 23 need a hard-wired phone cord in order to connect a device such
 24 as this to enact a transaction, where you would be sliding a
 25 card or credit card through a terminal such as this, and then

1 (Whereupon, exhibit was tendered to the witness.)
 2 Q What is Exhibit 123?
 3 A It is also a Point of Sale terminal through which credit
 4 card transactions are made.
 5 Q And what's the merchant that's listed on that terminal?
 6 A First National Merchant Solutions.
 7 Q And how about 124?
 8 (Whereupon, exhibit was tendered to the witness.)
 9 MR. FARNHAM: And, Agent Sims, as a heads-up, we're
 10 going to going to Exhibits 126, 127 and 128 next.
 11 BY MR. FARNHAM
 12 Q Exhibit 124, what is that?
 13 A That's also a Point of Sale terminal.
 14 Q And where was that item found?
 15 A In the back house.
 16 Q Does that have a -- can you identify the company that
 17 that's with?
 18 A Global Payments.
 19 Q We're almost there.
 20 (Whereupon, exhibit was tendered to the witness.)
 21 Q And is that Exhibit 126?
 22 Agent Kramer, you have been handed what's been marked as
 23 Exhibit 126. Is that something that was found during the
 24 search of [REDACTED]
 25 A Yes, it is.

1 Q What is it?
 2 A It is a stack of multiple opened envelopes.
 3 Q And was that -- where was that item found, those items?
 4 A In the back house on the premise.
 5 Q And how do you know that?
 6 A I know that from being there, from the evidence log and,
 7 also, from photographs taken.
 8 MR. FARNHAM: Your Honor, I would offer Exhibit 126
 9 into evidence and note that 127 and 128 are similar envelopes
 10 that I believe were found in the back house.
 11 THE COURT: Any objection to the admission of those,
 12 126, 127 and 128?
 13 MR. DRESSLER: No, your Honor.
 14 THE COURT: All right. Those three are admitted.
 15 (Trial Exhibits 126, 127 and 128 received in
 16 evidence.)
 17 MR. FARNHAM: Your Honor, I'd like to publish
 18 portions of Exhibit 126 and 128.
 19 THE COURT: Okay.
 20 (Brief pause.)
 21 BY MR. FARNHAM
 22 Q Agent Kramer, if I could just have you look at Exhibit 128
 23 to make sure we're talking about the same thing.
 24 (Witness complied.)
 25 Q What is that?

1 A It's an opened envelope.
 2 MR. FARNHAM: May I publish it, your Honor?
 3 MR. DRESSLER: Is this from 126?
 4 MR. FARNHAM: This is 128.
 5 THE COURT: 128.
 6 (Exhibit displayed.)
 7 BY MR. FARNHAM
 8 Q First, I wanted to look at the return address of the
 9 envelope that was found in the back house and is Exhibit 128.
 10 What does that say for the return address for this
 11 envelope?
 12 A It reads: Brandywine Executive Center, 1521 Concord Pike,
 13 No. 301, Wilmington, Delaware 19803.
 14 Q How about the address on this envelope? What does that
 15 read?
 16 A Richard Jones, Jones Moore and Associates, Pareto Capital,
 17 LLC, c/o Jones Moore and Associates, 4040 Civic Center Drive,
 18 Suite 200, San Rafael, California 94903-4187.
 19 Q And when you or the other agents found this item, did you
 20 consider it evidence?
 21 A Yes, we did.
 22 MR. DRESSLER: Can I look at it for one second?
 23 THE COURT: All right.
 24 (Whereupon, exhibit was shown to counsel.)
 25 MR. FARNHAM: This is Exhibit 128 which has been

1 shown, and I'm about to show 126.
 2 (Exhibit displayed.)
 3 BY MR. FARNHAM
 4 Q Agent Kramer, this is one of the envelopes in the stack of
 5 envelopes that was found in the back house as Exhibit 126.
 6 Can you read the return address for this document, this
 7 envelope?
 8 A Umm, it appears to be HQ Global. Can't read the rest of
 9 it. 4040 Civic Center Drive, Suite 200, San Rafael,
 10 California, 94903. HQ Global Workplaces.
 11 Q And what's the main address on this envelope? Where was
 12 it sent to?
 13 A Pareto Capital, LLC [REDACTED] Larkspur [REDACTED]
 14 Q And when you and other agents found the envelopes that are
 15 marked as Exhibit 126, did you consider them evidence?
 16 A Yes, we did.
 17 MR. FARNHAM: If we could bring up on the screen
 18 Exhibit 100, Page 9?
 19 This is an exhibit that's been previously admitted.
 20 (Photograph displayed.)
 21 MR. FARNHAM: I think I have the wrong one.
 22 (Brief pause.)
 23 MR. FARNHAM: I'm sorry. That's the wrong photo.
 24 I'll move on.
 25

1 BY MR. FARNHAM
 2 Q After the search of November, 2011, did you -- were you
 3 aware that Mr. Murray was arrested at some point?
 4 A I was, yes.
 5 Q Do you know when that happened, approximately?
 6 A I believe it happened early the following year. Maybe
 7 March time frame of the following year.
 8 Q Around that time frame or after that, were you
 9 participating or working on an application for a seizure
 10 warrant?
 11 A Yes, I was.
 12 Q Tell me about that?
 13 A It --
 14 MR. DRESSLER: Your Honor, I'm going to object to
 15 relevance.
 16 THE COURT: What's the relevance of this?
 17 MR. FARNHAM: Just the timeline for that, for that
 18 seizure warrant, when it was issued and this witness's
 19 participation in that.
 20 THE COURT: Well, I assume we have a stipulation of
 21 when the seizure warrant was issued. That's not an issue in
 22 dispute, is there?
 23 MR. DRESSLER: No.
 24 THE COURT: So why don't we just -- you can ask her
 25 when it was issued. I don't know if we need to get into all

1 the background, unless you can demonstrate its relevance.
 2 MR. FARNHAM: Very well.
 3 BY MR. FARNHAM
 4 Q Do you recall when that seizure warrant, approximately,
 5 was issued that you worked on?
 6 A I believe it was May or June of 2012.
 7 MR. FARNHAM: Your Honor, just a moment. One more
 8 question. I'm almost finished.
 9 THE COURT: Sure.
 10 (Brief pause.)
 11 MR. FARNHAM: Oh, your Honor, I would like to publish
 12 Exhibit 101, Page 9. I'm sorry. I had the wrong exhibit
 13 number.
 14 THE COURT: Okay.
 15 (Photograph displayed.)
 16 MR. FARNHAM: And, your Honor, just to clarify the
 17 record, because we did talk about a seizure warrant, I would
 18 like to ask one question about that.
 19 THE COURT: Sure.
 20 BY MR. FARNHAM
 21 Q Agent Kramer, what is a seizure warrant?
 22 A It is an application to seize property from an individual
 23 or an entity.
 24 Q Can it be funds?
 25 A It can be.

1 Q And was that what was applied for and sought to be seized
 2 in the warrant you issued, you worked on?
 3 A Yes.
 4 Q If you could look at the screen, Exhibit 101, Page 9. Is
 5 that a photo from the back house during the search?
 6 A I don't have anything appearing on my screen currently.
 7 THE COURT: Try it again.
 8 (Whereupon, photograph was tendered to the witness.)
 9 THE COURT: Does it appear now?
 10 Oh, they are all out? Okay. Well, we're going to try it
 11 again.
 12 MR. FARNHAM: We'll switch to the Elmo very
 13 quickly -- oh, it's up.
 14 (Photograph displayed.)
 15 THE COURT: Is it up for the jury?
 16 (Jury panel nodding affirmatively.)
 17 THE COURT: Okay. Thank you.
 18 All right.
 19 BY MR. FARNHAM
 20 Q What is this photo, Agent Kramer?
 21 A It appears to be a photo of a cabinet, which I believe is
 22 from the back house that we searched during the search warrant.
 23 Q And you see there is what appears to be a stack of
 24 envelopes?
 25 A Yes.

1 Q Is that the material that was seized as evidence by the
 2 agents?
 3 A I believe that it was.
 4 Q And are those the envelopes we were just looking at more
 5 closely?
 6 A I believe that they are.
 7 MR. FARNHAM: That's all I have, your Honor. Thank
 8 you.
 9 THE COURT: Cross examination?
 10 MR. DRESSLER: No questions, your Honor.
 11 THE COURT: All right. Thank you.
 12 And then you're excused and you may step down. Thank you.
 13 (Witness excused.)
 14 THE COURT: So this brings us to the noon hour, a
 15 good stopping point. We'll break for one hour -- half hour
 16 lunch. I wish an hour. But to keep things going, we're going
 17 to keep at the same pace here.
 18 And just a reminder, we are going to stay beyond our usual
 19 time today, but not tomorrow.
 20 So we'll see you back in 30 minutes.
 21 (Jury exits courtroom at 11:59 a.m.)
 22 THE COURT: All right. So next up is the video, or
 23 what do we have?
 24 MR. FARNHAM: The David Lowe deposition. We're ready
 25 to play that, your Honor.

1 THE COURT: All right. Hopefully, we'll be able
 2 to --
 3 MS. HARRIS: We should finish it this afternoon.
 4 THE COURT: Let's see what we can do, hopefully.
 5 And I didn't mean to cut you off, but I really do think
 6 that if there are other witnesses where there's lots of
 7 exhibits and things that there is no reason not to stipulate
 8 to, you can just stipulate to it and then you can just display
 9 whatever you want and ask questions rather than going through
 10 this.
 11 I've done this in other trials where the jury begins to
 12 fall asleep where things have been seized out of somebody's
 13 house and you go through literally 75 items. So I'm trying to
 14 save some time here.
 15 MR. FARNHAM: No, I understand. The evidence --
 16 sometimes the evidence procedures and the sealing and
 17 everything gets to be too much.
 18 THE COURT: Right, right. I understand chain of
 19 custody and all that, but, hopefully, we can short circuit
 20 those things.
 21 Thank you.
 22 MR. FARNHAM: Thank you.
 23 (Whereupon at 12:00 p.m. proceedings
 24 were adjourned for noon recess.)
 25

1 **PROCEEDINGS**
 2 September 29, 2015 12:37 p.m.
 3 (The following proceedings were held outside of the
 4 presence of the jury)
 5 **THE CLERK:** Please come to order.
 6 **THE COURT:** Okay. Jury is all waiting. Ready?
 7 **MS. HARRIS:** We need our paralegal.
 8 **THE COURT:** Oh. I'm --
 9 **MS. HARRIS:** I thought she was up here. I'll go down
 10 to the 11th Floor.
 11 (Off-the-Record discussion)
 12 **MR. FARNHAM:** Your Honor, what we would like to do,
 13 we did prepare binders for the jury.
 14 Can you grab those?
 15 **MR. DRESSLER:** What binders are these?
 16 **MR. FARNHAM:** I would like to show Your Honor and
 17 defense counsel.
 18 (Documents tendered)
 19 **MR. DRESSLER:** Oh, exhibits.
 20 **THE COURT:** All right.
 21 **MR. FARNHAM:** Your Honor, per your request,
 22 recommendation, we prepared binders of the exhibits and pages
 23 that were shown to David Lowe at the deposition. It does not
 24 -- it includes only admitted exhibits at this point. There are
 25 a few that -- there's one that's mentioned that was not

1 admitted. It's on deposition. I think it is inconsequential.
 2 The answer was "No" from Mr. Lowe. But other than that,
 3 everything in that binder that was shown to him was admitted.
 4 It'll be talked about in the deposition.
 5 **THE COURT:** Which of these was not admitted?
 6 **MR. FARNHAM:** Exhibit 26 is referenced on the
 7 portions of the designated deposition.
 8 **THE COURT:** Uh-huh.
 9 **MR. FARNHAM:** It's some ATM photos that Mr. Lowe
 10 looked at and said they were not him.
 11 **THE COURT:** Oh. So it's not in this binder.
 12 **MR. FARNHAM:** It's not in that binder.
 13 **THE COURT:** All right.
 14 **MR. FARNHAM:** It's an exception to the rule that
 15 everything in there's been admitted.
 16 **THE COURT:** Okay.
 17 **MR. FARNHAM:** In addition, we did include Exhibit A,
 18 Mr. Dressler's exhibit that he introduced on cross. I'm
 19 assuming that Mr. Dressler would like to move that into
 20 evidence. And we didn't have an objection to that.
 21 **MR. DRESSLER:** Yes.
 22 **THE COURT:** Okay.
 23 **MR. FARNHAM:** That's also at the back of the booklet.
 24 **THE COURT:** All right. So is there a stipulation
 25 that everything here, 1 through 36, and then Exhibit A is to be

1 admitted?
 2 **MR. DRESSLER:** Well, which number is it? Yeah,
 3 Exhibit A is at the very back of the binder.
 4 **THE COURT:** The tab at the bottom.
 5 **MR. DRESSLER:** Okay. And I have in my exhibits,
 6 Your Honor, I have Exhibit A as -- I can tell you what it is.
 7 **MR. FARNHAM:** I think it's best to have it as Exhibit
 8 A in the binder. That's how it's referenced in the deposition.
 9 **MR. DRESSLER:** Yeah, deposition, and then we can mark
 10 it --
 11 **THE COURT:** All right.
 12 **MR. DRESSLER:** I'll introduce my copy.
 13 **THE COURT:** Can we stipulate that everything that's
 14 in here is admitted?
 15 **MR. FARNHAM:** As far as I know, according to my
 16 records, we already have. That was part of this morning.
 17 **THE COURT:** Oh.
 18 **MR. FARNHAM:** And then, with witnesses so far in this
 19 trial.
 20 **THE COURT:** Okay.
 21 **MR. DRESSLER:** I'm going to have to take their word
 22 for it.
 23 **THE COURT:** All right. I'm going to deem them
 24 admitted. If you find there's a problem, let me know, and we
 25 can un-admit it if we need to.

1 **MR. DRESSLER:** I don't think there will be a problem.
 2 **THE COURT:** All right.
 3 **MR. FARNHAM:** And how should we get those to the
 4 jury? I want to just ask --
 5 **THE COURT:** I think we probably should give it to
 6 them now. I'll explain to them what we are going to do. And,
 7 explain that, you know, I guess that at the point -- it'll be
 8 obvious.
 9 When they say "Exhibit 1," they can turn to Exhibit 1,
 10 right?
 11 **MR. FARNHAM:** Exactly. And they will match the tabs.
 12 One note about these, and maybe could you note to the
 13 jury, the pages are in the order they are referenced, not
 14 necessarily numerical. So, so that they can hopefully, as best
 15 we could, page through as they're watching the video.
 16 **THE COURT:** They're in order of the presentation, is
 17 what you mean?
 18 **MR. FARNHAM:** The exhibit numbers are in order of
 19 presentation. Within the exhibits, the pages might be out of
 20 order, but they were referenced out of order.
 21 **THE COURT:** All right. It's the way -- the way
 22 they're in is the way they are referenced? Or this is the
 23 normal order, and the reference is out of order?
 24 **MR. FARNHAM:** I'm sorry, Your Honor. I'm not being
 25 clear. The exhibit numbers, 1 through whatever, 1, 2, 3, 4.

1 THE COURT: Yes.
 2 MR. FARNHAM: They were referenced at the deposition
 3 in that order.
 4 THE COURT: Yes.
 5 MR. FARNHAM: Within each exhibit, there are only
 6 selected pages.
 7 THE COURT: Yes.
 8 MR. FARNHAM: Because otherwise, the exhibits are too
 9 large to really manage.
 10 THE COURT: Yes.
 11 MR. FARNHAM: Within each exhibit, some of the pages
 12 are out of order if they were referenced out of order in the
 13 deposition.
 14 THE COURT: So they are ordered the way they are
 15 referenced within each exhibit.
 16 MR. FARNHAM: Yes.
 17 THE COURT: Thank you.
 18 MR. FARNHAM: Sorry.
 19 THE COURT: All right, let's bring the jury in.
 20 MR. FARNHAM: Thank you.
 21 (The following proceedings were held in the presence
 22 of the Jury)
 23 THE COURT: Okay. Thank you, ladies and gentlemen.
 24 We are going to proceed with the next witness.
 25 And I should explain that the next witness is going to

1 appear through what is called a deposition. When a person is
 2 unable to testify at a trial, the deposition of that person may
 3 be used at the trial.
 4 A deposition is the sworn testimony of a witness taken
 5 before trial. The witness is placed under oath to tell the
 6 truth, and lawyers for each party may ask questions. And the
 7 questions and answers are recorded.
 8 You are about to see and hear the deposition of David
 9 Lowe. And you should consider deposition testimony in the same
 10 way you would consider the testimony of any other witnesses who
 11 appear before you.
 12 To try to make this as smooth as possible, number one, you
 13 should know that there may be some things edited out of the
 14 deposition. So what is being presented to you is what is going
 15 to be deemed admissible testimony.
 16 Second of all, the witness will refer to certain written
 17 documents, which is going to be hard since he's not here and
 18 we're not doing the usual process. But what we have done is
 19 prepare a binder for you with the exhibits in the order that
 20 they are talked about in -- on the tape. So you can actually
 21 see the documents as we go along.
 22 And, again, these documents that -- that are in the binder
 23 are not the whole document. These are the pages that are
 24 talked about. So, we didn't give you everything; trying to
 25 give you what's -- what was actually referred to.

1 And some of the pages may appear out of order, and that's
 2 because that's the way they're talked about on the video.
 3 So, hopefully this will all be something that you can
 4 follow along with the help of the binders.
 5 And I guess you have several binders?
 6 MR. FARNHAM: We do, Your Honor.
 7 THE COURT: Why don't we go ahead and pass those out
 8 as we begin to roll the video.
 9 Now, this video will take about a total of about -- is it
 10 three to three and a half hours? Is that right?
 11 MR. FARNHAM: That's our best estimate.
 12 THE COURT: All right. So we will take a break, like
 13 everything else, at the appropriate point.
 14 So once we get those distributed, we can go ahead and play
 15 the video.
 16 (Binders distributed to the Jury)
 17 MR. FARNHAM: So, we don't quite have enough. Tried
 18 to save some trees. So some jurors will have to share,
 19 Your Honor.
 20 THE COURT: I have another one. You can use mine if
 21 you want, to ease that process.
 22 (Binder handed down and distributed)
 23 THE COURT: Okay, we're a little short, but hopefully
 24 you can read off of one if you don't have one on your own.
 25 (A hand is raised)

1 THE COURT: Yes?
 2 ALTERNATE JUROR NO. 2: Is it important for us to see
 3 the whole video (Indicating)?
 4 THE COURT: Oh, it's going to be on this -- on your
 5 screen.
 6 Right?
 7 ALTERNATE JUROR NO. 2: All right.
 8 MR. FARNHAM: That's correct.
 9 THE COURT: Right. So it will be right in front of
 10 you.
 11 Why don't you formally call your next witness.
 12 MR. FARNHAM: Certainly, Your Honor. We will call
 13 David Lowe, who will be testifying by deposition.
 14 THE COURT: All right, so let's go ahead and play the
 15 video.
 16 Is that not hooked up to our video system?
 17 (A pause in the proceedings)
 18 WHEREUPON:
 19 DAVID LOWE,
 20 called as a witness for the Plaintiff herein, testified via
 21 videotaped deposition played in open court.
 22 (Time noted: 12:48 p.m. to 1:42 p.m.)
 23 THE COURT: Is that for us?
 24 MR. FARNHAM: If we could stand up for a second while
 25 we change -- get the next clip?

1 THE COURT: Yeah, why don't we stand for a moment.
 2 And let me see the attorneys at sidebar for a second.
 3 (Whereupon, the following proceedings were held at
 4 sidebar.)
 5 THE COURT: Again, I ask: Isn't there a way to
 6 stipulate to some of this? Why are we going through some of
 7 these things?
 8 Can't we just stipulate that he's never seen -- he's
 9 already said he's not a part of JMA, not part of Anderson &
 10 Associates. That's not his signature on the various -- are we
 11 going to go through literally two hours of this?
 12 MR. FARNHAM: There's approximately another -- so
 13 next up, I'll just tell you, Your Honor, are Fidelity calls
 14 that will be played for Mr. Lowe. Some of those are the same
 15 calls we have heard before. But, Mr. Murray is identifying
 16 himself as Mr. Lowe.
 17 MS. HARRIS: We do want to play all of the phone
 18 calls.
 19 THE COURT: All right. That's a little different.
 20 MR. DRESSLER: I'm not going to stipulate that,
 21 Your Honor, because he sits there -- I don't think I can --
 22 MR. FARNHAM: Your Honor --
 23 (Reporter interruption)
 24 MR. DRESSLER: Let me -- I don't think I can do it.
 25 I realize it is tiresome. I think I have gone out of my way to

1 really move the case along.
 2 THE COURT: All right.
 3 MR. DRESSLER: But, there are reasons that will be
 4 obvious plus things that I can't share with regard to my
 5 client's position. I can't do it.
 6 THE COURT: Okay. So not -- not even to the
 7 documents, the signature part.
 8 MR. DRESSLER: Well, I think I have already -- I
 9 think that's not the problem.
 10 MR. FARNHAM: So, Your Honor, I think obviously it's
 11 more than a live witness would be. But, people went all the
 12 way to Bangkok for this, so the questions are extensive. But
 13 it's not too much more.
 14 And it is important -- we don't know what the defense is
 15 going to be here. And I think it is important for state of
 16 mind, which is really all we know about, I think it is
 17 important for us to --
 18 THE COURT: How many more of these JMA, Jones Moore &
 19 Associates and Anderson & Associates documents are we going to
 20 go through?
 21 MR. FARNHAM: I estimate about five or ten minutes of
 22 the Fidelity calls. Then some additional documents, for maybe
 23 45 minutes. And then I think we'll be able to -- there may be
 24 one shorter clip, and then we can get to the cross by
 25 Mr. Dressler.

1 MS. HARRIS: Is Mr. Dressler willing to stipulate
 2 that every document that we showed the witness that lists David
 3 Lowe as the president of Jones Moore & Associates and appears
 4 to have his signature is false?
 5 MR. DRESSLER: I don't think that's going to shorten
 6 it. I think that -- and I apologize, but I'm not -- I'm not
 7 going to be able to stipulate to that.
 8 MS. HARRIS: Okay.
 9 THE COURT: All right, let's do it.
 10 (Conclusion of sidebar discussion; the following
 11 proceedings were held in the presence and hearing of
 12 the Jury.)
 13 THE COURT: Somebody promise popcorn?
 14 MR. DRESSLER: I did, but I forgot.
 15 THE COURT: Okay, all right.
 16 Well, we'll go another segment, then we'll take a real
 17 break. But why don't we go to the next segment, then, Counsel.
 18 MR. FARNHAM: Yes, Your Honor. Thank you.
 19 THE COURT: Okay.
 20 MS. HARRIS: Your Honor, and the Exhibit 10 that is
 21 being shown is the same Exhibit 10 that is in evidence in this
 22 case.
 23 THE COURT: Okay.
 24 (Playing of video deposition continued. Time noted:
 25 1:48 p.m. to 2:25 p.m.)

1 THE COURT: Let me ask, is this -- why don't you --
 2 (Video paused)
 3 THE COURT: Oh. Was that you talking? Or who was
 4 that? Was that -- is this about to break, naturally?
 5 MR. FARNHAM: We're not to a break in a clip yet,
 6 Your Honor, but this might be a good time for a break.
 7 THE COURT: Why don't we take our real break then,
 8 and we will come back in 15 minutes.
 9 MR. FARNHAM: Thank you.
 10 (Jury exits the courtroom at 2:26 p.m.)
 11 THE COURT: All right. So how much longer is the
 12 direct examination clip?
 13 MR. FARNHAM: Your Honor, during the break I'll get a
 14 more accurate estimate. Maybe a little bit over an hour. I
 15 think we may run into tomorrow.
 16 THE COURT: Still an hour? On the direct?
 17 MR. FARNHAM: I'll get a more accurate estimate
 18 before we resume again.
 19 MS. HARRIS: If Mr. Dressler does want to stipulate
 20 to the false signatures on those documents, that would speed it
 21 up. I mean, they've heard quite a bit.
 22 MR. DRESSLER: I don't know how that would speed it
 23 up. Not my position to do it.
 24 THE COURT: Well, it would speed it up by not having
 25 to play every part of that direct. But if you are not willing

1 to stipulate, then we will just go forward.
 2 (Recess taken from 2:27 p.m. to 2:43 p.m.)
 3 (The following proceedings were held outside of the
 4 presence of the Jury)
 5 THE CLERK: Please come to order.
 6 THE COURT: Okay. Let's --
 7 MS. HARRIS: Wait, wait.
 8 THE COURT: What?
 9 MR. FARNHAM: Your Honor, best estimate is about an
 10 hour and 15 minutes to an hour and 25 minutes of direct
 11 remaining. Then it's about -- I believe, about 40 to 45
 12 minutes of cross that we certainly wouldn't get to today.
 13 I guess my proposal would be we keep going, get what we
 14 can in, until 3:30, which was the time proposed to the jury.
 15 THE COURT: I said possibly past 3:30, but --
 16 MR. FARNHAM: Whatever you would like, Your Honor.
 17 THE COURT: I'll just -- you know, maybe we'll go for
 18 an hour, 3:45. I want to get in as much as we can.
 19 MR. FARNHAM: Certainly. I think we will definitely
 20 have some to start with tomorrow.
 21 THE COURT: Okay.
 22 MR. FARNHAM: Thank you.
 23 THE COURT: All right. Let's bring them in.
 24 (The following proceedings were held in the presence
 25 of the Jury)

1 THE COURT: Okay. Thank you, ladies and gentlemen.
 2 Let's resume where we left off.
 3 And my plan today is to go to about -- for about another
 4 hour, about 3:45. That will not -- may not take us through the
 5 completion of this video, but it will get us through a lot of
 6 it. And then we may pick up tomorrow, and complete it tomorrow
 7 morning. And then back to live witnesses.
 8 Correct?
 9 MR. FARNHAM: That's correct.
 10 THE COURT: Okay. Let's roll it.
 11 (Playing of video deposition continued. Time noted:
 12 2:46 p.m. to 2:48 p.m.)
 13 MR. FARNHAM: Your Honor, I apologize. I think we're
 14 playing the right clip in the right spot.
 15 We'll try again at --
 16 (A pause in the proceedings)
 17 (Playing of video deposition continued. Time noted:
 18 2:49 p.m. to 3:44 p.m.)
 19 THE COURT: Is there a convenient --
 20 (Video paused)
 21 THE COURT: How much longer does this segment go?
 22 MR. FARNHAM: This segment is two more pages, page
 23 and a half.
 24 THE COURT: Okay. Let's finish it up.
 25

1 (Playing of video deposition continued. Time noted:
 2 3:44 p.m. to 3:46 p.m.)
 3 MR. FARNHAM: I guess that's the end of the longest
 4 clip.
 5 THE COURT: All right. Why don't we go ahead and
 6 break for today, and resume tomorrow, Wednesday, right?
 7 Tomorrow is Wednesday? For our normal schedule. Again, from
 8 8:30 to 2:00 tomorrow.
 9 And that will get us through this segment and on to the
 10 next witnesses. Correct?
 11 MR. FARNHAM: Yes, Your Honor.
 12 THE COURT: All right. So we will adjourn for the
 13 day. See you at 8:30 tomorrow. Again, I apologize for my
 14 lateness this morning.
 15 Again, do not discuss this case with anyone, including
 16 amongst yourselves; do not do any independent research; and do
 17 not form any opinions until this case is submitted to you for
 18 deliberation.
 19 See you tomorrow. Thank you.
 20 (Jury exits the courtroom at 3:47 p.m.)
 21 THE COURT: Okay.
 22 MR. FARNHAM: Your Honor, we're on the home stretch
 23 with this. We are just a couple of short clips of direct,
 24 maybe ten minutes, and then I think it's about 45 or 50 minutes
 25 of cross-examination, redirect, in the video. I would propose

1 we start that in the morning and get it out of the way.
 2 THE COURT: Okay. A little over an hour's worth more
 3 of video, sounds like, an hour and 15 minutes or so?
 4 MR. FARNHAM: Approximately. Less than that.
 5 THE COURT: Okay. And then, you will be calling --
 6 who's your next live witness?
 7 MR. FARNHAM: Mark Moskowitz. Melanie Perricone.
 8 (Off-the-Record discussion between counsel)
 9 MR. FARNHAM: Paul Sportelli. John Benedetto. Scott
 10 Greenberg.
 11 (Off-the-Record discussion between counsel)
 12 MR. FARNHAM: Marty Ward. And then there's also Mark
 13 Gong. G-O-N-G.
 14 There's a possibility if we move fast enough, Calvin Lim,
 15 L-I-M.
 16 MR. DRESSLER: Who is that?
 17 MR. FARNHAM: He is from US Bank. He will be short.
 18 MR. DRESSLER: And with regard to Melanie Perricone,
 19 I don't have any interview from her. And, I know who she is,
 20 but I don't know what exhibits. There's only one exhibit
 21 listed, one exhibit, one or two, at the most, on the
 22 Government's exhibit list. So I don't really know what to
 23 expect.
 24 MS. HARRIS: There is no report of interview. And,
 25 there are a couple of email chains that we have given over to

1 Mr. Dressler and marked as exhibits. All she's going to be
 2 doing is getting those emails and the communication between her
 3 and Mr. Murray into evidence.
 4 MR. DRESSLER: Okay. And --
 5 MR. FARNHAM: It should be very brief.
 6 MR. DRESSLER: There was one -- I meant to bring it
 7 up earlier, so I apologize, but one of the designated jail
 8 calls --
 9 (Reporter interruption)
 10 MR. DRESSLER: One of the designated jail calls, the
 11 recording that we have will not open. And the Government said
 12 they were trying to get that to me. I'm just trying to -- as
 13 long as we're talking about this stuff.
 14 MR. FARNHAM: Absolutely. I tried to take care of
 15 that yesterday afternoon, and I tried to email it to Miranda
 16 Dressler as an attachment --
 17 MR. DRESSLER: Was that emailed?
 18 MR. FARNHAM: I did email it yesterday, as an
 19 attachment. The one that wasn't able to be opened. I hope
 20 that works.
 21 MR. DRESSLER: Okay. I'll check with her. I haven't
 22 spoken to her since then. All right.
 23 THE COURT: All right.
 24 MS. HARRIS: Your Honor, just for planning purposes,
 25 we would anticipate resting early next week if we keep on at

1 this pace, just so Mr. Dressler should be ready to go with his
 2 case.
 3 THE COURT: All right. Well, I hope that is the
 4 case, because you've got the Oppenheimer stuff and then you've
 5 got Pillsbury.
 6 MS. HARRIS: Right.
 7 THE COURT: And I'm hoping you don't exceed -- hoping
 8 you go under these time estimates that we have here.
 9 MR. DRESSLER: Are you still planning on calling
 10 Mr. Crowley?
 11 MS. HARRIS: We don't know yet. We have to see how
 12 our case comes in, Your Honor.
 13 THE COURT: Okay. When would he be called, if you --
 14
 15 MS. HARRIS: In the Pillsbury part of the case,
 16 Your Honor.
 17 THE COURT: Sounds like you're going take Wednesday
 18 and part of Friday to do the Oppenheimer part?
 19 MS. HARRIS: Correct.
 20 THE COURT: But you may start the Pillsbury part?
 21 MS. HARRIS: Might start the Pillsbury part on
 22 Friday, but Mr. Crowley won't be called on Friday.
 23 THE COURT: All right. So certainly by then you'll
 24 have an idea, and you should let Mr. Dressler know.
 25 MS. HARRIS: Right.

1 MR. DRESSLER: I appreciate it. It's a lot of
 2 material. Not that I haven't looked at it --
 3 THE COURT: Well, you have him scheduled for 120
 4 minutes on direct. That's not -- a lot of time. But -- okay.
 5 See you tomorrow morning.
 6 (Whereupon at 3:52 p.m. further proceedings were
 7 adjourned until Wednesday, September 30, 2015 at
 8 8:15 a.m.)
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDWARD M. CHEN

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) NO. CR 12-0278 EMC
JAMES MURRAY,)
Defendant.) San Francisco, California
) Wednesday
) September 30, 2015
) 8:15 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:
For Plaintiff: MELINDA HAAG
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: ROBIN HARRIS, AUSA
LLOYD FARNHAM, AUSA

For Defendant: ALAN A. DRESSLER, ESQ.
400 Montgomery Street
Suite 200
San Francisco, California 94104

Also Present: USSS AGENT ANTHONY SIMS, JR.
FBI AGENT BRIAN C. WEBER

Reported By: Debra L. Pas, CSR 11916, CRR, RMR
Belle Ball, CSR 8785, CRR, RMR
Official Reporters - US District Court

PROCEEDINGS

1 SEPTEMBER 30, 2015 8:56 A.M.
2
3 (Defendant present, in custody.)
4 (Proceedings held in open court, outside the presence
5 and hearing of the jury.)
6 THE COURT: All right. Good morning, everyone. We
7 are still awaiting the arrival of one juror. I think it may be
8 one of the alternates who is running a little late. So, but
9 she -- I think the indication was she wasn't going to be very
10 late, so I think we should wait.
11 And so remind me, you've got another 15, 20 minutes on the
12 direct?
13 MR. FARNHAM: Correct. About 15 minutes on direct,
14 and then I estimate that the cross and very short redirect is
15 about 45 minutes.
16 THE COURT: Okay. So it will be about an hour.
17 MR. FARNHAM: Correct.
18 THE COURT: And then you're going to start with your
19 next witness?
20 MR. FARNHAM: After a couple brief things we would
21 like to do, your Honor, we would like to read the portions of
22 the Jim Murray transcript in the SEC matter that we've
23 designated. That will take -- I practiced it -- it's about 13
24 to 15 minutes.
25 THE COURT: Okay. That's after the -- after the

1 David Lowe?
2 MR. FARNHAM: That's right.
3 And we can show those -- we have redacted versions of
4 those transcripts that have just the portions that have been
5 designated and we can show those to the jury as they are read.
6 THE COURT: And Mr. Dressler has seen that already?
7 MR. DRESSLER: Yes.
8 THE COURT: And then you'll do your -- then we'll
9 probably take a break at that point. At that point it will be
10 an hour and a half probably.
11 MR. FARNHAM: Sounds good. We would also like to
12 read in the stipulation regarding the judicial proceeding
13 events. That shouldn't take very long.
14 THE COURT: Okay.
15 MR. FARNHAM: And then our first live witness.
16 THE COURT: And who is the first up?
17 MR. FARNHAM: Mark Moskowitz.
18 THE COURT: How long do you think you'll go with
19 Moskowitz?
20 MR. FARNHAM: Probably 30 to 45 minutes.
21 THE COURT: Okay. All right. That's the plan. So
22 as soon as the jury gets here, we'll resume.
23 MR. FARNHAM: Thank you.
24 Could I raise one more thing to make today easier?
25 THE COURT: Yes.

1 MR. FARNHAM: I would like to move some stipulated
2 exhibits into evidence.
3 THE COURT: Okay.
4 MR. FARNHAM: These relate to Interactive Brokers'
5 documents. And we do hope to get to an Interactive Brokers
6 witness today, but the exhibits I would like to move in that
7 were subject to a stipulation are basically 239 through 248,
8 and then 292 and 293.
9 THE COURT: All right. No objection, right?
10 MR. DRESSLER: No, your Honor.
11 THE COURT: Okay. Those four are admitted. And I
12 take it we're keeping a contemporaneous exhibit book, or we've
13 got them all --
14 THE CLERK: Yes, your Honor.
15 THE COURT: -- lined up ready to go and put in
16 binders when it comes time to submit to the jury.
17 As well as the photos? I assume they are all being stored
18 in some good place or being printed out at some point so we can
19 keep those in a binder and keep them in the order --
20 THE CLERK: I have them.
21 THE COURT: That's great. Thank you.
22 MR. FARNHAM: Just to be clear on the exhibits that
23 we just moved, I think it's more than four. It's 239 through
24 248.
25 THE COURT: Oh, through 248.

1 MR. FARNHAM: I'm sorry. I didn't list all the
 2 numbers there. They are sequential.
 3 THE COURT: And then 292 and 293.
 4 MR. FARNHAM: Yes.
 5 THE COURT: Okay. All of those of are admitted.
 6 (Trial Exhibits 239, 240, 241, 242, 243, 244, 245,
 7 246, 247, 248, 292, 293 received in evidence.)
 8 THE COURT: Well, I will -- I guess I will recess
 9 until the juror gets here.
 10 MR. FARNHAM: Thank you.
 11 (Brief pause in the proceedings.)
 12 (Jury enters the courtroom at 8:34 a.m.)
 13 THE COURT: Okay. Good morning, ladies and
 14 gentlemen. How is everybody doing?
 15 We're going to continue -- you all may be seated -- the
 16 videotaped testimony of Mr. Lowe.
 17 Just to give you an idea, it sounds like there is going to
 18 be about 15 more minutes of direct examination and then about
 19 45 minutes or so of cross examination on the video and
 20 redirect, and that will complete that portion of the testimony.
 21 So why don't we go ahead and get started?
 22
 23 WHEREUPON:
 24 DAVID LOWE,
 25 called as a witness for the Government herein, resumed

1 testimony via videotaped deposition played in open court.)
 2 (Time noted: 8:35 a.m. until 8:43 a.m.)
 3 MR. FARNHAM: That is the completion of direct, and
 4 we will now move to the cross examination.
 5 THE COURT: All right. You may proceed.
 6 MR. DRESSLER: Excuse me for one second. Can you
 7 pause it for one second?
 8 (Video paused.)
 9 MR. DRESSLER: Is that the maximum volume?
 10 MR. FARNHAM: I believe that's the maximum volume in
 11 the courtroom.
 12 THE COURT: Can that be turned up at all louder?
 13 THE CLERK: It's at the max.
 14 THE COURT: That's at the max.
 15 MR. DRESSLER: I just ask that if the jurors have
 16 trouble hearing --
 17 THE COURT: If you have trouble hearing, raise your
 18 hand, you know, at any time.
 19 Thanks.
 20 (Playing of the videotaped deposition resumed.)
 21 MR. DRESSLER: This is Exhibit A in the binder.
 22 THE COURT: All right. This is Exhibit A in your
 23 binder.
 24 (Playing of the videotaped deposition continues.)
 25 MR. FARNHAM: That's all for that deposition, your

1 Honor.
 2 (Video concluded. Time noted: 9:54 a.m.)
 3 MR. FARNHAM: Let me explain one thing so the jury is
 4 not confused. There were various objections that were voiced
 5 during the deposition and because we allow the answers to be
 6 given and to be played back, that necessarily implies that
 7 those objections were not sustained or not part of the -- well,
 8 that those objections essentially can be ignored.
 9 So we have about 10 minutes. Do you want to break now
 10 before you get to the reading or do you want to do that now?
 11 MR. FARNHAM: It will take about 10, 15 minutes. I
 12 propose we do it now.
 13 THE COURT: All right. Then why don't we call your
 14 next witness and you can explain what you're about to do?
 15 MR. FARNHAM: Yes, your Honor. If I could hand up a
 16 copy of the version I'll be reading from to your Honor.
 17 THE COURT: Okay.
 18 (Whereupon, document was tendered to the Court.)
 19 MR. FARNHAM: And, your Honor, this is a transcript
 20 of a proceeding before the Securities and Exchange Commission.
 21 It is under oath testimony of witness James M. Murray. It was
 22 recorded and then transcribed. The date of the testimony is
 23 February 23, 2011.
 24 And there is a stipulation of the parties that this --
 25 that this transcript is what happened at that proceeding. And

1 I'd like to read portions of it into the record.
 2 THE COURT: All right. And the jury will be able to
 3 see those portions as you read them?
 4 MR. FARNHAM: They should be legible, yes. We'll
 5 have the pages up.
 6 (Document displayed.)
 7 MR. FARNHAM: They're a little small. They will be
 8 better than that first page. I do believe that they will be
 9 legible.
 10 THE COURT: All right. Then I'll instruct the jury
 11 that the testimony you are about to hear, the parties have
 12 agreed to, will be admitted as testimony under oath and is
 13 evidence.
 14 So you may proceed, Mr. Farnham.
 15 MR. FARNHAM: Your Honor, if I may. I'll refer to
 16 the page numbers, but not necessarily the line numbers, if
 17 that's all right.
 18 THE COURT: Okay.
 19 (Testimony of James Murray before the Security and
 20 Exchange Commission on Wednesday, February 23, 2011
 21 as read by Mr. Farnham.)
 22 MR. FARNHAM: Starting on Page 4. Ms. Kreuzkamp
 23 says:
 24 "We are on the record at 10:05 a.m. on
 25 February 23, 2011.

1 "Mr. Murray, if you could raise your right hand?
 2 Whereupon, James Michael Murray was called as a
 3 witness herein and after first -- after having been
 4 first duly sworn, was examined and testified as
 5 follows."
 6 Continuing on Page 5. Question from Mr. Kreuzkamp:
 7 "QUESTION: Mr. Murray, are you represented by
 8 counsel?
 9 "ANSWER: Yes."
 10 Continuing on Page 11 and 12:
 11 "QUESTION: The oath that you just took has the
 12 same effect as if you were testifying in court and
 13 carries the same penalty for perjury. It is a crime to
 14 knowingly present false information during the course
 15 of this investigation. Do you understand this?
 16 "ANSWER: Yes."
 17 Also on Page 12:
 18 "QUESTION: Is there any reason today that you
 19 can't give full, complete and truthful testimony?
 20 "ANSWER: No.
 21 "QUESTION: Have you ever been known by any other
 22 name -- by other name than James Michael Murray?
 23 "ANSWER: 'We' go by Jim.
 24 "QUESTION: Any other names?
 25 "ANSWER: No."

1 THE COURT: Let's take a break and let's straighten
 2 this out. We'll take a break for 15 minutes.
 3 (Jury exits courtroom at 10:00 a.m.)
 4 MS. HARRIS: We would propose to make hard copies for
 5 the jury.
 6 MR. FARNHAM: I could do the Elmo, also.
 7 THE COURT: You can use the Elmo. Have somebody up
 8 here on the Elmo, turn the page so they can see it. Do it the
 9 old-fashioned way.
 10 And let's make sure with Tracy that you've got the Elmo
 11 working properly and not fumble around in front of the jury.
 12 Do it before she comes back.
 13 (Whereupon there was a recess in the proceedings
 14 from 10:02 a.m. until 10:18 a.m.)
 15 THE COURT: Do we have it straightened out?
 16 MS. HARRIS: We're going to go the old-fashioned way,
 17 your Honor.
 18 THE COURT: Does it work?
 19 MR. FARNHAM: It should. We're going to go right
 20 along with the Elmo and --
 21 THE COURT: The Elmo is working.
 22 MS. HARRIS: It is. We tested it. We looked in the
 23 jury box and they should see it clearly. Last time the pages
 24 that were coming up were not at all what we were reading, so it
 25 was very confusing. We'll get going from the beginning and --

1 MR. FARNHAM: Go to the next page.
 2 Page 13 --
 3 (Discussion held off the record between Government
 4 parties.)
 5 (Brief pause.)
 6 MR. FARNHAM: Page 13:
 7 "QUESTION: What's your address?
 8 "ANSWER: 505 Montgomery Street, Suite 1100,
 9 San Francisco, California 94111.
 10 "QUESTION: Is that where you live?
 11 "ANSWER: That's my office.
 12 "QUESTION: What's your home address?
 13 "ANSWER: [REDACTED], Larkspur, California
 14 [REDACTED]
 15 "QUESTION: And who else lives there with you?
 16 "ANSWER: My wife and son.
 17 "QUESTION: And what's your wife's name?
 18 "ANSWER: Lisa."
 19 THE COURT: If you announce the next page, you should
 20 be able to find it because they are the same. So that if you
 21 can read Page 15, exhibit number is 135-0015.
 22 (Brief pause.)
 23 MR. FARNHAM: Your Honor, I guess we're having
 24 unfixable technical problems showing it. I propose we
 25 break and --

1 THE COURT: Okay.
 2 MS. HARRIS: -- we can correct it.
 3 Your Honor, would the Court be willing to tell the jury
 4 that what we're doing is starting -- or do you want us to tell
 5 them what we're doing?
 6 THE COURT: That you're doing what?
 7 MS. HARRIS: We're going with the Elmo and they are
 8 going to hear this now from the beginning. Because what they
 9 were seeing before were words coming up that were nothing like
 10 what they were reading.
 11 THE COURT: Well, let's not start from the beginning.
 12 I mean, we've already gone through some very preliminary stuff.
 13 Let's just move on. Page 15. That's where you were. You
 14 had finished -- let's start with 13.
 15 MS. HARRIS: Actually, your Honor, can we start with
 16 Page 12, 11 and 12, because that is the background to all of
 17 this and it is important to us to get that in and make sure
 18 that that was heard.
 19 THE COURT: They've already heard it. Let's move on.
 20 We're going to start on 13. Let's go.
 21 (Jury enters courtroom at 10:20 a.m.)
 22 THE COURT: Welcome back, ladies and gentlemen.
 23 We've addressed our technical problems here by resorting to
 24 what we call the Elmo, where we actually project the page upon
 25 the screen rather than trying to use a computer, but the same

1 effect. You'll be able to see the words as they are being
 2 read.
 3 So we're going to pick up on Page 13. We had already
 4 started to read 13, but let's do it again on Page 13.
 5 MR. FARNHAM: Thank you, your Honor.
 6 And is the Elmo visible to the jury?
 7 (Jury panel responding negatively.)
 8 (Brief pause.)
 9 THE COURT: No?
 10 (Jury panel responding affirmatively.)
 11 THE COURT: All right. You may proceed.
 12 MR. FARNHAM: Thank you, your Honor. Page 13 of this
 13 transcript:
 14 "QUESTION: What's your address?
 15 "ANSWER: 505 Montgomery Street, Suite 1100,
 16 San Francisco, California, 94111.
 17 "QUESTION: Is that where you live?
 18 "ANSWER: That's my office.
 19 "QUESTION: What's your home address?
 20 "ANSWER: [REDACTED], Larkspur,
 21 California, [REDACTED].
 22 "QUESTION: And who else lives there with you?
 23 "ANSWER: My wife and son.
 24 "QUESTION: What's your wife's name?
 25 "ANSWER: Lisa."

1 Continuing on Page 14 -- I'm sorry, 15.
 2 "QUESTION: What about Market Neutral Trading,
 3 where does Market Neutral Trading maintain any
 4 securities or brokerage accounts?
 5 "ANSWER: My recollection is Interactive Brokers
 6 and TD Ameritrade.
 7 "QUESTION: Are there others that you just can't
 8 recall, sitting here today?
 9 "ANSWER: That's -- those are the only two
 10 accounts. Those are what I recall."
 11 Continuing on Page 17:
 12 "QUESTION: Okay. Do you have a college degree?
 13 "ANSWER: Yes.
 14 "QUESTION: At what institution did you obtain
 15 that degree?
 16 "ANSWER: University of Arizona.
 17 "QUESTION: And when was that?
 18 "ANSWER: 1987 to 1991.
 19 "QUESTION: What degree did you obtain there?
 20 "ANSWER: B.S. Economics."
 21 Page 18:
 22 "QUESTION: After you had received your B.S. from
 23 the University of Arizona, did you obtain any other
 24 degrees?
 25 "ANSWER: No.

1 "QUESTION: Do you hold or have you ever held any
 2 professional licenses?
 3 "ANSWER: I held a Series 63, 65 and 7.
 4 "QUESTION: 'Held,' past tense?
 5 "ANSWER: Yes, past tense.
 6 "QUESTION: And why do you know longer hold those
 7 licenses?
 8 "ANSWER: I'm not engaged in that business.
 9 "QUESTION: Have you ever been the subject of a
 10 disciplinary proceeding?
 11 "ANSWER: Yes.
 12 "QUESTION: Tell me when was that?
 13 "ANSWER: Back in 1998, a security that I was
 14 trading in lost over 70 percent of its value overnight.
 15 And I was suspended for six months."
 16 "QUESTION: Why were you suspended?"
 17 Continuing on Page 19:
 18 "ANSWER: For over concentration, is my
 19 recollection.
 20 "QUESTION: Who was the disciplinary proceeding in
 21 front of?
 22 "ANSWER: The New York Stock Exchange.
 23 "QUESTION: After the six-month suspension, did
 24 you go back to work in that capacity?
 25 "ANSWER: At that time I wasn't employed in that

1 capacity."
 2 Page 20:
 3 "QUESTION: Market Neutral Trading, that's an LLC?
 4 "ANSWER: Yes.
 5 "QUESTION: Who are the members of -- who's the
 6 managing member of Market Neutral Trading?
 7 "ANSWER: I am.
 8 "QUESTION: Does it have any employees besides
 9 you?
 10 "ANSWER: Not -- no.
 11 "QUESTION: I'm going to come back to Market
 12 Neutral Trading, but before that, where do you work
 13 today?"
 14 Page 21:
 15 "ANSWER: I'm the managing member of Market
 16 Neutral Trading.
 17 "QUESTION: And how long have you been the
 18 managing member?
 19 "ANSWER: Since 2006.
 20 "QUESTION: And what did you do prior to being the
 21 managing member of Market Neutral Trading?
 22 "ANSWER: I was with Pareto Capital.
 23 "QUESTION: What's Pareto Capital?
 24 "ANSWER: An LLC.
 25 "QUESTION: And what does it do?

1 "ANSWER: What does it do currently?
 2 "QUESTION: Or when you were --
 3 "ANSWER: I was trading for them.
 4 "QUESTION: Did you have a title?
 5 "ANSWER: CIO.
 6 "QUESTION: Chief Investment Officer?
 7 "ANSWER: Yes.
 8 "QUESTION: And how long were you with Pareto
 9 Capital?
 10 "ANSWER: 2002 to 2006."
 11 Page 23:
 12 "QUESTION: What does Market Neutral Trading do?
 13 "ANSWER: It's a dollar neutral fund.
 14 "QUESTION: How many investors do you have?
 15 "ANSWER: Less than 10."
 16 Page 25:
 17 "QUESTION: Does Market Neutral Trading provide
 18 statements to its investors?
 19 "ANSWER: Yes.
 20 "QUESTION: How often?
 21 "ANSWER: Quarterly."
 22 Page 26:
 23 "QUESTION: And who do those statements go to?
 24 "ANSWER: The investors.
 25 "QUESTION: And how do you know who to send them

1 to?
 2 "ANSWER: I don't send them.
 3 "QUESTION: Who sends them?
 4 "ANSWER: A third party."
 5 Page 27:
 6 "QUESTION: In 2009 were quarterly statements
 7 given to investors?
 8 "ANSWER: Yes.
 9 "QUESTION: And how do you know that quarterly
 10 statements were given to investors?
 11 "ANSWER: I just know.
 12 "QUESTION: Who sent them?
 13 "ANSWER: Are you talking about --
 14 "QUESTION: The quarterly statements in 2009?
 15 "ANSWER: You're talking about Hovan's quarterly
 16 statements?
 17 "QUESTION: Or any -- quarterly statements to any
 18 of the investors?
 19 "ANSWER: Well, in 2008 it was CCS Financial, the
 20 administrator.
 21 "QUESTION: And how did CCS know who to send the
 22 quarterly statements to?
 23 "ANSWER: Because they have all the records."
 24 Page 28:
 25 "QUESTION: In 2009 who was your administrator?

1 "ANSWER: CCS Financial.
 2 "QUESTION: Is CCS Financial your administrator
 3 today?
 4 "ANSWER: No.
 5 "QUESTION: When did CCS Financial stop being your
 6 administrator?
 7 "ANSWER: 2009.
 8 "QUESTION: Why did you stop using CCS Financial?
 9 "ANSWER: I don't remember.
 10 "QUESTION: Who did you use as an administrator
 11 after CCS Financial?
 12 "ANSWER: I don't recall."
 13 Page 29:
 14 "QUESTION: Who do you use as an administrator
 15 today?
 16 "ANSWER: I don't recall."
 17 Continuing to Page 41:
 18 "QUESTION: Do you recall who Market Neutral
 19 Trading used as an auditor in late 2008?
 20 "ANSWER: Late 2008, I don't think we had an
 21 auditor.
 22 "QUESTION: Do you recall when -- when you got an
 23 auditor?
 24 "ANSWER: After '07, I believe."
 25 Page 44:

1 "QUESTION: Who is Giovanni?
 2 "ANSWER: He is based in Italy and he is a -- he
 3 is a marketer, third party marketer.
 4 "QUESTION: What is Giovanni's last name?
 5 "ANSWER: I don't recall.
 6 "QUESTION: Do you know what firm or company he
 7 works for?
 8 "ANSWER: I think he was self -- yeah --
 9 self-employed.
 10 "QUESTION: Is he somebody that you already knew
 11 as a third party marketer or is he somebody that
 12 Mr. Hovan knew and suggested using?
 13 "ANSWER: That's someone that I already knew.
 14 "QUESTION: And how did you know Giovanni?
 15 "ANSWER: I just knew him.
 16 "QUESTION: Was he somebody that you had business
 17 dealings with?
 18 "ANSWER: In the past.
 19 "QUESTION: In the past?
 20 "ANSWER: Yes.
 21 "QUESTION: Do you have business dealings with him
 22 today?
 23 "ANSWER: No."
 24 Page 46:
 25 "QUESTION: So he was out trying to raise money in

1 Europe for your fund, is that right?
 2 "ANSWER: Yes.
 3 "QUESTION: Okay. And what types of investors was
 4 he looking for?
 5 "ANSWER: He was looking for qualified investors.
 6 "QUESTION: Did he ever refer any to you?
 7 "ANSWER: Not that I recall."
 8 Page 78:
 9 "QUESTION: Was it sometime then after this email
 10 that Market Neutral Trading retained Jones Moore to
 11 conduct its audits?
 12 "ANSWER: That's my recollection, yes.
 13 "QUESTION: Is Jones Moore still the audit firm
 14 for Market Neutral Trading?
 15 "ANSWER: That's what I recall, yes.
 16 "QUESTION: Is there an audit partner at Jones
 17 Moore that you use?
 18 "ANSWER: I don't recall specifically."
 19 That's the conclusion of this portion, your Honor.
 20 THE COURT: All right. Government may call its next
 21 witness.
 22 MR. FARNHAM: Your Honor, the Government calls Mark
 23 Moskowitz.
 24 THE COURT: Thank you.
 25 (Brief pause.)

1 MARK MOSKOWITZ,
 2 called as a witness for the Government herein, having been
 3 first duly sworn, was examined and testified as follows:
 4 THE WITNESS: Yes.
 5 THE CLERK: Please state your full name for the
 6 record and spell your last name, please.
 7 THE WITNESS: Mark Moskowitz. M-O-S-K-O-W-I-T-Z.
 8 THE COURT: All right. Thank you, Mr. Moskowitz.
 9 You may proceed, Mr. Farnham.
 10 MR. FARNHAM: Thank you, your Honor.
 11 DIRECT EXAMINATION
 12 BY MR. FARNHAM
 13 Q Mr. Moskowitz, what do you do for a living?
 14 A I'm an investment banker.
 15 Q And how long have you been in the investment banking
 16 industry?
 17 A I have been in the financial services business for 30
 18 years.
 19 Q And where do you work currently?
 20 A Out of my home office in San Rafael.
 21 Q Are you affiliated with a company?
 22 A Yes. Colorado Financial Services.
 23 Q Okay. And just to remind you that the court reporter is
 24 trying to take down what you say, so you'll have to speak a
 25 little slowly to make sure that we can hear you and the court

1 reporter can take down the testimony.
 2 We want to talk today mostly about 2011 and 2012, and I
 3 want to ask: Where did you work during that time period?
 4 A Oppenheimer.
 5 Q What is Oppenheimer?
 6 A It's a brokerage firm.
 7 Q What kind of brokerage firm is Oppenheimer? Do they have
 8 a specialization?
 9 A No, they are a broad firm. They handle most types of
 10 investing.
 11 Q And what was your job with Oppenheimer?
 12 A Managed clients' accounts and take investment orders.
 13 Q Were you a stockbroker?
 14 A Yes.
 15 Q And you had clients?
 16 A Yes.
 17 Q I think if you turn the microphone towards you a little
 18 bit more, that will be good.
 19 (Witness complied.)
 20 Q Thank you.
 21 Prior to 2011, did you know an individual named James
 22 Murray?
 23 A Yes.
 24 Q Had did you know him?
 25 A We had both previously worked at a firm, roughly, 10 years

1 earlier, Bear Stearns.
 2 Q Ten years earlier, that would have been the late 90's and
 3 early zeros?
 4 A Yes.
 5 Q What firm was that?
 6 A Bear Stearns.
 7 Q And how did you come into contact with Mr. Murray at Bear
 8 Stearns?
 9 A We just met casually. He had a role as a middle markets
 10 broker, as far as I knew. He was in a different section of the
 11 floor, but we were just acquaintances.
 12 Q And would you say you knew him well?
 13 A No.
 14 Q And did you work -- you said different areas of the firm?
 15 A We were -- well, I had a different role than he did, and
 16 I -- I worked in a different part of the floor than he was on.
 17 Q Did you work with him in a business capacity in any way?
 18 A No.
 19 Q After that casual contact with Mr. Murray in the late
 20 90's, early zeros did you have any contact with him again in
 21 about 2011?
 22 A Yes.
 23 Q Tell us about that?
 24 A I had moved to Oppenheimer from Bear Stearns and I was
 25 working at a new location at 580 California Street. And one

1 day I took the elevator to the first floor and was leaving, and
 2 I ran into him on the first floor, and we just said hello. And
 3 I said: What are you doing here? He said he now has an office
 4 here, that he works as an individual money manager for his own
 5 little company on a floor lower than mine.
 6 Q Did he tell you anything about the company that he was
 7 running?
 8 A Not then.
 9 Q Did he later tell you about that?
 10 A Yes.
 11 Q What did he tell you about the fund or the company he was
 12 running?
 13 A It was pretty basic. He just said that he had a small
 14 management company. He had foreign investors and he had a
 15 strategy to make money for them.
 16 Q Did he tell you what that strategy was?
 17 A Yes.
 18 Q What?
 19 A He would take advantage of analyzing companies after they
 20 put their earnings out and determining if the earnings were a
 21 negative or a positive, and he would make a determination of
 22 how the company's stock would react over the next few days
 23 based on his determination of how good the results were.
 24 Q Did he tell you anything about a market neutral strategy?
 25 A No.

1 opening -- and he opened accounts through you at Oppenheimer
 2 initially, did he tell you the amount of assets that he was
 3 managing?
 4 A The number 5 million came up several times.
 5 Q Number 5 million meaning what?
 6 A Assets available for investing.
 7 Q Did he tell you that those were the assets of the
 8 investors in his fund?
 9 A Yes. They were the assets allocated from his investors
 10 for this fund. I'm not sure what his investors' total assets
 11 were. Just that what they committed to his fund.
 12 Q When you were talking with Mr. Murray about the assets in
 13 his fund, did any other number come up or only 5 million?
 14 A No.
 15 Q I'm sorry. The --
 16 A No other number was mentioned.
 17 Q Thank you. That was a bad question.
 18 MR. FARNHAM: Your Honor, may I approach with a
 19 couple exhibits?
 20 THE COURT: Yes.
 21 (Whereupon documents were tendered to the witness.)
 22 BY MR. FARNHAM
 23 Q Mr. Moskowitz, I've handed you a couple of exhibits. I
 24 would like to start with what's been marked as Exhibit 288.
 25 Do you recognize that document?

1 Q After the meeting -- after the reconnecting with
 2 Mr. Murray in 2011, did he open any accounts with -- through
 3 you at Oppenheimer?
 4 A Yes.
 5 Q Those first accounts that Mr. Murray opened through you,
 6 what was the name of the entity on those?
 7 A I'm having a lapse of memory. I had so many accounts.
 8 Q Certainly. What about Market Neutral Trading, does that
 9 sound familiar?
 10 A Yes.
 11 Q Is that the entity that Mr. Murray was running at that
 12 time?
 13 A To be honest, I can't remember if that was the one he
 14 opened in the beginning or the one he opened the year later.
 15 I'm having a memory -- I know we had that account at one point
 16 for sure.
 17 Q Let's talk about the earlier ones for a minute. I
 18 think we'll -- we'll get to the later one and refresh your
 19 recollection about the name.
 20 Those earlier ones that Mr. Murray opened, did he actively
 21 trade in those accounts he opened through you?
 22 A No. They were very inactive.
 23 Q Did he put significant assets in those accounts?
 24 A No.
 25 Q When you were talking with Mr. Murray about his fund and

1 A Yes.
 2 Q The name -- can you read the name of the account that that
 3 relates to? The account name? It is small print.
 4 A I'm just trying to find it.
 5 Q Upper left, three lines down.
 6 A Okay, there. I'm sorry. Yeah. MNT Master Fund, Limited.
 7 Q At some point did Mr. Murray open accounts through you at
 8 Oppenheimer in the name of MNT Master Fund?
 9 A Yes.
 10 Q Is that the second round of accounts that you were
 11 remembering?
 12 A Yes.
 13 Q And Exhibit 288, what is this page? What is this
 14 document?
 15 A This is a New Account form.
 16 Q And what's the date on that form?
 17 A February 2, 2012.
 18 Q Is this a form that's reviewed and approved by you, and
 19 was it reviewed and approved in around February of 2012?
 20 A Yes.
 21 MR. FARNHAM: Your Honor, I would offer Exhibit 288
 22 into evidence.
 23 THE COURT: Any objection?
 24 MR. DRESSLER: No objection.
 25 THE COURT: Admitted.

1 (Trial Exhibit 288 received in evidence.)
 2 MR. FARNHAM: And, your Honor, if we may publish it?
 3 THE COURT: Yes.
 4 (Document displayed.)
 5 MR. FARNHAM: If we could for now zoom in on the top
 6 portion or half?
 7 (Document enlarged.)
 8 BY MR. FARNHAM
 9 Q You see at the top of this document it says "Account
 10 Information"?
 11 A Yes.
 12 Q Is this an Account Information form for this account, MNT
 13 Master Fund?
 14 A Yes.
 15 Q And what's the purpose of this form at Oppenheimer?
 16 A There's multiple purposes. One is strictly when
 17 transactions occur, notifications of the transactions go to the
 18 client. We have information so that we can provide them to the
 19 IRS when the transactions are completed.
 20 Q Okay. So it's for notification information and contact
 21 information for the client?
 22 A But there's a lot -- there's other issues as well. This
 23 is a multiple use form that covers a lot of areas. This allows
 24 the -- this particular form and the way we did it allowed him,
 25 if he wanted to trade using margin.

1 It's a form that collects information on his previous
 2 trading experience because if certain types of transactions --
 3 if there are transactions the client wants to make that are
 4 somewhat sophisticated, we would need to know that he had the
 5 experience before we would take these trades on.
 6 Q We'll get into more detail about what's in this form and
 7 its purpose.
 8 A Okay.
 9 Q Let me ask you this though. Is there -- is it filled out
 10 by the client or is it filled out by Oppenheimer employees, the
 11 information in there?
 12 A On this form particular? It's filled out by Oppenheimer.
 13 Q And where do -- well, who in particular filled out this
 14 form?
 15 A Well, ultimately my assistant would have inputted the
 16 information into the form.
 17 Q Sort of the computer typed information --
 18 A Correct.
 19 Q -- would have been input by your assistant?
 20 A Yes.
 21 Q And where did you or your assistant get the information
 22 that was put into it?
 23 A Well, information involving name, address, basic
 24 information she would have collected.
 25 General information, that's in the middle about the

1 client's experience, I would have given to her. Because I
 2 would have -- I would have gotten that from the client from our
 3 talks and inputted that myself.
 4 Q Okay. At this time, February 2, 2012, who was your
 5 assistant?
 6 A You know, I had -- I had two assistants over that time
 7 period, and I can't remember the exact time that the second one
 8 came on and the first one left.
 9 Q Tell us the names of the two?
 10 A Well, Melanie was the first, and Casey Cheung was the
 11 second.
 12 Q Is that Melanie Perricone?
 13 A Yes.
 14 Q So let's look at some particular information on this form.
 15 If we could look at the -- staying on that top portion the
 16 email address. Who provided that information?
 17 A The client.
 18 Q And how about the address of the entity?
 19 A The client.
 20 Q And you see there that that's -- there is a Cayman Islands
 21 listed there. Did you understand this to be a Cayman Islands
 22 incorporated entity?
 23 A Yes.
 24 Q Let's look at the General Information portion of this.
 25 MR. FARNHAM: I think we'll need to zoom in to the

1 last half of this box. The printing is very small.
 2 (Document enlarged.)
 3 MR. FARNHAM: Thank you.
 4 BY MR. FARNHAM
 5 Q I want to ask you about that net value, net worth --
 6 sorry, "Net Value/Worth Line." Do you see that?
 7 A Yes.
 8 Q And what does that say there?
 9 A "Net Value/Worth, approximate \$5 million."
 10 Q And then next to that, what does that say?
 11 A "Assets Available to Invest, \$5 million."
 12 Q And why is Oppenheimer collecting this information?
 13 A They would like to know something that ascertains how much
 14 the client may -- may use for his investments to know what's
 15 available.
 16 Q And why is that important?
 17 A Well, when he enters his orders, we -- we know based on
 18 this what's -- what he has available to pay us or to pay for
 19 his transaction. So if an order came in for significantly more
 20 than that amount, we would question it before we took the
 21 order.
 22 Q And when you say "we," would you have a part in that
 23 process?
 24 A Yes.
 25 Q So you would question it if an order came in for more than

1 that amount?
 2 A Yes.
 3 Q And what did you understand -- well, let me ask this.
 4 Did that information come from -- through you? Did you
 5 fill in that information?
 6 A I gave it to my assistant to input into the system.
 7 Q Where did you get that information?
 8 A From the client.
 9 Q In what type of -- did you have an email or a phone call?
 10 A It was just from talking to him. Whether it was on the
 11 phone or in person, I can't remember.
 12 Q And what does it mean, "Assets Available to Invest"?
 13 A Repeat the question?
 14 Q I'm looking at the line there that was highlighted, the
 15 second portion, "Assets Available to Invest." What does that
 16 mean?
 17 A When he's ready to put a transaction on, that's how much
 18 money can be used to pay for the transaction.
 19 Q How is that different from the first number. It says,
 20 "Net Value/Worth." What does that mean?
 21 A Well, in this situation they are pretty similar.
 22 Q Okay. They are the same amount, but is there a
 23 distinction between those definitions?
 24 A Well, let me give you an example. I mentioned earlier if
 25 an investor says: I'm putting 5 million into this account,

1 that's all I want to invest with you. Then that would be
 2 assets available to invest. But if he were worth 50 million,
 3 that might be the net value on the left.
 4 In this situation this was money that Mr. Murray had
 5 raised or told me he had raised, so that's why both numbers
 6 coincide.
 7 Q And in terms of your role in entering orders for stock
 8 trades, which number is more significant to you?
 9 A Assets Available to Invest.
 10 Q You mentioned that Mr. Murray told you something about the
 11 money that he had raised. Did you understand that the money
 12 he'd raised -- that this Assets Available to Invest was from
 13 money he had raised from investors?
 14 A Yes.
 15 Q How did you know that? How did you know that?
 16 A He told me.
 17 Q If we could look at a portion of this document that's
 18 right above, it's in the middle on the right.
 19 (Document displayed)
 20 Q In this zoomed portion there is a box kind of near the
 21 bottom that says:
 22 "Does client or spouse have another account with
 23 us?"
 24 Do you see that box?
 25 A Yes.

1 Q You can look on the screen; it's zoomed in on the screen.
 2 Might be easier.
 3 A Yes.
 4 Q And what was the response that was checked by Oppenheimer
 5 employees there?
 6 A "YES."
 7 Q And what was specified there?
 8 A He had another account called "Market Neutral Trading."
 9 Q And do you recall opening that account previously --
 10 A Yes.
 11 Q -- for Mr. Murray?
 12 A Yes.
 13 Q Why is this information in here? Why is this collected;
 14 why is it put down?
 15 A Well, it's actually a broad question. There's multiple
 16 potential reasons.
 17 When we're watching one client, we watch his whole
 18 portfolio, his whole activity. If he has multiple accounts, we
 19 -- we just need to keep track of everything. Sometimes we
 20 might even send documents or -- if he did a transaction in both
 21 accounts in the same day, we might pull and put them in one
 22 envelope.
 23 So, there's multiple reasons. But in general, we need to
 24 know about all the activity for an investor that's with us, not
 25 just one -- if he has more than one account, we have to monitor

1 all of it.
 2 Q In 2012 -- is that when this form was completed?
 3 A Yes.
 4 Q February, 2012, did you understand that Market Neutral
 5 Trading and MNT Master Fund were related?
 6 A Well, the only relation was it was the same manager that
 7 was managing both accounts.
 8 Q And who was that?
 9 A James Murray.
 10 Q If we could look at the bottom signature portion of this
 11 document.
 12 A Okay.
 13 Q Do you see on the left there, there's your name under
 14 "FINANCIAL ADVISOR APPROVAL?"
 15 A Yes.
 16 Q What is that box indicating?
 17 A What is what?
 18 Q What is that box indicating? What does that mean here?
 19 A That the information on this form is correct, that I'm
 20 signing off on it.
 21 Q Did you review it before it was approved?
 22 A Yes.
 23 Q And then on the right side, "BRANCH MANAGER APPROVAL,"
 24 what name is under that?
 25 A "Paul Sportelli."

- 1 Q What does this mean to you?
- 2 A Well, after I review the new account, it would submitted
- 3 for branch manager approval as well. Before the account was
- 4 opened.
- 5 Q So there's your approval that's signified there by your
- 6 name, and branch -- Mr. Sportelli's approval indicated there.
- 7 What happens after that? After the two of you approve it?
- 8 Does the account get opened?
- 9 A Well, Paul actually wasn't the actual branch manager. He
- 10 was the branch operations manager.
- 11 Q Okay.
- 12 A He would normally give it to the official branch manager,
- 13 and at that point, an account number would be assigned. I'm
- 14 not sure actually if on this one, if anything was done with our
- 15 corporate headquarters or not before it was officially opened.
- 16 If the account had extra types of investing requirements,
- 17 for example, if the client wanted to do option trading, the
- 18 options part would have to be approved by our New York office,
- 19 and that would have a whole 'nother set of requirements.
- 20 So, again, I'm not sure if this one went further than the
- 21 branch manager before it was approved or not.
- 22 Q Okay. It would have required your approval, at least, to
- 23 be opened?
- 24 A Yes.
- 25 Q And you don't know which other approvals --

- 1 A I know the branch manager has to approve it. I'm not sure
- 2 how much further it went before it was officially approved. I
- 3 know it is possible here that the branch manager was the final
- 4 place.
- 5 Q You raised a point about the type of account, and maybe
- 6 options trading. If we could look at just the very top portion
- 7 of this document under the account information heading, there's
- 8 a "TYPE OF ACCOUNT" box.
- 9 (Document displayed)
- 10 Q Do you see that part of it?
- 11 A Yes.
- 12 Q What type of account was this particular account?
- 13 A Margin.
- 14 Q What does that mean, generally?
- 15 A If the account had a certain amount of money,
- 16 theoretically, it could invest twice as much money in an asset.
- 17 So, if he had \$5 million, he could put an order in -- if it was
- 18 regular -- a regular stock transaction with a marginable stock,
- 19 he could buy \$10 million of stock.
- 20 It also means if he bought \$5 million of stock that he
- 21 fully paid for, he could at any time pull out 50 percent of
- 22 that in cash. He could pull that out of the account.
- 23 Q Sort of a lending facility on the account?
- 24 A Right. So, it -- it gives two purposes. One was that you
- 25 could borrow from the account. And number two, you could buy

- 1 on a margin.
- 2 Q And would the amount of margin or lending power that was
- 3 on this account depend on some of the information in it?
- 4 A Yes.
- 5 Q What information?
- 6 A The previous boxes we looked at regarding total assets
- 7 available.
- 8 Q Assets available to invest, you mean?
- 9 A Yes.
- 10 Q When you approved this account, did you believe that Jim
- 11 Murray had \$5 million of assets available to invest?
- 12 A Yes.
- 13 Q Was this accountable to trade right away, after you
- 14 approved it, on or about February 2nd, 2012? If you remember.
- 15 (Witness examines document)
- 16 A Um, I really can't answer that because I'm not sure --
- 17 even though the date says February 2nd, I'm not sure if it was
- 18 fully approved on that date or not. But I believe -- I believe
- 19 the answer is yes, but I'm not 100 percent.
- 20 Q You don't remember if there was a delay or not --
- 21 A Right.
- 22 Q -- in, sort of, being active and being able to trade?
- 23 A I don't know when it came back to me and I was told okay,
- 24 it's officially available for transactions. It might have been
- 25 that day.

- 1 Q Do you remember if any funds or assets were transferred to
- 2 the account around February, 2012?
- 3 A I don't believe any assets came in.
- 4 Q Ever?
- 5 A Well, that's a whole different question.
- 6 Q Okay. In the months after February, did any funds get
- 7 transferred to this account?
- 8 A No.
- 9 Q Do you recall that in about July of 2012, a few months
- 10 after this form was filled out, that Jim Murray asked you to
- 11 place an order for a large trade in Netflix stock?
- 12 A Yes.
- 13 Q And did he ask you to place that trade in this account?
- 14 A Yes.
- 15 Q When we say "Place a trade," at that time at Oppenheimer,
- 16 what was your role, when, let's say, Mr. Murray wanted to place
- 17 a trade in this account that he'd opened through you?
- 18 A He would give me instructions to enter the trade with our
- 19 traders.
- 20 Q So the instruction to place a trade would come through
- 21 you?
- 22 A Well, he would give me the instructions. I would then
- 23 relay them to my trading desk.
- 24 Q What type of discretion did you have to put it through or
- 25 not put it through?

1 A Are you saying did I have the discretion to not take the
2 order?
3 Q I'm just trying to understand your role. Are there
4 situations where you would not pass on an order to
5 Oppenheimer's trading desk to execute?
6 A The only way I wouldn't have passed the order on would be
7 if I believed he didn't have the funds to pay for the
8 transaction. Otherwise, I would put the order in.
9 Q And in those situations where you believed Mr. Murray or
10 any client didn't have the funds --
11 A I would never put the order in.
12 Q Why is that? Why would you not put an order through, if
13 you believed that the client did not have the funds to pay for
14 the trade?
15 A Well, when you do a transaction, you have three days to
16 settle the trade with a payment. If I didn't believe a trade
17 would be paid for, then there would be a violation.
18 I would never want to enter an order where I couldn't
19 collect the money to pay for the trade. I mean, that's -- part
20 of doing business is paying for your trades.
21 Q I understand that. Would you -- this account didn't have
22 any money in it or funds in it at this time. Right?
23 A Correct.
24 Q But you put the trade through, or you -- let's get to the
25 specifics. I'm sorry. That's not a good question.

1 That Netflix trade that was in July of 2012, tell me about
2 what type of trade that was.
3 A Do you have a copy of the trade order so that I can
4 refresh my memory?
5 Q That's a good idea. In front of you is Exhibit 289.
6 ALTERNATE JUROR NO. 1: Excuse me. May I have a new
7 pen? Sorry.
8 (Request complied with by Madam Clerk)
9 BY MR. FARNHAM:
10 Q Go ahead and have a look at what's been marked as Exhibit
11 289, Mr. Moskowitz.
12 MR. DRESSLER: What exhibit?
13 MR. FARNHAM: 289.
14 THE WITNESS: Okay.
15 MR. FARNHAM: I would like to offer into evidence --
16 BY MR. FARNHAM:
17 Q Let me ask you a few questions about that. Is this
18 document a series of order tickets on this account?
19 A Yes.
20 Q Does it also have a few emails that relate to the orders
21 in that account, at the back of it?
22 A Yes.
23 Q And are these documents from Oppenheimer's records?
24 A Yes.
25 MR. FARNHAM: I would offer Exhibit 289 into

1 evidence.
2 THE COURT: Any objection?
3 MR. DRESSLER: No objection.
4 THE COURT: Admitted.
5 (Trial Exhibit 289 received in evidence)
6 BY MR. FARNHAM:
7 Q If we could look at Page 2 first, of Exhibit 289.
8 MR. FARNHAM: Oh, Your Honor, if I may publish that
9 to the jury?
10 THE COURT: Yes.
11 MR. FARNHAM: Thank you.
12 (Document displayed)
13 BY MR. FARNHAM:
14 Q What is Page 2 of Exhibit 289?
15 A Um, that is a -- a ticket that was written that shows the
16 information that a short sale was made to sell short 50,000
17 shares of Netflix. And it was executed at a price of 71.4593.
18 It shows the account number and the name, "MNT Master
19 Fund." It has my broker number on it for -- that shows it was
20 my trade, one of my clients.
21 It shows a commission of ten cents a share. And, it shows
22 the fact that it was, prior to being placed, approved for
23 shorting by my short sale borrow desk.
24 Q I want to go through a few of those things. But first,
25 does this refresh your recollection about the Netflix trade --

1 A Yes.
2 Q -- that I asked you about?
3 A Yes.
4 Q And is this the first trade that was placed in Netflix
5 stock in that account?
6 A Yes.
7 Q Just a little bit about that, because it is -- this was a
8 short sale trade. Right?
9 A Yes.
10 Q What is a short sale?
11 A Well, it's basically the opposite of a buy. If you think
12 a stock is going to go lower and you want to take advantage of
13 a down move, you sell the stock first, knowing that you would
14 have to buy it back later, hopefully at a lower price to make a
15 profit.
16 Q And for the stock that's sold in the short sale, where
17 does it come from?
18 A We have a -- well, every brokerage firm, we have a desk
19 which is a short sale borrow desk. And the desk will go first
20 to its old firm -- let's say at Oppenheimer we have several
21 other clients that own Netflix. And let's say we own more than
22 50,000 shares. And we haven't lent it to anybody else, so it's
23 available. We would borrow the shares from within our client
24 and use those shares to put the short sale trade on.
25 If we didn't have a client elsewhere in the firm that had

- 1 this stock or we had already lent it out to someone else, then
2 the desk goes to the Street, to other brokerage firms, and asks
3 them if they could lend the stock. And this was sort of a
4 community thing where to facilitate more short sale trades,
5 Merrill Lynch would lend us stock, we would lend them stock.
6 But it's sort of an industry-acknowledged system.
7 And so when the day started, I was told I might short
8 Netflix this many shares before the day started, we did these
9 transactions, I would go to that desk and I would say "I want
10 to borrow 50,000 Netflix."
11 When they found the shares to be borrowed, they would give
12 me a confirmation number. And then say, "Use this number."
13 And I would take that number; I would put it on any ticket I
14 did.
15 Q And is that the approval -- short sale approval code?
16 A The E3X, right. And this number, not only would I put it
17 on my ticket, but my trading desk wouldn't take the order for a
18 short sale unless I gave them that code first.
19 Q And that indicates that Oppenheimer had actually borrowed
20 those shares.
21 A Correct.
22 Q And so that's why in the upper left, the first trade in
23 Netflix is marked as a "sell," because it's a short sale.
24 Right?
25 A That's correct.

- 1 A Very close to 71.46 cents.
2 Q So when this was executed, what was the approximate value
3 of the shares that were borrowed by Oppenheimer and sold on the
4 market?
5 A This transaction was a trade for a little over
6 \$3.6 million.
7 Q And that's basically multiplying the execution price by
8 the quantity of shares.
9 A Correct.
10 Q Do you recall when this -- the exact date of this trade?
11 A No.
12 Q If we could look briefly at Page 5, I think it might
13 refresh your recollection about the date.
14 (Request complied with by the Witness)
15 (Document displayed)
16 Q Is that sort of line on Page 5 that starts "NFLX" then the
17 account number "G70..."
18 A Okay.
19 Q Does this show you the date of that \$50,000 (sic) short
20 sale of Netflix stock?
21 A 50,000-share trade, you mean. You said "\$50,000."
22 Q I'm sorry.
23 A Yes. It shows a trade -- it shows a date.
24 Q What was the date of the Netflix short sale trade we have
25 been talking about?

- 1 Q It's basically a sale of those borrowed shares.
2 A Right.
3 Q With a promise to buy them back later.
4 A Right. So it's not really a sale. We only have one
5 ticket for sales. But we use that same ticket, whether it's a
6 sale or a short sale. So this was really a short sale.
7 Q Thank you. At the bottom left there is a box that's
8 selected, "UNSOLICITED." What does that mean?
9 A This means that this transaction was not my idea. I
10 didn't call the client and say, "I think you should do this."
11 It means the client called me and said, "I want to do this."
12 Q And then after -- well, first of all, this order ticket,
13 is this an internal Oppenheimer document?
14 A Yes.
15 Q What is it -- it's sort of noting what about the trade?
16 A Well, all the information possible pertaining to the trade
17 needs to be entered on this ticket so we have a complete record
18 of what happened. And that it was done properly.
19 Q And then Oppenheimer retains these?
20 A For our records. In case we ever need to go to court.
21 Q Here we are.
22 This sell looked like it was for 50,000 shares. Do you
23 see that?
24 A Yes.
25 Q And what was the execution price, approximately?

- 1 (Witness examines document)
2 A July 24th, 2012.
3 Q And is that the execution date?
4 A Yes.
5 Q Okay, go back to the ticket for a minute on Page 2 of 289.
6 (Document displayed)
7 Q On the bottom right there is a circle with a dollar sign
8 and a question mark. Do you see that?
9 A Yes.
10 Q Who wrote that?
11 A Um --
12 Q If you know.
13 A That is not my handwriting, so it must have been my
14 assistant. And if it was in July it would have been Casey,
15 Casey Cheung.
16 Q At the time of this trade, did the MNT Master Fund account
17 have any funds in it?
18 A No.
19 Q And why were you approving or putting through this sale,
20 this short sale trade, if there were no funds in the account?
21 A Because we had three days to receive the money.
22 Q Do you believe that there were assets somewhere else to
23 pay for that?
24 A Yes.
25 Q Where did you think those assets were?

- 1 A Overseas.
 2 Q Under the control of Mr. Murray?
 3 A Yes.
 4 Q Something related to his fund?
 5 A Related to MNT Master Fund.
 6 Q And, would you have executed this trade, done your part to
 7 execute this trade, if you thought that Mr. Murray didn't have
 8 assets available to invest of \$5 million?
 9 A No.
 10 Q Would you have executed the trade if you knew that
 11 Mr. Murray had been arrested and charged with fraud?
 12 A If I found that out, I would have notified my branch
 13 manager, and had them tell me what to do.
 14 Q What if you had known that Mr. Murray had been sued by the
 15 SEC in a civil complaint for activities related to Market
 16 Neutral Trading? Would you have executed this trade?
 17 A I would have passed the trade order up the rank to my
 18 manager, and had him give me advice on what to do.
 19 Q What's the second part of a short sale trade called?
 20 A Just a buy.
 21 Q Is that called a "cover"?
 22 A Yes.
 23 Q What is that part of it?
 24 A Well, to finish the trade and consummate a profit or a
 25 loss, you buy the exact amount of shares back that you

- 1 short-selled.
 2 Q And is that so you can pay back the shares that you
 3 borrowed?
 4 A Right.
 5 Q If we could look at Page 3 of 289, please.
 6 (Document displayed)
 7 (Request complied with by the Witness)
 8 Q What's this document?
 9 A This is strictly the buy-to-cover ticket.
 10 Q Do you see the quantity of shares?
 11 A Yes.
 12 Q What is that?
 13 A 5,000.
 14 Q Is that buying back all the shares that were borrowed, or
 15 a portion?
 16 A A portion.
 17 Q And, is this you and your assistant's writing on this
 18 ticket?
 19 A Yes.
 20 Q Do you know when this ticket was -- this order was placed
 21 and executed?
 22 A No.
 23 Q If we look at Page 4.
 24 (Document displayed)
 25 Q And you see there's a ticket that says "45,000-share

- 1 quantity." Do you see that?
 2 A Yes.
 3 Q What does this ticket represent?
 4 A This is a completion of buying the rest of the shares back
 5 to cover the trade.
 6 Q And was that a trade executed by you also?
 7 A Yes.
 8 Q You mentioned something about paying for the trade. For
 9 this trade, the \$50,000 short sale Netflix stock trade, was
 10 there a requirement that money be put into the account for that
 11 trade?
 12 A Yes.
 13 Q What, what requirement is that?
 14 A Because the account was on margin, at least 50 percent of
 15 a total size of the short sale would have been required to be
 16 sent into the account within three business days.
 17 Q And so for this, about 50 percent of that stock trade
 18 value, that would have been about 1.7 million? More than --
 19 A 1.8.
 20 Q About 1.8 million?
 21 A Yes.
 22 Q After this trade, did you tell Mr. Murray that that amount
 23 had to be wired or transferred into the account?
 24 A Yes.
 25 Q And did you tell him that it had to be transferred in by a

- 1 certain date?
 2 A Yes.
 3 Q What did you tell him?
 4 A "This is the amount of money you'll need to have wired
 5 in."
 6 Q And what did Mr. Murray say when you told him that?
 7 A "I'll take care of it."
 8 Q Did the money ever get wired into this account to pay for
 9 that trade in the \$1.8 million amount you mentioned?
 10 A I can't remember the -- I can't remember the circumstance
 11 on this transaction.
 12 Q Do you remember having conversations with Mr. Murray about
 13 his efforts to get the money into the account to settle this
 14 trade, to pay for this trade?
 15 A Right; I'm having confusion with my memory regarding -- he
 16 did a separate trade with Facebook, and I'm trying to remember
 17 which trade came first.
 18 I don't remember money -- I don't remember any money
 19 coming in this account, but I --
 20 Q Well, he didn't pay or trade -- he didn't pay for the
 21 trades for either one, did he?
 22 A No.
 23 Q So we can look at the -- there is a Facebook trade on
 24 Page 1 of this document. 289.
 25 A What happened is a second trade was made after the first

1 trade. And, we had not hit the three-day time period yet to
2 pay for the first trade.
3 So we assumed money was coming in for that, and therefore
4 there would be money for the second trade.
5 Q So you, you put in an order, per Mr. Murray's request, for
6 a second short sale trade?
7 A Correct.
8 Q Was that second one in Facebook stock?
9 A Yes.
10 Q So for the Netflix trade, that's the trade that you
11 informed Mr. Murray that he had to pay 1.8 million --
12 A Yes.
13 Q -- to pay for the trade.
14 A Yes.
15 Q Did that 1.8 million ever come into the account to pay for
16 that Netflix short sale trade?
17 A No.
18 Q Did you have conversations with Mr. Murray about why that
19 was?
20 A Yes.
21 Q What did he first tell you about the -- his efforts to
22 wire that money in?
23 A Um, he put the instructions in, and the money should be
24 here.
25 Q He told you that?

1 A Yes.
2 Q What -- what did you understand him to mean by "Put the
3 instructions in?"
4 A That he told his European banker who had the account with
5 the assets to wire the money to this account.
6 Q And then after -- you mentioned it had to be in within
7 three days. Right?
8 A Correct.
9 Q What happened when the three days passed?
10 A He gave me a couple of reasons over the next several days
11 -- a couple of different reasons why the money hadn't come in
12 yet.
13 Q What was the first reason that he gave you?
14 A Well, there was two or three reasons, and I can't remember
15 the order of which reasons came first. I know what the reasons
16 were. So I can just -- if you want, I can just tell you the
17 different reasons.
18 Q That'll work.
19 A One was he thinks that someone got the account number
20 wrong. That was the first one.
21 Q Tell me that again? I'm sorry.
22 A That the account number was entered incorrectly.
23 Q Like in the wire instructions?
24 A Right.
25 Q Okay.

1 A Second is that it takes more than one day for foreign
2 wires to get here, and that through no fault of anyone, foreign
3 wires could take several days, maybe longer than the three days
4 we needed. And --
5 Q When was he talking about? Just give me a general time
6 frame, talking about wires from foreign banks --
7 A Sometimes they can take three or four days. The reason
8 being some foreign banks go -- will send the money to a bigger
9 bank, which then can do the international wire. Some foreign
10 banks can't do an international wire. So that could be a
11 reason.
12 Q My question is: Approximately when was Mr. Murray giving
13 you this reason, that international wires --
14 A Around the third day or so, or fourth day, when the money
15 hadn't come.
16 Q Any other reasons that he gave?
17 A Well, the final reason, which was the long-term reason,
18 was the investor at first couldn't send the money in because
19 they had an investment that they were currently in over in
20 Europe, that they were reluctant to close and use those funds
21 to pay for it because it was still an ongoing trade. And they
22 were monitoring it day to day.
23 Q That reason, approximately when in the time frame compared
24 to the Netflix trade was that?
25 A It was over the time period of a week from the three-day

1 period of settlement. Let's say another week or so, where that
2 was the reason.
3 But then after that -- and I can't give you the exact
4 amount of days. The final reason was the investor was
5 reluctant to send the money, because he was concerned it would
6 never come back.
7 Q And that's -- how did you get that information?
8 A From Mr. Murray.
9 Q Did you have any other conversations with Mr. Murray about
10 how to get money into the account so that that trade could be
11 paid for?
12 A Well, at that point, you know, it was a profitable
13 transaction. And --
14 Q That means money was made on the short sale?
15 A Money was made. And it was my belief at that time that to
16 -- to a situation out of his control, he just had a client that
17 was reluctant and he was having a -- he was caught in a bad
18 situation where he did everything right, he made a profit, and
19 he couldn't get the client to submit the funds for whatever
20 reason, which I didn't know of --
21 Q Other than what he told you.
22 A What's that? Right.
23 Q Other than what he told you.
24 A Right. So I was thinking -- I was trying to figure out a
25 way, how could he get the money in so we could make that trade

- 1 work. Because it would be horrible not to pay for such a
2 profitable trade where there was -- I can't remember the exact
3 profit, but I think it was around 500,000.
- 4 And so I was -- I was feeling bad. I hope you can pay for
5 this trade, so you can get the money.
- 6 Q Did you put him in touch with somebody who might be able
7 to pay the money?
- 8 A Yes. I had a friend who was a client, and I knew he had a
9 lot of available cash in his funds.
- 10 And, I said "Hey, I've got a guy..." You know, after
11 talking to Jim, I said, "What if I -- I could introduce you to
12 someone who might have the funds to help you. Obviously you
13 would have to work out an arrangement with him first, and he
14 would probably have to be an investor in this fund, so you
15 would have to act really quick. But if you wanted to make an
16 arrangement with him, maybe he could help you pay for the
17 transaction."
- 18 Q What was the name of that person?
- 19 A Scott Greenberg.
- 20 Q And did that ever work out? Did the money ever come from
21 Mr. Greenberg to pay for the Netflix short sale trade?
- 22 A No.
- 23 Q After weeks went by and there was no payment, did you
24 become concerned about that?
- 25 A Yes.

- 1 Q Was that unusual for you to speak directly to Mr. Whaley?
- 2 A Well, I would never usually talk to -- I knew this person
3 from other business at the firm. But I would never talk to
4 people at this level of the firm about normal transactions.
5 Because this was so highly unusual, you know, it went all the
6 way to the top. And that, that was why -- so normally I would
7 never talk to him about a normal trade.
- 8 But again, this was a large trade that wasn't paid for.
9 And it went very high up in the firm, so a key decision-maker
10 could make the decision on what to do with this.
- 11 Q How long did that -- how long did it take for that
12 decision to be made?
- 13 A At least, at least three weeks. Maybe closer to four
14 weeks.
- 15 Q After Oppenheimer decided to do that with the account,
16 close it and -- what was going to happen with the money? I'm
17 sorry.
- 18 A He said to get instructions from the client of where they
19 want the money sent, and send the money out, and close the
20 account.
- 21 Q Meaning the profits from the Netflix trade.
- 22 A Right.
- 23 Q After that decision was made, who informed Mr. Murray
24 about that?
- 25 A I did.

- 1 Q Why?
- 2 A Because I thought that Mr. Murray was getting a bad break,
3 and that because the trade didn't get paid for, we'd probably
4 have to close the account. And I thought this would have been
5 a good client and a good account to have.
- 6 Q Was there a concern among other people at Oppenheimer
7 about the failure to pay for this trade?
- 8 A Yes.
- 9 Q Tell me about that.
- 10 A Well, it just was -- it was a violation. And their --
11 their concern wasn't my concern. Their concern was: We're
12 violating trade rules, and how do we rectify this when we have
13 a profit and we haven't been able to pay for the trade?
- 14 Q What eventually happened with that account?
- 15 A A gentleman named Mark Whaley, who at the time was at the
16 very high part of the firm, maybe the top three guys at the
17 firm, he was working on making a decision, and talking with the
18 attorneys.
- 19 And after a few weeks when they -- when they realized this
20 trade was never going to be paid for, they had to make a
21 decision. And the decision was: "Let's send the profit to the
22 client and close all of his accounts."
- 23 Q And you said, you spoke -- I'm sorry; you said Mr. Whaley
24 made that decision. Did you speak directly to Mr. Whaley?
- 25 A Yes.

- 1 Q How did you do that? How was that?
- 2 A By phone.
- 3 Q And what did Mr. Murray say after you told him that?
- 4 A He said "I'll give the instructions to your assistant for
5 wiring the money out."
- 6 Q Did you ever speak to Mr. Murray after that?
- 7 A No.
- 8 Q And those instructions you mentioned, did those come to --
9 who? To your assistant?
- 10 A Yes.
- 11 Q And was the money wired out of the fund?
- 12 A Yes.
- 13 Q So when you executed, when you took the order and executed
14 trade for Netflix, did you know that on March 15th, 2002 (sic),
15 the SEC had filed that civil complaint against Mr. Murray?
- 16 A No.
- 17 Q And did you know that on May 21 of 2002 (sic), this
18 May 22nd -- on or about May 22nd, 2012, that a seizure warrant
19 had been issued seizing MNT Master Fund assets at another
20 brokerage?
- 21 Did you know about that when you put the trade in?
- 22 A No.
- 23 Q And did you know that Mr. Murray had been charged with an
24 indictment for wire fraud relating to some activities with
25 Market Neutral Trading? Did you know that when you put that

1 through?
 2 A No.
 3 Q If you had known any of those three things, would you have
 4 put the trade through, the short sale, as you did on July 24th,
 5 2012?
 6 A I would have passed the instructions to my manager, for
 7 them to tell me what to do.
 8 MR. FARNHAM: Just a moment, Your Honor.
 9 THE COURT: Okay.
 10 (Off-the-Record discussion between counsel)
 11 MR. FARNHAM: No further questions. Thank you.
 12 THE COURT: Thank you.
 13 Cross?
 14 CROSS EXAMINATION
 15 BY MR. DRESSLER:
 16 Q Good morning.
 17 So, let's begin with -- I guess I'll use Government
 18 Exhibit 288. That's the account information form.
 19 (Document displayed)
 20 Q That's a one-page form, correct?
 21 A Yes.
 22 Q And in terms of information that you asked from
 23 Mr. Murray, that was the only form that contained any
 24 information about Mr. Murray, his assets, who his investors
 25 were, that kind of thing?

1 A No, there may -- there may have been other forms. I'm not
 2 sure.
 3 Q Okay. But, has anyone -- have you seen any other forms?
 4 What other forms would there be?
 5 A I -- I can't recollect. I know this form is real.
 6 Q Okay.
 7 A I'm just telling you this happened three years ago, and I
 8 can't remember if there were other forms or not.
 9 Q Okay. But, as you sit here right now, would it be fair to
 10 state your memory is this is the only form that --
 11 A It's likely this is the only form.
 12 Q Okay.
 13 A You know, I want to restate that, because in my history of
 14 doing these types of forms, when there's margin, there's
 15 usually a form with a client's signature on it.
 16 Q Okay.
 17 A Accepting the margin. And I don't know where it is. But,
 18 maybe this is all they asked for. I'm not sure.
 19 Q Okay.
 20 A All right.
 21 Q Fair enough. Anyway, looking at Government's Exhibit 289
 22 -- 288, Page 1, on that top area there, it indicates that the
 23 entity on this account for -- that this account was filled out
 24 for was MNT Master Fund, Limited, correct?
 25 A Yes.

1 Q It was located on Harbour Centre, 42 North Church Street,
 2 Grand Cayman. Correct?
 3 A Yes.
 4 Q And it says also there, "Cayman Islands." Correct?
 5 A Yes.
 6 Q So this was a non-U.S. entity. Correct?
 7 A Correct.
 8 Q And Mr. Murray had other accounts at Oppenheimer, correct?
 9 A Yes.
 10 Q Would it be fair to state that none of those were not
 11 non-U.S. entities?
 12 A Um, that none of them were U.S. entities?
 13 Q Non-U.S. entities.
 14 A So are you asking me: Is this the only non-U.S. entity?
 15 Q Yes.
 16 A I can't remember what the other accounts were at this
 17 point.
 18 Q Okay. All right. Would it be fair to state that opening
 19 an account for a non-U.S. entity is a little more complicated
 20 than opening an account for a U.S. entity?
 21 A Yes.
 22 Q And also in terms of this document, kind of in the same
 23 area, top third, it says "Email address," correct?
 24 A Yes.
 25 Q And the email address was "james@eventtradingfund.com."

1 Correct?
 2 A Yes.
 3 Q There was no email address of MNT, LLC or MNTB or anything
 4 like that. Correct?
 5 A Right.
 6 Q Okay. You indicated, just looking at this form, we were
 7 talking about five -- assets available to invest 5 million.
 8 Correct?
 9 A Yes.
 10 Q All right. And at some point between February 2nd, 2012
 11 -- on February 2nd or around February 2nd, 2012, did Mr. Murray
 12 tell you that the 5 million was a person in Europe that he was
 13 partnering with, partnering with, with regard to this specific
 14 account (Indicating)?
 15 MR. FARNHAM: Objection, hearsay.
 16 THE COURT: Overruled.
 17 THE WITNESS: Um, he didn't give me specific details.
 18 BY MR. DRESSLER:
 19 Q All right. At some point, though, when -- when, in July,
 20 when the trade, the Netflix trade actually occurred, you had
 21 conversations with him, and he indicated that Mr. DeFrancisci
 22 was his partner in the firm that had 5 million in assets, did
 23 he not?
 24 MR. FARNHAM: Objection, hearsay, foundation.
 25 THE COURT: Overruled.

1 THE WITNESS: I can't remember the name, if it was
2 the guy or not. But he mentioned there was someone that was
3 holding the money up for the trade.
4 BY MR. DRESSLER:
5 Q Okay. Now, is there a difference between opening the
6 account and getting authorization to actually conduct trades on
7 the account?
8 A No.
9 Q Okay. So are you saying that if on February 3rd, if
10 Mr. Murray had come in and wanted to do the Netflix trade, a
11 3 million -- how did you characterize it? That it was a --
12 A Margin trade.
13 Q It was a margin trade, and it was --
14 A 3.6 million.
15 Q 3.6 million. Okay. That he could have done that on
16 February 3rd?
17 A I said earlier that even though the document says it was
18 updated on February 2nd --
19 Q Uh-huh.
20 A -- I can't recollect the exact day that it was definitely
21 approved for trading.
22 Q Okay. Do you remember that basically it wasn't approved
23 until somewhere around June 22nd, six months later?
24 A I just know that it took a while to get -- to get enough
25 information from Mr. Murray to complete the application for the

1 account, and get it opened.
2 Q Okay.
3 A But I can't remember exact dates.
4 Q Okay.
5 A And I wasn't personally involved in gathering information.
6 My assistant was. So there was a point where my assistant just
7 told me, "Okay, now it's finally approved."
8 Q Okay. If -- in terms -- before you traded with the
9 account, did you look at any of the documents relating to the
10 authorization to trade?
11 Strike that.
12 When you have an account like this, and I'm talking about
13 the account here that -- just because -- I'll refer to it this
14 way, to make it simpler.
15 This account was G70-1378064. Correct?
16 A Yes.
17 Q So if I refer to it as "Account [REDACTED]," you'll know what
18 I'm talking about.
19 A Okay.
20 Q Correct?
21 A Yes.
22 Q Okay. Other accounts might have -- might start with "G70"
23 but they would end with -- the last four digits would be
24 different for --
25 A Correct.

1 Q -- every account. Correct?
2 A Correct.
3 Q Okay. So, at the time that this account was finally
4 approved, were you aware that there were two beneficial owners
5 of the account?
6 A No.
7 Q Okay. You weren't aware that -- at some point you learned
8 that for this account, there was only one -- a single investor.
9 Correct?
10 A I never knew how many investors there were.
11 Q I'm going to show you -- do you remember being interviewed
12 in -- August 28, 2013, by U.S. Attorney Ms. Harris here, and an
13 FBI agent, in the presence of Ellen Sheridan-Cona, who was a
14 lawyer for Oppenheimer?
15 A Yes.
16 Q They asked you questions; you gave answers?
17 A Yes.
18 Q You tried to be -- you were a little closer to the time
19 that these events occurred?
20 A Unfortunately, my memory is really getting bad as I get
21 older.
22 Q Well, the jury here will be able to attest to the fact
23 that that's certainly true in my case, as I get older.
24 But in any event, my question was: When you had this
25 interview in 2013, you were trying to -- you were closer to

1 2012?
2 A Yes.
3 Q Correct? You were trying to give honest, truthful --
4 A I had a much better memory then, yeah.
5 Q Okay. All right. So I'm going to show you --
6 MR. FARNHAM: Your Honor, I object. I don't think we
7 have established that this witness needs to be refreshed on
8 this issue.
9 THE COURT: Well, at this point it's not -- I don't
10 know what your purpose is.
11 MR. DRESSLER: I'm asking him if he --
12 BY MR. DRESSLER:
13 Q Do you remember telling, at that interview, saying that
14 you thought MNT had many clients, until Murray mentioned that
15 the 5 million available to MNT were funds from a single
16 investor some time after Murray opened the account?
17 Do you remember saying that?
18 A I don't remember saying that. I'm not saying it's
19 incorrect.
20 Q Okay. Does it refresh your recollection -- if I show you
21 this report, will it -- might it refresh your recollection?
22 A I don't know if it will refresh my memory. But I will say
23 that for most of the time that the account was open, I thought
24 that there were multiple investors. And I do remember that
25 when the transaction occurred, he was waiting for one investor

1 to send the money in.
 2 Q Okay.
 3 A Does that help you?
 4 Q Well, you're not here to help me. You are here to answer
 5 the questions as best you can.
 6 A Yes.
 7 Q All right? But, so, you don't remember saying what I just
 8 read to you.
 9 A Not exactly.
 10 Q Specifically.
 11 A No.
 12 Q Okay. Your investor initially -- your assistant was
 13 originally Melanie Perricone?
 14 A Correct.
 15 Q Is she related to you in some way?
 16 A Yes.
 17 Q How is she related?
 18 A Second cousin.
 19 Q Second cousin? In any event, at the beginning of the
 20 process which started in February, 2002 (sic), she was your
 21 assistant, correct?
 22 A Yes.
 23 Q And she would have been the one that would be helping
 24 Mr. Murray provide -- or telling him what Oppenheimer needed to
 25 get this account going. Correct?

1 A Yes.
 2 Q All right. And, would she, in terms of her employment as
 3 your assistant, would she from time to time update you in terms
 4 of what was happening with a particular account?
 5 A You mean an account that was in the middle of trying to be
 6 opened?
 7 Q Yes.
 8 A Yes.
 9 Q Okay. Do you have any memory of her advising you of what
 10 the progress was with this 8064 account?
 11 A It was -- it was really general: We're still in the
 12 middle. We had to get some more information. We sent it to
 13 our office -- our home office. We're waiting for responses.
 14 Things like that.
 15 Q And at some point, did she tell you that some of this
 16 information had to come from overseas? Documents that were
 17 necessary --
 18 A Well, she didn't tell me, but I knew that.
 19 Q Okay. You knew that if it's an overseas company, and a
 20 non-citizen is going to be on the account, it requires a lot
 21 more paperwork and documentation before the account can
 22 actually be functioning.
 23 A There's a criterion for overseas accounts where we had to
 24 adhere to the Patriot Act.
 25 Q Uh-huh.

1 A And so it would have required a lot of extra documents,
 2 copies of passports. A checklist.
 3 Q Right.
 4 A And we had a specific department in New York that would
 5 approve Patriot Act accounts. And sometimes it was cumbersome
 6 and would take a long time going back and forth, where you give
 7 them what they want, and then they need more.
 8 That's why I thought it took a few months to open the
 9 account all the way.
 10 Q Fair enough. By the way, in terms of the account
 11 information form that we've been talking about, Government
 12 Exhibit 288, there's no requirement -- strike that.
 13 Oppenheimer -- does Oppenheimer require a prospective
 14 account holder like Mr. Murray to fill out a form which would
 15 indicate who the investors are, what assets they have, where
 16 they are, that kind of thing, so Oppenheimer can verify whether
 17 the \$5 million is a correct number or not?
 18 A Um, this -- this is not the same process as taking out a
 19 loan, where you might have much more due diligence on verifying
 20 the money. I have been at more than one firm, and it's always
 21 been the same case.
 22 A familiar client, trust him with the information he gave
 23 you. But we were never required to then go and validate that
 24 the money was good, or existed where it was.
 25 Q I think that's -- is that a "Yes" answer to my question?

1 A What was your question?
 2 Q My question was: There's no -- in the business that you
 3 are involved in, all right -- I mean, there's no requirement --
 4 it's not like a loan. You're not required to list your
 5 investors, where their assets are, that kind of thing.
 6 A Well, that's two different questions. We never had to
 7 verify that there was money in some bank in Europe or anywhere
 8 else.
 9 If you're asking me did we have to verify who the
 10 investors were, I believe I'm correct on this but I'm not
 11 saying it's absolute, we had to verify that -- who the fund
 12 manager was. And if he had more than one investor, we did not
 13 have to verify who all the investors were. Just who the
 14 investment manager was.
 15 Q Okay. And so, that would be Mr. Murray, would be --
 16 A Correct.
 17 Q -- would be the first person. Right?
 18 A Right.
 19 Q And, if there was another -- with regard to this
 20 particular account, right, if there was a second beneficial
 21 owner, you wouldn't (sic) want to know who that was, correct?
 22 (Reporter interruption)
 23 MR. DRESSLER: Would want to know who that was.
 24 THE WITNESS: I can't answer if I needed to know that
 25 or not. I'd have to check.

1 BY MR. DRESSLER:
 2 Q Okay.
 3 A But again, I reviewed everything we got, and passed it on.
 4 So if there was a need to verify that, it would have been done
 5 above me.
 6 Q Okay. Well, if -- have you ever heard of a shell
 7 corporation -- offshore shell corporation do a due-diligence
 8 type of document?
 9 A No.
 10 Q If one was necessary, would that have been sent --
 11 something like that was necessary for Mr. Murray to -- to
 12 submit, would that be something that one of your assistants
 13 would advise him of?
 14 MR. FARNHAM: Objection. Lacks foundation, based on
 15 his previous answer.
 16 THE COURT: Overruled.
 17 THE WITNESS: I'm not familiar with the document you
 18 are talking about.
 19 BY MR. DRESSLER:
 20 Q Okay. But whatever documents were going to be required of
 21 Mr. Murray, that would -- that information would be sent to him
 22 by one of your assistants. Correct?
 23 A Well, we had a checklist of what we needed.
 24 Q Uh-huh.
 25 A And sometimes we would add to it after he submitted the

1 original part. So if that was on the list, we would have asked
 2 for it.
 3 Q Okay. When you say "we," what I'm asking is: That would
 4 have been one of your assistants, correct?
 5 A Well, my assistant would have been the one. I normally
 6 wouldn't do that.
 7 Q Okay. Now, you mentioned the Patriot Act. That added --
 8 would it be fair to state that added additional layers of
 9 information that had to be produced before an offshore account
 10 or a non-U.S. entity account could be approved of?
 11 A Correct.
 12 Q And also, would it be fair to state that background checks
 13 had to be done, correct? Of -- of the individuals associated
 14 with the account?
 15 A That's above what I was -- what I was required to do, so I
 16 can't even answer it. The Patriot Act department of my firm
 17 knew what they needed, and they asked for it. If that was part
 18 of it, then that might have happened. I'm not privy to that.
 19 Q Have you ever heard of, in the time that you were working
 20 at Oppenheimer, an AML desk, or anti-money laundering desk?
 21 A Um, whether it's a desk or a department, yes.
 22 Q You have heard of that, correct?
 23 A Yes.
 24 Q And that, whatever that desk or department is --
 25 A That's pretty closely tied to the Patriot Act idea. I

1 mean, sort of the same thing.
 2 Q Right. So there are background checks of the individuals
 3 associated with an offshore account that are done. Correct?
 4 In looking for negative -- negative information about whoever
 5 is on the actual account.
 6 A I just don't know to what extent the background check
 7 goes.
 8 Q Okay. Are you aware of the fact at that Oppenheimer --
 9 have you ever heard of McDonald Information Systems?
 10 A No.
 11 Q Okay. Are you aware that -- Let me give you an example.
 12 If I walked into your office, and you had no idea who I
 13 was, and I said "I want to open up -- I have \$5 million, I have
 14 a small hedge fund company, I have \$5 million that potentially
 15 are available to invest, sign me up," you wouldn't have done
 16 it, would you?
 17 A Why not?
 18 (Reporter interruption)
 19 THE WITNESS: "Why not?"
 20 BY MR. DRESSLER:
 21 Q All right. And if I came in the next day, you would have
 22 let me do a \$5 million trade?
 23 A No.
 24 Q Okay. So, isn't it true that for everyone that applies
 25 for a margin account, especially one with these kind of

1 numbers, that some background check is done by Oppenheimer of
 2 the individual who is trying to open the account?
 3 A Well, you keep asking me about this background check.
 4 Q Uh-huh.
 5 A And I keep telling you, we had a checklist.
 6 Q Uh-huh.
 7 A That might have been part of the checklist. I'm not even
 8 sure.
 9 Q Okay.
 10 A But, that's beyond me. You need to ask the next guy
 11 coming in, I think.
 12 Q Okay. All right.
 13 A Who probably can be more helpful on this.
 14 Q All right. So in terms of what happened with this
 15 particular 8406 account that I'm talking about, the interface
 16 between Mr. Murray and whatever was required of him by other
 17 people in Oppenheimer would have been handled by -- initially
 18 by Melanie Perricone. Yes?
 19 A Yes.
 20 Q And then after that, by Casey Cheung.
 21 A Correct.
 22 Q The Netflix trade occurred on two days, July 24th and
 23 July 25th?
 24 A Well, I know the short sale occurred on the 24th. And if
 25 you want me to look, I'll tell you -- do you want me to confirm

1 that?

2 Q Yes.

3 A Okay.

4 (Witness examines document)

5 Q And see if you can confirm whether there was -- whether it

6 took part -- a short -- a short sale is stock is borrowed or

7 located by Oppenheimer, and then it's --

8 A Sold.

9 Q First it has to be purchased, correct?

10 A No, no, you're --

11 Q All right. You sell it. You're right.

12 A You borrow it, then you do a short sale, which has certain

13 requirements. It's not a regular sale. And then, you cover

14 and close the trade by buying it later.

15 Q So what I'm asking is whether there were two instances of

16 what you just described.

17 A Well, yes. There was a short sale. That was one

18 instance.

19 Q All right.

20 A And then there was a buyback to cover, which we did in two

21 partial amounts.

22 Q Uh-huh.

23 A So there were three instances of transacting this trade.

24 Q Okay. So the first instance took place on the 24th.

25 (Witness examines document)

1 A Yes.

2 Q And then the second --

3 A Which was a partial, later on the 24th.

4 Q It was a partial?

5 A On the same day.

6 Q Okay.

7 A Later on. And then it was completed the following day.

8 The 25th.

9 Q So there were two -- the partials that we're talking

10 about, I'm --

11 A Yeah, we short sell 50,000.

12 Q Right.

13 A On the same day, later on, we bought back 5,000.

14 Q Right.

15 A And the following day, we finished with buying back the

16 other 45,000.

17 Q Okay. And that resulted in the profit of somewhere a

18 little less than 500,000.

19 A Right.

20 Q Okay. All right. And with regard to -- so I guess what

21 you are telling me is, and correct me if I'm wrong, even though

22 Mr. Murray -- you probably would have done a similar type trade

23 for Mr. Murray on Netflix in January or February of 2012, it

24 didn't happen until July of 2012. Correct?

25 A I would have only done a transaction like that earlier if

1 the account had been approved earlier.

2 Q Oh, okay. All right. All right. So, in any event, at

3 some point, the account was opened. Correct?

4 A Yes.

5 Q All right. And before any trades were done, you had

6 conversations with Mr. Murray about the fact that he was

7 interested in -- now that the account was opened, he indicated

8 he was interested in doing some short sales. Correct?

9 A Yes.

10 Q Okay. Would it be fair to state that in the week before

11 the next trade, you and Mr. Murray were in contact, either in

12 person or by telephone, with regard to potential short trades

13 that he wanted to execute?

14 A By telephone only.

15 Q Okay. All right. There there's nothing that requires you

16 do it in person, correct?

17 A No.

18 Q Okay. And would it be fair to state that Mr. Murray would

19 advise you in advance that he might want to do a short trade of

20 Company X, Company Y, Company Z, and would request that you

21 either locate or borrow a certain amount of stock in those

22 companies so if he did decide to do a short trade, the stock

23 would be available?

24 A That did happen.

25 Q Okay. All right. So I'm going to show you what's been

1 marked as Defense Exhibit 555 --

2 (Off-the-Record discussion between counsel)

3 MR. DRESSLER: May I approach?

4 THE COURT: Yes.

5 BY MR. DRESSLER:

6 Q I'm going to show you 555. And ask you to just take a

7 quick look at it.

8 (Witness examines document)

9 A Okay.

10 Q That appears to be a number of emails between you and

11 Mr. Murray. Correct?

12 A Correct.

13 Q Okay. So if you look at -- and I don't have these --

14 MR. DRESSLER: Is the ELMO on?

15 THE CLERK: I can turn it on. You need to move it

16 in, too.

17 MR. DRESSLER: Okay.

18 BY MR. DRESSLER:

19 Q If you look at --

20 THE COURT: Are you -- are you going to move to

21 admit, to publish it?

22 MR. DRESSLER: I'm going to move to admit this, 555,

23 yes.

24 THE COURT: Any objection?

25 MR. FARNHAM: No objection.

1 THE COURT: All right. 555 is admitted. You may
2 publish.
3 (Trial Exhibit 555 received in evidence)
4 BY MR. DRESSLER:
5 Q I'll just put this on the screen.
6 (Document displayed)
7 MR. DRESSLER: Everybody see what I'm putting up
8 there?
9 THE COURT: Okay.
10 BY MR. DRESSLER:
11 Q All right. So this is an email dated -- if you look at
12 the bottom half, Thursday, July 26, at 8:43 a.m., it's from
13 James Murray to you. Correct?
14 A Um --
15 Q Looking at the --
16 A Yes, yes.
17 Q All right. And then it says "borrows today." And it
18 lists -- there are a bunch of numbers and a bunch of
19 abbreviations there.
20 Do you see that?
21 A Yes.
22 Q Okay. What are those in?
23 A Those are the stock symbols for listed companies.
24 Q Okay. And, the numbers next to them are the -- what?
25 A Those are the amount of shares he's requesting to borrow

1 for each one of those companies.
2 Q Okay. And at 8:44, you responded with an email saying:
3 "If we can trade them all with big profit I will
4 take Monday off."
5 Correct?
6 A Okay.
7 Q That's what it says, right?
8 A Yes.
9 Q You did write that?
10 A I guess so.
11 Q All right. And before any of these trades had taken
12 place, you had discussed with Mr. Murray his strategy, that --
13 that he proposed to use during -- with regard to proposed short
14 trades that he wanted to do.
15 A Yes.
16 Q Okay. And would it be fair to state that you were
17 impressed with what he told you?
18 A I wouldn't say I was impressed. I mean, I acknowledged
19 the strategy.
20 Q Okay.
21 A I mean, that doesn't mean it's going to work.
22 Q Correct. All right. But, and the strategy required was
23 based on -- I don't know if this is a term of art within your
24 business or not, but a surprise concept with regard to
25 earnings?

1 A No. It was -- it was actually the opposite, because he
2 wasn't -- he wasn't putting the transactions on before the
3 companies put their earnings out.
4 Q Okay, all right.
5 A He was doing it afterward.
6 Q So the idea --
7 A Do you want me to explain what I think it was?
8 Q Let me ask you a couple of questions.
9 A Okay, go ahead.
10 Q So the idea there is that you wait -- at a particular time
11 you know a certain company is going to release an earnings
12 report. Correct?
13 A Yes.
14 Q Okay. And so, would it be fair to state that if you're
15 interested in doing a short, in that situation, there's a
16 period right after the earnings come out where it's unclear how
17 the market is going to react to that earnings report. Correct?
18 A Yes.
19 Q Okay. And so, if you can predict or are willing to bet on
20 how the market is going to react, and you react before the
21 market reacts, there's an opportunity to make money there.
22 Correct?
23 A Yes.
24 Q And that's kind of what Mr. Murray was proposing to you.
25 Correct?

1 A Yes.
2 Q And that was -- I'm sure he didn't invent that, correct?
3 That concept?
4 A No.
5 Q All right. So, if it's going to be -- if you are going to
6 be successful in doing that, you have to have some idea -- in
7 order to make money, hopefully, you have to have some idea of
8 which way it's going to go. Correct?
9 A Yes.
10 Q And so, if you look at the first page of Exhibit 555, on
11 July 24th, the bottom email, and -- put it up here.
12 (Document displayed)
13 Q July 24th, one of the things Mr. Murray asked you to do in
14 turn was -- it says:
15 "NFLX borrow 50,000."
16 Q Correct?
17 A Yes.
18 Q And that meant locate or borrow, or however the term is,
19 50,000 shares from Netflix. Correct?
20 A Correct.
21 (Document taken off display)
22 Q And then that morning, the trade was executed. Correct?
23 A Yes.
24 Q Okay. And, would it be fair to state that you were on
25 your phone in your office, and Mr. Murray was on his phone in

1 his office when the earnings report came out? You were
 2 monitoring that?
 3 A I don't know where he was. I know -- I was on the phone
 4 with him.
 5 Q Okay.
 6 A I don't know where he was.
 7 Q Okay. That's fine.
 8 A I was in the office.
 9 Q And, but you were on the phone with Mr. Murray.
 10 A Yes.
 11 Q Okay. And the earnings report came out, okay? And at
 12 some point he said "Go"?
 13 A He didn't say "Go," but he said "Here's your
 14 instructions."
 15 Q Basically, what did that mean? What instructions did he
 16 give you?
 17 A He would have given me an order to short Netflix with
 18 price instructions.
 19 Q Okay. And, do you remember what those instructions were?
 20 A No. I mean, they're usually either "Market," which means
 21 just get it done right now, whatever it's trading at, or he
 22 would have put a limit on it and said "Short it, don't use" --
 23 or "Don't sell it any lower than this price."
 24 Q Okay.
 25 A I can't remember -- I don't know which one he did.

1 Q And would that be reflected in the -- in the ticket you
 2 testified to earlier?
 3 A Um, that actual piece of the instruction?
 4 Q Right.
 5 A Probably not. It would be more -- what would be shown was
 6 that he gave the order. It was unsolicited. And, this is the
 7 price we ended up with.
 8 Q Okay.
 9 A How he actually worked it, the only thing that you would
 10 see is if I put partial confirmations in, so -- I know on some
 11 of these, it shows partials as the trade was finishing. Where,
 12 okay, short 50,000 shares. And I get a report back: We've
 13 done 10,000 so far; we're still working it. And I would report
 14 that back to him, and he would say: Keep going; change the
 15 price.
 16 All those changes of his instructions wouldn't be there,
 17 but the -- as the trade accumulated toward 50,000, I was
 18 putting in notes: Okay, we did this many so far now, and this
 19 is the average price. Until we finished it, and then I would
 20 put the average price in.
 21 Q Okay. And at the end of that process over two days,
 22 that's where the little less than 500,000 came from.
 23 A Yes.
 24 Q And Oppenheimer got about a 10,000 commission, based on
 25 that amount of profit? Sound about right?

1 A Ten cents per short -- on the short sale, and ten cents
 2 when we bought it back.
 3 Q Okay.
 4 A \$5,000 commission for each side of the trade.
 5 (Reporter interruption)
 6 THE WITNESS: \$5,000 commission for each side of the
 7 transaction.
 8 BY MR. DRESSLER:
 9 Q And, before the trade was actually made, you had to get
 10 approval from someone. And you think that was Mr. Sportelli?
 11 A Approval for what?
 12 Q For the short that was done on the --
 13 A Are you talking about for the borrow?
 14 Q Well, first, let's break it down into two questions. All
 15 right?
 16 A Okay.
 17 Q You have to get approval from someone for the borrow?
 18 A Yes.
 19 Q Okay.
 20 A And then they gave me a code.
 21 Q And that was in the ticket.
 22 A Right.
 23 Q And then for the short, would you have to get approval for
 24 that?
 25 A No. The account had prior been approved for trading in

1 general. This was the kind of trading it was approved for.
 2 Q Okay.
 3 A So I wouldn't have to get a higher approval unless he gave
 4 me an order for an amount significantly above the 5 million.
 5 Q Okay.
 6 A Which did not happen here.
 7 Q All right. And you were aware, were you not, that there
 8 were no funds in the account when this trade was executed?
 9 A Correct.
 10 THE COURT: Mr. Dressler, how much longer do you
 11 have?
 12 MR. DRESSLER: I think we should break. I may be a
 13 little while longer.
 14 THE COURT: All right. Let's go ahead and take half
 15 an hour break for lunch. We will resume at 12:35.
 16 THE WITNESS: Should I leave these (Indicating) here?
 17 THE COURT: You can for now.
 18 MR. DRESSLER: Just leave them.
 19 THE WITNESS: Leave them here?
 20 MR. DRESSLER: Yeah.
 21 THE COURT: For now.
 22 (Jury excused)
 23 THE COURT: You may go ahead and step out,
 24 Mr. Moskowitz. Thank you.
 25 I want to talk to counsel for a minute. So why don't we

1 have the witness step outside.
 2 (The Witness leaves the courtroom)
 3 MR. DRESSLER: Yes, Your Honor.
 4 THE COURT: How much longer do you think you are
 5 going to go in your cross?
 6 MR. DRESSLER: Fifteen, 20 minutes, maybe. No more
 7 than half an hour, for sure.
 8 THE COURT: And what about Ms. Perricone? Is she
 9 going to be on?
 10 MS. HARRIS: She is going to be our next witness,
 11 Your Honor.
 12 THE COURT: Are we going to be able to finish her?
 13 MS. HARRIS: I cannot imagine that I'm going to have
 14 very many questions. It's just to authenticate the email
 15 chain. And ask her, you know, the questions about the emails
 16 that preceded the filling out of the Exhibit 288 that we've
 17 just seen.
 18 THE COURT: All right.
 19 Well, you have listed some 45 minutes of cross on ten
 20 minutes of direct. Are you really going to take that much time
 21 on Ms. Perricone?
 22 MR. DRESSLER: Um, probably ten, ten minutes.
 23 THE COURT: All right. I would like to get her done
 24 today, since we held her over.
 25 MS. HARRIS: Yes.

1 THE COURT: And I want to move this thing along.
 2 MR. DRESSLER: I will definitely -- she's not going
 3 to be that long a witness.
 4 THE COURT: All right. Well, all right. Let's --
 5 let's keep things at a decent pace, please.
 6 (Whereupon at 12:09 p.m. proceedings
 7 were adjourned for noon recess.)
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1 PROCEEDINGS
 2 September 30, 2015 12:43 p.m.
 3 (Proceedings resumed pursuant to noon recess.)
 4 THE COURT: Thank you and welcome back, ladies and
 5 gentlemen. We are still in the process of cross examination of
 6 Mr. Moskowitz.
 7 You may proceed.
 8 CROSS EXAMINATION RESUMED
 9 MR. DRESSLER: Thank you, your Honor.
 10 Your Honor, I'm going to approach the witness and show him
 11 one page from Defendant's Exhibit 558, which is just marked for
 12 identification right now.
 13 THE COURT: All right.
 14 (Whereupon document was tendered to the witness.)
 15 BY MR. DRESSLER
 16 Q There are two pages I'm showing you out of the multi-page
 17 document. Did you see either of these two pages in connection
 18 with Mr. Murray's application for account No. 8064?
 19 A I've seen these documents. I can't say 100 percent that I
 20 saw these or not because it was so long ago, so I can't say for
 21 sure.
 22 Q That's fine.
 23 A All right.
 24 Q Mr. Moskowitz, in terms of the funds that were,
 25 quote/unquote, needed to settle this account, was it about

1 1,700,000?
 2 A 1,800,000.
 3 Q 1,800,000. Let's not quibble over 100,000, okay?
 4 Anyway, 1,800,000. So if the trade had been settled, all
 5 right, a wire would have come into Oppenheimer in the amount of
 6 \$1,700,000, correct, if it had been settled?
 7 A Let's just say if 50 percent of the 3.6 came in --
 8 Q All right. Did I say --
 9 A -- or more. You said 170 again.
 10 Q I apologize. Whatever that amount is. Fifty percent of
 11 the trade would have come in -- would have been wired to
 12 Oppenheimer, correct?
 13 A What is the question?
 14 Q If the trade had been settled, 50 percent of the trade,
 15 1,800,000 approximately, would have been wired to Oppenheimer
 16 and Company, correct?
 17 A Yes.
 18 Q All right. And it would have gone into account 8064,
 19 correct?
 20 A Yes.
 21 Q And how long would it have stayed there?
 22 A Until the client asked for it back or there was another
 23 transaction. It would have stayed for that maybe. It would
 24 have been up to the client to ask for it back.
 25 Q Okay. So if that amount of money came in on Monday, all

1 right, and if the client asked for it to come back on Tuesday
 2 morning, it would have been sent back, correct?
 3 A Are you talking about inside the three-day trade window,
 4 when it would have been paid for or any time after?
 5 Q I'm saying if during the three-day trade period, which
 6 is -- it's commonly called T+3, correct?
 7 A Yes..
 8 Q All right. If the 50 percent of those funds had come in
 9 within the three-day time period, on a Monday, just -- and on a
 10 Tuesday if the -- if Mr. Murray had asked that it be wired back
 11 to the person that sent it in, would that request have been
 12 honored?
 13 A Not by -- Mr. Murray had control of the money being sent
 14 out. Where it was sent, we would have needed a written
 15 instruction with details of where it's going, unless they were
 16 already in the account on the documents.
 17 Q So what I'm --
 18 A In other words, we wouldn't take a phone call that would
 19 say send it anywhere and we would send it out.
 20 Q I understand, okay.
 21 A Okay.
 22 Q So what I'm saying is if there were two people on the
 23 account, okay, and one of them wired in 50 percent and then
 24 that person requested the next day that the 50 percent be sent
 25 back to him, that would have been honored, correct?

1 A If there's instructions on the account of where money
 2 needs to be sent to, that's where it would be sent. If it
 3 needs to be sent elsewhere, we would need a written document
 4 with signature saying: Please send these funds to a third
 5 party. Okay?
 6 So even if there's two people on the account, we wouldn't
 7 send it somewhere else rather than the designated place on the
 8 account only, unless we had instructions.
 9 Q What I'm asking is: If everything was in order and you
 10 had the proper instructions, all right, both going in and out,
 11 all right, if the money came in on Monday and the instruction
 12 was send it back on Tuesday, it would have been sent back on
 13 Tuesday, correct?
 14 A Yes.
 15 Q Yes?
 16 A Yes.
 17 Q Okay. Now, if this trade had been unsuccessful, the
 18 Netflix trade, all right, and if -- let's say that the money
 19 wasn't paid. All right? Would you -- if money was lost, all
 20 right? Let's say, money was lost on this trade, all right,
 21 would it be fair to state that Oppenheimer would be looking to
 22 recover the money that was lost?
 23 A Yes.
 24 Q All right. And they would be looking to recover the money
 25 that was lost from the owner or owners of Account 8064,

1 correct?
 2 A Yes.
 3 Q All right. So if there was one owner, they would be
 4 looking at that owner. If there were two owners, they would be
 5 looking at both owners to recover their money, correct?
 6 A Yes.
 7 Q Now, this Account 8064 was in the name of MNT Master Fund,
 8 Limited, correct?
 9 A Yes.
 10 Q Let me ask you a couple questions about Mr. Greenberg, all
 11 right?
 12 You referred Mr. Murray to Mr. Greenberg in order to help
 13 him out, correct?
 14 A Yes.
 15 Q Because you felt he was in a bind?
 16 A Yes.
 17 Q Okay. And, to your knowledge, without telling me -- I
 18 don't want the content of any conversations. Did you become
 19 aware that Mr. Murray did meet with Mr. Greenberg?
 20 A Yes.
 21 Q Okay. And for whatever reason, Mr. Greenberg and Mr.
 22 Murray did not reach an agreement where Mr. Greenberg would put
 23 the approximately 1,800,000 into the 8064 account?
 24 A Yes.
 25 Q In order to settle the trade, correct?

1 A Yes.
 2 Q And Mr. Greenberg, in order to do that, would have to
 3 actually become one of the owners of the account, correct? Is
 4 that a correct statement?
 5 A I don't know if it's an owner or one of the investors.
 6 Something like that.
 7 Q Okay. All right. And --
 8 A Well, that might not be true because I'm not sure. He
 9 might have been able to lend money to MNT and so then he
 10 wouldn't be an owner.
 11 Q In any event, Mr. Greenberg was going to want to charge
 12 some money to Mr. Murray to do that, correct?
 13 A Well, he wasn't going to do it for free.
 14 Q Exactly. All right. Now, there was another trade that
 15 was done around the same period of time which I think you
 16 referred to as the Facebook trade, correct?
 17 A Correct.
 18 Q That was also a profitable trade, was it not?
 19 A Yes.
 20 Q And that trade had a profit of about \$11,800, correct?
 21 A Yes.
 22 Q All right. And plus about a \$2,500 commission, something
 23 along those lines?
 24 A Ultimately there was no commission.
 25 Q But those -- the profits from that trade Oppenheimer kept,

1 right?
 2 A Yes.
 3 Q Mr. Murray did not get any of that money, correct?
 4 A No.
 5 Q All right. And then -- in this case the three days went
 6 by without any settlement, correct?
 7 A Correct.
 8 Q All right. And the three days -- it's called a T+3 rule,
 9 correct?
 10 A Yes.
 11 Q And that's regulation T of what entity?
 12 A Feds.
 13 Q The Feds, okay. All right. And you say the Feds --
 14 A I said the Fed, Federal Reserve.
 15 Q Okay. And that requirement includes penalties if a trade
 16 is not settled within the T+3 period, correct?
 17 A There is no set procedure for the penalties, as far as I
 18 know. There might be penalties of interest. But I believe
 19 it's a case-by-case basis.
 20 Q Are you aware that there is a -- let me just ask you this:
 21 Are you aware that if there is a violation of T+3, that
 22 Oppenheimer would, at a minimum, would have to restrict the
 23 account for 90 days?
 24 A Yes.
 25 Q Okay. But that's a bottom line, correct? I mean, in

1 other words, Oppenheimer can choose to just end the
 2 relationship with the client when that happens, correct?
 3 A Right. Well, they could also -- most likely, they would
 4 have imposed a 90-day restriction, but the account could still
 5 execute further trades if there is cash in the account.
 6 Q All right. But in this case, Oppenheimer opted to close
 7 this account and the other accounts that were associated with
 8 Mr. Murray, correct?
 9 A Yes. After over three weeks had gone by without paying
 10 for it.
 11 Q Right.
 12 A If the money had come in earlier than that, by, let's say,
 13 a week or two weeks and there was a good explanation, they may
 14 have kept the account.
 15 Q But for whatever reason, Mr. Murray was not able to come
 16 up with that money, all right. So the account was terminated?
 17 A Correct.
 18 Q All right.
 19 A All related accounts as well.
 20 Q Right. In other words, any account that Mr. Murray was
 21 associated with?
 22 A Yes.
 23 Q All right.
 24 MR. DRESSLER: I think that's all I have. Thank you.
 25 THE COURT: Any redirect?

1 MR. FARNHAM: Nothing further, your Honor. Thank
 2 you.
 3 THE COURT: All right. Thank you, Mr. Moskowitz.
 4 You are excused. You may step down.
 5 (Witness excused.)
 6 THE COURT: The Government may call its next witness.
 7 MS. HARRIS: Thank you, your Honor. The United
 8 States calls Melanie Perricone.
 9 (Brief pause.)
 10 MS. HARRIS: Your Honor, Ms. Perricone is on the
 11 second floor eating lunch. We'll call another witness.
 12 Actually, we have some testimony to read into the record.
 13 Maybe we can do that now while we wait for Ms. Perricone.
 14 THE COURT: All right. Let's take care of something
 15 else then.
 16 MR. FARNHAM: Your Honor, we'd like to read in the
 17 stipulation regarding "Facts Re Judicial Proceedings in the
 18 Federal Criminal Case." It's a factual stipulation that the
 19 parties have reached.
 20 THE COURT: Okay.
 21 MR. FARNHAM: It will just take a moment and I can
 22 put it on the Elmo, with the Court's permission.
 23 THE COURT: All right.
 24 Again, ladies and gentlemen, these are facts that you are
 25 to take as having been proved.

1 (Document displayed)
 2 MR. FARNHAM: March 13, 2012, James Murray was
 3 arrested in San Francisco, California, pursuant to an arrest
 4 warrant on a federal criminal complaint alleging wire fraud
 5 issued by Magistrate Judge Maria-Elena James.
 6 On March 15, 2012, the Securities and Exchange Commission
 7 filed a civil complaint against James Murray alleging fraud.
 8 On March 22nd, 2012, James Murray was released on bond
 9 with conditions of release and release imposed by Magistrate
 10 Judge Nathanael Cousins.
 11 On March 27, 2012, Magistrate Judge Nathanael Cousins
 12 issues an order amending the release conditions, orders James
 13 Murray to transfer all assets held overseas to the MNT Master
 14 Fund, Limited account at Interactive Brokers and states that
 15 James Murray represents that he will waive extradition from any
 16 country that has an extradition treaty.
 17 On May 15, 2012 Attorney Garrett Zelen appeared as counsel
 18 to James Murray in the pending criminal case, Case No. 12-278
 19 EMC.
 20 May 21st, 2012, a seizure warrant is signed and issued by
 21 Magistrate Judge Laurel Beeler seizing funds held in the name
 22 of MNT Master Fund, Limited held at Interactive Brokers in four
 23 accounts in an amount totaling \$1,778,057.80.
 24 June 14, 2012, a superseding indictment is returned and
 25 filed charging James Murray with wire fraud in connection with

1 his role as the sole member and investment advisor of Market
 2 Neutral Trading.
 3 October 3rd, 2012 James Murray was remanded into custody.
 4 March 11th, 2013, attorney Garrett Zelen was relieved as
 5 counsel for James Murray by an order of the Court.
 6 June 7, 2013, attorney Marc Axelbaum and the law firm of
 7 Pillsbury Winthrop Shaw and Pittman, LLP are appointed as
 8 counsel to James Murray in the pending criminal case, Case No.
 9 12-278 EMC.
 10 July 10th, 2013, the Court conducts a bail review hearing
 11 regarding James Murray.
 12 July 18, 2013, the Court conducts a further bail review
 13 hearing regarding James Murray.
 14 July 13, 2013, James Murray is released from custody
 15 pursuant to an order setting conditions of release issued by
 16 Magistrate Judge Jacqueline Scott Corley incorporating the
 17 criminal minutes from the hearing on July 18th, 2013.
 18 February 26, 2014, James Murray was remanded into custody
 19 pursuant to order of the Court.
 20 Thank you.
 21 THE COURT: All right. Thank you.
 22 MELANIE PERRICONE,
 23 called as a witness for the Government herein, having been
 24 first duly sworn, was examined and testified as follows:
 25 THE WITNESS: Yes.

1 THE CLERK: Please be seated.
 2 Please state your full name for the record and spell your
 3 last name, please.
 4 THE WITNESS: Melanie Elise Perricone,
 5 P-E-R-R-I-C-O-N-E.
 6 DIRECT EXAMINATION
 7 BY MS. HARRIS
 8 Q Good afternoon, Ms. Perricone. Where do you currently
 9 work?
 10 A BART.
 11 Q How long have you worked for BART?
 12 A Three years.
 13 Q And what specifically do you do for BART?
 14 A Train operator.
 15 Q Does that mean you drive the actual BART trains?
 16 A Yes.
 17 Q Drawing your attention to 2012, where did you work in
 18 January and February of 2012?
 19 A Oppenheimer.
 20 Q Did you report to Mark Moskowitz at Oppenheimer in January
 21 and February of 2012?
 22 A Yes.
 23 Q What were your general duties and responsibilities when
 24 you were at Oppenheimer?
 25 A General personal assisting and opening accounts, wire

1 transfers.
 2 Q Were you involved with obtaining information from
 3 Oppenheimer's customers for account opening?
 4 A Yes.
 5 Q Were you involved with getting information from James
 6 Murray in connection with Mr. Murray opening a trading account
 7 at Oppenheimer in 2012?
 8 A Yes.
 9 MS. HARRIS: Your Honor, may I approach the witness?
 10 THE COURT: Yes.
 11 (Whereupon document was tendered to the witness.)
 12 BY MS. HARRIS
 13 Q Showing you what's been marked as Government's
 14 Exhibit 287.
 15 Can you take a look at Government's Exhibit 287 and tell
 16 me if that's an email chain between you and Mr. Murray in
 17 January and February of 2012?
 18 A Yes.
 19 Q Do you recognize Exhibit 287 and those emails?
 20 A Yes.
 21 Q And were the emails that were on Exhibit 287 sent or
 22 received on the dates they bear?
 23 A Yes.
 24 MS. HARRIS: Your Honor, I offer Government's
 25 Exhibit 287 into evidence.

1 THE COURT: Any objection?
 2 MR. DRESSLER: No, your Honor.
 3 THE COURT: Admitted.
 4 (Trial Exhibit 287 received in evidence.)
 5 BY MS. HARRIS
 6 Q Now, if we could take a look at --
 7 MS. HARRIS: May I publish Exhibit 287?
 8 THE COURT: Yes.
 9 (Document displayed.)
 10 BY MS. HARRIS
 11 Q If we could take a look at Page 3 of Government's
 12 Exhibit 287?
 13 And if we could draw your attention to the middle email,
 14 which is dated January 20th, 2012. And it appears to be from
 15 James Murray and it says, "Re: Oppenheimer Corporate Account."
 16 And he says:
 17 "Hi, Melanie. At the start of the year we opened
 18 a new fund Cayman Islands based entity and would like
 19 to open same accounts as last year. My question, is
 20 the paperwork the same for a Cayman entity?"
 21 Do you see that email?
 22 A Yes.
 23 Q Did you respond to Mr. Murray on January 23rd, 2012, the
 24 email above?
 25 A Yes.

1 Q Okay. Now, if we could focus on your response?
2 (Document displayed)

3 Q And you tell Mr. Murray in the first sentence:
4 "No. We would need foreign account paperwork for
5 that entity."
6 Do you see that?

7 A Yes.

8 Q And you also say:
9 "The new account application will give me enough
10 information to open the account."
11 What is the next line that you say after that? Can you
12 read us the next sentence?

13 A "Please fill out as completely as possible."

14 Q All right. And then if we could look at the sentence just
15 before the last sentence where you say, "We need the original."
16 Then you say:
17 "In addition, we need a document indicating
18 account ownership and a copy of the authorized
19 signer's passport."
20 Do you see that?

21 A Uh-huh.

22 Q Is that something that you wrote to Mr. Murray on
23 January 23rd, 2012?

24 A Yes.

25 Q Okay. And now if we could look at Page 2 of Government's

1 Exhibit 281 [sic], Mr. Murray's email to you dated February 1,
2 2012.

3 MR. DRESSLER: I'm sorry?

4 MS. HARRIS: Page 2 of Exhibit 287.
5 (Document displayed)

6 BY MS. HARRIS

7 Q Let's first take a look at Mr. Murray's February 1, 2013
8 email to you.
9 Mr. Murray tells you:
10 "There is a client agreement you sent that was
11 secured, so I can't sign it."
12 Do you see that?

13 A Uh-huh.

14 Q And you say:
15 "Can you check and make sure the attached
16 documents are sufficient. If they are, I will have
17 Jose print them down in the S.F. office and bring
18 down the originals to you."
19 Do you see that?

20 A Uh-huh.

21 Q And Mr. Murray also said:
22 "Also, we need a DVP account set up, too, in this
23 company title."
24 Do you see that?

25 A Yes.

1 Q Okay. Did you respond to Mr. Murray on February 2, 2012?
2 Do you see that?

3 A Yes.

4 Q And you said:
5 "That actually works out because since I sent you
6 the documents, the agreement has been updated just
7 within the last week. I have attached it. Use this
8 instead."
9 Did you send Mr. Murray a new agreement for him to fill
10 out to open another account with Oppenheimer?

11 A Yes.

12 Q If I could draw your attention back to the email that
13 Mr. Murray sent you on February 1.
14 MS. HARRIS: And, specifically, if we could zoom in
15 on the information under the word "Thanks" at the bottom, where
16 it says "James Murray, CIO."
17 (Document enlarged.)

18 BY MS. HARRIS

19 Q What does Mr. Murray indicate in his email footer that he
20 is the CIO of?

21 A MNT Master Fund. And --

22 Q Ltd?

23 A Yes. And Event-Trading-Fund, Ltd.

24 Q So he was indicating that he was the CIO of both, is that
25 correct?

1 A Yes.

2 Q Now, if we could take a look at Page 1 of Government's
3 Exhibit 287. And if we could go down to the bottom email on
4 that page, the one February 2 from Mr. Murray to you.
5 (Document displayed.)

6 Does Mr. Murray tell you:
7 "Okay, see attached. Please confirm everything I
8 provided was okay and I'll have Jose walk down the
9 originals."
10 Is that what Mr. Murray told you on February 2nd?

11 A Yes.

12 Q And then later that same day, on February 2nd, did you
13 send an email to Mr. Murray asking for more information?

14 A Yes.

15 Q And specifically did you ask Mr. Murray the following
16 questions. "Nature of business?" Did you ask him that?

17 A Yes.

18 Q "Where does company bank?"

19 A Yes.

20 Q "Address?"

21 A Yes.

22 Q "Net worth?"

23 A Yes.

24 Q "Amount in dollars assets available to" -- "assets to
25 invest." Do you see that?

1 A Yes.
 2 Q And then, "Sources of funds available to invest?"
 3 A Yes.
 4 Q Now, if we could look at the email on -- that Mr. Murray
 5 sent you in return to the one we just read. Did Mr. Murray
 6 answer all of the questions you asked him?
 7 A Yes.
 8 Q And was that also on February 2nd, 2012?
 9 A Yes.
 10 Q What did Mr. Murray say was the nature of his business?
 11 A "Investment."
 12 Q And what did Mr. Murray say in terms of where does the
 13 company bank?
 14 A "Cayman International Bank."
 15 Q And did Mr. Murray give you the bank address?
 16 A Yes.
 17 Q Okay. And then with regard to net worth, what did Mr.
 18 Murray tell you was the net worth?
 19 A "5 million."
 20 Q When it said, "Amount in assets to invest," what did
 21 Mr. Murray say?
 22 A "5 million."
 23 Q Next to "Source of funds available to invest," what did
 24 Mr. Murray tell you?
 25 A "Investment."

1 Q Did that mean investment actually in assets?
 2 MR. DRESSLER: Objection. Calls for speculation.
 3 THE COURT: Sustained.
 4 BY MS. HARRIS
 5 Q What did that mean to you based on your role at
 6 Oppenheimer?
 7 A It meant that that's where he was getting the funds.
 8 Q From the investment --
 9 A From other investments.
 10 Q Okay.
 11 MS. HARRIS: Now, if we could bring up what has been
 12 admitted as Government Exhibit 288?
 13 (Document displayed)
 14 BY MS. HARRIS
 15 Q Did you fill in the information on Exhibit 288 based on
 16 the email information you obtained from Mr. Murray on the
 17 emails we just went through?
 18 A Do you need to give me a copy?
 19 Q Oh, you don't see it on the screen?
 20 A Well, is that --
 21 Q I can give you the hard copy as well.
 22 A It's a little difficult to see the numbers.
 23 (Whereupon document was tendered to the witness.)
 24 Q Can you take a look at Exhibit 288 and tell us whether as
 25 part of your job responsibilities at Oppenheimer, you filled in

1 the information on Exhibit 288 based on the emails you received
 2 from Mr. Murray?
 3 A Yes.
 4 Q Okay. And did you fill in that information on
 5 February 2nd, 2012?
 6 A Yes.
 7 MS. HARRIS: Okay. And if we could just zoom in to
 8 the -- the section of the form that has the amount available to
 9 invest.
 10 (Document enlarged.)
 11 BY MS. HARRIS
 12 Q Okay. Where did you get the "\$5 million" of "Assets
 13 Available to Invest" that we see on Government's Exhibit 288?
 14 A From the email.
 15 Q From the -- the email from whom?
 16 A Mr. Murray.
 17 Q Was that information Mr. Murray gave to you?
 18 A Yes.
 19 Q Okay.
 20 MS. HARRIS: If we could zoom in on the General
 21 Information box above that.
 22 (Document enlarged.)
 23 BY MS. HARRIS
 24 Q There is a section that says "Investment Experience." Do
 25 you see that? And then it says, "Indicates number of years."

1 A Uh-huh. Yes.
 2 MS. HARRIS: We're not on the right section, Lilli.
 3 (Document displayed.)
 4 BY MS. HARRIS
 5 Q In General Information, each of the boxes that's checked
 6 says 11 years of experience. Where did you get that figure
 7 from?
 8 A From Mr. Murray.
 9 Q Okay. And if we could look at the top of the Account
 10 Information?
 11 What was the legal name of the fund that was applying for
 12 an account with Oppenheimer?
 13 MR. DRESSLER: Objection.
 14 MS. HARRIS: Well, there's a section that says "Legal
 15 Name."
 16 MR. DRESSLER: Can I object, please?
 17 THE COURT: Yes. What's the objection?
 18 MR. DRESSLER: The objection is she's calling for --
 19 asking the witness to make a legal conclusion, a legal name.
 20 MS. HARRIS: I'm just asking what she put in in the
 21 section that says "Legal Name."
 22 THE COURT: Overruled. You can answer.
 23 BY MS. HARRIS
 24 Q Do you see the section where it says, "Legal Name of the
 25 Entity?"

1 A Yes.
 2 Q What does it say underneath that?
 3 A "MNT Master Fund, Ltd."
 4 Q Where did you get the information that MNT Master Fund,
 5 Ltd. was the legal name of the entity?
 6 A From Mr. Murray.
 7 MS. HARRIS: I have no further questions, your Honor.
 8 THE COURT: All right. Thank you.
 9 MR. DRESSLER: Could you put that last exhibit back
 10 up on the screen, please?
 11 (Document displayed)
 12 CROSS EXAMINATION
 13 BY MR. DRESSLER
 14 Q Can you tell from that document that you have been
 15 reviewing who the legal owners of this particular 8064 account,
 16 what -- if there are individuals that are the legal beneficial
 17 owners of this account, can you tell who they are from the
 18 document that you're looking at?
 19 A No.
 20 MS. HARRIS: Objection, your Honor. Now this calls
 21 for a legal conclusion.
 22 THE COURT: Sustained. That answer is to be
 23 disregarded.
 24 MR. DRESSLER: May I approach the witness?
 25 THE COURT: Yes.

1 BY MR. DRESSLER
 2 Q I'm going to show you what's been marked for
 3 identification as Defendant's Exhibit 558.
 4 (Whereupon document was tendered to the witness.)
 5 Q Could you look through that and see whether it contains
 6 emails, email communications between you and Mr. Murray?
 7 A Yes.
 8 Q Look through each page, please.
 9 (Witness complied.)
 10 A Yes.
 11 Q Okay.
 12 MR. DRESSLER: I move Exhibit 558 into evidence.
 13 THE COURT: Any objection?
 14 MS. HARRIS: No, your Honor.
 15 THE COURT: Admitted.
 16 (Trial Exhibit 558 received in evidence.)
 17 BY MR. DRESSLER
 18 Q In one of the emails that the Government questioned you
 19 about a few minutes ago, you requested certain information,
 20 passport information, that kind of thing, correct?
 21 A Yes.
 22 Q Okay. And in this document attached was a passport of a
 23 person named Giuseppe de Francisci, correct? If you look at
 24 the third page of the document?
 25 A Yes.

1 Q Just so the jury sees what I'm referring to.
 2 (Document displayed.)
 3 Q That's what I'm referring to, correct?
 4 A What is that?
 5 Q I said, you see the --
 6 A Yes, yes.
 7 Q Okay. All right. And you see the last two pages of this
 8 document?
 9 A Yes.
 10 Q Okay. It's a two-page document, correct? 1 of 2 and 2
 11 of 2?
 12 A Yes.
 13 Q Okay. And the first page, it asks for information
 14 regarding the first beneficial owner, correct?
 15 A Yes.
 16 (Document displayed.)
 17 Q Okay. And it indicates that Mr. Murray is the first
 18 beneficial owner of -- in connection with the application that
 19 you're processing, correct?
 20 A Yes.
 21 Q That would be Account [REDACTED]
 22 A Uh-huh. Yes.
 23 Q Okay. And then the second page indicates that Gianluca
 24 de Francisci is the second beneficial owner, correct?
 25 A Yes.

1 Q Would it be fair to state that it took awhile to process
 2 this account?
 3 A Yes.
 4 Q So I'm going to show you what's been marked as Defendant's
 5 556 for identification.
 6 (Whereupon document was tendered to the witness.)
 7 Q I'm going to show you this document. Could you just go
 8 through the pages and indicate whether or not it reflects an
 9 email chain between you and Mr. Murray?
 10 A Yes.
 11 Q And if you look at the first page --
 12 MR. DRESSLER: Did I offer this? I don't think I
 13 did.
 14 BY MR. DRESSLER
 15 Q So these are all emails between the two of you, correct?
 16 A Yes.
 17 MR. DRESSLER: No. 556, I'll offer this into
 18 evidence.
 19 THE COURT: Any objection?
 20 MS. HARRIS: No, your Honor.
 21 THE COURT: All right. Admitted.
 22 (Trial Exhibit 556 received in evidence.)
 23 BY MR. DRESSLER
 24 Q All right. And the first page indicates -- if I look in
 25 the middle of the first page, I think it was the email -- I

1 think this email may or may not have been shown to you by the
 2 Government.
 3 But out of an abundance of caution, February 2nd
 4 Mr. Murray responded, "Let me know if this is sufficient."
 5 All right?
 6 A Yes.
 7 Q And then that was at 1:20 p.m., correct?
 8 A Yes.
 9 Q All right. And then a little bit later you say:
 10 "The account is open. Mark mentioned you want to
 11 get approval to participate in a deal soon. Can you
 12 get me the original paperwork today? That would
 13 help."
 14 Correct?
 15 A Yes.
 16 Q And then -- anyway, it took awhile for him to get that
 17 material to you, correct?
 18 A Yes.
 19 Q And did you say that you -- when did you leave the
 20 employment of Oppenheimer?
 21 A In June 2012.
 22 Q Okay.
 23 A Or -- yeah, 2012.
 24 Q I'll show you what's been marked as Defendant's Exhibit
 25 557.

1 (Whereupon document was tendered to the witness.)
 2 Q And ask you whether or not this is an email between you
 3 and Mr. Murray on April 13, 2012?
 4 A Yes.
 5 Q Okay.
 6 MR. DRESSLER: I'm going to move this into evidence.
 7 THE COURT: Any objection?
 8 MS. HARRIS: No, your Honor.
 9 THE COURT: Admitted.
 10 (Trial Exhibit 557 received in evidence.)
 11 BY MR. DRESSLER
 12 Q And it's entitled "Foreign Account Loose Ends," correct?
 13 A Yes.
 14 Q Have you read that? Could you read that over just
 15 quickly?
 16 (Witness complied.)
 17 A Okay.
 18 Q So would it be fair to state of as of April 13, 2012,
 19 there was still outstanding information that needed to be
 20 provided?
 21 A Yes.
 22 Q Okay. And after April 13, you were replaced by someone
 23 named Casey Cheung?
 24 A Yes.
 25 Q Okay. So whatever else transpired between April 13th and

1 whenever this account actually was authorized for trading, that
 2 would have been handled by Mr. Cheung, correct?
 3 A Yes.
 4 Q Okay. Thank you. I am no other questions.
 5 THE COURT: All right. Anything on redirect?
 6 MS. HARRIS: No, your Honor.
 7 THE COURT: All right, Ms. Perricone. Thank you.
 8 You are excused and you may step down.
 9 (Witness excused.)
 10 MR. FARNHAM: Thank you, your Honor. The United
 11 States calls John Benedetto.
 12 JOHN BENEDETTO,
 13 called as a witness for the Government herein, having been
 14 first duly sworn, was examined and testified as follows:
 15 THE WITNESS: Yes.
 16 THE CLERK: Please be seated.
 17 Please state your full name for the record and spell your
 18 last name, please.
 19 THE WITNESS: Jon Benedetto, B-E-N-E-D-E-T-T-O.
 20 DIRECT EXAMINATION
 21 BY MS. HARRIS
 22 Q Good afternoon, Mr. Benedetto. Where do you currently
 23 work?
 24 A I work for Oppenheimer and Company. I am the COO or Chief
 25 Operations Officer.

1 Q Where is Oppenheimer headquartered?
 2 A Oppenheimer is headquartered at 85 Broad Street, New York,
 3 New York.
 4 Q Do you also work at that location in New York?
 5 A Yes, I do.
 6 Q Okay. What is Oppenheimer's business?
 7 A We are a registered broker-dealer and member of all
 8 national exchanges.
 9 Q How long with you worked for Oppenheimer?
 10 A I started with the original Oppenheimer in 1982. That
 11 Oppenheimer was 1995 taken over by CIBC, Canadian Imperial Bank
 12 of Commerce.
 13 In 2003 Canadian Imperial Bank of Commerce sold the retail
 14 arm of Oppenheimer and Company to a company at the time was
 15 named Fahnestock. Fahnestock bought the retail business, along
 16 with the name. I was responsible for converting the business
 17 to the new entity.
 18 I then went to -- for a short period of time, about six
 19 months, I worked for Bear Stearns.
 20 In February of 2004, I was asked to come to the current
 21 entity of Oppenheimer. I have been there ever since.
 22 Q Can you describe for us your general duties and
 23 responsibilities as the Chief Operating Officer?
 24 A I am in charge of operations of the firm. Clearance and
 25 settlement of trades. I work with Cashiering Department, New

1 Accounts Department, the Margin Department, Operations Control
 2 Department, Purchase and Sales Department.
 3 I interact with various clearing firms, such as the
 4 Depository Trust Company, National Securities Trust, Euroclear,
 5 and other broker-dealers in an effort to settle trades and
 6 transactions.
 7 Q You had mentioned "settle trades." What does it mean to
 8 settle a trade?
 9 A A transaction that has taken place -- every transaction,
 10 there is both a buyer and a seller. Oppenheimer and Company
 11 acts as agent in 99 percent of the time of all transactions,
 12 where we would go between -- we're in the middle of the
 13 transaction between who was selling and who was buying. And we
 14 work with each of the broker-dealers on both ends of those
 15 trades to make sure the transaction is settled by way of the
 16 seller actually receiving the proceeds of the sale or the buyer
 17 actually receiving the securities purchased.
 18 Q Does Oppenheimer have an Account Information form that
 19 potential customers are required to provide information for in
 20 order to open a trading account?
 21 A Yes.
 22 Q What type of information is the customer required to
 23 provide?
 24 A Various -- most initial information is the name and
 25 address of the client, the client's age, Social Security

1 number, the client's net worth, assets available for
 2 investment, the client's -- I said the address, name and
 3 address of the client, the birth date of the client.
 4 Various other questions related to his employment: His
 5 employment status, retirement, who is he employed with.
 6 His banking information: Where he resides his bank and
 7 financial -- who he does financial business with.
 8 Q Does Oppenheimer rely on the information provided in the
 9 Account Information form before deciding to open an account for
 10 trading for a customer?
 11 A Yes.
 12 Q We've had some prior testimony about a short sale, and let
 13 me just ask you: You're familiar with what a short sale of
 14 stock is, is that correct?
 15 A Yes.
 16 Q Okay. When Oppenheimer places a short sale trade at a
 17 client's direction, who's actual capital is at risk if the
 18 trade does not turn out profitably?
 19 A That would be Oppenheimer's.
 20 Q I didn't hear your answer.
 21 A Oppenheimer's capital. Sorry.
 22 Q And who procures the shares of stock for an Oppenheimer
 23 customer who wants to place a short sale?
 24 A Oppenheimer procures the stock through the Stock Loan
 25 Department, which was another department that reports directly

1 to me.
 2 Q That department reports directly to you?
 3 A Yes.
 4 Q Okay. Pull the microphone a little closer.
 5 A Sorry.
 6 Q Okay. Now, if a customer does not have actual assets
 7 under its control to pay for his shares, whose money is on the
 8 line for the shares of stock Oppenheimer procures for the short
 9 sale?
 10 A In order to settle a short sale, a client first must
 11 indicate that he's executing a short sale.
 12 Oppenheimer would have to look to other broker-dealers or
 13 other financial institutions to borrow those shares in order to
 14 effect delivery of those shares to the buyer. Even though the
 15 customer is not intending to deliver the buy side of that
 16 transaction, that broker-dealer is expecting to receive the
 17 securities.
 18 So Oppenheimer will actually go out to look to borrow the
 19 securities at 100 percent of the value of the securities. So
 20 we have to put up 100 percent of the value of the securities in
 21 order to borrow those shares and effect settlement of that
 22 transaction.
 23 MS. HARRIS: Your Honor, may I approach the witness?
 24 THE COURT: Yes.
 25

1 BY MS. HARRIS
 2 Q I'm handing you what's been marked as Government's
 3 Exhibit 283 and 285.
 4 (Whereupon documents were tendered to the witness.)
 5 Q And I'd ask you to take a look at Exhibit 283 first. And
 6 documents are were copied on two sides.
 7 Maybe we can speed this up a little bit. Have you seen
 8 the documents that are -- that comprise Government's
 9 Exhibit 283 before?
 10 A So far, yes.
 11 Q Is Exhibit 283 a compendium of documents that were
 12 maintained by Oppenheimer in Oppenheimer's files on Market
 13 Neutral Trading?
 14 A Yes.
 15 Q Were the document that comprise 283 maintained by
 16 Oppenheimer in Oppenheimer's files on the Market Neutral
 17 Trading's accounts?
 18 A Yes.
 19 MS. HARRIS: Your Honor, I offer Government's
 20 Exhibit 283 into evidence.
 21 THE COURT: Any objection?
 22 MR. DRESSLER: No objection.
 23 THE COURT: Admitted.
 24 (Trial Exhibit 283 received in evidence.)
 25

1 BY MS. HARRIS
 2 Q Mr. Benedetto, in reviewing Exhibit 283, were you able to
 3 tell how many accounts Mr. James Murray opened with
 4 Oppenheimer?
 5 A Yes.
 6 Q How many accounts did Mr. Murray open with Oppenheimer.
 7 (Brief pause.)
 8 A Sorry. Just give me a second.
 9 Q Sure.
 10 (Brief pause.)
 11 A There's a lot of repeated documents in here, but -- these
 12 are emails.
 13 (Brief pause.)
 14 A I see four.
 15 Q You said four accounts. Are two of those accounts DVP
 16 accounts and two non-DVP accounts?
 17 A There are two DVP accounts and, also, two what looks to be
 18 custody accounts.
 19 Q What is a DVP account?
 20 A DVP is an acronym for Delivery Versus Payment. A DVP
 21 account, normally a customer custodies its assets at another
 22 broker-dealer or a financial institution and we settle the
 23 transactions between the client's custodian.
 24 We're acting as executing broker, so we basically execute
 25 the transaction and deliver the transaction versus pavement to

1 the client's custodian.
 2 Q Now, drawing your attention to the two DVP accounts that
 3 James Murray opened with Oppenheimer, what entity was the
 4 custodian for Market Neutral Trading's two DVP accounts?
 5 A Interactive Brokers, I believe.
 6 Q Now, if I could focus your attention to the two non-DVP
 7 accounts.
 8 Did James Murray -- and specifically if we could --
 9 MS. HARRIS: May I publish Exhibit 283, your Honor?
 10 THE COURT: Yes.
 11 MS. HARRIS: Okay. If we could pull up Page 30 of
 12 Exhibit 283?
 13 BY MS. HARRIS
 14 Q And, Mr. Benedetto, for your convenience, to your left
 15 will be a screen that has that page displayed as well.
 16 MS. HARRIS: Can we publish Page 30 of Exhibit 283?
 17 (Document displayed)
 18 BY MS. HARRIS
 19 Q Is it coming up?
 20 A It came up. Can we make it larger?
 21 Q I'll focus in on it for you.
 22 Okay. On Page 30 of Exhibit 283, is this the account
 23 application for one of the two DVP accounts you just testified
 24 about?
 25 A One of the two DVP accounts? No, this would be a

1 custodian --
 2 Q This --
 3 A This is a New Account form for a custodian account.
 4 Q Okay. For a custodian account, okay. And this is a
 5 non-DVP account?
 6 A Non-DVP account.
 7 Q Okay. And in the upper right-hand corner where it says,
 8 "Date Updated," and then there is a "Short Name." What was the
 9 date that this application was updated?
 10 A The date of this application is November 15, 2011.
 11 Q And what is the Short Name?
 12 A The short name is Jim Murray -- or Murray Jim, but it's
 13 Jim Murray.
 14 Q And then there is a section that says "Legal Name." And
 15 what is the Legal Name listed under the Account Information
 16 form for this particular --
 17 A Market Neutral Trading B, LLC.
 18 Q Okay. And then under the accounts available -- the
 19 "Assets Available To Invest" section?
 20 A That's not appearing on the screen.
 21 Q Okay. We're going to blow that up for you.
 22 MS. HARRIS: Can we blow up the Assets Available to
 23 Invest?
 24 (Document enlarged.)
 25

1 BY MS. HARRIS
 2 Q Okay. What is the net value or worth as stated on this
 3 form for Market Neutral Trading B, LLC?
 4 A \$5 million.
 5 Q Okay. And what are the assets available to invest as of
 6 November 15, 2011 for Market Neutral Trading B, LLC?
 7 A \$5 million.
 8 Q What does this mean:
 9 "Actual assets available to invest for Market
 10 Neutral Trading B, LLC"?
 11 A To Oppenheimer, this means the client is investing
 12 \$5 million with us.
 13 Q Does that mean that there are actually \$5 million worth of
 14 assets under the management of the entity that's applying for
 15 an account?
 16 A Yes.
 17 Q Okay. Is this figure important in Oppenheimer's decision
 18 as to whether to permit a customer to later place a trade?
 19 A Yes.
 20 Q Why is that?
 21 A This is telling us how much the client is worth and what
 22 he's looking to invest with us.
 23 Q Now, you mentioned that Market Neutral Trading, Limited
 24 applied to open another DVP account with Oppenheimer.
 25 MS. HARRIS: If we could go to Page 1 of Government's

1 Exhibit 283?
 2 (Document displayed)
 3 BY MS. HARRIS
 4 Q Is this the second DVP -- non-DVP account that Market
 5 Neutral Trading, and specifically James Murray, opened with
 6 Oppenheimer?
 7 A Yes.
 8 Q Okay. And now what was the date on this second non-DVP
 9 account?
 10 A February 2nd, 2012.
 11 Q Okay. And what was the Short Name for the account?
 12 A "MNT Master Fund."
 13 Q And under the Legal Name section, what Legal Name was
 14 filled in?
 15 A "MNT Master Fund."
 16 Q And under the "Assets" section --
 17 MS. HARRIS: If we could blow that up?
 18 (Document enlarged.)
 19 BY MS. HARRIS
 20 Q What was the net value of MNT Master Fund, Limited as of
 21 February 2, 2012, according to this Account Information sheet?
 22 A \$5 million.
 23 Q And what was the Actual Assets Available to Invest?
 24 A \$5 million.
 25 Q And does that mean that the client was representing that

1 there were actually \$5 million of assets under the management
 2 of the entity MNT Master Fund, Ltd.?
 3 A Yes.
 4 Q Now, we just looked at two Account Information forms, one
 5 filled out in November of 2011 and one filled out in February
 6 of 2012, and they were for two different entities.
 7 Is the person who identifies himself as the CIO on Page 30
 8 of Government's Exhibit 283 Jim Murray?
 9 A The document you're showing me is Jim Murray.
 10 Q And then on Page 1 of Government's Exhibit 283, is the
 11 person who lists himself as the CIO of MNT Master Fund, Ltd.
 12 James Murray?
 13 (Documents displayed side-by-side.)
 14 A Yeah. Now I see the both documents. They both say "James
 15 Murray."
 16 Q Does this mean that the combined assets of MNT B, LLC and
 17 MNT Master Fund, Limited were \$10 million based on the two
 18 Account Information forms that were received by Oppenheimer in
 19 November, 2011 and then in February, 2012?
 20 MR. DRESSLER: Objection. Calls for speculation of
 21 two different dates.
 22 THE COURT: Foundation is the question. So you need
 23 to lay a date foundation.
 24 BY MS. HARRIS
 25 Q Based on the information that Oppenheimer received on

1 Page 30 of Government's Exhibit 283, the form that was
 2 completed on November 15, 2011, was Oppenheimer advised that
 3 Jim Murray was the CIO of MNT -- Market Neutral Trading B, LLC?
 4 A Yes.
 5 Q And was Oppenheimer also advised on November 15, 2011 that
 6 the company that Mr. Murray was the CIO of had \$5 million of
 7 assets available to invest?
 8 A Yes.
 9 Q Okay. Now, if we look at the form that was submitted to
 10 Oppenheimer on February 2, 2012, was Oppenheimer told that the
 11 fund Mr. Murray was applying for an account with Oppenheimer
 12 with also had \$5 million in assets available to invest?
 13 A Yes, that's correct.
 14 Q What is the total amount of assets available to invest
 15 that Oppenheimer was told entities that Mr. Murray was the CIO
 16 of had?
 17 MR. DRESSLER: Objection, your Honor. Two different
 18 dates. There is no foundation --
 19 THE COURT: Sustained.
 20 BY MS. HARRIS
 21 Q What is the amount of assets available to invest for the
 22 MNT Master Fund, Limited account -- it says \$5 million, right?
 23 A That's correct.
 24 Q And how much does that mean that the account that was --
 25 the MNT Master Fund, Limited account, plus, in addition to the

1 one we just looked at, the November 15th, 2011, what are the
 2 total assets Oppenheimer was told based on both applications?
 3 MR. DRESSLER: Same objection.
 4 THE COURT: Sustained. It's two different dates.
 5 MS. HARRIS: Okay.
 6 BY MS. HARRIS
 7 Q Did Oppenheimer rely on both dates, the Assets Available
 8 to Invest?
 9 A Oppenheimer relies on these documents the way they are
 10 written.
 11 Q Is there anything in Oppenheimer's file that you just
 12 reviewed that indicates that there were any changes in the
 13 Assets Available to Invest for the November 15, 2011 account?
 14 A There was not.
 15 Q Is there anything that indicates that there were any
 16 changes in the account information that you have looked at for
 17 the Assets Available to Invest in the February 2nd, 2012
 18 account?
 19 A There was not.
 20 Q Is it the case that Oppenheimer assumed, based on both
 21 Account Information sheets that we just looked at, that the
 22 total amount of assets under Jim Murray's control as CIO for
 23 both entities we talked about was a total of \$10 million?
 24 MR. DRESSLER: I'm going to object on lack of
 25 personal knowledge of this witness.

1 MS. HARRIS: He just --
 2 THE COURT: He can testify to any assumptions that
 3 the company may have made. If they made such an assumption.
 4 And as of what date.
 5 BY MS. HARRIS:
 6 Q As of February 21, 2012.
 7 A Oppenheimer relies on what's on these documents until
 8 which time we're advised of a change of these documents. So,
 9 date-specific is not important to Oppenheimer.
 10 What is important is what is on the information. And we
 11 go by that information until which time we're notified of a
 12 change.
 13 Q Were there any changes ever told to you about either
 14 entity as contained in this file as to the assets available to
 15 invest?
 16 A Not in this file.
 17 Q Okay. Now if you could take a look at Government Exhibit
 18 285, which is also in front of you.
 19 (Witness examines document)
 20 Q Have you seen Government Exhibit 285 before today?
 21 A Yes.
 22 Q And what is Government's Exhibit 285?
 23 A It's Oppenheimer & Company's corporate client agreement.
 24 Q And then if you could look at Page 5 of Government Exhibit
 25 285.

1 Does that appear to have been signed by James Murray, on
 2 February 2nd, 2012?
 3 A Yes.
 4 MS. HARRIS: Your Honor, I offer Government Exhibit
 5 285 into evidence.
 6 THE COURT: Any objection?
 7 MR. DRESSLER: No, Your Honor.
 8 THE COURT: Admitted.
 9 (Trial Exhibit 285 received in evidence)
 10 MS. HARRIS: If we could publish Government Exhibit
 11 285.
 12 THE COURT: Yes.
 13 (Document displayed)
 14 BY MS. HARRIS:
 15 Q And if I could have you take a look at Page 2 of
 16 Government Exhibit 285, does that appear to be Mr. Murray's
 17 signature on February 2, 2012, under the name of the entity,
 18 MNT Master Fund?
 19 A Yes.
 20 Q Is the document that we are looking at, the corporate
 21 client agreement, the document that Oppenheimer gives customers
 22 of Oppenheimer to govern the terms and conditions of
 23 Oppenheimer's relationship with any given customer?
 24 A Yes.
 25 Q Now, if I could draw your attention to Paragraph 29, and

1 if we could bring up Page 3 of Government Exhibit 285.
 2 (Document displayed)
 3 MS. HARRIS: And if we could blow up the new account
 4 application.
 5 (Document displayed)
 6 (Witness examines document)
 7 BY MS. HARRIS:
 8 Q By signing Government Exhibit 285, is the client
 9 acknowledging that it has received and read Oppenheimer's new
 10 account application, and certifies that the information
 11 contained therein was provided by the client to Oppenheimer,
 12 and is true and accurate in all material respects?
 13 Is that what Paragraph 29 requires the customer to
 14 certify?
 15 A Yes.
 16 Q And based on the that date we just looked at of the
 17 signature, February 2nd, 2012, is this corporate client
 18 agreement, was this in connection with the account, MNT Master
 19 Fund, Limited, Limited account of February 2nd, 2012, the
 20 account information sheet?
 21 A Yes.
 22 Q Okay. And then second sentence says:
 23 "The client..."
 24 Is that MNT Master Fund, Limited, the client?
 25 A Yes.

1 Q (As read)
 2 "...agrees to notify the Oppenheimer office in
 3 which the client is transacting business without
 4 delay of any changes or corrections in connection
 5 with any information in the new account application."
 6 Do you see that?
 7 A Yes.
 8 Q What types of information is a customer of Oppenheimer
 9 required to notify Oppenheimer of if there are changes between
 10 filling out the new application and clearing the account for
 11 trading?
 12 A Changes in address, changes in banking information,
 13 changes in their value of account for net asset value. Changes
 14 in their employment relationships. Changes in marital status,
 15 but it wouldn't apply to this account because it's a corporate
 16 account.
 17 Q Okay. Are changes in a client's financial circumstances a
 18 material change that would require notification to Oppenheimer,
 19 under Paragraph 29?
 20 A Yes.
 21 Q Now, if we could bring up Government Exhibit 283, Page 5.
 22 (Document displayed)
 23 Q Does the subject, the sentence in the email that we're
 24 looking at on Page 5, indicate that the account, G70-1378064
 25 for MNT Master Fund, Limited, had been cleared by Compliance as

1 of June 22, 2012?

2 A Yes. Yes. Sorry.

3 Q Is that the first date on which this particular customer,

4 MNT Master Fund, Limited, would be permitted to place trades in

5 this account?

6 A Yes.

7 Q Mr. Benedetto, if the following facts have been proven as

8 true in this trial -- and I'm going to read you those facts --

9 on May 21, 2012, a seizure warrant is signed and issued by

10 Magistrate Judge Laurel Beeler, seizing funds held in the name

11 MNT Master Fund, Limited, held at Interactive Brokers in four

12 accounts in an amount totaling \$1,778,057.80 -- is that a

13 material change that should have been disclosed to Oppenheimer

14 under Paragraph 29?

15 A Yes.

16 Q Why?

17 A It represents roughly, if not more, 40 percent of the

18 assets that they advised us are available for investment.

19 Q When you say that "they advised us are available" to

20 investment, who are you referring to?

21 A The client.

22 Q Is it a material change that almost \$1.8 million of Market

23 Neutral Trading, Limited's assets held at Interactive Brokers

24 were frozen on May 21, 2012?

25 MR. DRESSLER: Objection, lack of personal knowledge.

1 THE COURT: Well, ask it as a hypothetical then.

2 BY MS. HARRIS:

3 Q Okay. If you had been advised that a seizure warrant was

4 signed and issued, seizing almost \$1.8 million of funds held in

5 the name of MNT Master Fund, Limited at Interactive Brokers,

6 would that have prevented this account from being cleared for

7 trading?

8 A Yes. It would also have prevented the other two.

9 Q When you say "the other two" --

10 A The DVP accounts that use Interactive Brokers as their

11 custodian.

12 Q Can you explain that to the jury so we understand what you

13 mean with the DVP accounts that Oppenheimer had?

14 A The two DVP accounts listed Interactive Brokers as their

15 custodian, meaning the Interactive Brokers has the assets to

16 settle the trades. If those assets have been frozen, based on

17 that statement, I wouldn't be able to deliver transactions that

18 were executed in those accounts to Interactive Brokers and

19 settle those trades, and therefore, receive payment for the

20 purchases. So that would have stopped us from allowing trades

21 to be in those accounts.

22 Had I known that, if I was notified of that information, I

23 would have put a freeze on those accounts.

24 Q If you had been notified of that information, would all

25 four of the accounts held at Oppenheimer in the Market Neutral

1 Trading name been frozen?

2 A Yes.

3 Q And specifically, would the account -- are you familiar

4 with the Netflix short sale that was executed in the account

5 that we've just been talking about, the G70 account?

6 A Yes.

7 Q Okay. Would that trade have been placed by Oppenheimer --

8 if Oppenheimer had been given the information that on May 21st,

9 2012, all of the assets in MNT Master Fund, Limited's account

10 that was held at Interactive Brokers totaling almost

11 \$1.8 million had been frozen, would that trade have been

12 allowed to be placed?

13 A No.

14 Q Why not?

15 A That -- at that point, the account would have been frozen.

16 Based on this email and that notification you're telling me

17 took place before this email, that information would have been

18 used to restrict those accounts from trading. Until further

19 investigation.

20 Q Is there anything in Exhibit 283, the Oppenheimer file

21 that you've just looked at, that indicates that James Murray

22 ever advised anyone at Oppenheimer that on May 21, 2012, all of

23 Market Neutral Trading's assets held at Interactive Brokers

24 were seized?

25 A No.

1 Q I now want you to assume that another fact has been proven

2 true at this trial. Specifically, the fact is: On March 15,

3 2012, the Securities and Exchange Commission filed a civil

4 complaint against James Murray, alleging fraud.

5 If Oppenheimer had been told the fact that I just read

6 you, would the account have been cleared for trading in June of

7 2012?

8 A No.

9 Q Why not?

10 A That information would have been provided to our AML

11 Department and other departments to review. An SEC issue would

12 definitely have frozen the account from trading.

13 Q I believe you just looked at Page 5 of Government Exhibit

14 283, and confirmed for the jury that the account in which the

15 Netflix trade was placed was cleared for trading on June 26,

16 2012.

17 (Document displayed)

18 A That's correct.

19 Q Do you see that date? I now want you to assume another

20 fact as being proven true in this trial.

21 If you at Oppenheimer had known that on June 14, 2012, a

22 superseding indictment was returned and filed charging James

23 Murray with wire fraud in connection with his role as the sole

24 member and investment advisor of Market Neutral Trading, would

25 Oppenheimer have cleared this account for the short sale, to

1 place the short sale of Netflix trade -- the short sale of the
 2 Netflix stock in July of 2012?
 3 A No.
 4 Q Why not?
 5 A Same reason. Knowing he was involved in some fraudulent
 6 activity, the account would have been reviewed by AML and
 7 frozen.
 8 Q Are you familiar with the Netflix short sale transaction
 9 that Oppenheimer placed for the customer MNT Master Fund,
 10 Limited in July of 2012?
 11 A Yes. Yes.
 12 Q On July 24, 2012, were there two components to the trade?
 13 And specifically, were there 50,000 shares of Netflix stock
 14 involved?
 15 A Yes. There was 50,000, short sale.
 16 Q Yes. How much did this cost Oppenheimer?
 17 A I believe it was \$3.5 million.
 18 Q Was Oppenheimer's capital at risk for this?
 19 A Again, Oppenheimer had to actually locate the securities
 20 to deliver to the buyer, so therefore, Oppenheimer had to put
 21 up \$3.5 million, or the value of the securities that were sold,
 22 the \$50,000 shares, in order to borrow those shares and make
 23 delivery to the buyer.
 24 Q Okay. Now, based on your review of the file that is
 25 Government Exhibit 283, did James Murray have day trade

1 authority?
 2 A He did not.
 3 Q What is day trade authority?
 4 A Day trading authority is based on assets on hand prior to
 5 the trade --
 6 (Reporter interruption)
 7 THE WITNESS: Sorry.
 8 Day trading authority is based on assets available on
 9 hand, prior to the transaction being executed.
 10 The transaction that took place was a sale of 50,000
 11 shares, and a buyback on the same day of 5,000 shares. In
 12 order to buy those 5,000 shares back, to have day trading
 13 buying power, he would have had to have 25 percent of that
 14 transaction on hand prior to the trade.
 15 BY MS. HARRIS:
 16 Q Did Mr. Murray have any money in the account prior to the
 17 day trade?
 18 A He did not.
 19 Q Was this a violation of the day trading authority
 20 regulations?
 21 A This is a violation of the day trading rule, yes.
 22 Q Did this violation by Mr. Murray trigger anything for
 23 Oppenheimer in connection with the Netflix short sale?
 24 A Yes, it did. The day trading violation plus the size of
 25 the Netflix short sale as the initial transaction triggered an

1 alert in the Margin Department to contact the branch to find
 2 out where the funds are coming from to cover the initial
 3 transaction.
 4 Q Is this --
 5 A Once --
 6 Q Go ahead.
 7 A I'm sorry. Once the day trade violation already took
 8 place, being as the transaction is closed, funds to meet that
 9 transaction would be -- would be defaulted or reneged at this
 10 point.
 11 And the requirement that remains pending is the initial
 12 transaction of the short sale where the client has, by
 13 Regulation T, T plus five or trade date plus five business days
 14 to meet that Regulation T requirement, which is 50 percent of
 15 the initial short sale transaction. Roughly 1.57 million.
 16 Q Was the short sale that Oppenheimer placed for MNT Master
 17 Fund, Limited on July 24 and July 25 a profitable trade?
 18 A The short sale was placed on July 24th. The partial cover
 19 took place on July 24th. The remaining 45,000 shares was
 20 covered on July 25th. It did result in a profitable
 21 transaction.
 22 Q Did the stock drop result in an approximate \$411,000 gain
 23 for MNT Master Fund, Limited?
 24 A Yes, it did.
 25 Q Based on the -- the settlement rules that you have just

1 explained to the jury, was MNT Master Fund, Limited supposed to
 2 put up almost \$1.8 million to close out the trade?
 3 A Based on what I just said earlier, yes. MNT is still
 4 required to meet their initial requirement of 1.7 million, and
 5 they're required to deposit it by trade day plus five.
 6 Q Okay. You mentioned something, a concept called "renege
 7 on a trade." What does it mean to renege on trade?
 8 A Failure to meet that initial requirement would be a renege
 9 on a trade. The client did not meet his obligation under our
 10 regulations, Rule 430 -- I just dated myself, sorry -- FINRA
 11 Rule 4210, and the Federal Reserve Board's Regulation T
 12 requirement, of 50 percent initial transaction.
 13 The client failure to meeting that is considered a renege
 14 on the trade.
 15 Q When you say the client reneged on the trade, do you mean
 16 that Market Neutral Trading Master Fund, Limited reneged on the
 17 Netflix trade?
 18 A On the 24th they reneged on the day trade. On the 27th,
 19 they reneged on the overall transaction, completely. No -- no
 20 deposit was made.
 21 Q Does the customer's failure to meet his agreed-upon
 22 obligations with a profitable trade indicate that the customer
 23 did not have sufficient actual assets under the customer's
 24 control?
 25 A Yes.

1 MR. DRESSLER: Objection. Calls for speculation.
 2 THE COURT: Overruled.
 3 BY MS. HARRIS:
 4 Q What is your answer?
 5 A My answer was "Yes."
 6 Q In your experience, based on 30 years in the industry,
 7 most of them with Oppenheimer, is it extremely unusual for a
 8 customer to fail to meet their settlement obligations with a
 9 profitable trade?
 10 A It's very rare that they meet -- they fail to meet their
 11 settlement obligations on a profitable trade. They will
 12 definitely indicate to me they didn't have the money to do the
 13 transaction. No one reneges on a profitable trade.
 14 Q Even though Market Neutral Trading Master Fund, Limited
 15 reneged on the Netflix trade, was the \$411,000 profit placed in
 16 Market Neutral Trading's account with Oppenheimer?
 17 A Yes.
 18 Q Okay. After the \$411,000 was placed in Market Neutral
 19 Trading's account at Oppenheimer, did Oppenheimer receive
 20 written instructions from James Murray as to where to wire the
 21 profits?
 22 A Yes.
 23 Q Okay. Now, if we could take a look at Page 136 of
 24 Government Exhibit 283, and bring it up on the screen.
 25 (Document displayed)

1 MR. DRESSLER: 136?
 2 MS. HARRIS: Yep.
 3 BY MS. HARRIS:
 4 Q First if we could look at the date. Is the date August 9,
 5 2012?
 6 A Yes.
 7 Q And does this appear to be a letter of authorization from
 8 James Murray with regard to the profits from the Netflix trade
 9 we've just been talking about?
 10 A Yes.
 11 Q Okay. And now, if we could take a look at the section
 12 that says "Regarding my account," and then it has a
 13 parenthetical, "MNT Master Fund, Limited."
 14 (As read):
 15 "Please wire out the amount of \$150,000 per wire
 16 instructions below."
 17 Who did Mr. James Murray request \$150,000 of the Netflix
 18 profit to be wired to?
 19 A He requested that we wire the money to US Bank, Wilshire
 20 Boulevard, ABA No. [REDACTED]. For the beneficiary name at the
 21 bank of "Garrett Zellen Law Offices."
 22 Beneficiary account number at the bank would be
 23 [REDACTED] That would be Garrett Zelen's Law Offices'
 24 account number at US Bank. And then bank-to-bank information
 25 is further credit to Jim Murray. James Murray.

1 Q Was any of the \$411,000 profit on the Netflix trade that
 2 was made in the name of MNT Master Fund, Limited, was any of
 3 that money wired to the MNT Master Fund, Limited?
 4 A As part of these instructions, no.
 5 Q Now, if we could take a look at Page 135 of Government
 6 Exhibit 283.
 7 (Document displayed)
 8 Q And specifically, if you could look at the date in the
 9 right-hand corner.
 10 Does that indicate on August 10, 2012, there was a fed
 11 wire initiated by Oppenheimer, by order of MNT Master Fund,
 12 Limited?
 13 A Yes. Yes. This is a screen shot of the wire funds
 14 transfer system at Oppenheimer.
 15 Q And does this reflect that \$150,000 was wire transferred
 16 from Oppenheimer to the -- to the law -- "US Bank, Garrett
 17 Zellen Law Offices"? Do you see that?
 18 A This instruction is that the wire was to US Bank for the
 19 account of Garrett Zellen Law Offices, Account
 20 No [REDACTED]
 21 Q And then, in the right hand section where it says "BY
 22 ORDER OF," who directed \$150,000 to be wired to Garrett Zelen's
 23 law office?
 24 A By order of -- it was the name of the client, "MNT Master
 25 Fund."

1 Q Now, if we could take a look at --
 2 THE COURT: Are you close to -- we're past the 2:00
 3 hour at this point. Are you -- is there a convenient break
 4 point?
 5 MS. HARRIS: I guess this would be as convenient as
 6 possible. Mr. Benedetto is from out of town, but I know --
 7 THE COURT: Well, unfortunately, I mean, we're not
 8 going to be able to complete today because we've got
 9 cross-examination.
 10 MS. HARRIS: Okay, this would be --
 11 THE COURT: I apologize. You'll have to be
 12 available, but we have to adjourn at 2:00, unfortunately.
 13 MS. HARRIS: Okay.
 14 THE COURT: So with that, we will adjourn for today.
 15 And, today is Wednesday. We'll reconvene Friday morning,
 16 at 8:30. We'll have a normal day from 8:30 to 2:00 on Friday.
 17 We will not have trial tomorrow. And so, we will see you back
 18 then.
 19 Please remember not to discuss this case with anyone, not
 20 to do any independent research on your own, and do not form any
 21 opinions until this case is submitted to you for deliberation.
 22 Thank you. See you on Friday.
 23 (Jury excused)
 24 (The following proceedings were held outside of the
 25 presence of the Jury)

1 THE COURT: Okay. You may step down, Mr. Benedetto.
 2 Thank you.
 3 (Witness excused)
 4 MS. HARRIS: Your Honor?
 5 THE COURT: Yes.
 6 MS. HARRIS: We have a witness that we need the Court
 7 to order back here on Friday. It's Mr. Scott Greenberg, who is
 8 here from the Virgin Islands. But he thought he was going to
 9 be called today, and we need the Court to explain that he is
 10 still under subpoena.
 11 THE COURT: All right.
 12 (Mr. Greenberg enters the courtroom)
 13 THE COURT: All right. Good afternoon,
 14 Mr. Greenberg.
 15 MR GREENBERG: Good afternoon.
 16 THE COURT: You are under subpoena in this case, and
 17 required to give testimony. I know you were expecting to give
 18 your testimony today, but unfortunately, we weren't able to get
 19 you on today. We've got an order of witnesses. And I know it
 20 is inconvenient, but we do need to proceed. And so you need to
 21 be back here on Friday.
 22 I don't know what else to tell you. I know it's
 23 inconvenient. We have got another witness here who is from
 24 New York who wasn't able to wrap up today, and he's going to
 25 have to either stay or come back, or do something. But

1 unfortunately, we can't predict the exact timing when somebody
 2 will be on, and we are getting through this as quickly as we
 3 can.
 4 So, with that, I -- I regret that I have to inconvenience
 5 you, but you are under court subpoena, and you do need to
 6 appear. That subpoena continues to be in place.
 7 So, we'll see you back here on Friday.
 8 MR GREENBERG: (Nods head)
 9 (Mr. Greenberg leaves the courtroom)
 10 THE COURT: Okay. How much longer on direct?
 11 MS. HARRIS: I have to prove up the other wire and --
 12 the other wire we charged to Event Trading, and the directions
 13 on that, and what happened to that account.
 14 And then we'll be done, and turn it over to Mr. Dressler
 15 for cross.
 16 MR. DRESSLER: Well, I thought I was going to be
 17 really short, but without going into the details, given the
 18 nature of his testimony, it's hard to predict, but it's going
 19 to be probably -- I'll be able to work on it tomorrow, and I
 20 will try to shorten it. But it's hard to predict.
 21 THE COURT: All right. Well, everybody benefits,
 22 including the parties as well as the jury, with examination
 23 that focuses in on what needs to be focused in on, and not
 24 meandering a lot. And so, that's the only observation I'm
 25 going to make.

1 Then you're going to call Mr. Sportelli? Is that a
 2 necessary witness at this point?
 3 MS. HARRIS: I don't think we are going to need him,
 4 Your Honor. I don't think we will need him now.
 5 THE COURT: Good.
 6 MR. DRESSLER: So, Friday we have -- finish
 7 Benedetto; we have Mr. Greenberg. Who else? Mr. Ward?
 8 MS. HARRIS: Yeah. We will email you. We have to
 9 regroup, now that we're behind. So we will email you tomorrow
 10 by noon. I think we can do it by noon.
 11 MR. FARNHAM: (Nods head)
 12 MS. HARRIS: With the list, the realistic list for
 13 Friday.
 14 THE COURT: All right. You will -- why don't you
 15 include the Court on that email, so I can see what's going on.
 16 MS. HARRIS: Okay.
 17 THE COURT: And we may -- I'm going to need an
 18 estimate from you as to how we're going to be doing, and
 19 whether -- I don't have very many days where I can go long.
 20 I've got things scheduled almost every day.
 21 MR. DRESSLER: If it's helpful to the Court, it's
 22 unlikely I'm going to be calling anybody from Oppenheimer as
 23 part of my case.
 24 THE COURT: Okay.
 25 MR. DRESSLER: So, it's probably going to be

1 Mr. Murray, and maybe my investigator with a couple of short
 2 things.
 3 THE COURT: Okay. Remember, the 12th is a federal
 4 holiday, so we're going to lose one day there. So keep that in
 5 mind.
 6 All right. So, let's see if we can keep this moving.
 7 Thank you.
 8 (Whereupon at 2:12 p.m. further proceedings were
 9 adjourned until Friday, October 2, 2015 at 8:15 a.m.)
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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

_____/s/ Debra Pas_____

Debra L. Pas, CSR 11916, CRR, RMR, RPR

_____/s/ Belle Ball_____

Belle Ball, CSR, CRR, RDR

Wednesday, September 30, 2015

Volume 7
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDWARD M. CHEN

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) NO. CR 12-0278 EMC
JAMES MURRAY,)
Defendant.) San Francisco, California
) Friday
) October 2, 2015) 8:15 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:
For Plaintiff: MELINDA HAAG
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: ROBIN HARRIS, AUSA
LLOYD FARNHAM, AUSA

For Defendant: ALAN A. DRESSLER, ESQ.
400 Montgomery Street
Suite 200
San Francisco, California 94104

Also Present: USSS AGENT ANTHONY SIMS, JR.
FBI AGENT BRIAN C. WEBER

Reported By: Debra L. Pas, CSR 11916, CRR, RMR
Belle Ball, CSR 8785, CRR, RMR
Official Reporters - US District Court

PROCEEDINGS

OCTOBER 2, 2015 8:56 A.M.

(Defendant present, in custody.)
(Proceedings held in open court, outside the presence
and hearing of the jury.)

THE COURT: All right. Good morning, everyone.
MR. FARNHAM: Good morning, Your Honor.
MS. HARRIS: Good morning, Your Honor.
MR. DRESSLER: Good morning, Your Honor.

THE COURT: You have some matters that you want to
raise?
MS. HARRIS: We do, Your Honor. There are a number
of documents we need to admit that have been stipulated to that
we want to make sure we do before the proceedings today.
And then we also wanted to advise the Court and
Mr. Dressler that if we get to the Pillsbury part of the case,
we're going to read redacted transcripts from the bond hearing
before this Court. And we've heavily redacted them so that it
only relates to what the Court was actually ordering, and the
question and answering back. And we have that, and wanted to
show it to everyone.
THE COURT: This is of whom?
MS. HARRIS: This is of this Court, when we had the
bond proceeding, and the terms and conditions of release were
discussed and fleshed out with the parties, with Mr. Murray

being present.
THE COURT: All right. Has that been vetted and
agreed to?
MS. HARRIS: Well, Mr. Dressler has seen the entire
transcript. We have heavily redacted it.
THE COURT: Have you shown the redacted version?
MS. HARRIS: Actually, no. I will do that now.
THE COURT: Okay.
(Document tendered)
MS. HARRIS: It's two transcripts, the July -- yes.
I don't know if we will even get to this today, but I just want
to make sure that everyone knows it's going to be redacted.
THE COURT: All right. In terms of future practice,
if you're going to redact something, you need to get it to the
other side as soon as possible. And the morning of could be
problematic.
MS. HARRIS: I understand.
I think Mr. Dressler will be quite happy with the
redactions. I redacted anything that would relate to the past
violations.
THE COURT: Okay. So, there's some documents you
want to admit now?
MR. FARNHAM: Yes, Your Honor. There's several
documents that have already been the subject of stipulations.
Those documents are Exhibits 60, 92, Exhibits 300, 301 and 302.

And those are the stipulated documents.
(Off-the-Record discussion between counsel)
THE COURT: All right. Any objection to their
admission?
MR. DRESSLER: No.
THE COURT: All right. Those five documents will be
deemed admitted.
(Trial Exhibits 60, 92, 300, 301 and 302 received into
evidence)
MR. FARNHAM: Then a couple of other documents that
weren't subject to stipulations yet. 263 and 264 are the bond
orders that were on our exhibit list.
THE COURT: What are they?
MR. FARNHAM: One is the order setting conditions of
release, dated March 27, 2012. And one is the supplemental
bond signature form, dated March 27, 2012.
I'm sorry; are those the right ones?
I don't think we wanted those. I apologize. We wanted
the later, the July, 2013. I'll find those exhibits.
But I do think those are --
MR. DRESSLER: We can do that at lunch break.
THE COURT: All right.
MR. FARNHAM: I apologize. I read the wrong ones.
Another couple of documents that we did talk about with
Mr. Dressler yesterday and propose a stipulation, one is an

1 additional document from E*Trade for which there is a 901
 2 business records declaration. It's essentially a two-page
 3 document with some records about credit cards.
 4 THE COURT: What are you asking? That it be
 5 admitted?
 6 MR. FARNHAM: Yes.
 7 THE COURT: What's the number?
 8 MR. DRESSLER: Let me see the document.
 9 (Document tendered)
 10 MR. DRESSLER: I have no objection to that.
 11 MR. FARNHAM: Exhibit 73, Your Honor.
 12 THE COURT: Okay. 73 is admitted.
 13 (Trial Exhibit 73 received in evidence)
 14 MR. FARNHAM: And then the other document that we
 15 discussed -- we've discussed a few times. It's an email
 16 between James Murray and Garrett Zelen, dated August 14, 2012.
 17 It's been marked as Exhibit 298.
 18 We think a stipulation to admissibility of this document
 19 would prevent us from having to call Mr. Zelen. It was also
 20 submitted by Mr. Zelen when it was produced, with a 901
 21 business records declaration.
 22 MR. DRESSLER: We did talk about that, and I did
 23 agree to stipulate to that.
 24 THE COURT: All right. Then 298 is admitted.
 25 (Trial Exhibit 298 received in evidence)

1 THE COURT: So you will not be calling Mr. Zelen.
 2 MR. FARNHAM: No.
 3 THE COURT: Okay. All right. What else, if
 4 anything?
 5 (Off-the-Record discussion between counsel)
 6 MR. FARNHAM: Oh, yes. For the testimony of Phillip
 7 Villanueva, who is a financial analyst in our office, we wanted
 8 to use some diagrams to assist with his testimony.
 9 And I wanted to preview those with Your Honor and make
 10 sure that those are okay to -- what I would like to do is have
 11 them admitted as diagrams, have Mr. Villanueva say that he
 12 prepared them, and what they show. And that they would assist
 13 with the jury understanding what he did, the work he did.
 14 And so I would propose having those offered and have --
 15 admitted as diagrams, but I wanted the Judge to be able to
 16 preview them. Your Honor.
 17 THE COURT: All right. Has this been shown to
 18 Counsel?
 19 MR. DRESSLER: I have seen those, Your Honor.
 20 (Document tendered)
 21 MR. DRESSLER: I need to -- with regard to one of
 22 them, an issue has come up that -- and I need to assess it with
 23 my client with regard to Exhibit 392.
 24 There's an issue with regard to -- we make -- I don't
 25 think I can resolve it today, but we may be able to -- with

1 some of the investments that are listed as to whether or not
 2 they are actually in the underlying documents. But I'll talk
 3 to Mr. Murray about that, today.
 4 With regard to 390 -- with regard to 393, I'm going to
 5 object on relevance.
 6 MR. FARNHAM: May I hand these up, Your Honor?
 7 THE COURT: Yep.
 8 (Document handed up to the Court)
 9 MR. DRESSLER: Some of these I have never seen,
 10 actually. And -- did you email these? I have seen --
 11 MR. FARNHAM: I did send them. Three of them were
 12 disclosed as potential summary exhibits several weeks ago, and
 13 then two of them were disclosed yesterday.
 14 MR. DRESSLER: Okay.
 15 MR. FARNHAM: And one is a chart at the end, 394.
 16 MR. DRESSLER: Okay, 394 -- 390 and 394 I believe are
 17 the new ones.
 18 MR. FARNHAM: That's right.
 19 MR. DRESSLER: All right. And so, I haven't seen
 20 these. I need to -- I didn't see -- What time did you email
 21 them?
 22 MR. FARNHAM: Yesterday afternoon, after you asked me
 23 about Mr. Villanueva.
 24 THE COURT: When is Mr. Villanueva going to testify?
 25 MR. FARNHAM: It wouldn't be before this afternoon.

1 But we wanted to have him ready to testify, in case we get
 2 through the day.
 3 THE COURT: So essentially these are charts he
 4 prepared that he will testify to? These are like summary
 5 charts?
 6 MR. FARNHAM: Yes, Your Honor. They are diagrams --
 7 THE COURT: And you are asking they be admitted in
 8 evidence, as opposed to be treated as demonstratives.
 9 MR. FARNHAM: I think they would be -- they would
 10 assist the jury as evidence.
 11 They do explain what he did, and they're based on the
 12 underlying documents that he looked at, and that we have been
 13 talking about in this trial. So I would propose that.
 14 MR. DRESSLER: Well, I mean --
 15 MR. FARNHAM: I also think it would be good to let
 16 the jury see them while he is testifying about them because --
 17 THE COURT: Well, they certainly -- they can see them
 18 while he's testifying, because it's as if he's going up on a
 19 white board. He can certainly do that. So there's no
 20 objection to these as a demonstrative.
 21 MR. DRESSLER: No. And I would just ask that we wait
 22 before we introduce -- before they are introduced in evidence.
 23 I have to look at this one (Indicating). I mean --
 24 THE COURT: All right. Let's do this. I'm going to
 25 allow him to publish, to talk about it, to use it as a

1 demonstrative. The jury can look at it.
 2 In terms of their admission, I want to give Mr. Dressler a
 3 chance to respond. But I want to know whether you object to
 4 any of these, and if so, what are the grounds. And I'll
 5 resolve that.
 6 MR. DRESSLER: Okay.
 7 THE COURT: And we can admit them or not admit them
 8 close in time or later.
 9 MR. DRESSLER: I assume -- the first three were
 10 accompanied by a letter with the -- Exhibits 391-01, 392-01,
 11 and 393-01, which I got a while ago, were submitted with a
 12 letter indicating what exhibits were being summarized.
 13 THE COURT: All right. And do you have any objection
 14 to --
 15 MR. DRESSLER: I'm assuming that there's a letter
 16 indicating the same kind of thing with this stuff (Indicating)?
 17 MR. FARNHAM: Not indicating specifically the
 18 documents, but Mr. Villanueva will testify about the documents
 19 he relied on.
 20 MR. DRESSLER: Well --
 21 MR. FARNHAM: It's the bank records, as indicated.
 22 Fidelity, Merrill Lynch.
 23 MR. DRESSLER: The Court's order was that we were
 24 supposed to have this, these kinds of exhibits if they were
 25 going to be offered as summary exhibits, with enough time --

1 with -- with -- the Court ordered that they provide the
 2 documents, the exhibit numbers or the document numbers that are
 3 being summarized so that we could have a chance to actually
 4 review, and see if, in fact --
 5 THE COURT: Was that done with respect to 391 through
 6 393?
 7 MR. DRESSLER: It was.
 8 MR. FARNHAM: Yes.
 9 MR. DRESSLER: With regard to these, it doesn't
 10 appear that that's the case. So --
 11 THE COURT: Let me ask you about the first three. Is
 12 there an objection --
 13 MR. DRESSLER: There is a -- there is --
 14 THE COURT: 391, 392 and 393.
 15 MR. DRESSLER: 393, there's an objection, based on
 16 relevance.
 17 THE COURT: On relevance?
 18 MR. DRESSLER: It's a snapshot of a very short period
 19 of time where monies were being transferred. And I think it --
 20 and I can't tell how the Government's -- totally how the
 21 Government's going to argue it. I have an idea.
 22 But I think that it's -- it's not relevant, and it's
 23 misleading as to what was going on during this time period.
 24 THE COURT: All right. Well, I can rule on that when
 25 you move to admit.

1 MR. FARNHAM: (Nods head)
 2 THE COURT: It will be a demonstrative. If you so
 3 move to admit, you can object at that point.
 4 MR. DRESSLER: Right.
 5 THE COURT: And we'll know the testimony. What about
 6 -91 and -92?
 7 MR. DRESSLER: -91, I don't think we have a problem.
 8 (Off-the-Record discussion between Defendant and
 9 Counsel)
 10 MR. DRESSLER: We don't have a problem with that one,
 11 your Honor.
 12 THE COURT: All right. So 391-0001 will be admitted.
 13 (Trial Exhibit 391-0001 received in evidence)
 14 THE COURT: How about 392?
 15 MR. DRESSLER: 392, there's an issue whether some --
 16 with regard to whether a number of the investments that are
 17 reflected on there are actually in the documents that they sent
 18 us.
 19 What I would like to do is -- I mean, I think they can --
 20 they can certainly ask today Mr. Villanueva about them. But we
 21 need a little time to check.
 22 THE COURT: So you're saying some of the underlying
 23 documents, you have not seen.
 24 MR. DRESSLER: No. We have access to them. They are
 25 really voluminous, all right? And most of these entries are on

1 there, but it's possible that a couple of them are not on
 2 there. And, I need to resolve that.
 3 MR. FARNHAM: This seems -- this seems --
 4 THE COURT: All right. You can object at the time
 5 for incompleteness or something else. You will have to
 6 demonstrate there's such a problem with this that it can't be
 7 admitted.
 8 MR. DRESSLER: Right.
 9 THE COURT: That it's not a proper summary.
 10 MR. DRESSLER: But I would like to make that
 11 presentation, if it's necessary, on Monday morning. So --
 12 THE COURT: Well --
 13 MR. DRESSLER: -- the jury will be able to see this
 14 (Indicating) and hear his testimony --
 15 THE COURT: So, defer the actual evidentiary ruling,
 16 is what you're saying.
 17 MR. DRESSLER: Yes, yes.
 18 THE COURT: All right.
 19 MR. FARNHAM: And Your Honor, this is in the category
 20 of documents that were disclosed as a potential summary
 21 exhibit, although it is also akin to a diagram, with the --
 22 with the disclosure of the underlying documents it is based on.
 23 It is based on a few sets of bank records.
 24 MR. DRESSLER: I'm not arguing that point,
 25 Your Honor, that we have the records. But an issue arose last

1 night, and --
 2 THE COURT: Well, your objection -- potential
 3 objection is incompleteness.
 4 MR. DRESSLER: Correct.
 5 THE COURT: Well, I'll have to make that judgment. I
 6 mean, frankly that's an objection you could make once you hear
 7 the testimony because you have the underlying documents.
 8 You've had this document for some time.
 9 MR. DRESSLER: Right.
 10 THE COURT: So --
 11 MR. DRESSLER: But I'm not -- what I'm saying is
 12 generally that's true, and I will not have an objection to the
 13 great majority of these. But I don't want to make an objection
 14 unless I know that there's really an issue there. That's what
 15 I'm saying.
 16 So, I would just let -- let Mr. Villanueva testify to
 17 this, and --
 18 THE COURT: All right. And what about -- and 390 --
 19 394, you just got.
 20 MR. DRESSLER: I'm going to object to those because I
 21 don't know what documents are being summarized here, and I
 22 think it violate the Court's order of a number of months ago
 23 that before presenting this kind of thing, they have to give us
 24 enough advance warning and the documents that are being
 25 summarized, so we can see if, in fact -- these are incredibly

1 voluminous documents.
 2 These are -- really are voluminous, within the meaning
 3 of --
 4 THE COURT: Why weren't these produced when the other
 5 were produced, along with the summary of the documents that are
 6 being summarized?
 7 MR. FARNHAM: Honestly, Your Honor, this one, it was
 8 a little complicated to get it laid out in a way that made
 9 sense -- Mr. Villanueva was working on it -- more clear, just
 10 to diagram it out. The work was the same. The work he had
 11 done.
 12 And it's -- it's voluminous. It's only a few bank
 13 records. We're talking hundreds of pages, not thousands of
 14 pages. We're not talking about 25 bank accounts. We're
 15 talking about really a fairly discrete number of transactions
 16 that he looked at to make this flowchart.
 17 I think that he can testify about the work he did and what
 18 it was based on. And that --
 19 THE COURT: Well, all right. I'll reserve an
 20 evidentiary ruling until I hear what the testimony is. And if
 21 it needs -- if I think it requires more time for the Defendant
 22 to go through documents as they are explained as -- as the
 23 underlying documents, so I can defer ruling on that. But you
 24 can use it as a demonstrative.
 25 And, is there something wrong with 394? This looks like a

1 summary of things we've seen. Is that not --
 2 MR. FARNHAM: That's right. It's essentially two
 3 pages compared, where the numbers are compared. And
 4 Mr. Villanueva did some analysis of that. It's Exhibit 140.
 5 And then the marketing materials, the monthly rate of
 6 return regarding MNT, there they're the same across many
 7 documents. But Exhibit 145 has the --
 8 THE COURT: So it's from 145.
 9 MR. FARNHAM: Correct.
 10 MR. DRESSLER: You know, I'm going to object to this,
 11 based on my previous objection to Exhibit 140. And I'm
 12 concerned about the concept that Mr. Villanueva did some kind
 13 of analysis. I have been very concerned about these kinds of
 14 things --
 15 THE COURT: This is just summarizing two documents.
 16 It doesn't qualify as a summary document because they're not so
 17 voluminous. They have 140; they have 145. This is the kind of
 18 thing would you show in argument. You can use it as a
 19 demonstrative, but it's not going to come in as an exhibit.
 20 So, objection to 394 is sustained.
 21 MR. DRESSLER: And just to preserve my objection to
 22 Exhibit 140 that I made earlier, I would just reassert that
 23 objection.
 24 THE COURT: All right. Well, that's -- you've noted
 25 that.

1 MR. FARNHAM: So I'm clear, Your Honor, 394 can still
 2 be published to the jury as a demonstrative. Mr. Villanueva
 3 can describe where he got the information from those two
 4 documents, and discuss what he did.
 5 THE COURT: Right.
 6 MR. DRESSLER: Well, I'm concerned about when he says
 7 "discuss what he did." I mean, if he just said "I looked at
 8 Exhibit 140 and took these numbers from it, and looked at
 9 Exhibit 145 and took those numbers from it," that's a summary
 10 witness.
 11 If he's going to explain or interpret, I'm objecting now.
 12 MR. FARNHAM: I'm not trying to hide the ball here,
 13 so I'll explain what Mr. Villanueva did, what I think he'll
 14 testify about.
 15 On the left side, Exhibit 140, the monthly rate of return
 16 and the column \$1,000 Index comes straight from Exhibit 140.
 17 And Tina Moran testified about that information, and those are
 18 just the numbers there.
 19 For the marketing materials on the right side, the monthly
 20 rate of return comes straight from those marketing materials.
 21 One thing Mr. Villanueva would talk about is how, January
 22 through August, those numbers are almost the same. Or, to --
 23 to rounded decimal points, the same.
 24 The \$1,000 Index he calculated in the same way that Tina
 25 Moran testified that the \$1,000 index was calculated, taking

1 the rate of return on a hypothetical \$1,000. It's a pretty
 2 simple multiplication problem for each month.
 3 So what he did was he did a \$1,000 index according to the
 4 monthly rate of return as stated on the MNT -- Market Neutral
 5 Trading marketing materials for 2009, over and over.
 6 THE COURT: So his work is in the bottom, is what
 7 you're saying.
 8 MR. FARNHAM: His -- his work, if you want to call it
 9 that, is the far right-hand column.
 10 THE COURT: So these are numbers he derived from
 11 materials?
 12 MR. FARNHAM: Correct. Multiplication of \$1,000
 13 hypothetical --
 14 THE COURT: They're not already in the materials?
 15 MR. FARNHAM: Those -- the right-hand column is not.
 16 MR. DRESSLER: That's why I'm objecting to that.
 17 THE COURT: On the ground that -- what?
 18 MR. DRESSLER: On the ground that it's not a summary.
 19 It's -- he's doing calculations which require some knowledge of
 20 what the \$1,000 index --
 21 THE COURT: All right, so it's being -- it's being
 22 posed as part of his testimony.
 23 MR. DRESSLER: Right.
 24 THE COURT: Not -- not -- this is really not a
 25 summary. He's doing some work. So this is almost like his

1 calculations.
 2 MR. FARNHAM: I'll agree to that. I do think it is a
 3 demonstrative that would help explain what he's going to
 4 testify.
 5 THE COURT: I think it is a demonstrative. I think
 6 the question is whether that can be an exhibit. And just like
 7 the transcript of somebody's testimony is not really an
 8 exhibit, I think his work -- this is just almost a graphic -- a
 9 summary of what his testimony is. I think that could be
 10 problematic.
 11 So I'm going to allow it as a demonstrative, but not as an
 12 exhibit.
 13 MR. FARNHAM: No objection.
 14 MR. DRESSLER: One other thing I would like to raise,
 15 Your Honor. I expect Scott Greenberg to testify today.
 16 THE COURT: Hold on. Did I say 390? I was going to
 17 reserve on that, right? Yeah.
 18 MR. FARNHAM: 390 --
 19 MR. DRESSLER: 390 and --
 20 MR. FARNHAM: Publish as a demonstrative. That's the
 21 one that Mr. Dressler wants to look at further.
 22 THE COURT: Right. And 394, I'm sustaining the
 23 objection, but demonstrative, okay.
 24 MR. FARNHAM: And I think 392, as I understand --
 25 THE COURT: Going to reserve, is that right?

1 MR. FARNHAM: Right, after the testimony. And
 2 Mr. Dressler can renew his objection.
 3 THE COURT: Right. Because that's an incompleteness
 4 issue.
 5 MR. FARNHAM: And then Exhibit 393, I do think that
 6 should also be admitted. The objection was relevance.
 7 THE COURT: And I was going to wait to hear the
 8 testimony on that, to determine whether it's relevant.
 9 MR. FARNHAM: Sure. Could I -- to avoid arguing that
 10 in front of the jury, the relevance which -- Mr. Villanueva
 11 follows the money. The relevance is -- is our part of it.
 12 This is -- this is a particular moment in time. This is
 13 when large transfers went in and out of a Cayman Islands bank,
 14 in a bank account named "MNT Master Fund." It's a relevant
 15 time period, and it's when large amounts of money were going in
 16 and out. And that's why this was mapped.
 17 THE COURT: All right. I understand that, but I'll
 18 make that ruling -- if there is an objection at that point,
 19 I'll make the ruling.
 20 MR. FARNHAM: I understand.
 21 THE COURT: Okay.
 22 MR. DRESSLER: Your Honor, Scott Greenberg is going
 23 to testify today.
 24 THE COURT: Yes.
 25 MR. DRESSLER: And, if you remember from Wednesday's

1 testimony, he was -- Mr. Moskowitz referred Mr. Murray to
 2 Mr. Greenberg.
 3 THE COURT: Yes.
 4 MR. DRESSLER: So, I mean basically, from his
 5 statement, what happened was that Mr. Murray contacted him;
 6 they had some negotiations over Mr. Greenberg providing money
 7 so that the -- the trade could be settled.
 8 THE COURT: To complete the trade.
 9 MR. DRESSLER: Right. And then, there was no
 10 agreement.
 11 THE COURT: Yes, I understand that.
 12 MR. DRESSLER: But there were things in his statement
 13 about he didn't trust Mr. Murray. There's some really kind of
 14 pejorative speculative opinions of this witness with regard to
 15 Mr. Murray's character. And I just want to make sure that
 16 nothing comes in. I think this is a very straightforward --
 17 should be --
 18 THE COURT: So you want to exclude any
 19 character-witness type testimony from Mr. Greenberg.
 20 MR. DRESSLER: Exactly. Right.
 21 MS. HARRIS: Your Honor, the only thing that
 22 Mr. Greenberg will be testifying to that's completely and
 23 directly relevant to this case, especially in light of
 24 Mr. Dressler's opening statement in which he said Mr. Murray's
 25 state of mind would be the defense, Mr. Greenberg sent

1 Mr. Murray an email with a series of criteria that
 2 Mr. Greenberg was going to require before he would advance the
 3 money. And one of them was to go through a background check of
 4 Mr. Murray. He wanted a --
 5 THE COURT: Right. Not character; it's specific
 6 evidence.
 7 MS. HARRIS: Right. And --
 8 THE COURT: And his refusal?
 9 MS. HARRIS: Exactly. He's not going to say "I think
 10 he's a bad person" or --
 11 THE COURT: All right. Well, I will be attuned to
 12 that, any general remarks about character. But if it's
 13 specifically transactionally related --
 14 MS. HARRIS: Correct.
 15 THE COURT: Fine.
 16 MS. HARRIS: And we have the email, and he's going to
 17 read the criteria that he sent Mr. Murray that he wanted before
 18 he would go forward, and Mr. Murray's response, and what they
 19 discussed.
 20 THE COURT: All right. All right. Well, I'll be
 21 attuned to that. And if there's an objection to general
 22 character evidence, it will probably be sustained. But it
 23 doesn't sound like that's the intent of the prosecution.
 24 So, I think we should call the jury in. They've been
 25 waiting ten minutes. And let's get Mister -- are they here?

1 THE CLERK: I think so. Let me check.
 2 THE COURT: Why don't we double-check. And we can
 3 get Mr. Benedetto back on the stand.
 4 How long do you think you will go on direct?
 5 MS. HARRIS: Very brief, Your Honor. We just have to
 6 prove up the last wire and -- you know, the wiring out.
 7 THE COURT: Okay.
 8 (Off-the-Record discussion between the Court and
 9 Clerk)
 10 THE COURT: One of the jurors has a laptop that he
 11 doesn't want to trust leaving it in the room. But he promises
 12 to keep it closed on the floor. Any objection to that?
 13 MR. FARNHAM: No, Your Honor.
 14 MR. DRESSLER: One of the witnesses?
 15 THE COURT: No. I'm sorry; one of the jurors.
 16 MR. DRESSLER: I have no problem.
 17 THE COURT: Okay. Yeah.
 18 (The following proceedings were held in the presence
 19 of
 20 the Jury)
 21 THE COURT: Okay, you may be seated.
 22 Good morning. Welcome back, ladies and gentlemen. I hope
 23 you enjoyed your break from us. But we are back, and as you
 24 will recall, Mr. Benedetto was being examined by the Government
 25 on direct examination.

1 And you may continue, Ms. Harris.
 2 MS. HARRIS: Thank you, Your Honor.
 3 JOHN BENEDETTO,
 4 called as a witness for the Government herein, having been
 5 previously sworn and testified, resumed the stand and testified
 6 further as follows:
 7 DIRECT EXAMINATION RESUMED
 8 BY MS. HARRIS:
 9 Q Good morning, Mr. Benedetto.
 10 When we broke on Wednesday, we were just talking about the
 11 wiring of the \$411,000 from the Netflix short sale trade that
 12 was made in the Oppenheimer account for MNT Master Fund,
 13 Limited. And you had just described \$150,000 wire transfer
 14 that Mr. Murray had requested to the account of the lawyer,
 15 Garrett Zelen.
 16 I now want to turn to the next wiring instruction. And if
 17 you could look at Page 140 of Exhibit 283.
 18 MS. HARRIS: And then, if we could also bring that up
 19 on the screen.
 20 (Document displayed)
 21 BY MS. HARRIS:
 22 Q Did Mr. Murray, on August 9, 2012, send a letter of
 23 authorization to Oppenheimer regarding where the remainder of
 24 the \$411,000 profitable trade should be wire-transferred to?
 25 A Yes.

1 Q Okay. If we look at who the letter was from, does it say:
 2 "JAMES MURRAY, MNT MASTER FUND, LIMITED?"
 3 A Yes.
 4 Q And then it says "Letter of Authorization - wire transfer
 5 request."
 6 A Yes.
 7 Q Where did Mr. Murray request the remainder of the
 8 profitable trade that was in Oppenheimer's account for MNT
 9 Master Fund, Limited to be wired out to?
 10 A Citibank, Wall Street, New York. ABA No. [REDACTED]
 11 Beneficiary account at Citibank was for Interactive Brokers.
 12 Beneficiary account number was at Citibank was
 13 [REDACTED]. For further credit, to [REDACTED] Account
 14 name: Event Trading GP, LLC.
 15 Q And then if you could look at the signature line, does
 16 that appear to be signed by James Murray?
 17 A Yes.
 18 Q And it says "SIGNATURE VERIFIED" to the right of
 19 Mr. Murray's signature, if you scroll down a little bit on Page
 20 140.
 21 Do you see that?
 22 A Yes.
 23 Q Okay. Does that mean that Oppenheimer verified this
 24 letter of authorization from Mr. Murray?
 25 A Yes, it does.

1 Q Now, if we could take a look at Page 139 of Government's
2 Exhibit 283.
3 (Document displayed)
4 Q And, the date of this is a fed daily payment of August 10,
5 2012. Is this the actual wire transfer that Mr. Murray
6 requested Oppenheimer to make to the Event Trading account held
7 at Interactive Brokers?
8 A Yes. This is a screenshot of Oppenheimer's funds
9 disbursement system, dated August 10, 2012, to wire transfer
10 260,882.65 to Citibank. Same ABA number, Account
11 No. [REDACTED] name of Interactive Brokers.
12 Q If we look at the right-hand side of Page 139, it says "BY
13 ORDER OF." Who ordered this wire transfer to be made?
14 A This would be the client account, MNT Master Fund.
15 Q Okay. And so, pursuant to Page 139, is this the wire
16 transfer of those funds to the Event Trading account held by
17 Interactive Brokers?
18 A Yes. As stated in the beneficiary information section, it
19 says (As read)
20 "For further credit, Event Trading GP LLC
21 Account No [REDACTED]
22 Q Mr. Benedetto, were any of the profits of the Netflix
23 trade wired to MNT Master Fund, Limited?
24 A No.
25 Q In your 30 years of experience with Oppenheimer, is this

1 unusual?
2 A This is a third-party wire. It would request a letter
3 from the client who has -- person who has authority over the
4 account. It is not a practice of the firm, although it does
5 occur.
6 (Off-the-Record discussion between counsel)
7 MS. HARRIS: Your Honor, the Government has no
8 further questions.
9 THE COURT: All right, thank you.
10 Cross-examination?
11 CROSS EXAMINATION
12 BY MR. DRESSLER:
13 Q Good morning, Mr. Benedetto.
14 A Good morning.
15 Q In your testimony on Wednesday, the U.S. Attorney asked
16 you a number of questions about the period of settlement of
17 trades.
18 A Yes.
19 Q Okay. And you indicated that the settlement period was
20 five days.
21 A Settlement period is three days. The payment period is
22 five days.
23 Q And, with regard to the account with the last four numbers
24 8064 that was opened in February of 2011, you referred to it as
25 a custodial account?

1 A Yes, I may have, yes.
2 Q Okay. Well, and actually it's a margin account, isn't it?
3 A That is a custodial account, sir.
4 Q Okay. Well, I'm asking the question. All right.
5 So as far as you are concerned, I just wanted to clarify
6 it, that a custodial -- when you refer to a "custodial
7 account," the account information form refers to it as a
8 "margin account." Correct?
9 A That's correct.
10 Q Okay. And, you were asked about the November account
11 which was in the name of Market Neutral Trading B.
12 You were asked what does it mean -- "actual assets under"
13 -- "actual assets available to investor for Market Neutral
14 Trading B;" I believe you were asked what that term meant to
15 you. And you said: To Oppenheimer, this means that the client
16 is investing \$5 million with us.
17 And I believe you also indicated: Also, how much the
18 client is worth and what he's looking to invest with us.
19 Do you recollect, just generally, that testimony?
20 A Yes.
21 Q Would it be fair to say that if a client says in an
22 account information form -- by the way, that's a one-page
23 document, is it not?
24 A I seen one page, yes.
25 Q Well, there's only -- the account information form is only

1 one page, isn't it?
2 A Yes.
3 THE COURT: Pull the microphone closer. We can't
4 hear you.
5 (Request complied with by Mr. Dressler)
6 BY MR. DRESSLER:
7 Q Would it be fair to state that if a client says that he
8 has \$5 million under management, the client is essentially
9 asking for authorization to trade up to \$5 million?
10 A It would be fair to say if the client says he has
11 \$5 million for assets to invest, it would be fair to say he has
12 \$5 million to trade with us.
13 Q Okay. And, just opening an account with an account
14 information form that says "\$5 million under management," that
15 doesn't mean that the client has to place \$5 million in the
16 Oppenheimer account, that particular Oppenheimer account.
17 Correct?
18 A That means the client has \$5 million to invest with us.
19 It doesn't mean he's going to deposit \$5 million with us. It
20 means he has \$5 million to invest with us.
21 Q Okay. And, this is a margin account, so a client could
22 put any amount, let's say, between 1- and \$5 million in the
23 account, and whatever that amount is, the client would be able
24 to trade that amount plus the margin. Correct?
25 A This is a margin account. Has nothing do with the form.

1 The form is required by FINRA for us to obtain information
 2 about the client and what his intentions are and what he plans
 3 to invest with us.
 4 How he invests it, whether he invests it as a cash account
 5 fully paid for or as margin account makes no difference for the
 6 purpose of that form. That form is used and required by FINRA.
 7 Those specific questions and all the other questions on that
 8 form is required by FINRA, for us to obtain that information in
 9 order for us to make logical judgments on how we want to trade
 10 for that client, and how that client intends to trade with us.
 11 That is the purpose of that form.
 12 Q Okay. So, does the client have to put any money into the
 13 account in order to trade up to \$5 million?
 14 A If the client executes an order with us, the client has to
 15 put money in the trade. Yes.
 16 Q That didn't happen in this case, though, did it?
 17 A Obviously.
 18 Q Now, when you open an account such as 8064, which was at
 19 least the -- the account information document says it was
 20 opened on February 2, 2012 -- the client also receives a
 21 corporate client agreement. Correct?
 22 MS. HARRIS: Objection, Your Honor. I believe that
 23 misstates the testimony about when the account was cleared for
 24 compliance --
 25 MR. DRESSLER: I don't think I said that, but I'll

1 reask the question.
 2 BY MR. DRESSLER:
 3 Q On Wednesday, you were asked questions about a 12-page
 4 document. And I believe it was called a corporate client
 5 agreement?
 6 A Correct.
 7 Q All right. And so, to begin the account-opening process,
 8 let's try it that way, the first thing is the account
 9 information form, and then the client has to sign a corporate
 10 client agreement. Correct?
 11 A Yes.
 12 Q All right. Let me go back to the account information form
 13 for a moment. It asks -- one of the things that is asked is
 14 the bank.
 15 THE COURT: Do you want to display that? Or are you
 16 just going to ask him based on --
 17 MR. DRESSLER: No, I'll display it.
 18 Do you have that available?
 19 MS. HARRIS: Yeah.
 20 MR. DRESSLER: Maybe it would be more readable by the
 21 jury if -- so that's Exhibit 283, Page 1.
 22 (Document displayed)
 23 BY MR. DRESSLER:
 24 Q All right.
 25 So, on that form, it asks on the top third, "Legal name of

1 the entity." Do you see that?
 2 (Witness examines document)
 3 Q It says "MNT Master Fund, Limited"?
 4 A Yes.
 5 Q And then below that, there's an address for MNT Master
 6 Fund, Limited. And that's an address in Grand Cayman.
 7 Correct?
 8 A That's the post office box address. The official address
 9 is up to the right.
 10 Q And if you keep going down, it says "Bank Name and
 11 Address"?
 12 A Yes.
 13 Q And, what is the purpose of that, and how do you interpret
 14 -- what's the purpose of that?
 15 A Again, it's a requirement of FINRA for us to obtain the
 16 client's banking information.
 17 Q Okay. And the client is not required to list every bank
 18 that he does business with, is it?
 19 A No, it's not. He's required to list the bank that he does
 20 business with mainly.
 21 Q And if the customer has funds in other brokerage accounts,
 22 that doesn't have to be provided to Oppenheimer, does it?
 23 A No, it does not.
 24 Q Okay. And in terms of, again, the account information
 25 form, there are no questions as to who the members -- if it's a

1 limited partnership, there's no question about who the limited
 2 partners are?
 3 A That investigation is done further after the account --
 4 before the account is approved to be opened, after the account
 5 documentation is provided.
 6 Q Okay. Are you saying that Oppenheimer asks for the names
 7 of all of the investors -- let's say it's a hedge fund -- that
 8 Oppenheimer wants to know -- strike that.
 9 That Oppenheimer requires the applicant entity to provide
 10 a list of all their limited partners if it's a limited
 11 partnership?
 12 A If a case of a foreign account, the AML Department will
 13 request additional documentation pertaining to questions asked
 14 by them. I can't speak for every question they would ask.
 15 They would ask for the background of the account, and where the
 16 account resides, and they would ask for beneficial owners at
 17 times, yes.
 18 Q I was asking for a generic -- generically, for a domestic
 19 entity, it wouldn't be such a need for that kind of
 20 information, would there?
 21 A AML will make their determination on which type of
 22 entities they ask for additional information, and how much
 23 additional information they ask for.
 24 Q Okay.
 25 MR. DRESSLER: Would it be possible to go to

1 Government Exhibit 283, Page 30?
 2 (Document displayed)
 3 BY MR. DRESSLER:
 4 Q This is an account application for Market Neutral Trading
 5 B, LLC. Correct?
 6 A Yes.
 7 Q And that's a U.S. company?
 8 A Yes.
 9 Q Okay. The bank is Wells Fargo?
 10 A Yes.
 11 Q In the documents you reviewed in preparing for your
 12 testimony, was there any indication in the file that AML asked
 13 for the names of who the partners were of that LLC?
 14 A There was an indication of names asked. I'm not sure
 15 whether -- specifically related to this LLC or not.
 16 Q Okay. And with regard to MNT B LLC, that lists \$5 million
 17 in assets under management. Correct?
 18 A Yes.
 19 Q Okay. And would it be fair to state that at no time did
 20 Oppenheimer know what those assets were, or where they were?
 21 A That would not be fair to state. It would be fair to
 22 state that this form is used by the firm as required by FINRA,
 23 that there's an understanding and the client dictated to us
 24 that he has \$5 million of assets available to invest.
 25 Whether he used the 5 million or not is not the point.

1 The firm is being informed by the client and required by FINRA
 2 to get this form so they can understand how to trade the
 3 client.
 4 Q That's not my question.
 5 A I'm sorry.
 6 Q My question is: There's no -- the customer is not
 7 required to tell Oppenheimer -- there's nothing on this form
 8 (Indicating) or any other Oppenheimer form that says -- asks
 9 the identity of the assets and where they're located.
 10 A It is not important to us as to where they are located.
 11 It is important to us that the client is attesting to the fact
 12 that he has 5 million available to invest with us.
 13 Q Could you -- my question is --
 14 MR. DRESSLER: Would you --
 15 MR. FARNHAM: Judge, this is being argumentative.
 16 THE COURT: No, it's not.
 17 THE WITNESS: I'm sorry.
 18 THE COURT: The question is: Does Oppenheimer know
 19 where the \$5 million is?
 20 THE WITNESS: No.
 21 THE COURT: What it's consisted of.
 22 THE WITNESS: No.
 23 THE COURT: That's what you were trying to ask, I
 24 believe.
 25 MR. DRESSLER: Yes. Thank you.

1 THE WITNESS: My apologies.
 2 MR. DRESSLER: Could we go back to Exhibit 283,
 3 Page 1.
 4 (Document displayed)
 5 BY MR. DRESSLER:
 6 Q This is the account that was at least initiated on
 7 February 2nd, 2012. Correct?
 8 A Yes.
 9 Q And I think I already asked you, it's obvious that this
 10 account, the MNT Master Fund, Limited is an offshore entity.
 11 Correct?
 12 A Correct.
 13 Q All right. And again, with regard to this entity and this
 14 account, Oppenheimer did not require the identification and/or
 15 location of the assets that were involved -- that are referred
 16 to as being \$5 million assets under management.
 17 A No. They're not required to.
 18 Q Okay. So, you don't have any information -- strike that.
 19 At the time this application was made, Oppenheimer had no
 20 idea whether the \$5 million under -- assets under management
 21 that are referred to in Account [REDACTED] are the same assets that
 22 were involved in -- listed on the account information form for
 23 MNT Master Fund B, Account [REDACTED]. Correct?
 24 A That is not correct. They are two different forms, two
 25 different clients, two different entities.

1 Q Okay. So what I'm saying is every -- the forms are
 2 different; the entities are different. And you don't know --
 3 you didn't know what the assets that were being referred to
 4 with regard to the MNT Master Fund B account, you said you
 5 didn't know what those assets were. Correct?
 6 A I know that the assets are worth \$5 million, based on the
 7 information given to us from the client for the B account.
 8 Q This will go a lot quicker if you listen to my question.
 9 A Sorry.
 10 Q If you don't understand my question, let me know.
 11 My question was, sir, you didn't know what the asserts
 12 were that were referred to for the MNT B account, [REDACTED] You
 13 didn't know what they were or where they were. Correct?
 14 A No. I know just the amount, \$5 million.
 15 Q Okay. And the same is true with regard to MNT Master Fund
 16 Limited Account No. [REDACTED] You didn't know what those assets
 17 were, and where they were. Correct?
 18 A That's correct.
 19 Q And therefore, you could not say at that time that we're
 20 talking about the same set of assets.
 21 A I cannot say they were talking about the same set of
 22 assets, because they are two different entities.
 23 Q Okay. Right.
 24 A I would not treat them as the same set of assets, because
 25 they are two different entities.

1 Q Is that a "Yes" to my question?
 2 THE COURT: You'd better ask the question again. I'm
 3 confused.
 4 MR. DRESSLER: Yeah.
 5 BY MR. DRESSLER:
 6 Q My question is this.
 7 A Evidently I am, too.
 8 Q You have two different entities -- two different
 9 applications, two different entities. Correct?
 10 A Correct.
 11 Q You don't know the nature and location of the assets with
 12 regard to either entity.
 13 A Correct.
 14 Q All right. So you can't conclude that they're the same
 15 assets.
 16 A I wouldn't conclude they were the same assets.
 17 Q Okay. The 8064 account, which I believe we still have up
 18 there, that account, as I believe you stated before, is because
 19 it's a -- an offshore entity. And there's nothing illegal
 20 about offshore entities, correct?
 21 A Correct.
 22 Q Just generally? All right. Requires that a -- a W-8BEN
 23 form be filled out?
 24 A Yes.
 25 Q All right.

1 A Depending on the type of entity.
 2 MR. DRESSLER: Can we have Exhibit 283, Page 2?
 3 (Document displayed)
 4 BY MR. DRESSLER:
 5 Q And in fact, one of those was filled out with regard to
 6 Account [REDACTED] correct?
 7 A Yes.
 8 Q And it says:
 9 "Certificate of Foreign Status of Beneficial
 10 Owner for United States Tax Withholding."
 11 Correct?
 12 A Yes.
 13 MR. DRESSLER: And if we could go to Exhibit 283 --
 14 I'm going to be asking that we show first 247, and then 248,
 15 and then 249, and then 250. So let's go to 247 first.
 16 (Document displayed)
 17 BY MR. DRESSLER:
 18 Q All right. That's a due diligence form for a non-U.S.
 19 shell company. Correct?
 20 A That's what it states, yes.
 21 MR. DRESSLER: And if you could scroll down.
 22 (Document displayed)
 23 BY MR. DRESSLER:
 24 Q That indicates a first beneficial owner. Correct?
 25 A That's correct.

1 Q And that's -- Mr. Murray's name is there, and he has
 2 signed that document. Correct? There's a signature there.
 3 A Correct.
 4 MR. DRESSLER: Can we go to the next page?
 5 (Document displayed)
 6 MR. DRESSLER: Go to 249.
 7 (Document displayed)
 8 BY MR. DRESSLER:
 9 Q All right. That's his name, there's a legal address, and
 10 there is a signature at the bottom of that page. Correct?
 11 A I don't see any -- yes.
 12 Q Okay.
 13 MR. DRESSLER: Can we go to 250, please.
 14 (Document displayed)
 15 BY MR. DRESSLER:
 16 Q On that page is the second beneficial owner. Correct?
 17 A Correct.
 18 Q All right. Could you read the name on that of that second
 19 beneficial owner?
 20 A I don't really think I can pronounce it correctly.
 21 "Gian-ucchi" DeFrancisci.
 22 Q You're from New York --
 23 A Sorry; I'm actually from Staten Island so it's not --
 24 Q How about Gianluca DeFrancisci?
 25 A Gianluca. Okay.

1 Q Okay. And there's an address, and I won't try to
 2 pronounce that one.
 3 A Yeah, please.
 4 Q But there's an address in Monte Carlo, correct?
 5 A That's correct.
 6 Q And there's a signature, it says, of "second beneficial
 7 owner." Correct?
 8 A Correct.
 9 Q Okay.
 10 MR. DRESSLER: Can we go to Exhibit 285?
 11 BY MR. DRESSLER:
 12 Q I don't know if you have that up there. Do you have that
 13 in front of you? Do you have that?
 14 A Yes.
 15 Q So that's the 12-page document that we were talking about,
 16 correct?
 17 A Yes.
 18 Q And, if we go to Paragraph 29, which is on Page 285 -- I
 19 mean Exhibit 285, at Page 3.
 20 (Document displayed)
 21 Q You testified about Paragraph 29 on Wednesday. Correct?
 22 A That's correct.
 23 Q Okay. And, the first sentence says (As read):
 24 "The Client acknowledges that it has received
 25 and read Oppenheimer's New Account Application..."

1 I'm going to pause there.
 2 So every time a new account is opened, you fill out a new
 3 account application. Correct?
 4 A Correct.
 5 Q All right. So the client has --
 6 (Reporter interruption)
 7 MR. DRESSLER: All right (As read):
 8 "The Client acknowledges that it has received
 9 and read Oppenheimer's New Account Application, and
 10 certifies that the information contained therein was
 11 provided by the Client to Oppenheimer and is true and
 12 correct in all material aspects (sic)."
 13 Correct?
 14 A Right.
 15 Q All right. Second sentence says (As read):
 16 "The Client agrees to notify the Oppenheimer
 17 office in which the Client is transacting business,
 18 without delay, of any changes or corrections in
 19 connection with any information contained in the New
 20 Account Application."
 21 Correct?
 22 A Correct.
 23 Q And the last sentence is:
 24 "This paragraph is not applicable to
 25 correspondent accounts as described in Paragraph 23."

1 And, that would be an account where Oppenheimer is just
 2 the clearing broker. Correct?
 3 A I would have to go through Paragraph 23. Yeah, we would
 4 be clearing broker for the --
 5 Q Okay. Would you just briefly describe for the jury what
 6 that means?
 7 A We don't actually do clearance business, but a broker
 8 would introduce themselves to us as a clearing firm. We would
 9 do their back-office settlements and clearance of securities.
 10 There would be an actual clearing agreement involved with the
 11 performance of a clearing account.
 12 Q Okay. And, one of the accounts -- Wednesday, there were
 13 four accounts that you were shown. One of them was entitled, I
 14 believe, "MNT LLC For the Benefit of..."
 15 (Witness's cell phone rings)
 16 THE WITNESS: Excuse me. Sorry.
 17 MR. DRESSLER: If that's my wife, I'm not here.
 18 THE WITNESS: My apologies.
 19 MR. DRESSLER: That's happened to me. It's worse
 20 when it happens to me than you. Don't worry.
 21 THE COURT: But let's make sure everybody's phones
 22 are off.
 23 Okay, go ahead.
 24 MR. DRESSLER: All right.
 25

1 BY MR. DRESSLER:
 2 Q Is that a clearing account for the benefit of -- the one
 3 you were shown said "For the Benefit of" Interactive -- MNT --
 4 or if it was Interactive Brokers, for the benefit of, would
 5 that indicate that was a clearing account?
 6 A No, it would not.
 7 Q In any event, with regard to Paragraph 29, you were asked
 8 Wednesday: What type of information is a customer of
 9 Oppenheimer required to notify Oppenheimer of if there are
 10 changes between the filling out of the new account application
 11 and clearing the account for trading.
 12 Correct?
 13 A Correct.
 14 Q And a part of your answer was:
 15 "Changes in their value of account for net asset
 16 value."
 17 A Correct.
 18 Q So, if there were no changes in the net asset value of the
 19 \$5 million under management that was contained in the new
 20 account information form for Market Neutral Trading, Limited,
 21 Account No. 864 (sic), if there were no changes in that account
 22 between February 2nd, 2012 and June 24, I believe, whenever the
 23 account was opened, it was either June 22 or somewhere around
 24 June 22, if there were no changes in the net assets between
 25 February 2nd, 2012, and let's say June 22 -- let's say that --

1 let me withdraw that.
 2 If there were no changes in assets between February 2,
 3 2012 and the day before the Netflix trade, no notification
 4 would be required under Paragraph 29. Correct?
 5 A Correct.
 6 Q And I forgot ask you this question: If -- just generally,
 7 on an account information form -- let's say hypothetically, I
 8 actually have \$10 million under management. But, I'm only
 9 interested in having authorization to trade up to \$5 million at
 10 Oppenheimer.
 11 I don't have to advise Oppenheimer that I have additional
 12 assets under management, do I?
 13 A You do not.
 14 Q So on Wednesday, the U.S. Attorney asked you whether or
 15 not -- if the fact that on May 21st, 2012, 1,778,000 was seized
 16 or frozen -- both terms were used -- from four accounts at
 17 Interactive Brokers in the name of Market Neutral Trading, if,
 18 in fact, there was still \$5 million of assets under management,
 19 that would not be required to be reported to Oppenheimer, would
 20 it?
 21 A That action would be a material action that should have
 22 been reported to Oppenheimer.
 23 Q You base your opinion that it should be reported to
 24 Oppenheimer because you said: It represents roughly 40 percent
 25 of the assets they advised us are available for investment.

1 A That's correct.
 2 Q But you don't know, as you sit here now, whether those --
 3 that money that was seized, that 1,700,000, all right, whether
 4 that was any of the assets that were pledged by Market Neutral
 5 Trading, Limited at the time this application was made.
 6 A No, I don't.
 7 Q Let me ask you another question here. Is there any -- the
 8 account information form does not ask whether you have ever
 9 been investigated -- the applicant, whether the applicant has
 10 ever been investigated by the SEC. Correct?
 11 A Does not.
 12 Q Doesn't ask whether the applicant has ever been
 13 investigated by the New York Stock Exchange?
 14 A It does not.
 15 Q And by the way, the New York Stock Exchange is what's
 16 called a self-regulating entity. It's not a governmental
 17 entity, correct?
 18 A I'm not sure how to answer that question. New York Stock
 19 Exchange, actually, self-regulatory agency, is FINRA now. It
 20 used to be the New York Stock Exchange. It's a self-regulatory
 21 organization.
 22 Q So FINRA is self-regulatory.
 23 A That's correct.
 24 Q And, you don't know whether the Stock -- New York Stock
 25 Exchange -- are you saying that FINRA replaced the New York

1 Stock Exchange?
 2 A Yes.
 3 Q So, all right. Fair enough.
 4 The account information form does not ask whether the
 5 applicant has been accused of a crime. Correct?
 6 A It does not. Not required by FINRA.
 7 Q It doesn't ask whether the applicant has been convicted of
 8 a crime?
 9 A Not required by FINRA.
 10 Q And I'm sure you understand the accusation of a crime does
 11 not mean the person is guilty. Correct?
 12 A Correct.
 13 Q And Oppenheimer does not ask those questions, because
 14 Oppenheimer does its own background checks of applicants.
 15 Correct?
 16 A That's correct.
 17 Q All right. Because this is an offshore entity,
 18 Oppenheimer was required to do certain background checks with
 19 regard to both beneficial owners. Correct?
 20 A Correct.
 21 MR. DRESSLER: So, could we go to Exhibit 519, Page
 22 289?
 23 We can't, because it's one of my exhibits. I apologize.
 24 (Off-the-Record discussion between counsel)
 25 MR. DRESSLER: May I approach?

1 THE COURT: Yes.
 2 BY MR. DRESSLER:
 3 Q All right. I'm going to show you a document.
 4 And, does that appear to be a document from -- an
 5 Oppenheimer document in relationship to MNT Master Fund,
 6 Limited?
 7 (Witness examines document)
 8 A I'm not familiar with this document, sir. I don't show
 9 it's an Oppenheimer document.
 10 Q Okay. All right.
 11 (Off-the-Record discussion between counsel)
 12 MR. DRESSLER: I'm going to offer this as -- I
 13 apologize. I left my marked copies at the office. So, this,
 14 I'm going to offer this as Defense Exhibit 570.
 15 (Trial Exhibit 570 marked for identification.)
 16 THE COURT: And what is the "this"?
 17 MR. DRESSLER: It's a one-page document which shows
 18 that --
 19 THE COURT: What is it?
 20 MR. DRESSLER: Oh. It's a search. It apparently was
 21 done by Oppenheimer --
 22 MS. HARRIS: Objection, Your Honor. I object to
 23 Mr. Dressler testifying.
 24 THE COURT: All right. Then, then first of all, is
 25 there an objection?

1 MS. HARRIS: No objection to admission of the
 2 document. There is objection to questioning the witness about
 3 something he doesn't recognize.
 4 MR. DRESSLER: Okay. I'll ask him some questions.
 5 THE COURT: Then if there's no objection to
 6 admission, I'll admit 570.
 7 (Trial Exhibit 570 received in evidence)
 8 BY MR. DRESSLER:
 9 Q You are the chief operating officer of Oppenheimer,
 10 correct?
 11 A That's correct.
 12 Q I believe you indicated earlier that Oppenheimer is
 13 required to do certain searches, certain background checks?
 14 A That's correct.
 15 Q All right. And, you have heard of FINRA, obviously.
 16 A Yes, sir.
 17 Q Okay. And to your knowledge, isn't it true that
 18 Oppenheimer is required to, for an offshore entity and the
 19 beneficial owners of the incident, do a background check
 20 through FINRA?
 21 A Yes, that is required by the AML Department.
 22 Q Okay. All right.
 23 MR. DRESSLER: Could we go to Government Exhibit 283,
 24 Page 5.
 25 (Document displayed)

1 BY MR. DRESSLER:
 2 Q Do you recognize that as an Oppenheimer --
 3 MR. DRESSLER: I believe this is already in evidence,
 4 isn't it?
 5 MS. HARRIS: Yes.
 6 MR. DRESSLER: So this is already in evidence, all
 7 right.
 8 BY MR. DRESSLER:
 9 Q This document indicates that -- I'm sorry.
 10 MR. DRESSLER: 283, Page 5?
 11 (Document displayed)
 12 MR. DRESSLER: Sorry.
 13 BY MR. DRESSLER:
 14 Q I believe this is already -- also been admitted.
 15 This is an email indicating that an AML review was done in
 16 connection with the application 8064 for a master -- MNT Master
 17 Fund, Limited. Correct?
 18 A Correct.
 19 Q And this indicates that the AML -- do you know what that
 20 stands for?
 21 A Anti-money-laundering.
 22 Q Okay. And that indicates that a search was, in fact,
 23 done. Correct?
 24 A Correct.
 25 Q Okay. And --

1 (Off-the-Record discussion between counsel)
 2 BY MR. DRESSLER:
 3 Q I'm going to approach you with Defendant's Exhibit 571.
 4 (Trial Exhibit 571 marked for identification)
 5 Q And I'm asking if you recognize this document.
 6 (Witness examines document)
 7 A I do not.
 8 Q Okay.
 9 MR. DRESSLER: I'm going to offer this in evidence,
 10 Defendant's Exhibit 577.
 11 THE COURT: 577? Or 571?
 12 MR. DRESSLER: Should be 571.
 13 THE COURT: All right. Any objection?
 14 MS. HARRIS: No, Your Honor.
 15 (Reporter interruption)
 16 THE COURT: Admitted.
 17 (Trial Exhibit 571 received in evidence)
 18 MR. DRESSLER: And then --
 19 (Off-the-Record discussion between counsel)
 20 BY MR. DRESSLER:
 21 Q I'm going to show you what's been marked as Defendant's
 22 Exhibit 572 for identification, in a moment.
 23 (Trial Exhibit 572 marked for identification)
 24 Q Ask you if you recognize that document.
 25 (Witness examines document)

1 A It's pretty much the same as the one before it.
 2 MR. DRESSLER: Okay. I'm going to offer Exhibit 572.
 3 THE COURT: Any objection?
 4 MS. HARRIS: No objection.
 5 THE COURT: Admitted.
 6 (Trial Exhibit 572 received in evidence)
 7 BY MR. DRESSLER:
 8 Q Almost done.
 9 A That's okay.
 10 Q Going back to the Netflix trade, that was a trade of
 11 50,000 shares. Correct?
 12 A Correct.
 13 Q And so you are aware, are you not, that shortly -- either
 14 the same day or the day before, that Mr. Murray notified the
 15 broker in San Francisco to borrow 50,000 shares of Netflix for
 16 a possible short sale?
 17 A Under FINRA's requirement, the day of the entry of the
 18 trade, Oppenheimer is required to perform a locate, which is
 19 identify a broker-dealer who will be willing to loan us the
 20 securities to settle that trade before we enter that
 21 transaction.
 22 Q Okay. Well, you can also borrow your own client's shares
 23 to do this, can't you?
 24 A We do not. It would require a loan agreement, a stock
 25 loan agreement with the client. And we have no such agreement.

1 We do not offer such agreements to clients.
 2 Q Okay. So you would borrow from another broker?
 3 A We would borrow from another broker-dealer that we have a
 4 required stock loan agreement with, that we have done business
 5 with. And we actually treat them as a counter-party.
 6 Q Okay. And when you do that, are they then lending you --
 7 or are they -- are you then borrowing their client's stock?
 8 Strike that.
 9 In this particular instance, if you get it from another
 10 broker, all right, you have an agreement with them, and that's
 11 a standing agreement?
 12 In other words, you don't have to -- or do you have to
 13 make an agreement every time you borrow?
 14 A That is a standing agreement.
 15 Q Okay. And, are they lending you their client's shares for
 16 this transaction?
 17 A That would be a violation, sir, of 15c3, so -- security
 18 protection -- customer protection rules.
 19 Q So these would be shares that are owned by the brokerage,
 20 themselves?
 21 A That's correct.
 22 Q Now, under the agreement that you have with the other
 23 brokers, do you actually -- if you borrow 50,000 shares for a
 24 short sale, I mean, do you have to send them a check for
 25 3 million -- in this case, 3,500,000?

1 A I haven't actually sent them a check in many years. It's
 2 done by the fed wire system. It would be equal to the amount.
 3 Q So is 350,000 actually wired to the other broker?
 4 A If we borrow \$350,000 worth of stock -- in this case it
 5 was \$3.5 million worth of stock. They would charge us
 6 \$3.5 million for the value of the stock.
 7 Q And that would -- is that wired before a trade is actually
 8 done?
 9 A That transaction is done at the settlement date of the
 10 trade.
 11 Q So the 50,000 shares are available for the short sale, but
 12 Oppenheimer has not transferred any money to the other
 13 brokerage house. Correct?
 14 A Until settlement date. That's correct.
 15 Q Okay. And then, if it's a successful trade, and it's
 16 settled within five days, do you still have to send them
 17 \$3,500,000?
 18 A I don't understand what you mean by "a successful trade."
 19 The trade was executed. On settlement date, I'm obligated to
 20 send them the \$3.5 million, because I'm obligated to deliver
 21 the shares to the buyer.
 22 Q Okay. I understand. Thank you.
 23 And in this case, all right, since it didn't settle within
 24 five days, when -- did you -- when was, if it was, the
 25 3,500,000 of Oppenheimer funds transferred to the other broker?

1 A Sir, the trade settled on settlement date plus three,
 2 three days. The trade didn't get paid for on the five business
 3 days. It's totally separate and distinct.
 4 On settlement date, which is trade date plus three,
 5 Oppenheimer had to provide the loaning broker \$3.5 million in
 6 order to obtain the shares, because the buyer intended to pay
 7 for his position. And therefore, we delivered the shares to
 8 the buyer.
 9 Q Okay.
 10 A So we had to make delivery to the buyer, whether the
 11 customer who executed the short sale kept his end of the
 12 bargain. Separate and distinct.
 13 Q When would Oppenheimer have gotten the 3,500,000 back?
 14 A When the transaction is closed out, and we return the
 15 shares to the -- to the loaning broker-dealer.
 16 Q And that was a few weeks later in August, correct?
 17 A That was the -- the position -- part of the position was
 18 closed out on the same day, to the tune of \$5,000. That was
 19 the day-trading violation. The remaining 45,000 shares was
 20 closed out the next day. So we had risk for over a day and a
 21 half.
 22 Q Is there anything on this account that says it was subject
 23 to day trading regulations?
 24 A Every account is subject to day trading regulations, under
 25 FINRA. No account gets indicated that it's subject to day

1 trading regulations. The account violated the day trading
 2 regulations because it had no pre-existing plans to allow them
 3 to do a day trade.
 4 Q Okay. But the broker who did the trade wasn't aware of
 5 that, apparently, correct?
 6 A That is not correct. The broker who did that was taking
 7 orders from the client. The client is allowed to take market
 8 action. No -- no rule will stop a client from opening and
 9 closing a transaction in the same day.
 10 The violation occurred that he didn't have the buying
 11 power to do the transaction. He still had trade day plus five
 12 to come up with the \$1.7 million. That \$1.7 million would have
 13 met the regulatory requirement for doing the short sale.
 14 As I explained the other day, the trade day violation
 15 cannot be met anymore; he already violated it. And that causes
 16 a restriction in day trading going forward.
 17 And by settlement date, without him meeting payment of the
 18 1.7 Reg T, that causes a restriction of trades going forward,
 19 funds in advance of trading.
 20 Q So the violation of the day trading basically is -- the
 21 penalty is a restriction is put on the account. Correct?
 22 A That's correct.
 23 Q That happens from time to time.
 24 A Clients are allowed to take market action to close out
 25 their position. That could happen, time to time. Yes.

1 MR. DRESSLER: I believe that's all I have. Thank
 2 you.
 3 THE COURT: All right, thank you.
 4 Anything on redirect?
 5 MS. HARRIS: Thank you, Your Honor.
 6 REDIRECT EXAMINATION
 7 BY MS. HARRIS:
 8 Q Good morning again, Mr. Benedetto.
 9 You were asked some questions on cross-examination about
 10 Page 1 of Government Exhibit 283.
 11 MS. HARRIS: And if we could just bring up Page 1
 12 again.
 13 BY MS. HARRIS:
 14 Q And if we could look at the net value worth of Market
 15 Neutral Trading, Limited, as listed on this form, is the net
 16 worth of Market Neutral Trading \$5 million as specified by the
 17 customer?
 18 (Witness examines document)
 19 A Yes.
 20 Q Now, focusing on the net worth of Market Neutral Trading,
 21 Limited, is a seizure of \$1.8 million of the assets of Market
 22 Neutral Trading that are held in a different brokerage
 23 account -- for example, Interactive Brokers -- does that affect
 24 the net worth of Market Neutral Trading as specified on the
 25 page?

1 A The net worth question pertains to all the assets the
 2 client owns, not necessarily interested in trading with us. So
 3 an investment piece versus what the client is worth are two
 4 different separate questions.
 5 A restriction or an action taken by a regulatory agency to
 6 the tune of \$1.8 million represents a material change in the
 7 client's net worth. And that should have been reported to
 8 Oppenheimer.
 9 Q And, that should have been reported, is it the case, under
 10 Paragraph 29 of the new account agreement that we looked at as
 11 Government Exhibit 285?
 12 A Yes.
 13 Q And that is different than the net assets available to
 14 invest.
 15 A That is correct.
 16 Q So just to clarify, a freeze on \$1.8 million of the assets
 17 of the entity Market Neutral Trading Master Fund LTD that are
 18 held in a different brokerage account is a material change to
 19 the net worth of the entity that was applying for this account.
 20 A Yes.
 21 Q Was that information ever disclosed to Oppenheimer in any
 22 of the materials you've seen?
 23 A No.
 24 MR. DRESSLER: Asked and answered, Your Honor.
 25 THE COURT: Overruled.

1 BY MS. HARRIS:
 2 Q What was the answer?
 3 A "No."
 4 MS. HARRIS: If we could also take a look at the
 5 mailing address on Page 1, which is above a legal permanent
 6 address of the entity.
 7 BY MS. HARRIS:
 8 Q What is the mailing address that the customer listed for
 9 MNT Master Fund, Limited?
 10 A Special mailing address is [REDACTED], [REDACTED]
 11 [REDACTED] San Francisco, California [REDACTED].
 12 Q You were asked some questions by Mr. Dressler about the
 13 beneficial owners, and background into the beneficial owner.
 14 Are the assets of a second beneficial owner considered at
 15 all under the assets available to invest section of the account
 16 information form? Is that relevant?
 17 A Yes. Yes.
 18 Q The assets of the beneficial owners, is that something
 19 that is the -- is considered assets available to invest?
 20 A No. Sorry.
 21 Q Okay. Can you clarify for the jury what you mean?
 22 A The assets available for investment are the assets of the
 23 client that are available to be invested.
 24 Q And who is the client in this case?
 25 A MNT -- MNT Master Fund, Limited.

1 (Off-the-Record discussion between counsel)
 2 MS. HARRIS: No further questions, Your Honor.
 3 THE COURT: All right. Anything further on recross?
 4 (Off-the-Record discussion between Defendant and
 5 Counsel)
 6 MR. DRESSLER: No, Your Honor.
 7 THE COURT: All right, thank you. Mr. Benedetto, you
 8 are excused. And --
 9 THE WITNESS: Sorry about that, Judge.
 10 THE COURT: Thank you.
 11 (Witness excused)
 12 THE COURT: All right. The Government's next
 13 witness?
 14 MS. HARRIS: Thank you, Your Honor. The United
 15 States calls Scott Greenberg.
 16 THE COURT: All right.
 17 SCOTT GREENBERG,
 18 called as a witness for the Government herein, having been
 19 first duly sworn, was examined and testified as follows:
 20 THE WITNESS: Yes, I do.
 21 THE CLERK: Please be seated, and state your name.
 22 THE WITNESS: Scott Greenberg.
 23 THE COURT: All right, thank you, Mr. Greenberg.
 24 You may proceed, Ms. Harris.
 25

1 DIRECT EXAMINATION
 2 BY MS. HARRIS:
 3 Q Good morning, Mr. Greenberg.
 4 Where do you currently work?
 5 A Capital Instincts.
 6 Q Is that where you worked in 2012?
 7 A Yes.
 8 Q Okay. What type of work do you do?
 9 A Statistical arbitrage.
 10 Q Can you, just in layperson's terms, explain to us what
 11 that is?
 12 A It's trading in equity and currency and commodity
 13 derivatives.
 14 Q In 2012, where did you live?
 15 A In St. Thomas, the Virgin Islands, U.S. Virgin Islands.
 16 Q Did you also have a residence anywhere in California?
 17 A Yeah, in San Anselmo. 100 Summit Road.
 18 Q Is that in Marin County?
 19 A Yes.
 20 Q Have you ever met someone named James Murray?
 21 A Yes.
 22 Q Drawing your attention the period of August 6, 2012, when
 23 did you first meet Mr. Murray?
 24 A On August 6, in the afternoon, 2012.
 25 Q Prior to August, 2012, had you ever had any business

1 dealings with James Murray?
 2 A No.
 3 Q Before August, 2012, had you ever even heard of James
 4 Murray?
 5 A No.
 6 Q Okay. How did you get connected with Mr. Murray?
 7 A My broker at Oppenheimer, Mark Moskowitz, introduced me.
 8 Q How do you know Mr. Moskowitz?
 9 A I used him as one of my brokers. He executed trades for
 10 me while he worked at Oppenheimer.
 11 Q At some point after Mr. Moskowitz connected Mr. Murray to
 12 you, did you meet with Mr. Murray in person?
 13 A I did.
 14 Q Where did this first meeting with Mr. Murray take place?
 15 A At my house in Marin County.
 16 Q And was this on August 6, 2012?
 17 A It was.
 18 Q Okay. What was the purpose of the meeting?
 19 A Mr. Murray was soliciting me for an investment in his
 20 fund.
 21 Q Did Mr. Murray, during this August 6, 2012 meeting, tell
 22 you anything about a Netflix short sale trade?
 23 A He did.
 24 Q What did Mr. Murray tell you about the trade?
 25 A He told me that he had made a profit shorting Netflix.

1 And that his partner in Europe had run into some difficulties,
 2 and wasn't able to finance the trade. And that he needed to
 3 borrow some money to have the profits from the trade cleared
 4 from Oppenheimer.
 5 Q Did Mr. Murray ask you to advance him money?
 6 A He did.
 7 Q How much money did Mr. Murray ask you to advance to him?
 8 A About 1.8 million.
 9 Q Did Mr. Murray offer you anything in exchange, if you
 10 would be willing to front him \$1.8 million?
 11 A He did. He offered me a percentage of the profits.
 12 Q How much did Mr. Murray offer to give you from the Netflix
 13 trade if you would front him \$1.8 million?
 14 A About 113,000.
 15 Q Did Mr. Murray mention that -- whether his business
 16 partner was willing to put up money to cover the trade?
 17 A He did.
 18 Q What did he say?
 19 A He said he was not willing to because he had run into some
 20 financial difficulties.
 21 Q Did you want to make contact with Mr. Murray's business
 22 partner?
 23 A I did.
 24 Q Why?
 25 A To verify his story. It didn't make sense.

1 Q Did Mr. Murray give you contact information for this
 2 partner?
 3 A He did not.
 4 Q How did you leave it with Mr. Murray after you met with
 5 him at your house in San Anselmo on August 6, 2012?
 6 A I told him that I would think about it and I would discuss
 7 it with my attorney and get back to him. So I did, and I sent
 8 him an email later on that afternoon asking him for some
 9 further documents and contact information.
 10 MS. HARRIS: Your Honor, may I approach the witness?
 11 THE COURT: Yes.
 12 BY MS. HARRIS
 13 Q I'm handing you what's been marked as Government's
 14 Exhibit 307 for identification.
 15 (Whereupon document was tendered to the witness.)
 16 Q I would ask you if that's the email you just referred to
 17 that you sent to Mr. Murray on August 6th, 2012?
 18 A Yes, it is.
 19 Q And above your email is it the response that you received
 20 from Mr. Murray on August 6th, 2012?
 21 A Yes.
 22 Q And then your response, again, to Mr. Murray on that same
 23 date?
 24 A Correct.
 25 MS. HARRIS: Your Honor, I offer Government's

1 Exhibit 307 into evidence.
 2 THE COURT: Any objection?
 3 MR. DRESSLER: No objection.
 4 THE COURT: Admitted.
 5 (Trial Exhibit 307 received in evidence.)
 6 BY MS. HARRIS
 7 Q If we could bring up Page 1 of Government's Exhibit 307?
 8 And specifically focus on the first email that you sent to
 9 Mr. Murray at 7:41 p.m.
 10 (Document displayed)
 11 Q Okay. And you say, Mr. Greenberg, you write to Mr. Murray
 12 that you just got done reviewing your documents and talking
 13 with your attorney. And you give the name of your attorney.
 14 And you say: Your attorney is advising me that we need the
 15 following to facilitate the transaction.
 16 And the first thing you ask for is a Power of Attorney
 17 form naming you as sole controller of the MNT Master Fund, Ltd.
 18 Oppenheimer security account ending in the last four digits
 19 8064.
 20 Why did you want that?
 21 A I wanted control over the funds I was going to place at
 22 Oppenheimer.
 23 Q And why is that? How much were you going to be putting
 24 up?
 25 A I was going to put up 1.8 million, but I didn't know James

1 Murray at all so I didn't trust him. And having a POA over the
 2 account could make sure that I was in control of the funds.
 3 Q Let's also look at section -- number two of what you
 4 requested, which is a promissory notes which provides you with
 5 the right to reclaim your loan funds at any time.
 6 Why were you requesting that?
 7 A When I met Mr. Murray, his story didn't make a lot of
 8 sense to me and there were a number of holes in it. So I
 9 wanted to make sure that if I was going to put the money in an
 10 Oppenheimer account, that I was able to get it back at any
 11 point in time if he tried to use it for something else or tried
 12 to cross collateralize it with another account that I wasn't
 13 aware of or something -- you know, or even if he had tried to
 14 take the funds out of the account for his own use.
 15 Q Now, if we could look at number four of what you were
 16 requesting for Mr. Murray:
 17 "Photos or scanned marriages of your driver's
 18 license and U.S. passport."
 19 Why were you have requesting that?
 20 A I wanted to make sure he said who he was; that, you know,
 21 I didn't know him, so I wanted proof of he was who he said he
 22 was.
 23 Q And you also ask for:
 24 "Completed consent form to run a criminal
 25 background check."

1 or so he purported. So this was a way for me to make sure that
 2 he wasn't in violation of any particular laws.
 3 Q Would a six-month suspension from the New York Stock
 4 Exchange have been something that you were looking for in
 5 response to Question 10 here?
 6 A Sure.
 7 Q Would that have been important to your decision as to
 8 whether you would front \$1.8 million to Mr. Murray?
 9 A Absolutely.
 10 Q Now, if we could look at No. 12. You were asking for:
 11 "The name and the contact information of your
 12 partner so I can make sure this is okay with him, as
 13 you told me he is aware of this deal. I assume this
 14 will not be a problem."
 15 Did Mr. Murray ever provide you with the name or contact
 16 information for his partner?
 17 A He did not.
 18 Q And then the next sentence of your email is:
 19 "I know you understand that this is necessary in
 20 order for me to risk 1.8 million to someone whom I
 21 just met today."
 22 What were you referring to when you said that?
 23 A I guess it's the normal course of business if, you know,
 24 you're going to give someone \$1.8 million and you've just met
 25 him in the day, you want to make sure that they are who they

1 And you attached a form for Mr. Murray's convenience.
 2 Was Mr. Murray willing to allow you to have a criminal
 3 background check run on him?
 4 A No.
 5 Q Was this important to you?
 6 A Yeah. I mean, I wanted to make sure I wasn't doing
 7 business with a criminal. And, obviously, if somebody is
 8 innocent, then they -- you run a check it's not a big deal.
 9 Q If we could look at Bullet Point 8:
 10 "The name and contact information for your
 11 securities attorney."
 12 Did Mr. Murray ever provide you with the name and contact
 13 information for any securities attorney?
 14 A He did not.
 15 Q Okay. Now, if we could look at No. 10, which is on the
 16 next page of the information you were asking Mr. Murray for.
 17 No. 10:
 18 "Written detailed confirmation and/or record
 19 files, if any, of any past SEC, FINRA, or other
 20 securities laws violations."
 21 Why were you asking for written confirmation from
 22 Mr. Murray concerning this?
 23 A Once again, I wanted to make sure I wasn't doing business
 24 with someone of ill repute or a criminal, and this is a way to
 25 make sure -- I knew he had been in the business for some time,

1 say they are. They are not a criminal. They are in good
 2 standing. You know, their history and their chosen profession
 3 is one -- a clean nature.
 4 So I wanted to, you know, make sure he was all of that by
 5 verifying and, you know, fulfilling my request for the
 6 documentation.
 7 And, you know, like I said, his story didn't make any
 8 sentences, why his partner wouldn't want to put up the money to
 9 claim the profits.
 10 Q And then if we look at the attachments underneath your
 11 signature block, one of them says "Background Check Consent
 12 Form." Do you see that?
 13 A Yes.
 14 Q If you -- and the date of your meeting was August 6, 2012,
 15 correct?
 16 A Correct.
 17 Q If you had received information that on June 14, 2012 a
 18 superseding indictment was returned and filed charging James
 19 Murray with wire fraud in connection with his role as the sole
 20 member and investment advisor of Market Neutral Trading, would
 21 you have in any way gone forward with loaning Mr. Murray money
 22 for this trade?
 23 A No. I -- I wouldn't, obviously, have invited him to my
 24 house.
 25 Q Now, if we could look at Mr. Murray's response to your

1 email. If we could go back to Page 1 of Exhibit 307 and
 2 Mr. Murray's email to you on August 6, 2012 at 7:58.
 3 (Document displayed.)
 4 Q What did Mr. Murray say to you?
 5 A (As read)
 6 "Whoa. This is way too much. POA as proposed
 7 puts me at risk. We agree and then keep changing it.
 8 Also gonna cost a bunch of legal fees."
 9 Q At the time you received Mr. Murray's response that we've
 10 just gone through, did you have any agreement with him at all?
 11 A No.
 12 Q And then let's take a look at your response to Mr. Murray,
 13 which is at the top of Page 1 of Exhibit 207. What did you say
 14 to Mr. Murray concerning legal fees?
 15 A (As read)
 16 "Legal fees max 2,000 or 2K. I'll pay for
 17 anything over that."
 18 Q And then what did you explain about the -- is the POA
 19 referring to the Power of Attorney you were requesting?
 20 A Correct.
 21 Q What did you explain to Mr. Murray about the POA?
 22 A (As read)
 23 "The POA only because there is no partial POA as
 24 we discussed, so no changes there. Also, it does not
 25 put you at risk. It asks you to trust me one-third

1 of what I'm entrusting you, and I'm more than happy
 2 to sign an agreement for 411,000 in collateral as I
 3 have way more than that to post to you in collateral,
 4 whereas you have none to me."
 5 Q And so with the would the maximum cost to Mr. Murray have
 6 been \$2,000 for legal fees, as you were proposing?
 7 A Correct.
 8 Q Did you and Mr. Murray ever reach an agreement for you to
 9 post the money to settle the Netflix trade?
 10 A No.
 11 Q After you sent the emails we just looked at in Exhibit
 12 307, did you have further contact with James Murray?
 13 A We did. We met one more time.
 14 Q Was this meeting approximately one week later?
 15 A Correct.
 16 Q And where did this meeting take place?
 17 A At Starbucks in San Rafael on Fourth Street.
 18 Q Is that also in Marin County?
 19 A Yes.
 20 Q What did Mr. Murray say at this meeting?
 21 A He tried to persuade me that most of my requests weren't
 22 necessary and that there was still a lot of money to be made in
 23 the trade and for me to put up the 1.8 million.
 24 Q At this point was Mr. Murray willing to go through --
 25 willing to consent to a criminal background check?

1 A He was not.
 2 Q Did Mr. Murray say anything about you investing in Market
 3 Neutral Trading during this second meeting?
 4 A He made a very brief attempt at persuading me of his -- of
 5 investing in his fund.
 6 Q Did you invest in Market Neutral Trading?
 7 A I did not.
 8 Q Why not?
 9 MR. DRESSLER: Objection, irrelevant.
 10 THE COURT: Overruled.
 11 A It was clear to me his strategy was not sound, and he
 12 hadn't done much research regarding it, and he didn't really
 13 have an argument that was persuasive in any way.
 14 BY MS. HARRIS
 15 Q Did you give Mr. Murray \$1.8 million to settle the Netflix
 16 trade?
 17 A I did not.
 18 Q Why not?
 19 A He struck me as someone who was not trustworthy. Struck
 20 me as someone who might be --
 21 MR. DRESSLER: Objection, your Honor.
 22 THE COURT: Overruled.
 23 A As I said, his story had a bunch of holes in it. I didn't
 24 believe him. He wasn't willing to do any of the checks I asked
 25 for. And, therefore, you know, my conclusion was that there

1 was something wrong with him and his story.
 2 BY MS. HARRIS
 3 Q Did you ever have any contact with Mr. Murray again after
 4 this second meeting?
 5 A I did not.
 6 MS. HARRIS: No further questions, your Honor.
 7 THE COURT: All right. Cross.
 8 CROSS EXAMINATION
 9 MR. DRESSLER: Can we put the last exhibit back up on
 10 the screen?
 11 (Document displayed)
 12 BY MR. DRESSLER
 13 Q Mr. Greenberg, so your first meeting with Mr. Murray was
 14 on August 6th?
 15 A Correct.
 16 Q And do you remember what time that was?
 17 A It was August 6th, 2012. I believe it was probably right
 18 around 1:00 o'clock after the market closed.
 19 Q Okay. So within six hours, you had spoken to your
 20 attorney and had prepared a proposed agreement?
 21 A Correct.
 22 Q And you were referred to Mr. Murray by Mark Moskowitz?
 23 A Correct.
 24 Q Before you met with Mr. Murray, did Mr. Moskowitz
 25 generally describe what -- the problem that Mr. Murray was

1 having?
 2 A Generally.
 3 Q Okay. All right. And you agreed to meet with Mr. Murray
 4 because you saw an opportunity to make some money, correct?
 5 A Correct.
 6 Q And you weren't doing this because you were a friend of
 7 Mr. Murray, correct?
 8 A I did not know Mr. Murray. I had never met him. I did --
 9 as behalf and a favor to Mark Moskowitz to some extent, but not
 10 to Mr. Murray.
 11 Q So the favor was that you agreed to meet with Mr. Murray,
 12 correct?
 13 A Correct.
 14 Q And after meeting with him, you felt -- you were aware
 15 that the trade was successful, correct? The trade that -- he
 16 was asking you for \$1.8 million to settle a trade?
 17 A Well, I wouldn't consider the trade successful, no.
 18 Q Well, you were aware that there was a \$400,000 profit from
 19 the trade, correct?
 20 A I -- I was aware that there was a profit from the trade.
 21 Q Okay. And you knew it was 400,000, approximately, or a
 22 little more than 400,000, correct?
 23 A Correct.
 24 Q Okay. And so you were doing this -- would it be fair to
 25 say your only motivation in doing this was to make some money

1 other attorney mentioned, there is a violation in the SEC, he
 2 was cited four months before -- I would have said "no deal."
 3 So it doesn't, you know, automatically assume that, oh,
 4 because he provides this, that there's going to be a deal.
 5 Q My question was: You had a proposal and you had discussed
 6 with Mr. Murray how much money you wanted to lend him,
 7 \$1,800,000, correct?
 8 A I didn't want to lend him anything. He came and made a
 9 request for me. So, no.
 10 Q Did you ever tell Mr. Murray how much --
 11 (Court reporter interruption.)
 12 Q Did you ever tell Mr. Murray or have a discussion with
 13 Mr. Murray with regard to how much money you wanted --
 14 A No. Mr. Murray asked me if he could borrow 1.8 million.
 15 Q And are you telling me that you never gave him an
 16 indication of how much money you wanted in order to do that,
 17 assuming you were satisfied with all the requirements --
 18 A No. This was never a request of mine. So you're phrasing
 19 it wrong.
 20 Q I'm just asking a question, sir. Is that right?
 21 A No. The answer is no.
 22 Q You don't understand --
 23 A I never made -- no. I never made a request. The way you
 24 phrased it, the answer is no.
 25 Q Okay. Did you discuss how much money --

1 for yourself?
 2 A Correct.
 3 Q All right. And based on what both Mr. Murray and
 4 Mr. Moskowitz told you, Mr. Murray was in a jam; fair
 5 statement?
 6 A No. Not -- that's not what I would call it.
 7 Q In any event, within six hours you had a proposal. You
 8 talked to your lawyer. You had a proposal and you were asking
 9 for a fairly large amount of money to lend him \$1.8 million,
 10 correct? Over \$100,000?
 11 A I'm sorry. Could you repeat the question?
 12 Q Within six hours, you had put together a proposal wherein
 13 you would lend Mr. Murray \$1,800,000 and you would make a very
 14 large sum of money, correct?
 15 A No.
 16 Q How much would you -- you --
 17 A It wasn't a proposal. It was a request for information.
 18 So once you get a certain amount of information, then you
 19 further question the -- and do your due diligence.
 20 So if he had submitted to a background check, provided his
 21 driver's license, passport and everything, then after you get
 22 that, then you run criminal check. You check the SEC and
 23 FINRA.
 24 You don't have an agreement just because he would actually
 25 answer these. If he had answered these honestly -- like the

1 A Yes.
 2 Q And how much money did you discuss?
 3 A \$1.8 million.
 4 Q And did you discuss how much money you would require to
 5 make this loan? You weren't just going to give him
 6 \$1.8 million, correct?
 7 A Right.
 8 Q Strike that. Strike that.
 9 You were going to loan him \$1.8 million. Did you expect
 10 anything in return?
 11 A Well, I wasn't really going to loan him anything. Okay?
 12 The money was going to go into an Oppenheimer account. So it
 13 wasn't going -- it's a loan, a personal loan to Mr. Murray.
 14 Q It was going to go into an Oppenheimer account, correct?
 15 A Right.
 16 Q Were you doing this for free? I mean if it, had happened?
 17 A No.
 18 Q All right. You expected some financial --
 19 A Correct.
 20 Q Okay. How much -- and you discussed with him how much you
 21 expected, did you not?
 22 A Correct. 113,000. It says that in the email. We went
 23 over that.
 24 Q Right. Right. Okay. So you wanted 113,000. You wanted
 25 25 percent, basically, of the profit of the trade, correct?

1 A That was Mr. Murray's suggestion.
 2 Q Okay. It was?
 3 A Yes.
 4 Q Okay. And, in fact, he said -- when he said "way too
 5 much" in answer to that email, didn't that indicate that that
 6 was -- he thought you wanted too much money?
 7 A No. The "way too much" was the request for information
 8 and the background check and the SEC. That's what the "way too
 9 much" was. He actually suggested the amount.
 10 Q Okay. And let me ask you this: If this -- if you would
 11 actually put \$1.8 million in the Oppenheimer account, how long
 12 would it have been in that account? Not very long?
 13 A It would be there -- I'm sure it would be lost in the
 14 ether at this point. The FBI would have seized it and I would
 15 have lost my money.
 16 Q Excuse me. The FBI would have seized it?
 17 A Sure.
 18 Q You don't know that for a fact, do you?
 19 A No.
 20 MS. HARRIS: Objection. This is all asking
 21 speculation.
 22 MR. DRESSLER: Well, he's --
 23 THE COURT: All right. Rephrase the question.
 24 That's the problem.
 25

1 BY MR. DRESSLER
 2 Q Assuming that there was no seizure, assuming that nothing
 3 happened other than you put \$1.8 million in the Oppenheimer
 4 account, all right, and nothing happened other than the account
 5 settled, how long would your money have been in the Oppenheimer
 6 account?
 7 A I have no idea.
 8 Q Okay. Well, it wouldn't have been in there very long,
 9 would it? A week?
 10 A I have no idea.
 11 Q You would have lent someone \$1.8 million with absolutely
 12 no idea when you were going to get your money back, is that
 13 what you're saying?
 14 A That's part of the problem of his story, correct.
 15 Q And you -- you say that you do statistical arbitrage?
 16 A Correct.
 17 Q You do trades with -- through Mark Moskowitz at
 18 Oppenheimer?
 19 A I did.
 20 Q Okay. And you know that when a trade is settled, the
 21 50 percent that has to go into settle a trade, you know it
 22 doesn't stay there very long, don't you?
 23 You're telling me with all your experience, you don't know
 24 how long --
 25 A I'm --

1 Q Let me finish the question, sir.
 2 You don't know how long a trade stays in there?
 3 MS. HARRIS: Asked and answered and argumentative,
 4 your Honor.
 5 THE COURT: Overruled. You can answer the question.
 6 A I do.
 7 BY MR. DRESSLER
 8 Q All right. How long?
 9 A Depends on the type of trade. Every trade is different.
 10 Every settlement is different. There's multiple settlement
 11 processes.
 12 The point is, there is no doubt in my mind. This trade
 13 had been done without funds, okay? That's a violation. It's
 14 called free riding --
 15 Q Excuse me.
 16 THE COURT: Wait.
 17 MR. DRESSLER: It's nonresponsive.
 18 THE COURT: That is nonresponsive. I'm striking it.
 19 BY MR. DRESSLER
 20 Q I'm asking, you indicated you knew how long it would be in
 21 this.
 22 Every trade is different, but there are -- you're aware
 23 there are rules that once a trade is actually settled, then the
 24 \$1.8 million would be --
 25 A But this trade wasn't settled. That's the problem.

1 Q Okay. All right.
 2 A My understanding was -- and stop me if you want to --
 3 Q I am going to stop you now --
 4 THE COURT: The question is: If it had been settled,
 5 what was your expectation of when that money would --
 6 THE WITNESS: But if it had been settled, he never
 7 would have come to me. So it doesn't make any sense. Because
 8 he would have had the money. He wouldn't have needed the 1.8.
 9 And it would never -- he never would have shown up and I
 10 wouldn't be here today.
 11 So that assumption is ridiculous, because I am here today
 12 and it wasn't settled and he needed the money because he traded
 13 with no money.
 14 BY MR. DRESSLER
 15 Q Sir, assuming that you had lent him the money, all
 16 right -- or put the money in the Oppenheimer account, all
 17 right, you don't have any idea how long it would be in there?
 18 A I do. And I told you.
 19 Q How long?
 20 A My guess is it would still be there.
 21 Q Today?
 22 A Yeah.
 23 Q All right. Assuming -- and that's based on what, sir?
 24 A I told you. And I'm more than happy to go into it.
 25 Q No. In terms of -- assuming that there was no FBI, anyone

1 seized the money and took it out of the account, all right,
 2 assuming none of that --
 3 A The SEC would have frozen it with Oppenheimer. You can't
 4 trade if you don't have any money.
 5 Q So --
 6 A That's why we're here.
 7 Q So you can -- are you telling me, sir, that you considered
 8 lending this money with the expectation that you would not get
 9 paid? You would not get the money back?
 10 THE COURT: That's a different question.
 11 He's asking what was your expectation if you had lent the
 12 money? What was your expectation in terms of repayment of the
 13 money, if you had any expectation.
 14 THE WITNESS: Well, I would need to get answers to
 15 the questions I asked before I had any expectations. That's
 16 why I sent the email to ask him the questions.
 17 BY MR. DRESSLER
 18 Q And he rejected the entire agreement, did he not?
 19 A He did. He said, "Whoa, this is way too much."
 20 Q Thank you. I have no other questions?
 21 THE COURT: Anything on redirect?
 22 MS. HARRIS: No, your Honor.
 23 THE COURT: All right. Thank you, Mr. Greenberg.
 24 You may step down. You're excused.
 25 (Witness excused.)

1 THE COURT: As long as it's on vibrate.
 2 MR. DRESSLER: It is on vibrate. I can mute --
 3 THE COURT: That is the one concern I have about
 4 Alternate No. 2. That's the one where his father -- his
 5 father-in-law is dying. I don't know if we want to make an
 6 exception for him or should I just say, "Turn it off?"
 7 MS. HARRIS: I would say, "Turn it off," your Honor.
 8 I mean, if he's here, he has to be focused on the trial.
 9 THE COURT: Okay.
 10 MS. HARRIS: If we're going to excuse him, we're
 11 going to excuse him.
 12 THE COURT: All right.
 13 (Jury enters courtroom at 10:30 a.m.)
 14 THE COURT: All right. Welcome back, ladies and
 15 gentlemen. You can all take a seat. We're going to call the
 16 next witness.
 17 But let me remind the jurors that all electronic devices
 18 should be turned off during the time that we're in court. You
 19 can retrieve your messages during the break.
 20 If there are any emergencies, you can give your contact --
 21 the contact information to the Court and if something comes up
 22 on an emergency basis, we can then get that information to you.
 23 But if we could keep all our cell phones off, I'd appreciate
 24 it.
 25 So you may call your next witness.

1 THE COURT: And we're going to go ahead and take our
 2 first break for 15 minutes.
 3 Just a reminder. Please do not discuss this case amongst
 4 yourselves or with anyone. Don't do any research on your own
 5 or form any opinions until this case is submitted to you for
 6 deliberation.
 7 Thank you.
 8 (Jury exits courtroom at 10:12 a.m.)
 9 THE COURT: All right on. Who is up next?
 10 MR. FARNHAM: Marty Ward from Interactive Brokers.
 11 THE COURT: Okay.
 12 (Whereupon there was a recess in the proceedings
 13 from 10:13 a.m. until 10:27 a.m.)
 14 THE COURT: Before we bring the jury back, I noticed
 15 at one point that Alternate Juror No. 2 is looking at his cell
 16 phone. So I'm going to gently remind them to turn off all
 17 electronic communication, all right?
 18 MR. FARNHAM: Okay.
 19 THE COURT: I just want to state that for the record.
 20 MR. DRESSLER: Your Honor, with regard to that, my
 21 oldest daughter is about to have her second baby. I have it
 22 off today, but next week it will be on silent, but they are
 23 going to buzz me when she --
 24 THE COURT: Okay. That does raise some --
 25 MR. DRESSLER: I will --

1 MR. FARNHAM: Thank you, your Honor. The Government
 2 calls Marty Ward.
 3 MARTIN WARD,
 4 called as a witness for the Government herein, having been
 5 first duly sworn, was examined and testified as follows:
 6 THE WITNESS: I do.
 7 THE CLERK: Please be seated and state your name for
 8 the record.
 9 THE WITNESS: My name is Martin Ward.
 10 THE COURT: Thank you, Mr. Ward.
 11 You may proceed.
 12 MR. FARNHAM: Thank you, your Honor.
 13 DIRECT EXAMINATION
 14 BY MR. FARNHAM
 15 Q Mr. Ward, could you spell your last name just so we make
 16 sure we have it right?
 17 A Ward is W-A-R-D.
 18 Q Good morning, Mr. Ward. Who do you work for?
 19 A I work for Interactive Brokers, LLC.
 20 Q How long have you worked there?
 21 A Approximately 10 years.
 22 Q What's your position there?
 23 A I'm compliance counsel.
 24 Q What are your general responsibilities as compliance
 25 counsel at Interactive Brokers?

1 A I coordinate our responses to what we call regulatory
2 correspondence. All of the dealings that we have with the
3 regulators with which we do business, the exchanges on which we
4 do business, law enforcement, civil legal matters, I coordinate
5 the putting together of the records that are necessary to
6 respond to those types of requests and make sure that they get
7 out on time to the right people and in the -- you know, in the
8 proper -- put together correctly.

9 Q And in that role are you familiar with the records that
10 are kept by Interactive Brokers?

11 A I am.

12 Q And are you familiar with the operation of the company?

13 A I am.

14 Q What is Interactive Brokers?

15 A Interactive Brokers is an exclusively online brokerage
16 that offers trade execution and clearing services to public
17 customers around the world.

18 Q And when you say "exclusively online," what does that
19 mean?

20 A It means we don't have any offices. We don't have
21 anywhere that you can walk in and open an account. Everything
22 is actually done via the internet.

23 Q And when you say -- and does that include, like, even the
24 application process?

25 A Absolutely.

1 Q To open an account?

2 A It has to be done online.

3 Q And you said trading and clearing. What's being traded
4 and cleared in an Interactive Brokers' account?

5 A Stocks, options, futures, options on futures, bonds,
6 mutual funds, contracts for difference; financial, financial
7 products.

8 Q And is there -- would you say that there is a
9 specialization for Interactive Brokers? What's their niche?

10 A We are the low price leader and we have a very, very
11 highly sophisticated technologically advanced trading platform
12 that is essentially geared toward professional traders.

13 MR. FARNHAM: Your Honor, I'd like to approach with
14 the first document.

15 THE COURT: All right.
(Whereupon document was tendered to the witness.)

16 BY MR. FARNHAM

17 Q Mr. Ward, I've handed you what's been marked as
18 Exhibit 248 for identification.

19 Actually, I take that back. This has been admitted per
20 stipulation.

21 What is Exhibit 248?

22 A It appears to be a packet of account documents and records
23 for a particular account that was opened at Interactive
24 Brokers, Account No. U614416, in the name of Market Neutral

1 Trading, LLC.

2 MR. FARNHAM: Your Honor, may I publish portions of
3 Exhibit 248?

4 THE COURT: Yes.

5 BY MR. FARNHAM

6 Q If we could start on Page 2 of Exhibit 248?
(Document displayed)

8 THE COURT: This has been admitted?

9 MR. FARNHAM: It has been admitted.

10 THE COURT: All right.

11 BY MR. FARNHAM

12 Q Could you tell me from on Page 2, Mr. Ward, what's the --
13 you mentioned the name of the account holder I believe. What
14 does it say on Page 2 for the Account Name?

15 A The Account Name was Market Neutral Trading, LLC.

16 Q And in the second box from the top, can you tell when this
17 account was opened?

18 A July 22nd, 2009.

19 Q And I want to look at some further information about the
20 account. Could we go to Page 6?

21 (Document displayed)

22 Q Is this additional information about this account from
23 Interactive Brokers' records?

24 A It is.

25 Q For this account, who is the -- the Principal?

1 A The Principle is listed as someone named Mike J. Murray.

2 Q And what is the Principle? What does that mean?

3 A That would be the person that was identified to
4 Interactive Brokers as the owner or controller, the person over
5 the account that had control and decision making authority.

6 Q Who could go into the account and trade and withdraw and
7 deposit?

8 A Yes.

9 Q And if we could look at the box that's being highlighted
10 there, there is also an email address and an address. Could
11 you read those, tell us what those are?

12 I'm looking in the Principal box. I'm sorry.

13 A The email address that was given was
14 jmurray@marketneutraltrading.com.

15 And the address that was given as a residential address
16 was 505 Montgomery Street, Suite 1100, San Francisco,
17 California 94111.

18 Q If we could turn to Page 67 of this document?
19 (Document displayed.)

20 Q What is this page of Exhibit 248?

21 A It is a picture of a driver's license that was submitted
22 to us for identification purposes.

23 Q And was this a -- was this driver's license required to be
24 submitted in order to open this account?

25 A Yes, it was.

- 1 Q Why is that?
- 2 A Normally, for United States-based applicants, we try to
3 verify identities by using Equifax and if we can do so, if the
4 information that they have given us matches what we get back
5 from Equifax, then we don't require that people submit identity
6 documents.
- 7 In this particular case the person who was applying for
8 the account in the name of Mike J. Murray, I believe it was, we
9 could verify that person's name and their Social Security
10 number, but the address that was given didn't match what came
11 back from Equifax. So we required this person to submit proof
12 of address. And that's why we required the driver's license to
13 be submitted.
- 14 Q When you say "request proof of address," how is that
15 request made?
- 16 A We would send them an email.
- 17 Q If we could go back to Page 6 again briefly?
- 18 MR. FARNHAM: 6, I'm sorry.
19 (Document displayed)
- 20 BY MR. FARNHAM
- 21 Q And so the -- zooming in on that box of information
22 provided, was that information provided by the applicant in
23 this case?
- 24 A It was.
- 25 Q If we could go -- look further down on that page. There

- 1 is a Disciplinary Events paragraph and a few questions. Do you
2 see that?
- 3 A Yes.
- 4 MR. FARNHAM: A little bit further down, Disciplinary
5 Events.
6 (Document enlarged.)
- 7 BY MR. FARNHAM
- 8 Q What is that section of this document?
- 9 A These are questions that we ask in the application process
10 about any past history that may have taken place regarding
11 regulatory authorities, law enforcement, things that nature.
- 12 Q So the "nos" in the right-hand column, where did that
13 information come from?
- 14 A Those were the answers that were submitted online during
15 the application process.
- 16 MR. FARNHAM: May I approach with another exhibit,
17 your Honor?
- 18 THE COURT: Yes.
19 (Whereupon document was tendered to the witness.)
- 20 BY MR. FARNHAM
- 21 Q Mr. Ward, I've handed you what's been marked as Exhibit
22 242.
- 23 MR. FARNHAM: It has also been previously admitted,
24 your Honor, and I would like permission to publish portions of
25 that document.

- 1 THE COURT: You may.
- 2 BY MR. FARNHAM
- 3 Q What is document 242?
- 4 (Document displayed.)
- 5 A Document 242 is another set of account documents that are
6 associated with another account held at Interactive Brokers.
7 It's account [REDACTED] in the name of MNT Master Fund, Limited.
- 8 Q If we could look at Page 2 of that document?
- 9 (Document displayed)
- 10 Q What is Page 2?
- 11 A Page 2 is the Account Information page that is held within
12 our customer account database, essentially a screen-scape of
13 that screen that would be seen in my computer system if I
14 looked up this particular account.
- 15 Q This is the information that Interactive Brokers stored
16 about this account?
- 17 A Yes.
- 18 Q Can you tell me, looking at that second box Accounts of
19 MNT Master Fund, Limited --
- 20 A Yes.
- 21 Q -- what does that box show?
- 22 A It's a listing of five different accounts that are all
23 associated -- they are all actually one single account. They
24 are just five separate subdivisions of that single account.
- 25 Q Okay. So those numbers underneath -- you mentioned the

- 1 account number ending [REDACTED] Is that the main account?
- 2 A That is the main account. It's the one that was opened
3 first. It's the master account.
- 4 Q And tell me what those numbers below that are again?
- 5 A Those are other service accounts or sub-accounts that were
6 requested to be opened by the owner of the original account
7 ending in [REDACTED]
- 8 Q Does the process for opening that first account, 0240,
9 differ from opening those sub-accounts?
- 10 A Yes. The opening of the [REDACTED] would require the entire
11 process of going through the online application and submission
12 of any identification documents, if necessary, and the entire
13 process of us vetting the character.
- 14 The secondary ones, the rest of these accounts, would be
15 opened at the request of the account holder.
- 16 Q If we could turn to Page 9 of this document, Exhibit 242?
17 (Document displayed)
- 18 Q I want to start at the bottom. What is the information
19 that's shown here?
- 20 Applicant Associated Entities, what does that mean and
21 what's the information?
- 22 A Here we would have listed all of the people who are
23 identified to us as Interactive Brokers as associated with or
24 having any capabilities or privileges in the account, ability
25 to either trade the account, manipulate the account, add funds,

1 withdraw funds, anything like that. So we collect all the
 2 names and their associated information.
 3 Q According to this page, who has authority over this
 4 account?
 5 A James Murray. He's listed as the fund manager and the CIO
 6 and the signatory.
 7 Q And can you read the email address that was provided?
 8 A James.m@event-trading-fund.com.
 9 Q If we could look at Page 2, the next page?
 10 (Document displayed)
 11 Q It also looks like there is a shareholder category. What
 12 is that?
 13 A We collect not only those persons' information that have
 14 privileges within the account to trade or manipulate it, we
 15 also want to know who the actual owners are.
 16 And so in the case of an organization type account, like
 17 this was, we want to know any 20 percent or more owners of the
 18 account.
 19 And so we asked for ownership information and the
 20 information that was given was that James Murray was the 100
 21 percent owner of the account.
 22 Q If we could look at the next box down on the same page, it
 23 talks about Associated Legal Entity Information. Do you see
 24 that?
 25 A Yes.

1 Q What is that box?
 2 A With hedge fund accounts like this, we want to know who
 3 the people are who have authority to trade, but we also would
 4 want to know a fund administrator.
 5 A fund administrator is the type -- is the entity that is
 6 responsible for taking care of all the niceties, filing
 7 documents and tax records and whatever else. And so we ask the
 8 fund owner or the fund manager to identify to us who it is that
 9 the administrator is.
 10 Q And was that required to be provided for this type of
 11 account?
 12 A Yes.
 13 Q I want to look at some of the other information that may
 14 have been submitted to Interactive Brokers regarding this.
 15 Starting on Page 29 of Exhibit 242.
 16 (Document displayed)
 17 Q What is this document, this page?
 18 A It purports to be a Certificate of Incorporation issued by
 19 some official from the Cayman Islands stating that MNT Master
 20 Fund, Limited was incorporated in the Cayman Islands this 15th
 21 day of June 2011.
 22 Q Why is this page in the Interactive Brokers' documents?
 23 A We would have required proof of existence of the entity
 24 that was opening the account, and this is a document that we'll
 25 accept as proof of existence.

1 Q This was submitted by the applicant?
 2 A Yes.
 3 Q And if we could look at Page 30.
 4 (Document displayed.)
 5 Q What is that document, that page of this document?
 6 A That is a copy of the handwritten Account Application page
 7 where we ask for the signature at the end of the application.
 8 Q And that was submitted by the applicant?
 9 A It was.
 10 MR. DRESSLER: Excuse me -- oh, there it is. I
 11 apologize. Not saying anything.
 12 THE COURT: Okay.
 13 BY MR. FARNHAM
 14 Q Okay. Could we look at Page 37 for a minute?
 15 (Document displayed)
 16 Q What is this document and why is it in the Interactive
 17 Brokers' materials?
 18 A The document starting on Page 37 and going on for several
 19 pages thereafter is the Offering Memorandum for MNT Fund,
 20 Limited.
 21 When we open a hedge fund account, we ask that the fund
 22 supply to us a copy of their Offering Memorandum or Private
 23 Placement Memorandum, because these documents will name within
 24 them who the fund manager is, what the fund strategy is, and
 25 generally explain what the whole purpose of the fund's

1 existence is. And we find it helpful to have that on file so
 2 that, you know, our records are complete and we can check the
 3 information that has been given in the application versus
 4 what's being offered to the public.
 5 Q Could we move on to Page 97 of this document, Exhibit 242?
 6 (Document displayed)
 7 Q What does that page show?
 8 A This is a cashing record. It shows a deposit being
 9 made to the master account, [REDACTED], for \$2.6 million on
 10 January 4th, 2012.
 11 Q And what -- what method of transfer was this?
 12 A It was a wire.
 13 Q Can you tell where the wire came from? It looks like in
 14 Payment Details there's some information.
 15 A The wire came to us at Interactive Brokers. Our banking
 16 is done through CitiBank. It came to us from...
 17 (Brief pause.)
 18 A It came to us from Northern Trust, but I can also see in
 19 the details that Northern Trust was being used as a
 20 correspondent bank and that the ultimate bank from which the
 21 money came was some bank in the Cayman Islands.
 22 Q And what account did the payment come from? Who is the
 23 account holder?
 24 A It says it came from MNT Master Fund, Limited.
 25

1 Q If we could look briefly at the next page, Page 98?
 2 (Document displayed)
 3 Q What does that page show?
 4 A This page shows a withdrawal being made from the same
 5 account, [REDACTED]. This is a withdrawal of \$500,000 done on
 6 January 13th, 2012, and it was being withdrawn from Interactive
 7 Brokers, going through Northern Trust to some eventual account
 8 in the name of MNT Master Fund, Limited.
 9 MR. FARNHAM: Your Honor, may I approach with a
 10 couple more documents?
 11 THE COURT: Yes.
 12 (Whereupon documents were tendered to the witness.)
 13 BY MR. FARNHAM
 14 Q Before we get to those Mr. Ward, in 2012 did Interactive
 15 Brokers receive a Court ordered seizure warrant regarding any
 16 of the accounts we discussed?
 17 A We did.
 18 Q Which account was that?
 19 A I believe it was the MNT Master Fund, Limited account.
 20 Q Did you have any role regarding Interactive Brokers'
 21 compliance with that order?
 22 A I did. I received it and I coordinated our response in
 23 making sure that the account itself got frozen so that no
 24 withdrawals could be made; that the trading capabilities were
 25 turned off; and that we collected the funds out of the account

1 and transmitted them to the authorities, as we had been
 2 directed by the seizure warrant.
 3 Q If you could just look at Exhibit 242, Page 2? It's one
 4 you just looked at a minute ago.
 5 (Document displayed)
 6 Q The accounts of MNT Master Fund, Limited, are those the
 7 accounts that were the subject of that seizure order?
 8 A Yes. The accounts that are listed on Page 2 of Exhibit
 9 242.
 10 Q And then you talked about the steps that you took to help
 11 comply with that order.
 12 After the execution of that order, that warrant, what
 13 happened to those accounts?
 14 A The accounts would have been closed after the money had
 15 been drained out of them and sent to the proper officials.
 16 Q After -- after that warrant was executed, would MNT Master
 17 Fund -- could any another accounts be opened in that entity's
 18 name at Interactive Brokers?
 19 A No. Once we had been served with and took care of
 20 whatever we needed to do with the seizure warrant, we would
 21 have put MNT Master Fund, Limited and any of its principles
 22 that were named on it, on what's called our red flag list, so
 23 that if an account was attempted to be opened by that
 24 particular entity or any of the people associated with it, it
 25 would come up as part of our account opening process and be red

1 flagged, and then it would be essentially a management
 2 decision, in which case, a case like this, we just would not
 3 open the account. We would reject it.
 4 Q What about an account with -- in the James Murray or with
 5 him as a principle?
 6 A James Murray had been named on the MNT Master Fund. His
 7 name was added to the list, to the red flag list in March of
 8 2012.
 9 Q What if a separate entity applied for an account with
 10 James Murray as principal?
 11 A James Murray would have caused the red flag to come up.
 12 Q If you can look at what's been marked as Exhibit 292?
 13 MR. FARNHAM: Your Honor, this has also previously
 14 been admitted and I would like permission to publish portions
 15 of that.
 16 THE COURT: All right.
 17 BY MR. FARNHAM
 18 Q What is Exhibit 292?
 19 (Document displayed.)
 20 A 292 appears to be a packet of documents all relating to
 21 another account that was opened at Interactive Brokers. This
 22 is account U00 -- I'm sorry [REDACTED]. This account was opened
 23 in the name of Event Trading GP, LLC.
 24 Q And what was the date that account was opened?
 25 A It was opened July 25th, 2012.

1 Q Was this before or after the seizure warrant, if you
 2 recall?
 3 A It was after the seizure warrant.
 4 Q If we look at Page 4 of this document?
 5 (Document displayed)
 6 MR. FARNHAM: It's not the right document coming up.
 7 We're looking at Exhibit 292 Page 4.
 8 (Document displayed.)
 9 MR. FARNHAM: That's right. Thank you.
 10 BY MR. FARNHAM
 11 Q I want to talk about the Applicant Associated Entities
 12 portion that starts about halfway down the page.
 13 According to this document, who has authority over this
 14 account?
 15 A A person named Giovanni de Francischi.
 16 Q If you look at that first box that's labeled Signatory
 17 Trader, do you see that?
 18 A Yes.
 19 Q Tell me where that information in that box came from?
 20 A That would have been supplied to us in the online
 21 application.
 22 Q From the online application process?
 23 A Yes.
 24 Q What was the email address that was provided during that
 25 process?

1 A James.m@event-trading-fund.com.
 2 Q And what's the address that was provided?
 3 A 580 California Street, 12th Floor, Suite 1256,
 4 San Francisco, California, 94104.
 5 Q And according to this document, were there any other
 6 people that would have had authority or signatory authority
 7 over that account?
 8 A No.
 9 Q If we look on the next page, Page 5?
 10 (Document displayed)
 11 Q You see there is a Disciplinary Events section, like we
 12 saw before?
 13 A Yes.
 14 Q And that's a little bit near the top. And the "no"
 15 answers on the right, who provided those?
 16 A Whoever was filling out the application online.
 17 Q Would any of those questions need to be "yes" if a person
 18 had been sued by the SEC and charged with fraud?
 19 A The second one would be.
 20 "Has the organization or any of its officers or
 21 authorized traders ever been the subject of
 22 investigation or proceeding by any commodities or
 23 securities exchange or regulatory authority or
 24 self-regulatory authority?"
 25 That would definitely be a "yes" answer if it -- if we're

1 talking about somebody who had been sued by the SEC.
 2 Q What about a person that had been charged with wire fraud,
 3 would any of those questions have to be "yes"?
 4 A Second one definitely would be.
 5 And then the third one:
 6 "Have any of the principals, officers or
 7 authorized traders of the organization ever been
 8 arrested for, or convicted of, a crime?"
 9 That would also be a "yes" answer.
 10 Q If we could go take Page 8 of this document, Exhibit 292.
 11 (Document displayed)
 12 Q There is a section here about one-third of the way down
 13 that says, "Document Submission Tasks." Do you see that?
 14 A Yes.
 15 Q What does that refer to?
 16 A It refers to the documents that were requested by
 17 Interactive Brokers that the applicants provide to us so that
 18 we can verify identities and existences of corporate entities
 19 and just -- our customer opposition process is what it's
 20 called.
 21 Q I want to draw your attention to the item in that box --
 22 one, two, three, four, five -- the sixth item down. It says:
 23 "Proof of address for Mr. Giovanni de Francisci."
 24 Do you see that?
 25 A Yes, yes.

1 Q What does that line indicate you to? What is the
 2 information there?
 3 A We asked the applicant to provide us some sort of proof of
 4 address because, as we talked about earlier, in this particular
 5 case it appears that our attempt to verify this particular
 6 person's identity using Equifax did not match the address that
 7 had been given to us as the address for this person. So we
 8 asked them to provide us some sort of proof of that address.
 9 Q And how does that -- how do you ask that? How does that
 10 go out?
 11 A We send them an email.
 12 Q How was the -- was the information provided to Interactive
 13 Brokers after that request?
 14 A Yes.
 15 Q And how was it submitted?
 16 A The applicant logged back into the Account Application
 17 process on our website and they uploaded a document, sent it to
 18 us essentially through our own website, showing a bank
 19 statement with the address that had been given in the
 20 application.
 21 Q It says here, "Via form upload." What does that mean?
 22 A It's a process by which applicants can log onto the
 23 Interactive Brokers' website and upload -- for lack of a better
 24 word, upload electronic copies of documents.
 25 Q Send electronically to Interactive Brokers?

1 A Yes.
 2 Q And what's the date and time that was done?
 3 A It says it was done July 17th, 2012 at 15:46:48.
 4 Q The next box over there says Approved and some other
 5 information. What does that mean?
 6 A Somebody would have had to take a look at the document
 7 that was submitted to us and verify that it fit the bill. You
 8 know, that it was sufficient to prove what it purported to
 9 prove.
 10 Q And you mentioned that that request would go out by email,
 11 the request for that additional information?
 12 A Yes.
 13 Q What would the email -- what would it be saying?
 14 A The email would say: We've been unable to verify the
 15 address that you said on your application. Please provide us
 16 with a recent utility bill or bank statement or something that
 17 would verify your address.
 18 Q If we could go back to Page 4?
 19 (Document displayed.)
 20 Q What address would that email have been sent to, that
 21 request for more information?
 22 A It would have been sent to james.m@event-trading-fund.com.
 23 Q If we could go to within this document, Exhibit 292, to
 24 Page 197?
 25 (Document displayed)

1 Q What is that document? What is that page?
 2 A This appears to be the bank account statement that was
 3 submitted to Interactive Brokers to prove the address.
 4 Q And, again, what is the reviewer who -- at Interactive
 5 Brokers that looks at this, what are they looking for?
 6 A They are looking that it's a recent or current document
 7 that matches up with the information that had been provided
 8 online as part of the application. And, generally, we're
 9 looking at the document to see that it's legitimate; that it
 10 appears to be, you know, what it purports to be.
 11 Q And that the address matches the application?
 12 A Definitely.
 13 MR. DRESSLER: I'm sorry.
 14 A That's the point.
 15 MR. DRESSLER: What page are we looking at?
 16 MR. FARNHAM: 197 of Exhibit 292.
 17 BY MR. FARNHAM
 18 Q If we could go to page -- if we could go to Page 199. 199
 19 of Exhibit 292.
 20 (Document displayed.)
 21 Q This looks like a bank activity page. If you could tell
 22 me -- and is this a wire transfer document?
 23 A It appears -- yes. It appears to be records of the wire
 24 transfer that was made into Account [REDACTED].
 25 Q Can you just tell us the date and amount and party that

1 originated this?
 2 A This was done on August 9th, 2012. The amount was
 3 \$260,882.65.
 4 And it says that it was coming By Order Of MNT Master
 5 Fund, Limited, 580 California Street, 12th Floor,
 6 San Francisco, California.
 7 Details: For further credit to Event Trading GP, LLC,
 8 Account No. [REDACTED].
 9 Benefit Of: That Same account number.
 10 By Order Of: MNT Master Fund, Limited.
 11 Q Do you recognize that name of that entity, MNT Master
 12 Fund, Limited?
 13 A MNT Master Fund, Limited was the entity whose accounts had
 14 been seized earlier in 2012.
 15 Q If you look at Page 200, the next page in the same
 16 exhibit?
 17 (Document displayed)
 18 Q Is this also a wire transfer document? Does it show a
 19 wire transfer?
 20 A It does. It's -- again, it's a wire transfer into account
 21 [REDACTED] in the name of Event Trading GP, LLC. That's the name
 22 of the account it was going into. It's for \$50,000. It's done
 23 on August 15th, 2012.
 24 And it says that it came By Order Of Michael J. Murray,
 25 2007 Northeast 33rd Place, Renton, Washington.

1 Q Does that Michael J. Murray, does that indicate the
 2 account holder that sent the wire?
 3 A It only indicates the information that was transmitted to
 4 us as to who had sent the wire.
 5 Q And what does it say next to By Order Of on the next page?
 6 Do you see where I'm referring to? Under the box that
 7 says Payment Details, there is a line that says By Order Of.
 8 A Oh, By Order Of. There appears to be a bank account
 9 number of 10 or so digits. This is Michael J. Murray. Michael
 10 J. Murray, 2007 Northeast 33rd Place, Renton, Washington, and
 11 then the zip code.
 12 Q If I could have you look at one last document? It's
 13 marked as Exhibit 305.
 14 (Witness complied.)
 15 Q If you could tell me if you recognize Exhibit 305?
 16 A Exhibit 305 is, once again, documents that have been
 17 produced out of Interactive Brokers' customer account database.
 18 These are for a particular account U1066482 in the name of
 19 Joseph Gianluca de Francisci.
 20 Q And what was the -- when this -- I'm sorry. This is not
 21 yet in evidence.
 22 MR. FARNHAM: Your Honor, I would offer Exhibit 305
 23 into evidence.
 24 THE COURT: Any objection?
 25 MR. DRESSLER: No, your Honor.

1 THE COURT: Admitted.
 2 (Trial Exhibit 305 received in evidence.)
 3 MR. FARNHAM: If I may publish it, your Honor?
 4 THE COURT: Yes, yes.
 5 MR. FARNHAM: It's actually very hard to read, even
 6 on the screen.
 7 If we could zoom in on the Account Balance amount?
 8 (Document displayed.)
 9 BY MR. FARNHAM
 10 Q When this was -- when this information was prepared, what
 11 was the account balance in that account?
 12 A \$22,702.
 13 Q So I want to ask you about information that starts on
 14 Page 6 of this document.
 15 (Document displayed.)
 16 Q And this document relates to an Interactive Brokers
 17 trading account?
 18 A Yes.
 19 Q The information that starts at the beginning -- I'm sorry,
 20 the middle of Page 6, what is that information?
 21 A Those are Internet Protocol addresses that we capture when
 22 account holders of ours log in to their accounts on the I.B.
 23 website. And these are logins to their Account Management
 24 functions of their account.
 25 Account Management is where you manage your personal

1 information, enter deposit or withdrawal notifications, look at
 2 statements, get customer service tickets or messages; sort of
 3 all of the administrative stuff, other than trading.
 4 Q And that's -- that's the Account Management portion of the
 5 Interactive Brokers' website?
 6 A Yes.
 7 Q So is there a column here that indicates -- you said IP
 8 addresses?
 9 A IP addresses are on the far right. They are -- on this
 10 document they are in blue.
 11 Q What is that -- what do those mean, those IP address
 12 information mean in this document?
 13 A The IP address is sort of your residence on the internet.
 14 It's where you exist in your current session of accessing the
 15 internet. And it's typically sent to you or given to you by
 16 your internet service provider. And at any given moment it is
 17 unique to you.
 18 Q And so for this document is that what the IP address
 19 information shows? It's the user's IP address?
 20 A It is the user's IP address, the user that is logging into
 21 the Account Management section of the I.B. website for this
 22 account.
 23 Q Starting at the -- I want to ask you about a particular IP
 24 address. And it's very small and I apologize. We can try to
 25 zoom in on the screen, also.

1 (Document was shown to the counsel.)
 2 Q The IP address I want to ask you about is 204.227.230.18.
 3 A Yes.
 4 Q If we could zoom very close into just this number so we
 5 can see it for a minute?
 6 (Document enlarged.)
 7 Q That bottom number is what I want to ask you about. Is
 8 that an IP address that logged into the Account Management
 9 portion of Interactive Brokers' website for this account?
 10 A That's the IP address we captured when it logged in.
 11 Q What's the date and time of this particular line?
 12 A This particular login was done February 5, 2014 at
 13 15:57:57.
 14 Q We could leave that up on the screen, that's okay.
 15 But if we could look at the second page of exhibit -- I'm
 16 sorry, Page 7 of Exhibit 305 and tell me if you see that IP
 17 address at the top for other dates and times, and if you could
 18 just tell me what those were?
 19 A I do. The first instance of logging in using this
 20 particular IP address appears to have taken place on
 21 January 28th, 2014.
 22 And then it continued with other logins that took place on
 23 January 29th, January 30th, February 4th.
 24 And then continuing into later in February, where it
 25 appears that the last time that was -- the account was logged

1 into, the Account Management section was logged into from this
 2 particular IP address appears to have taken place on
 3 February 18, 2014.
 4 Q Thank you. Just a moment.
 5 (Discussion held off the record between Government
 6 counsel.)
 7 MR. FARNHAM: That's all I have. Thank you.
 8 THE COURT: All right. Thank you.
 9 Cross?
 10 CROSS EXAMINATION
 11 BY MR. DRESSLER
 12 Q Good afternoon, sir.
 13 A Good afternoon.
 14 Q Is it a policy of Interactive Brokers that incoming wires
 15 for deposit to an offshore corporate account must come from a
 16 bank account in that same company's name?
 17 A I don't believe I would say it's a strict policy, no.
 18 Q So it's a policy, but not a strict policy?
 19 A We -- we attempt to match up deposits based on the
 20 information that comes in with them, and we attempt to
 21 discourage third-party deposits in that we don't want strangers
 22 funding accounts at Interactive Brokers. It's not good
 23 anti-money laundering policy.
 24 So, but that being said, we do allow broker-to-broker
 25 transfers, which may or may not come -- you know, it could come

1 either in a different corporate name or even a personal name
 2 into a corporate account. There are exceptions.
 3 Q Okay. The account in the name of Event Trading, you know
 4 what I'm talking about?
 5 A Yes.
 6 Q Okay. I think it was --
 7 A You mean, 1090538?
 8 Q Exhibit 292 is where those documents are.
 9 A 292?
 10 Q Yes.
 11 That kind of trading account requires -- that particular
 12 account required cleared funds in order to be traded, correct?
 13 A It had to have a positive balance for margin purposes.
 14 Q Right. So, I mean, in order to trade, there had to be
 15 money in there?
 16 A Correct.
 17 Q Okay. And you indicate that the Interactive Brokers'
 18 platform is very advanced?
 19 A Yes, it is. Highly sophisticated.
 20 Q Highly sophisticated, okay.
 21 And a part of that program is to -- it has a -- I struggle
 22 with these terms, so forgive me in advance.
 23 It has an automatic liquidation system, does it?
 24 A It does.
 25 Q Okay. And the idea of that is that when an account falls

1 below the margin requirement for that particular account, the
 2 system automatically liquidates the position? If that's the
 3 correct term.
 4 A That's correct.
 5 MR. FARNHAM: I object. Relevance and beyond the
 6 scope, your Honor.
 7 THE COURT: It's beyond the scope, as far as I can
 8 see.
 9 MR. DRESSLER: I just have a couple questions that
 10 will save me from calling him back at a later time.
 11 THE COURT: All right. Then this is your direct.
 12 MR. DRESSLER: Yes.
 13 BY MR. DRESSLER
 14 Q And the purpose of that is what?
 15 A Risk management.
 16 Q Okay. And the purpose of risk management is -- in this
 17 particular instance is what?
 18 A Let me back up and try to sort of give an overview of it.
 19 Because we are a wholly online broker and we do not --
 20 unlike other brokers, we don't give any trading or tax or
 21 investment advice. We are solely a platform. We're not going
 22 to tell you what to do. We're not going to advise you. We're
 23 not going to look over your shoulder.
 24 But we're -- we have certain rules, all of which are
 25 computerized, by which we're going to manage our risk.

1 Because, remember, at the end of the day if you put in a trade
 2 and you don't have the funds for it, the system as it works
 3 today, Interactive Brokers is still on the hook for your
 4 trades. So we don't want to be paying for positions that you
 5 can't pay for because you're under margin.
 6 So if you get close to the line or if you actually cross
 7 the line, we have programmed our systems. We're not going to
 8 call you and say: Put money in your account. Margin call. We
 9 don't do that. We start selling off or buying you in,
 10 depending if you're long or short. And that's the way that we
 11 don't end up at the end of the day having to pay for your
 12 losses.
 13 Q Exactly. So basically the idea is that that way you
 14 don't -- Interactive Brokers doesn't have to worry about being
 15 on the hook for -- losing any money on a trade?
 16 A That's not -- that's entirely not true.
 17 Q No, I mean, but that's the idea.
 18 A That's the idea, yes.
 19 Q All right. And in terms of the fee that Interactive
 20 Brokers charge for its service, that is a percentage of -- of
 21 the time frame --
 22 A No.
 23 Q How --
 24 A Typically, flat fees.
 25 Q Okay. You do a flat fee?

1 A Half a penny a share, on stocks.
 2 Q Okay.
 3 A On futures, depending on what exchange it traded on, it is
 4 typically -- you know varies, but relatively cheap.
 5 Essentially like futures, maybe \$3 a contract. Options, if you
 6 use our smart routing system, will be 70 cents a contract. If
 7 you decide to direct your own orders it might be a buck per
 8 contract. Really pretty cheap industry-wide.
 9 Q So it's by transaction, so whether it's a winning or
 10 losing transaction, that fee is -- is charged to the client?
 11 A Yes.
 12 Q Okay.
 13 MR. DRESSLER: That's all I have. Thank you very
 14 much.
 15 THE COURT: Thank you. Anything on redirect?
 16 MR. FARNHAM: One question, Your Honor.
 17 THE COURT: All right.
 18 REDIRECT EXAMINATION
 19 BY MR. FARNHAM:
 20 Q Mr. Ward, you were asked about the Event Trading account.
 21 Would that account have been opened if a bank statement was
 22 submitted with Jim Murray's name on it?
 23 A No, it would not have.
 24 MR. FARNHAM: That's all I have.
 25 THE COURT: All right. Anything further?

1 MR. DRESSLER: No. No, Your Honor.
 2 THE COURT: All right. Thank you, Mr. Ward. You are
 3 excused, and you may step down.
 4 THE WITNESS: Thank you.
 5 (Witness excused)
 6 THE COURT: Government may call its next witness.
 7 MS. HARRIS: Thank you, Your Honor. The United
 8 States calls Maria Micioni.
 9 MARIA MICIONI,
 10 called as a witness for the Government herein, having been
 11 first duly sworn, was examined and testified as follows:
 12 THE CLERK: State your name, and spell your last
 13 name.
 14 THE WITNESS: Maria Micioni. Last name is
 15 M-I-C-I-O-N-I.
 16 THE COURT: All right. Thank you, Ms. Micioni.
 17 You may proceed, Ms. Harris.
 18 DIRECT EXAMINATION
 19 BY MS. HARRIS:
 20 Q Good morning, Ms. Micioni. Where do you work?
 21 A At Discover Financial Services.
 22 Q And how long have you worked for Discover Financial
 23 Services?
 24 A Ten years.
 25 Q What do you do there?

1 A I investigate allegations of fraud and forgery against the
 2 company and its customers.
 3 Q What are your general duties and responsibilities?
 4 A Investigate fraud.
 5 Q Do your duties include searching phone records in response
 6 to document subpoenas?
 7 A Part of the time, yes.
 8 Q Are you familiar with the way in which Discover transmits
 9 monthly statements to its customers?
 10 A Yes.
 11 Q And are you also familiar with the way in which Discover
 12 formats monthly statements that are sent to its customers?
 13 A Yes.
 14 Q Does Discover Bank maintain records for customers that
 15 have accounts with the bank?
 16 A Yes.
 17 Q Does Discover Bank offer its customers a product called a
 18 money market account?
 19 A Yes.
 20 Q Are statements transmitted to customers on a monthly
 21 basis?
 22 A Yes.
 23 Q And are these monthly statements also available to
 24 customers online?
 25 A Yes.

1 Q Does Discover have a website where customers can pull up
 2 their account information from the internet?
 3 A Yes.
 4 Q Is it the regular practice of Discover Bank to keep
 5 records of monthly statements for customers who have accounts
 6 with Discover Bank?
 7 A Yes, it is.
 8 Q And are these records kept in the ordinary course of
 9 Discover Bank's business?
 10 A Yes.
 11 Q Are you familiar with the search for Discover Bank's
 12 records for a James Michael Murray?
 13 A I am.
 14 Q Did Discover Bank search for records for the calendar year
 15 2012?
 16 A Yes.
 17 Q Did Discover Bank locate records for customer James Murray
 18 for the calendar year 2012?
 19 A Yes.
 20 Q Did James Murray have money market accounts with Discover
 21 Bank?
 22 A Yes.
 23 Q Was one of the money market accounts No. 523-174942-1?
 24 A Yes.
 25 Q Okay. And was one of the money market accounts that James

1 Murray had with Discover Bank for the calendar year 2012,
 2 Account No. 523-165338-0?
 3 A Yes.
 4 Q Drawing your attention to James Murray's money market
 5 account with Discover Bank with the numbers 523-16-5338-0, did
 6 your department locate a monthly statement for the time period
 7 April 22, 2012, through May 20, 2012?
 8 A Yes.
 9 MS. HARRIS: Your Honor, may I approach the witness?
 10 THE COURT: Yes.
 11 BY MS. HARRIS:
 12 Q Showing you what's been marked as Government Exhibit 291,
 13 do you recognize Government Exhibit 291?
 14 A I do.
 15 Q Is Exhibit 291 the first page of James Murray's Discover
 16 money market account statement for the time period April 22,
 17 2012, through May 20, 2012?
 18 A Yes.
 19 Q And was Exhibit 291 part of the records kept in the
 20 ordinary course of business for Discover Bank?
 21 A Yes.
 22 Q Are the entries on Exhibit 291 made at or near the time of
 23 the acts and events appearing on it?
 24 A Yes.
 25 MS. HARRIS: Your Honor, I offer Exhibit 291 into

1 evidence.
 2 THE COURT: Any objection?
 3 MR. DRESSLER: No objection.
 4 THE COURT: Admitted.
 5 (Trial Exhibit 291 received in evidence)
 6 MS. HARRIS: Can we please publish Exhibit 291?
 7 (Document displayed)
 8 BY MS. HARRIS:
 9 Q What is the account number for the Discover Bank statement
 10 that we're looking at for the time period of April 22, 2012,
 11 through May 20, 2012?
 12 A The account number is 523-165338-0.
 13 Q What is the beginning balance for the monthly statement
 14 that we're looking at?
 15 A \$2,581.77.
 16 Q Okay. And what is the ending balance?
 17 A \$830.07.
 18 Q Now, if we could scroll down and look at the Account
 19 Activity section of the bank statement. And specifically, if
 20 you could focus in on the entry on May 2, 2012.
 21 (Document displayed)
 22 Q That refers to a J.M. Murray. Can we take a look at that?
 23 A Uh-huh, yes.
 24 Q What does that line reflect in the account activity
 25 section?

1 A It reflects a loan payment, J.M. Murray. And \$240 was
 2 deducted from the account.
 3 Q And now if we could look at the entry on May 7, 2012.
 4 A It was also a withdrawal, for \$686.04.
 5 Q And does that specific account activity on May 7th refer
 6 to "James M. Murray" in the account activity section?
 7 A It does.
 8 Q Okay. And then, drawing your attention to the formatting
 9 on the account activity, do all of the dots connect directly to
 10 the end of -- whether there's a plus or a minus sign?
 11 A They do.
 12 Q Okay. And is that consistent with how Discover Bank
 13 formats its account activity statements?
 14 A Yes.
 15 Q How do you know that this is a legitimate Discover Bank
 16 statement for James Murray's money market account for April 22,
 17 2012, through May 20, 2012?
 18 A Because these are the statements that we pull off of our
 19 system. And this is something that Discover did produce.
 20 Q Was Discover Bank also asked to conduct a search for any
 21 bank records pertaining to a Giovanni DeFrancisci?
 22 A Yes.
 23 Q What period of time did this search cover?
 24 A January 1, 2012 to December 31, 2012.
 25 Q Were there any Discover Bank records located for a

1 Giovanni DeFrancisci?
 2 A No, there was not.
 3 Q Did somebody named Giovanni DeFrancisci ever have any type
 4 of account with Discover Bank?
 5 A No.
 6 Q Now, if we can pull up Exhibit 197 of Government Exhibit
 7 292. This is already in evidence.
 8 (Document displayed)
 9 Q Can you take a look at what we're looking at, which is
 10 Page 197? Is this a legitimate Discover Bank record?
 11 A It is not.
 12 Q How do you know that it is not?
 13 A Because the dots in the account history do not go from the
 14 last letter to the plus or minus sign. In addition, "James
 15 Murray" is missing from --
 16 Q Let me ask you this.
 17 MS. HARRIS: Let's pull up Page 197 of Exhibit 292,
 18 and let's put it side by side with Government's Exhibit 291.
 19 BY MS. HARRIS:
 20 Q And then I would like you to point out the differences you
 21 observed from the legitimate Discover money market statement
 22 and Page 197.
 23 MS. HARRIS: Let's pull them both up.
 24 (Documents displayed)
 25

1 BY MS. HARRIS:
 2 Q Let's start first with -- is Page 197 the Giovanni
 3 DeFrancisci bank statement? Is that a fake Discover bank
 4 statement?
 5 (Witness examines document)
 6 A It is.
 7 Q Okay. And let's compare the account number on the fake
 8 Discover bank statement with the account number on the
 9 legitimate James Murray Discover bank account statement.
 10 Are the two account numbers the same?
 11 A They are.
 12 Q Now, who is the true Discover Bank account holder for
 13 Account 523-165338-0?
 14 A James Michael Murray.
 15 Q Now, let's look at the beginning balance on both the fake
 16 Giovanni bank statement and the legitimate James Murray.
 17 Is the beginning balance the identical amount on both
 18 statements?
 19 A They are.
 20 Q Is the ending balance the identical amount on both
 21 statements?
 22 A Yes.
 23 Q Now, if we can go to the account activity balance section
 24 for both the legitimate James Michael Murray statement and the
 25 fake Giovanni.

1 Are the account activity balances identical on both
 2 statements?
 3 A Yes.
 4 Q Let's take a look at the May 7, 2012 entry on the fake
 5 Giovanni statement. The fake statement.
 6 (Document displayed)
 7 BY MS. HARRIS:
 8 Q Did you notice anything on the fake Giovanni bank
 9 statement with regard to the account activity on May 2nd, 2012?
 10 A The -- the dots are not all the way to the plus or minus
 11 signs, and in addition, the name is missing from the activity
 12 history portion of it.
 13 Q Is there an "M" that is on the fake Giovanni May 2nd
 14 entry?
 15 A There is.
 16 Q Okay. And does that appear to you to correspond to the
 17 "M" that was on the real legitimate James Murray bank
 18 statement?
 19 A Yes.
 20 Q Now if we could look at the entry on the fake Giovanni
 21 bank statement for May 7th, and I would ask you to compare that
 22 to the legitimate James Michael Murray bank statement, May 7,
 23 2012, entry.
 24 Did you notice anything when you compared the two
 25 statements?

1 A Again, the dots are missing all the way to the minus sign
 2 on the fake statement. In addition, the first letter of the
 3 last name is the only thing that's appearing in the account
 4 activity. The rest of the name is missing.
 5 Q So on the legitimate statement, we see on the May 7th
 6 entry, "MURRAY, JAMES M." Do you see that?
 7 A Yes.
 8 Q And then on the fake Giovanni bank statement, do we only
 9 see an "M"?
 10 A That's correct.
 11 (Off-the-Record discussion between counsel)
 12 MS. HARRIS: I have no further questions, Your Honor.
 13 THE COURT: All right. Thank you.
 14 Cross?
 15 MR. DRESSLER: No questions, Your Honor.
 16 THE COURT: All right. Thank you, Ms. Micioni. You
 17 are excused.
 18 THE WITNESS: Thank you.
 19 THE COURT: You may step down.
 20 (Witness excused)
 21 THE COURT: Next witness?
 22 MR. FARNHAM: Next witness, Your Honor, is Johnny
 23 Wong.
 24 THE COURT: Okay.
 25

1 JOHNNY WONG.
 2 called as a witness for the Government herein, having been
 3 first duly sworn, was examined and testified as follows:
 4 THE CLERK: Please be seated. State your name.
 5 THE WITNESS: Johnny Wong. W-O-N-G.
 6 THE CLERK: Thank you.
 7 THE COURT: Thank you, Mr. Wong.
 8 You may proceed, Mr. Farnham.
 9 MR. DRESSLER: The exhibit from the last witness is
 10 still up.
 11 THE COURT: Oh, let's take the exhibit down, please.
 12 Close the screen.
 13 (Document taken off display)
 14 MR. FARNHAM: The first exhibit I will need is 301.
 15 DIRECT EXAMINATION
 16 BY MR. FARNHAM:
 17 Q Good morning, Mr. Wong. Where do you work?
 18 A US Bank.
 19 Q And how long have you worked there?
 20 A I have worked there for 13 years.
 21 Q What is your current position?
 22 A Operation specialist.
 23 Q What are your possibilities as an operation specialist at
 24 US Bank?
 25 A Mainly we're responsible, preparing the bank for

1 compliance and training, and for preparing them for audits.
 2 Q And are you familiar with US Bank's recordkeeping?
 3 A Somewhat familiar, uh-huh.
 4 Q Are you familiar with their storage and retention of bank
 5 statements and transaction records?
 6 A Yes.
 7 Q And are you familiar with US Bank's operations?
 8 A Yes.
 9 MR. FARNHAM: Your Honor, there is an exhibit. If we
 10 could -- just a moment. Let me see what I can go to next.
 11 If we move to the ELMO, Your Honor, I could show the
 12 witness a copy of Exhibit 301. It's already been admitted by
 13 stipulation.
 14 This is a copy. We don't have the original. But I think
 15 that -- if Your Honor is -- if that's okay with Your Honor, we
 16 could go with that.
 17 THE COURT: Any objection?
 18 MR. DRESSLER: I have none.
 19 THE COURT: Go ahead.
 20 MR. FARNHAM: If we could switch to the ELMO for a
 21 moment.
 22 THE CLERK: Sure.
 23 MR. FARNHAM: Okay.
 24 BY MR. FARNHAM:
 25 Q Mr. Wong, I'm handing you what's an admitted exhibit

1 that's been marked as Exhibit 301. And I was wondering if you
 2 could look at that document and just tell us what it is.
 3 What does it contain?
 4 (Witness examines document)
 5 A These are US Bank bank statements for business accounts.
 6 Q Does that document also include documents other than check
 7 -- than statements?
 8 A Yes. That includes transactions and checks, uh-huh.
 9 Q Tell me about what that information tells you about the
 10 account that those records relate to. What is the name of the
 11 account?
 12 A This account is a lawyer trust account. And it has -- for
 13 a one-month period, it has transactions related to deposits and
 14 withdrawals for that account.
 15 Q What's the name on the account?
 16 A The name on this account is "The Law Offices of Garrett J.
 17 Zelen."
 18 MR. FARNHAM: If I may approach, Your Honor?
 19 THE COURT: Yes.
 20 MR. FARNHAM: We'll use the screen to look at this
 21 one.
 22 And may I publish Exhibit 301 to the jury?
 23 THE COURT: Yes.
 24 (Document displayed)
 25

1 BY MR. FARNHAM:
 2 Q So this is the second page of this exhibit, Mr. Wong.
 3 Does that -- that address information, does that indicate the
 4 account holder here?
 5 A Yes.
 6 (Reporter interruption)
 7 (Witness examines document)
 8 THE WITNESS: Yes. That is the account holder.
 9 BY MR. FARNHAM:
 10 Q And could you read to me the account holder's name?
 11 A Well, the account holder would be Garrett J. Zelen.
 12 Q And what type of account is this?
 13 A Lawyer's trust account.
 14 Q And is that a particular category of account at US Bank?
 15 A Yes.
 16 Q What is different about that account, or why is there a
 17 special category?
 18 A For lawyer trust accounts, they have to have a special
 19 certificate before they could set up these type of accounts. A
 20 lawyer certificate.
 21 Q And are the accounts treated differently in any way at
 22 US Bank?
 23 A They're set up the same way, but they just require, like,
 24 special documentation before they could be set up. And there's
 25 a special EIN number that's required.

1 (Reporter interruption)
 2 THE WITNESS: EIN, it's like a tax ID number that's
 3 required to open these type of accounts.
 4 BY MR. FARNHAM:
 5 Q And, do you see in the address line, it says
 6 "ATTORNEY/CLIENT TRUST ACCOUNT"? What does that mean?
 7 A "ATTORNEY/CLIENT TRUST ACCOUNT." That's where -- that's
 8 where they have the -- that's the client's -- the client's
 9 information, for that particular client.
 10 Q I'm sorry. When you say "client," you mean Garrett Zelen?
 11 A For his particular -- looks like he is the lawyer, so he
 12 would use that account for his clients, for the clients that he
 13 services.
 14 Q I understand. I would like to show you what's on Page 14
 15 of this document. This exhibit.
 16 (Document displayed)
 17 Q Just generally, what is this page?
 18 A This page? This page is the first page of the bank
 19 statement.
 20 Q And what is the date range for the statement?
 21 A Date range for this is August 1st, 2012, to August 31st,
 22 2012.
 23 Q And is this for the same account? The Garrett J. Zelen
 24 Attorney/Client Trust Account?
 25 A Yes.

1 Q I would like to ask you to look at a couple of
 2 transactions that are noted on this statement.
 3 The first one is under "Other Deposits," and is dated
 4 August 10. It doesn't have the year there, but what would be
 5 the date of this transaction?
 6 A The date of this transaction should be August 10th, 2012.
 7 Q And what -- tell me what that information tells about you
 8 this transaction. What it was, and what the amount was.
 9 A This tells that this is a wire that's coming into the
 10 account. And it's coming from a bank from New York. And it's
 11 coming from MNT Master Fund, Ltd. MNT GP LLC.
 12 Q What's the amount of that transfer?
 13 A The total amount is 150,000.
 14 Q And was that a wire transfer?
 15 A That is a wire transfer. Incoming wire transfer.
 16 Q If we could look under "Other Withdrawals," I want to ask
 17 you about the August 15 wire debit. Do you see that?
 18 A Yes.
 19 Q Tell me what the information tells about you that
 20 transaction.
 21 A This is an outgoing wire, leaving the account. And it's
 22 conducted on August 15, 2012. It's outgoing, going to the Bank
 23 of America in New York City.
 24 And the beneficiary of this wire is a Mike Murray. 2007
 25 NE 33rd Place, that should be the address. And it's for

1 100,000.
 2 Q And was that a wire also?
 3 A This is also a wire.
 4 MR. FARNHAM: May I approach, Your Honor?
 5 THE COURT: Yes.
 6 MR. FARNHAM: And may we switch away from the ELMO to
 7 our computer?
 8 THE CLERK: Sure.
 9 MR. FARNHAM: Thank you.
 10 (Witness examines document)
 11 BY MR. FARNHAM:
 12 Q Mr. Wong, I would like to ask you to look at some pages
 13 from these exhibits.
 14 (Document displayed)
 15 Q First, if you could tell me what Exhibit 92 is.
 16 (Document taken off display)
 17 (Witness examines document)
 18 MR. FARNHAM: This is a previously-admitted document,
 19 Your Honor.
 20 THE COURT: Okay.
 21 BY MR. FARNHAM:
 22 Q But, what is Exhibit 92?
 23 A Exhibit 92 are bank statements for a business account for
 24 Market Neutral Trading.
 25 Q Okay. And are these bank statements for a US Bank

1 business account in that name?
 2 A Yes.
 3 Q And are these the true account statements issued for that
 4 account, for the time period indicated on the dates of the
 5 statements?
 6 (Document displayed)
 7 A Yes.
 8 Q If we could look at, then, Exhibit 42 for just a moment.
 9 MR. FARNHAM: We can leave that exhibit up on the --
 10 up on the right -- or left. That's fine. If we could bring up
 11 Exhibit 42 on the other side for a minute.
 12 This is a previously-admitted document.
 13 (Document displayed)
 14 MR. FARNHAM: On the right side, Exhibit 42, if we
 15 could look at -- just a moment. Page 5 of Exhibit 42.
 16 (Document displayed)
 17 MR. FARNHAM: And on the left side, if we could look
 18 at Page 20 of Exhibit 92.
 19 (Document displayed)
 20 BY MR. FARNHAM:
 21 Q Mr. Wong, you see the right side has an account holder.
 22 The address of that statement, do you see what that is?
 23 (Witness examines document)
 24 A Yes.
 25 Q Exhibit 42, Page 5?

1 A Yes.
 2 Q What is the account holder for that statement?
 3 A The account holder states it's Jones, Moore & Associates,
 4 Ltd.
 5 Q And, that appears to be a US Bank statement?
 6 A Appears to be a US Bank statement.
 7 Q Were you able to conduct a search regarding accounts at
 8 US Bank in the name Jones, Moore & Associates, Ltd.?
 9 A Yeah. I did conduct a search, and it was not located in
 10 the system.
 11 Q So, there was no accounts located in the name of Jones,
 12 Moore & Associates at US Bank?
 13 A Yes. Not that I could locate.
 14 Q And what time period would that search cover?
 15 A That time period would probably cover probably the last
 16 two years to seven years, possibly.
 17 MR. FARNHAM: If we could look at the dates of these
 18 two statements in the upper right.
 19 (Documents displayed)
 20 BY MR. FARNHAM:
 21 Q What do you see about the differences between the dates
 22 for the statement on the left, the US Bank statement, and the
 23 statement on the right, the Jones Moore statement?
 24 (Witness examines documents)
 25 A One's dated April 1, 2009 to April 30, 2009. And the

1 other one is from April 1, 2010 to April 30, 2010.
 2 Q If we could look at the account summary section of these
 3 statements.
 4 (Documents displayed)
 5 Q What do you notice about the account summary sections on
 6 both of these statements, Exhibit 92, Page 20 and Exhibit 42,
 7 Page 5?
 8 (Witness examines documents)
 9 A We notice that the item numbers for each of the
 10 transactions and the amounts are exactly the same.
 11 Q You mention that the amounts for these line items are all
 12 the same?
 13 A Yes.
 14 Q Down to the penny?
 15 A Down to the penny.
 16 MR. FARNHAM: If we could zoom out and look at
 17 something else on this document.
 18 BY MR. FARNHAM:
 19 Q On the US Bank Market Neutral Trading statement for that
 20 first transaction that's listed under "Card Withdrawals" --
 21 (Document displayed)
 22 Q -- there's something called a "ref number." Do you see
 23 that?
 24 A Yes.
 25 Q What is that number?

1 A The ref number is an identifier for the transaction. And
 2 it's used to identify that particular transaction on, like, a
 3 certain date and time.
 4 Q And for the Jones Moore statement for the account that
 5 US Bank does not have, do you see that same ref number for that
 6 transaction?
 7 A Yes.
 8 Q And what do you notice about those?
 9 A We notice that the ref number is exactly the same.
 10 Q On both of these statements?
 11 A Yes. On both of the statements.
 12 Q What about the dollar amount of that transaction that
 13 relates to that ref number?
 14 A The dollar amount is also exactly the same, down to the
 15 penny.
 16 MR. FARNHAM: If we could look at a couple of other
 17 examples of this. Exhibit 92, Page 28 on the left, and Exhibit
 18 42, Page 6 on the right.
 19 (Documents displayed)
 20 BY MR. FARNHAM:
 21 Q Are you at those pages?
 22 A Yes.
 23 (Off-the-Record discussion between counsel)
 24 MR. FARNHAM: 42, Page 6.
 25

1 BY MR. FARNHAM:
 2 Q If we could first look at the top portion, the date and
 3 address for these statements.
 4 The one on the left, the account holder is indicated as
 5 "Market Neutral Trading"?
 6 A Yes.
 7 Q And is that a real account statement that US Bank issued?
 8 A Uh, yes.
 9 Q And what about on the right? What's the account holder?
 10 A That's Jones Moore & Associates, Ltd.
 11 Q And does that relate to the statement that US Bank
 12 actually issued?
 13 A Yes.
 14 Q US Bank issued the statement on the right, I'm sorry, in
 15 the name of Jones Moore?
 16 A Um --
 17 (Witness examines document)
 18 A I mean, it appears to be. But that -- that account, like
 19 I said, doesn't appear on the system. So...
 20 Q So can that be a legitimate bank statement for this
 21 account?
 22 A If we're comparing the two, then -- then I don't see how
 23 it could be -- how it could be a legitimate statement.
 24 Q If we could look at the date portion.
 25 (Documents displayed)

1 Q What do you notice about the dates there?
 2 A The dates are for February 2, 2009, through February 28,
 3 2009. And on the other one it's February 2, 2010 to
 4 February 28, 2010.
 5 Q If we could look at the account summary portion.
 6 (Documents displayed)
 7 Q Looking at the left-hand side, the US Bank statement for
 8 Market Neutral Trading, LLC, what do you notice if you compare
 9 it to the Jones Moore -- what appears to be a Jones Moore
 10 statement?
 11 A Um, the item numbers for each transaction and the amounts
 12 are exactly the same, down to the penny.
 13 Q And is this -- this section, is this a summary of the
 14 activity in the account for the time period?
 15 A Yes, this is a summary for that specific time period.
 16 Q And if you look down at the bottom, there are a couple
 17 transactions with ref numbers. Let's look at February 11th
 18 reference number, for a transaction in the amount of
 19 \$23,804.89.
 20 Do you see that?
 21 A Yes.
 22 (Reporter interruption)
 23 MR. FARNHAM: Sure. \$23,804.89.
 24 BY MR. FARNHAM:
 25 Q So if we look at the left side, the US Bank-issued

1 statement, what do you notice about the reference number when
 2 you compare it to the right-side Jones Moore statement?
 3 A We notice that it is exactly the same.
 4 Q And what about the amount of that transaction?
 5 A The amount is also exactly the same, down to the penny.
 6 Q What does that tell you about the right-side statement?
 7 Can that one be real?
 8 A Um, it possibly cannot be real because it's -- that is a
 9 unique identifier that we have for each transaction.
 10 Q If we could look at the last one.
 11 MR. FARNHAM: On the left side, if you could compare
 12 Exhibit 92, Page 32, and on the right side, Page 42 --
 13 Exhibit 42, Page 7.
 14 (Documents displayed)
 15 BY MR. FARNHAM:
 16 Q Again, the dates, what do you notice? If you look at the
 17 left side, the Market Neutral Trading US Bank statement, what's
 18 the date range there?
 19 A The date range is January 2, 2009, to January 31, 2009.
 20 Q And if you look at the date range for the fake statement
 21 on the right in the name of Jones Moore, what do you see?
 22 A It's from January 2, 2010 to January 31, 2010.
 23 Q If we could look at the account summary portion again.
 24 (Documents displayed)
 25 Q Looking at the Market Neutral Trading statement on the

1 left, and comparing it to the fake bank statement on the right,
 2 what do you notice?
 3 A We notice that the item numbers, the transaction item
 4 numbers and the amounts are exactly the same. And also, the
 5 ending balance date is also exactly the same as well.
 6 Q So does that match -- so what did we see was the date on
 7 the fake statement for the Jones Moore account for this
 8 statement?
 9 A For the Jones Moore account, it stated that it went from
 10 January 2, 2013 to January 31, 2010.
 11 Q So does that fit with this on the right side, that ending
 12 balance date of January 31, 2009?
 13 A No. That does -- that does not fit.
 14 Q Does it make sense to you that those could be two
 15 different years?
 16 A Yes. Those are two different years.
 17 Q But I'm -- does it make sense that a real statement could
 18 have two different years in those spots?
 19 A Oh, yeah. The real statement would not have two different
 20 years on the summary part.
 21 Q And if we could look just briefly at the reference number
 22 for a transaction on January 2, on the bottom of those
 23 statements.
 24 (Documents displayed)
 25 Q There is a transaction on January 2nd listed on the Market

1 Neutral Trading bank statement. Do you see that?
 2 A Yes.
 3 Q And does that have a reference number next to -- I'm
 4 sorry, next to "HARRIS CHICAGO," there is a number there.
 5 Do you see that?
 6 A Yes.
 7 Q What does that number tell you?
 8 A The number next to "HARRIS CHICAGO," that's a -- that's a
 9 number generated when a wire is -- is credited.
 10 Q And does that information have the date in it? The date
 11 of the wire?
 12 A Yes. The first six digits of the number.
 13 Q So, the 090102?
 14 A Yes. That signifies January 2, 2009.
 15 Q So if you look at the number on the fake statement on the
 16 right, what do you see about that reference number?
 17 A That reference number has the same date on it. January 2,
 18 2009.
 19 Q And like the other instances we have seen, does this show
 20 you that the Jones Moore statement, Exhibit 42, Page 7, is
 21 fake?
 22 A Yes.
 23 (Off-the-Record discussion between counsel)
 24 MR. FARNHAM: Nothing further, Your Honor.
 25 THE COURT: All right. Thank you.

1 Cross?
 2 MR. DRESSLER: No questions.
 3 THE COURT: All right. And Mr. Wong, you may step
 4 down. You are excused. Thank you.
 5 THE WITNESS: Thank you.
 6 (Witness excused)
 7 THE COURT: That brings us to the noon hour. We are
 8 going to go ahead and take our lunch break, and return at
 9 12:30. Thank you.
 10 (Whereupon at 11:59 a.m. proceedings
 11 were adjourned for noon recess.)
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1 PROCEEDINGS
 2 October 2, 2015 12:32 p.m.
 3 (The following proceedings were held outside of the
 4 presence of the Jury)
 5 THE COURT: Okay. Bring the jury in.
 6 Ready?
 7 MR. FARNHAM: Yes, Your Honor.
 8 MR. DRESSLER: Yes.
 9 (Jury enters the courtroom at 12:34 p.m.)
 10 THE COURT: Welcome back, ladies and gentlemen. You
 11 may all be seated. Ready to hear the Government's next witness
 12 or evidence.
 13 MR. FARNHAM: Yes, your Honor. Next witness will be
 14 Mark Gong, G-O-N-G.
 15 MARK GONG,
 16 called as a witness for the Government herein, having been
 17 first duly sworn, was examined and testified as follows:
 18 THE WITNESS: Yes.
 19 THE CLERK: Can you please state your name and spell
 20 your last name?
 21 THE WITNESS: Mark Gong, G-O-N-G.
 22 THE COURT: All right. Thank you, Mr. Gong.
 23 You may proceed, Mr. Farnham.
 24 MR. FARNHAM: Thank you.
 25

1 DIRECT EXAMINATION
 2 BY MR. FARNHAM
 3 Q Mr. Gong, where do you work?
 4 A I work at Barracuda Networks.
 5 (Court reporter interruption.)
 6 A Barracuda Networks.
 7 Q You should turn that microphone towards you a little bit
 8 closer.
 9 And what do you do at Barracuda Networks?
 10 A I'm a financial analyst.
 11 Q And where did you work in 2012?
 12 A At a company called Office General.
 13 Q What is Office General?
 14 A It was a company that leased out office space for tenants
 15 and, also, offered virtual offices.
 16 Q And what did you do for Office General?
 17 A I was in charge of sales and client services there.
 18 Q Tell me the length -- give me the approximate length of
 19 time, the date range, that you worked for Office General, if
 20 you remember?
 21 A March 2011 through December 31st, 2012.
 22 Q And where was that location that Office General leased out
 23 office space?
 24 A It was 580 California Street, San Francisco, in the
 25 Financial District.

1 MR. FARNHAM: If I may I approach, your Honor?
 2 THE COURT: Yes.
 3 (Whereupon document was tendered to the witness.)
 4 BY MR. FARNHAM
 5 Q Mr. Gong, I've handed you what's been marked as Exhibit
 6 304. I would like to give you a chance to review that, take a
 7 look at that and tell me if you recognize that.
 8 A Yeah. Just emails between me and Jim.
 9 Q Is this an email chain between you and James Murray?
 10 A That's right.
 11 Q And is the date range of this chain approximately
 12 June 26th, 2012 to, look like it ends September, 2012?
 13 A That's correct.
 14 Q And these are emails that you sent and received in that
 15 time frame?
 16 A Yes.
 17 MR. FARNHAM: Your Honor, I would offer Exhibit 304
 18 into evidence.
 19 THE COURT: Any objection?
 20 MR. DRESSLER: No objection.
 21 THE COURT: Admitted.
 22 (Trial Exhibit 304 received in evidence.)
 23 MR. FARNHAM: If we may publish portions, your Honor?
 24 THE COURT: Yes.
 25

1 BY MR. FARNHAM
 2 Q Mr. Gong, I'd like to start at the bottom of this email
 3 chain.
 4 (Document displayed)
 5 Q Would that be the first email in this chain?
 6 A Yes.
 7 Q By date, the first email in the conversation would be at
 8 the bottom of the chain, is that right?
 9 A That's correct.
 10 Q And if we could start, then, at the bottom on Page 4 of
 11 this document?
 12 (Document displayed)
 13 Q And is this an email that you wrote to James Murray?
 14 A Yes.
 15 Q In around June of 2012 was Mr. Murray a client of Office
 16 General?
 17 A Yes.
 18 Q Was the -- what was the entity that he -- was there is
 19 entity associated?
 20 A It was Market Neutral Trading.
 21 Q And what was the relationship?
 22 A He was a tenant.
 23 Q You see in this email where you write:
 24 "The 30-day notice that you gave me will not be
 25 valid."

1 A Okay.
 2 Q What did you mean by that?
 3 A Pretty much, he had a lease with our company for an office
 4 and he gave us a 30-day notice, which usually means he wanted
 5 to vacate the office; but given that there was a two-year lease
 6 that extended to 2013, a 30-day notice wouldn't actually work.
 7 Q And that's because the lease was still -- would be in
 8 effect?
 9 A Ongoing, yes.
 10 Q We don't need to look at all the emails in this chain. I
 11 want to skip up to Page 2.
 12 (Document displayed.)
 13 Q And then there's an email dated Friday July 27th, 2012
 14 from you to Jim Murray. Do you see that one?
 15 A The downsizing? Page 2?
 16 Q Yes.
 17 A Uh-huh.
 18 Q Is this an email that you sent to Mr. Murray?
 19 A Yes.
 20 Q And you write:
 21 "I want to find out if you are still interested
 22 in downsizing to another office."
 23 Do you see that?
 24 A Yes.
 25 Q What did you mean by that?

1 A I think we had a conversation that he wanted to move to,
 2 like, a smaller office, pay a lesser amount.
 3 Q And did that happen?
 4 A No.
 5 Q He remained in the same office space?
 6 A Yes.
 7 Q If we could look at the next email up? It actually begins
 8 on Page 1 and goes on to Page 2.
 9 (Document displayed.)
 10 Q Looking at the quoting, "James,
 11 james.m@event-trading-fund.com" line, do you see that?
 12 A Yes.
 13 Q What does Mr. Murray write after that?
 14 A He wanted us to start accepting mail for Event Trading GP,
 15 LLC. And he also wanted us to accept mail for his partner
 16 Giovanni de Francisci.
 17 Q And so when he wrote, "Can you inform the mailroom our
 18 company has changed to Event Trading GP, LLC," what did you
 19 understand that to mean?
 20 A Sorry?
 21 Q What did you understand that to mean?
 22 A Can you repeat that again? Sorry.
 23 Q Why don't you read for me the first line that he wrote to
 24 you? Just read it out loud.
 25 A (As read)

1 "Can you inform the mailroom that our company has
2 changed to Event Trading GP, LLC."
3 Q What did you understand him to mean?
4 A Pretty much that means Market Neutral Trading has turned
5 into Event Trading GP, LLC.
6 Q And then the next paragraph, just go ahead and read that
7 out loud.
8 A (As read)
9 "My partner's name Giovanni de Francisci may have
10 mail sent here to the 12th floor in our Suite 1256."
11 Q And what did you understand that to mean?
12 A His partner Giovanni, we should start accepting mail for
13 this person.
14 Q What did you do after you received this email from
15 Mr. Murray?
16 A I notified the mailroom to let them know to start
17 accepting mail for this company, as well as for his new
18 partner.
19 MR. FARNHAM: Just a moment.
20 (Discussion held off the record between Government
21 counsel.)
22 MR. FARNHAM: That's all I have, your Honor.
23 THE COURT: All right. Any cross?
24 MR. DRESSLER: No questions.
25 THE COURT: All right. Thank you, Mr. Gong. You may

1 step down. You're excused.
2 THE WITNESS: Thank you.
3 (Witness excused.)
4 THE COURT: Government's next witness.
5 MS. HARRIS: Thank you, your Honor.
6 At this point the Government would ask for permission to
7 publish Exhibit 298 to the jury before we call our next
8 witness.
9 THE COURT: All right. Any objection?
10 MR. DRESSLER: No, your Honor.
11 THE COURT: All right. You may publish.
12 (Document displayed.)
13 MS. HARRIS: And if we could just zoom in on the
14 "From" line.
15 (Document enlarged)
16 It says, "From: James Murray." And the email address is
17 jmurray@marketneutraltrading.com to gzelen@AT&T.net. The date
18 is Tuesday, August 14th, 2012 at 9:26 in the morning. And the
19 Subject is "Confidential Correspondence to Counsel Re Wire."
20 And then the text of the email reads:
21 "Hi, Garrett. 150K should have been received
22 Friday. If you could send a wire for 100K to: Bank
23 America. Account name: Mike Murray. Account No:
24 38945168. And then ABA No: 125000024.
25 Thanks."

1 And with that, your Honor, we would call our next witness,
2 Mike Murray.
3 THE COURT: All right.
4 MICHAEL MURRAY,
5 called as a witness for the Government herein, having been
6 first duly sworn, was examined and testified as follows: .
7 THE WITNESS: I do.
8 THE CLERK: Please be seated and state your name,
9 please.
10 THE WITNESS: Michael J. Murray.
11 THE COURT: Can you spell the last name, Mr. Murray?
12 THE WITNESS: M-U-R-R-A-Y.
13 THE COURT: Thank you.
14 You may proceed, Mr. Farnham.
15 MR. FARNHAM: Thank you, your Honor.
16 DIRECT EXAMINATION
17 BY MR. FARNHAM
18 Q Mr. Murray, are you James Murray's father?
19 A Yes.
20 Q Where do you live?
21 A 2007 Northeast 33rd Place, Newcastle, Washington.
22 Q Where is Newcastle?
23 A It's near Seattle.
24 Q What do you do for a living?
25 A I'm a software developer.

1 Q Who do you work for?
2 A Costco.
3 Q Do you know what the entity Market Neutral Trading is?
4 Have you heard of it?
5 A I've heard of it.
6 Q Do you have any involvement in running that company?
7 A No.
8 Q Did you ever have any involvement in running that company?
9 A No.
10 MR. FARNHAM: Your Honor, may I approach with an
11 exhibit?
12 THE COURT: Yes.
13 (Whereupon document was tendered to the witness.)
14 BY MR. FARNHAM
15 Q Mr. Murray, I want to turn your attention to August, 2012.
16 In August, 2012 did you learn that a wire of \$100,000 had
17 been sent to your bank account?
18 A Yes.
19 Q And did you learn that through a text message from James
20 Murray?
21 A Yes.
22 Q If you could look at what's been marked for identification
23 as Exhibit 310?
24 (Witness complied.)
25 A Yes.

1 Q Does Exhibit 310 show a series of text messages that you
2 received on August 15th and 16th, 2012?
3 A Yes.
4 Q And does it also show some messages you sent around that
5 same time?
6 A Yes.
7 Q And the documents themselves, did you -- did you create
8 them from your phone?
9 A Yes.
10 Q How did you do that?
11 A I went to Kinko's and I used their color photocopy
12 machine. I pulled up the text message on my cell phone and I
13 had it enlarged.
14 Q And that's what these images are in Exhibit 310?
15 A They are my cell phone.
16 MR. FARNHAM: Your Honor, I would offer Exhibit 310
17 into evidence.
18 THE COURT: Any objection?
19 MR. DRESSLER: No objection.
20 THE COURT: Admitted.
21 (Trial Exhibit 310 received in evidence.)
22 MR. FARNHAM: May we publish portions?
23 THE COURT: Yes.
24 (Document displayed)
25

1 BY MR. FARNHAM
2 Q So I do want to start with Page 1 of Exhibit 310. You can
3 look on the screen or on the paper, either way.
4 MR. FARNHAM: If we could zoom in on the message
5 portion itself.
6 (Document enlarged.)
7 BY MR. FARNHAM
8 Q This Page 1, is this a message that you received from
9 James Murray on about August 15th, 2012?
10 A Yes.
11 Q Can you just read out loud this message.
12 A (As read)
13 "100K wired this morning to your account. When
14 it comes in if you could wire 50K to the following:"
15 Q And what is the 100K? What did you understand that to
16 mean?
17 A I didn't know at the time.
18 Q Before you received this message, did you know that
19 \$100,000 had been wired into your account?
20 A No. This was my first indication, this text message.
21 Q Where it says there:
22 "When it comes in, if you could wire 50K to the
23 following."
24 It looks like there is a colon there?
25 A Colon. Means there is more text.

1 Q And does this message continue?
2 A It does.
3 Q Why don't we look at Page 2?
4 (Document displayed)
5 Q Is that the continuation of this message?
6 A Yes.
7 Q What does that say, if you could read it for us?
8 A It says:
9 "ABA No. [REDACTED]
10 "Bank account name: Interactive Brokers, LLC.
11 "Bank account number: [REDACTED]
12 Q Does this Page 2 text message relate to the message we
13 just saw?
14 A It follows.
15 Q And does that -- that information there about a bank
16 account, does that relate to the 50K, the 5-0K?
17 A Yes.
18 Q If we could look at Page 3?
19 (Document displayed)
20 Q Is this a continuation of that same message?
21 A Yes. Actually, the line that ends [REDACTED] is -- the rest of
22 that page is a continuation. So it's:
23 "[REDACTED] For further benefit to:
24 [REDACTED]/Event Trading GP, LLC."
25 Q Did you understand this to be information about where to

1 wire \$50,000?
2 A Yes.
3 Q If we could look at Page 4?
4 (Document displayed)
5 Q This fourth page, is this a continuation of the same
6 message?
7 A Yes.
8 Q And what does it say, if you could read that?
9 A (As read)
10 "And 15K to: Discover Bank, Account Name: James
11 Murray. Acct #523-174942-1. Routing 031100649."
12 Q And how did you understand this text message? What did
13 you understand it to mean?
14 A A wire was needed to -- of 15,000 to Discover Bank and the
15 information to put on the wire was as I read.
16 Q If we could look at Page 5, please?
17 (Document displayed)
18 Q Is this either a continuation or part of the same set of
19 messages?
20 A No. It's a new message. It's not a continuation of the
21 first message.
22 Q Okay.
23 A This is the following message. Jim sent a text message to
24 me on my cell phone and it reads:
25 "I have 35K in Pareto debt. I am going to set up

1 to debit from your B of A account."
 2 Q What did you understand that to mean, "debit from your
 3 B of A account?"
 4 A He was going to take 35,000 to pay off some debt.
 5 Q In August of 2012 did James Murray have the ability to set
 6 up debits from your bank account?
 7 A Yes.
 8 Q If we could look at the sixth page?
 9 (Document displayed)
 10 Q Is this a message from James Murray, also?
 11 A This is another message in response to a text message that
 12 I had sent him that the wires had been cut.
 13 Q Okay. We'll get to some of those other messages in a
 14 second.
 15 These messages that -- did you understand these messages
 16 we just looked at to be telling you to wire some money to a
 17 couple different accounts?
 18 A Yes.
 19 Q And it referenced a wire of 100,000 being wired into your
 20 account?
 21 A Yes.
 22 Q At the time you read these messages, did you know where
 23 that money was being wired from?
 24 A No.
 25 Q Why don't we look at Page 16 of this document?

1 A I don't know.
 2 Q Let's look at Page 20.
 3 (Document displayed)
 4 Q Is Page 20 a text message that you wrote?
 5 A Yes.
 6 Q What does it say?
 7 A It says:
 8 "Yes. Wires out. Should be this afternoon," or
 9 "p.m."
 10 Q And is this a message that you wrote to James Murray?
 11 A Yes.
 12 Q And if we zoom out, it looks like there is a date, an
 13 indication of a date. Do you see that, that date? It's on the
 14 bottom of the page.
 15 A Oh. The 16th of August, 2012.
 16 Q Is that your writing noting that this message was sent --
 17 A That's my writing on the photocopy.
 18 Q Does that indicate that this message was sent on the 16th?
 19 A Yes.
 20 Q Let's look at Page 24.
 21 (Document displayed.)
 22 Q First of all, what's the date of this message?
 23 A August 17th, 2012.
 24 Q And if we could look at the message, what does that say?
 25 A "All xferred okay. Have good day."

1 (Document displayed)
 2 Q This one is difficult to read, but can you read what this
 3 says?
 4 A Yes.
 5 Q What does it say?
 6 A It was my text message to my son on my cell phone. I
 7 typed in:
 8 "Are Event Trading numbers correct? Can this
 9 wait to tomorrow?"
 10 Q Was this your response to those messages we just read?
 11 A My response to the first text message.
 12 Q And you were asking about Event Trading?
 13 A The account number for the Event Trading, I had a question
 14 about it and so that's why I asked this question.
 15 Q And you also ask, "Can this wait til tomorrow?"
 16 A Yes.
 17 Q If we could look at Page 14?
 18 (Document displayed)
 19 Q What is this message?
 20 First let's look at the date. What's the date of this
 21 message?
 22 A August 16th, 2012.
 23 Q And what does it say?
 24 A It says, "The wire came in, right?"
 25 Q And is this from James Murray?

1 Q What did you mean by "xferred"?
 2 A Transferred.
 3 Q And by "transferred," were you referring to the wires that
 4 were referenced --
 5 A The two wires, yes.
 6 Q The wires referenced in the earlier messages?
 7 A Yes.
 8 Q If I could ask you to look at a document that's previously
 9 admitted, it's marked as Exhibit 302. It's also up there in
 10 front of you.
 11 (Witness complied.)
 12 MR. FARNHAM: And, your Honor, if we may publish
 13 portions of this to the jury?
 14 THE COURT: Yes.
 15 BY MR. FARNHAM
 16 Q First, I'd like to start with Page 78.
 17 (Document displayed)
 18 Q You see Page 78?
 19 A Yes.
 20 Q Is this the first page of a bank statement?
 21 A It's the first page of my checking account statement.
 22 Q And if you look in the upper right, what's the date period
 23 of this statement?
 24 A The statement period is July 18th, 2012 through July
 25 17th -- no, August 17th, 2012.

- 1 Q I want to look at another page in this statement. It's
2 Page 82, using our page numbers for this exhibit.
3 (Document displayed)
4 Q And I want to ask you about a couple transactions on this
5 page.
6 First, drawing your attention to August 15th, transaction
7 in an amount of \$100,000. Do you see that on the statement?
8 A Yes.
9 Q And do you know what this transaction was?
10 A It's the transaction that was in the cell phone text
11 message.
12 Q And is this indicating an incoming wire?
13 A Yes.
14 Q And if you look at the description column here, the
15 "Transactions" column, where it describes the transaction, you
16 see where it says, "Wire Type: Wire in."
17 A Yes, into my checking account.
18 Q And what does it say after the -- for the originator?
19 "Orig:" What does that say?
20 A It says:
21 "Law Offices of Garrett J. ID 000164300997958."
22 Q Did you -- when you received this statement, did you look
23 at that transaction?
24 A Yes.
25 Q When you looked at it, did you understand what "Law

- 1 Offices of Garrett J" meant?
2 A Yes.
3 Q Who is that?
4 A Mr. Garrett Zelen.
5 Q And who is Garrett Zelen?
6 A My son's attorney at the time.
7 Q Before you saw that reference on your statement, did you
8 know where that wire had come from?
9 A I don't know. I -- I didn't know it until I received the
10 text message that I was even getting it. And I don't recall
11 any other indication that it was from Garrett Zelen except this
12 bank statement.
13 Q So other than possibly seeing this, you don't remember
14 whether or not you heard, after you got the wire, that
15 Mr. Zelen had sent it?
16 That's a bad question. I'll withdraw it.
17 As you read this, you understood that it came from
18 Mr. Zelen, that \$100,000 wire, right?
19 A Yes.
20 Q Do you know if you knew that before you saw the statement?
21 A I can't say that I did.
22 Q Looking at a transaction that starts on August 16th, that
23 looks like a \$50,000 transaction on the same page.
24 A Yes.
25 Q What is that transaction?

- 1 A That was the first wire out to Interactive Brokers.
2 Q And is that a wire that you initiated?
3 A Yes.
4 Q Did you initiate that pursuant to the instructions you got
5 by text?
6 A Yes.
7 Q And you see where it says "Wire Type: Wire out?"
8 A Yes.
9 Q Does that indicate it was an outgoing wire?
10 A Yes.
11 Q And then there's a beneficiary there, "BNF:" What does
12 it say after that?
13 A It says:
14 "Interactive Brokers, LLC. ID [REDACTED]."
15 Q Let's look at the transaction right below that, also
16 August 16th, for \$15,000. What is that transaction?
17 A That's another -- that's the second wire out to Discover
18 Bank.
19 Q And is that a transaction you initiated?
20 A Yes.
21 Q And whose bank account was that wire to?
22 A It says it's to James Murray's account.
23 Q And is that a wire that you initiated pursuant to the
24 instructions under the text messages?
25 A Yes.

- 1 Q Looking a little further down, there is an August 17th
2 transaction for \$30,000 -- \$30,008.78. Do you see that?
3 A Yes.
4 Q What is that transaction?
5 A That's the third transaction in the text message referred
6 to as "Pareto debt."
7 Q And is that a transaction that you initiated?
8 A No.
9 Q Did James Murray set up that debit as indicated in the
10 text?
11 A Yes.
12 Q If we could look at the first page of Exhibit 302?
13 (Document displayed)
14 A Okay.
15 Q You could look at the screen, it's okay.
16 I want to ask you: Do you recognize this document?
17 A Yes.
18 Q You see at the top it's a Bank of America form. It says
19 Business Signature Card. Do you see that at the top?
20 A Yes. I do.
21 Q And what's the Account Title listed on this page?
22 A Business Signature Card.
23 Q And what does it say under Account Title?
24 A Event Trading GP, LLC.
25 Q Is this a form related to the opening of an account?

1 A Yes.
 2 Q What did you do regarding the opening of this account?
 3 A I opened an account in Event Trading GP, in the name, and
 4 made a deposit of \$200.
 5 Q And did you open that account because James Murray asked
 6 you to?
 7 A Yes.
 8 Q If you could look at the bottom portion of the same page?
 9 What are those names, the written names? What do those
 10 represent?
 11 A Those are the partners.
 12 Q Would those be signatories to the account?
 13 A Yes.
 14 Q And your -- is that your signature there on the right?
 15 A Yes.
 16 Q And why weren't there any other signatures for Matthew
 17 Murray or James Murray?
 18 A Because I told the bank officer I would get the signatures
 19 later.
 20 Q But your intention was to open an account with those three
 21 people as signatories?
 22 A Yes.
 23 MR. FARNHAM: Just a moment, your Honor.
 24 (Discussion held off the record between Government
 25 counsel.)

1 MR. FARNHAM: That's all I have. Thank you.
 2 THE COURT: All right. Cross?
 3 CROSS EXAMINATION
 4 BY MR. DRESSLER
 5 Q Good afternoon, Mr. Murray.
 6 A Good afternoon.
 7 Q I just have really one question, and that is: After your
 8 son was arrested, at some point he retained Mr. Zelen, correct?
 9 A Mr. Zelen?
 10 Q Yes. Garrett Zelen as his attorney at some point?
 11 A What was the question? I'm sorry.
 12 Q My question was: When you received the -- I'm going to
 13 try it a different way.
 14 When you received the \$100,000 wire, you knew that it was
 15 from Garrett Zelen, who at that time was Mr. Murray's attorney
 16 in this case, correct?
 17 A Correct.
 18 Q Okay. Before that time, had you advanced Mr. Zelen or --
 19 monies on behalf of your son for attorney's fees?
 20 A Yes. Yes, I did.
 21 Q Okay. Thank you. That's all?
 22 THE COURT: All right. Anything further?
 23 MR. FARNHAM: Nothing further, your Honor.
 24 THE COURT: All right. Thank you, Mr. Murray. You
 25 are excused. You may step down. Thank you.

1 (Witness excused.)
 2 THE COURT: The Government may call its next witness.
 3 MR. FARNHAM: Your Honor, we're going to call -- the
 4 Government will call Phillip Villanueva.
 5 THE COURT: Okay.
 6 MR. FARNHAM: Your Honor, I would -- as we discussed
 7 earlier, I would like to hand out to the jury copies of the
 8 materials that we'll be referencing.
 9 THE COURT: Well, that's going to come up -- I
 10 thought you were going to display it. You're talking about
 11 physically handing them out?
 12 MR. FARNHAM: Well, problem is some of the writing is
 13 small. It's very difficult to manage the zooming in and
 14 zooming out and which portion to focus on. I had intended that
 15 they would be easier to look at that way.
 16 THE COURT: All right.
 17 MR. DRESSLER: Submitted at the Court's discretion.
 18 THE COURT: It's not appropriate until it becomes
 19 testified to. So at the appropriate time, you can do so.
 20 PHILLIP VILLANUEVA,
 21 called as a witness for the Government herein, having been
 22 first duly sworn, was examined and testified as follows:
 23 THE WITNESS: I do.
 24 THE CLERK: Please be seated.
 25 Can you state your name and spell your last name, please?

1 THE WITNESS: Phillip Villanueva. First name is
 2 spelled with two Ls, P-H-I-L-L-I-P. Last name, V, as in
 3 Victor, I-L-L-N, as in Nancy, U-E-V, as in Victor, A.
 4 THE COURT: Thank you, Mr. Villanueva.
 5 You may proceed, Mr. Farnham.
 6 MR. FARNHAM: Thank you, your Honor.
 7 DIRECT EXAMINATION
 8 BY MR. FARNHAM
 9 Q Mr. Villanueva, where do you work?
 10 A I work for the U.S. Attorney's Office in San Francisco.
 11 Q And how long have you worked there?
 12 A I've worked there for over 20 years.
 13 Q And what's your position?
 14 A I'm a financial fraud investigator in the Economic Crimes
 15 Unit, Criminal Division.
 16 Q What do you do in that division, in that job?
 17 A I work on the most complex financial fraud cases. I
 18 normally -- I'm asked to review documents and usually I'm asked
 19 to map out money transfers to follow the path as to where they
 20 started and where they ended up.
 21 I'm also frequently asked to transform complex financial
 22 transactions into simple bits of essential information.
 23 Q What types of materials do you look at to do your work?
 24 A I look at all kinds of financial statements. I look at
 25 bank statements. Brokerage account statements. Wire money

1 transfer records. Emails. Marketing materials.
 2 Q Tell me about your educational background after high
 3 school?
 4 A After high school I attended U.C. Davis, where I obtained
 5 a B.S. in Managerial Economics. After attending Davis, I
 6 attended University of San Francisco, where I obtained an
 7 M.B.A. in Finance.
 8 Q And were you asked to analyze -- I'm sorry. Were you
 9 asked to look at particular aspects of this case?
 10 A Yes, I was.
 11 Q And for that, what -- generally what types of materials
 12 did you look at and review?
 13 A Again, I looked at a variety of documents. I looked at
 14 brokerage account statements. I looked at bank account
 15 statements. Wire money transfers. Deposit notifications.
 16 Withdrawal notifications. Canceled checks. Emails. Interview
 17 reports.
 18 Q If I could ask you to look at what's in front of you, I
 19 think, marked as Exhibit 390?
 20 (Witness complied.)
 21 Q What is Exhibit 390?
 22 A Exhibit 390 is a diagram that I created based on my review
 23 of documents in this case.
 24 Q As part of your work on this case, were you asked to look
 25 at transfers from a Chase Paymentech credit card processing

1 account to various accounts in the name of Anderson &
 2 Associates?
 3 A Yes. I looked at basically three accounts. I looked at
 4 the Chase Paymentech account held in the Jones Moore and
 5 Associates.
 6 I also looked at two other accounts that were affiliated
 7 with that account, because these two other accounts had
 8 received money from that account.
 9 I looked at Fidelity, an account at Fidelity under the
 10 name of Anderson & Associates, Limited.
 11 I also looked at another account with the same name,
 12 Anderson & Associates, Limited at Merrill Lynch.
 13 Q And after reviewing the documents related to those
 14 accounts, did you prepare Exhibit 390?
 15 A I did.
 16 Q And just briefly what's reflected in Exhibit 390?
 17 A What's reflected in 390 are the amounts that flowed from
 18 the Chase Paymentech account held in the name of Jones Moore
 19 and Associates and how the money flowed from there into the two
 20 accounts: The one account at Fidelity under the name of
 21 Anderson & Associates, and then later the other account held in
 22 the same name, Anderson & Associates, Limited, at Merrill
 23 Lynch.
 24 And the other part of the chart shows where some of the
 25 larger amounts flowed, again, from those two accounts to other

1 accounts.
 2 Q So this diagram on Exhibit 390, would this help explain
 3 your testimony about this work you did on this?
 4 A Yes.
 5 MR. FARNHAM: Your Honor, I would request that we be
 6 allowed to publish this Exhibit 390.
 7 THE COURT: All right. I'm going to allow its
 8 publication, but it is not at this point admitted as an
 9 exhibit, but it is used as a chart to help explain this
 10 witness's testimony.
 11 MR. FARNHAM: Thank you, your Honor.
 12 (Document displayed)
 13 BY MR. FARNHAM
 14 Q Mr. Villanueva, can you tell us what's shown and how it
 15 relates to the work you did on the left-hand side, the green
 16 box there?
 17 A On the left-hand side on the green box it's -- it contains
 18 the name Chase Paymentech, which represents the Jones Moore and
 19 Associates account at Paymentech.
 20 And then below that is the total amount \$663,482.79, which
 21 were withdrawn from that account and transferred to two
 22 accounts, one up above, Fidelity account, and then below that
 23 the Merrill Lynch account. So that represents the entire
 24 amount of 663,000 -- \$663,482.79.
 25 Q So let's look at that for just a minute.

1 So the amount of money that you traced from the Chase
 2 Paymentech Jones Moore and Associates account was -- tell me
 3 that total again?
 4 A \$663,482.79.
 5 Q Let's look at the first part, the Fidelity portion.
 6 (Document displayed.)
 7 Q Did you trace funds that went to a Fidelity account?
 8 A I did.
 9 Q Tell me about that?
 10 A So when I looked at the Chase Paymentech statements for
 11 Jones Moore and Associates and looked at the Fidelity account
 12 held in the name of Anderson & Associates, account No.
 13 Z49172049, which I usually refer to as 2049, I found that
 14 between September 30th, 2010 and December 31st, 2010
 15 approximately \$366,305.79 was transferred to that Fidelity
 16 account from Jones Moore and Associates.
 17 Q I want to ask briefly: Did you look at documents related
 18 to that actual account, like account documents and account
 19 statements?
 20 A I did.
 21 MR. FARNHAM: If we could bring up what's been
 22 previously admitted as Exhibit 88 and start with Page 1 of
 23 Exhibit 88?
 24 (Document displayed)
 25 MR. FARNHAM: Your Honor, may I approach with paper

1 copies for Mr. Villanueva?
 2 THE COURT: Yes.
 3 (Whereupon documents were tendered to the witness.)
 4 BY MR. FARNHAM
 5 Q Does Exhibit 88 relate to the Fidelity account that you
 6 saw money flowing into from Chase Paymentech?
 7 A Yes, it does.
 8 Q And if you could look at the second page of that document?
 9 (Witness complied.)
 10 A Yes.
 11 Q And if you could tell me what's the legal name of the
 12 Primary Authorized Person on that account?
 13 A The full legal name listed is David Lowe, L-O-W-E.
 14 Q If we could go back to our Exhibit 390, our summary chart,
 15 our diagram?
 16 (Document displayed.)
 17 Q So tell me, after you traced the money into that Fidelity
 18 account ending 2049, what further work did you do?
 19 A I checked to see where -- or what was done with that
 20 money. In other words, what withdrawals were made from that
 21 account and where it sent.
 22 Q And what did you find?
 23 A I found that there were five checks issued out of the
 24 account and five of those checks were deposited into accounts
 25 held in the name of Market Neutral Trading.

1 Four of those checks ended up at Merrill Lynch,
 2 account number -- account number ending in 7022.
 3 And there was one check in the amount of 23,000, check No.
 4 117, that went to Market Neutral Trading account held at
 5 Ameritrade. The account number for -- the last four digits for
 6 that account number are 9005.
 7 Q And did you total up the amount of those checks?
 8 A I did. I totaled the amount of all the checks that went
 9 to Market Neutral Trading accounts and that totaled \$116,000.
 10 Q Tell me the time frame that money went from the Chase
 11 Paymentech -- went from Chase Paymentech Jones Moore and
 12 Associates into that Fidelity account?
 13 A It went from September 30, 2010 through December 31st,
 14 2010.
 15 Q And after that, where did money flow -- where did money
 16 flow to from the Chase Paymentech account?
 17 A In the beginning of 2011, money flowed from Chase
 18 Paymentech Jones Moore and Associates account to the Merrill
 19 Lynch account between the dates January 18, 2011 and March 29,
 20 2011.
 21 Q I want to ask you about one more portion of this, of your
 22 analysis here regarding the Fidelity account.
 23 MR. FARNHAM: If we can zoom in on this part?
 24 (Document enlarged.)
 25

1 BY MR. FARNHAM
 2 Q What does that part of your chart indicate?
 3 A That part indicates that there were transfers made -- not
 4 by check, but by other means -- whereby it went from the
 5 Fidelity account to the Merrill Lynch account.
 6 And there were three transfers made and they all took
 7 place on January 19th, 2011. One in the amount of \$15,357.44.
 8 The next one, \$14,441. And the last one for \$3,986.86.
 9 Q And those all went into which account?
 10 A So the total for that was \$33,785.30, which was
 11 transferred into the Merrill Lynch account under the name of
 12 Anderson & Associates, Limited.
 13 Q Let's look at that Merrill Lynch account for a moment.
 14 (Document displayed.)
 15 Q What did you find when you looked at the Anderson &
 16 Associates Merrill Lynch account ending 7199?
 17 A When I looked at the withdrawals for that account, again,
 18 I found there were large withdrawals made by check which were
 19 deposited into accounts -- in the accounts under the name of
 20 MNT B, LLC, or Market Neutral Trading. And there were five --
 21 I'm sorry. Five checks that were written off of the Merrill
 22 Lynch account for those transfers.
 23 And I found that the first check, which is check No. 1017
 24 for \$40,000 was deposited into an account under the name of
 25 Market Neutral Trading at the TD Ameritrade account No. 9005.

1 The next one was check No. 205 in the amount of 85,000,
 2 which cleared the account on March 11, 2011. That was check
 3 No. 205. And that went to Barclays.
 4 And the next one was March 28th in the amount of \$22,000,
 5 which was deposited into the Chase account, account No. 8375,
 6 and that was check No. 323.
 7 And the last check, which was -- which cleared the account
 8 on April 1, 2011 in the amount of \$60,000, and that was also
 9 deposited into the Chase account. Chase account No. 8375.
 10 Q So let's go back and trace that again. The money going
 11 into the Merrill Lynch account, how much was that and what was
 12 the time range?
 13 A So the money that flowed into the Merrill Lynch from Chase
 14 Paymentech was \$297,177.
 15 Q And what was the date range for that?
 16 A January 18, 2011 through March 29, 2011.
 17 Q And how much of that money then went to, as you indicated,
 18 MNT B, LLC?
 19 A 292,000.
 20 Q And did you calculate the total amounts that went to
 21 Market Neutral Trading and MNT B?
 22 A I did.
 23 Q And what is that?
 24 A From the Merrill Lynch account it was 292,000.
 25 Q And how about overall from both these accounts, how much

1 went to Market Neutral Trading and MNT B?
 2 A The total from Fidelity and from Merrill Lynch came to
 3 \$408,000.
 4 Q I want to ask you to look at Exhibit 22. It should be in
 5 a red folder in front of you.
 6 (Witness complied.)
 7 Q Exhibit 22, what do those documents relate to?
 8 A Exhibit 22 are documents related to the Merrill Lynch
 9 account, account No. 7199, held in the name of Anderson &
 10 Associates, Limited.
 11 Q And are these -- is this the account that you looked at
 12 records for to do your work?
 13 A Yes.
 14 Q If you look at the -- the seventh page of this document
 15 and look at the top portion where it says Primary Contact Name?
 16 A The Primary Contact Name listed is David Lowe, L-O-W-E.
 17 (Document displayed)
 18 Q Were you able to determine -- were you also asked to
 19 determine what the balance in that Merrill account was on
 20 March 31st, 2011?
 21 A Yes.
 22 Q Were you able to figure that out?
 23 A Yes.
 24 Q What was the account balance?
 25 (Brief pause.)

1 Q I turn your attention to Page 69. What was the account
 2 balance in that account on March 31st?
 3 A The account balance on that day, March 31st, was \$373.87.
 4 Q Was there any activity in the account that you saw on that
 5 day that might have changed that balance?
 6 A No. There are no transactions listed for March 31st,
 7 2011.
 8 MR. FARNHAM: May I approach with a couple more
 9 exhibits, your Honor?
 10 A Yes.
 11 (Whereupon documents were tendered to the witness.)
 12 BY MR. FARNHAM
 13 Q Exhibit 25 and Exhibit 73 are two documents that have been
 14 previously admitted.
 15 First Exhibit 25, did you review that document?
 16 (Document displayed)
 17 A Yes.
 18 Q And does that appear to be ATM records?
 19 A Yes. These and to be ATM records of ATM withdrawals at an
 20 ATM machine located at 433 Hegenberger Road, Oakland,
 21 California.
 22 Q And did you review other documents to see if you could
 23 identify accounts for those cards that were used in those ATM
 24 transactions?
 25 A Yes.

1 Q What did you look at?
 2 A I looked at Trial Exhibit No. 73, which is a spreadsheet
 3 provided by E*Trade Financial, and the spreadsheet has a list
 4 of account numbers, ATM check cards which are connected to the
 5 Jones Moore and Associates/David Lowe.
 6 And below that there are other numbers listed for Pareto
 7 Capital, Market Neutral Trading, James Murray, Market Neutral
 8 Trading, James Murray, Lisa Murray.
 9 Q If we could look at that Exhibit 73, Page 2, and zoom in
 10 on the top half?
 11 (Document displayed)
 12 Q Is that the information about the check cards that you
 13 looked at?
 14 A Yes.
 15 Q And that indicates the account and the name on the card?
 16 A Yes.
 17 Q And were you able to match those numbers with the ATM
 18 records that you looked at?
 19 A Yes. I was able to match 22 of the 24 transactions
 20 contained in Exhibit 25.
 21 Q And if we could look at an example? How about Page 2 of
 22 Exhibit 25?
 23 (Document displayed.)
 24 A So if you look at Page 2, on the -- looks like the second
 25 line from the top under Card Number, there is a card number

1 listed. The card number listed has the last four digits 4885.
 2 If you then look at Exhibit 73 for that same number,
 3 you'll see it in the second grouping of numbers from the top,
 4 and it is the third one from that second grouping from the top.
 5 It's that account number ending in 4885. That number matches
 6 the ATM check card listed on Exhibit 25.
 7 Q So for that Page 2 of Exhibit 25, based on your review of
 8 those records, who -- what was the name on the account and the
 9 card -- and the name on the card for that transaction?
 10 A Jones Moore and Associates/David Lowe.
 11 Q I would like to now ask you to look at what's been marked
 12 for identification as Exhibit 392.
 13 A Yes.
 14 Q Were you asked to look at contributions or investments in
 15 some Market Neutral Trading accounts?
 16 A Yes.
 17 Q And what did you do in connection with that?
 18 A So what I did is I reviewed account statements for several
 19 bank accounts: Barclays, Chase, CitiBank.
 20 I also reviewed interview reports, emails, declarations,
 21 wire transfer records to compile a list of individuals and
 22 entities which had transferred money to these various bank
 23 accounts.
 24 Q And is Exhibit 392 a diagram that you prepared after doing
 25 that work?

1 A It is. It's a list of the investors, the date that
 2 they -- that their investments were deposited into the various
 3 accounts and the amounts.
 4 Q Would the diagram help explain your testimony about that
 5 work you did?
 6 A Yes.
 7 MR. FARNHAM: Your Honor, I would move -- I would
 8 move Exhibit 392 into evidence. I'd also like to use it as a
 9 demonstrative to show the jury.
 10 THE COURT: All right. Any objection?
 11 MR. DRESSLER: This is (inaudible).
 12 THE COURT: You have to repeat it.
 13 MR. DRESSLER: This is an exhibit we deferred on,
 14 your Honor.
 15 THE COURT: All right. I will defer ruling on
 16 admissibility, but will allow it to be published.
 17 Again, at this point it is not an exhibit, ladies and
 18 gentlemen, but it is a chart designed to help you understand
 19 this witness's testimony.
 20 You may publish.
 21 MR. FARNHAM: Thank you, your Honor.
 22 (Document displayed)
 23 BY MR. FARNHAM
 24 Q Mr. Villanueva, what's the date range of transactions that
 25 you looked at to prepare this chart?

1 A January 26, 2011 through February 27th 2012.
 2 Q And during that time period, what did you find with regard
 3 to the Market Neutral Trading accounts you looked at?
 4 A I found that there were various deposits at various times
 5 that were made to primarily three bank accounts.
 6 Q And did you calculate the subtotals that went into each of
 7 those accounts?
 8 A I did.
 9 Q What was the first contribution or transfer that you
 10 looked at?
 11 A The first contribution was from Polaris investment
 12 partners, which made a deposit into the Barclays Wealth
 13 account, account No. 83370677. It was made on January 26, 2011
 14 in the amount of \$250,000.
 15 Q And what was the last investment that you looked at?
 16 A The last investment was by Gibson GP, which was deposited
 17 into the Citibank account, account No. 204248645, made on
 18 February 27, 2012 in the amount of \$50,000.
 19 Q And what types of documents did you look at to prepare
 20 this information?
 21 A I looked at the bank account statements. I looked at
 22 money transfer records. I looked at letters authorizing the
 23 transfer of funds.
 24 Q What was the total amount that you saw transferred into
 25 these accounts?

1 A The total amount was \$2,358,000 into the various -- into
 2 the three Market Neutral Trading accounts held at the three
 3 banks: Barclays, Chase and Citibank.
 4 Q Were you also asked to look at transfers in and out of a
 5 Cayman Islands bank account related to this investigation?
 6 A Yes.
 7 Q Tell me about that?
 8 A So I was asked to map out the money transfers that had
 9 gone into the bank account in the Cayman Islands and out of the
 10 Cayman Islands.
 11 Q If I could ask you to look at Exhibit 393?
 12 (Witness complied.)
 13 Q What is Exhibit 393?
 14 A So 393 is the path that the various money transfers made
 15 to the Cayman Islands and out of the Cayman Islands over a
 16 period of time.
 17 Q Did you review any documents in order to prepare this
 18 diagram?
 19 A I did. I reviewed bank account statements, brokerage
 20 account statements, money transfer records, records of notices
 21 of withdrawal and deposit.
 22 Q And just generally, what's -- what does the diagram show,
 23 just an overview?
 24 A The diagram shows a chronological history of the money
 25 transfers made from the United States into the Cayman Islands

1 and then back to other accounts in the United States and
 2 Europe.
 3 Q Would using this diagram help explain your testimony about
 4 those transfers?
 5 A Yes.
 6 MR. FARNHAM: Your Honor, I would offer Exhibit 393
 7 into evidence.
 8 THE COURT: Any objection?
 9 MR. DRESSLER: Previously made, your Honor.
 10 THE COURT: Pardon?
 11 MR. DRESSLER: I objected earlier.
 12 THE COURT: All right. That was on grounds of
 13 relevance, and that objection is overruled. And so I will
 14 admit 378.
 15 It's really a summary document, correct, counsel?
 16 MR. FARNHAM: That's correct, your Honor. It's a
 17 summary of records that Mr. Villanueva reviewed.
 18 THE COURT: All right. It is admitted as such.
 19 (Trial Exhibit 378 received in evidence.)
 20 MR. FARNHAM: May I publish it, your Honor?
 21 THE COURT: Yes.
 22 (Document displayed)
 23 BY MR. FARNHAM
 24 Q What time period did you look at in compiling this
 25 diagram?

1 A From January 3rd, 2012 through January 24th, 2012.
 2 Q Maybe you could walk us through what you found, looking at
 3 the wire transfer records for these accounts?
 4 A Sure. The first step the money took in this entire path,
 5 it started with Interactive Brokers. And I've identified that
 6 as box No. 1. That's the first transfer, if you look at that.
 7 There was a transfer of \$2,685,700 that took place on
 8 January 3rd, 2012 from the Interactive Brokers' account held in
 9 the name of Market Neutral Trading B, account No. U988206. And
 10 that money was transferred to Citibank into an account held in
 11 the name of Market Neutral Trading, LLC, account No. 204248645.
 12 Q What did you find after that?
 13 A I found that on that same day there was transfers from
 14 that Citibank account, two transfers, that took place that same
 15 day, January 3rd, 2012. One in the amount of 2,670,000. The
 16 other in the amount of 270,000, with both transfers going to
 17 the Cayman Islands.
 18 Q What account would those -- did those go into?
 19 A It went into an account held in the name of MNT Master
 20 Fund, Limited.
 21 Q What happened after that?
 22 A So what happened after that, if you look at the wire
 23 transfer that I label as No. 4, which takes place on
 24 January 5th, 2012 in the amount of 2.6 million, that
 25 2.6 million is then transferred back into the United States to

1 the Interactive Brokers' account, which is held in the name of
 2 MNT Master Fund, Limited, account No. [REDACTED]
 3 Q Was additional money then wired back into the Cayman
 4 Islands account?
 5 A Yes. Money was then transferred from the MNT Master Fund,
 6 Limited account at Interactive Brokers on January 13th, 2012 in
 7 the amount of \$500,000, which went into -- back into the Cayman
 8 bank account, account name MNT Master Fund, Limited.
 9 Q And what did you see after that?
 10 A So after that, if you look at the box labeled No. 6, on
 11 January 17, 2012 an amount of \$500,000 was transferred from the
 12 Cayman Island bank account to -- back to the Citibank account
 13 held in the name of Market Neutral Trading, account No.
 14 204248645.
 15 Q In regard to this work, what was the next transfer you
 16 looked at?
 17 A The next transfer occurred on actually the same day,
 18 January 17th, 2012, in the amount of \$150,000, which went from
 19 the Cayman Island bank account to a bank in Paris, France.
 20 Q Who is the account holder on that account?
 21 A I'm not sure who the account holder on that account is,
 22 but when you look at the wire transfer records, it is noted
 23 that there is a James Murray there. And if I recall correctly,
 24 it is for the benefit of James Murray.
 25 Q Did you also look at transfers regarding a Netflix short

1 sale in an Oppenheimer brokerage account?
 2 A I did.
 3 Q Tell me generally what you did with regard to that?
 4 A So I looked at the Oppenheimer account statement and
 5 traced where withdrawals were made from that account and where
 6 they had gone.
 7 So actually, again, I mapped out where the money flowed
 8 from that account where it ended up.
 9 Q If I could have you look at Exhibit 391 that's been marked
 10 for identification?
 11 (Witness complied.)
 12 Q What is Exhibit 391?
 13 A 391 is a chart that I created which maps out the flow of
 14 money from the Oppenheimer account.
 15 Q And what documents did you look at to prepare that
 16 information?
 17 A I looked at the Oppenheimer statements. I looked at wire
 18 transfer records. I looked at account statements for an
 19 account at US Bank held in the name of Garrett J. Zelen
 20 Attorney/Client Trust.
 21 I also looked at bank account statements for Michael J.
 22 Murray at Bank of America, and I looked at brokerage account
 23 statements for Event Trading GP LLC at Interactive Brokers. I
 24 also looked at statements for Discover Bank, held in the name
 25 of James Murray.

1 Q And is this diagram -- does this chart that money flow?
 2 A It is.
 3 Q Would the diagram help you explain your testimony about
 4 that money flow?
 5 A Yes.
 6 MR. FARNHAM: Your Honor, I would offer Exhibit 391
 7 into evidence.
 8 THE COURT: I believe I already ruled this is
 9 admissible, so it is admitted.
 10 (Trial Exhibit 391 received in evidence)
 11 MR. FARNHAM: And if we may publish it, Your Honor?
 12 THE COURT: Okay.
 13 (Document displayed)
 14 BY MR. FARNHAM:
 15 Q Tell us about the work you did to trace the funds from the
 16 Oppenheimer MNT Master Fund account.
 17 A So when I looked at the --
 18 (Reporter interruption)
 19 THE WITNESS: Okay.
 20 When I reviewed the Oppenheimer account statements, I
 21 found that there were two withdrawals made from that account.
 22 And I traced the proceeds of those withdrawals to two accounts.
 23 BY MR. FARNHAM:
 24 Q What was the total that was transferred out of that
 25 account?

1 A The total transferred out was \$410,882.65.
 2 Q And where did you see the money go after that?
 3 A \$260,882.65 was transferred to Event Trading GP LLC at
 4 Interactive Brokers, Account No. [REDACTED] And that was done
 5 on August 10, 2012.
 6 Q Was there an additional wire out of that account?
 7 A Yes, the second wire which took place on the same day in
 8 the amount of \$150,000, and that was wire transferred to a US
 9 Bank account held in the name of Garrett J. Zelen
 10 Attorney/Client Trust.
 11 Q What did you see in terms of the money going out of that
 12 attorney/client trust account?
 13 A When I reviewed the US Bank records for Garrett J. Zelen,
 14 the attorney/client trust account, I found that there was a
 15 \$100,000 transfer out of that account on August 15th, 2012.
 16 And that \$100,000 was then traced to an account at Bank of
 17 America, held in the name of Michael J. Murray, Account
 18 No. [REDACTED].
 19 Q After you traced that money to that account in the name of
 20 Michael J. Murray, what did you see?
 21 A There were then two transfers made out of that account, a
 22 day later. There was a \$50,000 transfer that went from the
 23 Michael J. Murray account to Event Trading GP LLC at
 24 Interactive Brokers.
 25 Q When you trace money, do you also look at the current

1 balances of the accounts that the money is going in and out of?
 2 A Yes.
 3 Q Did you see anything in relation to the Michael J. Murray
 4 account regarding this money?
 5 A That the money, the \$100,000 that went into the account,
 6 that the 50,000 that came out that, that was pretty much the
 7 money that was deposited into the \$100,000 account.
 8 Q So the balance of that account was less than the \$50,000
 9 that was transferred out?
 10 A Yes, it was substantially less.
 11 Q And how about less than the 15,000 -- well, we haven't
 12 gotten to that transfer yet. Let me ask you about the other
 13 transfer you saw out of that account.
 14 A So there was an additional transfer out of the Michael J.
 15 Murray account in the amount of \$15,000, which also took place
 16 on August 16, 2012, and it was traced to a Discover Bank
 17 account, Account No. [REDACTED], held in the name of James
 18 Murray.
 19 Q And for that transfer, did you also see that the balance
 20 of the account before the money came in was less than 15,000?
 21 A Yes.
 22 Q Does that indicate -- what does that indicate to you about
 23 the money that came out of that account?
 24 A That indicates to me that a large amount, if not all the
 25 money that was taken out of the account, the 50,000 and the

1 15,000, were probably taken from the 100,000 that initially
 2 went into the account on August 15, 2012. Given the amounts
 3 and the approximate -- the approximate timing that there was
 4 one day -- the withdrawals were one day later after deposit.
 5 Q Tell me the time frame that all these transactions --
 6 A The time frame is very short. If you look at the money
 7 being withdrawn from the Oppenheimer account, that occurred on
 8 August 10, 2012. And the transfers were completed by
 9 August 16, 2012.
 10 Q If I could ask you, did you do any work regarding --
 11 looking at a couple exhibits in this case? Specifically,
 12 Exhibit 140 and portions of Exhibit 145?
 13 MR. FARNHAM: Sorry. May I approach with those
 14 exhibits, Your Honor?
 15 THE COURT: Yes.
 16 (Witness examines documents)
 17 THE WITNESS: (Nods head)
 18 MR. FARNHAM: These have been previously admitted
 19 exhibits, Your Honor. Permission to publish portions of those?
 20 THE COURT: All right.
 21 (Document displayed)
 22 MR. FARNHAM: If we could first bring up Exhibit 140.
 23 BY MR. FARNHAM:
 24 Q So did you review Exhibit 140?
 25 A I did. I did review Exhibit 140.

1 Q And then, did you also look at Exhibit 145?
 2 A Yes.
 3 Q And specifically, did you look at -- well, tell me what
 4 you looked at in Exhibit 145.
 5 A So what I focused in on was the monthly rate of return for
 6 Exhibit 140, for the months January through December, 2009.
 7 And I compared that to the monthly rate of return for the same
 8 period of Exhibit 145, Page --
 9 Q I believe it's 7.
 10 (Witness examines document)
 11 A 7. For 2009.
 12 Q So for Exhibit 145, you looked at the 2009 rates of return
 13 on those materials?
 14 A I did. I compared the two.
 15 Q And what did you find?
 16 A I found that the two were for the most part very similar,
 17 except for the last four months. I believe beginning in
 18 September, that's where there was a significant difference
 19 taking place between the amounts.
 20 Q Can I ask you to look at what's been marked for
 21 identification as Exhibit 394.
 22 (Document taken off display)
 23 (Request complied with by the Witness)
 24 Q Do you recognize that document?
 25 A I do.

- 1 Q What is that?
- 2 A Exhibit 394 is a chart I prepared which compares the
3 monthly rate of return reported by each of the documents.
4 So on the left side I have all the rates of return for
5 Exhibit No. 140, and then on the right side I have the amounts
6 listed for the monthly rate of return and the \$1,000 index for
7 Market Neutral Trading marketing materials, which is Exhibit
8 145.
- 9 Q Would this diagram that you prepared regarding your work,
10 would that help explain your testimony about what you did?
- 11 A Yes.
- 12 MR. FARNHAM: Your Honor, I would propose to show
13 Exhibit 394 as a demonstrative.
- 14 THE COURT: As a demonstrative. All right.
15 (Document displayed)
- 16 THE COURT: I already indicated that that's
17 permissible. So again, this is not evidence at this point. It
18 is just a chart to help illustrate this witness's testimony.
- 19 MR. FARNHAM: Maybe we could zoom in a little bit.
20 (Document displayed)
- 21 BY MR. FARNHAM:
- 22 Q So tell us what you did in comparing the information from
23 those two exhibits.
- 24 A So what I did is I just transferred the information from
25 Exhibit 145 and Exhibit 140 to this chart, laying out what the

- 1 monthly rate of return reported on each of those documents are,
2 side by side on the same chart, so you can easily compare the
3 differences in the monthly rate of return and the amounts
4 reported for \$1,000 index.
- 5 Q So let's talk for a minute about what is on the left side
6 here (indicating). What is that information?
- 7 A On the left side is the information provided from Exhibit
8 No. 140, which contains the time -- the months for 2009, the
9 monthly rate of return reported for each of those months, and
10 then a \$1,000 index.
- 11 Q And what is the \$1,000 index?
- 12 A So the \$1,000 index is an amount reported that -- let's
13 say an investment would have grown by that amount, given that
14 rate of return.
- 15 For example, if you had invested \$1,000 at the beginning
16 of January, given a monthly rate of return of 5.99 percent,
17 that \$1,000 investment would have grown by the end of the month
18 to \$1,060.
- 19 Q And then, is that process repeated each month?
- 20 A Yes, that process is repeated each month. So at the
21 beginning of February you would have \$1,060 which you would
22 invest. And for February, the monthly rate of return is
23 .18 percent. So at the end of February, that \$1,060 would have
24 grown to 1,062.
- 25 Q Those numbers under Exhibit 140 on the left-hand side for

- 1 \$1,000 index, you got those from Exhibit 140, itself?
- 2 A I did.
- 3 Q Did you compare the monthly rate of return -- I'm sorry,
4 I'm skipping ahead. Let's go to the right-hand side. And tell
5 me what's there.
- 6 A So the right side, again, is the same information that's
7 -- well, the information on the right side is taken from
8 Exhibit No. 145. And, it lists all the information that was
9 provided in that document.
- 10 Q That is the marketing materials for Market Neutral
11 Trading.
- 12 A Correct.
- 13 Q Tell me what you found when you compared the monthly rate
14 of return from Exhibit 140 to the monthly rate of return as
15 reported on those Market Neutral Trading documents.
- 16 A So, I found that they were substantially similar in all
17 respects for both the monthly rate of return and the \$1,000
18 index. Except when it came to September, October, November and
19 December.
- 20 Q So let's talk about January through August. When you say
21 "substantially similar," what do you mean?
- 22 A So, if you look at January, for Exhibit No. 140, the
23 monthly rate of return is reported as 5.99 percent. For Market
24 Neutral Trading market materials, Exhibit No. 145, it's
25 reported as 6 percent. So that's -- it looks like there's

- 1 probably rounded up for that amount.
- 2 On the next month, it looks like the same thing occurred.
3 The Exhibit No. 140 reports a monthly rate of return of .18
4 percent. For Market Neutral Trading it's .2 percent. So it
5 looks like it was rounded -- it could have been rounded up to
6 .2 percent.
- 7 Q So except for rounding, they're basically the same
8 numbers.
- 9 A Yes.
- 10 Q And what did you find going further down in the months up
11 to August?
- 12 A That the process repeated itself. That it looks like if
13 you rounded up what was reported on Exhibit No. 140, you would
14 get what was reported on the Market Neutral Trading material.
- 15 Q And then what did you find for September through December?
- 16 A September was substantially different. That's where they
17 started to diverge. September for Exhibit No 140 was reported
18 as a negative 44.03. If you look at the Market Neutral Trading
19 materials, it was reported as a negative 1.6 percent.
- 20 Q Not a rounding error.
- 21 A No.
- 22 Q What about October?
- 23 A October, again, there is a huge -- there is a large
24 difference.
- 25 Q And November?

1 A Again, large difference. Largest difference yet. Exhibit
2 No. 140 reported a negative 80.75 percent. And for Market
3 Neutral Trading, they actually reported a positive 3.9 percent.
4 Q And what about December?
5 A December, Exhibit No. 140 reported a monthly rate of
6 return of negative 19.23 percent. While Market Neutral Trading
7 reported a positive 5.4 percent.
8 Q Tell me what you did for this column on the right
9 (indicating). What is that?
10 A So, on the column on the right, I calculated what the
11 \$1,000 index would be, with the amount of monthly rate of
12 return reported for Market Neutral Trading. So that is
13 actually my calculation of what \$1,000 would have grown,
14 assuming these monthly rates of return reported by Market
15 Neutral Trading.
16 Q So, for that column, that \$1,000 index column, you used
17 the actual marketing materials of Market Neutral Trading.
18 A Correct.
19 Q And then, what did you find for that \$1,000 index
20 throughout that year?
21 A That they were substantially the same from January through
22 August. And they diverged beginning in September. And
23 continued to grow through December.
24 Q According to your calculation of the \$1,000 index, at the
25 end of 2009, according to the Market Neutral Trading materials,

1 what would \$1,000 investment be worth?
2 A \$1,134.
3 Q And then, looking at Exhibit 140, the \$1,000 index that
4 you saw there, what would that \$1,000 investment be worth?
5 A \$51.
6 MR. FARNHAM: If I could have just a moment, Your
7 Honor?
8 THE COURT: All right. We are at the 2:00 hour.
9 (Off-the-Record discussion between counsel)
10 MR. FARNHAM: That's all I have. Thank you.
11 THE COURT: All right. And we will take our break
12 for today, and actually for this week. We will reconvene on
13 Monday, at 8:30.
14 I did want to indicate to the jury, if you could, try to
15 keep Friday the 9th open. We normally end at 2:00, and if it's
16 possible, I would like to try to reserve the afternoon to see
17 if we can get as much done as we can. We may or may not use
18 that time, but I want to give you a week's warning, if you can
19 swing it.
20 So otherwise, have a great weekend. Stay safe. We will
21 see you on Monday.
22 And again, please do not discuss this case with anyone, do
23 not do any research on your own, and do not form any opinions
24 until this case is submitted to you for deliberation.
25 Have a great weekend.

1 (Jury excused)
2 (The following proceedings were held outside of the
3 presence of the Jury)
4 THE COURT: Okay. You may step down, Mr. Villanueva,
5 for now.
6 (Request complied with by the Witness)
7 THE COURT: So Monday we will move into the next
8 phase of the case, I assume?
9 MR. FARNHAM: That's correct, Your Honor.
10 MR. DRESSLER: So, who's up on Monday?
11 MS. HARRIS: Your Honor, what we would anticipate
12 doing would be reading into evidence the transcripts as
13 redacted for July 10th and July 18th.
14 I understand Mr. Dressler has an objection to the
15 July 10th transcript, so we will need to work that out with the
16 Court beforehand.
17 THE COURT: Yep.
18 MS. HARRIS: And then we would anticipate calling the
19 chaperones, the Pillsbury chaperones, Aaron Jeter and Mark
20 Britton. But before we did that, we would also put the actual
21 Court's order, the release order, into evidence.
22 Then we would be calling Mr. Guerra, Ray Elquist --
23 MR. DRESSLER: I'm sorry; say -- I didn't hear what
24 you said, the first.
25 MR. FARNHAM: So, Jeff Guerra, G-U-E-R-R-A. Ray

1 Elquist, E-L-Q-U-I-S-T. Jim Bailey, B-A-I-L-E-Y.
2 MS. HARRIS: And then if we had time, Your Honor, we
3 would call Secret Service Agent Sims for the forensic analysis
4 of the computer tablet. And Mr. Sims will also be testifying
5 about the search at the Pillsbury law firm.
6 THE COURT: Okay. All right. So, you won't have any
7 more Oppenheimer witnesses after Mr. Villanueva. Right?
8 MS. HARRIS: Correct.
9 THE COURT: All right. And what about Crowley? You
10 had him as a lengthy witness.
11 MS. HARRIS: I already advised Mr. Dressler that we
12 do not anticipate calling him in our case-in-chief.
13 THE COURT: All right. So he won't be called. Okay.
14 All right. If you don't work out the issues with respect
15 to the transcript, let's talk about this at 8:15 on Monday.
16 MS. HARRIS: Your Honor, we can certainly do that.
17 The one thing I did want to advise the Court is there's a
18 possibility the Government could rest its case as early as
19 Monday or Tuesday morning. Monday afternoon or Tuesday
20 morning. So Mr. Dressler ought to be prepared to go as early
21 as Monday afternoon or Tuesday morning.
22 THE COURT: Okay. You are so warned.
23 MR. DRESSLER: I acknowledge the warning.
24 THE COURT: Okay. All right. Good. Thank you.
25 MR. FARNHAM: Thank you.

1 THE COURT: Just to make clear, I reserved ruling on
 2 392, so we will have to discuss that on Monday. I have
 3 admitted 391 and 393. 390 and 394 have been used only as
 4 demonstratives. There was no motion to admit.
 5 So the only one outstanding was 392. And you were going
 6 to look about completeness and those issues. And we'll talk
 7 about that also.
 8 MR. DRESSLER: Correct.
 9 THE COURT: Okay? Okay. Thanks, everyone. Have a
 10 great weekend.
 11 MR. DRESSLER: Have a good weekend, Your Honor.
 12 (Reporter interruption)
 13 MR. FARNHAM: 391 was admitted. I thought 390 was
 14 also deferred.
 15 I would offer 390. I know you didn't admit it,
 16 Your Honor.
 17 THE COURT: Okay, wait a minute.
 18 THE CLERK: I don't have it as admitted.
 19 MR. DRESSLER: Your Honor, can I have one second with
 20 Mr. Murray?
 21 THE COURT: Yes.
 22 390 was not preadmitted. It was reserved.
 23 MR. FARNHAM: That's right.
 24 THE REPORTER: Thank you.
 25 THE COURT: Okay. So 390, there's been a move to

1 admit 390.
 2 (Off-the-Record discussion between Defendant and
 3 Counsel)
 4 THE COURT: Is there an objection?
 5 MR. DRESSLER: I'm sorry?
 6 THE COURT: 390, they have now actually moved to
 7 admit 390. This is that Chase Paymentech into Fidelity and
 8 Merrill Lynch chart. I had reserved that.
 9 MR. DRESSLER: No objection, Your Honor.
 10 THE COURT: Okay, then 390 is admitted.
 11 (Trial Exhibit 390 received in evidence)
 12 THE COURT: All right.
 13 MR. FARNHAM: Thank you.
 14 THE COURT: See you next week. Thank you.
 15 (Whereupon at 2:06 p.m. further proceedings were
 16 adjourned until Monday, October 5, 2015 at 8:15 a.m.)
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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

_____/s/ Debra Pas_____

Debra L. Pas, CSR 11916, CRR, RMR, RPR

_____/s/ Belle Ball_____

Belle Ball, CSR 8785, CRR, RMR, RPR

Friday, October 2, 2015

Volume 8
Pages 1299 - 1449

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDWARD M. CHEN

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) NO. CR 12-0278 EMC
JAMES MURRAY,)
Defendant.) San Francisco, California
Monday
October 5, 2015) 8:15 a.m.

TRANSCRIPT OF PROCEEDINGS
EXCLUDES EX PARTE PROCEEDINGS

APPEARANCES:

For Plaintiff: MELINDA HAAG
United States Attorney
450 Golden Gate Avenue 94102
San Francisco, California
BY: ROBIN HARRIS, AUSA
LLOYD FARNHAM, AUSA

For Defendant: ALAN A. DRESSLER, ESQ.
400 Montgomery Street
Suite 200
San Francisco, California 94104

Also Present: USSS AGENT ANTHONY SIMS, JR.
FBI AGENT BRIAN C. WEBER

Reported By: Debra L. Pas, CSR 11916, CRR, RMR
Belle Ball, CSR 8785, CRR, RMR
Official Reporters - US District Court

PROCEEDINGS

1
2 OCTOBER 5, 2015 8:16 A.M.
3 (Defendant present, in custody.)
4 (Proceedings held in open court, outside the presence
5 and hearing of the jury.)
6 THE CLERK: Please come to order.
7 THE COURT: Good morning, everyone. Or who's ever
8 here, anyway.
9 MR. DRESSLER: We stipulate to that, Your Honor.
10 MR. FARNHAM: Good morning, Your Honor.
11 THE COURT: One of those days, eh?
12 (Defendant present)
13 THE COURT: All right. Good morning, everyone.
14 MS. HARRIS: Good morning, Your Honor.
15 THE COURT: There was an issue that you all were
16 going to talk about in terms of the transcript.
17 MS. HARRIS: Yes. We have agreed with Mr. Dressler
18 that we won't introduce the July 10 transcript in our
19 case-in-chief, and we're in agreement on the redactions on the
20 July 18th, which we had shown Mr. Dressler last week.
21 THE COURT: All right.
22 MS. HARRIS: So we will read the July 18th redacted
23 transcript in.
24 And I did tell Mr. Dressler, obviously, if his client
25 testifies, then the July 10 transcript could be pertinent to

1 cross-examination. But in our case-in-chief, we have gone
2 along with Mr. Dressler's objection, and we won't do it.
3 THE COURT: All right. Excellent.
4 MR. DRESSLER: Your Honor, if he testifies and if
5 they use the other transcript, I may or may not have
6 objections; we can deal with them at that point.
7 THE COURT: All right. So we have that. So after --
8 how much more time do you have with Mr. Villanueva on direct?
9 MR. FARNHAM: We are finished on direct, Your Honor.
10 THE COURT: You are finished.
11 MR. FARNHAM: Yeah.
12 THE COURT: So you will start in with the cross.
13 MR. DRESSLER: Yeah.
14 THE COURT: Then the next phase.
15 MS. HARRIS: The Pillsbury phase. And we may finish
16 that today, Your Honor, the entire rest of our case.
17 THE COURT: Oh.
18 MS. HARRIS: It depends, but that is a possibility.
19 THE COURT: Okay.
20 MR. FARNHAM: One thing we plan to do before the
21 Pillsbury witnesses testify is to play one jail call. It's
22 about 20 to 25 minutes.
23 THE COURT: That's on --
24 MR. FARNHAM: I think we should submit that as a
25 separate exhibit, once it's played. There is on our exhibit

1 list and on our set of exhibits a disk with a bunch of jail
2 calls.
3 THE COURT: Right.
4 MR. FARNHAM: But I think we should separately admit
5 the ones that we play.
6 THE COURT: Right. That would be the normal course
7 of things.
8 MR. DRESSLER: Right. One call or one --
9 MS. HARRIS: One call.
10 MR. DRESSLER: One call, all right.
11 MR. FARNHAM: And, so, those calls were subject to a
12 stipulation, Your Honor, about the authenticity, and about the
13 time and date that the particular calls took place.
14 Before we play that call, would it be appropriate for us
15 to say just those facts that -- either us or Your Honor say
16 that this was a call, such and such a date, time 19:42, I think
17 it was, and it was between James Murray and his parties?
18 THE COURT: Will it explain the context -- how about
19 explaining where these calls -- do we need to explain where the
20 calls were, or does that make any difference?
21 MS. HARRIS: Well, he was in jail, so I think when
22 you hear the call it says, you know, "An inmate at Glenn
23 Dyer..."
24 THE COURT: So that will be obvious to the jurors?
25 MR. FARNHAM: The stipulation -- maybe we could read

1 more of that.
 2 THE COURT: All right.
 3 MR. FARNHAM: Our stipulation says (As read):
 4 "Audio recordings of jail calls. True and
 5 correct copies of audio recordings made of telephone
 6 call system of Glenn Dyer Detention Facility in
 7 Alameda County. They involve...this call
 8 involved..."
 9 We could say:
 10 "...James Murray and his parents while he was an
 11 inmate at Glenn Dyer Detention Facility."
 12 THE COURT: All right.
 13 MR. DRESSLER: And the date might be helpful.
 14 MS. HARRIS: Yeah.
 15 MR. FARNHAM: And I will note the date, the time.
 16 THE COURT: Well, since -- yeah. Since we've been
 17 having the parties read the stipulations, I think we should
 18 continue doing that, rather than having the Court do that,
 19 because I don't want to imply anything different than what
 20 we've been doing.
 21 MR. FARNHAM: It'll be paraphrased, only because this
 22 stipulation involves a couple hundred calls, and we're only
 23 introducing one. But --
 24 MR. DRESSLER: I have no objection to paraphrasing.
 25 THE COURT: All right, all right. So we're not going

1 to introduce into evidence the stipulation, because there's so
 2 many calls in there.
 3 MR. FARNHAM: I think that doesn't make sense.
 4 THE COURT: I don't think that's something that's
 5 necessary.
 6 MR. DRESSLER: I agree.
 7 THE COURT: All right. So, all right. Anything
 8 else?
 9 MR. FARNHAM: Yes. We have some exhibits,
 10 Your Honor, that we'd like to move into evidence that are
 11 primarily stipulated.
 12 There's one -- Exhibit 2 was five different photos of
 13 evidence seized during the house, that was shown to David Lowe
 14 during his deposition. That's a subset of Exhibit 102. And
 15 all the pages are in Exhibit 102. So I would offer Exhibit 2
 16 into evidence.
 17 MR. DRESSLER: No objection.
 18 THE COURT: All right. 2 is admitted.
 19 (Trial Exhibit 2 received in evidence)
 20 MR. FARNHAM: And then there were a few others that
 21 were subject to stipulation. Here, I'll -- there are various
 22 E*Trade account documents in the names of Jones Moore &
 23 Associates and related entities. These are Exhibits 74 through
 24 80.
 25 MR. DRESSLER: No objection.

1 THE COURT: Okay. 74 through 80 are admitted.
 2 (Trial Exhibits 74 through 80 received in evidence)
 3 MR. FARNHAM: Some TD Ameritrade records at Exhibits
 4 82 and 83.
 5 MR. DRESSLER: No objection.
 6 THE COURT: Admitted.
 7 (Trial Exhibits 82 and 83 received in evidence)
 8 MR. FARNHAM: Some Fidelity records at 87 and 88.
 9 MR. DRESSLER: No objection.
 10 THE COURT: Okay, admitted.
 11 (Trial Exhibits 87 and 88 received in evidence)
 12 MR. FARNHAM: There's a Millennium Trust -- bank
 13 records regarding Millennium Trust's bank account that has the
 14 wires out to Market Neutral Trading, Exhibit 181.
 15 MR. DRESSLER: No objection.
 16 THE COURT: Okay. Admitted.
 17 (Trial Exhibit 181 received in evidence)
 18 MR. FARNHAM: Citibank records for Market Neutral
 19 Trading, Exhibit 235.
 20 MR. DRESSLER: No objection.
 21 THE COURT: Admitted.
 22 (Trial Exhibit 235 received in evidence)
 23 MR. FARNHAM: Additional bank record regarding Market
 24 Neutral Trading, and the wires in and out. Exhibits 249 and
 25 251 through 253.

1 MR. DRESSLER: No objection.
 2 THE COURT: Admitted.
 3 (Trial Exhibits 249, 251 through 253 received in
 4 evidence)
 5 MR. FARNHAM: Exhibit 290, Discover Bank records for
 6 James Murray; Exhibit 292, Interactive Brokers records that I
 7 thought had been admitted previously; and Exhibit 296, Citibank
 8 records for Event Trading, also subject to stipulation.
 9 MR. DRESSLER: No objection.
 10 THE COURT: Okay. Those three are admitted.
 11 (Trial Exhibits 290, 292, 296 received in evidence)
 12 MR. FARNHAM: Exhibit 371 are records regarding the
 13 times that Mr. Murray was in residence at [REDACTED].
 14 It's a halfway house record. Subject to stipulation.
 15 THE COURT: Okay. No objection?
 16 MR. DRESSLER: No objection.
 17 THE COURT: Okay. Admitted.
 18 (Trial Exhibit 371 received in evidence)
 19 MR. FARNHAM: And then, Exhibit 392 is one of
 20 Mr. Villanueva's exhibits that I think we're still going to
 21 talk about after his testimony.
 22 That's the investor contribution exhibit that I think we
 23 can -- perhaps we can discuss after he testifies.
 24 MR. DRESSLER: Yes.
 25 THE COURT: Okay, we reserve that one. And I think

1 the issue was completeness, as I recall.
 2 MR. DRESSLER: Correct, Your Honor.
 3 THE COURT: So that one still remains. There's a
 4 motion to admit, but I will take it under submission.
 5 MR. DRESSLER: Correct.
 6 THE COURT: And you do some cross, and then remind me
 7 that we've got to return to that one.
 8 MR. DRESSLER: Okay.
 9 MR. FARNHAM: That's all I had on that, Your Honor.
 10 THE COURT: Okay.
 11 (Off-the-Record discussion between counsel)
 12 MR. DRESSLER: I need a few minutes with Mr. Murray.
 13 THE COURT: Sure, that's fine.
 14 MS. HARRIS: Really quickly.
 15 THE COURT: Oh.
 16 MS. HARRIS: Your Honor, can we also move in Exhibit
 17 319, which is the transcript of the proceedings that
 18 Mr. Dressler and the Government have agreed on? That's the
 19 July 18th transcript.
 20 And can we also move in Government Exhibit 317, which is
 21 the Court's bail order with the minute order attached to it.
 22 It's the complete bond that -- the second bond.
 23 THE COURT: All right. 319 is the redacted version,
 24 right?
 25 MS. HARRIS: Correct, correct.

1 THE COURT: And 317 is the bond, bail order.
 2 MS. HARRIS: With the minute order attached.
 3 THE COURT: Minute order. Okay.
 4 Any objection to that, Mr. Dressler?
 5 (Off-the-Record discussion between Defendant and
 6 Counsel)
 7 MR. DRESSLER: I'm sorry, Your Honor?
 8 THE COURT: Any objection to admission of the
 9 redacted transcript and the actual bail order with the minute
 10 order, the bond with the minute order attached?
 11 MR. DRESSLER: No, Your Honor.
 12 THE COURT: Okay. Those two are admitted. That's
 13 319 and 317.
 14 (Trial Exhibits 319 and 317 received in evidence)
 15 MR. FARNHAM: That's correct.
 16 THE COURT: Okay. All right.
 17 MR. FARNHAM: I think that's it.
 18 THE COURT: Okay. Counsel, I'm wondering whether it
 19 would be useful to the jury to signal to them when you move
 20 into the Pillsbury part of the case.
 21 I don't want argument or anything, but just a note that
 22 the next witness will address the -- I realize now that we have
 23 had several transactions that, for the jury's purposes, they
 24 may not know where we're going.
 25 MS. HARRIS: I think that would be fine. And I can

1 tell the Court and Mr. Dressler what we would say, so we can
 2 vet it in advance.
 3 THE COURT: Why don't you do that. Just a short, you
 4 know, intro that the Government is now going to introduce
 5 evidence regarding the Pillsbury transaction, or whatever you
 6 want to call it.
 7 MS. HARRIS: The --
 8 THE COURT: The contempt claim, contempt charge.
 9 MS. HARRIS: "The contempt claim at the Pillsbury law
 10 firm" or something like that.
 11 THE COURT: Right. Why don't you talk about that
 12 before, because otherwise this thing's going -- continuing. We
 13 know where we're going, but they probably have no idea.
 14 MR. DRESSLER: I need just a few minutes.
 15 THE COURT: All right.
 16 THE CLERK: Your Honor, all the jurors are here.
 17 (Off-the-Record discussion)
 18 (A pause in the proceedings)
 19 THE CLERK: Please come to order.
 20 MR. DRESSLER: Your Honor, I'm sorry, but I think we
 21 need a quick in-camera discussion.
 22 THE COURT: In camera? Or sidebar? What do you --
 23 MR. DRESSLER: Me, my client and the Court without
 24 anyone else. *Ex parte*.
 25 THE COURT: Okay, I'll grant that request. Let's

1 vacate the courtroom for a moment.
 2 (Whereupon, the following proceedings were held
 3 ex parte with defense counsel, Page 1310 Line 5
 4 through Page 1313, Line 21.)
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21 (Courtroom reopened)
22 MR. FARNHAM: Your Honor, shall we bring the witness
23 to the stand?
24 THE COURT: Yes.
25 All right. Let's bring the jury in.

1 (Jury enters the courtroom at 8:38 a.m.)
2 THE COURT: Okay, you may be seated. Good morning,
3 happy Monday to everyone. I hope you had a great weekend.
4 It's good to see you back.
5 So again, we are going to pick up where we left off last
6 time. Mr. Villanueva was on the stand, testifying.
7 And, I believe the Government has completed its direct
8 examination? Is that correct?
9 MR. FARNHAM: That's correct, Your Honor.
10 THE COURT: All right. So now, Mr. Dressler, you
11 have the opportunity to conduct cross-examination.
12 MR. DRESSLER: Thank you. Actually, I just have a
13 couple of questions.
14 Can we put Exhibit 393 on the screen?
15 (Document displayed)
16 PHILLIP VILLANUEVA,
17 called as a witness for the Government herein, having been
18 previously sworn, resumed the stand and testified further as
19 follows:
20 CROSS EXAMINATION
21 BY MR. DRESSLER:
22 Q Can you see that, Mr. Villanueva?
23 A Yes.
24 Q What I want to ask you is, is this a -- a picture of all
25 of the monies that went in and out of the various bank accounts

1 that are depicted in this exhibit during the month of January?
2 A No.
3 MR. DRESSLER: And 394.
4 (Off-the-Record discussion between counsel)
5 MR. DRESSLER: 392.
6 (Document displayed)
7 BY MR. DRESSLER:
8 Q 392 represents certain monies that went into Market
9 Neutral Trading between -- during certain months in 2011 and
10 2012. Correct?
11 A Correct.
12 Q Does that summarize all of the investments during that --
13 all of the investor money that went into MNT during that time
14 period?
15 A This includes all of the investment money that I was able
16 to identify. There could have been more than what's listed
17 here. But these are the ones that I was able to identify for
18 this time period.
19 Q Okay. And, this chart only includes money coming in. It
20 doesn't include any withdrawals of assets by investors.
21 A I -- I did look for withdrawals out of that account that
22 would be wired back to the investors. I wasn't able to
23 identify any that went back to these investors, based on the
24 records that I was provided.
25 Q And did you look to determine whether money went back to

1 any investors that are not listed on this chart?
2 A No.
3 MR. DRESSLER: Thank you. I think that's all I have.
4 One minute.
5 THE COURT: Okay.
6 (Off-the-Record discussion between Defendant and
7 Counsel)
8 MR. DRESSLER: No further questions. Thank you, sir.
9 THE COURT: Thank you.
10 All right, anything on redirect?
11 MR. FARNHAM: Nothing further, Your Honor.
12 THE COURT: All right, then Mr. Villanueva, you are
13 excused and you may step down. Thank you.
14 (Witness excused)
15 THE COURT: All right. Government's next witness or
16 evidence?
17 MS. HARRIS: Thank you, Your Honor.
18 Ladies and gentlemen, we are moving into a new phase of
19 the trial. This involves the -- the allegations of what
20 happened at the Pillsbury law firm, and the contempt-of-court
21 charge.
22 And we are about to read an excerpt from a transcript that
23 took place in this criminal case on July 18, 2013, and it's
24 Government Exhibit 319.
25 (Off-the-Record discussion between counsel)

1 MR. FARNHAM: Your Honor, if we may, we would like to
 2 put it on the ELMO projector while it's being read.
 3 THE COURT: All right.
 4 MS. HARRIS: And Your Honor, may we remind the jury
 5 that at the time of this transcript, Mr. Axelbaum was counsel
 6 for the Defendant in the criminal case? And that's been
 7 stipulated to and entered into the record with the parties.
 8 THE COURT: All right. And he was with the Pillsbury
 9 Winthrop Shaw Pittman law firm.
 10 MS. HARRIS: Correct. (As read)
 11 MS. HARRIS: Good morning, Your Honor. Robin
 12 Harris for the United States.
 13 THE COURT: Good morning, Ms. Harris.
 14 MR. AXELBAUM: Good morning, Your Honor. Mark
 15 Axelbaum and Erica Turcios for Mr. Murray, who is
 16 present -- who is now present and in custody.
 17 THE COURT: Thank you. Good morning,
 18 Mr. Axelbaum and Mr. Lugo. Good morning, Mr. Murray.
 19 This is a continuation on hearing of the Defendant's
 20 motion to revoke the detention order. I indicated
 21 last time that there are conditions that are
 22 available to secure the public safety, and interest
 23 in flight, and ensure compliance of this Court's
 24 order, which would be very, very restrictive. At
 25 least to a halfway house.

1 "THE COURT: I indicated last time that this
 2 would be akin to a 24-hour lockdown and my plan is
 3 this: Is to go forward for the next, let's say, 60
 4 days and see where we are. Visits would be
 5 restricted to the attorney, your office, and to the
 6 Court, and that I do want -- either you can visit him
 7 or he can visit you, but I do want somebody there, an
 8 escort, to bring him to the office.
 9 MS. HARRIS: Your Honor, I would want to get
 10 some clarification before we go in front of the Duty
 11 Magistrate so we can represent exactly what it is
 12 that the Court is ordering.
 13 As I understand it, the Defendant is not going
 14 to be permitted to leave the halfway house for any
 15 purpose other than with pre-approval from Pretrial
 16 Services to travel to the Pillsbury law firm, and
 17 that would have to be approved in advance by
 18 Pretrial, and that somebody from Pillsbury would have
 19 to escort Mr. Murray from the halfway house to the
 20 law firm and from the law firm back to the halfway
 21 house.
 22 THE COURT: That is correct.
 23 MS. HARRIS: That's Point Number One. Point
 24 Number Two would be that there be no access to any
 25 telephone at all other than the land line at the

1 halfway house.
 2 And I would ask for a further restriction on
 3 the telephone, which is there be no contact with
 4 Giovanni DeFrancisci.
 5 Then in addition, the Court would have in the
 6 bond the Defendant shall have no access to any
 7 computer, no access to the internet, and no access to
 8 any cell phone, whether his own or any other person.
 9 MR. AXELBAUM: Let me clarify. What I'm saying
 10 is Mr. Murray would use a Pillsbury computer that
 11 would have internet access disabled.
 12 THE COURT: I think we talked about that last
 13 time, that that's something that your firm would
 14 monitor. If you need to access the internet, that
 15 would be done in another room.
 16 MR. AXELBAUM: Correct.
 17 THE COURT: As long as whatever computers that
 18 you have in there are not accessible to the internet.
 19 MR. AXELBAUM: That's correct, Your Honor.
 20 THE COURT: I don't have objection to that.
 21 THE COURT: Right now I want to bright line
 22 him. We are just going to restrict it to the
 23 telephone, land line use, at the halfway house, the
 24 conditions that they prescribe. I am not going to
 25 allow telephone access, at least at this point.

1 MS. HARRIS: Your Honor, I think we should also
 2 put in there, given what transpired while the
 3 Defendant was out on bond, that he is obviously not
 4 to be doing any trading, any work, any anything. He
 5 is under lockdown at the halfway house, and his only
 6 purpose for ever being outside the halfway house is
 7 to go visit Mr. Axelbaum under the escort of somebody
 8 from Pillsbury.
 9 THE COURT: That's a fair request. So no
 10 trading, financial trading, transactions during this
 11 period of time.
 12 MS. HARRIS: Correct.
 13 MR. LUGO: Your Honor, might I suggest that to
 14 include no financial advice to any third parties, and
 15 none of these activities through third-party
 16 intermediaries?
 17 MS. HARRIS: We would agree with that.
 18 THE COURT: So how would you phrase that? No
 19 financial advice --
 20 MR. LUGO: Shall not provide any financial
 21 advice or conduct any financial transactions through
 22 any third parties.
 23 THE COURT: Okay."
 24 THE COURT: I should explain: Mr. Lugo, who has
 25 previously not been identified, is a Pretrial Services officer

1 who supervises folks like Mr. Murray. So, that's who he is.
 2 MS. HARRIS: And Your Honor, ladies and gentlemen, we
 3 are now going to introduce the bond, which is Government
 4 Exhibit 317.
 5 THE COURT: All right.
 6 (Document displayed)
 7 MS. HARRIS: The bond is dated July 17 -- or July 19,
 8 2013. The sureties are Michael Murray and Jan Murray, the
 9 Defendant's father and mother; and Matthew Murray, the
 10 Defendant's brother.
 11 The conditions are as outlined in the bond, and that the
 12 Defendant is to live at the halfway house at [REDACTED],
 13 San Francisco.
 14 And, all conditions from Judge Chen's minute order of July
 15 18, 2013... (As read)
 16 "See attached, which is incorporated by
 17 reference.
 18 "The Defendant may leave the halfway house
 19 escorted with prior approval of Pretrial Services for
 20 legal and medical purposes."
 21 And then Mr. Murray's signature on the bond.
 22 And then if we could show the minute order.
 23 (Document displayed)
 24 MS. HARRIS: (As read)
 25 "ORDERED AFTER HEARING:

1 "For the reasons stated on the record at the
 2 prior and current hearings, Defendant's motion to
 3 revoke detention order is granted. Defendant is
 4 directed to contact Judge Corley's courtroom deputy
 5 to schedule a bond hearing to issue and admonish on a
 6 new bond with conditions previously set (where
 7 applicable) and also to include the following
 8 restrictions:
 9 "Defendant is to stay at a halfway house (at his
 10 own cost) with special restrictive conditions
 11 including 24 hour lockdown with restricted
 12 exceptions:
 13 "(1) No access to cell phone. Access only to
 14 land line at the halfway house. Defendant shall not
 15 make any calls at lawyer's office except those
 16 related to the defense in which defense counsel
 17 jointly participates. No contact with
 18 Mr. DeFrancisci.
 19 "(2) No computer or other means of accessing
 20 the internet. Defendant may use computer of
 21 counsel's office if it has no internet access.
 22 "(3) No access to credit card or use of credit
 23 card.
 24 "(4) No trading through third parties or giving
 25 of financial advices. (sic)

1 "(5) No other visits except with his attorney
 2 and children at the halfway house (provided such is
 3 allowed by Marin Superior Court)."
 4 Now, Your Honor, we would like to play a call, a jail
 5 call. And Mr. Farnham is going to explain to the jury what
 6 that jail call relates to.
 7 THE COURT: All right.
 8 MR. FARNHAM: Pursuant to an agreement of the
 9 parties, the recording that you're about to hear is a jail
 10 call. It was recorded and made by the telephone call recording
 11 system of Glenn Dyer Detention Facility in Alameda County.
 12 This call involves James Murray and his parents while he
 13 was an inmate at the Glenn Dyer Detention Facility. And the
 14 call was created -- the recording was created on July 10, 2013,
 15 at 19:47 or 7:47 p.m. And it involved James Murray talking to
 16 his parents.
 17 (Audio recording played in open court, not reported.
 18 Time noted: 8:53 a.m. to 9:19 a.m.)
 19 THE COURT: All right. That concludes that
 20 recording?
 21 MS. HARRIS: Yes, Your Honor.
 22 THE COURT: All right. Prepared to call a witness,
 23 then?
 24 MS. HARRIS: We are, Your Honor. The United States
 25 calls Aaron Jeter.

1 AARON LEE JETER, III,
 2 called as a witness for the Government herein, having been
 3 first duly sworn, was examined and testified as follows:
 4 THE CLERK: Please be seated. Please state your full
 5 name for the record, and spell your last name, please.
 6 THE WITNESS: Aaron Lee, Jeter, III. And Jeter is
 7 spelled J-E-T-E-R.
 8 THE COURT: Thank you, Mr. Jeter.
 9 You may proceed, Ms. Harris.
 10 DIRECT EXAMINATION
 11 BY MS. HARRIS:
 12 Q Good morning, Mr. Jeter. Where do you work?
 13 A At Pillsbury.
 14 Q And how long have you worked for Pillsbury?
 15 A Five years.
 16 Q Is Pillsbury a law firm in San Francisco?
 17 A Yes, ma'am.
 18 Q What do you do in general at the Pillsbury law firm?
 19 A I am an assistant manager in the copy center.
 20 Q Where is the Pillsbury firm located?
 21 A It is located at 4 Embarcadero Center. On the 23rd, 22nd,
 22 8th, 9th and 10th floors in that building.
 23 Q So Pillsbury has five different floors in the Embarcadero?
 24 A Yes, ma'am.
 25 Q Can you tell us the floors that Pillsbury occupies again?

1 A Eight, 9, 10, 22, and 23.
 2 Q Do you know someone named James Murray?
 3 A Yes, ma'am.
 4 Q Was James Murray a criminal defense client of the
 5 Pillsbury law firm in 2013?
 6 A Yes, ma'am.
 7 Q Who are the Pillsbury attorneys that represented
 8 Mr. Murray?
 9 A To my knowledge, Mr. Mark Axelbaum, and Ms. Erica Turcios.
 10 Q Drawing your attention to July of 2013, were you given
 11 responsibility for doing something regarding James Murray?
 12 A Yes, ma'am.
 13 Q What were you asked to do?
 14 A I was asked to escort him to and from Pillsbury. Pick him
 15 up from his halfway house where he was staying, bring him to
 16 Pillsbury, and at the end of the day take him from Pillsbury
 17 back to the halfway house.
 18 Q Were you given any instructions on how to perform your
 19 escort duties?
 20 A Mostly, I'd take him to and from the BART, because we -- I
 21 was given a Clipper card to help with this transportation.
 22 Q So was it the initial plan that you would escort
 23 Mr. Murray on the BART train from the halfway house to
 24 Pillsbury?
 25 A Yes, ma'am.

1 Q Did that change at some point?
 2 A Yes, ma'am.
 3 Q Can you describe that?
 4 A Well, on a few occasions we had problems with the Clipper
 5 cards, so we decided to walk a lot of the times.
 6 Q So on most occasions when you escorted Mr. Murray from the
 7 halfway house to the Pillsbury law firm, did the two of you
 8 walk from the halfway house to the law firm?
 9 A Yes, ma'am.
 10 Q Was that also the case when you returned Mr. Murray from
 11 Pillsbury to the law firm?
 12 A Yes, ma'am.
 13 Q Okay. Did you -- was the halfway house located at
 14 [REDACTED] in San Francisco?
 15 A Yes, ma'am.
 16 Q Where did you bring Mr. Murray to when you got him to the
 17 Pillsbury law firm?
 18 A We would check in on the 22nd Floor.
 19 Q Is the main reception area for the firm on the 22nd Floor?
 20 A Yes, ma'am.
 21 Q What floor was Mr. Murray's attorney Mark Axelbaum's
 22 office on?
 23 A The 9th Floor.
 24 Q Is that also where his other attorney Erica Turcios's
 25 office was?

1 A Yes.
 2 Q Did Pillsbury set aside a conference room for Mr. Murray's
 3 exclusive use while he was at the firm?
 4 A Yes, ma'am.
 5 Q Was that conference room located on the 23rd Floor?
 6 A Yes, ma'am.
 7 Q When you were charged with the responsibility of escorting
 8 Mr. Murray to and from the halfway house, was Mr. Murray
 9 permitted to stop anywhere in between?
 10 A No.
 11 Q What were the general subjects that you and Mr. Murray
 12 discussed during the time you walked him to and from the
 13 halfway house to Pillsbury?
 14 A We talked about each other's families. We talked about
 15 stocks, trading. Talked about vacations. Mostly family stuff,
 16 though.
 17 Q Did Mr. Murray ever give you some written advice on stock
 18 trading?
 19 A Yes.
 20 MS. HARRIS: Your Honor, may I approach the witness?
 21 THE COURT: All right.
 22 BY MS. HARRIS:
 23 Q I'm handing you what's been marked as Government Exhibit
 24 359 for identification, and I'd ask you if you recognize
 25 Exhibit 359.

1 (Witness examines document)
 2 A Yes, ma'am.
 3 Q What is Exhibit 359?
 4 A A list of rules for trading.
 5 Q And, is this, Exhibit 359, entitled "TWENTY RULES OF
 6 TRADING"?
 7 A Yes.
 8 Q Did Mr. Murray give you Exhibit 359 during one of the days
 9 that you were escorting him to the Pillsbury law firm?
 10 A Yes.
 11 Q And did you keep Exhibit 359 after Mr. Murray gave it to
 12 you?
 13 A Yes.
 14 MS. HARRIS: Your Honor, I offer Government Exhibit
 15 359 into evidence.
 16 THE COURT: Any objection?
 17 MR. DRESSLER: No objection.
 18 THE COURT: Admitted.
 19 (Trial Exhibit 359 received in evidence)
 20 MS. HARRIS: Can we please publish the first page of
 21 Exhibit 359? Can you switch to the --
 22 THE CLERK: It's on.
 23 THE COURT: It's not showing up on the screen?
 24 (Off-the-Record discussion between counsel)
 25 MS. HARRIS: Okay, here we go. Can everyone see?

1 (Jury responds in the affirmative)
 2 BY MS. HARRIS:
 3 Q Okay. Is Exhibit 359 the Twenty Rules of Trading that
 4 Mr. Murray gave to you during one of the days that you were
 5 escorting him to Pillsbury?
 6 A Yes, ma'am.
 7 Q And does Exhibit 359 contain a series of different types
 8 of advice for stock trading?
 9 A Yes.
 10 Q Did you ever allow Mr. Murray to stop at a Wells Fargo
 11 Bank during one of the times that you walked him home from
 12 Pillsbury?
 13 A Yes.
 14 Q What did Mr. Murray tell you regarding his need to stop at
 15 Wells Fargo Bank?
 16 A I believe he wanted to open an account so he can pay his
 17 dental -- his dentist.
 18 Q So Mr. Murray told you he was opening an account to pay a
 19 dentist?
 20 A Yes.
 21 Q Okay. And did you actually take Mr. Murray to a Wells
 22 Fargo Bank?
 23 A Yes.
 24 Q What did Mr. Murray do at that bank?
 25 A I guess he opened an account.

1 (Off-the-Record discussion between counsel)
 2 MS. HARRIS: We have no further questions,
 3 Your Honor.
 4 THE COURT: All right. Thank you. Cross?
 5 MR. DRESSLER: No questions.
 6 THE COURT: All right. Thank you, Mr. Jeter. You
 7 are excused. You may step down.
 8 (Witness excused)
 9 THE COURT: Government's next witness.
 10 MS. HARRIS: Thank you, Your Honor. The United
 11 States calls Mark Britton.
 12 MARK BRITTON,
 13 called as a witness for the Government herein, having been
 14 first duly sworn, was examined and testified as follows:
 15 THE CLERK: Please be seated. Please state your full
 16 name for the record, and spell your last name, please. Speak
 17 into the microphone.
 18 MS. HARRIS: Can you pull the microphone closer --
 19 THE WITNESS: My name is Mark Britton, with a K.
 20 Britton, B-R-I-T-T-O-N.
 21 THE COURT: All right. Thank you, Mr. Britton.
 22 You may proceed, Ms. Harris.
 23 DIRECT EXAMINATION
 24 BY MS. HARRIS:
 25 Q Good morning, Mr. Britton. Where do you work?

1 A I work at Pillsbury Winthrop Shaw Pittman. Here in
 2 San Francisco.
 3 Q How long have you worked for the Pillsbury law firm?
 4 A I have been -- I'm sorry.
 5 Q Let me finish my question.
 6 THE COURT: You have to wait for the question.
 7 THE WITNESS: Okay, I'm sorry.
 8 THE COURT: And take your time answering, okay?
 9 THE WITNESS: Okay.
 10 BY MS. HARRIS:
 11 Q How long have you worked for the Pillsbury law firm?
 12 A Almost 18 years now.
 13 Q And what are your general duties and responsibilities?
 14 A I am the records manager for the San Francisco office.
 15 Q And, is the Pillsbury law firm located at 4 Embarcadero
 16 Center in --
 17 A Yeah. I'm sorry.
 18 Q Whoops -- in San Francisco?
 19 A Yes, it is.
 20 Q Do you know someone named James Murray?
 21 A Yes, I do.
 22 Q Was James Murray being represented on a criminal case by
 23 the Pillsbury law firm in 2013?
 24 A Yes, he was.
 25 Q Who were the Pillsbury attorneys that represented him?

1 A Mark Axelbaum, I believe, and Erica Turcios.
 2 Q In July of 2013, were you given responsibility for doing
 3 something regarding James Murray?
 4 A Um, yes, I was asked to serve as an alternate to Aaron --
 5 to Aaron Jeter, "Jetter" I believe is how he pronounces it, in
 6 escorting Jim Murray to and from his -- the halfway house where
 7 he was being held. To our office, and then returning him at
 8 the end of the day.
 9 Q Were you given any instructions about your escort duties?
 10 A I was told initially that we were supposed to take BART,
 11 and use BART specifically. So we had a way of tracking
 12 Mr. Murray's movements. And, other than that -- and we weren't
 13 supposed to make any stops or anything along those lines. It
 14 was supposed to be very much -- very pragmatic, to back and
 15 forth.
 16 Q And where did you pick Mr. Murray up from in the mornings?
 17 A I picked him up from a facility at 111 Turk Street.
 18 Q Is it Taylor Street?
 19 A Taylor Street, excuse me. At the corner of Turk.
 20 Q And you mentioned that you were originally supposed to use
 21 BART. At some point during your chaperone duties, did the use
 22 of BART stop?
 23 A Yeah. Over a period of time we became a little more
 24 relaxed. And we would -- initially, at Jim's request, I agreed
 25 to walk with him to and from the office. I didn't see any harm

1 in it. After we'd established somewhat of a rapport.

2 Q Okay. And, where did you bring Mr. Murray to when you got
3 him to the Pillsbury law firm?

4 A I would take him directly to Reception on the 22nd floor
5 and turn him over. Just announce our arrival, and then I
6 released him.

7 Q And is the main reception area for the firm on the 22nd
8 Floor?

9 A The main reception is on the 22nd, yes.

10 Q And was there a conference room on the 23rd Floor that
11 Pillsbury designated for James Murray's use?

12 A Yes, there was.

13 Q And what floor were Mr. Murray's attorneys, Mark Axelbaum
14 and Erica Turcios, located on?

15 A I believe -- they're litigators, so they wouldn't be on
16 10. I believe they're on 9.

17 Q What were the general subjects that you and Mr. Murray
18 discussed during the time you walked him to and from the
19 halfway house to Pillsbury?

20 A We talked about a wide variety of things. Sometimes we
21 talked about very personal things. He shared, you know,
22 stories about his family. He told me about his family; I told
23 him about mine. We talked about sports. And, you know, we
24 developed a pretty relaxed rapport with each other. So over
25 time we talked about quite a bit -- quite a few different

1 things.

2 Q Did Mr. Murray ever discuss leaving the country with you?

3 A Jim actually kind of -- as an aside, we were walking back
4 to the facility, and he mentioned to me, he actually said
5 specifically and I didn't ever think I would have cause to say
6 anything, but he said, "Don't tell anybody, but..."

7 And I'm paraphrasing here. He basically said that when he
8 was catching wind that there was an investigation into his
9 business, he was thinking about leaving the company -- country,
10 and returning to Monaco.

11 Q And, and not coming back to the United States?

12 A I don't know what his plans were after that. But he said
13 he had -- at the time, he had thought about leaving.

14 Q Did you ever allow Mr. Murray to stop anywhere during your
15 walks to and from the halfway house?

16 A Yeah, on a couple of occasions. One time when he was
17 having some [REDACTED], we stopped and he purchased some
18 [REDACTED]

19 [REDACTED] And then on a couple of other occasions we
20 would stop at Chipotle, and he would pick up a burrito on the
21 way home.

22 Q Did you see Mr. Murray with money?

23 A Yes, I did.

24 Q Was this -- did this seem unusual to you?

25 A You know, it really didn't. I knew that he wasn't

1 supposed to necessarily have money on him, but I just figured
2 that maybe a family member, his mom, sent him some money so he
3 could have some pocket money. And it was never -- I mean, it
4 wasn't an egregious amount of money. A couple of twenties,
5 whatever. But yeah, I didn't really find it all that unusual.

6 MS. HARRIS: I have no further questions of this
7 witness, Your Honor.

8 THE COURT: All right. Any cross?

9 CROSS EXAMINATION

10 BY MR. DRESSLER:

11 Q Mr. Britton, did you ever accompany Mr. Murray to a
12 dentist?

13 A Yes, I did, on two occasions.

14 Q And so you were aware that while he was at Pillsbury, he
15 was having some work done by a dentist?

16 A Yeah. He had an abscessed tooth, I believe, and he had a
17 root canal at one point. And, well, I took him initially for a
18 cleaning, and then he had an abscess, which was an emergency.
19 And we took him to another dentist, because his regular dentist
20 was out of town.

21 MR. DRESSLER: Thank you.

22 THE COURT: Anything further?

23 (Off-the-Record discussion between counsel)

24 MS. HARRIS: No, Your Honor.

25 THE COURT: All right. Mr. Britton, you may step

1 down. You are excused. Thank you.

2 (Witness excused)

3 THE COURT: Government's next witness.

4 MR. FARNHAM: Yes, Your Honor. The Government calls
5 Joseph Guerra.

6 JOSEPH GUERRA,
7 called as a witness for the Government herein, having been
8 first duly sworn, was examined and testified as follows:

9 THE CLERK: Please be seated.

10 Please state your full name for the record, and spell your
11 last name, please.

12 THE WITNESS: Joseph Guerra, G-U-E-R-R-A.

13 THE COURT: Thank you, Mr. Guerra.

14 You may proceed, Mr. Farnham.

15 MR. FARNHAM: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. FARNHAM:

18 Q Mr. Guerra, how are you currently employed?

19 A At Pillsbury. I'm a paralegal, and I also help out with
20 the lit support team, litigation support team.

21 THE COURT: Speak into the microphone.

22 THE WITNESS: Okay, sorry.

23 MR. FARNHAM: And you can move it a little closer if,
24 that helps. The microphone can -- there you go.

25 THE WITNESS: Okay, thank you.

1 BY MR. FARNHAM:
 2 Q You said the Pillsbury firm. Is that the law firm of
 3 Pillsbury Winthrop Shaw Pittman?
 4 A Correct.
 5 Q And you said that you are a paralegal and you work with
 6 the -- I'm sorry?
 7 A The litigation support team.
 8 Q Thank you. How long have you worked at the firm?
 9 A Since 1999.
 10 Q And, which office do you work in?
 11 A San Francisco office.
 12 Q Where is that located?
 13 A At 4 Embarcadero.
 14 Q And what are your general job responsibility as a
 15 paralegal?
 16 A I assist the attorneys with documents and collections.
 17 Review of documents.
 18 Q And you also said you worked with the litigation support
 19 group. What does that involve?
 20 A Managing databases, so we set up databases so the
 21 attorneys can look at the documents online, or -- or hard copy.
 22 Q Okay. Databases of documents?
 23 A Yes.
 24 Q Related to Pillsbury's legal work.
 25 A Correct.

1 Q I want to talk for a minute about a time period from July
 2 of 2013 to about February, 2014. During that time, did you
 3 have any contact with James Murray?
 4 A Yes, I did.
 5 Q And, what was your contact with Mr. Murray?
 6 A I was asked to take him documents from the attorneys.
 7 They would direct me to -- whatever documents he needed to
 8 review, I would deliver or bring electronically.
 9 Q And, who was Mr. Murray?
 10 A He was one of our clients. I knew he was involved with a
 11 criminal -- a white-collar criminal case, and that's about it.
 12 Q You knew he was a criminal defense client of the firm.
 13 A Yes.
 14 Q And during the time period, July 2013 to February,
 15 February, 2014, did Mr. Murray come into the Pillsbury office?
 16 A Yes.
 17 Q Where did he go when he came in?
 18 A There was a conference room set up for him on the 23rd
 19 Floor.
 20 Q And was it the same room each day he came to?
 21 A Yes.
 22 Q That was a room that he was allowed exclusive use?
 23 A Yes. That's what I was told, yes.
 24 Q Do you know which room that was?
 25 A I don't remember the room number. It's 2308 or -10; I

1 can't remember. Sorry.
 2 Q And it's on the 23rd Floor?
 3 A Yes.
 4 Q So you mentioned delivering documents. Would you deliver
 5 paper documents to Mr. Murray?
 6 A It was usually a thumb drive. We'd load the documents on
 7 the thumb drive, and then we'd bring it and load it to his
 8 laptop.
 9 Q Was it ever paper documents?
 10 A I think it was only once it was something paper, but it
 11 was very small. Only a couple of sheets.
 12 Q Do you know whether Mr. Murray was under any restrictions
 13 on his activities while he was coming into the law firm?
 14 A Yes.
 15 Q What were those?
 16 A I was told he was not to use the internet.
 17 Q How did you know about those restrictions?
 18 A I was told by the partner, the lead partner, Mark
 19 Axelbaum. And the associate, Erica Turcios.
 20 Q I want to turn your attention back to August 2, 2013. Did
 21 you go to Mr. Murray's conference room that day?
 22 A Yes.
 23 Q Why?
 24 A I was delivering documents on a thumb drive.
 25 Q What part of the day? What time of day did you go?

1 A Late in the day. 4:00-ish, I think.
 2 Q When you went to Mr. Murray's conference room, what did
 3 you see?
 4 A He wasn't there. He was actually in a conference room
 5 near the conference room he was supposed to be in.
 6 Q Okay. As you look in the room and you see that
 7 Mr. Murray's not there, what happened next?
 8 A Um, I saw that he was in the other conference room. And
 9 so I went to the doorway, and told him that I needed to deliver
 10 documents to him.
 11 Q When you saw Mr. Murray in that other room, what was he
 12 doing?
 13 A He was on the computer.
 14 Q What type of computer?
 15 A A PC.
 16 Q Was it a laptop?
 17 A No. No. Just a PC.
 18 Q Like a desk computer?
 19 A Yeah, desk computer, desktop. Yeah.
 20 Q And when you saw him using it, what do you mean?
 21 A He was sitting at the computer, he saw me, and started
 22 closing things down (indicating). Clicking things off.
 23 Q Did it concern you when you saw this?
 24 A Concern me? Yes, it did.
 25 Q Why?

1 A Because I was told he wasn't supposed to be using -- using
 2 the internet, and also I think he was supposed to be in that
 3 conference room that was assigned to him.
 4 Q When Mr. Murray started closing things down on this
 5 computer, had he seen you?
 6 A Yes.
 7 Q Did he say anything to you?
 8 A No.
 9 Q What did you do after you saw him closing things down on
 10 that computer?
 11 A I didn't say anything to him, other than saying that I
 12 needed to give him documents. And we went back to the room he
 13 was assigned to.
 14 Q So you and Mr. Murray went back to the conference room he
 15 normally used.
 16 A Correct.
 17 Q What was that room that you saw Mr. Murray in on the
 18 computer? What -- what type of room was that?
 19 A It was a -- a larger conference room than the one that he
 20 was set up in. And it was set up for a document review. There
 21 was about eight computers set up for document review.
 22 Q Did you say anything to Mr. Murray about what you saw him
 23 doing in that room?
 24 A No, I did not.
 25 Q Did you confront him about that?

1 A No, I did not it.
 2 Q What did you do?
 3 A After I went back to the room that he was assigned to, I
 4 went back and reported what I saw to Mark Axelbaum.
 5 Q Where was -- did you go to Mr. Axelbaum's office?
 6 A Yes, I did.
 7 Q Where was that?
 8 A He's on the 9th Floor.
 9 Q And you told Mr. Axelbaum what you saw?
 10 A Yes.
 11 Q After that, did you identify to Pillsbury IT staff which
 12 computer you saw Mr. Murray using?
 13 A Yes, I did.
 14 Q And, did Pillsbury IT staff do an analysis of that
 15 computer?
 16 A Yes, they did.
 17 MR. FARNHAM: Just a moment.
 18 (Off-the-Record discussion between counsel)
 19 MR. FARNHAM: Nothing further, Your Honor.
 20 THE COURT: All right. Cross?
 21 MR. DRESSLER: No questions.
 22 THE COURT: All right. Then Mr. Guerra, you may step
 23 down. You are excused. Thank you.
 24 THE WITNESS: Thank you.
 25 (Witness excused)

1 THE COURT: The Government's next witness?
 2 MR. FARNHAM: Government calls Ray Elquist,
 3 Your Honor.
 4 THE COURT: Okay.
 5 MR. FARNHAM: Your Honor, I did want to use the ELMO
 6 for this witness, and it doesn't seem to be showing.
 7 (Off-the-Record discussion)
 8 RAY ELQUIST,
 9 called as a witness for the Government herein, having been
 10 first duly sworn, was examined and testified as follows:
 11 THE CLERK: Please be seated. Please state your full
 12 name for the record, and spell your last name, please.
 13 THE WITNESS: My name is Ray Elquist, E-L-Q-U-I-S-T.
 14 THE COURT: Thank you, Mr. Elquist.
 15 You may proceed, Mr. Farnham.
 16 MR. FARNHAM: Thank you, Your Honor.
 17 DIRECT EXAMINATION
 18 BY MR. FARNHAM:
 19 Q Mr. Elquist, where do you work?
 20 A I work for Pillsbury Winthrop Shaw Pittman.
 21 Q And how long have you worked for Pillsbury law firm?
 22 A This January, it will be 15 years.
 23 Q What's your position?
 24 A I am the information assurance manager.
 25 Q And what are your responsibilities in that position?

1 A To protect our firm's information. Electronic
 2 information.
 3 Q And, where physically do you do your work?
 4 A In our Nashville office.
 5 Q Tell me about that Nashville office.
 6 A It's a professional service center. IT, finance,
 7 non-attorney functions are -- are housed out of the Nashville
 8 office.
 9 Q How many offices does Pillsbury have around the world?
 10 A We have -- I want to say 20 offices now. Twenty? I think
 11 it's 20.
 12 Q And the Nashville, the professional services center
 13 provides services to all those offices?
 14 A Correct.
 15 Q If you could move the microphone a little closer?
 16 A Uh-huh.
 17 Q It's almost there. That will be better. Thank you.
 18 We are going to be talking about events and work you did
 19 in August of 2013. What was your position at that time?
 20 A At that time, I was -- I have to think about this. I
 21 believe at that time I was the applications delivery and
 22 security manager. So my roles were a little bit different.
 23 Q What was your -- what were your responsibilities in that
 24 role?
 25 A In that role, I managed the team that designs the firm's

1 desktop and delivers applications for our attorneys to use, and
 2 staff.
 3 Q And were you also working in Nashville in 2013?
 4 A Yes, I was working in Nashville.
 5 Q Tell me, just describe for us briefly how that works. How
 6 are you able to do your job, managing applications and so
 7 forth, doing the technical parts of your job from Nashville?
 8 A You know, we're -- we're network-connected with all the
 9 offices. We have tools and utilities that allow us to remotely
 10 administer computers in all of our offices.
 11 Q So you can do what you need to do on these computers
 12 remotely from Nashville.
 13 A Absolutely.
 14 Q I want to ask you about some work you did looking at some
 15 computer usage that happened on about August 2, 2013.
 16 Did you analyze the usage of a computer that had been used
 17 by a Pillsbury client named James Murray?
 18 A I did.
 19 Q And were you asked to look at internet usage on that
 20 computer?
 21 A Correct.
 22 Q Who made that request?
 23 A The request came to me from the San Francisco IT manager,
 24 Shelley Taylor.
 25 Q And did she identify the computer that she wanted to you

1 look at?
 2 A Yes.
 3 Q And you were able to look at it remotely?
 4 A Correct.
 5 Q Why were you being asked to look at internet usage on that
 6 computer?
 7 A At the time, I did -- I was not aware. I was just asked
 8 to -- if I can identify if somebody had logged on to that
 9 computer, and what sites they may have visited.
 10 Q And, were you given a specific time frame to look at?
 11 A I was.
 12 Q What's that?
 13 A I don't remember off the top of my head, but they gave me
 14 -- it was a specific day, from the morning to a specific time.
 15 I want to say it was a few hours during the morning.
 16 Q And were you able to -- how were you able to analyze the
 17 internet usage on that computer? What did you use?
 18 A I used a utility called "IE History Viewer." And what it
 19 does is it reaches out to the computer and will capture the
 20 browsing history logs.
 21 Q Did you also look at the computer to determine if any
 22 applications had been downloaded or installed?
 23 A I did.
 24 Q And what did you find when you looked at that?
 25 A I found that -- I believe, Skype had been downloaded and

1 installed.
 2 Q And how were you able to determine that?
 3 A Those were records in -- in the OS system logs.
 4 Q And what is Skype?
 5 A Skype is a communication -- internet communication
 6 utility. So you can make phone calls from a computer across
 7 the world, over the internet.
 8 Q And I want to ask you about the computer, itself. What
 9 type of computer was it that was being -- that you were
 10 analyzing?
 11 A You know, I didn't -- I -- I know it was a laptop. I
 12 believe at the time it was a Dell laptop. But I never had
 13 physical access to the computer.
 14 Q You were looking at it remotely?
 15 A I was looking at it remotely.
 16 Q And did you create some spreadsheets with the data that
 17 you extracted regarding internet usage?
 18 A I did.
 19 MR. FARNHAM: May I approach with an exhibit,
 20 Your Honor?
 21 THE COURT: Yes.
 22 (Witness examines document)
 23 MR. FARNHAM: Your Honor, as we are looking at this
 24 exhibit, I have also created a highlighted version that will
 25 aid us on the ELMO. It's got a lot of lines.

1 I think it would be easier for us to identify what we're
 2 all talking about, if I could also hand him a highlighted
 3 version?
 4 THE COURT: All right, you can hand that to him.
 5 (Witness examines document)
 6 MR. FARNHAM: And the highlighted version will just
 7 be for demonstratives purposes today. I think the exhibit is
 8 what it is.
 9 BY MR. FARNHAM:
 10 Q Exhibit 323, Mr. Elquist do you recognize that document?
 11 A I do.
 12 Q Is this a spreadsheet that you prepared, based on your
 13 investigation of the internet usage on that computer on
 14 August 2, 2013?
 15 A Yes. Yes.
 16 MR. FARNHAM: Your Honor, I would offer Exhibit 323
 17 into evidence.
 18 THE COURT: Any objection?
 19 MR. DRESSLER: No objection.
 20 THE COURT: Admitted.
 21 (Trial Exhibit 323 received in evidence)
 22 MR. FARNHAM: And may I publish it to the jury,
 23 Your Honor?
 24 THE COURT: Yes.
 25 (Document displayed)

1 THE COURT: This is the highlighted version, right?
 2 And the highlights are what you've added.
 3 MR. FARNHAM: That is correct. I have added the
 4 highlights, just to identify the portions that I would like to
 5 discuss today.
 6 THE COURT: All right. But the actual exhibit,
 7 itself, does not have the highlights. Correct?
 8 MR. FARNHAM: That's correct.
 9 THE COURT: All right.
 10 BY MR. FARNHAM:
 11 Q Mr. Elquist, if you could look first at the original
 12 version without the highlights, I just want to ask you a few
 13 questions about that.
 14 A Uh-huh.
 15 Q Tell me about some of the headings that appear in this
 16 document. What is the "URL" heading? What data does that
 17 capture?
 18 A That's the -- the name of the site that was visited.
 19 Q And, what about the "Title" column?
 20 A The title is generally something that the site would label
 21 just as a way to inform the user, in regular words.
 22 Q That's something that's -- that is data that is provided
 23 by the site that is visited?
 24 A Correct.
 25 Q How about the "Hits" column?

1 A "Hits" means the number of times that that site was hit.
 2 Q And if there are multiple times, what does that mean?
 3 A It generally means that the page was either reloaded, or
 4 it was redirected, or there were several -- several pages on
 5 that site.
 6 Q Okay. And how about the "Mod Date" column in Exhibit 323?
 7 What does that mean?
 8 A That's the date that record was -- was created or
 9 modified. That was the date that the last hit happened.
 10 Q When you say "last hit," you mean the last time that
 11 website was visited on that computer?
 12 A Correct.
 13 Q And in what time zone is this Mod Date on this exhibit?
 14 A I believe on this exhibit, we did -- this was Pacific
 15 Time. So it was San Francisco time.
 16 Q I would like to look at a few items on this exhibit. If
 17 you could look at the highlighted version or look at the
 18 screen, so we can know that we are talking about the same ones.
 19 A Uh-huh.
 20 Q Looking at Page 1 of Exhibit 323, there's the highlighted
 21 line that's a site, www.bing.com. Do you see that?
 22 A I do.
 23 Q And, what is that site?
 24 A Bing is a -- is a search engine.
 25 Q And, looking at this URL, can you tell what was being

1 searched on bing.com?
 2 A Yes. It looks like the word "Skype" was being searched.
 3 Q And, is this a -- is this a URL that was visited on this
 4 computer on August 2, 2013?
 5 A Yes.
 6 Q And can you tell that by looking at the -- what was the
 7 Mod Date column?
 8 A Correct.
 9 Q And does that show the date and time it was visited?
 10 A It does.
 11 Q If we could look at the second highlighted line, says
 12 "www.skype.com." What does that tell you about the site that
 13 was visited?
 14 A That tells me that -- that the Skype website was visited.
 15 Q And then what about the bottom highlighted line, the
 16 bottom of Page 1 of 323, what does that line tell you about
 17 what happened?
 18 A That tells me that somebody probably clicked on a download
 19 link on the Skype site.
 20 Q And what date and time did that occur?
 21 A That was 8/2/2013 at 10:04.
 22 Q If I could ask you to take a look at the second page of
 23 that document.
 24 (Document displayed)
 25 Q And there is a highlighted line at the top, says

1 "www.skype.com.url," do you see that one?
 2 A I do.
 3 Q What does that line tell you?
 4 A That line would tell me that the Skype application was
 5 downloaded. From the Skype website.
 6 Q And does that confirm the other information you looked at
 7 in the OS log?
 8 A It does.
 9 Q There's another highlighted line there on Page 2 of
 10 Exhibit 323, at the bottom. What is that URL?
 11 A "match.com."
 12 Q Does that indicate that website was visited?
 13 A It does.
 14 Q And what's the date and time that that site was visited on
 15 the computer?
 16 A 8/2/2013, at 10:57.
 17 (Document taken off display)
 18 Q If we could turn to Page 6.
 19 (Document displayed)
 20 Q Looking at the top highlighted line, --
 21 A Yes.
 22 Q -- is that another bing.com?
 23 A It is.
 24 Q What was searched for in that search?
 25 A "hide-my-ip.com."

- 1 Q And do you know what that is?
- 2 A I am familiar with that.
- 3 Q What is -- what is the -- well, let's go -- we'll go to
- 4 the next one. Hold on.
- 5 If you look at the second highlighted line, do you
- 6 see -- what's that URL?
- 7 A That's "www.hide-my-ip.com."
- 8 Q What does the title say?
- 9 A It says:
- 10 "Hide your IP address, surf anonymously."
- 11 Q What is hide-my-ip.com?
- 12 A Hide-my-ip.com is what would be considered a proxy
- 13 service, where you can anonymously surf the internet, using
- 14 hide-my-ip's IP address instead of your source IP address.
- 15 Q Does that mean that outside computers wouldn't know which
- 16 IP address was being used to access the internet?
- 17 A Correct.
- 18 Q And how does that help someone surf anonymously?
- 19 A Because you -- you can't trace back to a specific
- 20 location.
- 21 Q That solicited to hide-my-ip.com, when did that occur?
- 22 A That occurred 8/2/2013, at 11:36.
- 23 Q One more highlighted line on Page 6 of Exhibit 323. Do
- 24 you see that there is another skype.com visit?
- 25 A I do.

- 1 Q What does this line tell you about what happened?
- 2 A This tells me that somebody was at the Skype website, and
- 3 it looks like they were navigating the help page to learn how
- 4 to make a call on Skype.
- 5 Q And what was the date and time of the visit to that page?
- 6 A 8/2/2013 at 11:40.
- 7 Q I would like to ask you to turn to Page 7 of Exhibit 323.
- 8 (Document displayed)
- 9 Q And near the bottom there's a highlighted line, it's a
- 10 "www.bing.com" --
- 11 A Uh-huh.
- 12 Q -- site. Do you see that?
- 13 A Uh-huh.
- 14 Q Would this have been a search visit?
- 15 A It looks like it's a search visit, yes.
- 16 Q What was being searched on bing.com?
- 17 A It looks like "Belle plus Aire Elementary."
- 18 Q And when did that search happen?
- 19 A That was 8/2/2013, at 15:59.
- 20 Q If we could look at Page 8.
- 21 (Document displayed)
- 22 Q Looking on Page 8, the top highlighted line, what does
- 23 that URL say?
- 24 A The URL is "belaire.reedschools.org."
- 25 Q What is the title of that web page, according to that URL?

- 1 A "Bel Aire" -- I'm sorry. "Bel Aire Elementary."
- 2 Q If we look at the second highlighted line, what is the URL
- 3 that was visited there?
- 4 A It looks like "brigulio.reedschools.org."
- 5 Q And what is the title that came with that URL and what
- 6 time and date?
- 7 A That is Ms. Brigulio's fourth grade class and that was on
- 8 8/2/2013 at 16:00.
- 9 Q Looking at the third highlighted line on Page 8 of Exhibit
- 10 323, there is another Bing.com search. Do you see that?
- 11 A I do.
- 12 Q What was that search involving?
- 13 A That search involved James Murray with the word
- 14 "San Francisco."
- 15 Q And when was that search done?
- 16 A That was 8/2/2013 at 16:04.
- 17 Q Page 4 has a few more highlighted lines I'd like to talk
- 18 about. The first highlighted line starts www.bing.com and there
- 19 was a search there.
- 20 What was that search for?
- 21 A That search was Kurt Hovan, Belvedere.
- 22 Q And when was that Bing search done?
- 23 A 8/2/2013 at 16:05.
- 24 Q 4:05 in the afternoon?
- 25 A Correct.

- 1 Q Next highlighted line is a LinkedIn cite. Can you read
- 2 that URL?
- 3 A Yes. That's www.linkedin.com. And it looks like it's the
- 4 LinkedIn page for Giovanni de Francisci.
- 5 Q And when was that URL, that page visited?
- 6 A 8/2/2013 at 4:08 p.m.
- 7 Q The last line I'd like to talk about is little further
- 8 down. It's another Bing.com search. Was does that line say?
- 9 A Giovanni de Francisci.
- 10 Q And what does that line tell you -- what does that
- 11 information in that line tell you happened?
- 12 A It looks like somebody did a Bing search for -- it looks
- 13 like a person's name, Giovanni de Francisci.
- 14 Q If I could ask you to look at another URL that's four
- 15 lines down from that. The title starts "Event Trading GP,
- 16 LLC." Do you see that? It's not highlighted.
- 17 A Four lines down from the last Bing search?
- 18 Q Yes.
- 19 A Find the company. Find the company.
- 20 Q And the title starts "Event Trading."
- 21 A I see it. Yes, I do.
- 22 Q Tell me the URL that was visited, according to that line?
- 23 A That looks like it was a cite called findthecompany.com.
- 24 Q And does it look like a particular page at that domain
- 25 name?

1 A It does. And it looks like Event Trading GP, Limited
2 Liability Company.
3 Q And that was the cite that was visited on that day?
4 A Correct.
5 Q And what date and time was that cite visited?
6 A That was 8/2/2013 at 4:09.
7 Q If I could ask you to look at Page 10 that document?
8 (Document displayed)
9 Q The fourth line from the bottom on that page is a
10 highlighted line. It's a Bing search.
11 Can you tell me what happened? What that line tells you
12 happened?
13 A Yes. It looks like this search was H.F. Administrators,
14 Ltd.
15 Q And that was a Bing.com search?
16 A Correct.
17 Q And what time did that occur?
18 A That was at 4:13.
19 (Document displayed)
20 Q Going to Page 11. Just a couple more lines I'd like you
21 to look at. There is a third line from the top on Page 11 of
22 Exhibit 323. There is another Bing search. Can you tell what
23 that shows?
24 A Yes. It looks like Jones Moore & Associates was searched
25 for.

1 Q And what was the date and time of that search?
2 A That was 8/2/2013 at 4:13.
3 Q And a few lines down there is another Bing search that's
4 highlighted there. Can you tell what that search was for?
5 A Yes. That looks like it was Anderson & Associates.
6 Q What's the date and time of that search?
7 A 8/2/2013 at 4:14 p.m.
8 Q Based on your analysis and the information that you pulled
9 from this computer, what were the time periods during
10 August 2nd that the computer was used to access the internet?
11 A It looks like it was from -- the log started at 8:35 a.m.
12 and continued through 4:00- -- actually, 5:00- -- it looks like
13 5:46 was the last entry.
14 Q And according to your chart on Page 1, there were also
15 visits at around 10:00 a.m.?
16 A Yes.
17 Q And continuing to 11:00 a.m. on Page 3?
18 A Yes.
19 Q Page 6 shows it continues through 11:58 and 12:30. Do you
20 see that?
21 A I do.
22 Q And then Page 9 there are visits, looks like 4:00 p.m.,
23 different times?
24 A Uh-huh.
25 MR. FARNHAM: Just a moment, your Honor.

1 (Discussion held off the record between Government
2 counsel.)
3 MR. FARNHAM: Nothing further. Thank you.
4 THE COURT: All right. Cross?
5 MR. DRESSLER: No questions.
6 THE COURT: All right. Then this witness is excused
7 and you may step down.
8 THE WITNESS: Okay. Thank you.
9 (Witness excused.)
10 THE COURT: I think we've reached a point where we're
11 at our morning break. So why don't we go ahead and take our
12 15-minute break this morning?
13 Thank you.
14 (Jury exits the courtroom at 10:09 a.m.)
15 THE COURT: All right. Where are we at in terms of
16 witnesses?
17 MS. HARRIS: Your Honor, for planning purposes, we
18 have one more witness from Pillsbury, who will explain how the
19 guest wi-fi was accessed, how all of what the Court just saw
20 was able to be done.
21 And then we have Agent Sims, who will testify about the
22 search of the conference room and the finding of the tablet in
23 the ceiling. And then the Government is going to rest.
24 So I think we will probably start the defense case today.
25 THE COURT: Will there be -- Mr. Sims also will

1 explain the forensic?
2 MS. HARRIS: Correct. He will explain the search and
3 finding of the computer, as well as the forensic analysis of
4 what was on it.
5 THE COURT: All right. And this will take an hour?
6 How long do you think that will go?
7 MR. FARNHAM: Maybe, approximately, an hour. He has
8 a couple other topics. He's going to testify in terms of with
9 work he did on the investigation.
10 THE COURT: All right. So that will take us up to
11 the noon hour.
12 And -- well, at this point, Mr. Dressler, I should at
13 least raise the issue that you have raised with me without
14 getting into detail?
15 MR. DRESSLER: Yes, your Honor.
16 THE COURT: I don't think I can make any decisions
17 without the Government's response.
18 MR. DRESSLER: If the Court wants to hear further
19 from me, I can do it.
20 THE COURT: "Further," you mean --
21 MR. DRESSLER: Further from me.
22 THE COURT: In camera or here?
23 MR. DRESSLER: In camera.
24 THE COURT: Well, let's do this first.
25 The defense has asked for some time to prepare for his

1 direct testimony and has asked for an extra day of recess and
2 to be able to come on on Wednesday instead of this afternoon or
3 tomorrow.

4 So that -- that is the subject that we need to address,
5 since it appears that the Government is going to be prepared to
6 rest probably around noon today.

7 MS. HARRIS: Correct.

8 THE COURT: So without taking anything further in
9 camera from Mr. Dressler, let me get the Government's reaction.

10 MS. HARRIS: Your Honor, we would object to that. We
11 need to be moving on. There has been a clear heads-up on
12 Friday of where the Government was with its case, and that
13 would probably mean we wouldn't close until next week. And
14 we're losing a day with the Monday holiday.

15 Clearly, if we end by noon today, if the Court wanted,
16 maybe it could give Mr. Dressler the afternoon, but there was
17 plenty of time over the weekend to prepare Mr. Murray and three
18 years that this case has been pending for Mr. Murray to be
19 thinking about his intended testimony.

20 So we object to taking a day off to prepare the defendant.

21 THE COURT: All right. I'll give you have a chance
22 to respond publicly and if you want to submit something in
23 camera.

24 MR. DRESSLER: Yes, your Honor.

25 This case was anticipated to end by October 14th. I think

1 It still will end by October 14. It was -- frankly, I probably
2 should say anything else in camera.

3 But I think the Government has been indicating all along
4 that their case would end at the end of this week not at the
5 beginning of this week.

6 THE COURT: Well, that's not what was represented as
7 of Friday.

8 MR. DRESSLER: As of Friday, correct. But before
9 then, I anticipated more time to prepare.

10 MS. HARRIS: But I did tell Mr. Dressler before
11 Friday that we would not be calling Mr. Crowley in our
12 case-in-chief and that was the largest witness time estimate,
13 other than Mr. Eckel.

14 MR. DRESSLER: That's correct. On Friday, I believe
15 it was.

16 MS. HARRIS: No. It was earlier than that.

17 THE COURT: When was that?

18 MS. HARRIS: It was earlier in the week. I called
19 Mr. Dressler and told him not to spend a lot of time preparing
20 Mr. Crowley; that we would not be calling him in our
21 case-in-chief, and he thanked me for the heads up. I told the
22 Court when the Court asked on Friday.

23 MR. DRESSLER: It might have been on Thursday, your
24 Honor, the dark day.

25 THE COURT: All right. If Mr. Dressler wants to say

1 something in camera, I'm going to hear it. So why don't you go
2 ahead and excuse yourself for a couple minutes.

3 (Whereupon, the following proceedings were held
4 ex parte with defense counsel, Page 1363 Line 6
5 through Page 1365, Line 2.)
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1 (Whereupon there was a recess in the proceedings
2 from 10:17 a.m. until 10:26 a.m.)
3

4 THE COURT: All right. Back on the record.

5 MS. HARRIS: Your Honor, we just wanted to make sure
6 that before the Court makes any decision on Mr. Dressler's
7 request, that we have some opportunity to know what the
8 in camera proffer was, as long as it doesn't relate to
9 attorney-client privileged material, because we can't
10 effectively address the proffer without knowing what it is.

11 It strikes us as a very unusual request, especially in the
12 context of this trial, the notice the Court has given both
13 parties and the notice the Government gave last week, but we
14 would want to at least, before the Court makes a decision,
15 be able --

16 THE COURT: All right. Mr. Dressler, not everything
17 you said is an attorney-client privilege. I think you ought to
18 go ahead and at least explain the proffer.

19 MR. DRESSLER: Yes.

20 The proffer is, without going into the attorney-client
21 stuff, material, is that I don't feel that -- frankly, that I'm
22 adequately prepared to proceed with his direct examination at
23 this time. And I think that -- and we had a conversation in
24 camera about we're going to break early today, but I realize
25

1 that they don't just take them directly back to his cell. And
2 my understanding is that he wouldn't get back until 2:00 or
3 sometime thereafter. And I can't get in til after 3:00 because
4 of shift change.

5 So in considering -- considering all that, it's not going
6 to provide any real time especially going into the late evening
7 just -- I'm not complaining about this, but I went to bed -- I
8 was working on a Rule 29 motion last night until after 10:00 in
9 the evening and got up at 4:00 this morning and he went into my
10 office to work on this case. So I'm not going to be
11 particularly -- I'm used to working long hours on this case,
12 but it's just having some time. A few hours tonight is not
13 going to do it.

14 THE COURT: Response?

15 MS. HARRIS: Well, your Honor, we also have our own
16 logistical issues and what I would ask the Court is, if it's
17 possible, maybe bring the jury in at 10:00 so Mr. Dressler had
18 time tomorrow morning to work with Mr. Murray.

19 My concern is that if Mr. Murray -- the anticipated length
20 of the direct was a day and a half. I don't know if that's
21 still the case. But just so the Court knows, I'm unavailable
22 on Thursday. I was planning on that being the Court's dark day
23 and I have the Brugnara sentencing in front of Judge Alsop,
24 which was especially scheduled based on this --

25 THE COURT: We're dark on Thursday.

1 MS. HARRIS: Right. So I won't be able to work at
2 all on anything other than Brugnara on Thursday. Mr. Dressler
3 has brought up his logistical concerns and we had all based our
4 schedules on Mr. Murray being -- his entire testimony being
5 completed on Wednesday and going into closing arguments Friday.

6 But if the Court were to give -- bring in the jury a
7 little late tomorrow, would that then accommodate Mr. Dressler
8 and still keep this relatively on schedule?

9 MR. DRESSLER: I don't -- I don't think his direct
10 examination is going to be a day and a half, your Honor,
11 frankly. And I think that if we have -- if I have time to work
12 with him, it will certainly go a lot faster than if we go
13 forward at 8:30 tomorrow morning.

14 MS. HARRIS: I was proposing starting later to give
15 Mr. Dressler additional time.

16 THE COURT: Not only the rest of today, but also
17 tomorrow morning?

18 MS. HARRIS: Right.

19 MR. DRESSLER: I am --

20 THE COURT: I mean, we had the whole trial. Let me
21 just say. I've got a list. I have been very fastidious about
22 checking off every witness who has testified and just about
23 every witness who was listed has gone in order and has
24 testified. So the progress of this trial is no surprise.

25 Crowley was the biggest witness and that was, apparently,

1 announced at least as of Thursday last week that the Government
2 wasn't going to call him. There are a couple of other minor
3 people who weren't called, like Sportelli. And we knew Zelen
4 wasn't going to be called.

5 So, you know, we've gone through this thing. So the
6 progress has been clear. And we have had -- and I don't
7 frankly see any, you know, shockingly new documents that
8 weren't disclosed. The only thing that has come up are the
9 demonstratives and the summary exhibits from Mr. Villanueva,
10 but these are summary exhibits of all the discovery that's
11 already been produced. So there may be tactical issues.

12 Frankly, I don't see why -- taking the Government's
13 suggestion, we can start late tomorrow. Let's say 10:00. It
14 gives you an extra hour and a half, two hours to meet with your
15 client tomorrow, as well as the rest of the day today, for a
16 case that's been pending for years and, certainly, this trial
17 has been announced and set for many, many months. And so
18 I'm -- I really, frankly, don't see a need to -- for further
19 accommodation.

20 MR. DRESSLER: How about 11:00 o'clock, your Honor?
21 It would be helpful.

22 THE COURT: You think you will be able to get your
23 direct done in the three hours?

24 MR. DRESSLER: Close, or maybe some spill-over into
25 Wednesday.

1 MS. HARRIS: The concern, though, if there is
2 spill-over, is we are not permitted to talk to our witnesses
3 while they are on direct. Mr. Dressler wouldn't be able to
4 meet with Mr. Murray if he were still on direct. So what's the
5 point?

6 MR. DRESSLER: I don't think that there is any rule
7 that says I can't confer with my client during direct
8 examination. He's not --

9 MS. HARRIS: That is the rule, when a witness is on
10 direct testimony, that the attorney sponsoring the witness
11 doesn't meet with them in the middle of the direct if there is
12 a break.

13 MR. DRESSLER: I think --

14 MS. HARRIS: And we want to prevent that from
15 happening.

16 MR. DRESSLER: I think if that happened during my
17 client's cross examination, that would be a valid argument,
18 but not during -- I don't even know if it's a valid argument
19 during cross-examination. But this is going to be direct
20 examination.

21 I mean, I talked to him during breaks. I talked to him
22 during lunch. I've always done that for 40 years.

23 THE COURT: Well, if that's going to be an issue, I
24 want to see some authorities on that, because normally you
25 cannot talk to a witness; but if it's your own client and it

1 could be brought out on cross, maybe not the substance, but the
 2 fact that there has been some conversation. But I need to see
 3 some authorities on that point.

4 We will start at 10:30 tomorrow. That's a fair -- that
 5 gives you over two hours in the morning, as well as the rest of
 6 the day to prepare for something that should have been prepared
 7 for over the last several months. Certainly, the last several
 8 weeks.

9 For the reasons I've stated, this case has progressed --
 10 although it has progressed faster than we had forecasted to the
 11 jury as an outside, it has not progressed any faster
 12 unexpectedly based on the witness list and all the things that
 13 we've talked about. So this thing has progressed at a rate
 14 that was easily measurable and that could be anticipated.

15 So I think if we get started now, we can finish today and
 16 we will adjourn so that you can have the rest of the day, or at
 17 least the afternoon, and into the evening to converse further
 18 with your client, as well as tomorrow morning. Get him here
 19 early. Direct the Marshals to get him here at the usual time
 20 and so you can have a full two hours.

21 MR. DRESSLER: That is a problem, your Honor, because
 22 working with someone up on the 20th floor is practically
 23 impossible. You're -- I can't -- there is a screen. It's hard
 24 to show documents.

25 THE COURT: Well, where would you like to meet him?

1 At the jailhouse in the morning?

2 MR. DRESSLER: I would, but I don't know if the
 3 Marshals can organize that, or in the courtroom.

4 THE COURT: Let me ask the Marshals.
 5 Tomorrow morning for a couple of hours where can
 6 Mr. Dressler meet with his client?

7 MR. DRESSLER: Upstairs. He can be upstairs in an
 8 interview room that we have.

9 THE COURT: You know, that's what we're going to do.
 10 MR. DRESSLER: All right.

11 THE COURT: Okay? All right. So let's bring the
 12 jury in.

13 (Jury enters courtroom at 10:36 a.m.)

14 THE COURT: Okay. Welcome back, ladies and
 15 gentlemen. You may be seated. We're going to continue with
 16 the Government's case.

17 Next witness.

18 MR. FARNHAM: Yes, your Honor. The Government calls
 19 James Bailey.

20 JAMES BAILEY,
 21 called as a witness for the Government herein, having been
 22 first duly sworn, was examined and testified as follows:

23 THE WITNESS: Yes.

24 THE CLERK: Please be seated.
 25 Please state your full name for the record and spell your

1 last name, please.

2 THE WITNESS: James Patrick Bailey, B-A-I-L-E-Y.

3 THE COURT: Thank you, Mr. Bailey.

4 You may proceed, Mr. Farnham.

5 MR. FARNHAM: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. FARNHAM

8 Q Mr. Bailey, where do you work?

9 A Pillsbury Winthrop Shaw Pittman in our San Francisco
 10 office.

11 Q And how long have you worked there?

12 A Sixteen years.

13 Q And where is that San Francisco office located?

14 A Four Embarcadero Center.

15 Q What are your general responsibilities?

16 A Network engineering manager. I'm responsible for the
 17 general design and maintenance of our network servers,
 18 wireless, all the general network components.

19 Q Does that include working on Pillsbury's internet
 20 connection, their connection to the outside world?

21 A That is correct, sir.

22 Q And, also, their wireless network, you said?

23 A Yes, sir.

24 Q Can you describe the wireless network that you maintain at
 25 Pillsbury Winthrop?

1 A Sure. It's a basic Cisco wireless network. We have two
 2 networks. One is designed specifically for our internal staff
 3 to use.

4 We also have a network that's designed for our clients or
 5 guests to come in and work on. It's very similar to kind of
 6 like a hotel. You get a password from our reception. You
 7 login with your laptop, try to go to a website and just type in
 8 your password that was given to you and you connect to the
 9 internet.

10 Q What's the purpose for maintaining that guest wireless
 11 network?

12 A Typically, we may have a client that comes in to do work
 13 with us and they may need to connect to their corporate network
 14 or maybe get an airline reservation or those type of things.
 15 So we provide it as a means for our clients to, you know, be
 16 able to get on the internet to do whatever they need to do.

17 Q So it allows guests or clients of the firm to access the
 18 internet while they were in the office?

19 A Correct.

20 Q That guest wi-fi, is there a password?

21 A There is, a daily password that's given to reception and
 22 they can give out as needed.

23 Q When you say "daily," what do you mean?

24 A Every night at midnight it changes.

25 Q And what format is that password in?

1 A It's typically going to be "client" is the user name.
 2 Then the password will be two English words separated with a
 3 number, so like hello7guest, would be an example.
 4 Q So the word hello7guest?
 5 A All together, yes.
 6 Q All together might be an example of a password?
 7 A Exactly.
 8 Q And it changes each day you said?
 9 A At midnight.
 10 Q And I've been asking you generally, but was that the
 11 situation for the wireless network in 2013 and 2014?
 12 A Yes, sir.
 13 Q Everything that you've described also applied then?
 14 A Yes, it did, and still does.
 15 Q And you said that the password was distributed to who?
 16 A Our receptionist. We send out an email every night to
 17 reception at midnight to let them know what the current
 18 password is and it's on our internal extranet pages so that our
 19 attorneys can look it up if they need to.
 20 Q And why do you forward it to the receptionists?
 21 A So that guests, such as yourself if you were in our
 22 office, could request the password to gain access.
 23 Q And in the San Francisco office, would that reception desk
 24 be on the 22nd floor?
 25 A That is correct.

1 Q And during 2013 and early 2014, was it posted near that
 2 reception desk?
 3 A They did in -- frequently have a little plastic holder
 4 next to the receptionist that did have the password written on
 5 it.
 6 Q And that's so the guests could see it as they arrived at
 7 the office?
 8 A Correct. It would be seeable from when you walk in the
 9 elevator lobby, right through reception.
 10 Q So tell me a little bit more about how that works when a
 11 guest wants to access the wireless? What do they do?
 12 A So you would turn on your laptop. You would see a variety
 13 of wireless networks made available to you. One of them will
 14 be called "external," which on that sheet of paper would
 15 reference it. You would connect to "external." And you would
 16 just try to get to a web page, any web page.
 17 And once you do, our system would realize you're someone
 18 we haven't seen before, would cause your browser to hit a login
 19 page that had the Pillsbury logo on it, and you would just
 20 enter in whatever today's user name and password is.
 21 Once you did that, if it was successful, you would go
 22 through. If not, you would get an error message back and maybe
 23 have to go talk to reception. If it was successful, you would
 24 see the Pillsbury law external web page and at that point you
 25 could surf to Google or do whatever it is you might need to do

1 on the internet.
 2 Q For that first page, that login page that the network
 3 would direct guests to, what is the URL for that?
 4 A It's hotspot.pillsburylaw.com.
 5 Q And so that page is the firm of the login process?
 6 A Correct.
 7 Q And then after that you said, I'm sorry? If it's
 8 successful?
 9 A But the trick is, they don't necessarily need to go to
 10 that. They don't even need to know about that. They'll just
 11 go to, like, Google. And if they try to go to Google or they
 12 try go to any web page, the system will realize they have not
 13 logged in and redirect them to that web page where they would
 14 log in.
 15 Q So that guest's computer browser will be redirected to the
 16 hotspot.pillsburylaw.com?
 17 A Correct. Yes. Until they have successfully logged in.
 18 Q In 2013 and 2014 was the wi-fi signal available throughout
 19 the Pillsbury office space?
 20 A Yes. It's designed to cover all the square footage that
 21 Pillsbury leases in that building.
 22 Q How did you do that?
 23 A When we moved in, we bought many transmitters and we
 24 wandered around with a laptop to verify the coverage of the
 25 building. And, you know, from that survey we determined if

1 there is a dead zone in the building or a place that's not
 2 properly served, we would put in additional access points,
 3 paying particular attention to shared use areas, conference
 4 rooms, lunch rooms, open areas, that type of thing.
 5 Offices didn't need it as much because they probably have
 6 a cable connection.
 7 Q And what about the 23rd floor?
 8 A The 23rd floor is also our conference area, so it's well
 9 served with wireless. It's both our lunch room, conference
 10 centers and such.
 11 Q What about the bathroom area on the 23rd floor?
 12 A We don't seek out to cover that, but it is actually pretty
 13 well covered. There is an access point about 18 feet away from
 14 the restroom.
 15 Q And I'm sure you're familiar with what the term "Internet
 16 Protocol address" or "IP address" means?
 17 A Correct.
 18 Q What is that?
 19 A That's the IP address that when you send a piece of data
 20 on the internet or any IP network, that essentially will say
 21 the -- if you will, the phone number of your computer, your
 22 connection. That's the number that the world will know your
 23 computer by.
 24 Q Is there an IP address that the outside world would see in
 25 terms of computers at Pillsbury using the internet?

1 A Correct. Anything in our San Francisco office going to
 2 the internet, the IP address associated to it would be
 3 204.227.230.18.
 4 Q And it would just be that one IP address for any internet
 5 access from any computer at Pillsbury?
 6 A Any computer in San Francisco at Pillsbury, our guest
 7 network or our internal network.
 8 Q In the San Francisco office?
 9 A Correct.
 10 Q And tell me again what that number was?
 11 A 204.227.230.18.
 12 MR. FARNHAM: Just a moment, your Honor.
 13 (Discussion held off the record between Government
 14 counsel.)
 15 BY MR. FARNHAM
 16 Q One follow-up question to something you said.
 17 So if a guest brings in their own computer and does the
 18 login process that you've talked about and connects to the
 19 Pillsbury wireless, what would the outside world see as that
 20 internet connection?
 21 A It would see that same IP address, that 204.227.230.18.
 22 Our firewall will keep everybody's traffic separate from
 23 each other and log it, but they will see it coming from that
 24 connection, just like if it was your laptop directly connected
 25 to the internet.

1 Q So that would be true even if somebody brought in their
 2 own device?
 3 A If they connected to our network, yes.
 4 MR. FARNHAM: Nothing further, your Honor.
 5 THE COURT: All right. Anything on cross?
 6 MR. DRESSLER: No questions.
 7 THE COURT: All right.
 8 Thank you. Mr. Bailey, you're excused. You may step
 9 down.
 10 THE WITNESS: Thank you, your Honor.
 11 (Witness excused.)
 12 THE COURT: Government's next witness.
 13 MR. FARNHAM: Your Honor, the Government calls
 14 Anthony Sims.
 15 ANTHONY LEWIS SIMS,
 16 called as a witness for the Government herein, having been
 17 first duly sworn, was examined and testified as follows:
 18 THE WITNESS: Yes.
 19 THE CLERK: Thank you. Please be seated.
 20 Please state your full name for the record and spell your
 21 last name, please.
 22 THE WITNESS: My full name is Anthony Lewis Sims,
 23 Junior. Last name is spelled S-I-M-S.
 24 THE REPORTER: Would you spell Lewis, please?
 25 THE WITNESS: Lewis is spelled L-E-W-I-S.

1 THE COURT: Thank you, Mr. Sims.
 2 You may proceed, Mr. Farnham.
 3 MR. FARNHAM: Thank you, your Honor.
 4 DIRECT EXAMINATION
 5 BY MR. FARNHAM
 6 Q Good afternoon -- I'm sorry. Good morning, Agent Sims.
 7 What law enforcement agency do you work for?
 8 A I work for the United States Secret Service.
 9 Q And how long have you been with the Secret Service?
 10 A About five years.
 11 Q What's your current assignment?
 12 A I'm currently assigned to the Electronic Crimes Task Force
 13 in the San Francisco Field Office.
 14 Q As an agent with the Secret Service, what are your primary
 15 responsibilities?
 16 A Primary responsibilities are to protect the President,
 17 Vice-President, former Presidents, other visiting heads of
 18 state and the financial infrastructure for the United States.
 19 Q You also work on investigations?
 20 A Yes.
 21 Q What types of investigations does the Secret Service do?
 22 A The Secret Service conducts computer crime, cyber crime,
 23 financial crimes, like wire fraud, bank fraud, identity theft,
 24 threats against any of our protectees; threats against the
 25 President, Vice-President, former Presidents.

1 Q What about counterfeiting?
 2 A Counterfeiting was the original investigative mission of
 3 the Secret Service back in 1856.
 4 Q During the five years that you have been in the Secret
 5 Service, what types of investigations have you personally
 6 worked on?
 7 A I've personally worked on counterfeit crimes, cyber crimes
 8 and financial crimes.
 9 Q What type of financial crimes have you worked on?
 10 A Worked on bank fraud, wire fraud, identity theft.
 11 Q Tell me about your -- sort of what's your specialty in
 12 your current assignment?
 13 A So my current assignment, I am the senior forensic -- call
 14 it computer forensic agent for the San Francisco Field Office
 15 Electronic Crimes Task Force.
 16 Q And what do you do in that role?
 17 A We conduct primarily in this -- in the San Francisco Bay
 18 Area cyber crime investigations. We provide assistance to
 19 federal authorities, state authorities.
 20 If there is a computer hack, a breach of a network, for
 21 example when Target got breached, information was stolen, we
 22 provide assistance to businesses and other agencies.
 23 Q What did you do before you became an agent with the U.S.
 24 Secret Service?
 25 A I was in the -- I currently still am in the Army Reserves.

1 Hold the rank of Captain.

2 Q What did you do in the Army before you became an agent?

3 A I was a helicopter pilot and, also, was in the Infantry.

4 Q What type of training did you undergo when you were in the
5 military?

6 A I received training, management training, leadership
7 training.

8 I received training in aviation maintenance, working with
9 the aviation computer systems, doing counterintelligence work
10 as a pilot and as an aviation officer.

11 Q Where did you get your education?

12 A I received any education from Texas Women's University by
13 way of the Army. It's cheaper.

14 I also went to New Mexico Military Institute, which is in
15 Roswell, New Mexico.

16 And I'm currently pursuing an M.B.A. from Tarleton State
17 University in Texas.

18 Q I want to ask about some of your technical training,
19 training in technical fields.

20 What types of training did you receive as an agent with
21 the Secret Service, first?

22 A Initially, started off basic agent training at the Federal
23 Law Enforcement Center in Georgia, and I followed up with
24 Secret Service Academy training in D.C.

25 After that, the Secret Service sent me to what's called

1 Basic Computer Evidence Recovery Training, and then Advanced
2 Computer Evidence Recovery Training. Then I became certified
3 as an ethical hacker for the Secret Service, certified to
4 conduct mobile device forensics and forensics on vehicles,
5 cars, airplanes, et cetera.

6 Q What types of things did that Computer Recovery Training
7 cover?

8 A Basically, we want to preserve the crime scene. So the
9 computer or device itself is like a crime scene. And so we're
10 taught to preserve the crime scene and then do forensic
11 analysis on the crime scene.

12 Q You mentioned that you received training as an ethical
13 hacker. What does that mean?

14 A Ethical hacker is the counter to illegal hackers, hackers
15 that illegally enter networks.

16 So the Government provides us training on how to identify
17 their -- the hacker's techniques, their tactics and procedures,
18 and how to provide countermeasures to those tactics and
19 procedures in order to identify and arrest those individuals.

20 Q You mentioned that forensic training. What type of --
21 tell me about that? Who taught that?

22 A So the Secret Service, through the Treasury Department,
23 along with IRS and Homeland Security investigations, they bring
24 in industry experts, professors from universities like
25 Berkeley, other -- M.I.T., and those experts train the agents

1 how to conduct computer science forensic investigations.

2 Q And are there standards that they taught you?

3 A Yes. So we receive a lot of the standard industry
4 certifications that are required by civilian businesses.

5 Q What about forensic standards?

6 A Forensic standards, law enforcement forensic standards
7 that are recognized by the international law enforcement
8 community.

9 Q We both actually used the word "forensics" a few times
10 now. What is -- when you talk about forensics, what does that
11 mean?

12 A So forensics is the study, the preservation of evidence.
13 In this case, computer evidence in my case.

14 Q In your work as an agent for the Secret Service, have you
15 conducted forensic preservation and analysis of electronic
16 devices?

17 A Yes. I've conducted analysis for all the major law
18 enforcement agencies, including FBI, ATF, local police
19 departments, San Francisco Police Department, et cetera.

20 Q Are you familiar with the software tools that are used for
21 that?

22 A Yes I am. I have been trained. I currently use numerous
23 tools. In particular, for this case a tool that's called
24 Forensic Toolkit and a tool called Cellebrite.

25 Q And are those the industry standard tools?

1 A Yes. Those are industry standard tools for law
2 enforcement agencies.

3 Q There are these forensic standards you've talked about.
4 What is the general goal of those standards?

5 A The general goal for the forensic standards is to have
6 uniformity, a similar process that each agent or law
7 enforcement officer takes when we find a computer or evidence
8 so that someone can reproduce your work should you leave or be
9 transferred somewhere else.

10 Q What about the preservation of evidence?

11 A Yes. Preservation of evidence for the Secret Service, I
12 believe Jordyn Kramer testified earlier. She described that.
13 We like to preserve evidence as it's found, photograph and
14 document the device or evidence, and then we follow our normal
15 protocols after that.

16 Q And does your experience on these analyses, does that
17 extend to analyzing the usage of electronic devices?

18 A Yes. So basically through forensics we're able to
19 establish a timeline of everything that was done on a
20 particular device. So we can recreate basically the crime
21 scene for the investigators.

22 MR. FARNHAM: Your Honor, I would like at this point
23 to ask that Agent Sims be qualified as an expert on the
24 forensic preservation and analysis of electronic devices.

25 THE COURT: Any objection?

1 MR. DRESSLER: No, your Honor.
 2 THE COURT: All right. I find that Mr. Sims is so
 3 qualified.
 4 MR. FARNHAM: Thank you, your Honor.
 5 BY MR. FARNHAM
 6 Q First, I want to talk about some of the work that you did
 7 in connection with the investigation in this case and, in
 8 particular, regarding Chase Paymentech.
 9 Are you familiar with Chase Paymentech?
 10 A Yes, I am.
 11 Q And do you know what its role is in this investigation?
 12 A Yes, I do.
 13 Q What is Chase Paymentech?
 14 A Chase Paymentech is a card brand or a processor. They
 15 process credit card payments for different merchants around the
 16 country.
 17 Q There was -- why don't I show you the exhibit?
 18 MR. FARNHAM: I'd like to approach, your Honor, with
 19 a previously admitted exhibit.
 20 THE COURT: All right.
 21 (Whereupon document was tendered to the witness.)
 22 MR. FARNHAM: If we may publish it, your Honor?
 23 THE COURT: All right. This is -- what number is
 24 this?
 25 MR. FARNHAM: 43. Exhibit 43.

1 THE COURT: Previously admitted, correct?
 2 MR. FARNHAM: Yes, your Honor.
 3 THE COURT: Okay.
 4 (Document displayed)
 5 BY MR. FARNHAM
 6 Q If you could look at Exhibit 43 for a moment? This is a
 7 document that says at the top Batch Detail Report.
 8 Do you have an understanding about what this document
 9 shows?
 10 A Yes. This document shows the credit card transactions
 11 that were ran through the Chase Paymentech terminal.
 12 Q There is a column there that says Card. Do you see that?
 13 A Yes.
 14 Q Do you recognize what those numbers are in there?
 15 A Yes, I do.
 16 Q What are they?
 17 A These numbers are different cards that belong to different
 18 owners and various banks.
 19 Q As part of the investigation, were Secret Service agents,
 20 including yourself, able to identify the card holders and the
 21 names associated with those cards on that list?
 22 A Yes, we were.
 23 Q Tell me how you did that?
 24 A So I took these card numbers, sorted them by largest
 25 dollar amount to smallest dollar amount. And then we have a

1 database that tells us which banks owned these card numbers.
 2 And then I cross-referenced those banks with the subpoenas that
 3 we've sent out over the course of the investigation and I was
 4 able to match up the names that belonged to the cards that way.
 5 Q So when you say subpoenas sent out, did you look at the
 6 documents that the Secret Service received during the
 7 investigation?
 8 A Yes. Secret Service subpoenaed just about every card
 9 number that's present on this spreadsheet.
 10 Q And what types of documents are you talking about there?
 11 A So when we subpoena a bank, they provide us with the owner
 12 or the registered customer that has this, this -- that's using
 13 this card number. And so the banks provide us with all the
 14 records associated with the time period that we request.
 15 Q So looking at that type of bank information that the
 16 Secret Service obtained during the investigation, were you able
 17 to match that to the card numbers that are on Exhibit 43?
 18 A Yes, I was.
 19 Q And were you able to identify names associated with some
 20 of those cards?
 21 A Yes, I was.
 22 Q What are some of the names that came up as you matched
 23 these card numbers?
 24 A David Lowe, Lisa Brigulio, Michael Murray, James Murray.
 25 Q What about Tim Palm?

1 A Tim Palm was also a name.
 2 Q How about Market Neutral Trading?
 3 A Market Neutral Trading, care of James Murray.
 4 Q Those names all came up as card holders for those card
 5 numbers?
 6 A Correct.
 7 Q Can you -- did you add up some of the totals for some of
 8 those card holder names?
 9 A Yes, I did.
 10 Q What about Michael Murray? Do you know the approximate
 11 amount of transactions that related to him?
 12 A Personal amount was about \$102,000.
 13 Q What about Lisa Brigulio?
 14 A About \$88,000.
 15 Q What about cards associated with James Murray?
 16 A About \$202,000.
 17 Q And what about David Lowe?
 18 A About \$40,000.
 19 Q Is there a ballpark total for those four card names?
 20 A Ballpark is over \$400,000 in transactions for those names.
 21 Q And those are card names you matched to this Chase
 22 Paymentech list?
 23 A Correct.
 24 Q I next want to ask you about some GoDaddy.com IP
 25 addresses, information that appears in the GoDaddy.com

1 documents.

2 MR. FARNHAM: But, first, if I could approach with a

3 couple of pre-existing -- sorry, already admitted exhibits,

4 your Honor: 56, 67 and 70.

5 THE COURT: All right.

6 (Whereupon documents were tendered to the witness.)

7 BY MR. FARNHAM

8 Q Just by way of background for this part of your testimony,

9 can you tell me what an IP address is and how it can identify a

10 particular user?

11 A An IP address is a series of numbers assigned by your

12 Internet Service Provider and that IP address is typically

13 stored in your device, your computer, your tablet, so on and so

14 forth, and that number is used to communicate with the

15 internet. So the internet needs to know who you are in order

16 for you to communicate, to go to different websites via the IP

17 address.

18 Q And is that a unique number for that connection?

19 A Yes. The number is unique.

20 Q In the course of your investigation in this case, did you

21 review records from Comcast?

22 A Yes, I did.

23 Q And from those records did you learn about an IP address

24 associated with James Murray's residence in a particular time

25 period?

1 A Yes, I did.

2 Q If we could look at the second page of Exhibit 56?

3 (Document displayed)

4 Q Is this one of the records you looked at?

5 A Yes, it is.

6 Q And what does this tell you about the Internet Protocol

7 address?

8 A So the Internet Protocol address assigned to Lisa and

9 James Murray in Larkspur, California at 206 William Avenue was

10 71.202.117.49.

11 Q And is there an "as of" date there?

12 A Between December 2nd, 2010 and February 9, 2011.

13 Q Looking at the current IP address line, you see that it

14 says, "as of June 20th, 2011"?

15 A Yes.

16 Q What's your understanding, based on information you've

17 gathered in the investigation, of how long that Internet

18 Protocol address would have been associated with James Murray's

19 residence?

20 A So according to investigators from Comcast, this -- once

21 an Internet Protocol, IP address, is assigned to a customer,

22 that address will not change unless the router is switched out

23 or if the service is down for an extended period of time.

24 In this case, neither was the case. So this IP address

25 remained with this customer name.

1 Q So it could have been -- it could have been that IP

2 address for an extended period of time prior to June of 2011?

3 A Correct.

4 Q If we could look at the previously admitted Exhibit 67,

5 which should also be in front of you?

6 (Document displayed)

7 Q During the investigation, did you review documents

8 provided by Internet Service Provider -- well, I guess -- I

9 don't know what they are. GoDaddy.com, did you review

10 documents from GoDaddy.com?

11 A Yes, I did.

12 Q What is GoDaddy.com?

13 A GoDaddy.com is a hosting service for hosting web pages.

14 Q And what about hosting email?

15 A Yes. They host email as well.

16 Q If we look at Exhibit 67, can you read the company that is

17 associated with this document?

18 A The company is J.M. and Associates.

19 Q And what's the address that's listed for this GoDaddy

20 record?

21 A 1521 Concord Pike Street, Third Floor, Wilmington,

22 Delaware.

23 Q And what's the email address that appears in the contact

24 information for this document?

25 A richard@jonesmoore.com.

1 Q If I could ask you to look at Page 40 of this document?

2 (Document displayed)

3 Q During the investigation, did you get an understanding of

4 what Page 40 is?

5 A Yes. These are IP addresses and the times that those IP

6 addresses used GoDaddy.com.

7 Q And in what way did they use GoDaddy.com, according on

8 this page?

9 A So these IP addresses would have accessed GoDaddy.com's

10 domain name.

11 Q And you see at the top it says Email Address. Do you see

12 that?

13 A Yes. It states richard@jonesmoore.com.

14 Q Did you understand that these IP addresses relate to

15 access to that email address?

16 A Yes.

17 Q Can you identify the dates and times that you see -- you

18 talked about an IP address of 71.202.117.49 that was associated

19 with James Murray's residence, is that right?

20 A That's correct.

21 Q And on this page can you identify that IP address?

22 A Just about halfway down the page, there is -- that IP

23 address is listed twice. The first one is 2010, October 1st,

24 7:33. The second one is October 15th of 2010 at 6:21.

25 Q If we could look at the next page, Page 41 of this

1 document?
 2 (Document displayed)
 3 Q Can you tell us the dates and times you see that same IP
 4 address accessing the GoDaddy.com?
 5 A The first date is November 20th at 3:26. The second one
 6 is half way down the page, November 27th, 4:50 a.m. The third
 7 one is listed as December 2nd, 8:26 p.m.
 8 Q And let's look at the next page, Page 42.
 9 (Document displayed.)
 10 Q Is there another time that that Internet Protocol address
 11 is used to access richard@jonesmoore.com as hosted by
 12 GoDaddy.com?
 13 A Yes. Its internet IP address was on -- accessed
 14 GoDaddy.com on January 1st, 2011 at 2:02 p.m.
 15 Q If we could look at Page 3 of Exhibit 67?
 16 (Document displayed)
 17 Q And directing your attention to about two-thirds of the
 18 way down. First, what email address is listed on this page of
 19 Exhibit 67?
 20 A Email address listed is david@jonesmoore.com.
 21 Q And are these dates and times of access to that email
 22 address?
 23 A Yes.
 24 Q And do you see the Internet Protocol for James Murray's
 25 residence listed on that document?

1 A Yes. It's about a third of the way down. First one is --
 2 starts on October 1st, 7:25 a.m. On that same day 7:34 a.m.
 3 The next one is on October 15th 6:21 p.m.
 4 Q And how about the next page, Page 44?
 5 (Document displayed)
 6 Q And we can just look at the bottom?
 7 A At the bottom of this page there are three entries for
 8 January 1st, 2011. First entry is at 2:06 p.m., 2:08 p.m., and
 9 5:36 p.m.
 10 Q Let's move to Page 46, different email address. What's
 11 the email address associated with Page 46?
 12 A This email address states sherry@jonesmoore.com.
 13 Q Is there an access to that email address listed here using
 14 the IP address we have been talking?
 15 A Yes, there is.
 16 Q When is that?
 17 A This is on November 27th at 4:54 a.m.
 18 Q A.M. or P.M.?
 19 A A.M.
 20 Q Oh, I'm sorry. I see. I was looking at a different one.
 21 Further down, do you see one that was on December 2nd?
 22 A Yes. December 2nd at 8:27 p.m.
 23 Q And if you look at the next page, Page 47.
 24 (Document displayed.)
 25 Q What email address does this page relate to?

1 A michelle@jonesmoore.com. And this is -- the first IP
 2 address that comes up, December 2nd, 8:27 p.m.
 3 Q If I could ask you just very quickly to compare that time,
 4 December 2nd about 8:27 p.m. on Page 47 and see if there is a
 5 similar time on Page 46?
 6 (Documents displayed.)
 7 Q Do you see a December 2nd, 2010 access to that IP address
 8 at about 8:27?
 9 A Yes, I do.
 10 Q And that's for a different email address?
 11 A Yes, it is.
 12 Q It's about the same time?
 13 A Correct.
 14 Q If we go back to Page 41 just briefly?
 15 (Document displayed)
 16 Q Is there a December 2nd, 2010 access to a different email
 17 address using the same IP address?
 18 A Yes, there is.
 19 Q What time was that one?
 20 A This is at 8:26 p.m.
 21 Q So what does that tell you about those three accesses for
 22 those three email addresses?
 23 A It means that those three email addresses were accessed
 24 from the same IP address in Larkspur, California.
 25 Q And separated by how much time?

1 A Minutes and seconds.
 2 Q If I could ask you to look at a different document,
 3 Exhibit 70, which has been previously admitted.
 4 (Document displayed)
 5 Q You see the first page of Exhibit 70?
 6 A Yes, I do.
 7 Q And what's the company listed for this GoDaddy.com
 8 document?
 9 A The company is H.F. Administrators, Limited.
 10 Q And what's the email address associated with this account?
 11 A gary@hfundadministration.com.
 12 Q If I could ask you to look at Page 45 of Exhibit 70?
 13 (Document displayed)
 14 Q Based on your investigation, is this also a GoDaddy.com
 15 page relating to a particular email address?
 16 A Yes, it is.
 17 Q What email address?
 18 A gary@hfundadministration.com.
 19 Q And do you find the IP address that we've seen associated
 20 with James Murray's residence used on this page?
 21 A Yes.
 22 Q Can you just summarize --
 23 A On the first --
 24 Q Sorry.
 25 A There are seven IP addresses that accessed the email

1 gary@hfundadministration.com -- excuse me, that IP address
 2 accessed that email seven times.
 3 Q So the IP address that we have been talking about accessed
 4 it seven times?
 5 A Correct.
 6 Q And what are the dates it was accessed?
 7 A The first date listed is October 27th, accessed -- that IP
 8 address accessed the email twice on October 27th around
 9 9:18 p.m.
 10 Then it was accessed on February 5th at 7:25 a.m.
 11 February 5th again, at around 9:00-- excuse me, at
 12 9:11 a.m.
 13 February 9th at 8:49 p.m.
 14 And February 9 at 8:55 p.m.
 15 Q If you could look at Page 46 of this document, the next
 16 page?
 17 (Document displayed)
 18 Q Which email address does this relate to?
 19 A This is eve@hfundadministration.com.
 20 Q And are you able to identify times when the same IP
 21 address was used to access that email?
 22 A Yes. The first time listed is February 57:23 a.m.
 23 And then on the same day at 9:00 a.m.
 24 And then on February 9 at 8:48 p.m.
 25 Q Going to Page 50 of Exhibit 70?

1 (Document displayed.)
 2 Q Which email address does this page relate to?
 3 A dlowe@anderson-assoc-ltd.com.
 4 Q And was the IP address we have been talking about used to
 5 access that email?
 6 A Yes. The same IP address.
 7 Q What date and time?
 8 A January 8th, 5:36 a.m.
 9 Q How about Page 51 of Exhibit 70?
 10 A So the IP address we have been discussing accessed
 11 gary@anderson-assoc-ltd.com, February 5, 2011 at 7:24 a.m. and,
 12 again, at 9:08 a.m.
 13 Q Does that tell you that these accesses to these email
 14 addresses that we have been talking about happened through the
 15 same internet connection?
 16 A Yes, it did.
 17 Q Turning your attention to a search that you participated
 18 in in 2014, did you participate in the execution of a search
 19 warrant on February 26, 2014?
 20 A Yes, I did.
 21 Q Where was that search warrant executed?
 22 A The search warrant was executed at the Pillsbury law firm
 23 in San Francisco, California.
 24 Q When that search warrant was being executed at that law
 25 firm, were there other law enforcement agents with you?

1 A Yes.
 2 Q How many?
 3 A There was approximately four agents on the search that
 4 day.
 5 Q Let me ask first about the search warrant itself.
 6 Is that -- is a search warrant the document that
 7 authorizes law enforcements agents to do a search?
 8 A Correct.
 9 Q And this particular warrant, where did it authorize agents
 10 to search?
 11 A The search warrant was very particular. It authorized us
 12 to search a room that was specifically designated for James
 13 Murray, Pillsbury law firm.
 14 Q And was it a particular part of that room that you were
 15 authorized to search?
 16 A Yes. We were only authorized to search in the ceiling
 17 area, looking for a tablet, a computer tablet.
 18 Q What specifically were agents authorized to look for?
 19 A Specifically, looking for an Asus Nexus computer tablet.
 20 Q Asus, is that A-S-U-S?
 21 A A-S-U-S.
 22 Q Is that a brand of computer?
 23 A Yes, it is.
 24 Q And the Nexus, you said?
 25 A Nexus is kind of like a brand of the brand. It's like a

1 type of the brand.
 2 Q And that's what agents were authorized to look for?
 3 A Correct.
 4 Q When agents arrived at that search, how did you know which
 5 room to search?
 6 A We met with Mr. Murray's defense attorney, Marc Axelbaum,
 7 and he directed us to the conference room on the 23rd floor
 8 that was specifically designated for use by Mr. Murray.
 9 Q Is that the room that he had been using while he was at
 10 that law firm?
 11 A Correct.
 12 Q And Mr. Axelbaum, was he the criminal defense lawyer of
 13 Mr. Murray at that time?
 14 A As I understand it, yes.
 15 Q After Mr. Axelbaum showed agents the room that Jim Murray
 16 was working in, what happened next?
 17 A Mr. Axelbaum requested that we allow him to turn over any
 18 documents that would be privileged. After that, he allowed the
 19 agents to enter the room.
 20 Q Who went in first?
 21 A I went in first.
 22 Q And then what happened?
 23 A Shortly after I stepped into the room, I noticed the
 24 ceiling panel above me, above the doorway, was slightly ajar,
 25 slightly pulled back. There was black space showing, which is

1 kind of unusual.

2 Q And you were looking at the ceiling because you were

3 authorized to search there, right?

4 A Correct.

5 Q And after you saw that that ceiling tile was a little ajar

6 and had some space there, what happened next?

7 A I obtained a chair to stand on. I stood up. Looked at

8 the area where the ceiling tile was ajar and I recognized a

9 device that I identified as a computer tablet.

10 Q And then what did you do?

11 A I took the tablet from the ceiling and then I placed the

12 tablet inside of what is called a Faraday bag. A Faraday bag

13 allows -- keeps people from sending signals to the computer

14 tablet to keep from remotely wiping or destroying the evidence.

15 Q So the Faraday bag is an evidence preservation tool?

16 A Correct.

17 Q It's like a metallic bag?

18 A Correct. It stops all electronic communications to and

19 from the device.

20 Q After you recovered the tablet computer and put it in the

21 Faraday bag, what happened next? What did you do?

22 A We exited the room, secured the tablet in one of our

23 evidence bags, and then left the premises.

24 Q Why didn't you search any more?

25 A We were -- the search warrant was very particular. We

1 weren't authorize to search anywhere inside that conference

2 room except for the ceiling area.

3 MR. FARNHAM: Your Honor, if I may approach with an

4 exhibit?

5 THE COURT: Yes.

6 (Whereupon photographs were tendered to the witness.)

7 BY MR. FARNHAM

8 Q Agent Sims, I've handed you what's been marked as Exhibit

9 320 for identification. If you could look at this and tell me

10 if you recognize these?

11 A These are photos of the conference room at the Pillsbury

12 law firm that we searched.

13 Q And you've had an opportunity to review these photos?

14 A Yes, I have.

15 Q And do these photos accurately depict the conference room

16 you searched that day and the outer door of the conference room

17 that you searched that day?

18 A Yes, they do.

19 MR. FARNHAM: Your Honor, I would offer Exhibit 320

20 into evidence.

21 THE COURT: Any objection?

22 MR. DRESSLER: No objection.

23 THE COURT: Admitted.

24 (Trial Exhibit 320 received in evidence.)

25 MR. FARNHAM: And may we publish some of the photos

1 in this exhibit, your Honor?

2 THE COURT: Yes.

3 BY MR. FARNHAM

4 Q I want to start with Page 2.

5 (Photograph displayed.)

6 Q What is this photo showing?

7 A This shot is showing a view of the conference room from

8 the hallway.

9 Q And is that what it looked like the day that you searched

10 it?

11 A Correct.

12 Q And is that the -- is there only that one table in that

13 room?

14 A Yes, sir. There is a table along the back wall. If

15 you're looking at the photo, to the left of the door.

16 Q Okay. Maybe we can see what that looks like. If we could

17 look at Page 9?

18 (Photograph displayed.)

19 Q What is this photo showing?

20 A So this photo shows further into the conference room and

21 you can see the back table or cabinet against the wall, and you

22 can also see the -- the Embarcadero or the Bay through the

23 window.

24 Q And that shows the orientation of this room?

25 A Correct.

1 Q If we could look at Page 19?

2 (Photograph displayed.)

3 Q What does this picture show?

4 A This picture shows what I described earlier, the ceiling

5 tile that was slightly pulled back. You can see there is a

6 black or dark space. And this tile is in the general vicinity

7 of the door area.

8 Q And is that similar to what it looked like the day that

9 you found the tablet?

10 A Correct.

11 Q And tell me, describe those -- those sealing tiles? What

12 are they like? What are they made of?

13 A I believe they are made of maybe a foam type material to

14 help with noise, acoustics.

15 Q If we could look at Page 49?

16 (Photograph displayed.)

17 Q What is Page 49? What is this photo showing?

18 A This photo is showing a view from inside the conference

19 room facing the door.

20 Q And is the ceiling tile that you moved to recover the

21 lap -- the tablet, computer, shown here?

22 A Yes, it is.

23 Q Is that it there (indicating)?

24 A That is correct.

25 Q And that's the one you moved in order to recover the

1 tablet?

2 A I didn't have to move the tile. The tablet was sticking

3 out, so I just pulled the tablet directly from the ceiling.

4 Q Where -- where in this photo was the tablet?

5 A The -- so the tablet was sticking out of this area

6 (indicating).

7 Q So the part that you just drew on, it was like a shelf it

8 could sit on?

9 A Correct.

10 Q After you brought the tablet -- after you recovered the

11 tablet computer, put it in the Faraday bag, what happened with

12 it next?

13 A So the tablet was processed via our normal protocols and

14 then it was sent to another computer forensic analyst for

15 forensic extraction of any data on the tablet.

16 Q Was it brought back to the Secret Service offices?

17 A Yes. So, the tablet was sent -- we have a Secret Service

18 office in San Jose. My counterpart, we often check each

19 other's work. So he conducted the extraction of the data and

20 then I conducted the analysis of that data.

21 Q Tell me how that extraction took place?

22 A So we -- we have various tools that are issued to us and

23 all the industry devices out there typically provide law

24 enforcement with a way to pull data off of those devices.

25 In this case it was an Asus tablet. That device was

1 hooked up to a machine called Cellebrite and, also, a forensic

2 tool called FTK imager. And then we pulled off all the

3 electronic data from the tablet and that was put onto a hard

4 drive for analysis.

5 Q Is there also -- as part of the forensic analysis, do

6 agents also sometimes take photos of the tablet of data that

7 can't necessarily be pulled off a different way?

8 A Yes. So if our devices haven't caught up to the current

9 technologies, sometimes you have to use old school methods, a

10 camera. And we swipe through the device and take a picture of

11 each screen on that device in areas that we think are relevant

12 to the investigation.

13 Q And that's a way that you can preserve the evidence and

14 analyze it?

15 A Correct.

16 Q You said that you did your own analysis on the data and

17 information that was extracted from that tablet computer, is

18 that right?

19 A Correct.

20 Q What types of information generally were you able to learn

21 from that work? What categories of information?

22 A The tablet had connections with the internet, and then

23 from the internet a series of documents. About -- about

24 300-some items were downloaded to the tablet, and then there

25 was extensive use on the device itself.

1 Q So 300, more than 300 items, were those documents and

2 files --

3 A Yes.

4 Q -- on the computer and not -- were those -- I don't know

5 the right word. Were they user files?

6 A Yes. Those files were not -- in my experience, those

7 files do not appear to be default program files that are

8 installed when you buy a device like that.

9 Q And when you were analyzing the information from this

10 forensic work, were you able to figure out information about

11 those user files; such as, who authored them, where they came

12 from?

13 A Yes.

14 MR. FARNHAM: If I could approach with an exhibit,

15 your Honor?

16 THE COURT: All right.

17 (Whereupon document was tendered to the Court.)

18 BY MR. FARNHAM

19 Q Agent Sims, if you could look first at what's been marked

20 as Exhibit 338?

21 (Witness complied.)

22 Q What is Exhibit 38?

23 A Exhibit 338 is a camera photo of the internet history on

24 the tablet.

25 Q And this is the tablet computer that you recovered from

1 the Pillsbury ceiling?

2 A Correct.

3 Q And what is it -- what do the screenshots show?

4 A So what I looked for was the device had connected to the

5 internet. So first thing I noticed from this screenshot was a

6 web authentication line on the bottom of the page that states

7 hotspot.pillsburylaw.com/login.html. And from my experience

8 seeing this type of log usually leads to a successful

9 connection to the internet, which stated above

10 <http://www.pillsburylaw.com>.

11 This implied to me that whoever used this tablet had the

12 user name and password to access the Pillsbury wi-fi.

13 Q Are these -- let me ask you a couple more questions about

14 this exhibit. So these are screenshots of the tablet computer

15 that was recovered?

16 A Correct.

17 Q And these are accurate photos of what that screen showed?

18 A Correct.

19 Q And that was during the analysis of the tablet?

20 A Correct.

21 MR. FARNHAM: Your Honor, I would offer Exhibit 338

22 into evidence.

23 THE COURT: Any objection?

24 MR. DRESSLER: No objection.

25 THE COURT: Admitted.

1 (Trial Exhibit 338 received in evidence.)
 2 MR. FARNHAM: And if I could, your Honor, I would
 3 like to publish the page that Agent Sims was talking about.
 4 THE COURT: Okay.
 5 MR. FARNHAM: Page 1 of Exhibit 338.
 6 (Document displayed)
 7 BY MR. FARNHAM
 8 Q And I think you said that this is the browser history for
 9 the tablet?
 10 A Correct. These are websites that were accessed from this
 11 browser.
 12 Q And then show me where is the web authentication portion
 13 you were talking about?
 14 A (Indicating).
 15 Q And what is it that that item on this browser history
 16 tells you?
 17 A This tells me that the tablet was connected to a wi-fi hot
 18 spot, as stated in the first part of the line. And then the
 19 hot spot was at Pillsbury law.
 20 And then it says "login.html," which means that there
 21 needs to be a user name and a password. And then the
 22 directions state:
 23 "Once the password is entered correctly, it will
 24 redirect you to www.pillsburylaw.com."
 25 Q And could you read for us the URL for this web

1 authentication page?
 2 A The URL as stated, "https://hotspot.pillsburylaw.com/
 3 login.html?redirect=www.pillsburylaw.com."
 4 Q And based on information that you gathered during this
 5 investigation, to log on to the Pillsbury wireless network, was
 6 visiting that site required?
 7 A Correct.
 8 Q In addition to looking at this browser history, were there
 9 things that you looked at that enabled you to figure out
 10 whether or not this tablet computer had been used to access the
 11 internet?
 12 A Yes. There was a couple applications that were installed
 13 that are native to that -- to the device. One is called Google
 14 Drive. The other is called Viber.
 15 Q And would that application, Google Drive, would that
 16 require an internet connection?
 17 A Yes. Google Drive requires you to have an active internet
 18 connection or to download files from Google.
 19 Q And then what other applications did you find that
 20 indicated it had used the internet?
 21 A Another application was called Viber.
 22 Q V-I-B-E-R?
 23 A V-I-B-E-R, correct.
 24 Q What is the Viber application?
 25 A Viber is an application that allows to you communicate via

1 instant message similar to Skype, almost exactly identical to
 2 Skype. The application allows you to make phone calls to other
 3 people who have the Viber application.
 4 Q And application, how did it get on that tablet?
 5 A So the application had to be downloaded from the internet.
 6 This type of tablet uses Google's operating system. You have
 7 to download it through what's called the Play Store.
 8 Q So when you say "application," another word for that is
 9 like an "app"?
 10 A Like an "app," correct.
 11 Q It had been downloaded in order to be used?
 12 A Correct.
 13 Q And did you find any evidence that the Viber app had
 14 actually been used on that computer?
 15 A Yes. During the extraction, the Viber app keeps a log of
 16 all the communications and we were able to obtain that log,
 17 like chat log, from the application itself.
 18 Q If you could look at Exhibit 332? It should be in front
 19 of you -- I'm sorry, 335.
 20 (Witness complied.)
 21 Q What is Exhibit 335?
 22 A Exhibit 335 is the Viber chat log that was extracted from
 23 the tablet.
 24 Q And was this extracted as part of the forensic analysis of
 25 that tablet computer?

1 A Yes, it was.
 2 MR. FARNHAM: Your Honor, I would offer Exhibit 335
 3 into evidence.
 4 THE COURT: Any objection?
 5 MR. DRESSLER: No objection.
 6 THE COURT: All right. Admitted.
 7 (Trial Exhibit 335 received in evidence.)
 8 BY MR. FARNHAM
 9 Q So tell us again --
 10 MR. FARNHAM: And, your Honor if I may publish --
 11 THE COURT: Yes.
 12 MR. FARNHAM: -- portions of this?
 13 (Document displayed)
 14 BY MR. FARNHAM
 15 Q So tell me what this document tells you about this
 16 computer tablet?
 17 A So this document gives the dates, the times and the -- who
 18 was communicating, and it ranges from August 12, 2013 to
 19 February -- excuse me, December 8th, 2013 to February 26, 2014.
 20 Q If we could look at that last page of this exhibit,
 21 Page 13?
 22 MR. FARNHAM: Page 13. Sorry. And if we could zoom
 23 in on the last entries on this Page?
 24 (Document displayed.)
 25

1 BY MR. FARNHAM
 2 Q What is the date of the last entry in this Viber log?
 3 A On my exhibit in front of me the date is February 26,
 4 2014, 11:04 a.m.
 5 Q And what is this -- what does this Viber log tell you
 6 about the usage of the Viber app? What is it?
 7 A Can you repeat the question?
 8 Q What is it logging, I guess, is my question?
 9 A It's logging the phone numbers. It appeared to be phone
 10 numbers. The times, the dates and then the content of the
 11 conversations between the two parties.
 12 Q So it shows the actual messages sent and received?
 13 A Correct.
 14 Q And it shows which direction it's going?
 15 A Correct.
 16 Q For the communication on this log, of this Viber log, is
 17 there any indication of who was on the other end of it?
 18 A Yes.
 19 Q How did you figure that out?
 20 A So I did a search from our law enforcement database on the
 21 numbers in the fourth column and I found --
 22 Q First, tell us what number you're looking at?
 23 A I'm on the fourth column on Page 13 of 335, and there is a
 24 415 number and there's also an 1-646 number.
 25 Q So was the person using the tablet computer using Viber to

1 communicate with that 646 number?
 2 A Correct.
 3 Q And were you able to determine who that was?
 4 A Yes. I used our -- the law enforcement database search on
 5 that phone number and it came back to a Giovanni de Francisci.
 6 Q So you concluded that this Viber app was being used to
 7 communicate with Giovanni de Francisci?
 8 A Correct.
 9 Q Did you also find another tie to Mr. De Francisci on these
 10 logs?
 11 A Yes. There was a -- throughout the course of the
 12 investigation, I identified Mr. De Francisci's email. His
 13 email starts with Dongdef, and there is a reference to that
 14 user I.D. in this Viber chat log.
 15 Q Dongdef? D-O-N-G-D-E-F, is that how you spell that?
 16 A Yes.
 17 Q And that's an email address that you have seen associated
 18 with Mr. De Francisci?
 19 A Correct.
 20 Q I want to ask you about some of the documents that you
 21 were found during your analysis of this tablet computer? If we
 22 could start by looking at Exhibit 340?
 23 (Witness complied.)
 24 THE COURT: Is it previously admitted?
 25 MR. FARNHAM: No. We will. We're working on that.

1 BY MR. FARNHAM
 2 Q Exhibit 340, was this a document that was found in the
 3 user files on this tablet computer?
 4 A Yes. This is a document that was a PDF that was found on
 5 the computer, on the tablet.
 6 Q And you were -- you looked at the forensic data that was
 7 pulled from that tablet computer and confirmed that this
 8 document was on the tablet?
 9 A Correct.
 10 Q In the PDF format?
 11 A In the PDF format.
 12 MR. FARNHAM: Your Honor, I would offer Exhibit 340.
 13 THE COURT: Any objection?
 14 MR. DRESSLER: No objection.
 15 THE COURT: Admitted.
 16 (Trial Exhibit 340 received in evidence.)
 17 MR. FARNHAM: If I may publish it, your Honor?
 18 THE COURT: Yes.
 19 BY MR. FARNHAM
 20 Q If we could look at the first page of Exhibit 340.
 21 (Document displayed)
 22 Q You see that this document says Company Account
 23 Applications at the top?
 24 A Yes, it does.
 25 Q And then at the very top, what's the company that --

1 what's the company name listed there under Company Account
 2 Applications?
 3 A The name listed is MNT Master Fund, Limited.
 4 Q And what's the email address that's listed in the Email
 5 line on this page?
 6 A The email is james.m@event-trading-fund.com.
 7 Q And just zooming out a little bit for a second. What's
 8 the -- the company that this application seems to relate to at
 9 the very top?
 10 A AvaFx Online Trading Center.
 11 Q If I could ask you to look at Exhibit 341?
 12 (Document displayed)
 13 Q And was Exhibit 341 -- actually, I'm only going to have
 14 you look at the first page of that document and that's the only
 15 portion that I'll offer into evidence.
 16 But is Exhibit 341 a document that was found on that
 17 tablet computer?
 18 A Yes, it is.
 19 Q And were you able to confirm that by looking at the
 20 forensic data that you analyzed?
 21 A Correct.
 22 Q And what format was this document?
 23 A This form was -- is a PDF as well.
 24 MR. FARNHAM: Your Honor, I would offer Exhibit 341,
 25 but only the first page, because it is a transcript that

1 probably wouldn't otherwise come into evidence.
 2 THE COURT: All right. So you're asking to admit
 3 Page 1 of Exhibit 341?
 4 MR. FARNHAM: That's correct.
 5 THE COURT: Any objection?
 6 MR. DRESSLER: No objection.
 7 THE COURT: Admitted.
 8 (Trial Exhibit 341, Page 1 received in evidence.)
 9 MR. FARNHAM: If we could publish it, your Honor?
 10 THE COURT: Okay.
 11 (Document displayed)
 12 BY MR. FARNHAM
 13 Q And what -- can you identify what type of document Exhibit
 14 341 was?
 15 A This document is a court transcript for the United States
 16 District Court in this courtroom.
 17 Q And which case does it relate to?
 18 A The United States of America versus James Murray.
 19 Q This case?
 20 A This case.
 21 Q If I could ask you to look at Exhibit 345?
 22 (Witness complied.)
 23 Q Is Exhibit 345 another document that was found on the
 24 tablet computer?
 25 A Yes, it was.

1 Q And is this a document that through your analysis of the
 2 forensic data you were able to confirm was stored on that
 3 tablet?
 4 A Correct. I do confirm so.
 5 MR. FARNHAM: Your Honor, I would offer Exhibit 345
 6 into evidence.
 7 THE COURT: Any objection?
 8 MR. DRESSLER: Maybe I missed something.
 9 THE COURT: 345? Do you want to look at it?
 10 (Whereupon, document was shown to counsel.)
 11 MR. DRESSLER: No objection.
 12 THE COURT: Admitted.
 13 (Trial Exhibit 345 received in evidence.)
 14 MR. FARNHAM: If we may publish that, your Honor?
 15 THE COURT: All right.
 16 (Document displayed)
 17 BY MR. FARNHAM
 18 Q Exhibit 345, does this appear to be a Certificate of
 19 Incorporation?
 20 A Yes, it does.
 21 Q And is this a one-page PDF format document?
 22 A Yes, it was.
 23 Q What is the company that that certificate appears to
 24 relate to?
 25 A MNT Master Fund, Limited.

1 Q Were you able to find out anything about how this PDF
 2 document got onto the tablet?
 3 A This PDF document was downloaded from the internet.
 4 Q And how do you know that?
 5 A In the metadata for the document, it shows -- whenever a
 6 document comes from outside the tablet, it puts it in the
 7 download folder once it comes from the internet.
 8 Q And is that the folder on the tablet computer that this
 9 was found in?
 10 A Correct.
 11 Q What about the other documents we have been looking at?
 12 Where did those -- were you able to determine the source or how
 13 those got onto the tablet computer?
 14 A Yes. The documents -- all the documents that we
 15 identified were downloaded to the tablet.
 16 Q And would that require internet access to do that?
 17 A Correct.
 18 Q I'd ask you to look at what's been marked as Exhibit 347?
 19 (Brief pause.)
 20 Q Not in front you? We'll get that in just a minute and
 21 talk about that in a minute.
 22 How about 348?
 23 (Witness complied.)
 24 Q Is Exhibit 348 a document that you found on the tablet
 25 computer?

1 A Yes, it was.
 2 Q And was it a PDF document?
 3 A Yes, it was.
 4 Q And did your analysis confirm that this file was on that
 5 computer?
 6 A Yes, it was on the tablet.
 7 MR. FARNHAM: I would offer Exhibit 348.
 8 MR. DRESSLER: No objection.
 9 THE COURT: Admitted.
 10 (Trial Exhibit 348 received in evidence.)
 11 MR. FARNHAM: If I could publish that exhibit, your
 12 Honor?
 13 THE COURT: Okay.
 14 MR. FARNHAM: Let's start with Page 1.
 15 (Document displayed)
 16 BY MR. FARNHAM
 17 Q What does Exhibit 348 Page 1 appear to be?
 18 A It appears to be Page 1 of a U.S. -- United States
 19 passport.
 20 Q And what about on the second page?
 21 A On the second page it shows a passport for the United
 22 States belonging to James Michael Murray.
 23 Q And was this -- I'm sorry. You said this was a PDF
 24 document?
 25 A A PDF.

1 Q And how did this document -- based on your analysis, how
2 did it get on the tablet?
3 A Based on my analysis, this document was downloaded to the
4 tablet from the internet.
5 MR. FARNHAM: If I could have just one moment, your
6 Honor?
7 THE COURT: All right.
8 (Discussion held off the record between Government
9 counsel.)
10 MR. FARNHAM: Your Honor, I --
11 BY MR. FARNHAM
12 Q Do we have the tablet computer?
13 A Yes.
14 Q I forgot something critical and important. I would like
15 to talk about the tablet computer itself.
16 Agent Sims, did the tablet computer that was recovered in
17 the ceiling that day, did you bring it to court with you today?
18 A Yes, I did.
19 MR. FARNHAM: Your Honor, may he retrieve that tablet
20 computer? I'd like to discuss it.
21 THE COURT: All right.
22 MR. FARNHAM: Can't forget about the evidence.
23 (Brief pause.)
24 MR. FARNHAM: Your Honor, this has been marked. So I
25 just want to, for the record, make sure we have the right

1 exhibit number.
2 (Brief pause.)
3 MR. FARNHAM: We had marked this as Exhibit 331 for
4 identification.
5 BY MR. FARNHAM
6 Q Agent Sims, can you identify what is Exhibit 331?
7 A Exhibit 331 is an Asus Nexus tablet.
8 Q And do you recognize that device?
9 A Yes, I do.
10 Q How do you recognize it?
11 A This device was found in the ceiling at the Pillsbury law
12 firm during the search warrant we executed.
13 Q And what's happened to it generally between the time that
14 you recovered it, put it in a Faraday bag and that it arrived
15 here today? Where was it been?
16 A It's been under the custody of the Secret Service. Three
17 agents have handled this device: Myself, another forensic
18 agent, and another case agent that was assigned to this case.
19 Q And has it been stored in evidence vaults at the Secret
20 Service offices?
21 A Correct.
22 Q And under what circumstances can it be taken out of those
23 vaults?
24 A So typically whenever we recover evidence, we create
25 what's called a working copy. And then the original evidence

1 itself is put back into the vault preserve it.
2 Q And maybe you could just show us, how was that -- how much
3 of that device was visible when you saw it in the ceiling at
4 the Pillsbury law firm?
5 A So if this -- the end of the table was the ledge or the
6 lip, about -- about an inch of the device was hanging out over
7 the lip on the ceiling.
8 Q So when you looked up, you saw just the outer edge of the
9 device?
10 A Correct.
11 Q And the rest of it was -- the rest of the device that you
12 didn't see was where?
13 A Tucked into the ceiling.
14 MR. FARNHAM: Your Honor, I would move to -- I would
15 move to admit Exhibit 331 into evidence.
16 MR. DRESSLER: No objection.
17 THE COURT: All right. Admitted.
18 (Trial Exhibit 331 received in evidence.)
19 MR. FARNHAM: May I approach with another exhibit?
20 THE COURT: Yes.
21 (Whereupon document was tendered to the witness.)
22 BY MR. FARNHAM
23 Q I've handed you what's been marked as Exhibit 347. Is
24 this a document that was found on the tablet computer?
25 A Yes, it is.

1 Q Was it a PDF format file?
2 A Yes, in a PDF format file.
3 Q And through your forensic analysis, were you able to
4 confirm that this was a file that was found on that tablet?
5 A Yes.
6 MR. FARNHAM: Your Honor, I would offer Exhibit 347
7 into evidence.
8 THE COURT: Any objection?
9 MR. DRESSLER: I don't have a copy -- oh, I do.
10 (Brief pause.)
11 MR. DRESSLER: No objection.
12 THE COURT: Admitted.
13 (Trial Exhibit 347 received in evidence.)
14 MR. FARNHAM: If we could publish that, your Honor?
15 THE COURT: All right.
16 (Document displayed)
17 BY MR. FARNHAM
18 Q What format was this file stored on that laptop -- tablet
19 computer?
20 A Was stored as a PDF.
21 Q What does it appear to be a PDF of?
22 A A California driver's license belonging to James Michael
23 Murray.
24 Q If we could -- if I could ask you to look at Exhibit 349?
25 (Witness complied.)

1 Q Is this a document that was found on the tablet computer?
 2 A Yes, it was.
 3 Q And what file format was this?
 4 A This was a PDF document as well.
 5 Q Were you able to determine through your analysis how it
 6 got onto the tablet computer?
 7 A This document was also downloaded to the computer.
 8 Q And through that analysis you were able to confirm that
 9 this document appears as a PDF stored on that tablet computer?
 10 A Correct.
 11 MR. FARNHAM: Your Honor, I would offer Exhibit 349.
 12 MR. DRESSLER: No objection.
 13 THE COURT: Okay. Admitted.
 14 (Trial Exhibit 349 received in evidence.)
 15 MR. FARNHAM: If we may publish that, your Honor?
 16 THE COURT: Yes.
 17 MR. FARNHAM: If we could zoom in on the top portion
 18 of this document.
 19 (Document displayed)
 20 BY MR. FARNHAM
 21 Q What does this document appear to be?
 22 A This document appears to be an Extradition Treaty with the
 23 country of Germany and the United States.
 24 Q How many pages is this document?
 25 A About 21 pages in this document.

1 Q And all 21 of those pages were found in a PDF file on that
 2 tablet?
 3 A Correct.
 4 Q If I could ask you to look at Exhibit 350? Three five
 5 zero.
 6 (Witness complied.)
 7 Q Is this a document that was found on the tablet computer?
 8 A Yes. This is a document that was found in a PDF format on
 9 the tablet.
 10 Q And through your forensic analysis, were you able to
 11 determine that this was also stored on that tablet computer?
 12 A Correct.
 13 MR. FARNHAM: I would offer Exhibit 350 into
 14 evidence.
 15 THE COURT: Any objection?
 16 MR. DRESSLER: No objection.
 17 THE COURT: All right. Admitted.
 18 (Trial Exhibit 350 received in evidence.)
 19 MR. FARNHAM: If I may publish that, your Honor?
 20 THE COURT: Yes.
 21 MR. FARNHAM: If we could start with Page 1?
 22 (Document displayed)
 23 BY MR. FARNHAM
 24 Q If you could tell me, based on the heading there, what
 25 does this document appear to be?

1 A This document is Criminal Code, Title 18, Part II of
 2 Criminal Procedure, Chapter 209, For Extradition.
 3 Q Is this part of the United States Code?
 4 A Yes, it is.
 5 Q How many pages is this document?
 6 A There are 10 pages in this document.
 7 Q If we could look at Page 5 of this document?
 8 MR. FARNHAM: Zooming in on the bottom there.
 9 (Document displayed)
 10 BY MR. FARNHAM
 11 Q Does this document appear to list -- what does that say
 12 there, that bottom sentence?
 13 A The heading is Treaties of Extradition. And it says:
 14 "The United States currently has bilateral
 15 extradition treaties with the following countries."
 16 Q And if we could look at Page 6?
 17 (Document displayed.)
 18 Q And is that the beginning of the list of countries?
 19 A Yes, it is.
 20 Q And these pages were all in the document that was found on
 21 the tablet?
 22 A Correct.
 23 Q If I could ask you to look at Exhibit 351?
 24 (Witness complied.)
 25 Q Is this a document that was found on the tablet computer?

1 A Yes, it was.
 2 Q Was this a PDF format document?
 3 A Yes, it was.
 4 Q And were you able to determine through your analysis that
 5 this file was stored on that tablet computer?
 6 A Yes, I was.
 7 MR. FARNHAM: I would offer Exhibit 351.
 8 THE COURT: Any objection?
 9 MR. DRESSLER: No objection.
 10 THE COURT: Admitted.
 11 (Trial Exhibit 351 received in evidence.)
 12 MR. FARNHAM: If I may publish it, your Honor?
 13 THE COURT: Yes.
 14 (Document displayed.)
 15 BY MR. FARNHAM
 16 Q Is this a one-page PDF document?
 17 A Yes, it is one page.
 18 Q I want to draw your attention to the middle of the
 19 paragraph. What language does this appear to be in?
 20 A It appears to be in French.
 21 Q First let me ask you: Does it appear to be a document
 22 that relates to a bank or bank institution?
 23 A Yes.
 24 Q What's the name of that bank institution?
 25 A Excuse me, I don't speak French, but Marseillais de

1 Cr dit.
 2 Q And in the very middle of that paragraph, do you see
 3 Mr. Murray's name?
 4 A Correct. It states Monsieur James Michael Murray.
 5 Q If we could look at Page 352 -- I'm sorry, Government
 6 Exhibit 352? If I could ask you to look at that?
 7 (Witness complied.)
 8 Q Is this a PDF document that was found on the tablet
 9 computer?
 10 A Correct.
 11 Q And through your analysis, were you able to confirm that
 12 this file was stored on that tablet?
 13 A I was.
 14 MR. FARNHAM: I would offer Exhibit 352.
 15 THE COURT: Any objection?
 16 MR. DRESSLER: No objection.
 17 THE COURT: Admitted.
 18 (Trial Exhibit 352 received in evidence.)
 19 MR. FARNHAM: If I may publish that, your Honor?
 20 THE COURT: Yes.
 21 (Document displayed)
 22 BY MR. FARNHAM
 23 Q What does Exhibit 352 appear to be?
 24 A This appears to be a check for the same bank, Marseillais
 25 de Cr dit.

1 Q And who is the account holder that's listed on this check?
 2 A The account holder as listed is James Murray.
 3 Q Agent Sims, we've gone through a handful of documents that
 4 were found on the tablet.
 5 I want to ask you about other information and material
 6 that you reviewed and saw on that tablet. Were there other
 7 files stored on that tablet?
 8 A Yes.
 9 Q And were there other files that were tied to James Murray?
 10 A Yes.
 11 MR. FARNHAM: No further questions.
 12 THE COURT: All right. Cross?
 13 MR. DRESSLER: Yes, your Honor. Thank you.
 14 CROSS EXAMINATION
 15 BY MR. DRESSLER
 16 Q Good afternoon?
 17 A Good afternoon.
 18 MR. DRESSLER: If we could go to the first exhibit
 19 that he was shown?
 20 MR. FARNHAM: Exhibit 67.
 21 MR. DRESSLER: Exhibit 67.
 22 (Document displayed)
 23 MR. DRESSLER: I think what I'm looking for is 56.
 24 (Document displayed)
 25 MR. DRESSLER: All right. Let me try it this way.

1 BY MR. DRESSLER:
 2 Q You were shown a number of exhibits that had -- GoDaddy
 3 exhibits that contained a number of pages that showed various
 4 IP addresses that had accessed the emails of -- various emails
 5 associated with that -- with the GoDaddy account. Various -- a
 6 couple of GoDaddy accounts. Correct?
 7 A Correct.
 8 Q And on those pages, there were numerous IP addresses that
 9 accessed the various accounts that you testified to. And you
 10 pointed out a couple that related to an IP address that you
 11 identified as coming from the Comcast account of Mr. Murray and
 12 his wife. Correct?
 13 A Correct.
 14 Q All right. And those were -- would it be fair to say,
 15 that there were many, many other IP addresses that contacted
 16 the emails in the various exhibits you saw that you did not
 17 identify as to where -- where they came from or who they came
 18 from. Correct?
 19 A There were other -- other IP addresses listed on the
 20 discovery, on the subpoenas, that GoDaddy gave us, yes.
 21 Q And did you make any attempt to identify who -- the
 22 location of those IP addresses? I mean -- what I mean by that
 23 is all the other IP addresses that did not come back to the
 24 Comcast account in Larkspur.
 25 A I can't testify to -- to those other IP addresses, without

1 the data in front of me, on my case notes.
 2 Q What I'm asking you is: Did you do an analysis to
 3 determine --
 4 A Typically, as a part of our investigation, we run out all
 5 the available leads. So we would have checked those IP
 6 addresses.
 7 Q And did you create a report of that?
 8 A A report should have been created.
 9 Q Okay.
 10 A For that, for that check.
 11 MR. DRESSLER: Can we approach the bench, briefly,
 12 Your Honor?
 13 THE COURT: All right.
 14 (Whereupon, the following proceedings were held at
 15 sidebar.)
 16 MR. DRESSLER: Apparently there was a report. I
 17 don't think I -- I just asked the U.S. Attorneys whether they
 18 saw that report. And apparently they didn't.
 19 MR. FARNHAM: He said -- he said one should have been
 20 created, to run down all those leads. But he didn't say that
 21 one existed. He didn't say that he's seen one, and I'm not
 22 aware of one.
 23 MR. DRESSLER: Okay, well --
 24 THE COURT: You can ask him that.
 25 MR. DRESSLER: I will, I will.

1 THE COURT: Okay.
 2 (Conclusion of sidebar discussion; the following
 3 proceedings were held in the presence and hearing of
 4 the Jury:)
 5 THE COURT: All right, go ahead.
 6 BY MR. DRESSLER:
 7 Q My question was -- remember my last question? Whether --
 8 what -- my question, I guess, is: Did you in this case prepare
 9 a report which would indicate the location information for
 10 other IP addresses on the GoDaddy records that you reviewed on
 11 this case?
 12 A A report -- It may not be an official Secret Service
 13 report, but typically a search is conducted for any IP
 14 addresses that we receive on documents as investigative leads.
 15 Q So, I guess what I'm asking is: Do you have a
 16 recollection of doing such a search in this case?
 17 A I did not do that search, myself. The previous agent
 18 assigned to this case would have conducted that search.
 19 Q Okay. So, in other words, in this case you don't know
 20 whether it was done or not.
 21 A I do know as a part of our protocol, our investigative
 22 protocol, that we research all leads.
 23 Q Uh-huh.
 24 A And in this case there was IP addresses listed, so the
 25 agent would have been instructed by our supervisors, as per

1 protocol, to conduct any leads associated with -- that are
 2 present on that subpoena.
 3 Q Thank you.
 4 MR. DRESSLER: And can we go to Exhibit 340, Page 1?
 5 340, Page 1.
 6 (Document displayed)
 7 BY MR. DRESSLER:
 8 Q Were you able to determine the date this particular
 9 document was created?
 10 A There is metadata associated with this document. But I
 11 don't have that information in front of me. I can't recollect
 12 at this time.
 13 Q Okay. So, as you sit here now, you don't know when it was
 14 actually created.
 15 A Not as is -- as is visible on this document.
 16 (Reporter interruption)
 17 THE WITNESS: Not as is visible on this exhibit
 18 number.
 19 MR. DRESSLER: Let me ask Mr. Murray one question.
 20 THE COURT: Okay.
 21 (Off-the-Record discussion between Defendant and
 22 Counsel)
 23 MR. DRESSLER: I have no further questions. Thank
 24 you, sir.
 25 THE COURT: All right. Thank you.

1 Any redirect?
 2 MR. FARNHAM: I have nothing further, Your Honor.
 3 THE COURT: All right. Then, Agent Sims, you may
 4 step down. You are excused as a witness in this case.
 5 (Witness excused)
 6 THE COURT: Further witnesses from the Government?
 7 MS. HARRIS: Your Honor, is the Court going to have a
 8 break? We wanted to just make sure our exhibits are all in
 9 order, and then I think -- we can even take a short break.
 10 THE COURT: All right. Let's take a very short break
 11 at this point, and then have the jury come back, and we'll
 12 announce how we proceed from here.
 13 So, I know this is normally the lunch break. Why don't we
 14 go ahead and take a 15-minute break right now, and then we'll
 15 get back to you.
 16 (Jury excused)
 17 (The following proceedings were held outside of the
 18 presence of the Jury)
 19 MR. DRESSLER: Your Honor --
 20 MS. HARRIS: Your Honor, the Government -- oh, do you
 21 want --
 22 THE COURT: All right.
 23 MR. DRESSLER: When you're done, when you're done.
 24 MS. HARRIS: Your Honor, the Government is prepared
 25 to rest. We just want to confirm with the courtroom deputy

1 that all of the items we believe are in evidence are actually
 2 entered into evidence on the Court's logs.
 3 THE COURT: Well, haven't you been doing that as we
 4 go along?
 5 MS. HARRIS: We've kept a running record, but we have
 6 not compared it with what the Court has done.
 7 THE COURT: All right. So what do you propose to do?
 8 MS. HARRIS: We're going to do that right now on the
 9 break. And then we can rest. We just want to make sure that
 10 everything we've moved into evidence, the Court --
 11 THE COURT: Oh, no further witnesses.
 12 MS. HARRIS: No further witnesses.
 13 THE COURT: How long do you need to do this
 14 comparison?
 15 MS. HARRIS: I think we can probably do it in the
 16 time that the Court allocated.
 17 THE COURT: All right.
 18 MS. HARRIS: And then we'll be prepared to rest.
 19 THE COURT: I do have to rule on Exhibit 392 still.
 20 MR. DRESSLER: Oh. I'm not going to object to that.
 21 THE COURT: All right, then 392 is admitted. So
 22 let's make a note for that.
 23 (Trial Exhibit 392 received in evidence)
 24 MR. DRESSLER: And I just want to advise the Court --
 25 THE COURT: Yeah.

1 MR. DRESSLER: -- that when they rest, I'm going to
 2 make an oral motion under Rule 29(a) with regard to one count,
 3 and I will file -- I'm going to ask the Court to reserve it.
 4 I'm going to file a written motion. It's 80 percent prepared.
 5 And I just want to let the Court know.
 6 THE COURT: Okay. We'll obviously do that outside
 7 the presence of the jury.
 8 MR. DRESSLER: Yes.
 9 THE COURT: But when they come back in, once you've
 10 straightened out the exhibits, I will announce -- or you will
 11 announce that the Government rests.
 12 MS. HARRIS: Correct.
 13 THE COURT: I'll excuse the jury for the day. And
 14 indicate to them that we're going to start at 10:30 tomorrow,
 15 instead of 8:30 tomorrow.
 16 MS. HARRIS: Okay.
 17 THE COURT: All right? Thank you.
 18 MS. HARRIS: Okay, Your Honor.
 19 (Recess taken from 12:09 p.m. to 12:20 p.m.)
 20 (The following proceedings were held outside of the
 21 presence of the Jury)
 22 THE COURT: Okay. Back on the record.
 23 You have clarified that all the exhibits you want are in?
 24 MS. HARRIS: Yes, except for two, Your Honor.
 25 We would move Exhibit 266 and 263 into evidence. They're

1 both referred to on the parties' stipulation as to judicial
 2 events.
 3 THE COURT: What are they?
 4 MS. HARRIS: They are the original bond by Magistrate
 5 Cousins in the case, the one the parents were referring to.
 6 And then, the stipulation of the parties that was
 7 incorporated into that bond concerning Mr. Murray's agreement
 8 to waive extradition from any country that has an extradition
 9 treaty with the United States.
 10 (Defendant present)
 11 MR. DRESSLER: No objection to either.
 12 THE COURT: All right. Then 266 and 263 are
 13 admitted.
 14 (Trial Exhibits 266 and 263 received in evidence)
 15 THE COURT: And the Government has double-checked
 16 with our courtroom deputy. And all the exhibits it seeks to
 17 admit at this point are in, right?
 18 MR. FARNHAM: Yes. Yes, Your Honor. Thank you.
 19 MS. HARRIS: We are ready to rest, Your Honor.
 20 THE COURT: All right. Then what I'm going to do is
 21 call the jury in, allow you to officially rest your case, and
 22 then I'm going to dismiss the jury until 10:30 tomorrow.
 23 And then you can go ahead and make your Rule 29 motion.
 24 All right?
 25 MS. HARRIS: Okay.

1 MR. DRESSLER: Okay.
 2 THE COURT: Thank you.
 3 (Jury enters the courtroom at 12:23 p.m.)
 4 THE COURT: Okay. Welcome back, ladies and
 5 gentlemen. Thank you for your patience.
 6 Anything further for from the Government at this point?
 7 MS. HARRIS: Thank you, Your Honor.
 8 Ladies and gentlemen, the United States rests.
 9 THE COURT: All right, ladies and gentlemen, that
 10 concludes the Government's case-in-chief, presentation of its
 11 evidence.
 12 What we are going do now is to adjourn early for the day.
 13 So I'm going to excuse you in about 30 seconds. We are going
 14 to reconvene tomorrow but we're going to start a little, later
 15 tomorrow, at 10:30. But you will be out at the same time, at
 16 2:00 tomorrow.
 17 So, I will excuse you now at this point. Again, with the
 18 reminder that you are not to discuss this case with anyone, do
 19 not do any research on your own, and do not form any opinions
 20 until the entire case is submitted to you for deliberation.
 21 So we will see you tomorrow at 10:30 for our -- and we
 22 will go until about 2:00 tomorrow. Great. Thank you.
 23 (Jury excused)
 24 (The following proceedings were held outside of the
 25 presence of the Jury)

1 THE COURT: All right. Mr. Dressler, do you have a
 2 Rule 29 motion?
 3 MR. DRESSLER: Yes, Your Honor. I'm going to move
 4 orally at the moment for a judgment of acquittal under Rule --
 5 Federal Rule of Criminal Procedure 29(a). One, with regard to
 6 Count 21 of the indictment, which is an aggravated identity
 7 theft, based on the use of Lisa Brigulio's California driver's
 8 license to open the virtual offices for Jones Moore &
 9 Associates.
 10 THE COURT: Okay.
 11 MR. DRESSLER: And if you want, I can briefly state
 12 what --
 13 THE COURT: Sure.
 14 MR. DRESSLER: The basis of the motion is that 1028A
 15 requires that the identification of another person be used for
 16 a non-lawful purpose during and in relationship to the
 17 commission of an underlying felony. And Count 21, the
 18 underlying felony, are wire frauds committed against Paymentech
 19 in 2011. The use of the license was in 2008.
 20 So I will be citing a Supreme Court case that relates to a
 21 different statute that uses the same language, basically, or
 22 uses "during." And it's a temporal -- "during and in
 23 relationship to" is in the conjunctive. So the Government has
 24 to prove both that the driver's license was used during the
 25 commission of the underlying felony, and in relation to the

1 underlying felony.
 2 THE COURT: Okay.
 3 MR. DRESSLER: And "during" means "at the same time."
 4 And that is not the case here. So I don't think any reasonable
 5 trier of fact could find that the driver's license was used
 6 during the commission of -- of an alleged wire fraud that took
 7 place a year and a half after the use of the license.
 8 That's generally the basis of the motion.
 9 THE COURT: All right. If the Government wants, it
 10 can say something in response. Otherwise, I'll take that under
 11 submission.
 12 MS. HARRIS: We -- we would submit it, Your Honor,
 13 and wait to see what authorities Mr. Dressler cites. And we
 14 would also request the opportunity there to address it in
 15 writing.
 16 THE COURT: Okay. And I didn't mean to say "take it
 17 under submission." I'm going to defer and allow the parties to
 18 fully air their views on this question. All right?
 19 MR. DRESSLER: Thank you.
 20 MS. HARRIS: Thank Your Honor.
 21 THE COURT: Thank you.
 22 So starting at 10:30 tomorrow, we will commence the
 23 defense case. And I'm hoping that we will be able to, if not
 24 conclude testimony, certainly conclude testimony by Wednesday
 25 in this matter.

1 And, I'm going to -- well, I'm going to have to get the
 2 final jury instructions ready to go, too. And I'm going to
 3 assume that come Friday, we will give final instructions and
 4 hear closing arguments.
 5 (Off-the-Record discussion between counsel)
 6 MR. FARNHAM: Depending on rebuttal witnesses,
 7 Your Honor. We will have to see about that.
 8 THE COURT: Okay. So, it sounds like the Government
 9 may be -- well, depending on what happens, you may have a list
 10 of rebuttal witnesses?
 11 MR. FARNHAM: That's correct, Your Honor. It's
 12 possible.
 13 MR. DRESSLER: I would just go back to one of our
 14 many wonderful pretrial conferences that have occurred over the
 15 last year. And I think one of the things we discussed at the
 16 beginning of the trial was that we would try and do all the
 17 arguments in one day.
 18 So I would just remind everybody, I think it would be --
 19 that's more likely Friday than Thursday, I think, given --
 20 THE COURT: Oh, we're not going to have court on
 21 Thursday.
 22 MR. DRESSLER: I mean, that's Friday rather than
 23 Wednesday, is what I'm -- what I meant. So I think we should
 24 be able to argue on Friday.
 25 MS. HARRIS: Your Honor, I would agree with that,

1 because we did agree that -- and if -- that all of the closings
 2 would take place in one day.
 3 So, I do agree with Mr. Dressler --
 4 THE COURT: And I agree with that. See how quickly
 5 things go. If the testimony -- if the defense case goes
 6 quickly and there are no rebuttal witnesses, we may get there
 7 sooner.
 8 But, I agree. I don't want to start without knowing we
 9 are going to finish on the same day.
 10 MS. HARRIS: And then, one other thing. If there's
 11 any change of events with Mr. Dressler meeting with his client
 12 where his client will not be testifying, we would greatly
 13 appreciate the heads-up on that.
 14 THE COURT: All right. Fair request. Should there
 15 be such a decision. Otherwise, I'm anticipating being able to
 16 submit this case to the jury some time Friday.
 17 And I did warn them last week that they should reserve the
 18 full day on Friday.
 19 MS. HARRIS: Okay.
 20 THE COURT: Just in case.
 21 MR. DRESSLER: Thank you.
 22 MR. FARNHAM: One minor logistical question. The
 23 photos that have been taken during trial.
 24 THE COURT: Yes.
 25 MR. FARNHAM: Is there anything that we should do

1 with them? Can we get copies of them? I don't know what the
 2 Court's expectation was.
 3 THE COURT: What I was hoping, Tracy, is that we
 4 would be able to put them all in, like, a binder or something.
 5 THE CLERK: They are (Indicating).
 6 THE COURT: Okay.
 7 THE CLERK: Uh-huh.
 8 THE COURT: With their names on it?
 9 THE CLERK: Uh-huh.
 10 THE COURT: I don't know if we need a little title
 11 under their names, so people remember who they are.
 12 THE CLERK: I wrote their names and the date that
 13 they testified on the photos.
 14 THE COURT: All right. I mean, that may be enough,
 15 without any further description.
 16 MR. DRESSLER: I think that's fine.
 17 MR. FARNHAM: (Nods head)
 18 MR. DRESSLER: I object, I object to it unless
 19 Counsel are included in the book, but --
 20 THE COURT: We could do that too, in case they forgot
 21 who you are.
 22 MS. HARRIS: I don't want --
 23 THE COURT: If you all decide to stipulate to, you
 24 know, at least a title so people remember they're with this
 25 bank or this brokerage or this agency or something. Otherwise,

1 I assume people had notes, so they'll be able to kind of
 2 correlate that.
 3 MR. DRESSLER: I don't think it's going to be a
 4 problem.
 5 THE COURT: All right.
 6 MR. DRESSLER: Thank Your Honor.
 7 MR. FARNHAM: Thank you.
 8 THE COURT: And then, we have all the exhibits that
 9 are ready to go. They'll be all ready to go in a binder.
 10 THE CLERK: Yes, Your Honor.
 11 THE COURT: All right. So I'm going to work on final
 12 instructions, get that close to ready.
 13 All right? So we'll see you 10:30 tomorrow morning.
 14 MR. FARNHAM: Thank you, Your Honor.
 15 THE COURT: Thank you.
 16 (Whereupon at 12:32 p.m. further proceedings were
 17 adjourned until Tuesday, October 6, 2015 at
 18 10:30 a.m.)
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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

_____/s/ Debra Pas_____

Debra L. Pas, CSR 11916, CRR, RMR, RPR

_____/s/ Belle Ball_____

Belle Ball, CSR 8785, CRR, RMR, RPR

Monday, October 5, 2015

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDWARD M. CHEN

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) NO. CR 12-0278 EMC
JAMES MURRAY,)
Defendant.) San Francisco, California
) Tuesday
) October 6, 2015 10:15 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:
For Plaintiff: MELINDA HAAG
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: ROBIN HARRIS, AUSA
LLOYD FARNHAM, AUSA

For Defendant: ALAN A. DRESSLER, ESQ.
400 Montgomery Street
Suite 200
San Francisco, California 94104

Also Present: USSS AGENT ANTHONY SIMS, JR.
FBI AGENT BRIAN C. WEBER

Reported By: Debra L. Pas, CSR 11916, CRR, RMR
Belle Ball, CSR 8785, CRR, RMR
Official Reporters - US District Court

PROCEEDINGS

1 OCTOBER 6, 2015 10:26 A.M.
2 (Defendant present, in custody.)
3 (Proceedings held in open court, outside the presence
4 and hearing of the jury.)
5 THE COURT: All right. Good morning, everyone.
6 We're on the record.
7 So ready to proceed shortly?
8 MS. HARRIS: We are, your Honor.
9 MR. DRESSLER: Yes, your Honor.
10 THE COURT: All right. Any better time estimate at
11 this point, Mr. Dressler, in terms of the time for direct
12 examination of Mr. Murray?
13 MR. DRESSLER: To be honest with you, your Honor, I
14 don't. I just...
15 THE COURT: Okay.
16 MR. DRESSLER: Every direct examination has its own
17 gestalt and it's going to be -- I have a lot of questions to
18 ask, so...
19 THE COURT: I didn't get any further briefing on the
20 question about whether during breaks counsel can speak with his
21 client, even though his client is going to testify as a
22 witness, so...
23 MS. HARRIS: Your Honor, I completely forgot about
24 that issue. I would maintain -- the Government did not do that
25

1 and it doesn't seem proper to be able to coach your own witness
2 and it -- I didn't think about that. We've never done that.
3 THE COURT: Well, it may be -- and I don't know the
4 answer to that. It may be complicated because there is a Sixth
5 Amendment issue interposed now. It's not your typical rule.
6 So absent some authority to the contrary, I'm going to
7 excise caution and not put a bar.
8 However, of course, on cross you certainly can ask -- even
9 if you don't get in the content, the witness/defendant can be
10 asked whether there were conversations between counsel and the
11 witness during breaks and things.
12 MR. DRESSLER: Your Honor, I think it would be
13 appropriate during cross-examination, but not during direct
14 examination.
15 I mean, what's the difference between me consulting with
16 him last night in the jail about his direct examination and
17 consulting with him before --
18 THE COURT: Where it's going to come up is in cross,
19 if, for instance, he revises his testimony or something after
20 break. I think it's a fair inference that they can make is,
21 you know -- that's all I'm saying; that there is a risk that --
22 when there is consultation. You know, if it's linear and there
23 is no revision or something, that's different. I mean, there
24 is nothing to cross about.
25 MR. DRESSLER: Then the only way to respond to it --

1 I mean, let's say he does change, all right? And let's say it
2 was not subject of an attorney-client conversation. What do I
3 do then? Breach the privilege?
4 I mean, that's the -- it creates real --
5 THE COURT: But it is fair game for any witness to
6 say: Did you talk to anybody during a break? It could have
7 been with a police officer. It could have been with another,
8 you know...
9 I mean, that's -- as long as it doesn't breach privilege,
10 then it's up to you how you -- you know, this may be moot. I
11 mean, if there is no basis for cross-examination on that
12 question. If, like I said, this is a linear path and there is
13 no revision, then I don't see the point.
14 MS. HARRIS: Right, but -- right. All we want to
15 just say is that it doesn't seem fair to allow Mr. Dressler and
16 Mr. Murray to hide behind the Sixth Amendment and have
17 Mr. Dressler coaching Mr. Murray at breaks without the
18 Government having an opportunity to at least explore that
19 potential avenue for impeachment and, certainly, it would apply
20 even with greater force if we don't finish cross examination
21 today and there is a break.
22 MR. DRESSLER: All right. Well --
23 THE COURT: Well --
24 MR. DRESSLER: I --
25 THE COURT: I --

1 MR. DRESSLER: I just want to say that I have very
 2 thick skin, but I've never been accused of hiding behind the
 3 Sixth Amendment.
 4 MS. HARRIS: I'm not accusing him --
 5 THE COURT: That hasn't happened yet.
 6 MS. HARRIS: And I'm not accusing --
 7 THE COURT: Okay. Okay. My ruling stands. Absent
 8 some authority, I'm not going to just allow -- I'm not going to
 9 put a bar on it, and the scope of cross will be -- if there is
 10 any, will be subject to the attorney-client privilege unless,
 11 again, I'm given some authority that that is somehow implicitly
 12 waived or it is some kind of... So, anyway, that's where we'll
 13 leave it.
 14 So is the jury here?
 15 (Discussion held off the record between the Court and
 16 the clerk.)
 17 (Jury enters courtroom at 10:32 a.m.)
 18 THE COURT: All right. You all may be seated. Good
 19 morning, ladies and gentlemen. Thank you for adjusting your
 20 schedule this morning.
 21 As you recall, the Government had completed its
 22 presentation of its case-in-chief yesterday. And now it is the
 23 opportunity for the defendant, if it wishes, to present its
 24 case.
 25 And so, Mr. Dressler, you may call your first witness.

1 MR. DRESSLER: I call James Murray.
 2 THE COURT: All right.
 3 JAMES MICHAEL MURRAY,
 4 called as a witness for the Defendant herein, having been first
 5 duly sworn, was examined and testified as follows:
 6 THE WITNESS: Yes.
 7 THE CLERK: Please state your full name for the
 8 record and spell your last name, please.
 9 THE WITNESS: James Michael Murray. M-U-R-R-A-Y.
 10 THE COURT: Thank you, Mr. Murray.
 11 You may proceed, Mr. Dressler.
 12 DIRECT EXAMINATION
 13 BY MR. DRESSLER
 14 Q Mr. Murray, you are charged in this case with a number of
 15 counts alleging fraud. With regard to any of the fraud counts
 16 in this case, did you intend to defraud anyone?
 17 A No, I did not.
 18 Q You're aware that -- and I keep forgetting the date, but
 19 the jury has heard that at one point, approximately,
 20 \$1.8 million was seized by the Government from various MNT
 21 accounts.
 22 You're aware of that seizure, are you not?
 23 A I am.
 24 Q And, to your knowledge, is that money still frozen by the
 25 Government?

1 A Yes.
 2 Q With regard to the SEC lawsuit that's been mentioned in
 3 this case, has that case been resolved or is it still pending?
 4 A It's still pending.
 5 Q Okay. So how old are you?
 6 A Forty-six.
 7 Q And where were you born?
 8 A I was born on the Presidio Army base here in
 9 San Francisco.
 10 Q And were you raised in San Francisco or some other
 11 location?
 12 A Partly. My middle school and high school was in a suburb
 13 of Seattle Washington.
 14 Q And your marital status now is pending a divorce?
 15 A Correct.
 16 Q And how long were you married to Lisa Brigulio?
 17 A Over three years.
 18 Q And do you have any children from that marriage?
 19 A I do.
 20 Q And is it a boy or girl?
 21 A It's a [REDACTED], and he will be [REDACTED].
 22 Q And his name is?
 23 A [REDACTED].
 24 Q And were you previously married?
 25 A I was.

1 Q And do you have any children from that marriage?
 2 A Yes, I have two; a [REDACTED]
 3 [REDACTED]
 4 Q Could you tell the jury how you got -- how and when you
 5 became involved in the -- for lack of a better word, the
 6 brokerage industry?
 7 A Yes. In 1993 I started with Merrill Lynch. I later moved
 8 to Bear Stearns, where I had known Mark Moskowitz. And then
 9 also after that, I had moved to UBS.
 10 Q And at some point you started Market Neutral Trading?
 11 A Correct.
 12 Q I would like to ask you some questions about the New York
 13 Stock Exchange. To your knowledge and based on -- strike that.
 14 So how long, roughly, had you been involved in the
 15 brokerage industry? How many years?
 16 A Including this year?
 17 Q Well, let's say -- roughly, yeah, up til now.
 18 A Twenty-two years. Over 22 years.
 19 Q And were -- we've stipulated that in 2002 you were
 20 suspended by the New York Stock Exchange for six months, is
 21 that correct?
 22 A That's correct.
 23 Q And, to your knowledge, is the New York Stock Exchange a
 24 Government agency or is it a self-regulating agency?
 25 A No. It's a self-regulatory agency.

1 Q And if you can, briefly describe what a self-regulatory
2 agency is?

3 A That's where -- it's a group of member firms that are a
4 part of the New York Stock Exchange and they have their own
5 regulatory panel, if you will.

6 Q All right. And at the time that you were suspended
7 from -- for six months, did you have a Series 7 license?

8 A Yes.

9 Q Okay. Did you -- could you briefly tell the jury what a
10 Series 7 license is?

11 A It's a general securities license.

12 Q And what does it license you to do?

13 A It licenses you to trade and make recommendations
14 regarding specific securities or other investments.

15 Q As a result of your six-month suspension by the New York
16 Stock Exchange, was your Series 7 license suspended?

17 A Yes.

18 Q It was?

19 A Yes.

20 Q For how long?

21 A Six months.

22 Q Okay. Is that license issued by the New York Stock
23 Exchange?

24 A At the time it was. I believe FINRA is the governing
25 organization now, but at the time it was, yes.

1 Q Was your license revoked as a result of the suspension?

2 A No.

3 Q Were you sued by anyone with regard to the conduct which
4 gave rise to the suspension?

5 A No.

6 Q And that -- were you -- were you accused of
7 misappropriating anybody's funds in connection with that
8 suspension?

9 A No.

10 Q Were you charged with a crime based on the underlying
11 conduct that gave rise to that suspension?

12 A No, I was not.

13 Q Okay. In 2010 you did apply for a brokerage account with
14 Barclays Capital under the name MNT B?

15 A Yes.

16 MR. DRESSLER: Could we go to Government's
17 Exhibit 81?

18 I believe it was introduced. Is this exhibit in evidence?

19 MS. ARAUZHAASE: Yes.

20 MR. DRESSLER: All right. So could we go to
21 Page 146?

22 (Document displayed)

23 MR. DRESSLER: All right. And could we go to page
24 147 now?

25 (Document displayed)

1 BY MR. DRESSLER

2 Q All right. Mr. Murray, could you look at that document?

3 A It's not coming up on my screen.
4 (Brief pause.)

5 THE COURT: Is it up?

6 THE WITNESS: It says "Out of Range."
7 (Brief pause.)

8 THE COURT: How about now?

9 THE WITNESS: No.
10 (Brief pause.)

11 THE COURT: It's a longstanding technical problem
12 we've had only for about six years. They are going to fix it
13 some day.
14 (Brief pause.)

15 THE COURT: How about now?

16 THE WITNESS: There it is.

17 THE COURT: Okay.

18 BY MR. DRESSLER

19 Q All right. And on Exhibit 81, Page 147, does the document
20 indicate the name of the entity that the account would be
21 under?

22 A It does.

23 Q And what is that?

24 A Market Neutral Trading B, LLC.

25 Q And does it indicate the name of someone as the managing

1 member of Market Neutral Trading?

2 A Yes. It names me. Myself. Jim Murray.

3 Q And the address that's on that document, was that the
4 address of Market Neutral Trading at the time this account was
5 applied for?

6 A Yes.

7 MR. DRESSLER: If we could go to Page 148 --
8 actually, let's go to 149.

9 THE COURT: 139?

10 MR. DRESSLER: 149. Page 149.
11 (Document displayed)

12 BY MR. DRESSLER

13 Q Is that your signature on there?

14 A Yes, it is.

15 Q And that was -- if you look to the right of your
16 signature, it appears to say some date in 2010?

17 A Yes. I believe it's May 26.

18 Q And is that your signature?

19 A It is.

20 MR. DRESSLER: If we could you go to Page 150?
21 (Document displayed)

22 BY MR. DRESSLER

23 Q In the big -- in the large box, that also has a date and a
24 signature. It says: "Margin Account Agreement."
25 Do you see that?

1 A Yes.
 2 Q And you see a black dot next to it a "Yes" in the upper
 3 corner?
 4 A I do.
 5 Q And does that mean that this was a brokerage account?
 6 A Yes, a margin brokerage account.
 7 Q And just briefly, what does that mean -- what did this
 8 account allow you to do?
 9 A It allowed the purchase and sale of securities on margin.
 10 Q Okay. Do you know whether the pages I just showed you
 11 were the entire application or could it just be part of the
 12 application?
 13 A It could be just part.
 14 Q Okay. Do you remember whether or not the application for
 15 this account asked whether you had ever been suspended by the
 16 New York Stock Exchange?
 17 A It did not. And it's actually -- it's not typical, in my
 18 26 years in the business, for a brokerage firm to ask that
 19 because they conduct their own background checks.
 20 Q Okay. Did you volunteer to Barclays the fact that in 2002
 21 you had been suspended for six months by the New York Stock
 22 Exchange?
 23 A No.
 24 Q Was that account approved for trading?
 25 A It was.

1 Q And did you actually trade in that account?
 2 A Yes, I did.
 3 MR. DRESSLER: If we could go to Exhibit 140, please?
 4 I'm sorry. Exhibit 81, Page 140.
 5 (Document displayed)
 6 BY MR. DRESSLER
 7 Q And if you could look at the bottom third, there is an
 8 email. It says, "Tuesday, June 8th at 6:43."
 9 Do you see that?
 10 A I do.
 11 Q Do you know what an EAM request is?
 12 A No, I don't specifically know. It looks like some sort of
 13 a background check.
 14 Q And could you -- could you read for the jury what it says,
 15 what the body of that email says?
 16 A It says:
 17 "Hi. I'm working on the above EAM request and
 18 while performing due diligence on the necessary
 19 parties, I received a positive hit on the authorized
 20 signatory/owner James Michael Murray. He was
 21 censured and barred from the New York Stock Exchange
 22 for six months. Apparently, as a registered
 23 investment rep with a member firm, he performed
 24 questionable trades on customers' accounts."
 25 MR. DRESSLER: And if we could go to the top of

1 Page 141?
 2 (Document displayed)
 3 BY MR. DRESSLER
 4 Q It appears that is a continuation of the email we have
 5 just looked at. What does that say?
 6 A It says:
 7 "I have attached two PDFs below which chronicle
 8 the offenses against Mr. Murray. If you have any
 9 questions, please let me know."
 10 And below are two PDFs.
 11 Q All right.
 12 MR. DRESSLER: And if we could go back to 140,
 13 please?
 14 (Document displayed)
 15 BY MR. DRESSLER
 16 Q And in the middle there is another email. Could you just
 17 read the first paragraph of that?
 18 A (As read)
 19 "I just wanted to follow up to see if there is
 20 any update with the email I sent for the above
 21 entity. One of the principals, James Murray, was
 22 involved with an infraction with the SEC and paid a
 23 fine and was suspended for a few months."
 24 Q And this -- so this account was opened and you did trade
 25 in it, correct?

1 A Yes.
 2 Q Okay. Did -- do you have any recollection of Barclays --
 3 oh, I'm sorry.
 4 MR. DRESSLER: If we could go to Page 139 of
 5 Exhibit 81?
 6 (Document displayed)
 7 BY MR. DRESSLER
 8 Q And you see the top email there?
 9 A Yes.
 10 Q Could you just read the sentence there?
 11 A (As read)
 12 "Hi T'sah. Due diligence on the above noted
 13 client has been completed. Please approve in the EAM
 14 system."
 15 Q So do you have any recollection of anyone from Barclays
 16 contacting you, either electronically or by telephone, asking
 17 for any explanation of the New York Stock Exchange suspension
 18 that's referred to in the emails that we just looked at?
 19 A No.
 20 (Brief pause.)
 21 MR. DRESSLER: Can I just look at the -- I misplaced
 22 something, but I think I know which one it is.
 23 THE COURT: Okay.
 24 (Brief pause.)
 25

1 MR. DRESSLER: All right. I've removed Government's
2 Exhibit 159 from the desk.
3 And if could we go to Government's Exhibit 159, Page 1?
4 (Document displayed)
5 BY MR. DRESSLER
6 Q On Page 1, that is -- do you recognize that email?
7 A I do.
8 Q Okay. And that was an email from...
9 MR. DRESSLER: Okay. Could you drop down to the --
10 that's the...
11 BY MR. DRESSLER
12 Q Let me just ask you this: Do you recognize that email?
13 A I do.
14 Q And was that -- was -- okay.
15 MR. DRESSLER: Maybe we should go -- just go to
16 159-2, please. Make it simpler.
17 (Document displayed)
18 A You asked me if I recognized that email --
19 BY MR. DRESSLER
20 Q I know. Let me -- let me just go back.
21 All right. Look at the email on this page, all right? Is
22 that an email to you from someone called Fariba Ronnasi?
23 A It is.
24 Q Okay. And in that email is that person requesting your
25 Social Security number?

1 A Yes, for the background check.
2 MR. DRESSLER: Now if we go back to Page 1?
3 (Document displayed.)
4 BY MR. DRESSLER
5 Q It was your understanding that the -- your Social Security
6 number was requested so that person could do a background check
7 on you, correct?
8 A Correct.
9 Q And on Page 1 you provided that information, right?
10 A I did.
11 Q So you were not trying to avoid a background check at that
12 time?
13 A I was not.
14 MR. DRESSLER: Putting 159 back.
15 (Brief pause.)
16 BY MR. DRESSLER
17 Q Over the years, would it be fair to state that you've
18 applied for and received a number of -- you've applied for a
19 number -- to open a number of brokerage accounts?
20 A Yes.
21 Q And has -- have you ever been denied authorization for --
22 to open a brokerage account at any time since 2002 based on the
23 New York Stock Exchange suspension?
24 A No.
25 Q Have you ever been denied the right to open a brokerage

1 account based on -- have you ever been -- let me just ask you
2 this way: Prior to, let's say, 2012, all right, had you ever
3 been denied -- had an application to open a brokerage account
4 ever been denied, as far as you can recollect?
5 A No.
6 Q All right. I'm going to ask you now, you are the managing
7 member of an entity called Market Neutral Trading, LLC, is that
8 correct?
9 A Yes.
10 Q When was that entity established?
11 A 2006, I believe.
12 Q And I'll ask you the same question about an entity known
13 as Market Neutral Trading B. Are you the managing member of
14 that entity?
15 A Yes.
16 Q And do you remember, just roughly, when that was
17 established?
18 A Approximately, I don't remember exactly, 2009.
19 Q All right.
20 MR. DRESSLER: Could we have Government Exhibit 393-1
21 up on the screen?
22 (Document displayed)
23 BY MR. DRESSLER
24 Q You've seen this before?
25 A Yes, I have.

1 Q All right. And do you recognize the transactions that are
2 depicted on this exhibit?
3 A I do.
4 Q Okay. Are you the person that conducted those
5 transactions?
6 A I had a part in their ultimate transmission, if you will.
7 Q Okay. Bad question.
8 All right. In order for -- were you the person that
9 caused those transactions to take place?
10 A Yes, I was.
11 Q And they all took place in January of 2012, correct?
12 A Correct.
13 Q Okay. And if you can answer this question, what was the
14 end result of those transactions?
15 Does that question make any sense to you? You're -- you
16 look like you're having --
17 A Are you asking me what the purpose was?
18 Q Yeah. What was the purpose?
19 MS. HARRIS: Of which transactions?
20 THE COURT: Yeah, which --
21 MR. DRESSLER: Okay, okay.
22 THE COURT: Please rephrase.
23 MR. DRESSLER: I withdraw it. I will.
24 BY MR. DRESSLER
25 Q Did all of these transactions, were they for a -- one

1 specific purpose? If you can answer "yes" or "no."
 2 A All of them? No, not one specific purpose. The -- I
 3 think there are a number that are for a specific purpose, but
 4 not all.
 5 Q Okay. Well, would it be fair to state that these
 6 transactions involved funds that were in various accounts?
 7 A Yes.
 8 Q Okay. And when all the transfers were done, were -- the
 9 great majority of the funds, did they wind up in one brokerage
 10 account?
 11 A Yes.
 12 Q Okay. All right. And was that a brokerage account in the
 13 name of MNT Master Fund, Limited?
 14 A Yes, it was.
 15 Q So let me ask you about MNT Master Fund, Limited. Was
 16 that an offshore entity?
 17 A Yes. Registered in the Cayman Islands.
 18 Q And when did the process to establish that entity begin?
 19 A Approximately June of 2011.
 20 Q Okay. Did you retain a law firm to assist you in setting
 21 up that entity?
 22 A Yes. I retained Sadis and Goldberg to register the
 23 company, do the Private Placement Memorandums and the legal
 24 documents behind it and advise on how to structure the change
 25 from Market Neutral Trading to MNT Master Fund.

1 Q Okay. And they, in fact, assisted in the entire process?
 2 A They did.
 3 Q Did you have to negotiate a fee with them?
 4 A The final engagement letter, I believe there was some
 5 back-and-forth on the amount of fees that were going to be paid
 6 and what the exact terms of the contract were, but just
 7 typical...
 8 Q So did you reach an agreement for approximately \$19,000?
 9 A I did. Well, it was 38,000, but two payments of 19,000.
 10 Q Okay. After that agreement, did they ask you for
 11 additional funds for a background check?
 12 A They did.
 13 Q Did a dispute arise as to that issue?
 14 A It did. The original contract had nothing about a \$5,000
 15 fee for a background check.
 16 Q Were you able to resolve -- so there was a dispute about
 17 whether you should pay more money and how much you would pay?
 18 A Correct.
 19 Q Okay. And was that dispute resolved?
 20 A It was.
 21 Q All right.
 22 A And a background check was performed.
 23 Q Okay. And after the background check was performed, did
 24 they continue to work for the purpose that you hired them?
 25 A They did, yes.

1 Q Was MNT Master Fund, Limited set up for a specific
 2 purpose?
 3 A Yes.
 4 Q And what was that purpose?
 5 A To be more attractive to offshore investors. The offshore
 6 investors have certain requirements and I was advised that this
 7 structure would be a more likable, if you will, or a preferred
 8 structure for offshore investors to invest in.
 9 Q Okay. And do you remember when the process for setting up
 10 MNT Master Fund, Limited was completed?
 11 A It was in June 2012.
 12 Q In terms of MNT Master Fund, Limited, did that -- was that
 13 going to involve the MNT B and MNT, LLC investor money in any
 14 particular way?
 15 A Yes, it was.
 16 Q And what was that way?
 17 A The funds needed to be transferred into the MNT Master
 18 Fund structure or accounts.
 19 Q Okay. And did that happen?
 20 A It did.
 21 Q Okay. And did you have authority to do that without
 22 consulting the individual members or investors in MNT B and
 23 MNT, LLC?
 24 A Yes.
 25 Q What was that authority based on?

1 A It's based on the operating agreement and the subscription
 2 agreement. And, also, the advice of counsel.
 3 Q Okay. So after the paperwork was completed, what was the
 4 next step? Was it transferring the funds?
 5 A Well, it was -- the process was completed, the legal
 6 process, the registration, the paperwork was completed sometime
 7 in June, 2011.
 8 Typically, you don't start those new entities until a new
 9 fiscal year. So January 1st of 2011 would be the start of the
 10 new fiscal year. So the actual movement took place -- the
 11 opening of the account took place with Interactive Brokers in
 12 December and ultimately the account was funded around the first
 13 of January, 2012.
 14 Q All right.
 15 MR. DRESSLER: So if we could go back to Exhibit
 16 391-1?
 17 (Document displayed)
 18 MR. DRESSLER: I'm sorry. 393-1.
 19 (Document displayed)
 20 MR. DRESSLER: All right. Could everyone see that?
 21 If it's all right with everyone, I'm going to hand
 22 Mr. Murray a copy of that and ask him to -- each transaction is
 23 numbered. I'm going to ask him to go through the numbered
 24 transactions and explain what was going on there.
 25

1 (Whereupon document was tendered to the witness.)
 2 BY MR. DRESSLER
 3 Q So starting with No. 1, could you explain to the jury what
 4 those transactions represent?
 5 A No. 1 represents a wire transfer from the Interactive
 6 Brokers Market Neutral Trading B brokerage account into the
 7 Market Neutral Trading Citibank bank account.
 8 Q Let me stop you there for a section -- for a second. Why
 9 was it necessary to do that?
 10 A Interactive Brokers policy, as I was advised, is that they
 11 only want wire transfers going to same name company accounts.
 12 So they won't -- they won't transfer money from a brokerage
 13 account to an individual's name or a brokerage account in a
 14 company name to another company's bank account. They want it
 15 going to the same company name.
 16 Q Okay. So was that what was going on there?
 17 A Yes.
 18 Q Okay. You can go to No. 2.
 19 (Document displayed)
 20 (Brief pause.)
 21 Q You can go to No. 2.
 22 A So, No. 2 represents the transfer from Citibank into the
 23 MNT Master Fund's bank account at Cayman Institutional Bank.
 24 Q Okay. And how about No. 3?
 25 A No. 3 represents another wire transfer from Citibank into

1 the Cayman Institutional MNT Master Fund account.
 2 Q Okay. And if we could go to No. 4?
 3 A No. 4 is Cayman Institutional Bank is sending a wire
 4 transfer two days later back into the Interactive Brokers MNT
 5 Master Fund, Limited brokerage account.
 6 Q And -- okay. Could we --
 7 MR. DRESSLER: Could you just pull back on this?
 8 (Document zoomed out.)
 9 BY MR. DRESSLER
 10 Q Okay. So No. 4 money is going into MNT Master Fund,
 11 Limited Interactive Brokers account, and the last four numerals
 12 of the account number are [REDACTED], correct?
 13 A Correct.
 14 Q Okay. So let's go to No. 5 now.
 15 A No. 5 represents a wire transfer from MNT Master Fund's
 16 brokerage account to MNT Master Fund's bank account.
 17 Q Okay. And what was the purpose of that, if you remember?
 18 A I believe it was -- this was the start of a process of a
 19 return of investor funds. It had to go -- the investor was in
 20 Market Neutral Trading, so the money had to go back to the bank
 21 account at MNT Master Fund, which led us to step No. 6, where
 22 it was transferred back to Citibank.
 23 Q And then No. 7?
 24 A No. 7 is a wire transfer from Cayman Institutional Bank
 25 MNT Master Fund to Société Marseillaise de Crédit.

1 Q What was that for?
 2 A That was a -- that was a capital withdrawal from my
 3 account, from my capital -- my member account, capital account
 4 at MNT Master Fund.
 5 Q Okay.
 6 A -- into that account.
 7 Q Is that money still there?
 8 A It is.
 9 Q And why is it still there?
 10 A Because the banker -- the policy of that bank is that they
 11 will not send wire transfers unless I'm physically present.
 12 Q And based on your issues arising out of this case, I take
 13 it you have not been -- you haven't been permitted to go to
 14 that bank and withdraw the money, correct?
 15 A Correct.
 16 Q All right. Let's go to No. 8.
 17 A No. 8 is a payment to Bloomberg Finance for the Bloomberg
 18 service. So that was wired direct from MNT Master Fund's bank
 19 account to Bloomberg Finance or Bloomberg, Limited Partnership
 20 for those fees.
 21 Q And how much was that amount?
 22 A \$6,279.
 23 Q So now we know why Mr. Bloomberg is so rich, I guess.
 24 What is that for? I mean, why is it a \$6,000 charge?
 25 Exactly what -- is that a business expense?

1 A It is.
 2 Q And what is it an expense for?
 3 A For news service.
 4 Q News service?
 5 A Well, it's -- I mean, that simplifies it. Bloomberg is
 6 the leading provider of news. Recognized in the world as the
 7 leading news provider, especially in the securities industry
 8 where time is of the essence.
 9 Q And that's -- in terms of deciding what to trade and when
 10 to trade, that's the kind of -- you get some information from
 11 that service?
 12 A You also get historical price index. There is a wide
 13 variety of information that you obtain from that. But, yes,
 14 you -- it's a research tool, also.
 15 Q Is it an online research tool?
 16 A Umm, it's not something you can just log in to through the
 17 internet. You have to have a fingerprint password on your
 18 keyboard, so it identifies each user by fingerprint. And so
 19 it's not a traditional login, internet login.
 20 Q And the other amount, No. 9, for \$2,525.50?
 21 A That's for office rent.
 22 Q And then No. 10.
 23 A No. 10 is \$1,000 wire transfer back to Citibank for some
 24 residual Market Neutral company expense or expenses.
 25 Q All right. So --

1 A I don't remember specifically.
 2 Q Would it be fair to state that the -- at the end of Step
 3 10, that practically all of the money from MNT, LLC and MNT B
 4 were in the Interactive Brokers account [REDACTED]
 5 A Yes. Less the 500,000 that was returned to an investor.
 6 Q Okay.
 7 (Brief pause.)
 8 Q I'd like to direct your attention to what we have been
 9 referring to as the Netflix trade.
 10 This -- go ahead.
 11 (Witness pours a glass of water.)
 12 Q Ready?
 13 A I'm ready.
 14 Q This trade was executed in July of 2012?
 15 A July 24th, 2012, yes.
 16 Q And did it take place on the 24th and the 25th?
 17 A The original transaction was executed on the 24th. There
 18 was a partial buyback on the 25th -- oh, wait. Excuse me.
 19 There was a partial buyback on the 24th and then the remaining
 20 amount was bought back on the 25th of July.
 21 Q And that was executed on an Oppenheimer account in the
 22 name of MNT Master Fund, Limited?
 23 A Correct.
 24 (Whereupon document was shown to counsel.)
 25 Q All right. I'm going to ask you to look at what's been

1 previously marked as Exhibit 513. Just if you could just thumb
 2 through that?
 3 (Whereupon document was tendered to the witness.)
 4 Q Have you seen those documents before?
 5 A Yes, I have.
 6 Q Do those documents appear to come from Oppenheimer
 7 documents that were provided to the defense by the Government?
 8 MS. HARRIS: Your Honor, I object. Mr. Murray can't
 9 authenticate Oppenheimer's documents.
 10 THE COURT: Sustained.
 11 MR. DRESSLER: Okay. All right. Well, I'm going to
 12 offer this into evidence, Exhibit 513 into evidence.
 13 It's been -- unless the Government is going to say that
 14 they are not Oppenheimer documents.
 15 THE COURT: These are not previously admitted?
 16 MR. DRESSLER: They weren't previously admitted.
 17 THE COURT: All right. Any objection?
 18 MS. HARRIS: No objection.
 19 THE COURT: All right. 513 will be admitted.
 20 (Trial Exhibit 513 received in evidence.)
 21 MR. DRESSLER: Could you turn the Elmo on?
 22 BY MR. DRESSLER
 23 Q If you would just look at Page 1? I believe this was part
 24 of another Government's exhibit, but...
 25 (Document displayed)

1 Q So Exhibit 513.1, do you recognize that as an Oppenheimer
 2 Account Information form?
 3 A Yes. I've seen this before in the documents that have
 4 been provided.
 5 Q Only it's dated on the bottom February 22, 2012?
 6 A It is.
 7 Q Okay. Did you cause this document to be prepared on or
 8 about January 2nd -- February 2, 2012?
 9 A Yes.
 10 Q Who were the beneficial owners of this account? Just --
 11 you don't have to look at --
 12 A Oh, Gianluca de Francisci and myself.
 13 Q Could you tell the jury when you were first introduced to
 14 Gianluca de Francisci?
 15 A It was --
 16 Q Approximately?
 17 A Approximately 2007.
 18 Q Were you introduced to him in person?
 19 A No. Over the phone.
 20 Q And between 2007 and 2012, did you have -- between that
 21 time period, did you have conversations with him?
 22 A Yes, I did.
 23 Q Telephone conversations?
 24 A Did you ask phone conversations?
 25 Q Yes.

1 A Yes, I did.
 2 Q Conference calls involving him, you and other people?
 3 A Yes.
 4 Q You got to know him, at least telephonically?
 5 A Yes.
 6 Q Okay. What was your understanding of his background and
 7 what he did for a living?
 8 A He's a professional trader, had been employed by the
 9 London Stock Exchange as a young adult, that was my
 10 recollection, and had been trading his entire life.
 11 Q Did you have an understanding as to -- strike that.
 12 Okay. When you first met him, could you estimate how old
 13 he was?
 14 A I believe 70.
 15 Q And in connection with conversations you had with him over
 16 the years, did you have some idea of his net worth?
 17 A Yes.
 18 Q Okay. And in 2011 did it appear that he was a wealthy
 19 individual?
 20 A Yes.
 21 Q Did it appear that his net worth exceeded \$5 million?
 22 A Yes.
 23 MS. HARRIS: Objection, foundation, your Honor.
 24 THE COURT: Sustained. Lay a foundation.
 25 MR. DRESSLER: Okay.

1 THE COURT: That answer is stricken.
 2 BY MR. DRESSLER
 3 Q Did you -- over the years, you met his son Giovanni?
 4 A Yes, that's how we -- that's how I was introduced to him.
 5 Q Okay. And did you, over the years, discuss with Gianluca
 6 de Francisci investments that he had made?
 7 A Yes, on multiple occasions throughout the years.
 8 Q Okay. Did you talk to other people who knew him and knew
 9 the kind of work that he did?
 10 A Yes.
 11 Q Did you visit his home?
 12 A I did.
 13 Q Did he tell you -- over the years, did he indicate what
 14 kind of assets he had under his control?
 15 A Yes.
 16 Q Okay. And based on all of that information, did you
 17 believe in 2011 that he had at least \$5 million worth of assets
 18 under his control?
 19 A Yes.
 20 Q When was the first time that you met him in person?
 21 A Umm, it was the winter of 2011. I believe December 2011.
 22 Q Could it have been earlier?
 23 MS. HARRIS: Objection, speculation.
 24 THE COURT: Sustained.
 25

1 BY MR. DRESSLER
 2 Q All right. Did you discuss MNT Master Fund, Limited with
 3 Mr. De Francisci at any time during -- between -- strike that.
 4 During the first six months of 2011, did you have any
 5 conversations with Mr. De Francisci about MNT Master Fund,
 6 Limited?
 7 A No.
 8 Q The second half of 2011, did you discuss -- have any
 9 discussions with Mr. De Francisci with regard to MNT Master
 10 Fund, Limited?
 11 A Yes.
 12 Q Okay. When did those discussions take place?
 13 A When I met him personally in -- in December of 2011.
 14 Q Okay. During the course of those of discussions, did you
 15 and him discuss the possibility of him investing funds in the
 16 United States?
 17 A Yes.
 18 Q Okay. And did those funds -- did you discuss the
 19 possibility of him investing funds in either MNT B, MNT, LLC or
 20 MNT Master Fund, Limited?
 21 A Yes.
 22 Q Okay. Which ones?
 23 A MNT Master Fund.
 24 Q Okay. Could you just give the jury a brief summary of
 25 what those discussions were?

1 MS. HARRIS: Objection, hearsay.
 2 THE COURT: Overruled.
 3 A Could you repeat the question?
 4 BY MR. DRESSLER
 5 Q Yeah. Could you give the jury a brief summary of what
 6 those discussions involved?
 7 Did you talk to him about investing money in the United
 8 States?
 9 A No. He's -- he was averse to investing directly in -- he
 10 wanted to do it through an offshore company.
 11 Q So you discussed --
 12 A Excuse me. Offshore registered company.
 13 Q Okay. When you say he was interested in investing in an
 14 offshore company, would that be a company that would then
 15 invest money in the United States?
 16 A That's how it works, yes.
 17 Q Okay. You indicate that you first met Mr. de Francisci in
 18 person in late or December 2011, correct?
 19 A Correct.
 20 Q And did you go there to meet with him and other people or
 21 did you just run into him?
 22 A Him and other people.
 23 Q On purpose or by accident?
 24 A On purpose.
 25 Q And what was the purpose for you being in Monaco during

1 that time period?
 2 A With regard to Mr. de Francisci?
 3 Q With regard to anyone.
 4 A Well, I had business meetings set up and there's -- it was
 5 just for business meetings. And, also, meeting -- meeting new
 6 investors and, also, demonstrating my Event Trading strategy.
 7 Q Was Mr. de Francisci one of the people that you
 8 demonstrated your trading strategy to?
 9 A Yes.
 10 Q Did that -- let me step back.
 11 Did you explain to these -- Mr. de Francisci and other
 12 people what your trading strategy was?
 13 A I explained it and then I actually demonstrated it.
 14 Q Okay. And could you -- when you say that you demonstrated
 15 that, could you explain what you mean by that to the jury?
 16 A That's exactly what it means. I performed the trades in
 17 front of them.
 18 Q And how did you do that? How did you do that?
 19 In other words, you performed the trades. Did you do it
 20 via computer?
 21 A Yes.
 22 Q Okay. So just explain to the jury what you mean,
 23 performing trades, how that would happen mechanically? Where
 24 the people would be? What you would be doing?
 25 A I think -- I think you're asking how would I accomplish it

1 in a different geographic location versus -- is that what
 2 you're asking?
 3 Q Yeah. I mean, you're in Monaco, correct?
 4 A Right, right.
 5 Q All right. How did you conduct -- the trades that you
 6 were conducting, were they trades in the United States?
 7 A I'm trading in the U.S. markets, yes.
 8 Q Okay. All right. And did you do that through some kind
 9 of brokerage account?
 10 A Yes. I -- I traveled with my Bloomberg keyboard. Any
 11 computer I can plug it into and get my news service.
 12 Q But you did actually make trades in realtime?
 13 A Yes.
 14 Q And could people observe you making those trades?
 15 A Yes.
 16 Q On a computer?
 17 A Yes.
 18 Q During this same period, were there -- did you become
 19 friends with Mr. de Francisci, also?
 20 A Very good friends, yes.
 21 Q Okay. And did you have dinner together while you were in
 22 Monaco?
 23 A Did I have dinner?
 24 Q Together with him.
 25 A Yes. Monaco is nine hours ahead of U.S. markets, and so

1 typically these are trades that are done at -- earnings are
 2 reported after the market closes, which is 1:00 p.m. Pacific
 3 Standard Time.
 4 A So we would be up very late. We would go to dinner first.
 5 I would explain which companies I was watching and which
 6 companies might be -- might have qualified earnings surprises.
 7 We would talk about them. Go back --
 8 Q Let me stop you there. Let me stop you there.
 9 Would you explain to the jury what a "qualified earnings
 10 surprise" is?
 11 A Right. So I have been studying this strategy for 17 years
 12 and I've come up with parameters in terms of what qualifies for
 13 an earnings surprise or a disappointment. So a surprise is
 14 based on certain news, if you will.
 15 Q So are these trades that you make before earnings come out
 16 or after?
 17 A After.
 18 Q Okay. Are there surprises every day?
 19 A Earnings season, there is specific times when U.S.
 20 companies release their earnings, news announcements. So it
 21 happens -- there -- it will be very active for two months and
 22 then for a month it will be quiet. There won't be any earnings
 23 releases. It's quarterly.
 24 Q Okay. At some point -- so during the period of time that
 25 you were -- at some point, did you go back to the United

1 States?
 2 A Yes, I did.
 3 Q Okay. When was that?
 4 A Just before Christmas.
 5 Q So you were only in Monaco for a few weeks?
 6 A Correct.
 7 Q Okay. During the weeks that you were there, you actually
 8 did some successful trades? Would that be correct?
 9 A That's correct.
 10 Q Okay. Did you return to Monaco after Christmas?
 11 A Yes. Around January 13, 2013.
 12 Q Okay. So you went, spent Christmas at home and then came
 13 back?
 14 A Christmas and New Year's. A few -- a couple of weeks
 15 after that.
 16 Q Okay. When you got back from -- to the United States,
 17 roughly mid-January, did you continue to have discussions with
 18 Mr. de Francisci about investing?
 19 A Yes.
 20 THE COURT: Clarify what year.
 21 MR. DRESSLER: I'm sorry.
 22 THE COURT: I'm getting a little lost now.
 23 BY MR. DRESSLER:
 24 Q So you were there in December of 2011, correct?
 25 A Correct.

1 Q Around Christmastime in 2011, you went back to the United
 2 States?
 3 A Correct.
 4 Q Stayed there past New Year's of 2012?
 5 A '12.
 6 Q And then, in January of 2012, you went back to Monaco.
 7 A January 13.
 8 Q Okay. And did you continue -- when you got back, did you
 9 have further discussions with Mr. DeFrancisci about investing?
 10 A Yes.
 11 Q Okay. And did that result in an agreement between the two
 12 of you to open a trading account in the United States?
 13 A It did. It's -- it would --
 14 Q All right.
 15 A Correct. I did.
 16 Q And, were you the one that initiated the application for
 17 the trading -- for the brokerage account at Oppenheimer?
 18 A Yes.
 19 Q Okay. And is that the account information form that was
 20 prepared on February 2nd, 2012?
 21 A Well, this is the -- the account information form is --
 22 there was --
 23 Q Yeah. Was that -- was that -- did you -- you caused that
 24 to be prepared --
 25 A Yes.

- 1 Q -- on February 2, 2012. Correct?
 2 A Yes.
 3 Q And were you in Monaco at the time when you did that?
 4 A Yes.
 5 Q All right. How did that take place?
 6 A Through email or electronic conversations with
 7 Oppenheimer.
 8 Q Okay. And when you say "Oppenheimer," are we talking
 9 about Mark Moskowitz?
 10 A I don't believe I worked with -- I mean, I've talked with
 11 Mark over the phone. But I was working with his assistants on
 12 the account.
 13 Q Melanie? Perricone?
 14 A Yes. She started it.
 15 Q Before you -- did you talk to Mark and give him some of
 16 the information that went on that account information form?
 17 A I actually talked to Melanie. I mean, she e-mailed me
 18 this information or requests about the information.
 19 Q So did you have any conversations with Mark Moskowitz in
 20 early February about the \$5 million under asset management
 21 information that went into the account information form?
 22 A Yes.
 23 Q Okay. When was that?
 24 A Probably a little bit prior to the 2nd of February.
 25 Q Okay.

- 1 A Because he would have then passed it off to his assistant.
 2 Q And were you going to -- in terms of this account, was he
 3 going to do the trading on it? Were you going to do the
 4 trading on it? Or were both of you going to do the trading on
 5 it?
 6 Who was going to be responsible for the trading?
 7 A Well, I'm ultimately the person that places the orders.
 8 Mark and his trade index, they execute the orders.
 9 Q I'm talking about between you and Mr. DeFrancisci --
 10 A Oh, okay.
 11 Q Did you have an agreement as to who was going to manage
 12 the account?
 13 A I was going to manage the account.
 14 Q And, were you the person that was going to pick the trades
 15 that would be made?
 16 A Yes.
 17 Q And did you have an agreement as to whether you were going
 18 to have to get approval from him beforehand, or after, or
 19 anything like that?
 20 A No.
 21 MS. HARRIS: Objection (Inaudible)
 22 (Reporter interruption)
 23 MS. HARRIS: I'm making a foundational objection.
 24 This is vague. There is an agreement being referred to.
 25 There's no time, place, or whether it was --

- 1 THE COURT: All right. I will ask you to lay a
 2 foundation.
 3 MR. DRESSLER: I will. All right.
 4 BY MR. DRESSLER:
 5 Q Did you have verbal discussions with him about an
 6 agreement as to how -- strike that.
 7 Did you have -- did you have a written agreement with him
 8 about who would manage the account?
 9 A Yes.
 10 Q Okay.
 11 A Wait. Could you repeat the question?
 12 Q Yeah. My question was -- strike that. Let me start all
 13 over again.
 14 Did you have a discussion with him where it was agreed
 15 that you would be the person that managed the account that made
 16 the trades?
 17 A Yes.
 18 Q Okay. Was that agreement reduced to writing? In other
 19 words, was there a written contract signed between you and
 20 Mr. DeFrancisci?
 21 A No.
 22 Q Okay.
 23 A You're talking about the period of January and February?
 24 Q Yes. I'm talking about --
 25 A Right at this -- we're still talking about this

- 1 (Indicating) --
 2 Q Before the account -- before the account was opened.
 3 A Correct. Yes.
 4 Q Okay.
 5 THE COURT: So you might lay a foundation as to time
 6 frame as to this agreement.
 7 BY MR. DRESSLER:
 8 Q Okay. This verbal agreement, can you tell us, would this
 9 have been in January of 2012?
 10 A Yes.
 11 Q Okay. And, did you -- were you going to be -- did you
 12 discuss in January of 2012, with Mr. DeFrancisci, that --
 13 strike that.
 14 Did you discuss with him how the -- any profits from this
 15 agreement were going to be split between the two of you?
 16 A Yes.
 17 Q And how was that?
 18 A It was a 50/50 profit split.
 19 Q Okay. Was that reduced to writing?
 20 A No.
 21 Q Did you, again during January of 2012, did you have
 22 discussions with Mr. DeFrancisci with regard to who -- how
 23 losses would be shared, if they were going to be shared?
 24 A Yes. He's responsible for the losses.
 25 Q Okay. Was that reduced to writing?

1 A No.
 2 Q All right. During, again, January of 2012 -- so would it
 3 be fair to state that in terms of the verbal agreement that you
 4 had in January of 2013 with Mr. DeFrancisci --
 5 THE COURT: 2012.
 6 MR. DRESSLER: 2012, sorry.
 7 BY MR. DRESSLER:
 8 Q -- in 2012, January of 2012, that you were going to do the
 9 trading?
 10 A Yes.
 11 Q And he was going to be taking the risk of loss?
 12 A Yes.
 13 Q And, if there was profits, you would be sharing the
 14 profits.
 15 A Yes.
 16 Q All right. And, when you advised Oppenheimer that there
 17 was \$5 million available or under management, did you do so
 18 based on your understanding of Mr. DeFrancisci's wealth?
 19 A Yes.
 20 Q Now, in January of 2012, you knew his son, Giovanni?
 21 A Yes.
 22 Q And was Giovanni a citizen of the United States?
 23 A Yes. I believe he has dual citizenship.
 24 Q And did he -- during the period from, let's say, 2007
 25 until January of 2012, did you have contact with Giovanni?

1 A From 2007 to 2012?
 2 Q Yes.
 3 A Off and on, yes.
 4 Q And in terms of what he did for a living, what was your
 5 understanding of what Giovanni DeFrancisci did for a living?
 6 A He's a third-party marketer.
 7 Q Third-party marketer of what?
 8 A For alternative investments.
 9 Q Okay. And, based on your interaction with both Giovanni
 10 DeFrancisci and Gianluca DeFrancisci, did it appear that aside
 11 from a father-son relationship, that they had also had business
 12 relationships?
 13 A Yes.
 14 MS. HARRIS: Objection, compound, and foundation,
 15 Your Honor.
 16 THE COURT: Sustained.
 17 BY MR. DRESSLER:
 18 Q You indicated that -- based on your contact with these
 19 individuals, father and son, DeFrancisci, did you become aware
 20 that they had investments together?
 21 A Yes.
 22 Q Did they refer to those investments in any particular way?
 23 A "Family assets."
 24 Q All right. In terms of your discussions with Gianluca
 25 DeFrancisci in January of 2012 about the agreement between you

1 and him involving opening an Oppenheimer account, did -- was it
 2 intended by the two of you that Giovanni DeFrancisci would have
 3 some kind of role in setting up this account?
 4 A Yes.
 5 MS. HARRIS: Objection, Your Honor. That's
 6 completely overbroad. I don't know what account they're
 7 talking about, or what agreement they are talking about.
 8 THE COURT: Well, lay a foundation again.
 9 BY MR. DRESSLER:
 10 Q With regard to the agreement with Mr. Gianluca DeFrancisci
 11 to open a trade account, the discussions you had with him in
 12 January to open a trading account at Oppenheimer -- correct?
 13 A Correct.
 14 Q Did the two of you discuss, you and Gianluca DeFrancisci,
 15 did you have any discussions as to whether or not Giovanni
 16 DeFrancisci would have a role in setting up that Oppenheimer
 17 account?
 18 A Yes.
 19 Q And what was -- what was the role?
 20 A The role is sort of as acting as liaison between his
 21 father and myself. His father's native language is French.
 22 And he's also seventy, and he's not of the computer era as some
 23 of us that are a little bit younger than him are. So he is not
 24 as comfortable communicating electronically.
 25 So Giovanni was sort of acting as liaison and trying to

1 help that along, that process a long.
 2 Q In any event, so, would it be fair to say that you
 3 initiated the process for opening the Oppenheimer account on or
 4 about February 2, 2012?
 5 A Yes.
 6 Q All right. And, I believe you indicated that you left
 7 Monaco around March 12th, 2012?
 8 A Yes.
 9 Q And so during that time period, any documents that you
 10 submitted to Oppenheimer with regard to that account, were they
 11 submitted from Monaco?
 12 A Yes.
 13 Q All right. I would like to show you what's already been
 14 offered into evidence as Exhibit No. 556. A three-page
 15 document.
 16 (Witness examines document)
 17 A Five pages.
 18 MR. DRESSLER: (Inaudible) everyone, I'm less than
 19 perfect.
 20 BY MR. DRESSLER:
 21 Q These emails appear to be dated February 2nd, and
 22 February 3rd. Correct?
 23 A Correct.
 24 Q Okay. And, they were documents -- communications between
 25 you and Melanie Perricone?

1 A Correct.
 2 Q With regard to getting the account started?
 3 A Yes.
 4 Q All right.
 5 MR. DRESSLER: And, could we have Government 287.
 6 (Document displayed)
 7 BY MR. DRESSLER:
 8 Q Can you see that on the screen?
 9 A Yes. I see that on the screen.
 10 Q And, is Government Exhibit 287 one of the emails -- strike
 11 that.
 12 At the lower half of Exhibit 287, that's an email from
 13 Melanie to you, requesting certain information. Correct?
 14 A Correct.
 15 Q All right.
 16 MR. DRESSLER: Can we go to the top of it?
 17 (Document displayed)
 18 BY MR. DRESSLER:
 19 Q And you put -- in that, that's your response. Correct?
 20 A Correct.
 21 Q You indicate it's an offshore company?
 22 A Yes.
 23 Q All right. It has a net worth of \$5 million?
 24 A That's what -- yeah. That's what I filled out.
 25 Q Okay. And then, has -- that the company has assets to

1 invest of \$5 million?
 2 A Yes.
 3 Q And the sources of funds available to invest were from
 4 investment. Correct?
 5 A Yes.
 6 Q All right. Thank you.
 7 MR. DRESSLER: Can we have 288?
 8 (Document displayed)
 9 MR. DRESSLER: (Inaudible)
 10 (Document taken off display)
 11 BY MR. DRESSLER:
 12 Q In any event, do you remember whether or not between
 13 February 2 and 3rd and your return to the United States, you
 14 provided any other information to Melanie Perricone? If you
 15 remember.
 16 A I don't remember.
 17 Q Okay. So, you returned to the United States on what date?
 18 A March 12.
 19 Q Okay.
 20 A I believe.
 21 Q All right. And, did something occur on or about that
 22 date?
 23 A Yes.
 24 Q What happened?
 25 A I was arrested.

1 Q And were you in custody during March of 2012?
 2 A Yes, I was.
 3 Q And were you released from custody at the end of March?
 4 A I was, yes.
 5 Q Okay. Some time after your release from custody, did you
 6 resume the process of opening the MNT Master Fund, Limited
 7 account that you had started in February of 2012?
 8 A Yes.
 9 Q All right.
 10 (Off-the-Record discussion between counsel)
 11 BY MR. DRESSLER:
 12 Q I'm going to show you what's been marked for
 13 identification as Exhibit 519. And ask you to look at -- first
 14 of all, you've seen this particular exhibit before, have you
 15 not?
 16 A Yes, I have.
 17 Q Okay. And, does that appear to be Oppenheimer documents
 18 that you sent to Oppenheimer in support of the application for
 19 this account?
 20 (Witness examines document)
 21 A Yes. Except for the first two pages, these are
 22 Oppenheimer documents.
 23 Q And you have seen those before?
 24 A The Oppenheimer documents?
 25 Q Yes.

1 A Yes. I have seen all of these.
 2 MR. DRESSLER: I'm going to move Exhibit 519 into
 3 evidence.
 4 THE COURT: Any objection?
 5 MS. HARRIS: No objection.
 6 THE COURT: Admitted.
 7 (Trial Exhibit 519 received in evidence)
 8 MR. DRESSLER: Can we have the Elmo on? Is it on?
 9 THE CLERK: (Inaudible)
 10 MR. DRESSLER: I'm going to have to butcher my copies
 11 because they all got stapled together. Okay.
 12 BY MR. DRESSLER:
 13 Q If look at Pages -- Pages 12 and 13, and 14.
 14 A 12 through 14, you said?
 15 Q Yes.
 16 (Witness examines documents)
 17 Q I'm going to put Page 12 on the screen.
 18 (Document displayed)
 19 Q Was that a document that you submitted to Oppenheimer
 20 after you got back from Monaco -- that you submitted to
 21 Oppenheimer after March 12, 2012, upon your return to the
 22 United States?
 23 A Yes, it is.
 24 Q Okay.
 25 (Document taken off display)

1 (Document displayed)

2 Q And what is a due-diligence form for non-shell US

3 companies?

4 A I was told this was required by Oppenheimer for non-US

5 shell companies or personal -- also known as personal holding

6 companies.

7 Q Okay. And, I want to show you the Page 13 of Exhibit 519.

8 (Document displayed)

9 Q That's the same page. All right. That, 519-13 that I

10 have on the screen now, that indicates in the middle there,

11 "First Beneficial Owner." Correct?

12 A Yes.

13 Q What does that mean?

14 A "James Murray." What does it mean? Or what's the name?

15 Q Does it mean that there is more than one owner of the

16 account?

17 A Yes.

18 Q And I'm going to show you Exhibit 519-14.

19 (Document displayed)

20 Q Does that appear to be from the same form? In terms of --

21 A Yes. It's the second page of the same form.

22 Q Okay. And does that indicate who the second beneficial

23 owner of the account is?

24 A It does.

25 Q And who is that?

1 A Gianluca DeFrancisci.

2 Q And, I think I declined to pronounce the name of the

3 address, but it indicates that -- do you recognize the legal

4 address on there as Mr. DeFrancisci -- Mr. Gianluca

5 DeFrancisci's address in Monte Carlo, Monaco?

6 A Yes, I do.

7 Q Okay.

8 (Document taken off display)

9 Q All right. I'm going to now show you what's been marked

10 as Exhibit 521 for identification.

11 (Off-the-Record discussion between counsel)

12 BY MR. DRESSLER:

13 Q I'm going to ask you to look at it, and tell me whether or

14 not it appears to -- at least Pages 1 of 2 appear to be

15 e-mailed communications between you and Oppenheimer?

16 (Witness examines document)

17 A Yes, it is.

18 Q Okay. I'm going to show you, put on the screen Page 1.

19 (Document displayed)

20 THE CLERK: Mr. Dressler, is that admitted?

21 MR. DRESSLER: If I didn't, I'll offer it. Exhibit

22 521, I'll offer into evidence.

23 THE COURT: Any objection?

24 MS. HARRIS: No objection.

25 THE COURT: Admitted.

1 (Trial Exhibit 521 received in evidence)

2 BY MR. DRESSLER:

3 Q Okay. Showing you Page 1, would you look at the top

4 email? Can you read the header as to who -- that's from you,

5 correct?

6 A Yes.

7 Q To someone named caseycheung@opco.com?

8 A Yes.

9 Q Who is Casey Cheung?

10 A That was Mark's assistant after Melanie Perricone left.

11 Q And what was attached to that email?

12 A The due diligence form that we just looked at, as part of

13 the other exhibit, and Gianluca's notarized passport --

14 passport, excuse me. And my passport.

15 Q Okay. And so, those items were attached to this email?

16 A Yes.

17 Q And those were requested by who?

18 A Those were requested by -- let me check the email.

19 (Witness examines document)

20 A Okay, so it would have been Melanie Perricone.

21 Q Okay. So she requested it, and then --

22 A (Inaudible)

23 Q Let me -- she requested it, and then you realized --

24 somehow learned that she had been replaced by Mr. Cheung?

25 A Yes.

1 Q Okay. And so on June 8th, you sent that information to

2 him.

3 A Yes.

4 Q Okay.

5 (Document taken off display)

6 MR. DRESSLER: I'll take that back.

7 THE COURT: Is there going to be a convenient break

8 point?

9 MR. DRESSLER: This would be a fine break point.

10 THE COURT: Let's go ahead and break until 12:30,

11 when we will resume.

12 (Jury excused)

13 (The following proceedings were held outside of the

14 presence of the Jury)

15 THE COURT: All right. I'm going to ask that you get

16 your documents in order. We're spending a lot of time going

17 back and forth, and you are reading documents. It's -- this is

18 going interminably slow, in my opinion.

19 We have had a lot of time to prepare for this. I would

20 like to move this along. Okay?

21 MR. DRESSLER: Yes, Your Honor.

22 THE COURT: Do you expect to be completed by the end

23 of today?

24 MR. DRESSLER: Completed with his direct?

25 THE COURT: Right.

1 MR. DRESSLER: No.
 2 MS. HARRIS: What was the answer to that?
 3 THE COURT: The answer is "No."
 4 And how long do you --
 5 MR. DRESSLER: Your Honor, Your Honor, with all due
 6 respect, I mean, this is the beginning of our case, which is --
 7 THE COURT: That's fine.
 8 MR. DRESSLER: I'm not -- I'm just saying -- I'm
 9 trying --
 10 THE COURT: I'm asking you to get your exhibits ready
 11 and things, because, you know, it's -- at this rate I don't
 12 know when we're going to be done.
 13 MR. DRESSLER: We'll be done -- I mean, we're not --
 14 I don't think we're going to be done today, but we will be done
 15 tomorrow morning.
 16 THE COURT: All right. Thank you.
 17 (Whereupon at 12:07 p.m. proceedings
 18 were adjourned for noon recess.)
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 20
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 22
 23
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 25

1 PROCEEDINGS
 2 October 6, 2015 12:35 p.m.
 3 (Proceedings resumed pursuant to noon recess.)
 4 THE COURT: All right. Thank you, ladies and
 5 gentlemen.
 6 I have a note from the jury, Mr. Dressler, that some are
 7 having difficulty hearing you. You need to speak into the mic,
 8 because sometimes when you go over to the Elmo and you speak
 9 without a microphone, without your raising your voice, you
 10 can't be heard.
 11 MR. DRESSLER: I apologize. All right.
 12 I'm going to approach with Exhibit 525. I'm going to
 13 offer it into evidence. I don't think the Government has any
 14 objection to it.
 15 THE COURT: No objection?
 16 MS. HARRIS: No objection, Your Honor.
 17 THE COURT: All right, then 525 is admitted.
 18 (Trial Exhibit 525 received in evidence)
 19 (Witness examines document)
 20 BY MR. DRESSLER:
 21 Q All right. Mr. Murray, if you look at 521, Pages 1, 2,
 22 and 3 --
 23 A Did you mean 525?
 24 THE COURT: 525? Or 521?
 25 MR. DRESSLER: I'm sorry, 525, Pages 1, 2, and 3.

1 (Witness examines document)
 2 THE WITNESS: Okay.
 3 BY MR. DRESSLER:
 4 Q Are those -- that -- the first -- I'm going to put it up.
 5 (Document displayed)
 6 Q There are two emails on there. Correct?
 7 A Yes.
 8 Q All right. And, they both concern a W8 form?
 9 A Yes.
 10 Q Okay. And, on the lower email (indicating), you're
 11 indicating that -- they're asking you -- basically they're
 12 asking you for a W8 form. You are saying you already sent one,
 13 and they want another one. Correct?
 14 A Correct.
 15 Q Okay.
 16 (Document taken off display)
 17 Q You can put that exhibit down.
 18 Would it be fair to state that there was a lot of back and
 19 forth by way of emails between you and Oppenheimer regarding
 20 different things, items that they needed in order to authorize
 21 this account? Correct?
 22 A Correct.
 23 Q Was there an issue with the name -- did you submit
 24 Mr. DeFrancisci's passport at some point?
 25 A Yes.

1 Q Okay. Did they have a problem with that passport?
 2 A Yes.
 3 Q What was the problem?
 4 A His -- his name on the passport is "Giuseppe Gianluca
 5 DeFrancisci." And, we had submitted paperwork with "Gianluca
 6 DeFrancisci." As I recollect, that raised an issue.
 7 Q And were you required to obtain additional material from
 8 Mr. DeFrancisci in order to resolve that issue?
 9 A Yes.
 10 Q And did you forward that information to Oppenheimer?
 11 A Yes.
 12 Q Okay. Was there an issue that came up with regard to the
 13 resolution of the board of directors of MNT Master Fund,
 14 Limited?
 15 A Yes.
 16 Q Okay. Did that require you to obtain information from
 17 Mr. DeFrancisci, and a different resolution?
 18 A Yes.
 19 Q And was that information transmitted to Oppenheimer?
 20 A Yes.
 21 Q And this all occurred in June of 2012. Correct?
 22 A Yes.
 23 Q All right. So at some point around June 22nd of 2012, did
 24 Oppenheimer authorize the account that we're talking about,
 25 8064?

1 A Yes. On June 22nd they sent me an email saying the
2 account was approved. And -- and cleared by Compliance.
3 Q Okay. Between June 22nd and the Netflix trade on
4 July 24th, were you -- did you -- were there any trades
5 executed on the MNT Master Fund Limited Oppenheimer account
6 that ends in [REDACTED]?
7 A No.
8 Q Okay. Why not?
9 A Um, because -- my recollection is that it was a
10 combination of no opportunities, no trade opportunities, and
11 also some additional, you know, back and forth discussions
12 between myself and Gianluca.
13 Q And the trading strategy that you were going to execute
14 with this account, was it based -- also based on timing of
15 certain earnings results?
16 A Yes. It's a strategy that's centered around that.
17 Q Okay. And was it based on results of guessing what the
18 earnings were going to be or determining -- strike that.
19 Was it based on determining whether you thought the
20 earnings results were going to be good or bad, and making a bet
21 on a certain stock before the results came out?
22 A No. That's a very risky strategy.
23 Q Okay.
24 A Because it involves taking event risk that you don't know
25 what the results are going to be.

1 Q So this strategy that you were pursuing with this account,
2 it wasn't an event strategy, would it be fair to say; it was a
3 surprise strategy?
4 A Yeah, I mean, it's an after -- it's an
5 after-the-news-event surprise strategy.
6 Q Can you just explain to the jury, in layman's terms if
7 possible, exactly what that strategy was in terms of after
8 earning results came out?
9 A Right. Well, after the news is released, I would -- I had
10 pre-set conditions on what a surprise would be. And then if
11 the news came out and met those conditions -- so after the
12 earnings was released, I would monitor the news on my
13 Bloomberg. And if it met the criteria, then there's -- then we
14 move to the next, the next stage of the trade.
15 Q Let me stop you there. When you say "criteria," can you
16 give us an example of what the criteria are?
17 A For a surprise?
18 Q Yes.
19 A An earnings surprised based on -- I mean, specifically,
20 the quantitative amount is based on the individual company
21 relative to what the market's expecting, and also some other
22 measures of volume and -- that we don't need to get into.
23 But basically, the -- it -- it's a strategy that's looking
24 for a surprise, based on the earnings.
25 Q Okay. And in terms of the surprise, does it make any

1 difference -- based on the surprise, do you make a
2 determination of whether the stock is going to go up or down
3 because of the surprise?
4 A Could you repeat the question?
5 Q Yeah. In other words, the earnings come out. All right?
6 And depending -- if -- if there's a surprise that meets your
7 criteria, all right, are you always going to be trying to do a
8 short sale? Or are you going to try and sometimes do the
9 opposite of a short sale?
10 A When -- when the -- when there is a list of companies that
11 are available to possibly trade, I don't know whether I'm going
12 to go short or long. But to prepare for the possible short, I
13 borrow the shares so they're there.
14 It may be that I go long, based on the earnings surprise,
15 to the up side rather than to the down side.
16 Q Okay. So, in -- around the time period July 22nd,
17 July 23rd, July 24th of 2012, did you identify companies whose
18 earnings --
19 THE COURT: July? Or June?
20 MR. DRESSLER: July.
21 THE COURT: July?
22 MR. DRESSLER: Yes.
23 THE COURT: Okay.
24 BY MR. DRESSLER:
25 Q During the period July 22nd, July 23rd, July 24th of 2012,

1 had you identified some companies whose earnings reports were
2 going to be coming out that you were interested in?
3 A Yes.
4 Q And --
5 A You mean before the Netflix trade on the 24th.
6 Q Correct.
7 A Yes.
8 Q And did you advise Mr. Moskowitz that you might be
9 interested in doing a trade during that time period?
10 A Yes.
11 Q Okay. And did you indicate to him companies that you
12 would be interested in?
13 A Yes.
14 Q And did you ask him to borrow a certain amount of stock
15 for each company in case you decided to do a trade?
16 A Yes.
17 Q Okay. And was one of those companies Netflix? One of the
18 companies that you asked in advance, asked Mr. Moskowitz to
19 borrow so that you could do a trade, was one of those companies
20 Netflix?
21 A Well, I -- not in the period before the 24th, because they
22 weren't reporting earnings on those days. But did I ask him to
23 borrow Netflix in the morning of the 24th.
24 Q Okay.
25 A And I asked him to borrow three or four others, also.

- 1 Q Okay.
- 2 A On that date.
- 3 Q Around that time, did you tell Mr. Moskowitz -- before the
4 trade, did you discuss with Mr. Moskowitz -- before the Netflix
5 trade on the 24th, did you discuss with Mr. Moskowitz that if
6 you did a trade on Netflix and it was successful -- or I guess
7 even if it wasn't successful -- who would be settling the
8 trade?
- 9 A Yes.
- 10 Q Okay. What did you tell them?
- 11 A I told him I had a partner in Monaco who is also the
12 second beneficial owner that is going to be settling the trade.
- 13 Q Okay. And --
- 14 A Because it was such a large trade, there was no money in
15 the account. I wanted to let Mark know ahead of time what was
16 happening.
- 17 Q Okay. So before the trade was executed, he was aware of
18 that?
- 19 A Yes.
- 20 Q And in the afternoon or some time after you notified -- on
21 the 24th, after you notified Mr. Moskowitz to have some Netflix
22 stock available, did you execute a short sale?
- 23 A Yes. On the 24th.
- 24 Q Yes. Okay. And could you just describe to the jury what
25 happened and what you did in terms of the -- when you saw the

- 1 earnings?
- 2 A You mean what was going on in my office?
- 3 Q What was going on -- what was going in your head in terms
4 of -- you saw the earnings report from Netflix come out?
- 5 A Correct.
- 6 Q Okay. Did you decide to -- what did you decide to do
7 after you saw the earnings come out?
- 8 A Well --
- 9 Q In terms of the trade?
- 10 A Within the first few seconds I determined that it was --
11 it was a much larger disappointment -- it was a huge
12 disappointment. And so I had had it pre-set up with Mark where
13 he was on the phone with me prior -- I told him exactly what I
14 was looking for, what we were doing. And in order to prepare
15 for that, Mark and I were on the phone together, so that he
16 could quickly execute a trade.
- 17 Q So when you saw large surprise, did you tell him to
18 execute a trade for 50,000 shares of Netflix?
- 19 A I gave him a limit order.
- 20 Q What does that mean?
- 21 A It means -- a market order is just: Get it done at any
22 price. And I gave him a very specific limit order. That's an
23 order amount or a price that is -- that I'm not willing -- I'm
24 only willing to sell it at a certain price or higher on a short
25 sale.

- 1 Q Okay, so when you say "I'm only willing to sell it..."
2 This is kind of counter-intuitive I think for most people, all
3 right?
- 4 So you sell it before -- before you execute the trade?
- 5 A No. The sale is the execution.
- 6 Q Okay. All right. So in other words, they essentially
7 lend you stock you don't own, and you sell it?
- 8 A Correct.
- 9 Q Before the trade?
- 10 A Correct.
- 11 Q That's --
- 12 (Reporter interruption)
- 13 THE WITNESS: Not before the trade.
- 14 BY MR. DRESSLER:
- 15 Q You said that they -- they lend you stock. And selling
16 that stock is the execution of the trade. Correct? Am I
17 getting it right?
- 18 A They don't really lend you the stock. They just give you
19 the right to sell it short.
- 20 Q Okay.
- 21 A So you sell it and it's -- there's a specific way that you
22 mark the ticket. And the orders need to be transmitted to the
23 various exchanges, as -- it's a sell short, with your
24 parameters.
- 25 And then once you get -- once the order's filled, you have

- 1 what's called an execution price. A completed execution price.
- 2 Q Okay. And would it be fair to state that if the price of
3 the stock goes down, the way you make a profit is by buying it
4 back at a lower price than you sold it?
- 5 A Yes.
- 6 Q Okay. And on the 24th, the Netflix stock went down.
7 Correct?
- 8 A Right.
- 9 Q And did you buy back a small amount of that stock on that
10 same day?
- 11 A Yes, I did. I bought back about 10 percent. I was
12 testing the strength and size of the sellers in the market.
- 13 Q Okay. So, if you could put that in layman's terms for the
14 jury.
- 15 A Um, I'm -- a lot of times in the market, there's a
16 price -- you can see execution prices, but it's not a real
17 price at which you can get a trade-off. You can print there,
18 but you really couldn't get any stock sold or bought at that
19 price.
- 20 So, I -- I executed the 5,000 shares to make sure the
21 price I was seeing was, in another -- in a simple way of
22 putting it, a real price.
- 23 Q So in other words, you wanted to see whether you could
24 make money by selling those stock -- how much money you would
25 be able to make by that sale?

1 A Well, when I bought it back, how -- how I was filled on
2 the trade, based on my experience in the industry, I could tell
3 that there was further down side to go. And I -- and so, yes.
4 Q Okay. The next day, what did you do with regard to the
5 Netflix stock?
6 A Well, Mark and I were in contact. He called me initially
7 excited because the stock was already down another -- a large
8 percentage. And he was, of course, looking to make a trade.
9 MS. HARRIS: Objection, Your Honor.
10 THE WITNESS: Well --
11 BY MR. DRESSLER:
12 Q Well, did the stock --
13 THE COURT: Over -- all right.
14 BY MR. DRESSLER:
15 Q You can answer the question.
16 THE COURT: Well, first of all, I'm going to overrule
17 the objection. So that answer will stand.
18 MR. DRESSLER: Okay.
19 BY MR. DRESSLER:
20 Q So what happened to the Netflix stock on the next day?
21 A Later that morning --
22 Q Yes.
23 A -- I bought the remaining 45,000 shares back.
24 Q Okay. And, did that result in a profit?
25 A Yes.

1 Q What was that profit?
2 A \$421,000. But Oppenheimer --
3 Q Just stop there.
4 A Okay.
5 Q All right. And, did that -- Oppenheimer was entitled to a
6 commission on the 421,000?
7 A Yes.
8 Q Okay. And, what commission do they get for those kinds of
9 trades?
10 A Well in this case it was 10 cents a share, so it was
11 10,000 -- 5,000 on the sell side and 5,000 on the buy side.
12 Q So they were due \$10,000 commission?
13 A Correct.
14 Q Did you transact a trade in another stock on the 25th?
15 A No. On the 27th.
16 Q The 27th. And what was that?
17 A Facebook.
18 Q Okay. And, was that a short sale also?
19 A Yes.
20 Q Okay. Did that stock -- was there a profit on that stock?
21 A Yes.
22 Q Okay. How much was the profit?
23 A Um, it was a smaller size trade than the Netflix. I
24 believe it was 11,800, if my memory serves me correct.
25 Q Okay. And is that including or excluding commission to

1 Oppenheimer?
2 A I remember the figure of \$2,100 commission. I'm not sure
3 if the 11,800 is included in that. But it's, at a minimum,
4 11,800. It could be as high as another 2,500.
5 Q Okay. On July 24th, without telling me the contents of
6 any discussions, did you have any -- before the Netflix trade,
7 did you have any discussions with Giovanni DeFrancisci?
8 A On the trade date?
9 Q Yes.
10 A Yeah. He was -- as part of our regular course of conduct
11 -- contact during the earning season, I would set him up on
12 what's called a WebEx.
13 Q Let me stop you there. What's a WebEx?
14 A It's a service that one of the Silicon Valley companies
15 has provided that allows people to take a look at your desktop
16 remotely.
17 Q You mean the computer on your desktop?
18 A Correct.
19 Q And in this case, all right, if someone was looking at
20 your desktop at the time of the Netflix trade, what would they
21 see?
22 A Well, if they are looking at my desktop, they have access
23 to all my -- everything that's open. So, the price quote of
24 Netflix, the chart, the price, and the news.
25 Q Okay. And did you arrange with Mr. DeFrancisci that -- in

1 advance of the Netflix trade, that he would be able to have
2 access to your desktop if and when a Netflix trade was
3 conducted on July 24th?
4 A Well, it wasn't specifically due to Netflix. He had
5 access to my desktop for -- for a number of other days, and
6 related to other companies. It's just we didn't have a
7 qualified trade to do.
8 Does that answer your question?
9 Q Yes.
10 A Okay.
11 Q On the 24th, during time the Netflix trade was executed,
12 were you aware of whether or not Mr. DeFrancisci was observing
13 the trade?
14 A He was.
15 Q And from observing the trade through that website, would
16 he have been aware that the trade on the 24th was successful?
17 A Um, yes.
18 Q Okay. And how about the 25th?
19 A He's not an early morning person, so he didn't make it on
20 the next morning.
21 Q All right. After -- the jury has heard testimony about
22 this concept of having to sell a trade within a certain period
23 of time. What was your understanding, on July 24th, what the
24 settlement period was?
25 A Three days.

- 1 Q Okay. And, has it ever been five days?
- 2 A It was five days. In the late nineties and I believe up
- 3 until 2000, it was five days. But then, Alan Greenspan reduced
- 4 it to three days because --
- 5 Q Okay. And, when you -- when it -- when -- T+3 says you
- 6 have to settle a trade within three days. Correct?
- 7 A Correct.
- 8 Q And did you understand what the settlement date was for
- 9 the Netflix trade on July 24th?
- 10 A Yes.
- 11 Q Okay. And what was that settlement date?
- 12 A It's trade date plus three. It's the 27th.
- 13 Q Okay. And how about for the trade on the 25th? Does it
- 14 have the same trade date? Or is it extended a day?
- 15 A The trade date is also T+3 for the 25th, but since it --
- 16 the trade for the 25th doesn't have a cash or margin
- 17 requirement because you're closing -- you're settling the open
- 18 position by making that purchase.
- 19 Q So are you saying that the trade date for both trades was
- 20 the 27th of July?
- 21 A What I'm trying to say is there is no settlement date for
- 22 the 25th transaction because it's closing out the open position
- 23 in Netflix.
- 24 Q In any event, 1 million -- 50 percent of the trade was
- 25 supposed to be paid by July 27th, to settle the trade.

- 1 Q Okay. And have you learned the rules and regulations that
- 2 relate to settling trades?
- 3 A Yes.
- 4 Q Okay. And, is there a -- once the money to settle the
- 5 trade comes in, is there -- can it be -- the money comes in,
- 6 and Oppenheimer doesn't get to keep it, do they?
- 7 A No. It's quite common and actually an industry practice
- 8 that if you're settling a trade, that money comes -- you just
- 9 instruct the broker, "We're just settling the trade. You've
- 10 got to wire it back."
- 11 So that's one of the issues in choosing and selecting --
- 12 Q Let me stop you there. All right.
- 13 If the money had come in on the 27th of July, all right,
- 14 based on your experience, based on your settling of many
- 15 trades, all right, if that 1 million, 7 wire had come in on the
- 16 27th, would it be possible for that money to go right back out
- 17 and back to Mr. DeFrancisci, if he had sent it, the next day?
- 18 A Yes.
- 19 MS. HARRIS: Objection, speculation again.
- 20 THE COURT: Overruled.
- 21 THE WITNESS: Yes. It could have gone out, actually,
- 22 if it had been --
- 23 BY MR. DRESSLER:
- 24 Q Just listen to my question.
- 25 A Okay, go ahead.

- 1 Correct?
- 2 A Correct.
- 3 Q And the value of the 50,000 shares of Netflix was
- 4 approximately 3,500,000?
- 5 A I think it was 3.4 and a half. 3.450.
- 6 Q So approximately \$175,000 was needed to settle the trade.
- 7 A 1.75 million.
- 8 Q Okay.
- 9 A Yeah.
- 10 Q And you had advised Oppenheimer that Mr. DeFrancisci was
- 11 going to be the one that be that would be submitting or wiring
- 12 approximately 1,700,000 to Oppenheimer within three days?
- 13 A Yes.
- 14 Q All right. And that did not happen, did it?
- 15 A No.
- 16 Q Okay. If it did happen, how long would that 1,700,000
- 17 have to remain with Oppenheimer?
- 18 MS. HARRIS: Objection. Foundation. And
- 19 speculation.
- 20 THE COURT: All right. Lay a foundation for his
- 21 understanding.
- 22 BY MR. DRESSLER:
- 23 Q In your years as a stock trader, all right, have you
- 24 settled numerous trades?
- 25 A Yes.

- 1 Q Could it have gone back the next day?
- 2 A Yes.
- 3 Q Is it even possible, depending on the time of day that it
- 4 comes in, that it could go back on the next day -- I mean, the
- 5 same day?
- 6 A With good brokers and with good assistants, typically it
- 7 does go back on the same day.
- 8 Q All right. Now, did you give someone at Oppenheimer
- 9 Mr. DeFrancisci's email address in Monaco?
- 10 A Yes.
- 11 Q Okay. And, why did you do that?
- 12 A It was part of -- I believe it was part of the initial
- 13 conversations about who was going to be settling the trade. I
- 14 gave an email address and the phone number.
- 15 Q And the phone number was for Gianluca DeFrancisci?
- 16 A Yes.
- 17 Q And when a trade is executed, after it's executed, all
- 18 right -- and we've just discussed there is an obligation on
- 19 someone to send 50 percent of the value of the trade, meaning
- 20 the value of the stock that was traded, that has to be sent to
- 21 Oppenheimer. Correct?
- 22 A Yes.
- 23 Q And based on your experience in settling trades over many
- 24 years, does the brokerage firm, in this case Oppenheimer, are
- 25 they required to send wiring information to the person who's

1 going to be responsible for paying for the trade?

2 A Well, it's -- are they required? It's good business
3 practice. It's a requirement to send the confirmation. The
4 official trade confirmation.

5 Q Okay. Let me stop you there. What is an official trade
6 confirmation?

7 A This is a document that's been preapproved by -- in this
8 case it would have been FINRA, the over -- the regulatory body
9 that supervised the brokerage.

10 They have to submit to FINRA what the form, what the --
11 you know, what the template for their trade confirmations are
12 going to be for their customers.

13 And I think your question is -- sorry.

14 Q Don't ask. I never remember what my questions are.
15 But I think that the idea is that -- they have to submit
16 this document that you're describing to the person that's going
17 to be responsible for settling the trade. Correct?

18 A It's such an important detail -- yes.

19 Q Just --

20 A Yes. Correct.

21 Q And so you gave Oppenheimer Mr. DeFrancisci's name, number
22 -- telephone number, and email so they could send that trade
23 confirmation to him.

24 A Correct.

25 Q Right? And is there a practice that you have become aware

1 deposit in the account."

2 Q All right. Based on your experience over the years, have
3 you ever seen an email like that?

4 Bad question. Bad question. All right.

5 This was sent on the 27th. Correct?

6 A Correct.

7 Q Referred to another email -- a previous email that was
8 also sent on July 27th. Correct?

9 A Correct.

10 Q And July 27th was, in fact, the settlement date.

11 A Correct.

12 Q All right. That -- the email that we're looking at here,
13 was sent on 10:50 a.m. I assume -- I think we can assume since
14 it was Oppenheimer in San Francisco, that it was San Francisco
15 time.

16 What time would it have been in Monaco, roughly, when that
17 email was sent?

18 A 7:50 p.m.

19 Q In your experience, had you ever seen an email that was
20 transmitting wire instructions and a trade confirmation sent on
21 the last day of the settlement date?

22 A No.

23 Q This email also refers to an additional trade that was
24 done on July 27th. And I believe we discussed that. That was
25 the Facebook trade. Correct?

1 of, based on your experience, as to when the trade confirmation
2 needs to go out?

3 A Immediately. As soon as -- as soon as possible on a
4 T-plus-3 settlement period because we're working with a limited
5 time frame.

6 Q Okay. All right.

7 MR. DRESSLER: Can we have Government Exhibit 280 up
8 on the screen, please.

9 (Document displayed)

10 MR. DRESSLER: Am I talking loud enough so far?

11 BY MR. DRESSLER:

12 Q Okay. Do you recognize this email?
13 (Witness examines document)

14 A Yes.

15 Q Okay. And, what is the date of this email?

16 A July 27th.

17 Q And, the sender of the email is?

18 A Casey Cheung.

19 Q Okay. And could you read the first paragraph of that
20 email?

21 A (As read)

22 "Hello again. For the three Netflix trades per
23 the trade confirmations sent to you today, the Margin
24 Department informs me that the amount of \$1,783,940
25 is due today. This is urgent, we need this wire

1 A Correct.

2 Q All right. Now, did Mr. DeFrancisci ever send the
3 \$1,783,940 to settle this trade?

4 A No.

5 Q With regard to the Facebook trade, all right, you
6 indicated that some -- that trade was -- if I say "busted,"
7 does that have a meaning within the business that you work in?

8 A It means that it was moved to the error account, and the
9 profits were absorbed by Oppenheimer. Or paid to Oppenheimer.

10 Q Okay. And did Oppenheimer explain to you why that trade
11 was busted?

12 A Yes. Well, first I should point out that it wasn't busted
13 on this day.

14 Q I understand. Some time --

15 A But they did -- they did explain why.

16 Q Okay. Why was that?

17 A Well, I disagreed, based on the rules that I know of,
18 but --

19 Q Whatever. What is their explanation?

20 A Their explanation is that the first trade hadn't been paid
21 for yet, and so we shouldn't have traded the Facebook.

22 Q Okay.

23 A Or, it hadn't been settled yet. Even though it had been
24 closed out already.

25 Q So whatever profit was made on that trade, they kept the

1 profit. Correct?
 2 A Yes.
 3 Q And they didn't have to pay themselves a commission on it.
 4 Correct?
 5 A No.
 6 Q Okay. Based on your agreement with Mr. Gianluca
 7 DeFrancisci, was this Facebook trade -- that was part of your
 8 agreement, correct?
 9 A Yes.
 10 Q So he would have been entitled to 50 percent of the
 11 profits of that trade. Correct?
 12 A Yes.
 13 Q Okay. And, do you remember exactly -- did they send him
 14 an email -- you and him an -- strike that.
 15 Did they send you an email indicating they were busting
 16 the Facebook trade?
 17 A I think Mark called me, but I don't remember specifically
 18 whether I got an email or a call.
 19 Q Did you ever see an email where they notified
 20 Mr. DeFrancisci that the second trade had been busted?
 21 A I do recall seeing that.
 22 Q So, and someone sitting in Mr. DeFrancisci's situation
 23 would have learned that a successful trade which occurred
 24 basically on the same day as the -- as the successful buying
 25 back of stock on the 20 -- no, it wouldn't be on the same day,

1 I'm sorry.
 2 Basically, someone in Mr. DeFrancisci's position would
 3 have seen that there were two successful trades, and one of
 4 them had -- Oppenheimer decided to keep the profits. Correct?
 5 MS. HARRIS: Objection. Compound, and calls for
 6 speculation.
 7 THE COURT: Sustained.
 8 MR. DRESSLER: Okay.
 9 BY MR. DRESSLER:
 10 Q Assuming -- you have an actual recollection of seeing an
 11 email that was sent to Mr. DeFrancisci concerning the Facebook
 12 trade being rescinded?
 13 A Per -- perhaps you can -- I think it's part of this
 14 exhibit here that you just showed me.
 15 Q Okay.
 16 A The one that was just on the screen, but it was the next
 17 page, I believe.
 18 Q Oh. I missed it.
 19 A It was either the next page or the one -- it's near --
 20 around these emails.
 21 MR. DRESSLER: All right. If we can just go to Page
 22 2 of Exhibit 280.
 23 (Document displayed)
 24 BY MR. DRESSLER:
 25 Q At the very top, there's an email from Mr. Casey Cheung to

1 Mr. DeFrancisci?
 2 A Yes.
 3 Q And let me ask you this: In terms of the period of time
 4 that you have known Mr. DeFrancisci, starting whenever it
 5 started, but for a number of years before July 27, 2012, were
 6 you familiar with his email address?
 7 A Yes.
 8 Q All right. And is that his email address?
 9 A It is.
 10 Q All right. And, it indicated that -- that there were
 11 three files attached to the email.
 12 A Right. The official trade confirmations.
 13 Q Two would be for Netflix, and one for Facebook?
 14 A I believe so.
 15 Q Okay. All right. Let me look at 280.
 16 MS. HARRIS: Your Honor, Exhibit 280 is not in
 17 evidence. Mr. Dressler (Inaudible)
 18 MR. DRESSLER: Okay. Well, I would move it into --
 19 THE COURT: All right. Well, if it's not in
 20 evidence, it should not be published without consent.
 21 MR. DRESSLER: Okay. I would move it into evidence.
 22 THE COURT: All right. So he's moving 280 into
 23 evidence. Objection?
 24 MS. HARRIS: No.
 25 THE COURT: 280 is admitted.

1 (Trial Exhibit 280 received in evidence)
 2 MR. DRESSLER: It doesn't have that page. All right.
 3 (Document displayed)
 4 MR. DRESSLER: I don't think it --
 5 BY MR. DRESSLER:
 6 Q Did Mr. DeFrancisci ever send the 1 million -- strike
 7 that.
 8 At some point, were you concerned that Oppenheimer might
 9 keep all the profits from the Netflix trade because
 10 Mr. DeFrancisci had not sent in 1 million, 700?
 11 A I was told that that was possible.
 12 Q Okay. And, did you discuss that with Mr. Moskowitz?
 13 A Yes.
 14 Q Okay. Did he make a suggestion to you?
 15 A He did.
 16 Q Okay. And was that suggestion that you contact
 17 Mr. Greenberg?
 18 A Well, I mean it was -- yes. That was his suggestion.
 19 Q Did you meet with Mr. Greenberg?
 20 A Yes.
 21 Q Was that approximately on August 6th?
 22 A Yes.
 23 Q Okay. And you were in court when the Government showed
 24 Mr. Greenberg an email that he sent you on August 6th.
 25 Correct?

1 A Correct.

2 Q You met with him around lunchtime on August 6th?

3 A Yes.

4 Q Sent you an email with various conditions to lend you
5 \$1.8 million?

6 A Yes.

7 Q Okay. And how much do you recollect, in his email, how
8 much was he asking to lend you -- how much was he asking in
9 terms of financial remuneration, to lend you \$1.8 million?

10 MS. HARRIS: Objection, Your Honor. That misstates
11 Mr. Greenberg's testimony. It was -- Mr. Murray made a
12 suggestion.

13 THE COURT: Well, he's not necessarily bound by that
14 testimony. He can answer the question.

15 THE WITNESS: Would you repeat it?

16 BY MR. DRESSLER:

17 Q Yes. When you met with Mr. Greenberg, did you suggest how
18 much you were willing to pay him if he would help you settle
19 the Netflix trade?

20 A Well, it was already spoken about prior to us meeting.
21 And I had suggested -- and Mark -- well --

22 Q Let me stop you there. All right. You spoke to
23 Mr. Greenberg before you met with him?

24 A Yes.

25 Q And did you discuss what you thought would be a reasonable

1 payment to him if he would help you settle the Netflix trade?

2 A Yes.

3 Q Okay. And, what did you suggest, as what would be
4 reasonable?

5 A Well, the figure of 123,000 rings a bell, or about
6 25 percent.

7 Q Okay. And then you met with him?

8 A Yes.

9 Q And how much did he want -- after you met with him, did he
10 tell you how much he wanted?

11 A Well, it was a surprise to me. I thought we had agreed on
12 the 123. He then wanted 50 percent of the profits.

13 Q Let me stop you there. He wanted 50 percent of the
14 profits.

15 A Correct.

16 Q Did you agree with that?

17 A Um --

18 Q Yes or no?

19 A No. I did not agree to that.

20 Q You saw his email. It asked for a background check and
21 all those kinds of things?

22 A Correct.

23 Q All right. You didn't accept his -- his offer or his
24 conditions, correct?

25 A Correct.

1 Q Was it based on the fact that he wanted 50 percent of the
2 trade? Or was it based on the fact that he wanted a background
3 check?

4 A Fifty percent of the trade.

5 Q I believe Mr. Greenberg testified he met with you at
6 Starbucks about a week later?

7 A On --

8 Q After your initial meeting which was August 6th, did he
9 indicate --

10 A That's what I -- that's what I heard him testify to.

11 Q In fact, did you meet with him days -- three, four, four,
12 five days after your August 6th meeting?

13 A No, because we --

14 Q Let me just --

15 A No, we didn't.

16 Q All right.

17 A Correct.

18 Q Did something happen on August 8th, two days after your
19 meeting with Mr. Greenberg?

20 A Yes.

21 Q What happened?

22 A I got a call from Mark. And he said that, you know, they
23 needed wire instructions. They were going to just give them
24 wire instructions for the Netflix profits. And then they had
25 to -- unfortunately, he was upset that they had had to close

1 the accounts.

2 Q Okay. So around August 8th, you didn't meet with
3 Mr. Greenberg anymore, did you?

4 A No.

5 Q And in fact, Oppenheimer agreed to give you the profits,
6 minus their commission? Correct?

7 A Correct.

8 Q All right.

9 MR. DRESSLER: I just want to get a quick glass of
10 water, Your Honor.

11 THE COURT: Okay.

12 (A pause in the proceedings)

13 BY MR. DRESSLER:

14 Q I want to go back to your agreement with Mr. DeFrancisci
15 regarding the Oppenheimer account.

16 Did -- did you have discussions with Mister -- after you
17 -- after you and Mr. DeFrancisci decided to open the
18 Oppenheimer trading account together, did you have discussions
19 about where -- what would happen to any profits that were
20 generated through that account?

21 A Yes.

22 Q Okay. And, what were those discussions?

23 A We were going to form Event Trading.

24 Q Okay. And, what was Event Trading going to be?

25 A This was going to be a new fund. Dedicated exclusively to

1 these types of trades.
 2 Q And where was -- when you say "a new fund," did you mean a
 3 brokerage account of some kind?
 4 A Well, yes. It would have to have a brokerage account
 5 attached to it. So, yes.
 6 Q Okay. And, where was that brokerage account going to be
 7 located?
 8 A Interactive Brokers.
 9 Q Okay. And in what country?
 10 A In the U.S.
 11 Q All right. And, was there's going to be an Event Trading
 12 bank account set up in connection with opening the fund?
 13 A Yes.
 14 Q And was Mr. DeFrancisci -- was that going to be in the
 15 United States also?
 16 A Yes.
 17 Q Was Mr. Gianluca DeFrancisci going to be the one that
 18 opened the bank account?
 19 A No. Because he's not residing here, we decided that
 20 Giovanni would open that account.
 21 Q Okay. Now at or about the time that the Netflix trade
 22 took place, was -- based on your discussions -- strike that.
 23 Did you have -- you indicated that when you got back to
 24 the United States on March 12th or 13th, you were arrested.
 25 Correct?

1 A Correct.
 2 Q Okay. Did you have discussions -- without telling me the
 3 content, but did you have discussions with Giovanni DeFrancisci
 4 about the fact that you had been arrested?
 5 A Of course. It was all over the media.
 6 Q Okay. And indicted.
 7 A Yes.
 8 Q All right. And did you have -- around the same time, have
 9 communication with Gianluca DeFrancisci about the fact you had
 10 been arrested?
 11 A Yes. He heard about it too.
 12 Q So, when the Oppenheimer Netflix account -- the
 13 Oppenheimer Netflix account was opened on June 22nd, all right,
 14 the -- both de Franciscis knew about your legal troubles.
 15 Correct?
 16 A Correct.
 17 Q Was Gianluca DeFrancisci concerned about -- strike that.
 18 Based on your discussions with Gianluca DeFrancisci, was
 19 he aware of the publicity that your arrest had generated?
 20 A Yes.
 21 Q Okay. Was Giovanni DeFrancisci aware of the publicity
 22 that your arrest had generated?
 23 A Yes.
 24 Q Did Mr. Gianluca DeFrancisci, even though you had been
 25 indicted, was he still willing to remain as your partner for

1 the purpose of operating -- doing trades through the
 2 Oppenheimer brokerage account?
 3 A Yes. He was.
 4 Q Okay.
 5 MR. DRESSLER: Can we have Government Exhibit 296,
 6 Page 1, on the screen?
 7 It's already been introduced into evidence.
 8 THE COURT: All right.
 9 BY MR. DRESSLER:
 10 Q Even though Mr. DeFrancisci did not settle the trade, the
 11 Netflix trade, did you still consider -- did you still consider
 12 him to have a 50 percent interest in the profits generated by
 13 that trade?
 14 A Yes.
 15 Q Okay. And when you realized that Oppenheimer was going
 16 send -- was willing to pay out the \$400,000 profit, did you
 17 have discussions with Giovanni DeFrancisci which led to opening
 18 -- led to the opening of an Event Trading bank account at
 19 Citibank?
 20 A Yes.
 21 Q All right.
 22 MR. DRESSLER: Now if we can look at Exhibit 296,
 23 Page 1.
 24 (Document displayed)
 25

1 BY MR. DRESSLER:
 2 Q Have you seen these documents before?
 3 A Yes, I have.
 4 Q Okay. And, prior to the setting up of this bank account,
 5 had a brokerage account -- let me back off here. Okay.
 6 MR. DRESSLER: If you could keep that up on the
 7 screen, that would be fine.
 8 BY MR. DRESSLER:
 9 Q Was an Event Trading brokerage account created in the name
 10 of Event Trading?
 11 A Yes.
 12 Q Okay. And approximately when did that happen?
 13 A It was the end of July, I believe, or the first part of
 14 August, it was finalized.
 15 Q Okay. So, and the purpose --
 16 A Did you mean bank account? Or brokerage account?
 17 Q Brokerage account.
 18 A Yeah. The end of July, early August.
 19 Q And that was anticipated by your agreement, correct?
 20 A Yes, that was the agreement.
 21 Q Is there a reason why it wasn't set up before July -- end
 22 of July of 2012?
 23 A Um, no. I mean, no particular reason, other than we were
 24 getting the -- the paperwork in order, and the company formed
 25 and registered. That was my recollection.

1 Q All right. Let's just talk about the bank account now.
 2 All right? So, that Event Trading bank account was opened by
 3 Giovanni DeFrancisci. Correct?
 4 A Correct.
 5 MR. DRESSLER: If we can go to Exhibit 296, Page 8.
 6 (Document displayed)
 7 BY MR. DRESSLER:
 8 Q Do you see that page?
 9 A Yes.
 10 Q All right. Does it indicate on there the date the account
 11 was opened?
 12 A It says it was signed on August 15th.
 13 Q Okay.
 14 A 2012.
 15 Q And does that form indicate where it was signed?
 16 A "DOWNTOWN BOSTON."
 17 Q Okay. Based on your knowledge of Giovanni DeFrancisci and
 18 your -- does he have any association with Boston?
 19 A He does.
 20 Q And I assume we're talking about Boston, Massachusetts?
 21 A Correct.
 22 Q And so, you're not surprised to see that he opened this
 23 account in Boston.
 24 MS. HARRIS: Objection, Your Honor.
 25 THE COURT: Overruled.

1 BY MR. DRESSLER:
 2 Q Were you surprised to see that he opened this --
 3 A No. He -- he has family, I believe, in Boston. And went
 4 to school over there.
 5 Q Okay. And in terms of Mr. Giovanni DeFrancisci, you
 6 indicated your understanding, a third-party marketer?
 7 A Yes.
 8 Q Based on your years of knowing him, does he travel around
 9 a lot?
 10 A Yes. He's always traveling, and very difficult to get in
 11 touch with.
 12 Q Domestically?
 13 A He travels internationally and domestically.
 14 Q Okay. All right. With regard to this account, what was
 15 the address, if you look -- if we go back to 296, Page 1 --
 16 (Document displayed)
 17 Q What is the address that Mr. Giovanni DeFrancisci gave for
 18 Event Trading, GP, LLC, which was the business name of this
 19 account?
 20 A 580 California Street, the 4th -- or the 12th Floor, in
 21 San Francisco. And that's the office address.
 22 Q Okay. And is that the office address also of MNT?
 23 A Yes.
 24 Q Okay. And, did he have your permission to put that
 25 address on this application for opening of this account?

1 A Well, I wouldn't --
 2 Q Let me ask you -- I mean, did you -- did you know he was
 3 going to open a bank account?
 4 A It was part of our agreement, the division --
 5 Q Let's just --
 6 A Yes. It was part of our agreement, yes. I knew he was
 7 doing that. It took a little longer than it should for him to
 8 do that, but that's just Giovanni.
 9 Q Did you know it was going to be at Citibank?
 10 A I didn't know what bank it was going to be. He selected
 11 that.
 12 Q Okay. And if he put some different address other than [REDACTED]
 13 [REDACTED] -- what I'm asking you is: Did he have
 14 permission to use your address as -- the [REDACTED]
 15 address as the business address for this bank account?
 16 A Yes.
 17 Q Okay.
 18 MR. DRESSLER: Can we go to Page 2 of 296?
 19 (Document displayed)
 20 BY MR. DRESSLER:
 21 Q See it?
 22 A I see it.
 23 Q See where it says "SIGNER 1"?
 24 A I do.
 25 Q Whose name is there?

1 A Giovanni's.
 2 Q Giovanni DeFrancisci?
 3 A Correct.
 4 Q Okay. Do you see the email address there?
 5 A Yes.
 6 Q Do you recognize that email address?
 7 A I recognize it as Giovanni's email address.
 8 Q Okay. Do you see the telephone number?
 9 A Yes.
 10 Q Okay. Is that the -- was that his telephone number then?
 11 A It is. Or it was, yes.
 12 Q Okay. And it says "Percentage of Company Owned." What do
 13 you see there?
 14 A "Fifty percent."
 15 MR. DRESSLER: Can we go to Page 3?
 16 (Document displayed)
 17 BY MR. DRESSLER:
 18 Q Do you see what appears to be, on the top, a request for
 19 an online enrollment?
 20 A Yes.
 21 Q Okay. And, whose name is on that?
 22 A Giovanni.
 23 Q DeFrancisci?
 24 A DeFrancisci.
 25 MR. DRESSLER: Okay. If we go to 296, Page 6.

1 (Document displayed)
 2 BY MR. DRESSLER:
 3 Q On the top there, under "OWNER 1," do you see your name
 4 there?
 5 A Yes, I do.
 6 Q Do you see the date of birth?
 7 A Yes.
 8 Q Is that your date of birth?
 9 A It is.
 10 Q And do you see "Percentage of Company Owned"?
 11 A Yes.
 12 Q And what is the percentage?
 13 A "Fifty."
 14 MR. DRESSLER: And if we go to --
 15 BY MR. DRESSLER:
 16 Q Do you see anywhere in this application that you have
 17 signing authority on this account?
 18 A No.
 19 Q Okay. And, just answer this question yes or no: Was
 20 there a reason why, if you were 50 percent owner, you didn't
 21 have signing authority?
 22 A There is a reason. Yes.
 23 Q Okay. What was that reason?
 24 A After the publicity and arrest had transpired and I came,
 25 the de Franciscis didn't want me to have signatory power on any

1 new company we formed.
 2 Q Is another way of saying that, they didn't want your name
 3 associated with any company like this bank account -- strike
 4 that.
 5 Were they concerned about having your name on a bank
 6 account or relating to this Event Trading business because of
 7 the bad publicity of your arrest?
 8 A Well --
 9 Q Is that what you're saying?
 10 A No. That's not what I'm saying.
 11 Q What are you saying?
 12 A I'm saying that due to the publicity and the accusation
 13 that I had stolen two and a half million dollars, they didn't
 14 want my name as a signatory so they would show, if they did
 15 bring any investors in, that I was not in charge or didn't have
 16 the ability to remove funds.
 17 Q Okay.
 18 MR. DRESSLER: And can we go to 296, Page 9?
 19 (Document displayed)
 20 BY MR. DRESSLER
 21 Q Does that indicate a wire coming into this bank account
 22 for \$38,000?
 23 A Could I see the other page?
 24 Q Page 10?
 25 A I mean, is this part of the Citibank --

1 Q Yes, it is.
 2 A -- documents?
 3 Q Yes. 296, Page 9.
 4 A And your question is: Does this reflect --
 5 Q Money wired from another account into this bank account?
 6 A Yes.
 7 Q Okay. And could you -- can you tell what -- it says,
 8 "Originator: Interactive Brokers, LLC."
 9 Do you know -- let me just you this way: Do you know
 10 where that 38,000 came from?
 11 A Yes.
 12 Q Where did it come from?
 13 A It came from the Event Trading GP Interactive Brokers
 14 account.
 15 Q Okay. Was a brokerage account in the name of Event
 16 Trading set up at Interactive Brokers?
 17 A Yes.
 18 Q Okay. Did you help set that account up?
 19 A Well, I did set it up. It was part of my -- it was the
 20 division of labor.
 21 Q All right. So Giovanni was supposed to set up the bank
 22 account and you were supposed to set up the trading account?
 23 A Yes.
 24 Q In terms of creating that account, did you use your own
 25 name in any part of the application for setting up the Event

1 Trading Interactive Brokers account?
 2 A No.
 3 Q Okay. Why not?
 4 A I was following the instructions of the de Franciscis.
 5 Q Were they -- they -- did they tell you that they didn't
 6 want you to put your name on it? "Yes" or "no."
 7 A Yes.
 8 Q Okay. And did they tell you why they didn't want you to
 9 put your name on it?
 10 A Yes.
 11 Q And what did they say?
 12 A What did they tell me the reason why was?
 13 Q Yes.
 14 A Well, again, because of what happened in the media; that I
 15 had been accused of stealing two and a half million dollars.
 16 If they brought in new funds, they didn't want -- they didn't
 17 want my name -- they didn't want me to have the legal authority
 18 to remove funds or they didn't want me to have signatory
 19 authority. Just because of the accusations.
 20 Q Were they willing to let you trade that account?
 21 A Yes.
 22 Q Is that why you didn't put your name anywhere on that
 23 account?
 24 A Yes.
 25 Q Okay. Now, without going into every detail, you filled

1 out an application, an online application with Interactive
 2 Brokers, correct?
 3 A Correct.
 4 Q In the name of Event Trading?
 5 A Yes.
 6 Q Okay. We've heard testimony that -- on that application
 7 did you -- that was done in the -- in the name of Giovanni
 8 de Francisci, correct?
 9 A The signatory was Giovanni de Francisci.
 10 Q Okay. And in terms of the information regarding Giovanni
 11 de Francisci that you placed into the application, was
 12 everything accurate as far as you know?
 13 A Yes.
 14 Q Okay. Did you receive an email communication from
 15 Interactive Brokers at some point which indicated that the --
 16 that they had done some kind of background check on Giovanni
 17 de Francisci?
 18 A I don't specifically recall receiving that email, but I do
 19 recall receiving an email saying: We need a verification of
 20 address.
 21 Q For?
 22 A For --
 23 Q -- Mr. Giovanni de Francisci?
 24 A Yes.
 25 Q Okay. At that time did -- do you remember where

1 Mr. de Francisco was actually living at that time?
 2 A When the email came or --
 3 Q Yes.
 4 A He was living -- I mean, in the U.S. he really didn't
 5 have -- I mean, he lived with his girlfriend. I knew that. He
 6 had --
 7 Q Where was she located?
 8 A She was in Phoenix.
 9 Q Arizona?
 10 A Yes.
 11 Q Okay.
 12 A And I knew he had family in the Boston area. He had an
 13 aunt or someone.
 14 Q Let me stop you there. Were you aware of any resident --
 15 actual permanent legal residence for Mr. Giovanni de Francisci
 16 when you received the email from Interactive Brokers?
 17 A No.
 18 Q So, actually, you weren't able to provide an actual United
 19 States address for Mr. de Francisco at that time, correct?
 20 A Correct.
 21 Q All right. And so what did you do?
 22 A So I took my Discover bank account and I removed my name
 23 and put Giovanni's.
 24 Q And why did you do that?
 25 A Just because I was getting bogged down with all of the --

1 you know, the requests of setting up this account and I didn't
 2 have a bank statement with his address.
 3 And I also thought that they were asking for verification
 4 of the company's address, so I just did it to solve the -- the
 5 housekeeping details of opening the account.
 6 Q Okay. Were you trying to defraud Event Trading by putting
 7 that -- by PhotoShopping your Discover card?
 8 A No.
 9 Q Before you did that, had Mr. de Francisco given you
 10 permission to use his identifying information in general on the
 11 application for the Event Trading Interactive Brokers account?
 12 A Yes. That was part of our agreement.
 13 (Brief pause.)
 14 Q I'm going to ask you just a couple questions about Corinna
 15 Seibt.
 16 Did you -- were you seeking -- she contacted -- whenever
 17 it was, at some point she contacted you and you wound up
 18 handling her -- some of her investments, correct?
 19 A Correct.
 20 Q Did you -- how many times did you talk to her before you
 21 actually -- actually formalized some kind of relationship
 22 between you and her with regard to her investing some of her
 23 monies, some of her funds?
 24 A The question is how many times before?
 25 Q How many times between the time she first contacted you

1 and the time you formalized your relationship in terms of
 2 helping her with her investments, how many times would you say
 3 you talked to her before those -- between the initial contact
 4 and actually beginning to handle her investments?
 5 THE COURT: About investments? Because the testimony
 6 is that they had talked -- they were social -- I'm not sure
 7 what your time frame is. They had talked before. They were
 8 social contacts before.
 9 MR. DRESSLER: Right, but other -- I'm sorry.
 10 THE COURT: You're not including that, I assume.
 11 MR. DRESSLER: No, I'm not.
 12 BY MR. DRESSLER
 13 Q When she contacted you about helping her invest her money
 14 that she had, that was in a -- some kind of IRA account at
 15 Fidelity? You know what I'm talking about?
 16 A Yes.
 17 Q Okay. She contacted you about that, correct?
 18 A Yes.
 19 Q At some point you actually began -- you helped her or
 20 advised her with regard to opening a Pensco kind of account?
 21 A Yes.
 22 Q Okay. And she put some money directly into MNT?
 23 A Yes.
 24 Q Okay. Did you ever tell her that -- that putting her
 25 money in your hands was a low risk proposition?

1 A No.
 2 Q What did you tell her?
 3 A I told her there is no -- you know, the stock market, as
 4 she knows, because she just lost money in 2008, there are no
 5 guarantees.
 6 Q And did you make any expressions that -- you heard her
 7 testimony, correct?
 8 A Yes.
 9 Q Okay. Did you tell her that there was -- you know, that
 10 if there were losses, they would only be very small losses?
 11 A We didn't get into that. She came to me basically. She
 12 had already made up her mind that she wanted me to help her.
 13 The reason was is because the other person she was working
 14 with, she didn't -- she had a whole list of reasons she didn't
 15 want to work with this person.
 16 Q Okay. I mean, you had -- did you have -- I'm just asking
 17 you specifically whether you told her that this was a --
 18 that -- did you tell her -- did you guarantee her she wouldn't
 19 lose any money?
 20 A No. I mean, that's not something that's --
 21 Q Okay, well...
 22 Did you tell her if there was any money lost, it would be
 23 a very minor amount of money?
 24 A We didn't get into that about, you know, the specifics.
 25 She had already made up her mind --

1 Q In other words, she started -- there was about a \$40,000
 2 less than what she originally put in?
 3 A Correct.
 4 Q All right. Did you try and hide that from her?
 5 A No.
 6 Q Did she talk to you? Was she concerned about the fact of
 7 those losses?
 8 A Yes.
 9 Q Okay. Did you have discussions with her about her
 10 concerns?
 11 A Yes.
 12 Q Okay. Did she say: I want to -- give me my money, what's
 13 left of it, right now?
 14 A No.
 15 Q Was she asking your advice as to what she should do?
 16 A Yes.
 17 Q And did you give her your advice?
 18 A Yes.
 19 Q And what was the advice that you gave her?
 20 A I told her, you know: If this isn't money you need right
 21 away, you'll probably be okay longer term.
 22 Q Would you repeat your answer? I didn't hear you.
 23 A I said: If this isn't money you need right away -- like
 24 she had represented to me initially -- then you're probably
 25 going to be okay long term.

1 MS. HARRIS: Objection. Move to strike this part as
 2 nonresponsive.
 3 THE COURT: Sustain the objection.
 4 MR. DRESSLER: Okay.
 5 THE COURT: The jury is to disregard that last
 6 comment.
 7 BY MR. DRESSLER
 8 Q Okay. Before you -- did you show her your Private
 9 Placement Memorandum relating to MNT?
 10 A I gave it to her, yes.
 11 Q Okay. Did you go over every -- did she -- did you review
 12 it with her?
 13 A No.
 14 Q Does it indicate in there that in terms of -- in that PPM
 15 does it indicate that there is some risk?
 16 A It does.
 17 Q Does it indicate there was low risk, moderate risk or high
 18 risk?
 19 A Moderate risk.
 20 Q Okay. She indicated that -- I believe in her testimony,
 21 that at the end of 2009 you -- based on documents you had
 22 provided to her, all right, there have been a fairly
 23 significant loss; would that be fair to state?
 24 A I don't remember the time frame, but she did have
 25 drawdowns, yes.

1 Q Okay. Did you -- after you were arrested, did you call
 2 her and say: I was arrested?
 3 A No. I didn't have a chance to. I mean, I -- when I
 4 got --
 5 Q Just, you didn't --
 6 A No.
 7 Q Okay. All right.
 8 Did you hear from her shortly after you were arrested?
 9 A Yes.
 10 Q Was she upset?
 11 A She was -- she wanted to know what was going on, which is
 12 understandable.
 13 Q Were you represented by a lawyer then?
 14 A Was I represented by a lawyer?
 15 Q Yes.
 16 A Yes.
 17 Q Did you advise her -- did you tell her -- strike that.
 18 What did you tell her when she wanted to know what was
 19 going on?
 20 A I told her that the money had been frozen, and I told her
 21 about the -- she -- about the media allegations.
 22 Q You don't have to go into detail, but you did -- you did
 23 discuss -- gave her your thoughts?
 24 MS. HARRIS: Objection, your Honor. Can we get some
 25 foundation as to date, time, place?

1 THE COURT: Let's do that.
 2 BY MR. DRESSLER
 3 Q Was this within a month of your arrest, all right, did she
 4 call you?
 5 A It was less than that.
 6 Q Okay. Was it within days of your arrest?
 7 A Yes -- well, excuse me. My arrest, took me a couple weeks
 8 to bail out. Then when I bailed out, it was within a few days
 9 of that.
 10 Q Okay. So these questions I have been asking you about a
 11 discussion with her about what happened, was it within the time
 12 frame that you just described?
 13 A Yes.
 14 Q Were you able to give her any information beyond the fact
 15 that the money had been seized and frozen?
 16 A Just general comments.
 17 Q Your opinion about the case?
 18 A Correct.
 19 Q Okay. Did she -- I take it she wasn't satisfied with what
 20 you told her, or was she?
 21 A Actually, she -- she was -- I think she -- we left that
 22 meeting where she was kind of -- she was okay. That's he was
 23 what I thought.
 24 Q Are we talking about a personal meeting at your office?
 25 A Yes.

1 Q Is this the meeting she testified to where she showed up
 2 at your office?
 3 A It is.
 4 Q Okay. And she indicated that she saw computer screens lit
 5 up and that you seemed to still be in business?
 6 A Yes.
 7 Q All right. Is -- you heard her version of what transpired
 8 at that meeting?
 9 A Yes.
 10 Q All right. Is her version what happened?
 11 MS. HARRIS: Objection, your Honor. That's not a
 12 proper question.
 13 THE COURT: Sustained.
 14 BY MR. DRESSLER
 15 Q Did you at any time tell her that: Don't worry if you
 16 lose your money, your daddy is a doctor?
 17 A Never.
 18 Q As you sit here right now, do you know whether or not all
 19 her money is gone?
 20 A I know for a fact it's not gone.
 21 Q And are you saying that you believe that part of the funds
 22 that were seized by the Government contain some of her monies?
 23 A Yes.
 24 Q Okay.
 25 MR. DRESSLER: I think this would be a good time to

1 break, your Honor.
 2 THE COURT: All right. We'll adjourn for the day and
 3 reconvene tomorrow morning at 8:30.
 4 Just a reminder. Depending on the scheduling of how
 5 things go, I did mention last week the possibility of a full
 6 day on Friday. So if you could still keep that option open,
 7 I'd appreciate it, but we'll let you know as we progress.
 8 So we'll see you tomorrow morning. Please remember not to
 9 discuss this case with anyone, including amongst yourselves or
 10 with anyone else. Don't attempt to do any research on your own
 11 and do not form any opinions until this case is submitted to
 12 you for deliberation. Thank you.
 13 See you tomorrow morning.
 14 (Jury exits courtroom at 2:01 p.m.)
 15 THE COURT: Okay. So we'll pick up tomorrow morning.
 16 MR. DRESSLER: Yes, your Honor.
 17 THE COURT: And you're still expecting to complete by
 18 tomorrow morning your direct? Are we on schedule?
 19 MR. DRESSLER: I believe so. I'll do the best I can.
 20 THE COURT: Okay. All right. Thank you.
 21 (Whereupon at 2:02 p.m. further proceedings
 22 in the above-entitled cause was adjourned
 23 until Wednesday, October 7, 2015 at 8:15 a.m.)
 24
 25

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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

_____/s/ Debra Pas_____

Debra L. Pas, CSR 11916, CRR, RMR, RPR

_____/s/ Belle Ball_____

Belle Ball, CSR 8785, CRR, RMR, RPR

Tuesday, October 6, 2015

Volume 10
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDWARD M. CHEN

UNITED STATES OF AMERICA,)
Plaintiff,))
vs.) NO. CR 12-0278 EMC
JAMES MURRAY,)
Defendant.) San Francisco, California
) Wednesday
) October 7, 2015 8:15 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:
For Plaintiff: MELINDA HAAG
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: ROBIN HARRIS, AUSA
LLOYD FARNHAM, AUSA

For Defendant: ALAN A. DRESSLER, ESQ.
400 Montgomery Street
Suite 200
San Francisco, California 94104

Also Present: USSS AGENT ANTHONY SIMS, JR.
FBI AGENT BRIAN C. WEBER

Reported By: Debra L. Pas, CSR 11916, CRR, RMR
Belle Ball, CSR 8785, CRR, RMR
Official Reporters - US District Court

PROCEEDINGS

1
2 OCTOBER 7, 2015 8:26 A.M.
3 (Defendant present, in custody.)
4 (Proceedings held in open court, outside the presence
5 and hearing of the jury.)
6 THE CLERK: Please come to order.
7 THE COURT: Good morning, everyone.
8 MR. DRESSLER: Good morning, Your Honor.
9 THE COURT: Are you ready to continue?
10 MR. DRESSLER: Yes.
11 MR. FARNHAM: Yes, Your Honor. I had one item to
12 bring up.
13 THE COURT: Okay.
14 MR. FARNHAM: The jail call that was played, I think
15 you ruled that that could be admitted. We had a CD that had
16 all the jail calls. We wanted to separately mark that
17 particular jail call.
18 THE COURT: Yes.
19 MR. FARNHAM: So we have done that as 311A. And I
20 would like to make sure this is in evidence.
21 THE COURT: All right.
22 MR. DRESSLER: No objection.
23 THE COURT: All right, then you should submit 311A.
24 That has only that call that has been played. And it'll be
25 admitted into evidence.

1 (Trial Exhibit 311A received in evidence)
2 MR. FARNHAM: Thank you, Your Honor.
3 THE COURT: I'll make note of that. Okay. The
4 jurors are all here?
5 THE CLERK: Let me check. We were shy.
6 THE COURT: Oh, okay. You can resume the stand,
7 Mr. Murray.
8 THE DEFENDANT: I just have one quick question.
9 THE COURT: Oh.
10 (Off-the-Record discussion between Defendant and
11 Counsel)
12 THE CLERK: Judge, we're still down one juror.
13 THE COURT: Oh. Okay. I guess the jury is not ready
14 yet.
15 MR. DRESSLER: Okay. You know, there's something I
16 will bring up that is pertinent to this morning's direct
17 examination.
18 THE COURT: Yes.
19 MR. DRESSLER: The Court probably remembers my
20 cross-examination of Mr. Eckel. And I went through some
21 calculations with him about timing of investments, that was a
22 hypothetical.
23 THE COURT: The return --
24 MR. DRESSLER: Yes, yes. And, I would like to
25 present that through Mr. Murray, hopefully a little more

1 coherently. And so, we worked out in advance kind of the
2 calculation, so we can present it. But I want to do it through
3 his testimony. And, he has a little cheat sheet (indicating)
4 just for the -- for the numbers that we are going to use. And,
5 I'm just asking whether he can just refer to that. It'll save
6 a lot of time.
7 THE COURT: Is that --
8 MS. HARRIS: Well, I think we would like to see that.
9 THE COURT: Yeah, you should show that. If you are
10 going to rely on anything, it's almost like refreshing
11 recollection. Each side should see it.
12 MR. DRESSLER: It is, and --
13 (Off-the-Record discussion between Defendant and
14 Counsel)
15 MR. DRESSLER: Doesn't have all the numbers. It just
16 has kind of the final division.
17 (Document tendered)
18 MS. HARRIS: And this is a hypothetical?
19 MR. DRESSLER: It is -- it's a hypothetical based on
20 -- it explained his conversations with Mr. Eckel about using
21 the audits.
22 MS. HARRIS: So Your Honor, I think the way this
23 should be done is that Mr. Dressler asks to approach the
24 witness and, asks him what it is that he's referring to, so
25 that the jury knows this was drafted by Mr. Murray.

1 THE COURT: No, I think that's fair.
 2 MR. DRESSLER: Yeah.
 3 THE COURT: That is.
 4 MR. DRESSLER: Yeah, that's fine.
 5 THE COURT: That he is using that to refresh his
 6 recollection.
 7 MR. DRESSLER: That's fine.
 8 THE COURT: All right.
 9 THE CLERK: They're here.
 10 THE COURT: All right, so the jurors are here. All
 11 right. As soon as he takes the stand, we will bring the jury
 12 in.
 13 (Reporter interruption)
 14 THE CLERK: Oh, yes. Thank you. Thank you.
 15 THE COURT: Oh, there is a note.
 16 THE CLERK: I'm so sorry. Sorry.
 17 THE COURT: Thank you. Thank you. Note from the
 18 jury asks:
 19 "Can you ask Mr. Dressler to always specify
 20 which Mr. de Francisci he refers to, with first name,
 21 ideally?"
 22 MR. DRESSLER: I thought I did that, but I will --
 23 THE COURT: I thought you did that. But you might
 24 want to underscore like, you know --
 25 MR. DRESSLER: "Giovanni."

1 THE COURT: "Giovanni," "the son," something like
 2 that. Unfortunately they both begin with G's, so that makes it
 3 complicated.
 4 MR. DRESSLER: I don't think it's going to come up
 5 very much.
 6 THE COURT: All right.
 7 MR. DRESSLER: But if it does, I will do it.
 8 THE COURT: Good.
 9 (The following proceedings were held in the presence
 10 of the Jury)
 11 THE COURT: All right. Have a seat, everyone. And
 12 good morning, ladies and gentlemen. We are going to continue
 13 the direct examination of Mr. Murray.
 14 So --
 15 MR. DRESSLER: Thank you, Your Honor. Good morning,
 16 ladies and gentlemen.
 17 JAMES MURRAY,
 18 called as a witness for the Defendant herein, having been
 19 previously sworn, resumed the stand and testified further as
 20 follows:
 21 DIRECT EXAMINATION RESUMED
 22 BY MR. DRESSLER:
 23 Q Mr. Murray, I'm going to move into a different area now
 24 and talk about your interactions with Mr. Eckel.
 25 Before you were contacted by Mr. Eckel -- in the period

1 directly within the month before being contacted by Mr. Eckel,
 2 let's say, I want to ask you about whether or not you had --
 3 were engaged in certain activities with regard to marketing
 4 Market Neutral Trading.
 5 And could you describe to the jury the types of -- the
 6 avenues that are available to market hedge funds at the time
 7 that you met Mr. Eckel?
 8 A Sure. The alternative -- alternative investment fund
 9 business has a wide variety of websites. Because of the size
 10 of the business, there are a number of websites that you can
 11 advertise your alternative investment fund on. They don't
 12 charge a fee. They're very well-trafficked. And it's actually
 13 a very good source of getting you clients.
 14 Q Let me stop you there. Was CS First Boston/Tremont one of
 15 those websites?
 16 A Yes. They're the leader.
 17 Q Okay. And did they charge, if you had wanted to -- you
 18 weren't advertising on that website when you met Mr. Eckel?
 19 A No.
 20 Q Okay. And if you had, would they have charged you for the
 21 services?
 22 A No. The way they make their profit is similar to a lot of
 23 online companies these days. They do it through advertising,
 24 third parties.
 25 Q Are there other websites that are available for

1 advertising a fund such as yours at the time?
 2 A There's multiple other websites also, similar to the CS
 3 First Boston.
 4 Q Were you advertising on any of those websites?
 5 A No.
 6 Q Were you doing any print advertising?
 7 A You mean in the media?
 8 Q In the media?
 9 A No.
 10 Q And how about by email or any electronic form of
 11 advertising?
 12 A Well, the only email I did was basically communicating
 13 with separately-managed account prospects.
 14 Q Okay. And could you just very briefly describe what a
 15 separate -- what you mean by that?
 16 A Well, a separately-managed account is an account that is
 17 owned by the investor. My role would be trading only. There's
 18 no administration, there's no reporting done. My sole role is
 19 trading. There's no access to any investor funds. They can
 20 see my trades real time as they are being placed so they can
 21 monitor me and my trading activity.
 22 And that's -- I would say about 95 percent of all
 23 separately-managed accounts are run that way.
 24 Q Okay. Thank you. When you spoke with Mr. Eckel for the
 25 first time, did you -- did you discuss his ability to get you

1 introductions to investors that were looking for people to do
 2 separately-managed account type trade?
 3 A Yes.
 4 Q And, did you talk to him or did he talk to you about -- or
 5 make you a proposal about his abilities to find direct -- help
 6 you locate and market MNT for the purpose of locating direct
 7 investors in MNT, itself?
 8 A You mean into the separately-managed accounts?
 9 Q No, into MNT, your hedge fund.
 10 A He offered both. That was part of his service. He came
 11 to me and told me he had access to both types.
 12 Q Okay. And did you tell him you were interested in his
 13 separate -- his ability to manage -- introduce you to people,
 14 investors that had separately-managed accounts?
 15 A Yes. That was the attraction of using Paul.
 16 Q Okay. And with regard to attracting direct investors into
 17 MNT, did you indicate to him that you were interested in
 18 pursuing that, also?
 19 A Pursuing what?
 20 Q His services of marketing MNT in order to attract people
 21 who would directly invest in MNT.
 22 A I -- I don't understand --
 23 Q Okay. Aside from being able to locate investors who might
 24 want to utilize your services for separately-managed accounts,
 25 in addition to that, all right, were you interested in his

1 ability to attract people who would invest in MNT directly?
 2 A Initially, no. I had told him that I didn't think raising
 3 money directly would be -- would be possible because of the --
 4 the administrator and the auditor are no-name auditors and
 5 administrators. And I didn't think that it would be possible
 6 for him to do that.
 7 Q And when you say "no-name auditors and administrators,"
 8 are you referring to Jones Moore & Associates and HF Fund
 9 Administrators?
 10 A Correct.
 11 Q And did he make a suggestion as to what you should -- in
 12 terms of that, did he make a suggestion?
 13 A Yeah. He said that investors don't care about who the
 14 service providers are regarding the previous investors' money,
 15 but they care primarily about who the service provider is going
 16 to be to oversee their money. And so he proposed that if we
 17 changed service providers, that this would -- this would be
 18 something he could -- he could do.
 19 Q Okay. And so did you agree with -- did you -- at some
 20 point did you have a written agreement with him with regard to
 21 both aspects of his services?
 22 A I had one written agreement. It had an addendum to it, is
 23 what I recall. And I don't remember if it -- if it broke down
 24 like what percentage of his time would be spent marketing on --
 25 on which, separately managed accounts or direct investments. I

1 don't think it did.
 2 Q Okay. And did he make any suggestion about upgrading or
 3 updating the -- some of the documents that were already in
 4 existence with regard to MNT, such as the PPM or the DDQ?
 5 A Yes, he did.
 6 Q And just again, briefly, the PPM is what?
 7 A Private placement memorandum.
 8 Q And could you give the jury a quick description of what
 9 that is?
 10 A It basically is the legal document that describes all the
 11 risks. It's a general overview of the investment. Tax issues.
 12 Goes into some details about some of the types of investments
 13 and securities that might be made on behalf of the fund. But
 14 it's just generally a legal document.
 15 Q Okay. And how about the DDQ?
 16 A Well, a DDQ is not prepared by a lawyer. Is that --
 17 Q Okay. So, then, he didn't -- did he ask you to upgrade
 18 that or did he want to see your DDQ?
 19 A He did. He wanted to upgrade it -- well, he wanted to see
 20 it, and then possibly upgrade it to the type of format that he
 21 typically uses.
 22 Q Okay. And did he recommend that you hire a law firm?
 23 A Yes. That was to do the -- to complete the new documents.
 24 Q Okay. And did you agree to do those things?
 25 A Yes.

1 Q Did he ask for copies of prior audits?
 2 A Like?
 3 Q By whoever audited your company?
 4 A Yes.
 5 Q And did you give them to him directly? Or did he get them
 6 by some other method?
 7 A No. I had Jones Moore send it directly to him.
 8 Q And prior to engaging his services, did you have a
 9 discussion with him about whether or not those audits should be
 10 used as a marketing tool to attract individual investors who
 11 wanted to invest directly into MNT?
 12 A Prior to him receiving those audits?
 13 Q Yes.
 14 A Did we have a conversation immediately -- not prior to.
 15 He had asked me after he received them, I believe he noted that
 16 there was a disclaimer in the email from JMA saying this is not
 17 marketing material. And this is not confirmation of historical
 18 performance, not to be distributed. A legal disclaimer.
 19 He talked to me about it. And at that point I explained
 20 to him the details of why the audit is not a marketing tool.
 21 Q Okay. Mr. Murray, you were in the courtroom --
 22 MR. DRESSLER: Can you turn the ELMO on?
 23 THE CLERK: Sure.
 24 BY MR. DRESSLER:
 25 Q You were in the courtroom when I questioned Mr. Eckel and

1 gave him a hypothetical regarding why an audit is not a
 2 confirmation of historical -- historical -- confirmation of
 3 historical returns. Do you remember that testimony?
 4 A I do.
 5 Q Okay. What I would like to do is to have you explain --
 6 MR. DRESSLER: Actually, can we go to 156, Page 11
 7 first?
 8 Yeah.
 9 THE WITNESS: My screen is not on. I think it needs
 10 to be powered on.
 11 THE COURT: I think you have to reboot again.
 12 MS. ARAUZHAASE: Nothing is coming up --
 13 MR. DRESSLER: I'm going to grab Exhibit 156.
 14 THE COURT: Okay.
 15 MR. DRESSLER: The hard copy, while we're doing this.
 16 THE COURT: Are we on the right input? Is it
 17 registering?
 18 THE CLERK: (Nods head)
 19 MR. DRESSLER: I can proceed for the moment, at
 20 least.
 21 (Document displayed)
 22 MR. DRESSLER: Here we go.
 23 BY MR. DRESSLER:
 24 Q All right. Mr. Murray, do you see the last paragraph
 25 there?

1 A I'm not seeing it.
 2 Q You are not seeing it? All right. Maybe --
 3 (Document taken off display)
 4 THE WITNESS: It's because my screen's not on, not
 5 because --
 6 THE COURT: Yeah, you ought to try that.
 7 MR. DRESSLER: If I can approach Mr. Murray, I'll
 8 have him read it.
 9 THE COURT: Let's try to get the thing -- Tracy, can
 10 you --
 11 THE CLERK: Yeah.
 12 THE WITNESS: It's on now.
 13 THE COURT: Now it's on.
 14 MR. DRESSLER: Okay. Can you --
 15 THE COURT: It's on the ELMO right now.
 16 MR. DRESSLER: All right. I'm going to show you
 17 Exhibit 156, Page 11.
 18 (Document displayed)
 19 BY MR. DRESSLER:
 20 Q Ask you to -- do you see the last paragraph?
 21 A Yes, I do.
 22 Q Could you read that for the jury?
 23 A (As read)
 24 "Financial highlights are calculated for the
 25 member class taken as a whole. And individual

1 member's return and ratios may vary based on
 2 different management fee and incentive arrangements,
 3 and the timing of capital transactions and/or capital
 4 withdrawals."
 5 MR. DRESSLER: I'm handing Exhibit 156 back to the
 6 clerk, just for the record.
 7 BY MR. DRESSLER:
 8 Q So I'm going to ask you some questions, and I'm going to
 9 try and at least jot down your answers. Okay? And to
 10 illustrate what that paragraph means. All right?
 11 A All right.
 12 Q Okay. And so the -- the hypothetical I'm going to ask you
 13 is going to involve two investors over a 12-month period. All
 14 right?
 15 A Okay.
 16 Q Okay. So, let's start with Investor No. 1.
 17 A All right.
 18 Q Start with Investor No. 1. Investor No. 1 invests in
 19 January of our hypothetical year. Can you give me that?
 20 A He invests, yes, January 1st, \$1 million. And the fund
 21 returns 10 percent in the first month.
 22 Excuse me. Let's -- the fund loses 10 percent in the
 23 first month.
 24 Q All right.
 25 (Document displayed)

1 MR. DRESSLER: Can everybody read my terrible
 2 printing?
 3 (Jury indicates in the affirmative)
 4 MR. DRESSLER: All right. Okay.
 5 BY MR. DRESSLER:
 6 Q So at the end of the first month, how much -- Investor
 7 No. 1 has lost 10 percent, leaving Investor No. 1 with a
 8 balance of --
 9 A 900,000.
 10 Q Okay. So I'm going to write "End of 1st month, Investor
 11 No. 1 has 900,000."
 12 (Counsel writes on document)
 13 Q At the end of the first month, Investor No. 1 has 900,000
 14 left. Correct?
 15 A Correct.
 16 Q All right. Let's go to Month 2, which would be February
 17 1st. And talk about Investor No. 2.
 18 A Okay.
 19 (Counsel writes on document)
 20 Q How much does Investor No. 2 invest?
 21 A Say, 3 million.
 22 (Counsel writes on document)
 23 Q And how does the fund perform in February?
 24 A Let's say it makes 10 percent.
 25 (Counsel writes on document)

1 Q All right. So at the end of February, how would you
2 calculate how much Investor No. 1 has in the fund as of the end
3 of February?
4 A Investor No. 1 made 10 percent in February, so that would
5 be 10 percent of 900,000. Or 90,000.
6 (Counsel writes on document)
7 Q So at the end of February, Investor 1 has made 10 percent
8 of 900,000. Which is 90,000. So how much does Investor No. 1
9 have in the fund at the end of February?
10 A 990,000.
11 (Counsel writes on document)
12 Q And with regard to Investor No. 2, how much does Investor
13 No. 2 have in the fund?
14 A They have the 3 million, plus whatever they made in the
15 second month, which would be 10 percent of 3 million. That's
16 3.3 million.
17 (Counsel writes on document)
18 A Or 300 -- 3,300,000. Excuse me.
19 Q So at the end of February, Investor 1 has 990,000 and
20 Investor No. 2 has 3,300,000?
21 A Correct.
22 Q All right. Now, with regard to March through the end of
23 December, all right, for the purposes of this hypothetical, we
24 are going to assume that the fund neither made money or lost
25 money in any month, so that for each of the next ten months,

1 the fund had a zero percent gain or loss. All right?
2 A That's possible.
3 Q Okay.
4 (Counsel writes on document)
5 Q So March through December, for each of those months, the
6 fund has zero percent gain or loss. All right?
7 So, at the end of the year, how much has the fund actually
8 made?
9 A Well, it would be the 300,000 minus 10,000, which is what
10 Investor 1 has lost. So it's 290,000.
11 (Counsel writes on document)
12 Q 300,000 minus the 10,000.
13 A Right.
14 (Counsel writes on document)
15 Q Investor 1 lost. All right. So, the audits that Jones
16 Moore did were average asset-weighted?
17 A Yes.
18 Q Okay.
19 A That's disclosed in -- I believe it's in the -- Page 11.
20 Q Okay. And are you familiar enough with how that kind of
21 audit is prepared to explain to the jury how -- how an average
22 asset-weighted calculation is done?
23 A Yes.
24 Q Okay. So, how is it -- how is that done?
25 A So, you -- you take every month, and add up how much was

1 invested in each month.
2 Q Okay.
3 A So Month 1 is 1 million. Month 2 is 3 million plus the
4 1 million, which is 4 million.
5 (Counsel writes on document)
6 Q So there's 3 million plus 1 million?
7 A Which is 4 million.
8 Q All right.
9 A And the remaining months are also 4 million.
10 Q Okay. So Months 3 through 12 also 4 million?
11 (Counsel writes on document)
12 A Correct.
13 Q Okay.
14 A You total, you total those up.
15 Q All right. And what does that --
16 A I believe --
17 MR. DRESSLER: Oh. We've discussed this. I'm going
18 to approach Mr. Murray, and he has a little, for lack of a
19 better term, cheat sheet to refresh his recollection of what
20 this calculation is.
21 THE COURT: These are his calculations, already
22 prepared. Right?
23 MR. DRESSLER: They are.
24 (Defendant examines document)
25 THE DEFENDANT: Okay, so the total is 44 million.

1 And then you need to divide that by the number of months.
2 BY MR. DRESSLER:
3 Q So, let me stop you there.
4 (Counsel writes on document)
5 Q So --
6 THE COURT: Is it 44 million? Or 45 million?
7 MR. DRESSLER: Let me ask him. I can ask him a
8 question to clarify that, Your Honor.
9 THE COURT: Okay.
10 BY MR. DRESSLER:
11 Q So how do you get to the 44 million?
12 A You add 1 million for January, plus the 4 million that was
13 in February. And then the remaining ten months are 4 million,
14 also. So ten times 4 million is 40 million plus 4 is
15 44 million.
16 THE COURT: What about the January?
17 THE WITNESS: January was only 1 million.
18 THE COURT: You add that in? Or you don't add that
19 in?
20 THE WITNESS: You do add that in.
21 THE COURT: Doesn't that come to 45?
22 MR. DRESSLER: It's 1 million --
23 THE COURT: Oh, I got it.
24 MR. DRESSLER: Yeah.
25 THE COURT: Okay.

1 MR. DRESSLER: It only took me a week to figure this
 2 out, myself.
 3 BY MR. DRESSLER:
 4 Q So yeah, 44 million is the average amount of --
 5 A That's the average assets. Those are the average assets
 6 that were invested for the year.
 7 Q Okay. And you divide that by the --
 8 A The total amount of profit or loss in this case --
 9 Q Now wait. Do you divide the 44 million now by 12?
 10 A Oh, yes. You do.
 11 Q Okay.
 12 A You have to get the average.
 13 Q For the year.
 14 A Right.
 15 Q Correct? And if you divide that by 12, what do you get?
 16 (Counsel writes on document)
 17 A Three-point -- 3,666,666.
 18 Q And that's the average amount of money in the hedge fund
 19 over the 12-month period?
 20 A Correct.
 21 Q And then how do you determine the average asset-weighted
 22 return?
 23 A You divide the total profit or loss by that average.
 24 Q Okay. And in this case, the total profit, after taking
 25 into account the loss, is that the 290,000 figure?

1 A It is.
 2 Q Okay. I have it backwards. So you have 290,000 divided
 3 by \$3,666,666. Correct?
 4 A Correct.
 5 Q And have you done that calculation?
 6 A I have.
 7 Q And what is the -- what does it come out?
 8 A That's a positive 7.9 percent.
 9 Q All right. So that's the average asset-weighted return
 10 for the fund --
 11 A As a whole. Member class taken is as a whole.
 12 Q So now Investor No. 1, all right, started off with
 13 1 million. Right?
 14 A Correct.
 15 (Counsel writes on document)
 16 Q At the end of the year, he has 990,000?
 17 A Correct.
 18 Q And that means he has a loss of...
 19 A One percent. Or 10,000.
 20 Q Okay.
 21 (Counsel writes on document)
 22 Q And Investor No. 2 started off with 3 million.
 23 (Counsel writes on document)
 24 Q He made 300,000?
 25 A Yes.

1 Q He has a gain of --
 2 A Ten percent.
 3 (Counsel writes on document)
 4 Q All right.
 5 (Document taken off display)
 6 Q So even though, under our hypothetical, Investor No. 1 was
 7 in the fund the entire year -- correct?
 8 A Yes. They were in from January 1st to until
 9 December 31st. The entire period.
 10 Q Okay. So, even though that investor was in the -- in for
 11 the entire year, and even though the fund made 7.9 percent,
 12 according to the average asset-weighted calculation, Investor 1
 13 still suffered a loss. Correct?
 14 A Correct.
 15 Q All right.
 16 MR. DRESSLER: Can we have -- is it not working?
 17 She's not even here. All right.
 18 THE CLERK: You have to switch from the ELMO to that,
 19 so do you want to go to --
 20 MR. DRESSLER: Yeah, but --
 21 THE CLERK: Oh, she's not there.
 22 MR. DRESSLER: I'll get Exhibit 166.
 23 THE CLERK: Okay.
 24 MR. FARNHAM: The gear is down. I'm sorry.
 25 THE CLERK: Okay.

1 BY MR. DRESSLER:
 2 Q All right. So I'm going to go to 166, Page 6 and 7. And
 3 I'm going to show you --
 4 (Document displayed)
 5 Q If you could look at the -- do you see this?
 6 A Yes.
 7 Q All right.
 8 A I can't see the top part of the email, but I --
 9 Q Okay. I'm going to ask you about the bottom part.
 10 A Okay.
 11 Q Did you receive an email from -- on the bottom there, does
 12 that show an email from Paul Eckel to you on Monday,
 13 October 25th at 12:51 p.m.?
 14 A It does.
 15 Q And it says:
 16 "Subject: Audit versus return report?"
 17 A Yes.
 18 Q Okay. Could you read what Mr. Eckel asks you?
 19 A (As read)
 20 "Jim, Can you explain to me again the reason for
 21 the difference? The performance report is AUM
 22 weighted."
 23 Q I'm going to go the next page.
 24 (Document displayed)
 25 A (As read)

1 "And the Audit is not?"
 2 With a question mark.
 3 Q And attached to that email, does it appear to be an
 4 excerpt of an email Mr. Eckel received from a potential
 5 investor?
 6 A It is.
 7 Q Okay. And can you read that?
 8 A (As read)
 9 "Thanks for the audits and DDQ. I will review
 10 and revert with potential questions. I do not
 11 understand why there can be a performance difference
 12 between factsheet and auditing. The auditing -- the
 13 audit states that the total return is based on the
 14 changes in value during the period of..."
 15 Um --
 16 Q "Theoretical?"
 17 A "Theoretical," yes.
 18 Q Can you see it?
 19 THE COURT: You can zoom that up.
 20 THE WITNESS: I can't really read --
 21 THE COURT: No, Mr. Dressler can zoom the ELMO.
 22 THE WITNESS: The other way. There you go. Okay,
 23 there it is (As read):
 24 "...theoretical investment made at the beginning
 25 of the period. It is therefore clearly not an asset

1 weighted return and should be in line with the
 2 factsheet. I assume that there are a) no side
 3 pockets, b) different fee structures, and c) no
 4 different portfolios for different investors. I.e.
 5 eligible for hot issues or not?"
 6 BY MR. DRESSLER:
 7 Q All right. And then, does it outline the difference
 8 between the factsheet performance and the audited performance
 9 for various years?
 10 A It does.
 11 Q And in terms of factsheet performance, can you tell the
 12 jury where this investor would have gotten that information?
 13 A Off of Mr. Eckel's one-page summary.
 14 Q Okay. And then the last paragraph, can you read that?
 15 A (As read)
 16 "Why does the manager calculate and report
 17 different - always better - performance numbers? I
 18 would expect that he would or should use the same
 19 calculation method as the administrator and auditor.
 20 Can you please explain in detail where the difference
 21 comes from and why performance it is not reported as
 22 calculated by the auditor?"
 23 Q Okay. Now, prior to receiving this email, Exhibit 166,
 24 Page 6 and 7, from Mr. Eckel, had you had discussions with him
 25 about whether or not the audits should be used as a marketing

1 tool?
 2 A Yes.
 3 Q And what did you tell him?
 4 A I told him that they should not be used as a marketing
 5 tool.
 6 Q Because?
 7 A And went -- and I explained this, what I'm explaining
 8 here, to Paul.
 9 Q Okay. And you explained that to him?
 10 A I explained it, yes.
 11 Q And did you explain it to him before this email?
 12 A Yes.
 13 Q Did he continue -- did this email, when you received this
 14 email, did it indicate to you that he was not following your
 15 advice with regard to using the audits as a marketing tool?
 16 A Yes. And it also indicates that he's misrepresenting what
 17 an audit is. An audit is not confirmation of historical
 18 performance.
 19 Q Okay. So you called him after you received this email?
 20 A Yes.
 21 Q And what did you say to him?
 22 A I -- we talked about this very subject, and I told him
 23 that, you know, we already went over this, and I thought we had
 24 decided that this is not a marketing tool.
 25 Q Okay.

1 A And clearly, this is -- this investor has misunderstood
 2 what -- what, you know, this whole -- the difference between an
 3 audit and the historical performance, which, it led me to
 4 believe that Paul didn't understand what I was talking about.
 5 Q Okay.
 6 MR. DRESSLER: I'm going to return Exhibit 166.
 7 THE CLERK: Thank you.
 8 MR. DRESSLER: And I'm going to grab Exhibit 162.
 9 BY MR. DRESSLER:
 10 Q I'm going to show you Page 1 of 162 and ask if you have
 11 seen this document before.
 12 (Document displayed)
 13 A Yes. I believe it's the solic- -- the agreement I had
 14 with Paul Eckel.
 15 Q I'm going to show you Exhibit 162 at Page 6.
 16 (Document displayed)
 17 Q Is that your signature on that page?
 18 A It is.
 19 Q Is that Paul Eckel's signature on that page?
 20 A It is.
 21 Q Now I'm going to go back to Page 1.
 22 (Document displayed)
 23 Q And I'm going to focus on No. 1 there. It says
 24 "Solicitation Activities."
 25 A Yes.

1 Q And then there is Subparagraph B?

2 A Yes.

3 Q And then there's Subparagraph small-cap iii?

4 A Yes.

5 Q Do you see that?

6 A Yes.

7 Q Could you read that?

8 A (As read)

9 "Shall not deliver to prospective investors any

10 written materials concerning the investment manager,

11 the funds (other than copies of the offering..."

12 Q Stop there, and I'll go to Page 2.

13 (Document displayed)

14 A (As read)

15 "...memorandums) or managed accounts that have

16 not been specifically approved in writing by the

17 investment manager prior to such delivery."

18 MR. DRESSLER: I'm returning 162 to the clerk.

19 BY MR. DRESSLER:

20 Q Did you ever give Mr. Eckel oral authority -- bad term.

21 Did you ever tell Mr. Eckel during any conversation that

22 you had with him that he was authorized to send the JMA audits

23 to investors or show investors the JMA audits?

24 A No.

25 Q Did you ever give him written authorization to give or

1 show those audits to investors?

2 A No.

3 Q All right. Did you make arrangements for JMA to provide

4 those audits to Mr. Eckel?

5 A Yes.

6 Q All right. And how did you do that?

7 A By email.

8 Q Did you create these audits? Or did JMA?

9 Strike that.

10 When I refer to "JMA" I'm talking about, for you and for

11 the jury, Jones Moore & Associates. Okay?

12 Did you cause JMA to send -- I asked you that. Did you --

13 did you create these audits? Or did JMA create these audits?

14 A I did not create these audits.

15 Q And you did make arrangements to have those audits sent to

16 Mr. Eckel. Correct?

17 A Yes.

18 Q And what was your purpose in sending those audits to

19 Mr. Eckel?

20 A To show that there is no qualified -- that the audit is

21 unqualified, which directly relates to startup costs being

22 amortized. So that -- some funds, they have a large cost that

23 they need to -- that they will amortize and carry forward to

24 their investors. So some investors when they buy into the fund

25 are responsible for those expenses.

1 This was to show that there are -- there were no expenses

2 that were amortized.

3 Q Okay. And was the purpose of that to -- was that

4 something that would attract -- in your mind, would attract

5 investors to MNT, the fact they wouldn't have to pay those

6 extra expenses?

7 A No. It's not really something to attract them. It's just

8 something to disclose to them, that there's -- there's no

9 startup cost.

10 Q Okay. I want to ask you some questions about

11 Mr. Hornstein.

12 Did you -- Mr. Hornstein represented you, actually

13 represented you in some kind of civil action. Correct?

14 A Correct.

15 Q All right. That had something to do with B of A?

16 A Yes.

17 Q In your mind, was that somehow security-related?

18 A Yes.

19 Q Okay. And in any event, at some point, you put

20 Mr. Hornstein's name as the legal counsel?

21 A Yes.

22 Q For MNT Investment? MNT?

23 A Well, I -- there's a question: Who is the legal counsel?

24 And I listed Val Hornstein.

25 Q Okay. And did you ask him in advance whether or not you

1 could name him as legal counsel on the questionnaire?

2 A No.

3 Q Okay. Why not?

4 A Because what I understood "legal counsel" to mean is that

5 if you need a lawyer, who would you get counsel from. Who

6 would you go to.

7 Q Okay. In other words, if the fund needed a lawyer.

8 A Correct.

9 Q All right. Now, I take it you have reviewed the JMA

10 audits for the years 2000- -- what years did JMA do the audits?

11 A 2006 through 2010.

12 Q Okay. And I take it you reviewed those in preparation for

13 this case, and even before this case, correct?

14 A Correct.

15 Q And in terms of those audits, all right, over the course

16 of the period of time that was audited, all right, do those

17 audits show that the assets under management of MNT were

18 increasing or decreasing?

19 A Decreasing.

20 Q That's between 2006 and 2010?

21 A Correct.

22 Q And based on your experience in the industry that you work

23 in, based on your experience with hedge funds, the fact that

24 assets are declining over time, is that a good thing or bad

25 thing in terms of potential investors?

1 A It is a bad thing.
 2 Q And why is that?
 3 A Because it indicates less interest in the investment,
 4 rather than more interest.
 5 Q Okay.
 6 MR. DRESSLER: Are we up and running? Can we go to
 7 Exhibit 140, please, Government Exhibit 140?
 8 (Document displayed)
 9 BY MR. DRESSLER:
 10 Q Okay. Can you see Exhibit 140, Page 1?
 11 A I see -- yes, I do.
 12 Q Okay. Let me ask you a preliminary question. Why did you
 13 hire CCS Financial in 2009?
 14 A One of my partners had an existing business relationship
 15 with them, and requested that I use them.
 16 Q Okay. Now, the highlighted section of Exhibit 140 shows
 17 September, October, November, December, a sudden and
 18 significant decrease in the performance of the fund.
 19 Would that be a correct characterization?
 20 A It is.
 21 Q Okay. And why does that exhibit show that decrease in
 22 performance?
 23 A At the time, that represents a new class. A new share
 24 class of investing.
 25 Q And, could you explain that further?

1 A There were two or three partners that wanted to do
 2 self-directed trades with their capital account. So, this
 3 class was created.
 4 Q And was it that class that lost significant amounts of
 5 money?
 6 A Yes.
 7 Q Okay. And were you required to report those losses as
 8 part of the performance of the fund as a whole?
 9 A Yes.
 10 Q Okay. All right.
 11 A And those are -- those are -- these losses are included.
 12 Q Okay. Thank you. I'll move on now. I'm going to ask you
 13 some questions about David Lowe.
 14 When did you first meet David Lowe, either in person or
 15 electronically?
 16 A Um, I met him over the phone in late 2007 or early 2008.
 17 Q Okay. And did you call him, or did he call you?
 18 A Called me.
 19 Q And did you indicate -- had someone referred him to you?
 20 A Yes.
 21 Q And who was that?
 22 A It was miss -- Gianluca de Francisci.
 23 Q And, can you just give the jury a brief summary of what
 24 that initial conversation entailed?
 25 A It was about investing. He was interested in my trading.

1 Q And during that first conversation, did you discuss your
 2 trading strategy?
 3 A Yes. Generally.
 4 Q Okay. And did you have followup calls with him after that
 5 initial telephone call?
 6 A Yes, I did. Several.
 7 Q Okay. And, did you -- during those subsequent calls, did
 8 you continue to discuss your trading strategy?
 9 A Yes.
 10 Q All right. And during the subsequent calls, did he tell
 11 you who he was and what his business background was, what his
 12 profession was, that type of thing?
 13 A He did. He told me he was the ex-president of -- excuse
 14 me -- Orion Pictures, based in Los Angeles. And he was
 15 currently the CEO of Eurovision, PLC, which traded publicly on
 16 the London Stock Exchange.
 17 And he told me he was an attorney, a British attorney, and
 18 he represented several wealthy, large wealthy families. He
 19 mentioned the Saudi royal family, and an Israeli, and then some
 20 European banking families.
 21 Q Okay. And did you believe him?
 22 A I did.
 23 Q And did he also talk to you about -- did he indicate
 24 whether or not he had a group of investors in Europe?
 25 A Yes, he did.

1 Q Okay. And what did he tell you about those investors?
 2 A He said there's large pool of capital that's been managed,
 3 and I think during that time period, had lost a substantial
 4 amount of money. And they were looking for new -- new ideas.
 5 Q I take it -- let me ask you this.
 6 During these conversations, at some point did he indicate
 7 he was interested in you actually having these investors --
 8 having these European investors invest in your -- in MNT?
 9 A He did, yes.
 10 Q And did he indicate to you the amount of money that these
 11 investors had to invest?
 12 A Well, he didn't specify the ceiling. The amount he was
 13 talking about with me was 20 million.
 14 Q Okay. And were you interested in having 20 million
 15 invested in MNT at that time?
 16 A I was, of course.
 17 Q Okay. And did you then discuss conditions and -- let me
 18 withdraw that.
 19 Did you discuss the mechanics of how that kind of
 20 investment would be made?
 21 A Yes.
 22 Q Okay. Did -- did Mr. Lowe indicate that there was some
 23 conditions that he would require to make his investors
 24 comfortable in investing in the United States?
 25 A Yes. In 2000- -- yes, he did.

1 Q And what were those conditions?
 2 A The conditions were that there was a -- a large concern in
 3 the market at that time in 2000- -- 2007, 2008. The worldwide
 4 banking system was under a lot of pressure. And there was
 5 concern --
 6 MS. HARRIS: Your Honor, I move to strike. This is a
 7 narrative, not --
 8 THE COURT: Sustained. There was a specific
 9 question. Answer the specific question.
 10 MR. DRESSLER: Okay.
 11 THE WITNESS: All right.
 12 BY MR. DRESSLER:
 13 Q So, what were one of the conditions that he indicated
 14 would make his investors feel more comfortable?
 15 A At the time I had no auditor and I had no administrator.
 16 He needed that to happen.
 17 Q Okay. Let me ask you this, while we're at this point.
 18 You didn't have any auditing firm?
 19 A No.
 20 THE COURT: You need to set a time frame.
 21 MR. DRESSLER: At the end of 2007, beginning in 2008.
 22 THE WITNESS: Correct. And --
 23 BY MR. DRESSLER:
 24 Q Okay. Same time period, end of 2007, beginning of 2008,
 25 you didn't have a fund administrator?

1 A No. It's not required.
 2 Q Okay. All right. So, let me ask you this question.
 3 There are JMA audits for 2007 --
 4 MS. HARRIS: Objection, Your Honor. This is leading.
 5 THE COURT: Sustained.
 6 MR. DRESSLER: Okay.
 7 BY MR. DRESSLER:
 8 Q The JMA audit for 2006 that's been referred to in this
 9 case, you have seen that?
 10 A Yes, I have seen that.
 11 Q Okay. When was the that audit actually done?
 12 A In 2000- -- the middle of 2009.
 13 Q And, same question with regard to the 2007 audit. When
 14 was that done?
 15 A I believe 2006, -7 and -8 were done in the middle part of
 16 2009.
 17 Q Okay. Did you tell Mr. Lowe that you didn't have -- did
 18 you indicate to him whether or not you had -- during that
 19 conversation you had with him, end of 2007, beginning of 2008,
 20 did you indicate to him that you did not have an auditor?
 21 A I told him that, yes.
 22 Q Did you -- same time period, did you indicate to him you
 23 did not have a fund administrator?
 24 A I did.
 25 Q Okay. How did he respond to that?

1 A He told me that in order for this to happen, I would need
 2 to get one.
 3 Q Okay. And were you willing -- did you tell him you would
 4 agree to do that?
 5 A Yes. No problem.
 6 Q Did he make a proposal to you with regard to who would be
 7 the auditor and who would be the hedge fund arbitrator?
 8 A He did.
 9 Q Again, this is in conversations during the end of 2007,
 10 beginning of 2008? These conversations I just asked you about?
 11 A Yes.
 12 Q Let me rephrase it -- all right. Did he make a proposal
 13 to you at the end of 2007, beginning of 2008, with regard to
 14 obtaining an auditor and a hedge fund administrator?
 15 A He did.
 16 Q Okay. And what did he -- what did he propose?
 17 A He proposed that he would have direct oversight and
 18 control of the audit and administration firm.
 19 Q And what did you say to that?
 20 A I said that sounds reasonable.
 21 Q Okay. Were you concerned about the fact that he was --
 22 would be doing -- having that control, and at the same time be
 23 advising people to invest in your fund?
 24 A No. It -- during the time, in 2007, 2008, there was a
 25 concern about the banking industry. Worldwide. I mean,

1 everyone who's been reading the newspapers for the -- since
 2 that time knows about that.
 3 MS. HARRIS: Your Honor, I move to strike. That's
 4 totally unresponsive.
 5 THE COURT: Right. I'm going strike the response as
 6 non-responsive.
 7 You need to answer the question specifically.
 8 THE WITNESS: Repeat the question.
 9 THE COURT: And then afterwards you can --
 10 MR. DRESSLER: I'm going to ask a different question.
 11 All right?
 12 THE COURT: Okay.
 13 BY MR. DRESSLER:
 14 Q Were you concerned -- based on his indication that he
 15 wanted to have some control over the auditor and hedge fund,
 16 were you concerned that that created a conflict of interest for
 17 him?
 18 A No. Because he wasn't -- he wasn't going to be an
 19 investor.
 20 Q Okay. After the conversation that we are talking about
 21 now where he made this suggestion, all right, did you have a
 22 conference call with him and some other individuals?
 23 A I did.
 24 Q Okay. And when did that occur?
 25 A A few months later.

- 1 Q And this was a conference call, correct?
 2 A Correct.
 3 Q Okay. And, you were on one end of the conference call?
 4 A Yes.
 5 Q And who was on the other end of the conference call?
 6 A Mr. Lowe, and a gentleman named Richard Jones, another man
 7 named Joseph Moore, and Gary Anderson. And there was also a
 8 female, Eve Nelson.
 9 Q Okay. And did these individuals identify what their
 10 occupation was?
 11 A Yes.
 12 Q Would you tell the jury, for each of the individuals you
 13 just described, with their occupation was. What they told you
 14 their occupation was.
 15 A They told me -- Richard told me he was a Certified Public
 16 Accountant in the state of Delaware. Joseph said he was a
 17 Certified Public Accountant in Delaware, also. And so did
 18 Mr. Anderson. The same state.
 19 And Eve Nelson was not certified, but she has accounting
 20 experience.
 21 Q And could you briefly summarize what was discussed during
 22 that conference call?
 23 A They were at the time asking me, getting some background
 24 information on me and my -- my business, and my trading style.
 25 Typical questions an accountant would ask about a trader's

- 1 business, such as number of trades traded per day, the
 2 instruments traded. The reporting. Just some general
 3 background.
 4 Q Okay. And were there followup conference calls with
 5 Mr. Lowe and these same individuals?
 6 A Yes.
 7 Q Okay. And when did those occur, over what period of time?
 8 A Over the next couple of months.
 9 Q Okay. At some point after these conference calls, did you
 10 have a telephone conversation with Mr. Lowe -- strike that.
 11 After these conference calls, did you have a conversation
 12 with you on one side of the line and Mr. Lowe on one side of
 13 the line, involving the kinds of issues that were discussed
 14 during these conference calls?
 15 A Yes.
 16 Q Okay. Did Mr. Lowe make a proposal with regard to setting
 17 up an auditing firm and a hedge fund administration firm?
 18 A He did.
 19 Q Okay. What was that proposal?
 20 A He proposed that I help and assist with the initial
 21 startup, obtaining the -- reserving the domain names, doing --
 22 getting the virtual office set up. Just general startup
 23 activities. While he would work on coordinating the other --
 24 you know, agreements between everyone.
 25 Q Did you find that an unusual request?

- 1 A Um, initially I thought it might be a little unusual, but
 2 given the period of time that we were in, in the market, I
 3 understood the concern. So it wasn't -- it didn't seem --
 4 there was nothing wrong with it, so it seemed reasonable.
 5 Q Okay. And did the fact that it was a potential
 6 \$20 million investment have an effect on your thinking at that
 7 time?
 8 A Yes. In hindsight, it did.
 9 Q Okay. How did you respond to that proposal?
 10 A Well, I agreed to it.
 11 Q Did you make -- did you make any additional -- or ask for
 12 any conditions for doing those things?
 13 A Well, the agreement was -- or the proposal was initially
 14 that --
 15 Q Let me stop you there. Did you make a proposal to them?
 16 A I made a counter-proposal, yes.
 17 Q What was that?
 18 A I -- I -- I wanted to make sure the assets were there. So
 19 I proposed that: If your main concern is -- is oversight, why
 20 don't we do a -- why don't we -- why don't you allow me to
 21 trade some of these assets, a portion of those assets under --
 22 you know, in Europe, but do it remotely from the U.S.
 23 Q And, did Mr. Lowe agree to that?
 24 A He did.
 25 Q And did you -- did you begin trading some of -- some

- 1 assets that were located in Europe?
 2 A Yes. In 2008.
 3 Q Okay. And in terms of the -- how is that set up? Let me
 4 make a more specific question, all right?
 5 In terms of trading these assets, what kind of mechanism,
 6 institutional mechanism or business mechanism, was used to set
 7 up that arrangement? Was that between you, personally, or MNT
 8 and --
 9 A No, MNT became a partner.
 10 Q Okay. A partner in what?
 11 A In -- in the separately-managed -- in the company account.
 12 Q So would you describe this as a separately-managed account
 13 where MNT was actually a partner?
 14 A That's a good description.
 15 Q Okay. All right. And was there an agreement with regard
 16 to -- did you ask -- did you expect to be paid for your trading
 17 services?
 18 A Of course, I did. Yes.
 19 Q Okay. And what was the arrangement with regard to that?
 20 A The typical incentive allocation fee, which is if I don't
 21 make the money, then I don't get paid.
 22 Q Okay. So did you start managing that account in 2008?
 23 A I did.
 24 Q All right. And after you agree to set up -- you agreed --
 25 did you agree to set up, reserve a domain name and to -- did

1 you -- did you agree to reserve a domain name for JMA?
 2 A I did, yes.
 3 Q And did you do that?
 4 A I did.
 5 Q Did you set up a website for JMA at that time?
 6 A No.
 7 Q Did you ever set up a website for JMA?
 8 A No.
 9 Q All right. With regard to HF Administrators, did you
 10 reserve a domain name for HF Administrators?
 11 A I did.
 12 Q Okay. Did you set up a website for HF Administrators?
 13 A No.
 14 Q Okay. Did you ever set up a website for
 15 HF Administrators?
 16 A No.
 17 Q Did you set up a virtual office for JMA?
 18 A Yes, I did.
 19 Q Did you set up a virtual office for HF Administrators?
 20 A Yes.
 21 Q And this was all in what time period?
 22 A JMA's virtual office was set up December of 2008. HFA's
 23 was set up some time later.
 24 Q How much later?
 25 A I recall, 2010.

1 Q Okay.
 2 A -9 or '10.
 3 Q Did HF Administrators provide financial statements --
 4 A Yes.
 5 Q -- to MNT?
 6 A Yes.
 7 Q Okay. Did you prepare those? Or were they independently
 8 prepared by HF Administrators?
 9 A They were independently prepared.
 10 Q Okay. And with regard to Jones Moore & Associates, at
 11 some point, they did prepare audits. Correct?
 12 A Correct.
 13 MS. HARRIS: Objection. This is leading, Your Honor.
 14 And there's no --
 15 MR. DRESSLER: I'll withdraw it.
 16 THE COURT: All right. Sustained.
 17 MR. DRESSLER: I'll withdraw it. All right.
 18 BY MR. DRESSLER:
 19 Q Did you ever ask JMA to prepare audits for MNT?
 20 A Yes.
 21 Q Okay. Did you ever ask JMA to prepare audits for the 2006
 22 year for MNT?
 23 A Yes.
 24 Q Okay. And I think I asked you this already, but I want to
 25 add some additional things. When did you ask them to do that?

1 A 2009.
 2 Q Okay. And, why did you ask them to do that in 2009?
 3 A To show that there were no qualified startup expenses.
 4 Q Okay. And, how were they able to prepare an audit for
 5 2006 in 2009?
 6 MS. HARRIS: Objection. There is no foundation laid
 7 for this.
 8 MR. DRESSLER: I'm asking him how. I'm trying to lay
 9 the foundation.
 10 THE COURT: Overruled.
 11 THE WITNESS: You're asking me how?
 12 BY MR. DRESSLER:
 13 Q Yes. Did -- what -- did you provide them with materials,
 14 documents, records, in 2009 in order for them to prepare an
 15 audit of the 2006 year for MNT? .
 16 A Yes.
 17 Q Okay. Did you do the same thing for 2007 and 2008? Did
 18 you provide them after-the-fact documents so they could prepare
 19 audits of those earlier years?
 20 A Yes.
 21 Q Okay. Did you ever meet in person anyone from JMA?
 22 A Yes.
 23 Q Okay. Who was that?
 24 A Richard Jones.
 25 (Reporter interruption)

1 THE WITNESS: Well, he -- he told me his name.
 2 BY MR. DRESSLER:
 3 Q Stop.
 4 A J-O-N-S -- J-O-N-E-S.
 5 Q Where did you meet him?
 6 A In Monaco.
 7 Q When did you meet him?
 8 A It was December of 2011.
 9 Q And where in Monaco did you meet him?
 10 A On a boat.
 11 Q All right. And who else was on the boat?
 12 A David. David Lowe.
 13 Q All right. And was that an accidental meeting? Or were
 14 you aware that those individuals were going to be on the boat
 15 at that time and place?
 16 A It was a scheduled meeting.
 17 Q Okay. What was the purpose of that meeting?
 18 A They wanted to ask me questions.
 19 Q And what did those questions concern?
 20 A They had received phone calls from the government --
 21 actually, all of them had received phone calls from the
 22 government, I believe it was the SEC, doing -- asking them some
 23 questions about my relationship with all of them.
 24 Q Okay. And speaking about -- they were concerned?
 25 A Yes.

1 Q And did you -- without going into detail, did you explain
2 to them what -- what, if anything, you knew about the
3 investigation?
4 A Yes.
5 Q At some point, did you obtain a copy of Mr. Lowe's
6 passport?
7 A Yes.
8 Q Okay. And when did that occur?
9 A That happened in April or May of 2010.
10 Q Okay. And how did that come about?
11 A He gave it to me. We had gotten to the point in our
12 relationship where he had said that he wanted to fund these
13 private businesses. And so I was given this to open up the
14 brokerage accounts that would ultimately be traded by me, and
15 also accept the fund.
16 Q Okay. I'm going to get back to that in more detail. But
17 did he give it to you in person? Or was it by some other
18 method?
19 A No. He did not give it to me in person. I believe it was
20 sent electronically.
21 Q Okay. Let's go back to 2008 for a moment. In 2008, did
22 David Lowe or any -- did any of David Lowe's investors make a
23 direct investment in MNT?
24 A No.
25 Q How about in 2009? Did any of David Lowe's investors make

1 a direct investment in MNT?
2 A No.
3 Q Did Mister -- did you ask Mr. Lowe why that wasn't
4 happening?
5 A Yes.
6 Q And without going into the details, did he give you some
7 explanation?
8 A Yes, he did.
9 Q Did that explanation satisfy you?
10 A Yes.
11 Q Can you tell me whether or not you were concerned about
12 the fact that no -- no direct investment had come forward --
13 come forth in 2008 and 2009?
14 A I was concerned.
15 Q Okay. Did something happen in 2010 to lessen your concern
16 in that regard?
17 A Yes.
18 Q Okay. And what was that?
19 A He signed a \$3 million subscription agreement.
20 Q And --
21 A To invest directly into MNT.
22 Q Okay. And did he do that on behalf of himself,
23 personally? Or on behalf of some other entity?
24 A No. Not for himself, personally.
25 (Reporter interruption)

1 THE WITNESS: I said "Not for himself." Correct.
2 BY MR. DRESSLER:
3 Q Was it for a company?
4 A Yes, it was.
5 Q What was the name of the company?
6 A Eurovision.
7 MR. DRESSLER: Your Honor, the jury -- I'm about to
8 show Mr. Murray a document. The jury has already seen this.
9 This was Exhibit A to the deposition of David Lowe. And so, it
10 was in a binder. And I don't know if the jury during that time
11 had an opportunity to review the whole thing.
12 But in any event, I marked it as Exhibit 504. The clerk
13 expressed some concern as to where it was, after the
14 deposition. So, I have marked it as Exhibit 504. And, I'm
15 going to offer it into evidence at this time.
16 THE COURT: All right. Any objection?
17 MS. HARRIS: No objection.
18 THE COURT: All right. 504, which was Exhibit A to
19 the Lowe deposition, is admitted.
20 (Trial Exhibit 504 received in evidence)
21 MR. DRESSLER: So I'm going to -- is the ELMO up?
22 (Document displayed)
23 BY MR. DRESSLER:
24 Q I'm going to show you, Mr. Murray, Page -- Exhibit 504,
25 Page 1, and ask you whether you recognize that document.

1 A Yes, I do.
2 Q And what is that document?
3 A This is the subscription agreement. It is the first page
4 of the investor questionnaire.
5 Q And when did you first see this document?
6 A The early part of -- I believe it was signed in January or
7 February, 2010.
8 Q Okay.
9 (Document taken off display)
10 Q I'm going to show you the last page of that document.
11 (Document displayed)
12 Q Can you see that?
13 A Yes, I do.
14 Q All right. Do you see a printed "David Lowe" on "Print
15 Name and Title of Authorized Signatory"?
16 A Yes, I do.
17 Q And do you see "Signature of Authorized Signatory"?
18 A Yes.
19 Q All right. Did you receive this document electronically,
20 or by some other means?
21 A Electronically.
22 Q Okay. And did you believe that that was Mr. Lowe's
23 signature when you received it?
24 A I did.
25 Q And based on that, did you expect that some time in the

1 near future, you would -- MNT would be receiving a \$3 million
 2 investment?
 3 A I did.
 4 Q Okay. Now, in 2010, when you received this document, were
 5 you still managing the separate account for David Lowe's
 6 investors that you referred to earlier?
 7 A Yes.
 8 Q Okay. After you received Exhibit 504, let's say, over the
 9 next three, four, five months after it was signed, did you --
 10 did you receive \$3 million from Eurovision, PLC?
 11 A No, I didn't.
 12 Q Did you have communications with Mr. Lowe, let's say some
 13 time -- you know, within three or four months after not
 14 receiving any monies, did you have communications with Mr. Lowe
 15 or conversations with Mr. Lowe about why the money was not
 16 forthcoming?
 17 A Yes.
 18 Q Okay. And did he explain why?
 19 A Yes.
 20 Q What did he tell you?
 21 A He told me he was having some -- some issues with his
 22 investors, and that they would prefer to invest directly into
 23 the private companies.
 24 Q Okay. And in connection with that, did he ask you to do
 25 something else for him in the United States?

1 A Yes.
 2 Q And what was that?
 3 A To open up the brokerage accounts.
 4 Q Okay. For what companies?
 5 A HFA, JMA, Anderson & Associates.
 6 Q Okay. And at that time, was there a virtual office for
 7 Anderson & Associates?
 8 A Yes. Well, yes. Well, no, it'd just been -- he asked me
 9 to set up Anderson & Associates in conjunction with that, also.
 10 Q Okay. And did he ask you to set up a -- reserve a domain
 11 name for Anderson & Associates?
 12 A I did.
 13 Q Did you set up a website for Anderson & Associates?
 14 A No.
 15 Q Did you also set up a merchant account with Chase
 16 Paymentech for JMA in May of 2010?
 17 A I did.
 18 Q And was that at Mr. Lowe's request, or was that your own
 19 idea?
 20 A That was at Lowe -- Mr. Lowe's request.
 21 Q All right. Did Mr. Lowe tell you why he wanted you to set
 22 up the brokerage accounts and the Chase Paymentech account for
 23 -- merchant account for JMA?
 24 A Yes.
 25 Q Okay. What did he tell you?

1 A Well, the -- the brokerage accounts were for receiving
 2 direct investments. And the merchant account was so that they
 3 could start accepting credit card payments for the business.
 4 Q Okay. And, did he use a particular term to describe what
 5 -- how he viewed the -- what these -- how he viewed the
 6 business that was going to be conducted by these entities?
 7 A I'm sorry. Can you repeat that?
 8 Q All right. Did he use a particular term in terms of how
 9 he visualized the operation of these businesses that he was --
 10 and accounts that he was asking you to set up?
 11 A He did.
 12 Q What was that term?
 13 A He called it a "profit center."
 14 Q And what did that mean to you?
 15 A It meant that these were viable businesses that he
 16 intended to -- to operate.
 17 Q Okay. After you set up the various brokerage accounts and
 18 the merchant account, did you receive any funds from
 19 Eurovision, PLC?
 20 A No.
 21 Q Did you raise that issue with Mr. Lowe?
 22 A Yes.
 23 Q And did you have a conversation with him?
 24 A Yes.
 25 Q All right. And did -- were you satisfied with his

1 explanation at that point?
 2 A Yes.
 3 Q At some point, did you decide -- did you determine that --
 4 whether or not you were ever going to see any money from
 5 Mr. Lowe's companies or investors?
 6 A Uh, directly -- whether I was going to see anything coming
 7 directly to the U.S., I had my -- I basically didn't -- I
 8 thought it wasn't going to happen.
 9 Q All right. And based on that, did you decide to utilize
 10 the JMA merchant account and the brokerage accounts for your
 11 own purposes?
 12 A I did.
 13 Q And in terms of utilizing those accounts for your own
 14 purposes, what did you do?
 15 A I took my credit cards and related business account credit
 16 cards that had credit lines on them, and I went and converted
 17 them into cash, by charging them.
 18 Q And charging them what way?
 19 A On the JMA merchant account.
 20 Q So --
 21 (Reporter interruption)
 22 BY MR. DRESSLER:
 23 Q You saw pictures of various credit cards that were found
 24 at your home during a search warrant. Are those the credit
 25 cards you are talking about?

- 1 A I don't -- I don't know specifically what which ones why
2 used. I know they were all -- I was legally responsible for
3 all the credit cards.
- 4 Q Okay. And when you say you were legally responsible for
5 those credit cards, could you tell the jury what you mean that?
- 6 A Well, it means that I was -- they were either in my name,
7 I was a guarantor, or they were -- you know, they were in my
8 wife's name under, you know, the business that we had together.
- 9 Q That kind of thing.
- 10 A That kind of thing, right.
- 11 Q Did you feel you were -- when you were doing this, did you
12 feel that you were risking -- that they would be liable if you
13 weren't able to pay the money back, the money that was being
14 generated by these credit card transactions?
- 15 MS. HARRIS: Objection, Your Honor. That is a
16 completely confusing question.
- 17 THE COURT: Rephrase the question, please.
- 18 MR. DRESSLER: Okay. Okay.
- 19 BY MR. DRESSLER:
- 20 Q Did you feel, in utilizing these credit cards, that you
21 were putting any of the individuals whose names were on those
22 cards in financial risk?
- 23 A No. Because I'm responsible for those cards.
- 24 Q And did you intend -- were you trying to just steal money
25 or did you intend to pay -- pay all these funds back?

- 1 A From Mr. Lowe.
- 2 Q And when were you expecting that?
- 3 A The last week of March.
- 4 Q Okay. On March 30th did you issue a very large amount of
5 refunds through the JMA Paymentech account, on March 30th?
- 6 A Yes, I did.
- 7 Q And why did you do that?
- 8 A Because I was told the wire transfer for 608,000 had been
9 sent.
- 10 Q Okay. Within a few days of issuing those refunds, did you
11 receive a telephone call from Chase Paymentech?
- 12 A I did.
- 13 Q And did you have a conversation with someone from Chase
14 Paymentech?
- 15 A I did.
- 16 Q What was the subject of that call?
- 17 A It was someone from Chase, a woman. She said that they
18 had -- she had stopped the refunds and that she needed to
19 verify funds in the Demand Deposit Account that they were
20 debiting before she could process the refunds.
- 21 Q And what was your response there?
- 22 A I said that's fine with me. I don't want you to put them
23 through if there is no funds.
- 24 Q Okay. Did you receive another call a day or two later?
- 25 A I did.

- 1 MS. HARRIS: Objection, your Honor. That's leading
2 and improper.
- 3 THE COURT: Sustained.
- 4 MR. DRESSLER: Okay.
- 5 BY MR. DRESSLER
- 6 Q What was your purpose in doing this?
- 7 A Well, to convert the credit lines that I had into cash.
- 8 Q And what did you intend to do with the cash?
- 9 A To invest it into MNT.
- 10 Q And did you invest it into MNT?
- 11 A I did.
- 12 Q Let's go to January and February of 2011. In terms of --
13 have you reviewed the JMA merchant account documents in
14 preparation for this case?
- 15 A Yes.
- 16 Q And would it be fair to state that in January and February
17 of 2011 the amount of money -- strike that, the amount of
18 charges that you made through the JMA Paymentech account
19 increased dramatically?
- 20 A Yes.
- 21 Q Okay. And can you tell the jury why there was a dramatic
22 increase in the amount of transactions that you were putting
23 through the JMA Paymentech DDA account?
- 24 A Yes. I was expecting a wire payment in March.
- 25 Q Okay. From whom?

- 1 Q And was that from the same person?
- 2 A It was.
- 3 Q And what was the substance of that call?
- 4 A She told me that she had verified funds with the bank and
5 she was releasing the refunds from hold status.
- 6 Q And when she told you there were funds in the bank, did
7 you know where those funds came from?
- 8 A Yes.
- 9 Q Where?
- 10 A From Mr. Lowe's control.
- 11 Q Okay. After that conversation, what happened in terms of
12 the refunds?
- 13 A Well, you mean what happened --
- 14 Q In other words --
- 15 A They were released.
- 16 Q -- did you learn at some point when the -- when the
17 refunds -- did you learn that the refunds that you issued on
18 March 30th went through?
- 19 A Yes.
- 20 Q At some point -- so after those refunds, you were aware of
21 that, correct?
- 22 A Correct.
- 23 Q That those refunds went through?
- 24 A Correct.
- 25 Q And after those refunds went through, did you issue

1 additional refunds?
 2 A I did.
 3 Q Why?
 4 A Because that would -- that represents the -- I'd only
 5 issued refunds in the amount of like 359,000. So the
 6 additional refunds represented the balance, the difference
 7 between the 608 and what I'd already issued.
 8 Q Okay. At some point after you issued those refunds, did
 9 you learn that not all of those refunds were processed?
 10 A The second --
 11 Q The second set of --
 12 A Yes, I did.
 13 Q Okay.
 14 A By checking the credit card statements, I could see that
 15 some of them weren't processed.
 16 Q Okay. Did you -- what did you do about that, if anything?
 17 A I called the credit card companies and --
 18 Q What did you learn?
 19 A They told me if a refund had been issued, it should be --
 20 should have hit the account and that they would recommend
 21 filing a dispute.
 22 Q Is it also known as a chargeback?
 23 A Yes.
 24 Q Did you then file chargebacks?
 25 A Yes.

1 Q Okay. In the names of the people whose -- of the cards
 2 that had been charged?
 3 A Yes.
 4 Q All right. And what happened after that?
 5 A They -- they eventually were put -- the refunds were
 6 eventually put on the accounts.
 7 Q Okay. And after that happened, all right, did you take
 8 any further action with regard to -- after that happened, all
 9 right, did you attempt to conduct further credit card
 10 transactions through the JMA Paymentech processing machine?
 11 A No, because that was -- that was over and above the
 12 amount. I had already issued refunds for the amount of the
 13 wire.
 14 Q Okay. And were you ever notified that the JMA Paymentech
 15 account had been closed? This is after you issued the second
 16 set of refunds and requested the chargebacks.
 17 A No.
 18 Q I believe that's all I have. Thank you.
 19 THE COURT: All right. We'll go ahead and take our
 20 morning break for 15 minutes and then resume thereafter.
 21 (Jury exits courtroom at 10:01 a.m.)
 22 THE COURT: All right. We did get a note from the
 23 jury this morning. A juror asked:
 24 "Does 'intent' to defraud makes a difference on
 25 the law as it pertains to this case?"

1 That's anticipating the instructions. So one thing we
 2 could do is just simply acknowledge that we've received a
 3 question regarding the law and that I will instruct the jury
 4 fully on the law prior to deliberation.
 5 MR. DRESSLER: I agree..
 6 MS. HARRIS: That would be fine, your Honor.
 7 THE COURT: All right. I don't think I need to read
 8 this question per se because it's probably going to confuse
 9 everybody else.
 10 MR. DRESSLER: Right.
 11 THE COURT: I will just indicate the nature of this,
 12 okay?
 13 MR. DRESSLER: Yes.
 14 THE COURT: Thank you.
 15 (Whereupon there was a recess in the proceedings
 16 from 10:02 a.m. until 10:18 a.m.)
 17 THE COURT: All right. Ready to proceed?
 18 MS. HARRIS: We are, your Honor.
 19 MR. DRESSLER: Yes, your Honor.
 20 THE COURT: Bring the jury in.
 21 (Jury enters courtroom at 10:19 a.m.)
 22 THE COURT: All right. Welcome back, ladies and
 23 gentlemen.
 24 We are now going to continue to proceed with the cross
 25 examination with Mr. Murray.

1 MS. HARRIS: Thank you, your Honor.
 2 CROSS EXAMINATION
 3 BY MS. HARRIS
 4 Q Good morning, Mr. Murray.
 5 Now, as I understand your testimony just a few minutes
 6 ago, you said you thought you could use Val Hornstein's name on
 7 Market Neutral Trading materials because if in the future you
 8 needed legal advice from Mr. Hornstein, that's who you would
 9 reach out to, correct?
 10 A Correct.
 11 MS. HARRIS: Can we bring up Exhibit 202, Page 1,
 12 please?
 13 (Document displayed)
 14 BY MS. HARRIS
 15 Q This is the Market Neutral Trading Due Diligence Report
 16 dated January, 2011 that is already in evidence. Do you see
 17 that?
 18 A Yes.
 19 Q And it is entitled "Due Diligence Report."
 20 Q Now if we could go to Page 12 of Government's Exhibit 202?
 21 (Document displayed)
 22 Q Do you see where it says "Blue Sky filings"? And isn't
 23 that true that it says:
 24 "The Hornstein Law Offices is responsible for
 25 overseeing Blue Sky compliance for the MNT fund. The

1 GP notifies Hornstein with state residence details of
 2 each new LP investor."
 3 You see that, correct?
 4 A Yes, I see that.
 5 Q Okay. Isn't it true that there is nothing in the Due
 6 Diligence Questionnaire in this Private Placement Memorandum
 7 that says the Hornstein Law Office will be consulted for future
 8 use? Nothing says that, right?
 9 A That's correct, but I'd like to explain my answer, if I
 10 may.
 11 Q No. I'll give you a chance later.
 12 You said that your understanding was the Hornstein Law
 13 Office would be something you could use in the future, right?
 14 They were not legal counsel to the -- your company at the time?
 15 A No, that's not what I said.
 16 Q Oh, what did you say?
 17 A Well, I said that I interpreted the legal counsel -- where
 18 it says "Legal Counsel" under "Service Providers" -- to mean
 19 that if there was a legal problem, who would I consult?
 20 Q Mr. Murray, it is absolutely false that the Hornstein Law
 21 Office did any Blue Sky compliance for Market Neutral Trading,
 22 isn't that correct?
 23 A Yes. But I'd like to explain my answer.
 24 Q You'd like to explain why that's a false representation?
 25 MR. DRESSLER: Objection.

1 Q Did you approve it?
 2 A I -- okay. Yes. You could say I approved it.
 3 Q And the Hornstein Law Office was never retained by you or
 4 anyone at Market Neutral Trading to do any Blue Sky compliance,
 5 correct?
 6 A We don't need Blue Sky compliance. It doesn't apply to
 7 our fund. We're too small.
 8 Q So the Hornstein Law Office was responsible for providing
 9 Blue Sky compliance to the Market Neutral Trading fund that did
 10 not need Blue Sky compliance? Is that what it says?
 11 A It says:
 12 "...is responsible for overseeing Blue Sky
 13 compliance for the MNT fund."
 14 And that implies if it's necessary.
 15 In this case, we're too small. We don't -- that's not --
 16 that's not something we need to do.
 17 Q Can you show us where it says "if it is necessary" in that
 18 statement?
 19 A This is my interpretation of it.
 20 Q Now, you also said that when you were first involved with
 21 discussions with Mr. Eckel in August of 2012, you really
 22 weren't interested in raising money from the individual
 23 investors because you knew you had no name auditors and
 24 administrators, correct?
 25 MR. DRESSLER: Excuse me. The exhibit is still on

1 THE COURT: All right. She's asking a different --
 2 she's asking about this representation on the screen right now.
 3 THE WITNESS: Okay.
 4 THE COURT: So why don't you answer that first and
 5 then I'll give you a chance to explain.
 6 THE WITNESS: Okay. What is --
 7 THE COURT: So the question is: Is that a false
 8 recommendation? That's the question.
 9 THE WITNESS: No, it's not. Can I --
 10 BY MS. HARRIS
 11 Q So you're telling this jury that the Hornstein Law Office
 12 did Blue Sky compliance for the Market Neutral Trading fund?
 13 A Could I explain? And then we can clear up the second
 14 question?
 15 THE COURT: Well, why don't you ask the first
 16 question again. I don't know if you're going to use the words
 17 that are in there or -- because the way you phrased the
 18 question is different than the actual language.
 19 BY MS. HARRIS
 20 Q You wrote:
 21 "The Hornstein Law Office is responsible for
 22 overseeing Blue Sky compliance for the Market Neutral
 23 Trading fund."
 24 Correct?
 25 A I believe correct. I did not write this.

1 the screen.
 2 THE COURT: Let's turn off that exhibit.
 3 (Document removed from display.)
 4 THE COURT: Move on to the next question. You can
 5 answer the question.
 6 BY MS. HARRIS
 7 Q You testified just a few minutes ago that at the time that
 8 you met Mr. Eckel or had discussions with Mr. Eckel in the
 9 summer of 2012, you weren't interested in raising any money
 10 from individuals because you knew you had a problem with no
 11 name auditors and administrators, right?
 12 MR. DRESSLER: Objection. Misstates --
 13 A I didn't say that --
 14 MR. DRESSLER: Excuse me.
 15 Objection. Misstates the evidence. The question was not
 16 whether --
 17 (Court reporter interruption.)
 18 MR. DRESSLER: The question was not whether he was
 19 interested in raising money, but whether or not he was
 20 advertising for investors.
 21 THE COURT: Well, either you can rephrase the
 22 question and -- or we can go back and find the exact wording of
 23 it.
 24 BY MS. HARRIS
 25 Q You told Mr. Eckel that you knew that you would have

1 problems raising money because you had a no name auditor and
 2 administrator, correct?
 3 A I said it wasn't -- probably wasn't going to be -- we can
 4 read back exactly what I said, but what I -- what I believe it
 5 says, what I said was is that he wouldn't -- he would have a
 6 hard time raising money for direct investments in the fund
 7 because we have no name auditors and administrators.
 8 Q And then you just acknowledged that in December of 2008
 9 was when Jones Moore and Associates came into existence,
 10 correct, when you set up the virtual office?
 11 A Your question is when did Jones Moore and Associates --
 12 I -- I --
 13 Q Jones Moore and Associates was -- first came into
 14 existence with its virtual office in December of 2008, correct?
 15 A Yes.
 16 MS. HARRIS: Now, if we could bring up Exhibit 160
 17 and look at Page 1 first.
 18 And if we could just highlight your email to Mr. Eckel on
 19 August well, 2002 -- 2010.
 20 (Document displayed.)
 21 Q (As read)
 22 "I did a rough date update of an old DDQ I had -
 23 attached. Let me know your thoughts."
 24 Do you see that?
 25 A Yes, I do.

1 Q Okay. Now if we could turn to Page 7 of Exhibit 160,
 2 Question 15?
 3 (Document displayed)
 4 Q (As read)
 5 "Does the firm have business relationships with
 6 any service providers or professional parties?"
 7 And you list Jones Moore and Associates, correct, the
 8 auditor?
 9 A Correct.
 10 Q As well as H.F. Administrators?
 11 A Correct.
 12 Q Now, H.F. Administrators didn't come into existence until
 13 April of 2010, correct?
 14 A No. That's not what I testified to.
 15 Q That's when you set up the virtual office for H.F.
 16 Administrators?
 17 A You've got two different statements in your questions
 18 there. The first one, I believe, you're asking me when it came
 19 into existence versus a virtual office.
 20 Q Isn't it true that there was no H.F. Administrators until
 21 2010?
 22 A No, that's not true.
 23 Q When did you -- when did H.F. Administrators first come
 24 into existence?
 25 A I told -- I testified that I set up the domain name in

1 2008.
 2 Q Oh, 2008. Okay.
 3 Now, if we could look at Page 19 of Defendant's Exhibit
 4 160, question No. 6. Isn't that true that you wrote:
 5 "All of our service providers are
 6 well-established organizations with 10 or more
 7 reputable years of experience in their field."
 8 Correct?
 9 A Yes. That's correct.
 10 Q And that is a false statement, isn't that true?
 11 A No, it's not a false statement. May I please explain my
 12 answer?
 13 Q You're going to explain how Jones Moore and Associates was
 14 founded in 2008 and H.F. Administrators was founded in 2008 and
 15 they had been in business for more than 10 years as of 2010?
 16 A You're interpreting this differently than -- that's your
 17 interpretation. The accountants underlying these two firms
 18 have substantially more than 10 years experience.
 19 Q So, "All of our service providers." You would agree that
 20 refers to the service providers Jones Moore and Associates and
 21 H.F. Administrators, correct? Is there some other service
 22 provider that refers to?
 23 A They are listed there. I mean --
 24 Q And you would agree --
 25 A -- you're asking --

1 Q -- that you say:
 2 "They are well-established organizations with 10
 3 or more reputable years of experience."
 4 Correct?
 5 A I'm trying to answer your first question. I guess --
 6 THE COURT: You can answer the question "yes" or "no"
 7 and then you can explain.
 8 A Can you repeat the previous question?
 9 BY MS. HARRIS
 10 Q Question No. 6 of the Due Diligence Questionnaire that you
 11 filled out in August of 2010, isn't that true that you said:
 12 "All of our service providers are
 13 well-established organizations with 10 or more
 14 reputable years of experience in their field."
 15 Correct?
 16 A Correct.
 17 Q Let's also look at what you wrote on the Due Diligence
 18 Questionnaire. Let's take a look at Page 10 of Government's
 19 Exhibit 160.
 20 (Document displayed)
 21 Q Let's look at what you mention about your educational
 22 background under question No. 3.
 23 "Mr. Murray graduated cum laude in economics and
 24 finance from the University of Arizona in 1991."
 25 Isn't it a fact, Mr. Murray, that that is false?

1 A That's correct.
 2 Q It is false?
 3 A Yes.
 4 Q Okay. And you also say about yourself:
 5 "Mr. Murray had a Master's in economics in 1993."
 6 That is a false statement?
 7 A I thought I just answered that question --
 8 Q We were talking about the cum laude part. That's false.
 9 A I misunderstood you. Yes, that's correct.
 10 Q And the Master's, the M.S. in economics in 1993 is also
 11 false?
 12 A That's correct.
 13 Q Now, Mr. Murray, you were asked some questions yesterday
 14 about Event Trading, correct?
 15 A Yes.
 16 Q Okay. And let me see if I understand your history.
 17 On November 1st, 2002 you were found guilty of three
 18 charges before the New York Stock Exchange, correct?
 19 A I didn't hear a year.
 20 MR. DRESSLER: Objection. Objection --
 21 BY MS. HARRIS
 22 Q November 1, 2003 --
 23 THE COURT: Hold on. There is an objection.
 24 MR. DRESSLER: Objection. I don't think that there
 25 is...

1 (Court reporter interruption.)
 2 MR. DRESSLER: I withdraw the objection.
 3 THE COURT: All right.
 4 BY MS. HARRIS
 5 Q Isn't it true, Mr. Murray, that on November 1st, 2002, you
 6 were found guilty of three charges before the New York Stock
 7 Exchange?
 8 A I disagree with your characterization of "guilty." I
 9 violated an Exchange rule of the member organization. It's
 10 not -- it wasn't a legal criminal proceeding where someone is
 11 guilty or innocent.
 12 Q Are you saying that there was not a finding that you were
 13 guilty of the three charges in the New York Stock Exchange?
 14 Isn't it true, and I'm referring to Government's
 15 Exhibit 137, that the opinion of November 1, 2002 said:
 16 "The hearing panel by unanimous vote found
 17 Mr. Murray guilty of Charges 1, 2 and 3."
 18 Does that refresh your recollection that you were found
 19 guilty by the hearing panel?
 20 A Yes.
 21 Q You also testified yesterday that you were not accused or
 22 found guilty of mismanaging anyone's assets, is that correct?
 23 A No, that's not what I testified to.
 24 Q Didn't you say yesterday that you were not found guilty of
 25 misappropriating anyone's assets?

1 A You just asked two different questions -- you asked one
 2 question and I said that's not what I said, and then you ask a
 3 different question that contains a term in there that's not the
 4 same as your first question.
 5 Q Okay. Let's get it straight?
 6 A Well, let's do that. I mean...
 7 Q Okay. Isn't it a fact, Mr. Murray, that you did
 8 misappropriate investors' money and that's why you were found
 9 guilty by the New York Stock Exchange?
 10 A That's not true.
 11 Q Isn't it true, Mr. Murray, that on November 1st, 2002 the
 12 panel unanimously found that:
 13 "Murray exercised discretion by purchasing stock
 14 in both joint accounts. He did not have an order to
 15 purchase a specific share amount or dollar amount of
 16 the security. He did not have written authorization
 17 from the customers to do that."
 18 Is your testimony that that is not misappropriating
 19 customers' money?
 20 A That's correct. "Misappropriating" means taking funds.
 21 Q Not investing it in contradiction to the investor's
 22 direction to you?
 23 A I've -- I think I've answered that question, what
 24 "misappropriation" in my experience means.
 25 Q And isn't as it also a fact, Mr. Murray, that in November

1 of 2002, the New York Stock Exchange found that you purchased
 2 \$17,842 of stock without authorization in an IRA non-margin
 3 account which only had a value of a little more than \$10,000,
 4 thus, quote:
 5 "Even if the IRA was fully liquidated to pay for
 6 the purchase of the shares, there would have been an
 7 outstanding debit balance of approximately \$7,000.
 8 In other words, the account was not permitted to buy
 9 this much stock."
 10 Is it your testimony that is not a misappropriation of
 11 customers' funds?
 12 A I think I've answered that question as to what
 13 "misappropriation" -- what I believe it to mean.
 14 "Misappropriation" in my experience means you've taken
 15 someone's funds.
 16 Q So misusing their funds in a way that you weren't
 17 authorized to is different than misappropriating them to you,
 18 is that correct?
 19 A Yes.
 20 Q And you would acknowledge that you misused customer funds
 21 then?
 22 A With regard to what?
 23 Q With regard to what you were charged with before the New
 24 York Stock Exchange?
 25 A That I misused?

1 Q Isn't that what the finding was?
 2 A I think it speaks for itself.
 3 Q So you agree the opinion speaks for itself when it says:
 4 "In other words, the account was not permitted to
 5 buy this much stock."
 6 You would agree with this misuse that you were charged
 7 with and found guilty of?
 8 A If we're going to call it a "misuse," then that's true,
 9 yes.
 10 Q And you were also barred from employment or association
 11 with the New York Stock Exchange for six months, correct?
 12 A Correct.
 13 Q And you testified yesterday that you understood that the
 14 New York Stock Exchange is a self-regulatory authority,
 15 correct?
 16 A Correct.
 17 Q You were also sued by -- for fraud by the Securities and
 18 Exchange Commission in March of 2012, correct?
 19 A Correct.
 20 Q Now, with regard to Event Trading, you testified yesterday
 21 that you were an authorized trader of Event Trading. Do you
 22 recall that testimony?
 23 A Maybe up should read it back. I'm I used the word
 24 "authorized trader." I was trading the account, is what I've
 25 testified to.

1 Q Were you trading Event Trading without authorization?
 2 A No. I had authorization from the de Franciscis.
 3 Q So you were going to be trading on the Event Trading
 4 account, correct?
 5 A Yes.
 6 MS. HARRIS: Now, if we could bring up Government's
 7 Exhibit 292 Page 5?
 8 (Document displayed)
 9 BY MS. HARRIS
 10 Q Mr. Murray, I believe you testified that this was the form
 11 that you filled out to set up a brokerage account for Event
 12 Trading in July of 2012 with Interactive Brokers, correct?
 13 A I don't think we broached the subject. I don't think I
 14 was asked that question.
 15 Q Mr. Murray, yesterday -- and I'm reading from Page 1541 of
 16 the transcript of your testimony yesterday. You were asked the
 17 question:
 18 "QUESTION: Wasn't Event Trading brokerage account
 19 in the name of -- created in the name of Event Trading?
 20 "ANSWER: Yes."
 21 Then you were asked the question:
 22 "QUESTION: Approximately when did that happen?
 23 "ANSWER: It was the end of July or the first part
 24 of August it was finalized."
 25 And then you were asked a question:

1 "QUESTION: And that was anticipated by your
 2 agreement, correct?
 3 "ANSWER: Yes. That was the agreement."
 4 You testified to that yesterday, correct?
 5 A Correct.
 6 Q Okay. And isn't it a fact that you set up this brokerage
 7 account at Interactive Brokerage in the name of Event Trading?
 8 A Yes, I did. That was -- I did testify about how that was
 9 the division of labor.
 10 Q And you actually set up the account that we're looking at
 11 the application for right now?
 12 A Yes.
 13 Q Okay. Now, if we could look at Page 5 and specifically
 14 Disciplinary Events?
 15 (Document displayed.)
 16 Q Question No. 2:
 17 "Has the organization or any of its officers or
 18 authorized traders ever been the subject of an
 19 investigation or proceeding by any commodities or
 20 securities exchange or regulatory authority or
 21 self-regulatory authority?"
 22 And you answered: "No."
 23 Correct?
 24 A Correct.
 25 Q Isn't that a fact that you were disciplined by the New

1 York Stock Exchange which you have testified was a
 2 self-regulatory authority?
 3 A Correct.
 4 Q So the answer to question No. 2 should have been "Yes"
 5 because you were an authorized trader with Event Trading?
 6 A Well, I was authorized to trade the account by the
 7 de Franciscis. I don't know if that meets the definition.
 8 Q So the question says:
 9 "Has any of the organization -- has the
 10 organization or any of its officers or authorized
 11 traders."
 12 Are you saying that question should have been amended to
 13 say "authorized traders by the de Franciscis" and then it would
 14 have required a "Yes" answer?
 15 A I think I've already answered that question.
 16 Q I don't think you have, Mr. Murray.
 17 Isn't it true that the de Franciscis authorized you to be
 18 a trader for the Event Trading account that you opened this
 19 brokerage with?
 20 A Yes.
 21 Q You were an authorized trader disciplined by a
 22 self-regulatory authority, correct?
 23 A Correct.
 24 Q And you answered "No" to the question that required a
 25 "Yes" answer?

1 A I filled out the form as I understood it to be asking the
2 question. I -- I --
3 Q Let's look at question No. 3.
4 You had been arrested on March 12, 2002, isn't that
5 correct?
6 A Correct.
7 Q And you were indicted for federal crimes in June of 2002,
8 correct?
9 A Correct.
10 Q This form is filled out in July of 2002 and --
11 THE COURT: 2012.
12 MS. HARRIS: 2012, excuse me.
13 BY MS. HARRIS
14 Q Let's look at question No. 3:
15 "Have any of the principals, officers or
16 authorized traders of the organization ever been
17 arrested for or convicted of a crime?"
18 And you answered: "No."
19 A I think I testified before. I didn't think that this
20 required a "Yes" answer because I'm not on the account.
21 Q You have just testified you knew you were an authorized
22 trader for Event Trading, correct?
23 A I thought this applied to those that are on the --
24 signatories on the account.
25 Q Where --

1 A I didn't realize --
2 Q Where does it say in the question: Have any of the
3 signatories to this account ever been arrested? Where does it
4 say that in this question?
5 A I don't see it there.
6 Q But it does say: Have any of the authorized traders ever
7 been arrested. Correct?
8 A Yes.
9 Q And you had, in fact, been arrested and charged with
10 federal crimes?
11 A Yes.
12 Q Now, Mr. Murray, you testified on direct examination
13 yesterday that you had opened numerous banking and brokerage
14 accounts over the course of your life and professional
15 background, correct?
16 A Correct.
17 Q And you knew and understood that it was very important to
18 be honest with those bank applications that you fill out with
19 banks?
20 A There is no question there. I think that's a statement.
21 Q You understood that it was very important when you fill
22 out an application for an account with a bank, that it's very
23 important to be honest with the bank?
24 A Are you asking me do I -- is that my understanding?
25 Q Is it your understanding that you need to be honest with a

1 bank when you apply for an account with that bank? You
2 understand that question?
3 A Well, now I do.
4 Q You would agree that it's very important to be honest when
5 you fill out an application for an account with a bank?
6 A Yes.
7 Q Now, you were released from jail by this Court to a
8 halfway house on July 19th, 2013?
9 A Yes.
10 Q Okay. And the address of that halfway house was 111
11 Taylor Street?
12 A Yes.
13 Q And as of 29, 2013 you had been living at that halfway
14 house for about six weeks, correct?
15 A Yes.
16 Q You never lived at a halfway house at any other time in
17 your life, isn't that correct?
18 A Correct.
19 Q And at the time that you were released to the halfway
20 house, your criminal defense attorneys in this very case were
21 the Pillsbury law firm, correct?
22 A Correct.
23 Q And you were a client of Pillsbury's in August of 2013?
24 A Yes.
25 Q You were, of course, not any type of employee of the

1 Pillsbury law firm?
2 A That's correct.
3 MS. HARRIS: Now, if we could pull up Government's
4 Exhibit 370 and specifically if we could go to Page 5 --
5 actually, Page 6 of Government's Exhibit 370.
6 (Document displayed)
7 BY MS. HARRIS
8 Q Mr. Murray, this is the account application that's already
9 in evidence for the Wells Fargo bank account you applied for on
10 August 29th, 2013.
11 Let's go to the Customer Name where it says "James
12 Murray." That's your name, correct?
13 A Yes.
14 Q And you gave that information to Wells Fargo Bank?
15 A Yes.
16 Q And then your Street Address, let's go to that. "111
17 Taylor Street." You see that?
18 A I see that.
19 Q And that's the address that you were living at at the
20 halfway house, correct?
21 A Correct.
22 Q Okay. Now, let's go down to the box that says Time at
23 This Address.
24 Isn't it true, Mr. Murray, that you told Wells Fargo Bank
25 you had been living at [REDACTED] 13 years and seven

1 months?
 2 A No.
 3 Q Are you saying somebody else filled that information in,
 4 not you?
 5 A I did not fill out this form.
 6 Q You gave the information for this form to the Wells Fargo
 7 Bank employee that was taking the information from you,
 8 correct?
 9 A I did not give that time period. That makes no sense; why
 10 I would give a time period like this.
 11 Q So are you saying that a Wells Fargo employee entered
 12 false information on this form that you were providing the
 13 information for?
 14 A No. What I would say is is that I have had Wells Fargo
 15 accounts before and the way it works is is that they pull up
 16 your previous accounts, and they take your years at the
 17 address, and they -- these bank reps are just -- they are just
 18 trying to do an administrative duty to fill out the form.
 19 And he took the 13 years and 7 months off of my previous
 20 bank account, most likely. I didn't -- wouldn't say that I was
 21 there for 13 --
 22 Q So where it says --
 23 A Could I finish?
 24 MR. DRESSLER: Excuse me.
 25 THE COURT: All right. Let him finish and then you

1 can start in.
 2 MS. HARRIS: Okay.
 3 A I wouldn't put 13 years 7 months. That's such an exact
 4 amount of time. My recollection is, is the teller or the guy
 5 who is opening up the bank account at the bank is interested in
 6 filling out his form so he can move to the next one, get that
 7 completed. I knew he had my profile up because I had a
 8 previous Wells Fargo account and I believe, my recollection is
 9 that he was pulling off some of the information off of that.
 10 BY MS. HARRIS
 11 Q So the part where it says Customer Signature, "Everything
 12 I have stated in this application is correct," you didn't agree
 13 to that?
 14 A Let's see the signature.
 15 Q It says Submit Manually, doesn't it, Mr. Murray?
 16 A I didn't sign that.
 17 Q Okay. And, Mr. Murray, it also says Current Employer.
 18 And let's look at what it says for your current employer,
 19 Pillsbury. You were not employed by the Pillsbury law firm?
 20 A That's correct, but it's not --
 21 Q And are you saying --
 22 A May I please explain my answer --
 23 Q No. It's a "yes" or "no" answer.
 24 Were you employed by the Pillsbury law firm --
 25 THE COURT: Wait a minute. Let's go one at a time.

1 "Yes" or "no." And I said I would allow him to answer, to
 2 explain.
 3 Answer the question.
 4 A No. I was not employed at Pillsbury. They were my
 5 lawyers.
 6 BY MS. HARRIS
 7 Q Okay. And are you saying now that --
 8 A Can I explain?
 9 Q -- somebody from Wells Fargo bank happened to know they
 10 were your lawyers and just on their own submitted that as the
 11 information for your current employer?
 12 THE COURT: All right. This is where you can
 13 explain.
 14 THE WITNESS: Okay.
 15 A He asked, where I could reach you. And I said, "I'm up at
 16 Pillsbury." He took that to mean I'm employed at Pillsbury and
 17 must have put that in there.
 18 BY MS. HARRIS
 19 Q So it was just a big misunderstanding on the part of Wells
 20 Fargo Bank that you were employed at Pillsbury when, in fact,
 21 you were their criminal defense client?
 22 A I don't think there is a question there, is there?
 23 Q Yeah. There is a question --
 24 THE COURT: The question is: Do you agree with that
 25 statement?

1 THE WITNESS: Do I agree that there was -- that it
 2 was a misunderstanding? Is that the question?
 3 MS. HARRIS: Can you read the question back?
 4 (Whereupon the record was read as requested.)
 5 A I don't know what this teller or who took the information
 6 was thinking, but I did not tell him my employer was Pillsbury.
 7 Like I said before, he asked me where he could reach me, and I
 8 said "Pillsbury."
 9 Q And are you saying that you never signed an application
 10 with Wells Fargo Bank that listed your employer as Pillsbury?
 11 A No. I didn't -- if he had -- if he had given this to me
 12 to sign, I probably would have taken the time to correct it and
 13 say this is -- and I'd look closely at it. I would have said
 14 that this is incorrect.
 15 Q So you would have corrected that?
 16 A Most likely. Depending on how much --
 17 MS. HARRIS: Let's pull up Page 9 of Government's
 18 Exhibit 370.
 19 (Document displayed)
 20 BY MS. HARRIS
 21 Q Mr. Murray, that is your signature on Page 9 of
 22 Government's Exhibit 370, isn't it?
 23 A Yes.
 24 Q And you signed this application that says your current
 25 employer is Pillsbury, didn't you?

1 A Yes.

2 Q And, in fact, you also signed this application saying that

3 you were living at [REDACTED] for a period of 13 years

4 and 7 months?

5 A Well, that's what's noted on the application, yes. I

6 probably should have looked at it a little closer.

7 Q Uh-huh. And right below your signature it says:

8 "Everything I've stated in this application is

9 correct."

10 Isn't it true?

11 A Umm, yes.

12 Q Okay. Let's pull up Government's Exhibit 148, your

13 resume, Mr. Murray.

14 (Document displayed)

15 Q You testified yesterday about some of your professional

16 experience, but let's fill in some of the blanks.

17 MR. DRESSLER: Your Honor, I'm going to object to

18 that. Argumentative.

19 BY MS. HARRIS

20 Q You were asked --

21 THE COURT: What?

22 MR. DRESSLER: It's argumentative.

23 MS. HARRIS: I haven't asked a question yet.

24 MR. DRESSLER: Just fill in the blanks.

25 THE COURT: There is no question pending. And,

1 again, comments by counsel is not evidence.

2 MS. HARRIS: Okay.

3 BY MS. HARRIS

4 Q Let's take a look at your resume.

5 Mr. Murray, this is the resume that you electronically

6 transmitted to Paul Eckel and that's in evidence. And let's

7 see how you describe your professional experience.

8 From 2006 to the present you were the Chief Investment

9 Officer for Market Neutral Trading, correct?

10 A Correct.

11 Q And you were the Head of Trading --

12 A Correct.

13 Q -- is that correct? Okay.

14 And Market Neutral Trading is based in San Francisco,

15 California?

16 A Correct.

17 Q And then before you worked at Market Neutral Trading, you

18 worked at Pareto Capital, correct?

19 A Correct.

20 Q And that was for a period of time from May 2006 -- 2002

21 through July 2006, correct?

22 A Correct.

23 Q Okay. And Pareto Capital, you've got it listed as

24 San Francisco, California. What was the address of Pareto

25 Capital?

1 A It was -- well, which address are you talking about? The

2 San Francisco address?

3 Q You tell me. You've got "San Francisco, California." You

4 tell me what the San Francisco, California address of Pareto

5 Capital was?

6 A There -- we didn't have a physical office in

7 San Francisco.

8 Q So "San Francisco, California" was not the office of

9 Pareto Capital as listed on your resume?

10 A That's not what this says. It doesn't say that's the

11 office. It doesn't say "office of San Francisco."

12 Q It says, "Pareto Capital, LLC, San Francisco, California."

13 Where in your resume does it say this is not the physical

14 location of Pareto Capital, LLC? Can you show us where it says

15 that?

16 A No, I can't show you that. It doesn't exist.

17 Q Now, how many people worked at Pareto Capital while you

18 were there?

19 A This -- it's a group of traders that worked together

20 remotely from different parts of the U.S. and even outside the

21 country.

22 Q And who's the president of Pareto Capital while you were

23 there?

24 A Tim Palm.

25 Q Did you ever meet Mr. Palm?

1 A I did.

2 Q What does Mr. Palm look like?

3 A He's about 5'10, between 5'10 and 6 feet tall, medium

4 brown hair, medium to larger build.

5 Q Where does Mr. Palm live?

6 A He resides in London and, also, in Canada, south -- 20 to

7 40 minutes north of Vancouver BC.

8 Q What's the name of the town Mr. Palm lives in north of

9 Vancouver BC?

10 A I want to say Kelowna, but that's not it. Further -- it's

11 further south.

12 Q And Mr. Palm was the president of Pareto Capital from

13 London?

14 A Correct.

15 Q And you gave Mr. Palm's name to Paul Eckel as a

16 professional reference, did you not?

17 A Correct.

18 Q And in that professional reference that you gave to Paul

19 Eckel, you listed Mr. Palm's address as 4040 Civic Center

20 Drive, San Rafael, California, correct?

21 A No. I think I listed Pareto Capital's address as 4040

22 Civic Center Drive.

23 Q Isn't it a fact that you listed Tim Palm's name above

24 "Pareto Capital" and then the address, 4040 Civic Center Drive,

25 San Rafael, California?

- 1 A I believe it said, probably his name and then the company
2 name and then the company address.
- 3 Q Is it your testimony that Pareto Capital's company address
4 is the virtual office at Regus at 4040 Civic Center Drive, San
5 Rafael, California?
- 6 A Yes.
- 7 Q Now, let's look at your resume where you talk about Murray
8 Partners from 2000 to 2002, and you're the chief investment
9 officer.
- 10 Who were the other partners of Murray Partners?
- 11 A What do you mean the "other partners"?
- 12 Q Well, it says "Murray Partners," and there is a plural.
13 So who were the other partners?
- 14 A You're assuming that because it says "partners" there are
15 other partners? It's just the title of a company.
- 16 Q So you had no partners?
- 17 A Well, you're -- yes, there were partners in the company.
- 18 Q Who were they?
- 19 A It's a limited partnership.
- 20 Q Who were they?
- 21 A This is back in 2000 to 2002. I can't recall
22 specifically.
- 23 Q So the name of the company is your name, Murray Partners?
- 24 A Correct.
- 25 Q And you cannot recall who your other partners were?

- 1 A Specifically? No.
- 2 Q Now if we could look at Page 2 of your resume that you
3 sent to Paul Eckel.
- 4 (Document displayed)
- 5 Q Let's look at what you say about your education. You say
6 you've got a Bachelor's of Science in economics and finance
7 from the University of Arizona. You see that?
- 8 A Uh-huh.
- 9 Q And you also gave yourself an honor of cum laude. That
10 was false, correct?
- 11 A Yes.
- 12 Q Okay. Now, let's look at your graduate education. On
13 your resume that you provided to Paul Eckel you list that you
14 had a Master's in Science in Economics from the University of
15 Arizona in 1993.
- 16 That was false?
- 17 A Yes.
- 18 Q Now, Mr. Murray, you testified this morning that you met
19 David Lowe for the first time in person in December of 2011 in
20 Monaco?
- 21 A Yes.
- 22 Q And that was also the first time that you met Richard
23 Jones, isn't that correct?
- 24 A Yes.
- 25 Q And that was also the first time that you met Gianluca

- 1 de Francisci in person?
- 2 A Correct.
- 3 Q And all of you just happened to convene on a boat in
4 Monaco to discuss your problems with the SEC; is that your
5 testimony?
- 6 A "Just happened"?
- 7 Q You said that was the purpose of the meeting; that you
8 were all on the boat in Monaco discussing your -- everybody
9 convened in Monaco and the business purpose was to discuss your
10 issues with the SEC, correct?
- 11 A It was -- that's an incorrect statement.
- 12 Q Oh. You didn't testify this morning that the purpose of
13 joining everybody together in Monaco was to discuss your
14 problems with the SEC?
- 15 A No. I didn't testify to that. I said there was a
16 business meeting that we had planned.
- 17 Q And at that business meeting all of you discussed your
18 problems with the SEC?
- 19 A Yes. I think I testified that that issue came up, but it
20 wasn't the purpose of the meeting.
- 21 Q Let's talk about Richard Jones. Where is he from?
- 22 A Delaware. He's licensed in Delaware.
- 23 Q And that's also where Mr. Jones lives?
- 24 A I don't know.
- 25 Q This is the first time you ever met Richard Jones of Jones

- 1 Moore and Associates, the company you were the president of?
- 2 A You mean met personally? Like, face-to-face? Yes.
- 3 Q And you were, in fact, the president of Jones Moore and
4 Associates?
- 5 A I was not the president.
- 6 Q Mr. Murray, isn't it a fact that you listed yourself on an
7 application with -- oh, you were -- excuse me. I misspoke.
- 8 You were the Chief Financial Officer of Jones Moore and
9 Associates, correct?
- 10 A Correct.
- 11 Q Okay. And as the Chief Financial Officer of Jones Moore
12 and Associates, you have no idea where Richard Jones lives?
- 13 A Correct.
- 14 Q And you had never met Richard Jones before?
- 15 A Before what?
- 16 Q Before the meeting in Monaco that you testified to.
- 17 A That's correct.
- 18 Q Okay. What does Mr. Jones look like?
- 19 A He's about 6 feet 1, medium build, dark brown hair.
- 20 Q Now, yesterday you testified that you and the
21 de Franciscis were setting up Event Trading, correct?
- 22 A That we were setting up Event Trading?
- 23 Q Right. Event Trading was going to be a partnership
24 between you and Giovanni de Francisci, correct?
- 25 A We set up the company, yes.

1 Q And you were going to own 50 percent of Event Trading,
2 correct?

3 A Well, the way it works is you set it up --

4 Q No. It's just a "yes" or "no" question. You were going
5 to own 50 percent --

6 A Well, can I explain my --

7 THE COURT: He can answer "yes" or "no." Then you
8 can explain.

9 THE WITNESS: All right.

10 A Could you read the question back again?

11 BY MS. HARRIS

12 Q I'll restate it.
13 Your conception of Event Trading was that you would own
14 50 percent of the company, correct?

15 A Conception? It was my understanding at the time that was
16 sort of the profit split, yes.

17 Q And Giovanni de Francisci would own the other 50 percent,
18 correct?

19 A Correct.

20 Q And then you also testified that you opened the account
21 for Event Trading and Interactive Brokers in Mr. De Francisci's
22 name so that potential new investors in Event Trading wouldn't
23 find out about your legal problems?

24 THE COURT: This is Mr. Giovanni?

25 MS. HARRIS: Correct.

1 THE COURT: Make sure you understand which
2 de Francisci.

3 BY MS. HARRIS

4 Q You opened that account --

5 A It's a long question and I'm having trouble following it.

6 Q Let's break it up.
7 You opened the account at Interactive Brokers in July of
8 2012 in Mr. de Francisci's name, correct?

9 A Giovanni de Francisci's name, correct? It was not July.
10 It was opened actually sometime in August.

11 Q You filled out the application July 25th, 2012, correct?

12 A No. I started the process in July. It wasn't completed
13 until some time in August.

14 Q Right. But well before July you had been indicted for
15 wire fraud in this case?

16 A Well before July, correct.

17 Q Okay. And so you and Gianluca and Giovanni de Francisci
18 were concerned that potential new investors in Event Trading
19 would find out about your legal problems, correct?

20 A No, that's not what I had meant or what I believe I
21 testified to.

22 Q You said there was a lot of publicity around your arrest,
23 correct?

24 A I don't remember saying that --

25 MR. DRESSLER: I don't think she let him finish the

1 question.

2 THE COURT: I thought he was finished.
3 Go ahead and answer the question.

4 BY MS. HARRIS

5 Q You testified that there was a lot of publicity
6 surrounding your arrest, isn't that right?

7 A Correct.

8 Q Okay. And, by the way, can we get some clarification on
9 "publicity"? Where was this publicized?

10 A In the media.

11 Q What media?

12 A The newspapers.

13 Q Which newspapers, Mr. Murray?

14 A San Francisco Chronicle, the Marin I.J., Fortune -- excuse
15 me, Fortune magazine.

16 Q You're saying Fortune magazine covered your arrest?

17 A Let me make sure. It's Fortune or Forbes. It's either
18 Fortune or Forbes had a one-paragraph article about the arrest
19 and the accusation against me. They were very fair about how
20 they reported it, unlike a number other news medias. That's my
21 recollection.

22 Q And are you saying that any international media covered
23 your arrest here in San Francisco in 2012?

24 A Am I -- the question is: Am I saying that international
25 media covered the arrest? I don't specifically know of any

1 international media.

2 Q And you are saying that because there was some publicity
3 in the San Francisco Chronicle, the Marin I.J. and some other
4 magazine, maybe Forbes, Fortune, you and Gianluca and Giovanni
5 decided that the Event Trading account should not be opened in
6 your name, correct?

7 A Umm, it was -- it's not -- that's not actually the reason
8 why we did that.

9 The reason why is because the de Franciscis were concerned
10 about me being a signatory on the account because of the
11 accusations surrounding me and the media, because they
12 probably -- my opinion is is they didn't want to have that
13 money frozen like, you know -- or have some problem with it
14 and/or they didn't want me being the signatory to move funds.

15 Q Mr. Murray, yesterday you were asked: What are you
16 saying, with regard to the publicity of your arrest? And you
17 gave the following answer:

18 "ANSWER: I'm saying that due to the publicity and
19 the accusation that I had stolen two and a half million
20 dollars, they didn't want my name as a signatory so
21 they would show, if they did bring any investors in,
22 that I was not in charge or didn't have the ability to
23 remove funds."

24 Correct?

25 A Correct.

1 Q So you were attempting to hide your identity from
2 potential new investors, correct?
3 A No, not correct.
4 Q Now, you set up the Event Trading account with Interactive
5 Brokers in Giovanni de Francisci's name, correct?
6 A Yes.
7 Q And you admitted yesterday to falsifying a Discover bank
8 statement, as submitting it to Interactive Brokers in order to
9 verify Giovanni's address?
10 A Correct.
11 Q And you actually gained access to that account with
12 Giovanni's information, isn't that correct?
13 MR. DRESSLER: Excuse me. One of the jurors, I
14 think, is having trouble hearing Mr. Murray.
15 THE COURT: Oh, okay.
16 THE WITNESS: Is that better?
17 (Jury panel nodding affirmatively.)
18 BY MS. HARRIS
19 Q We're now focusing on the Interactive Brokers account that
20 you opened with Event Trading in Giovanni's name. You got that
21 straight?
22 A Yes, I do have it straight.
23 Q Okay. You actually gained access to that account using
24 Giovanni's information, isn't that correct?
25 A "Gained access"? I don't understand the question. Maybe

1 you can help me with that.
2 Q You attempted to get access to the account, isn't that
3 correct?
4 A To get access? What do you mean "access"?
5 Q You don't understand what "access" means, Mr. Murray?
6 A I just asked you. Could you explain what you mean?
7 Q Did you attempt to have any ability to unlock or open up
8 access to that account?
9 A I opened the account. Of course, I had access.
10 Q Okay. So you were going to have access to the account,
11 right, with Interactive Brokers?
12 A Yes. I was trading it.
13 Q Okay. And you were going to do so in Giovanni's name?
14 A The account was opened in Giovanni's -- he was -- he's
15 listed as a signatory. It's under Event Trading's name, yes.
16 Q So isn't it true that in order for you to do anything with
17 that account, you would have to use Giovanni's name, not your
18 own?
19 A "Isn't it true"? I don't understand your question.
20 Q Okay. Let me help you. Let's play a phone call and tell
21 me if you recognize the voice on this phone call.
22 And I'll representative to you, Mr. Murray, that this is a
23 phone call from September of 2012.
24 A Okay.
25 (Audio played in open court.)

1 Q Isn't that the account number for the account that you
2 opened in Giovanni's name at Interactive Brokers?
3 A You know what? I actually don't know the account number,
4 but I will stipulate -- I'll let you know that I did call on
5 behalf of the account, yes.
6 Q Okay. We're going to go ahead and play the rest of the
7 call, Mr. Murray.
8 A Okay.
9 (Audio played in open court.)
10 Q Okay. Mr. Murray, you just told Interactive Brokers you
11 were Giovanni de Francisci, did you not?
12 A That's correct.
13 (Audio played in open court.)
14 MS. HARRIS: Can you stop it here?
15 BY MS. HARRIS
16 Q Mr. Murray, does that refresh your recollection as to what
17 "access" is?
18 A Okay. You're saying the definition of "access" is that
19 login device?
20 Q Yes.
21 A Yes.
22 Q You're attempting to log in to the account that you set up
23 in Giovanni's name, correct?
24 A Well, that's part of -- yes, that's part of what being a
25 trader on an account is. You log in.

1 Q Okay. Let's play the rest of the call.
2 (Audio played in open court.)
3 MS. HARRIS: Okay. Let's stop right there.
4 BY MS. HARRIS
5 Q Did you hear when the Interactive Brokers employee asked
6 to verify your information? Did you hear that?
7 A He's asking for the -- I didn't hear what he -- they
8 typically -- what they typically do is ask for the -- the
9 account holder's name, the date of birth, some identifying
10 information. And I provided Giovanni's because I was -- umm,
11 this is -- this is an account I'm trading and I needed to get
12 service on it.
13 Q Okay. We're going to listen to the rest of the
14 information you provided Interactive Brokers.
15 (Audio played in open court.)
16 MS. HARRIS: Can we stop it right there?
17 BY MS. HARRIS
18 Q Mr. Murray, you weren't born March [REDACTED], were you?
19 A No, that's correct.
20 Q In fact, that's Giovanni de Francisci's date of birth?
21 A Yes.
22 Q And you didn't tell Interactive Brokers that you were not
23 Giovanni de Francisci, did you?
24 A No.
25 MS. HARRIS: Okay. Let's play the rest of the call.

1 (Audio played in open court.)
 2 BY MS. HARRIS
 3 Q And, Mr. Murray, those are not the last four numbers of
 4 your Social Security number, are they?
 5 A No.
 6 Q In fact, that is Giovanni de Francisci's last four Social
 7 Security number?
 8 A Yes.
 9 (Audio played in open court.)
 10 MS. HARRIS: Let's stop right there.
 11 BY MS. HARRIS
 12 Q Mr. Murray, you testified that Giovanni de Francisci is
 13 not married yesterday, correct?
 14 A Correct.
 15 Q You were, in fact, married at the time and you were
 16 married in Tiburon, California, correct?
 17 A Correct.
 18 Q So you provided your security question answers to Giovanni
 19 de Francisci's account, isn't it true?
 20 A Yes.
 21 (Audio played in open court.)
 22 MS. HARRIS: Let's stop there.
 23 BY MS. HARRIS
 24 Q Mr. Murray, Rosie was the name of your first pet, isn't
 25 that correct?

1 A Yes.
 2 Q Not Giovanni de Francisci's?
 3 A Correct. I testified I set up the account. That was the
 4 division of labor.
 5 Q Division of labor in setting up the account, correct?
 6 A His job was to set up the Citibank account. My job was to
 7 set up the brokerage account in the company name.
 8 Q Now, Mr. Murray, let's talk a little bit about Scott
 9 Greenberg. You turned to him after you were unable to come up
 10 with one point -- nearly \$1.8 million to settle the Netflix
 11 trade, correct?
 12 A The way it worked is --
 13 Q It's a "yes" or "no" question.
 14 THE COURT: Answer "yes" or "no" and then you can
 15 plain.
 16 THE WITNESS: All right. Yes. And I'd like to
 17 explain, please.
 18 THE COURT: Go ahead.
 19 A The way it worked is Mark Moskowitz referred Scott
 20 Greenberg to me because he wanted to make sure that this
 21 account stayed open, and then I began my discussions with Scott
 22 Greenberg.
 23 BY MS. HARRIS
 24 Q And you had those discussions with Scott Greenberg and
 25 they -- they didn't work out for you, right?

1 A I don't think they -- they just didn't work out.
 2 Q And you testified yesterday that that was because
 3 Mr. Greenberg wanted 50 percent of the Netflix profit, isn't
 4 that right?
 5 A Yes.
 6 Q Okay. Let's pull up Government's Exhibit 307 and,
 7 specifically, let's look at the August 6, 2012 email that
 8 Mr. Greenberg wrote to you.
 9 (Document displayed)
 10 You would agree that this is an email that Mr. Greenberg
 11 wrote to you after you personally met with him at his home in
 12 Marin County?
 13 A The one you've got highlighted here is -- oh, yeah, that's
 14 true. Yes. Well, it says "From: James" "To: Scott" up here.
 15 Okay. Oh, this one, yes, from Scott to me. Yes.
 16 BY MS. HARRIS
 17 Q And you agree, Mr. Murray, that this was written to you
 18 after you and Mr. Greenberg met in person in Marin County on
 19 August 6th, 2012?
 20 A I believe it was -- I don't know exactly -- I didn't,
 21 like, keep a note of when we met, but it appears so.
 22 Q Well, let's look at the last paragraph. It's on Page 2 of
 23 Exhibit 307 and the -- the sentence Mr. Greenberg writes is:
 24 "I know you understand that this is necessary in
 25 order for me to risk 1.8 million to someone whom I

1 just met today."
 2 Does that refresh your recollection that you met Mr.
 3 Greenberg on August 6th, 2012?
 4 A Yes.
 5 Q Okay. Now, there are 12 conditions that Mr. Greenberg
 6 lays out in the email. Do you see those?
 7 A I do.
 8 Q Show us where in Government's Exhibit 307 Mr. Greenberg
 9 said he wanted 50 percent of the Netflix profit?
 10 A It doesn't show up there because we had already agreed --
 11 well, not agreed to it. He wanted more than the 123, the
 12 123,000 that I initially offered in my email to him.
 13 When we met, he wanted more. Then I came back from the
 14 meeting, he wanted yet more conditions.
 15 Q You said the deal didn't go through because Mr. Greenberg
 16 wanted 50 percent. Show us where he said he wanted 50 percent.
 17 A In this email?
 18 Q Yeah.
 19 A It doesn't talk about what the profit split is.
 20 Q Okay. Doesn't it say -- let's look at No. 1.
 21 A Okay.
 22 Q (As read)
 23 "As the agreed-upon additional sum of \$113,026.92
 24 has been transferred out to an account of my
 25 designation."

1 Does that refresh your memory that that was the figure
2 that you discussed with Mr. Greenberg concerning what his share
3 of the Netflix profit would be if he loaned you the money?
4 A Okay. So maybe it -- I know that in our meeting he wanted
5 more than I initially proposed. So maybe I was only proposing
6 a smaller figure.
7 I couldn't remember the exact. It's been years since this
8 happened, but I do know that I proposed something initially and
9 then he wanted more.
10 Q Mr. Murray, you testified that after the meeting with Mr.
11 Greenberg, the deal between you and Greenberg did not come to
12 fruition because he was demanding 50 percent. Show us where it
13 says that.
14 A It doesn't say that right there. That was my
15 understanding of our meeting.
16 Q So your understanding was that 113,000 was 50 percent of a
17 \$410,000 trade?
18 A No. I believe we discussed in the meeting 50 percent,
19 which was 205. That's my understanding of the meeting.
20 Q Okay. Mr. Murray, let's talk about your situation with
21 being in custody.
22 You were arrested in March of 2012 and you went to jail,
23 correct?
24 A Yes.
25 Q Okay. And then you said it took about two weeks for you

1 to bail out and you were released on a bond, correct?
2 A Correct.
3 Q And that bond specifically said you were not to leave
4 San Francisco County without permission from Pretrial Services,
5 correct?
6 A Correct.
7 Q Okay. And isn't it a fact that you went to Marin County
8 to discuss with Mr. Greenberg settling the Netflix trade?
9 A Umm, yes.
10 Q And you did not seek Pretrial Services' authority to go to
11 Marin County to try and transact a \$1.8 million loan?
12 A That's correct.
13 Q So you violated your bond right there, correct?
14 A Umm, that's correct.
15 Q And you also violated this bond in other ways, too, isn't
16 that right?
17 A Oh, you mean my 13-minute haircut.
18 Q Oh, yes. Let's discuss that, Mr. Murray.
19 Isn't it a fact you that made numerous trips to Marin
20 County while you were under orders to stay in San Francisco
21 County?
22 A I didn't make "numerous." I made one or two trips to
23 San Francisco -- I mean, to Marin County; one to meet with
24 Scott and then another -- a few others to go to Family Court in
25 Marin.

1 Q And a few others to get haircuts in Marin?
2 A Umm, I -- on the way back from court, I would stop --
3 Q Is that a "yes" or "no"?
4 A What's the question again?
5 Q You also made other trips to Marin County to get your hair
6 cut, didn't you?
7 A Yes. And I'd like to explain, please.
8 Q No --
9 THE COURT: You can explain. Go ahead.
10 A What I would do is I would go to court in Marin, which is
11 in San Rafael, and then my barber of 20 years, I would stop by
12 and stop in for a few minutes to get my hair cut. He's in Mill
13 Valley.
14 On this particular issue you're speaking of, it was
15 literally a 13-minute hair cut.
16 I also had permission from Pretrial Services to have an
17 hour lunch and I took this haircut during my lunch hour. So I
18 didn't believe I was violating any terms of the bond.
19 BY MS. HARRIS
20 Q Where in your bond, that's Government's Exhibit 263, does
21 it say you're permitted to do what you think is permissible in
22 Marin County, including getting haircuts? Where does it say
23 you can do that?
24 A No. I was given specific instruction -- or permission
25 from my Pretrial Services officer that I could take an hour

1 lunch break.
2 Q In Marin County?
3 A We didn't discuss where. She gave me permission to take a
4 one-hour lunch break.
5 I came back from court around -- from court around noon
6 and I didn't think there was anything wrong with stopping in to
7 my barber shop to get a 13-minute haircut between around 12:00
8 and 12:15.
9 Q And you just admitted that you didn't ask permission for
10 of the August 6th trip that you went to Marin County to meet
11 with Scott Greenberg, correct?
12 A I think I've already answered that, yes.
13 Q Okay. So you violated your bond, but you're saying it's
14 okay to have one or two violations, is that right?
15 A I'm not saying it's okay.
16 Q Okay. And, in fact, based on your bond violations, you
17 were put back in custody, based on your violations of the
18 original bond?
19 A That's correct.
20 Q And you appealed? You appealed getting put back into
21 custody. You appealed that to Judge Chen, did you not?
22 A Yes.
23 Q Okay. And on July 19th, 2013 Judge Chen released you from
24 custody and placed you in a halfway house?
25 A Correct.

1 Q And you knew you were forbidden from accessing the
2 internet?
3 A Yes.
4 Q In fact, you were here when we played a phone call between
5 you and your parents, weren't you?
6 A Look, I'm not contesting this. I think --
7 Q The question is: You were here when we played a phone
8 call?
9 A Yes. I was in the courtroom.
10 Q Okay. And you told your parents during that phone call
11 you would do everything in your power not to violate the new
12 bond?
13 A Yes.
14 Q You told your parents you'd rather spend 10 years in jail
15 than put your parents at risk of losing their home? Didn't you
16 say that?
17 A Yes.
18 Q Within 13 days of being released on that bond, you snuck
19 into a conference room at the Pillsbury law firm and accessed
20 the internet, didn't you?
21 A Yes.
22 Q In fact, you spent most of the day on August 2nd, 2013
23 accessing various websites on the internet?
24 A Yes.
25 Q You logged onto Match.com?

1 A I don't recall that, but --
2 Q Are you denying that that was on the internet browser
3 history?
4 A I don't remember doing this, if that's your question.
5 Q You don't remember spending nearly a day in the conference
6 room at Pillsbury accessing the internet when you weren't
7 supposed to?
8 A I remember accessing the internet, yes.
9 Q You and also logged onto hidemyipaddress.com?
10 A I don't remember doing that.
11 Q You also tried to use Skype to make calls?
12 A I did not do that.
13 Q You attempted to install Skype, didn't you?
14 A I probably looked at it. I -- I don't think that I
15 installed it or tried to make any calls.
16 Q You knew that you were specifically prohibited from
17 contacting Giovanni de Francisci, correct?
18 A Yes.
19 Q Judge Chen had specifically ordered that, correct?
20 A Yes.
21 Q And you attempted on that day, on August 2nd, 2013, to
22 find contact information for Giovanni de Francisci on one of
23 Pillsbury's computers?
24 A I don't recall specifically doing that.
25 Q Are you disputing the log history on the internet?

1 A I said, I don't recall doing it.
2 Q After you were caught by a paralegal at Pillsbury on the
3 computer, you needed to figure out some other way to get access
4 to the internet, correct?
5 A No.
6 Q Mr. Murray, isn't it true that you smuggled a computer
7 tablet into the Pillsbury law firm and then hid it in the
8 ceiling of that conference room after you had been caught using
9 one of Pillsbury's computers?
10 A Yes. And I'm sorry for that.
11 Q And each night you hid that computer tablet in the ceiling
12 of the conference room that Pillsbury had specifically
13 designated for you to use to prepare for your criminal defense
14 in this case?
15 A Yes.
16 Q Now, let's get back to your first bond, the bond that you
17 violated that got you back into custody. That bond had a
18 specific addendum, did it not?
19 MR. DRESSLER: Objection, vague.
20 THE COURT: Overruled.
21 MS. HARRIS: Let's bring up Exhibit 165 that's been
22 entered into evidence and then maybe we can -- actually, it's
23 not Exhibit 165. I'm sorry. It's Exhibit 266.
24 Can we bring up Exhibit 266?
25 (Document displayed.)

1 BY MS. HARRIS
2 Q Mr. Murray, we're looking at the order Magistrate Cousins
3 instance imposed on March 27, 2012. Do you agree that that
4 order requires you to:
5 "Wire all assets held overseas, including monies
6 held at the Cayman Institutional Bank to the MNT
7 Master Fund, Limited account held at Interactive
8 Brokers."
9 Is that true?
10 A Yes.
11 Q Okay. So as of March 27th, 2012 you knew that you needed
12 or were ordered to repatriate any money held in MNT Master
13 Fund, Limited to the Interactive Brokers account number?
14 A Yes.
15 Q Okay. Let's look at representation No. 2. You made
16 certain representations to the Court in No. 2, did you not?
17 A Yes.
18 Q And didn't you specifically say:
19 "James Murray represents and warrants to the
20 United States Attorney's Office, the United States
21 Department of Justice, the United States District
22 Court of the Northern District of California, and to
23 any foreign country that has an extradition treaty
24 with the United States that while James Murray is on
25 pretrial release and subject to the terms and

1 conditions of the bond in this case, if James Murray
 2 travels without Court order to any country that has
 3 an extradition treaty with the United States, he will
 4 waive extradition and consent to removal in custody
 5 from that foreign country to the United States
 6 forthwith."
 7 You agreed to that, correct?
 8 A Yes.
 9 Q Mr. Murray, isn't it true that on the secret tablet you
 10 smuggled into Pillsbury, you were researching countries that
 11 didn't have an extradition treaty with the United States?
 12 A No.
 13 Q You were, in fact, researching extradition treaties as was
 14 found on that tablet?
 15 A No. That document got on the tablet by someone else that
 16 had given me the tablet. He had used it before me and had
 17 given it to me.
 18 Q So your testimony is that research concerning extradition
 19 treaties, in light of your willingness to waive extradition,
 20 was put on your secret computer tablet by someone else; is that
 21 your testimony?
 22 A I'm saying that I didn't download that document. And I --
 23 I believe I know who did.
 24 Q Now, Mr. Murray, let's talk a little bit more about your
 25 role with Jones Moore and Associates.

1 You were the Chief Financial Officer of Jones Moore and
 2 Associates, correct?
 3 A I listed myself as the Chief Financial Officer, yes, on a
 4 Chase application.
 5 Q In your mind is listing yourself as Chief Financial
 6 Officer on an application to a bank different than actually
 7 being the Chief Financial Officer?
 8 A No.
 9 Q Okay. So you were the Chief Financial Officer?
 10 A Yes.
 11 Q Okay. Let's bring up Exhibit 160, again, the Due
 12 Diligence Questionnaire.
 13 (Document displayed.)
 14 Q If we could go to Questions 15 and 16 about the service
 15 providers --
 16 MR. DRESSLER: I think we're on the wrong exhibit.
 17 Did you say 160?
 18 MS. ARAUZHAASE: Which page?
 19 MS. HARRIS: Can you get to page -- probably about
 20 Page 7 or 8, Lilli.
 21 (Document displayed.)
 22 BY MS. HARRIS
 23 Q Do you see where it says:
 24 "Does the firm have any service providers?"
 25 Do you see that?

1 A Yes.
 2 Q And you list the auditor as Jones Moore and Associates?
 3 A Yes.
 4 Q Okay. And that is an entity of which you were the Chief
 5 Financial Officer, correct?
 6 A Correct.
 7 Q Now, let's go to Question 16:
 8 "There are any conflicts of interest of which the
 9 investor should be aware?"
 10 And you list "No."
 11 Do you see that?
 12 A Yes, I do.
 13 Q Okay. So isn't it the case that you were the sole manager
 14 of Market Neutral Trading?
 15 A Sole manager, yes.
 16 Q And you were also the Chief Financial Officer of the
 17 auditor for Market Neutral Trading, isn't that correct?
 18 A Yes.
 19 Q And you answered "No" to the question about conflicts of
 20 interest?
 21 A Right. I didn't intend to give anyone any audits while I
 22 was -- from Jones Moore and Associates, and I never did give
 23 them audits.
 24 Q So there is no conflict of interest if you are the auditor
 25 in the fund as long as you don't distribute the audits; is that

1 your testimony?
 2 A My testimony is that we switched to Spicer Jeffries. I
 3 switched the auditor to Spicer Jeffries.
 4 Q Where does it say that in the DDQ that's August 12, 2010?
 5 MR. DRESSLER: Excuse me --
 6 THE WITNESS: Can I finish my question?
 7 THE COURT: You can finish that question. Then you
 8 can answer the next question.
 9 A We switched to Spicer Jeffries as the auditor. No one
 10 received any -- none of the investors received any audits from
 11 Jones Moore and Associates on their -- regarding their money
 12 that would have come from Spicer Jeffries --
 13 MR. FARNHAM: Your Honor, I move to strike as
 14 nonresponsive.
 15 The question is simply whether Mr. Murray was the Chief
 16 Financial Officer of Jones Moore and Associates and the sole
 17 manager of Market Neutral Trading as of August, 2010, the date
 18 of the document we're looking at.
 19 THE COURT: Well, actually, I think your question was
 20 whether there was a conflict of interest.
 21 MS. HARRIS: Correct.
 22 THE COURT: So, yes. The answer was nonresponsive.
 23 It will be stricken and disregarded.
 24 You can answer that question: At the time did you believe
 25 there was a conflict of interest?

1 THE WITNESS: No. Because I knew I would not give
2 anyone audits on their money on a company that I was involved
3 in.
4 BY MS. HARRIS
5 Q Where in the Due Diligence Questionnaire, that's exhibit
6 160, does it say that the auditor, Jones Moore and Associates,
7 will not provide any audits to investors of Market Neutral
8 Trading because the manager and the Chief Financial Officer are
9 one in the same? Where does it say that?
10 A That question is confusing. Maybe you can break it down
11 to two parts?
12 Q Mr. Murray, you would agree that it is a conflict of
13 interest to have the Chief Financial Officer of an auditing
14 firm doing the audits for a hedge fund. You would agree that's
15 a conflict of interest?
16 A Yes, and that's why I switched to Spicer Jeffries.
17 Q Where does it say in the DDQ: I switched to Spicer
18 Jeffries. That's my auditor. Where does that say that in
19 Exhibit 160?
20 A It doesn't say that I switched to Spicer Jeffries.
21 Q In fact, it lists your auditor as Jones Moore and
22 Associates?
23 A Right.
24 Q And, in fact, you say there is no conflict of interest
25 with any of your service providers that are listed, correct?

1 A I think we're talking about apples and oranges.
2 You're asking me literally what does it say? Yes, it says
3 "No." Okay. And I am just simply answering -- I -- I don't
4 believe there is any conflict unless there is a -- unless an
5 audit is issued on an investor's money from Jones Moore and
6 Associates, and that didn't take place.
7 Q Mr. Murray, isn't it true that you specifically directed
8 audits prepared supposedly by Jones Moore and Associates to be
9 given to Paul Eckel?
10 A Yes. For a specific purpose, not for marketing.
11 Q Wasn't the specific purpose to show Paul Eckel what your
12 supposed rate of return was as audited by the independent
13 auditor Jones Moore and Associates?
14 A I think I already showed in the example how that is not
15 confirmation of --
16 MS. HARRIS: Your Honor, I move to strike as
17 nonresponsive.
18 THE COURT: The question --
19 THE WITNESS: The answer is no --
20 THE COURT: Hold on. Hold on.
21 I'm going to grant the motion to strike. You're going to
22 answer the question that is asked.
23 THE WITNESS: Okay.
24 THE COURT: I'll give you an opportunity to respond,
25 but you have to answer the question as asked.

1 THE WITNESS: All right. I understand.
2 THE COURT: Pose the question.
3 BY MS. HARRIS
4 Q Isn't it true that you gave Mr. Eckel or directed
5 Mr. Eckel to get audits supposedly prepared by Jones Moore and
6 Associates so that Mr. Eckel would have independent audits of
7 the performance of Market Neutral Trading?
8 A Yes.
9 Q And you knew that Mr. Eckel would be relying on those
10 audits to determine what the performance of Market Neutral
11 Trading was?
12 A No.
13 Q You didn't think Mr. Eckel was going to rely on
14 independent -- supposedly independent audits for your hedge
15 fund when he requested those audits?
16 A I explained to him what those were. We've had -- I've had
17 testimony. I've told -- I've tried to show it. I believe I've
18 taken -- I've explained this, but no. I told Paul that these
19 are not marketing materials and I explained to him how it's not
20 confirmation of historical performance.
21 Q Where in any of the Jones Moore and Associates audits does
22 it say: This is not confirmation of the performance of Market
23 Neutral Trading? Where does it say that?
24 A It specifically says that this is a -- this is a -- this
25 is for the member class as a whole and I'm talking about the

1 historical performance of an investor that would invest for the
2 entire year.
3 These are two separate -- these are two separate issues
4 and the audit cannot verify historical performance by
5 definition. We just can't, unless there are no contributions
6 or withdrawals during an entire year, which is virtually
7 unheard of.
8 MS. HARRIS: Your Honor, I move to strike the last
9 answer as nonresponsive.
10 THE COURT: Stricken. Disregard it. The jury is to
11 disregard.
12 BY MS. HARRIS
13 Q Now, if we could pull up Government's Exhibit 175, Page 3?
14 (Document displayed.)
15 Q Mr. Murray, let's look at what the Jones Moore and
16 Associates cover letter says for of the audit supposedly of
17 December, 2009.
18 It starts by saying:
19 "Independent Auditor's Report."
20 Do you see that?
21 A Yes, I do.
22 Q Is there anything that says the sole manager of Market
23 Neutral Trading is also the chief financial officer of Jones
24 Moore & Associates?
25 A No.

1 Q And then, let's look at Paragraph 2:
 2 "We conducted our audit in accordance with
 3 auditing standards generally accepted in the United
 4 States of America."
 5 Do you see that?
 6 A Yes.
 7 Q (As read)
 8 "Those standards require that we plan and
 9 perform the audit to obtain reasonable assurance
 10 about whether the schedule of rates of return..."
 11 Do you see that? "Schedule of rates of return." Do you
 12 see that, Mr. Murray?
 13 A I do.
 14 Q (As read)
 15 "...is free of material misstatement."
 16 Do you see that?
 17 A Yes.
 18 Q Now let's look at the third paragraph:
 19 "In our opinion..."
 20 And that would be the opinion of Jones Moore & Associates,
 21 the company of which you are the chief financial officer.
 22 Right?
 23 "In our opinion...."
 24 Do you see that, Mr. Murray?
 25 A I see that.

1 Q (As read)
 2 "...the financial statement referred to above
 3 present fairly, in all material respects, the
 4 financial position of Market Neutral Trading, LLC, as
 5 of December 31, 2013..."
 6 Do you see that?
 7 A Yes, I do see it.
 8 Q Okay. Now, if we could take a look at Page 10 of
 9 Government Exhibit 175.
 10 (Document displayed)
 11 Q Mr. Murray, isn't it true that Page 10 of Government
 12 Exhibit 175 shows a 94.9 percent loss for Market Neutral
 13 Trading for the period January 1, 2009 to December 31, 2009?
 14 A Yes.
 15 Q Isn't it true, Mr. Murray, that this particular 2009 audit
 16 was never given to Paul Eckel at any time?
 17 A This -- I don't know what specifically was given to Paul.
 18 This is -- this is not -- this is not representative -- this is
 19 a separate share class that I have already explained earlier
 20 today.
 21 Q Where in the cover letter for the audit that we are just
 22 looking at, where does it say "This is an audit for a separate
 23 share class"? Where does it say that?
 24 A I -- I don't know.
 25 Q Isn't it true, Mr. Murray, there is nothing in this audit

1 that says "This audit refers to a separate share class of
 2 Market Neutral Trading?"
 3 A Yes.
 4 Q Now, Mr. Murray, yesterday you were asked about some
 5 personal information and you said that you have three kids. Is
 6 that correct?
 7 A Yes.
 8 Q And that's by two different wives, correct?
 9 A Correct.
 10 Q Okay. And, what was the name of your first wife?
 11 A D'Re.
 12 (Reporter interruption)
 13 THE DEFENDANT: D'Re.
 14 BY MS. HARRIS:
 15 Q How do you spell that?
 16 A D apostrophe R-E.
 17 Q What was her maiden name?
 18 A Anderson.
 19 Q Isn't it Stregios?
 20 A No. It's -- her maiden name is Anderson.
 21 Q Does she go by D'Re Stergios?
 22 A It's her new married name, I believe.
 23 Q S-T-E-R-G-I-O-S is the name that she goes by?
 24 A Yes.
 25 Q And in 2000 and 2001 you were married to D'Re?

1 A Yeah -- well, wait. I'm not sure about the date.
 2 Q Let me make it a little more clear for you. In 2000 and
 3 2001, you and D'Re filed joint tax returns for those years.
 4 Correct?
 5 A I don't remember. It's been a long time.
 6 Q You have no memory of whether you filed joint tax returns
 7 with D'Re in 2000 and 2001?
 8 A I don't know if they were joint or -- or separate, is what
 9 I meant.
 10 Q Okay.
 11 A I mean it's likely, if we were married at the time, we
 12 would have filed those.
 13 Q Okay. And you recall that the IRS sent you and D'Re a
 14 notice that you had under-reported your income, and there was a
 15 large deficiency owing. You remember that, do you not?
 16 A Yes. I do. That rings a bell.
 17 Q Okay. And in fact, D'Re filed a petition with the IRS to
 18 be relieved from the deficiency, as an innocent spouse. Do you
 19 remember that?
 20 A Yes.
 21 Q And in fact, you testified during those proceedings.
 22 A Yes.
 23 Q And isn't it true that you denied preparing the 2000 tax
 24 return?
 25 A Uh, I don't remember my testimony back then. But it does

1 -- it does ring a bell. Sounds -- if you're looking at it,
 2 that's -- that's what I testified to.

3 Q And isn't it true that on January 22, 2009 --
 4 MR. DRESSLER: Excuse me. Could I see the documents
 5 that --

6 MS. HARRIS: I'm not done yet.
 7 THE COURT: Well --
 8 MS. HARRIS: I haven't --
 9 THE COURT: There's been no documents yet.

10 BY MS. HARRIS:
 11 Q Mr. Murray, isn't it true that you denied preparing the
 12 2002 joint return for you and D'Re?
 13 A Yes.
 14 Q Okay. And you will recall that on January 22, 2009, the
 15 Honorable Judge Holmes of the United States Court, Tax Court,
 16 issued a written opinion on the -- on the litigation between
 17 you and D'Re and the IRS.
 18 You recall that?
 19 A Yes.
 20 Q And isn't it true that Judge Holmes specifically found
 21 that you completed the return, and did so without showing it to
 22 D'Re, at Page 14? Isn't that true?
 23 A I don't remember that specifically. I don't --
 24 Q Would it refresh your recollection to see the opinion
 25 Judge Holmes issued?

1 A Okay, so you are characterizing it differently now. It is
 2 a judge's opinion? If that's your question, yes.

3 Q Judge Holmes made those findings, did he not?
 4 A I'm just trying to -- it's a judge's opinion or findings,
 5 whatever you want to call it. Yes.

6 Q And he also, Judge Holmes, made the finding that your
 7 ex-wife, D'Re, also, quote (As read):
 8 "...lacks sufficient knowledge because we find
 9 that Murray hid the account statements, particularly
 10 the statements for accounts in her name."
 11 Isn't that what Judge Holmes found in the 2009 opinion
 12 about you?
 13 MR. DRESSLER: I'm going to object to this as
 14 irrelevant, improper --
 15 MS. HARRIS: He's put his credibility at issue,
 16 Your Honor.
 17 THE COURT: Well, all right. Unless it's
 18 transactionally related, we're on grounds that are no longer
 19 relevant. So I'm going to sustain the objection.
 20 MS. HARRIS: Your Honor -- all right. I'll lay a
 21 foundation.
 22 BY MS. HARRIS:
 23 Q Mr. Murray, you testified under oath during the tax
 24 proceedings in front of Judge Holmes, didn't you? You did take
 25 an oath to tell the truth.

1 MR. DRESSLER: Same objection, Your Honor.
 2 THE COURT: Well, I'll allow that answer.

3 BY MS. HARRIS:
 4 Q You did take an oath to tell the truth?
 5 A Yes.
 6 Q And that's the same oath you took in this courtroom
 7 yesterday to tell the truth in these proceedings.
 8 A Yes.
 9 Q And isn't it true that Judge Holmes in 2009 found your
 10 testimony highly improbable?
 11 MR. DRESSLER: Objection, Your Honor. (Inaudible)
 12 THE COURT: Sustained.
 13 (Reporter interruption)

14 BY MS. HARRIS:
 15 Q Isn't it true, Mr. Murray, that you invented a fake
 16 horse-trading business on your tax returns in 2000?
 17 MR. DRESSLER: Objection.
 18 THE COURT: Sustained.

19 BY MS. HARRIS:
 20 Q Mr. Murray, I think we need to get some more clarification
 21 of what happened on that yacht in Monaco in December of 2011.
 22 Who was on that yacht with you?
 23 A Joseph -- or excuse me -- Richard Jones, David Lowe, and
 24 Gianluca. And there were three or four others. A banker, and
 25 a couple of other people I don't recall specifically.

1 Q Okay. And what did you and Richard Jones discuss on this
 2 yacht?
 3 A We spoke about business and trading.
 4 Q What, specifically?
 5 A The markets.
 6 Q And you specifically told Mr. Jones that you received --
 7 that you were under investigation by the Securities and
 8 Exchange Commission?
 9 MR. DRESSLER: Objection. Misstates the evidence.
 10 MS. HARRIS: I'm asking.
 11 THE COURT: Overruled.

12 BY MS. HARRIS:
 13 Q Did you specifically --
 14 A During what time period?
 15 Q You only met him once, correct?
 16 A Yes.
 17 Q Okay. During this personal meeting with Mr. Jones on the
 18 boat in Monaco, did you specifically tell him that you were
 19 under investigation by the SEC?
 20 A He already knew it. He received phone calls from the SEC
 21 and another government agent, I believe he told me.
 22 Q Tell me exactly what Mr. Jones told you about the phone
 23 calls he had received from the SEC.
 24 Did he tell you who called him?
 25 A He didn't give me the name. He said that he -- he spoke

1 to someone from the government.
 2 Q About what?
 3 A My recollection is either the government or the SEC. And
 4 it was generally -- specifically -- it was generally -- I don't
 5 remember the specifics of the conversation. It was about them
 6 contacting him about the relationship between me and -- and
 7 himself and Jones Moore.
 8 Q And Mr. Jones said he specifically spoke to someone from
 9 the government. That's your testimony?
 10 A Yes.
 11 Q Okay. Now, let's talk a little bit about Market Neutral
 12 Trading.
 13 Are you the only employee of Market Neutral Trading?
 14 A Right now?
 15 MR. DRESSLER: Time frame, please.
 16 BY MS. HARRIS:
 17 Q Yeah. Let's talk about the 2010-2011. Let's say
 18 specifically in 2011, did Market Neutral Trading have any other
 19 employees?
 20 A I don't -- we had a couple of traders that were interns
 21 that came from the University of Arizona. I don't remember
 22 exactly the time frame. They were coming; they went. One
 23 person came back.
 24 So, I don't remember specifically when those dates were.
 25 Q Did you have a head of operations?

1 A Um, you mean a tech -- technical operations?
 2 Q What do you mean by "head of operations"?
 3 A Well, why don't you show me the document? I don't --
 4 Q I'm asking you: Did you have a head of operations in
 5 February of 2011? That's the question.
 6 A That would be me.
 7 Q You were the head of operations?
 8 A Yeah, I didn't -- there wasn't a specific designation, a
 9 title, but if you're asking who's in charge, I was.
 10 Q Who was the head of operations?
 11 A I was the head of operations. I mean, there's not, like,
 12 a specific title that I gave myself. But I handled things.
 13 Q Did you have an assistant head of operations?
 14 A Assistant head of operations. Not that I recall.
 15 Q You recall giving testimony under oath to the Securities
 16 and Exchange Commission on February 23, 2011. Correct?
 17 A Yes.
 18 Q And you were under oath during that proceeding.
 19 A Yes.
 20 Q On Page 20, you were asked the question (As read):
 21 "Does Market Neutral Trading have any employees
 22 besides you?"
 23 "ANSWER: No."
 24 "QUESTION: Has it ever?"
 25 "ANSWER: Yes."

1 "QUESTION: Who?
 2 "ANSWER: Julie Leopold.
 3 "QUESTION: What was Julie Leopold's role with
 4 Market Neutral Trading?
 5 "ANSWER: Assistant head of operations."
 6 Does that refresh your recollection that Julie Leopold --
 7 A She was my assistant, yes. I didn't realize I had labeled
 8 her as the assistant head of operations.
 9 Q Where does Ms. Leopold live, Mr. Murray?
 10 A In the East Bay.
 11 Q Where in the East Bay?
 12 A I don't know, specifically.
 13 Q How old is Ms. Leopold?
 14 A Right now? Or at the time?
 15 Q Both.
 16 A I -- I can only estimate. She's probably, right now,
 17 about 36.
 18 Q And how did you come to hire her as the assistant head of
 19 operations for Market Neutral Trading?
 20 A How did I come to hire her. She was -- she's been helping
 21 for a number of years.
 22 Q Helping who?
 23 A Me.
 24 Q With what?
 25 A With the trading operations, just administrative things.

1 Q For Market Neutral Trading?
 2 A And Pareto.
 3 Q Any other organizations you were involved with?
 4 A She -- I believe, Murray Partners, also. And Murray Asset
 5 Management.
 6 Q So how did you get connected with Julie Leopold so she
 7 could serve in all these functions with you?
 8 A I believe she answered an ad, a help-wanted ad that I put
 9 up.
 10 Q What newspaper was that help-wanted ad in?
 11 A I believe it was a Craigslist ad.
 12 Q When was this Craigslist ad?
 13 A I don't recall specifically.
 14 Q What did it say?
 15 A What did the ad say?
 16 Q Yes.
 17 A It was looking for an administrative assistant.
 18 Q For what?
 19 A For trading.
 20 Q What qualifications were you seeking?
 21 A Oh, just your general organizational skills. Typing.
 22 College graduate. I don't remember specifically what I put in
 23 the ad.
 24 Q Approximately when did you list this ad with Craigslist?
 25 A I don't remember. It was probably the early part of 2000-

1 -- 2002.
 2 Q And after you placed the ad with Craigslist, did you
 3 interview Ms. Leopold in person?
 4 A Yes.
 5 Q Where did that interview take place?
 6 A In Starbucks in San Francisco.
 7 Q Which Starbucks?
 8 A I don't recall specifically. I think it's on Kearney and
 9 California. Maybe the street over.
 10 Q What time of day did this interview take place?
 11 A Afternoon. After the market closed.
 12 Q How did you contact Ms. Leopold to tell her to meet you at
 13 the Starbucks at Kearney and California after the market closed
 14 for an interview?
 15 A I don't remember.
 16 Q Did you have a phone number for her?
 17 A Did I have a phone number?
 18 Q Yeah.
 19 A No. I mean, I probably did. She probably e-mailed me or
 20 something.
 21 Q Was it done by e-mail, Mr. Murray?
 22 A Was what done by email?
 23 Q The setting up of this interview at the Starbucks at
 24 California and Kearney.
 25 A I don't remember how it was set up. It's been 14 years.

1 Q So how would you contact Ms. Leopold if you wanted to
 2 contact her? Did you have an email address for her?
 3 A At the time, I probably -- I don't remember if it was
 4 email or phone.
 5 Q You have no idea how you contacted your assistant head of
 6 operations?
 7 A I thought you were talking about in the initial Starbucks
 8 meeting.
 9 Q Well, let's talk about the time that you gave the sworn
 10 testimony to the SEC. How did you contact your assistant head
 11 of operations in February of 2011?
 12 A I think that she was previously my head of operations, is
 13 what my testimony is.
 14 Q Oh, so at the time of your testimony, she wasn't your head
 15 of operations.
 16 A I believe so. That's -- that's what was -- what I
 17 testified to.
 18 Q Did you fire her?
 19 A Did I fire her -- I didn't need -- I didn't need her
 20 anymore.
 21 Q So what happened?
 22 A What do you mean, what happened? It's a business issue.
 23 Q When did you do -- when did you have this business issue
 24 with Ms. Leopold?
 25 A It wasn't -- it wasn't a personal issue. It was regarding

1 my need for an assistant.
 2 Q I'm confused, Mr. Murray. Can you let us know when
 3 Ms. Leopold stopped working for you at Market Neutral Trading?
 4 A Some time before January or -- that interview was given
 5 with the SEC, what, in 2011? It would have been before that
 6 time.
 7 Q And what were the circumstances under which Ms. Leopold
 8 stopped working for you?
 9 A What do you mean, "circumstances"? I told you that I
 10 didn't have any need for an assistant.
 11 Q So what did you do? How did you let Ms. Leopold know not
 12 to show up for work?
 13 A I just told her.
 14 Q In person? Or over the email?
 15 A I don't recall.
 16 Q Now, Mr. Murray, you testified that Mr. Lowe
 17 electronically transmitted a copy of his passport to you in
 18 April of 2010. Do you recall that testimony?
 19 A I said approximately April, yes.
 20 Q And in fact, you provided a copy of the subscription
 21 agreement that you received electronically from Mr. Lowe for a
 22 potential investment in Market Neutral Trading. You also
 23 received that electronically.
 24 A Yes.
 25 Q And you provided that transmission to your lawyer, and

1 it's now an exhibit in court.
 2 A Yes.
 3 Q Okay. You have not provided any electronic transmission
 4 information concerning the passport you supposedly got from
 5 Mr. Lowe in April, 2010. Correct?
 6 A The question is -- how do you supply electronic
 7 transmission? I don't understand the question.
 8 Q Are you confused about how you supplied the electronic
 9 transmission for the subscription agreement we just saw as an
 10 exhibit in your direct examination?
 11 A That's not what I said. I thought we were talking about
 12 the passport.
 13 Q Okay. And you printed out that subscription agreement for
 14 your lawyer. Correct?
 15 A Correct.
 16 Q Okay. And you also electronically received Mr. Lowe's
 17 passport. Was there an email from Mr. Lowe that accompanied
 18 that electronic transmission?
 19 A An email. Um, I think it was done over Skype or one of
 20 the instant messaging services.
 21 Q Let's get some clarification for this. Mr. Lowe
 22 transmitted his passport to you over Skype?
 23 A I don't recall specifically. But it's possible. I do a
 24 lot of document transmissions through Skype. And other instant
 25 messages.

1 Q And those would all be shown on your computer hard drive,
2 correct?
3 A Correct.
4 Q And you --
5 A I don't actually know about that. That's above my
6 qualifications.
7 Q So, let's get your best memory of this April, 2010 sending
8 of the passport by Mr. Lowe to you. You remember that it was
9 done electronically. Correct?
10 A Yes.
11 Q And was there a transmission letter that accompanied the
12 passport from Mr. Lowe?
13 A Letter. I don't recall a letter.
14 Q So, did the passport just show up electronically somewhere
15 for you?
16 A That's because I was expecting it. Per our conversation.
17 Q An electronic copy of a passport just showed up, with no
18 cover letter, no email, no transmission.
19 A Correct.
20 Q Is that your testimony?
21 A Yes.
22 Q Okay. And, you never downloaded the transmittal to show
23 us in this courtroom to back up your story, did you?
24 A There was no transmittal. There's not how electronic
25 documents work.

1 Q So there would be no date showing this; it would just go
2 into the ether? Is that your testimony?
3 A What would go into the ether?
4 Q Are you confused about the electronic transmission you
5 testified to of Mr. Lowe's passport? You said it was
6 transmitted to you electronically in April, 2010.
7 A Correct.
8 Q Are you saying that there is no electronic record of that
9 transmission today?
10 A I'm not -- I'm not saying that. I'm just trying to answer
11 your questions.
12 Q And you never printed out a copy of any electronic
13 transmission that would back up your story that Mr. Lowe sent
14 you his passport electronically in April, 2010.
15 A You're assuming that there would be a transmission.
16 Q It's a yes-or-no question.
17 A Your question is: Did I print out an electronic
18 transmission?
19 Q Yes.
20 A No. And I don't know that one existed.
21 Q So, you're saying that passport was transmitted to you
22 electronically, with no footprint whatsoever left behind?
23 A I'm not -- I'm not saying that. I don't know what
24 footprint was left behind.
25 Q But you never brought it to court to verify your story.

1 Correct?
2 MR. DRESSLER: Objection, Your Honor.
3 THE COURT: Sustained.
4 MR. DRESSLER: What court?
5 BY MS. HARRIS:
6 Q You printed out the copy of the subscription agreement
7 that you thought you had with Mr. Lowe, right?
8 A Actually, I technically -- I'd like to restate my
9 testimony. I didn't print it out. I gave the file, the PDF
10 file to my lawyer. And then he printed it out.
11 Q Okay. Is there also a PDF file somewhere of this
12 electronic transmission of Mr. Lowe's passport?
13 A Yes.
14 Q Where's that?
15 A On our computers.
16 Q So --
17 A It's where we got the documents to introduce into
18 evidence.
19 Q So, you're saying that the electronic copy of Mr. Lowe's
20 passport that was in evidence came from your documents? Not
21 what was seized by the Government? Is that what you're saying?
22 A I don't -- I don't know where it came from, is what I'm
23 saying.
24 (Off-the-Record discussion between counsel)
25 MS. HARRIS: Your Honor, I believe Exhibit 263 has

1 been admitted in evidence, but not formally moved in. And I
2 would like to do that.
3 THE COURT: Has been admitted but not formally moved
4 in? What's your --
5 MS. HARRIS: The conditions of release. The
6 original.
7 THE COURT: What --
8 MS. HARRIS: It was subject to a stipulation.
9 THE COURT: Does it show admission so far?
10 THE CLERK: I do. I show it in.
11 THE COURT: It was admitted.
12 THE CLERK: Yes. On October 5th.
13 THE COURT: All right.
14 MS. HARRIS: And I would also like to move in
15 evidence --
16 THE COURT: So it was already admitted.
17 MS. HARRIS: Okay. So I -- I just want to make sure
18 I didn't publish it without --
19 THE COURT: Okay.
20 MS. HARRIS: And then I would also like to move
21 Exhibit 404, the phone call that was played, between Mr. Murray
22 and Interactive Brokers.
23 THE COURT: All right. Any objection?
24 MR. DRESSLER: No, Your Honor.
25 THE COURT: 404 is admitted.

1 (Trial Exhibit 404 received in evidence)
 2 (Off-the-Record discussion between counsel)
 3 MS. HARRIS: We have no further questions,
 4 Your Honor.
 5 THE COURT: All right. Redirect?
 6 MR. DRESSLER: No questions.
 7 THE COURT: All right. Then, Mr. Murray, you may
 8 step down. Thank you.
 9 (Defendant excused from the witness stand)
 10 THE COURT: Any further witnesses by the defense?
 11 MR. DRESSLER: No, Your Honor. The defense rests.
 12 THE COURT: Thank you. Any rebuttal by the
 13 Government?
 14 (Off-the-Record discussion between counsel)
 15 MR. FARNHAM: May we have a moment, Your Honor?
 16 THE COURT: All right.
 17 (A pause in the proceedings)
 18 MS. HARRIS: Your Honor, can we take a break at this
 19 point?
 20 THE COURT: All right. How long of a break do you
 21 need?
 22 MS. HARRIS: Fifteen minutes.
 23 THE COURT: Will, this is the normally the lunch
 24 hour. So maybe we should just go ahead and take that break,
 25 unless you see a reason to make this a 15-minute break.

1 (Off-the-Record discussion between counsel)
 2 MS. HARRIS: I think the lunch hour would be fine.
 3 THE COURT: All right. Well, lunch half hour. So,
 4 see you back here -- trying to squeeze in a little extra time
 5 here -- 12:30, we'll be back.
 6 Thank you, ladies and gentlemen.
 7 (Jury excused)
 8 (The following proceedings were held outside of the
 9 presence of the Jury)
 10 THE COURT: All right. So we'll find out what you
 11 are going to be doing shortly.
 12 MR. FARNHAM: Yes. Thank you, Your Honor.
 13 THE COURT: Thank you.
 14 (Whereupon at 11:58 a.m. proceedings
 15 were adjourned for noon recess.)
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1 PROCEEDINGS
 2 October 7, 2015 12:31 p.m.
 3 (The following proceedings were held outside of the
 4 presence of the Jury)
 5 THE CLERK: Come to order.
 6 THE COURT: Okay. Back on the record, everyone?
 7 MS. HARRIS: We have one rebuttal witness,
 8 Your Honor, Agent Sims. And we can put him on in 15 minutes.
 9 I mean we're ready now, but it won't take very long.
 10 THE COURT: All right. And that's it?
 11 MS. HARRIS: Yes.
 12 THE COURT: Okay. Then what I propose to do,
 13 obviously, we're not going to be able to do closings and all
 14 that, so we'll just excuse the jury for the day after evidence
 15 is completed, and instruct them to come back first thing
 16 Friday, and we will start in with my final instructions and
 17 closings.
 18 MR. DRESSLER: Yes.
 19 THE COURT: I know you haven't had a chance to
 20 prepare all your closings, but do you have some guess as to how
 21 long the closings will be?
 22 MS. HARRIS: I don't, Your Honor. But how -- we
 23 should be able to finish everything in the extended court day.
 24 I don't --
 25 THE COURT: I would hope so, unless you're going to

1 tell me you're going to have, like, a four-hour closing. I
 2 assume that's not the case.
 3 MS. HARRIS: I would be collapsing in front of the --
 4 THE COURT: We would all be collapsing.
 5 MR. DRESSLER: As someone once said to a jury, Your
 6 Honor, I've always wanted a case where could I argue, like in
 7 the old days, for four or five days. This is not one of those
 8 cases.
 9 THE COURT: This is not one of those cases. These
 10 are not the old days. So --
 11 MR. DRESSLER: These are not the old days. But, I
 12 mean, an hour and a half, if that.
 13 THE COURT: All right. So they'll be able to --
 14 MR. DRESSLER: We'll definitely finish the arguments,
 15 and be instructed at some point on Friday.
 16 THE COURT: All right. So what I can tell the jury
 17 before we excuse them is that we will reconvene. The plan is
 18 they're going receive final instructions on the law, that each
 19 side will then make their closing arguments, and we anticipate
 20 that some time during the day, certainly before the end the day
 21 if it's a full day, and hopefully before the end of the day
 22 even if it's a normal day, that they can expect to receive the
 23 case for deliberation.
 24 MS. HARRIS: Yes.
 25 THE COURT: That's a fair prediction.

1 MR. DRESSLER: Yes.
 2 THE COURT: And then they can decide what they want
 3 to do. Whether they stay or come back. Monday is a holiday,
 4 right?
 5 MS. HARRIS: Uh-huh.
 6 MR. DRESSLER: (Nods head)
 7 THE COURT: All right. So let's bring them. Let's
 8 take care of this.
 9 And then I have a couple of jury-instruction things I want
 10 to raise with you, and then I'll take them back.
 11 (The following proceedings were held in the presence
 12 of the Jury)
 13 THE COURT: Okay. You may be seated, everyone.
 14 Welcome back. I hope you enjoyed the lunch half-hour break.
 15 The Government has an opportunity now to present a
 16 rebuttal case. I understand that you do have a witness to
 17 call?
 18 MR. FARNHAM: Yes, Your Honor. The Government would
 19 call on rebuttal, Agent Anthony Sims.
 20 THE COURT: All right.
 21 THE CLERK: Do you want me to re-swear him?
 22 THE COURT: No.
 23 Mr. Sims, you have been previously sworn. And so, just a
 24 reminder that you are under oath. You may go ahead and take
 25 the stand.

1 MR. FARNHAM: May I begin, Your Honor?
 2 THE COURT: Yes.
 3 ANTHONY SIMS,
 4 called as a witness for the Government herein, having been
 5 previously sworn, resumed the stand and testified as follows:
 6 DIRECT EXAMINATION
 7 BY MR. FARNHAM:
 8 Q Good afternoon, Agent Sims.
 9 Do you recall that you were previously qualified as an
 10 expert in the analysis and interpretation of forensic data?
 11 A Yes, I do.
 12 Q And that was computer forensic data?
 13 A Yes.
 14 Q Before we get into that, I want to ask you one question
 15 about the work you did regarding looking at the card holders in
 16 the Chase Paymentech transactions. Do you remember that?
 17 A Yes, I do.
 18 Q Was one of the card holders that you identified that had
 19 been swiped on that Chase Paymentech machine and appeared on
 20 that spreadsheet, was one of those Julie Leopold?
 21 A Yes, it was.
 22 Q One of the card holder names?
 23 A Correct.
 24 Q I want to ask you about work you did looking at a --
 25 forensic data from a hard drive that was found during a search

1 of James Murray's residence in 2011.
 2 Were you able take a look at that -- did you have a chance
 3 to look at that, some of that forensic data?
 4 A Yes.
 5 Q Were you able to look at information about some of the
 6 files that were actually found on that hard drive that was
 7 found in Mr. Murray's residence?
 8 A Yes.
 9 MR. FARNHAM: Your Honor, may I approach with some
 10 exhibits?
 11 THE COURT: Yes.
 12 MR. DRESSLER: Can I see this exhibit before --
 13 (Inaudible)
 14 (Reporter interruption)
 15 MR. DRESSLER: I would like to see these exhibits
 16 before --
 17 THE COURT: All right. Maybe you can tell Counsel
 18 which --
 19 MR. FARNHAM: I will show them; I'll show him copies.
 20 They were on our exhibit list.
 21 THE COURT: Okay.
 22 MR. DRESSLER: I want to see (Inaudible)
 23 (Reporter interruption)
 24 THE COURT: If it's what?
 25 MR. DRESSLER: If it's proper rebuttal evidence.

1 THE COURT: Oh.
 2 (Off-the-Record discussion between counsel)
 3 BY MR. FARNHAM:
 4 Q Agent Sims, when a forensic pull of data is captured from
 5 a device like a hard drive, what types of information about the
 6 files on that drive are retained or kept?
 7 A So, the forensic tools capture when the file was created,
 8 when the file was last accessed, and the owner of the file, and
 9 who created the file.
 10 Q So when you do your analysis and you look at particular
 11 files, are you able to analyze some of that information?
 12 A Yes. Typically, that information is highly analyzed to
 13 establish ownership of the document and create a timeline of
 14 the document.
 15 Q If I can ask you to look at what's been marked as
 16 Exhibit 133A.
 17 Do you have that in front of you?
 18 A Yes.
 19 Q Was this a document that was pulled from the forensic
 20 information from the hard drive that was found in James
 21 Murray's residence in November, 2011?
 22 A Yes.
 23 Q And what does it appear to be, on its face? What does it
 24 say?
 25 A Says (As read):

1 "Market Neutral Trading LLC, Financial
2 Statements and Independent Auditor's Report,
3 December 31, 2006."
4 MR. FARNHAM: Your Honor, I would move Exhibit 133A
5 into evidence.
6 THE COURT: Any objection?
7 MR. DRESSLER: No objection.
8 THE COURT: All right. Admitted.
9 (Trial Exhibit 133A received in evidence)
10 MR. FARNHAM: May we publish it?
11 THE COURT: Yes.
12 (Document displayed)
13 BY MR. FARNHAM:
14 Q And just like we were talking about when you were
15 discussing the files that you found on the tablet computer,
16 tell me about this document.
17 What file format was this document found -- what format
18 was it on the hard drive?
19 A PDF format.
20 Q And looking at the forensic data that had been pulled from
21 that hard drive, were you able to look at what's called the
22 metadata of this document?
23 A Yes.
24 Q What is metadata?
25 A Metadata is properties. So just like your -- a person's

1 prop- -- like the Social Security number, date of birth, files
2 also have the same sorts of properties. So the metadata or
3 properties are going to be stored in the computer, itself, for
4 that file.
5 Q And do they go with the file, itself?
6 A Correct.
7 Q And they don't appear on the paper version, but how -- how
8 are they stored?
9 A They're stored in what's called the registry, which is a
10 database on the computer. And that database keeps track of
11 everything ever done on that computer since the computer was
12 turned on from the factory.
13 Q Looking at the metadata for Exhibit 133A, when you looked
14 at it, what did you find?
15 A I found that the metadata for this file shows that the
16 properties came from Microsoft Word document belonging to James
17 Murray.
18 Q So when you say it came from a Microsoft Word document,
19 what does that mean?
20 A Microsoft is the company. Microsoft. And they create
21 software, office software. And a Word document is a program
22 that allows you to type information, and then transmit that
23 information.
24 Q So Word is a word processor?
25 A A word processor, correct.

1 Q So when you say it came from a Word document, what does
2 that mean?
3 A So the properties, once -- once the document is created,
4 its properties are imprinted permanently into the document,
5 itself.
6 Q Was this -- you mentioned that this file was stored on the
7 hard drive as a PDF document.
8 A Correct.
9 Q How did it get to be a PDF document?
10 A So the Word document was changed into a PDF document. And
11 it shows that in the metadata of the file.
12 Q This PDF file. Did the metadata indicate the name of the
13 Word document that had been --
14 A Correct.
15 Q -- that had been converted to a PDF?
16 A Correct.
17 Q And then, what did it indicate about the author of that
18 document?
19 A The author was listed as "James Murray."
20 Q What does that mean, in terms of metadata?
21 A What that means is whenever -- typically, whenever you buy
22 a new program -- in this case, Microsoft -- you install it onto
23 a computer, it would ask you who is the registered owner or
24 user. And then you have to enter a name. And that name is
25 transmitted to the properties of the -- of the document.

1 In this case, the properties listed the owner as "James
2 Murray" for the Word document.
3 Q And would that indicate that the software was owned by Jim
4 Murray?
5 A That -- that says that James Murray entered his name as
6 the registered owner-user for that software.
7 Q Were you also able to find, when you looked at that
8 metadata, the create date of the document?
9 A Yes.
10 Q What would that create date mean?
11 A The create date is when the change from the document to
12 the PDF occurred.
13 Q Change from the Word document to the PDF document?
14 A Correct.
15 Q And for Exhibit 133A, do you recall what you saw as the
16 create date for that document?
17 A I recall the year, 2010.
18 Q Do you recall the month and day?
19 A I would have to have a -- the work I did. I would have to
20 have the work I did to refresh my recollection on the actual
21 day.
22 Q Would it refresh your recollection if I showed you a
23 printout of some of the metadata information?
24 A Yes.
25 MR. FARNHAM: Your Honor, may I approach with that

1 document?

2 THE COURT: All right. Counsel has seen it?

3 MR. DRESSLER: No.

4 (Document tendered)

5 MR. DRESSLER: Go ahead.

6 BY MR. FARNHAM:

7 Q Does that document refresh your recollection as to what

8 you saw as the create date in the metadata for this document,

9 Exhibit 133A?

10 A Yes. It says:

11 "March 24, 2010, 9:57 a.m."

12 Q I'll take that back. And if I could ask you to look at

13 Exhibit 133B.

14 (Witness examines document)

15 Q What is Exhibit 133B?

16 A This is a -- Financial Statements and Independent

17 Auditor's Report for Market Neutral Trading, December 31, 2007.

18 Q Is this a printout of a file that you found in the

19 forensic data pull from the hard drive found in James Murray's

20 residence?

21 A Yes.

22 MR. FARNHAM: Your Honor, I would offer Exhibit 133B

23 into evidence.

24 THE COURT: Any objection?

25 MR. DRESSLER: No objection.

1 THE COURT: Admitted.

2 (Trial Exhibit 133B received in evidence)

3 MR. FARNHAM: If we may publish it, Your Honor?

4 THE COURT: Yes.

5 (Document displayed)

6 BY MR. FARNHAM:

7 Q Does this also appear to be a Market Neutral Trading, LLC

8 Financial Statements document?

9 A Yes.

10 Q If we could look at Page 3.

11 (Document displayed)

12 Q Do you see at the top of this letter, it purports to be

13 from Jones Moore & Associates, Limited?

14 A Yes, I do.

15 Q Were you able to look at the metadata for this document?

16 A Yes, I did.

17 Q And, what did the metadata tell you about how this PDF

18 file was created?

19 A This PDF file was created in the same manner I spoke of

20 for Exhibit 133A. It was converted from a Word document and

21 changed into a PDF document.

22 Q And was there anything in the author field of that

23 metadata?

24 A The name on the author line was James Murray.

25 Q And what does that indicate to you?

1 A Indicated the author of this document, the Word document

2 that was converted to a PDF was James Murray.

3 Q According to the name that was entered into that version

4 of Microsoft Word?

5 A Correct.

6 Q Do you remember the date, the create date that you saw in

7 the metadata for this document?

8 A I believe the date was either March 23rd, 2010, or the

9 24th.

10 Q Would it refresh your recollection to see the printout of

11 the metadata that you made?

12 A Yes.

13 (Document tendered)

14 MR. FARNHAM: May I approach with the document,

15 Your Honor?

16 THE COURT: Yes.

17 (Witness examines document)

18 (Document displayed)

19 BY MR. FARNHAM:

20 Q Does that refresh your recollection about the create date

21 that you saw in the metadata for Exhibit 133B?

22 A Yes, it does.

23 Q And what was that date?

24 A Create date listed "3" -- "March 24, 2010, 9:32 a.m."

25 Q I'll take that from you. If I could ask you to look at

1 Exhibit 133C.

2 (Witness examines document)

3 Q And is 133C also a printout of a PDF file that you found

4 from the forensic data of that hard drive found in James

5 Murray's residence?

6 A Yes.

7 Q Same hard drive we've been talking about.

8 A Correct.

9 Q And what is -- what was the file format for Exhibit 133C?

10 A That was a PDF.

11 MR. FARNHAM: Your Honor, I would move Exhibit 133C

12 into evidence.

13 THE COURT: Any objection?

14 MR. DRESSLER: No objection.

15 THE COURT: Admitted.

16 (Trial Exhibit 133C received in evidence)

17 MR. FARNHAM: If we may publish that, Your Honor?

18 THE COURT: Yes.

19 (Document displayed)

20 BY MR. FARNHAM:

21 Q And you see that document 133C says:

22 "Market Neutral Trading Financial Statements..."

23 With a date of December 31, 2010?

24 A Correct.

25 Q Were you able to look at the metadata for this, document?

1 A Yes, I did.
 2 Q And what did that tell you about its creation?
 3 A It told me that the -- the document was originally a Word
 4 document, and -- as stated in the first line of the metadata.
 5 And then it was changed into a PDF. And the author was listed
 6 as "James Murray."
 7 Q If I could ask you to look at 133D, should also be in
 8 front of you.
 9 (Witness examines document)
 10 Q Is 133D a printout of a document that was found in the
 11 forensic data from that hard drive found in Mr. Murray's
 12 residence?
 13 A Yes.
 14 Q And what file format was this saved in?
 15 A PDF format.
 16 MR. FARNHAM: Your Honor, I would offer 133D into
 17 evidence.
 18 MR. DRESSLER: No objection.
 19 THE COURT: Admitted.
 20 (Trial Exhibit 133D received in evidence)
 21 MR. FARNHAM: If we may publish it?
 22 THE COURT: Yes.
 23 (Document displayed)
 24 BY MR. FARNHAM:
 25 Q Exhibit 133D, you see that it says:

1 "Market Neutral Trading, LLC, Schedule of Rates
 2 of Return, August 1, 2006 Through December 31, 2009."
 3 Do you see that?
 4 A Yes, I do.
 5 Q If we could look at the third page of this document.
 6 (Request complied with by the Witness)
 7 (Document displayed)
 8 Q You see at the top, the letterhead appears to say "Jones,
 9 Moore & Associates"?
 10 A Yes, I do.
 11 Q Were you able to look -- based on the forensic data that
 12 was pulled from that hard drive, were you able to look at the
 13 metadata for this file?
 14 A Yes, I was.
 15 Q And what did that show?
 16 A Showed that the PDF, the information in the PDF came from
 17 a Word document. And that information, the author of that
 18 information was James Murray.
 19 Q And, if we could look at the -- on that same page, Page 3
 20 of this document, if we zoom out a little bit, do you see the
 21 bottom date says "Wilmington, Delaware," and then it says --
 22 has a date?
 23 A Correct.
 24 Q What is that date?
 25 A "March 22, 2010."

1 Q Were you able to determine the create date of this
 2 document, based on the metadata you reviewed?
 3 A Yes, I was.
 4 Q Do you recall what that date was?
 5 A It was on -- on or about March 23rd or 24th of 2010.
 6 Q Would it refresh your recollection for the exact day to
 7 see a printout of the metadata you made?
 8 A Yes.
 9 (Document tendered)
 10 (Witness examines document)
 11 Q Does that document refresh your recollection as to the
 12 create date that you saw in the metadata for Exhibit 133D?
 13 A Yes. Says March 24, 2010, 2:43 a.m.
 14 Q And then, one last document.
 15 MR. FARNHAM: I would like to approach, Your Honor.
 16 THE COURT: Okay.
 17 BY MR. FARNHAM:
 18 Q Handing you what's been marked as Exhibit 134.
 19 (Witness examines document)
 20 Q What is Exhibit 134?
 21 A Financial Statements and Independent Auditor's Report for
 22 Market Neutral Trading, the month of December 31st, 2009.
 23 Q And was this -- is this -- Exhibit 134, is that a printout
 24 of a file that you found in the forensic data from the hard
 25 drive found in Jim Murray's residence?

1 A Yes, it was.
 2 Q And for that document --
 3 MR. FARNHAM: I'm sorry. Your Honor, I would move
 4 Exhibit 134 into evidence.
 5 MR. DRESSLER: No objection.
 6 THE COURT: Admitted.
 7 (Trial Exhibit 134 received in evidence)
 8 BY MR. FARNHAM:
 9 Q For that document, were you also able to look at the
 10 metadata associated with that, that file?
 11 A Yes, I was.
 12 Q Was that a PDF file?
 13 A Yes, it was.
 14 Q What did the metadata indicate to you about how that PDF
 15 file was created?
 16 A This PDF file was created in the same manner as previous
 17 exhibits discussed. It was a Word document converted into a
 18 PDF. The author was James Murray.
 19 Q Were you able to determine the date that document was
 20 created, according to the metadata?
 21 A Yes, I was.
 22 Q Do you remember the date?
 23 A The date was either March 23 or 24 of 2010.
 24 Q Would it refresh your recollection to see a printout of
 25 that metadata?

1 A Yes.
 2 Q As to the exact date?
 3 (Off-the-Record discussion between counsel)
 4 (Document tendered)
 5 MR. FARNHAM: Your Honor, if I may publish Exhibit
 6 134?
 7 THE COURT: Okay.
 8 (Document displayed)
 9 BY MR. FARNHAM:
 10 Q Is this the document that you found on that hard drive?
 11 A Yes.
 12 Q This is the document that was contained in the forensic
 13 data pull from that hard drive?
 14 A Correct.
 15 Q And it was in PDF format?
 16 A Correct.
 17 Q If we can look at the third page of Exhibit 134.
 18 A Okay.
 19 (Document displayed)
 20 Q And does this also appear to have "Jones, Moore &
 21 Associates, Limited" at the top of the letterhead?
 22 A Yes, it does.
 23 Q And does this say "INDEPENDENT AUDITORS' REPORT"?
 24 A Yes, it does.
 25 Q And, I'm sorry; did you remember the exact date that was

1 shown in the create date for that metadata?
 2 A I remember the date range, but not the exact date.
 3 MR. FARNHAM: Your Honor, may I approach?
 4 THE COURT: Yes.
 5 (Witness examines document)
 6 BY MR. FARNHAM:
 7 Q Does that refresh your recollection as to the date you saw
 8 as the create date for this document in the metadata?
 9 A Correct.
 10 Q And what does that create date refer to, again?
 11 A The create date refers to the date when the original
 12 properties of the document was created. Which was --
 13 Q And would that, would that indicate something in relation
 14 to the conversion from a Word document to a PDF document?
 15 A Correct.
 16 Q So that would have been -- this would -- that metadata
 17 would indicate to you that this document was converted from a
 18 Word document to a PDF on March 23, 2010?
 19 A Correct.
 20 MR. FARNHAM: Just a moment, Your Honor.
 21 THE COURT: Okay.
 22 (Off-the-Record discussion between counsel)
 23 BY MR. FARNHAM:
 24 Q So for Exhibit 134, we've looked at, you've reviewed the
 25 metadata for that. Correct?

1 A Correct.
 2 Q And does that metadata indicate to you the author of this
 3 file?
 4 A It states "Jim Murray."
 5 MR. FARNHAM: No further questions.
 6 THE COURT: All right. Cross?
 7 MR. DRESSLER: Just one question.
 8 CROSS EXAMINATION
 9 BY MR. DRESSLER:
 10 Q The Julie Leopold credit card that you identified, that
 11 was not a personal account. That was Julie Leopold under an
 12 MNT credit card account. Correct?
 13 A Correct.
 14 MR. DRESSLER: Thank you. No further questions.
 15 THE COURT: All right. Thank you.
 16 Anything further?
 17 (Off-the-Record discussion between counsel)
 18 MR. FARNHAM: Nothing further, Your Honor.
 19 THE COURT: All right. Then Agent Sims, you may step
 20 down. Thank you.
 21 (Witness excused)
 22 THE COURT: Anything further from the Government?
 23 MS. HARRIS: No, Your Honor.
 24 THE COURT: All right. That concludes presentation
 25 of evidence, then.

1 You agree, Mr. Dressler? At this point?
 2 MR. DRESSLER: I do, Your Honor.
 3 THE COURT: All right. So, each side has rested.
 4 That concludes the evidence presentation of this case.
 5 What we are going to do is adjourn now at this time and
 6 reconvene -- tomorrow is not a court day, not a trial day, but
 7 Friday is. So we will commence with the next phase of the
 8 case, which is I'm going to read you some instructions on the
 9 law.
 10 And I will acknowledge that one of you had submitted a
 11 question about the law. And my comment is that I'm going to
 12 give you the law on Friday morning, explain to you the -- the
 13 laws that apply here.
 14 We will then hear from each side, who will have an
 15 opportunity to make closing arguments. And it is my
 16 expectation that some time, perhaps late morning or early
 17 afternoon, that the case will be submitted to you for
 18 deliberation.
 19 And as I had mentioned, I had asked that you try to keep
 20 Friday open on your schedule in case the jury wants to, you
 21 know, decide how long they want to stay. Depending on the
 22 hour.
 23 Once it's in your hands, you will decide how long to go,
 24 et cetera, et cetera, within reason. We don't have staff to
 25 stay here all night, but we will get to that point.

1 So, please anticipate that the case will be submitted to
2 you for deliberation some time on Friday. And if you could
3 keep your schedules open, so that when the jury does convene
4 and deliberate, you can all collectively decide what the
5 schedule might be.

6 So until then, please let me remind you one more time,
7 please do not discuss this case with anyone.

8 Yes, a question from Ms. DeLeon?

9 JUROR NO. 2: What is the latest that we might be
10 able to stay on --

11 THE COURT: Oh, probably 5:00. That's when our staff
12 leaves.

13 (A hand is raised)

14 THE COURT: Yes.

15 ALTERNATE JUROR NO. 1: What about alternates?

16 THE COURT: Okay. Well, I will explain to you when
17 we reconvene that the Alternate Jurors will not participate in
18 deliberation, but will be here to hear all the closing
19 arguments and everything else. But, would stand ready to -- if
20 something should happen to one of the jurors during
21 deliberation, that you will be called upon to take their place.

22 So, essentially, you will be sort of on standby.

23 ALTERNATE JUROR NO. 2: Physically?

24 THE COURT: Well, my general rule is no, you don't
25 have to be in the courthouse. You can go back to work. But

1 please have your cell phone ready so we can get ahold of you.
2 And -- because we can't -- as I will explain, we can't -- the
3 jury can't proceed if somebody gets ill and has to drop out.
4 They have to wait until the person comes. They can't really do
5 anything until the alternate comes. But no, I'm not going to
6 require you to stay in the courthouse during this period.

7 But, I will give you those instructions on Friday. All
8 right?

9 (A hand is raised)

10 THE COURT: We have another question, from
11 Mr. Howell.

12 JUROR NO. 7: 8:30 a.m. Friday?

13 THE COURT: Yes.

14 Okay. Thank you for your patience, ladies and gentlemen,
15 and for your attention. Again, we'll see you 8:30 Friday
16 morning.

17 (Jury excused)

18 (The following proceedings were held outside of the
19 presence of the Jury)

20 THE COURT: Okay. Let me just say a couple of words
21 about jury instructions.

22 I have taken a look at the preliminary instructions that I
23 had previously disseminated to you all, and on which you had
24 commented. And my plan at this point is to add -- or mention
25 five instructions, some of which weren't included, but I think

1 now that we have heard the evidence, it may be appropriate.
2 So the first one, an example of that is opinion evidence.
3 We did get one -- opinion evidence from one expert witness.
4 So, Ninth Circuit Model Criminal Jury Instruction 4.14
5 says:

6 "You have heard testimony from persons who,
7 because of education or experience, were permitted to
8 state opinions and the reasons for their opinions."
9 It's actually one person, right, because --

10 MS. HARRIS: (Inaudible)

11 THE COURT: Should say:

12 "...a person who, because of education and
13 experience, was permitted to state opinions and the
14 reasons for his opinions. Such opinion testimony
15 should be judged like any other testimony. You may
16 accept it or reject it, and give it as much weight as
17 you think it deserves, considering the witness's
18 education and experience, the reasons given for the
19 opinion, and all of the evidence in the case."
20 That's the standard instruction.

21 MR. DRESSLER: No objection.

22 THE COURT: Okay. That's okay with the Government, I
23 assume?

24 MS. HARRIS: Yes, Your Honor.

25 THE COURT: And now that Mr. Murray has testified, I

1 should give Instruction 3.4 from the model criminal
2 instructions of the Ninth Circuit, which states that:

3 "The Defendant has testified. You should treat
4 this testimony just as you would the testimony of any
5 other witness."
6 Again, standard instruction.

7 MS. HARRIS: That's fine, Your Honor.

8 MR. DRESSLER: No objection.

9 THE COURT: Okay. There were some summary charts, a
10 couple of them, that were not received in evidence but were
11 used as demonstrables. So, we should give Instruction
12 No. 4.15, which states that (As read):

13 "During trial, certain charts and summaries were
14 shown to you in order to help explain the evidence in
15 the case. These charts and summaries were not
16 admitted in evidence, and will not go into the jury
17 room with you. They are not, themselves, evidence or
18 proof of any facts. If they do not correctly reflect
19 the facts and figures shown by the evidence in the
20 case, you should disregard these charts and summaries
21 and determine the facts from the underlying
22 evidence."
23 Again, standard instruction.

24 MR. DRESSLER: No objection.

25 MR. FARNHAM: There was only one -- I think only one

1 chart was not admitted into evidence, but I -- that is
 2 appropriate.
 3 THE COURT: Okay. I can't remember if it was one or
 4 two, but I'll just leave it plural, just in case there were
 5 more than one.
 6 And then, Summaries Received in Evidence. This is Model
 7 Instruction 4.16:
 8 "Certain charts and summaries have been admitted
 9 in evidence. Charts and summaries are only as good
 10 as the underlying supporting material. You should
 11 therefore give them only such weight as you think the
 12 underlying material deserves."
 13 Again, standard instruction.
 14 MR. FARNHAM: I would question, Your Honor, whether
 15 there is a dispute as to the accuracy of those charts. There
 16 is a note about that. When Mr. Murray testified, for example,
 17 about the Cayman Islands transfer chart.
 18 THE COURT: Well, I think this instruction doesn't
 19 presume one way or the other. It just says that it's as good
 20 as the underlying supporting material. If the underlying
 21 supporting material is undisputed, then there won't be much
 22 dispute, but -- unless you --
 23 MR. DRESSLER: Well, I don't think there is any
 24 dispute as to -- I don't think he disputed the content.
 25 THE COURT: Is there a suggestion to change this

1 language?
 2 MR. DRESSLER: Not from me.
 3 MR. FARNHAM: I think it's just a question of whether
 4 or not, if you -- it should be read or not, but I think it's a
 5 fine instruction, as written. So we can read that.
 6 THE COURT: All right.
 7 MR. FARNHAM: No objection.
 8 THE COURT: I'll go ahead and give it, since it's a
 9 model instruction. And I think it encompasses the Government's
 10 observation, doesn't hurt that, if, in fact, that's the case.
 11 And then, we do have to address -- we left open the good
 12 faith as a defense to wire fraud instruction. Want to hear --
 13 MR. DRESSLER: I'm still requesting it. And I -- I
 14 -- the Court indicated -- I forget what circuit it was.
 15 THE COURT: It was the Eleventh Circuit, Criminal
 16 17 -- No. 17 instruction that I said I would be inclined to
 17 give if the evidence warranted or made it relevant.
 18 And it seems to me that the -- since the Defendant has
 19 testified, that is one of his claims.
 20 MS. HARRIS: Your Honor, we would request the Ninth
 21 Circuit's jury instruction, though. It would be really
 22 problematic for the record to go with an Eleventh Circuit jury
 23 instruction when there's a Ninth Circuit instruction for the
 24 Ninth Circuit to pass on.
 25 MR. DRESSLER: There's -- there is no Ninth Circuit

1 instruction that specifically mentions good faith. They just
 2 indicate that it's not an abuse of discretion to give such an
 3 instruction. And I don't think it would be an abuse of
 4 discretion to give the one from the other circuit.
 5 MS. HARRIS: We proposed one, though, that the Ninth
 6 Circuit has passed on.
 7 MR. DRESSLER: That was a quote from a case. It's
 8 not an instruction.
 9 THE COURT: That was my recollection. I mean, I have
 10 the -- that's, I think -- Is the Government's proposal the one
 11 that says (As read):
 12 "Good faith is a complete defense to wire fraud.
 13 Since good faith on the part of the Defendant is
 14 inconsistent with the intent to defraud or
 15 willfulness, which is an essential part of the
 16 charges, the burden of proof is not on the Defendant
 17 to prove good faith. Of course, since the Defendant
 18 has no burden of proving anything, the Government
 19 must establish beyond a reasonable doubt that the
 20 Defendant acted with specific intent to defraud as
 21 charged in the indictment?
 22 Is that the one that you had proposed?
 23 MS. HARRIS: No.
 24 THE COURT: No? This is going back a couple of
 25 generations now.

1 MR. FARNHAM: So I'm looking at -- the Government's
 2 objection to the good faith jury instructions, document we
 3 filed on September 9th.
 4 It's a note -- the instruction comes from a note to 3.16
 5 of the model instructions. And it does address good faith.
 6 And it notes that that instruction has been approved in the
 7 Ninth Circuit for the same issue. And that's why we would
 8 propose that.
 9 I do think it's also simpler, and more straightforward.
 10 THE COURT: Hold on. Let me get my book.
 11 MR. FARNHAM: Certainly.
 12 (A pause in the proceedings)
 13 THE COURT: All right. So, it's the note to No. 3.16
 14 which is the intent-to-defraud definition. And, that was in
 15 our -- was that in our --
 16 MR. DRESSLER: 3.16 was requested.
 17 THE COURT: That's in there. Right.
 18 MR. FARNHAM: Yes.
 19 THE COURT: So then the question is -- there's a
 20 commentary in here, of course, that says it's not an abuse of
 21 discretion not to give, at least in that case, a good faith
 22 instruction at all, but the Court approved an instruction in a
 23 case involving bank fraud in this case, *United States v.*
 24 *Mollnaro*, and quotes from that instruction. That's what the
 25 Government is suggesting.

1 MS. HARRIS: If the Court is going to give a good
2 faith instruction at all, then we would suggest giving the one
3 that was at least cited approvingly by the Ninth Circuit, for
4 two reasons.
5 First of all, it was cited approvingly by the Ninth
6 Circuit. And second, the Eleventh Circuit one is misleading,
7 and it does not really go to what the theory of the defense is,
8 in this case, anyway.
9 THE COURT: All right. So why not go with language
10 that at least the comments indicate the Ninth Circuit's already
11 approved in terms of good faith?
12 MR. DRESSLER: Well, they said it wasn't an abuse of
13 discretion to give it. But I think that the Ninth -- the --
14 THE COURT: Actually, said there was no good faith
15 instruction necessary at all, but --
16 MR. DRESSLER: Correct.
17 THE COURT: But if they are going to give it, they --
18 they approved some particular wording. And --
19 MR. DRESSLER: I think that the -- I keep blanking on
20 what circuit you were talking about -- the Eleventh?
21 THE COURT: Eleventh.
22 MR. DRESSLER: Eleventh Circuit. I think it's more
23 comprehensive and a better explanation of what the good faith
24 defense is.
25 THE COURT: Well, this one says -- this is Ninth

1 Circuit-approved language (As read):
2 "You may determine whether a defendant had an
3 honest, good-faith belief in the truth of the
4 specific misrepresentations alleged in the indictment
5 in determining whether or not the defendant acted
6 with intent to defraud. However, a defendant's
7 belief that the victims of fraud would be paid in the
8 future or will sustain no economic loss is no defense
9 to the crime."
10 So this does seem apt, now that I've heard the testimony
11 that -- for instance, if he asserts he had a good-faith belief
12 in the truth of the specific misrepresentations alleged -- and
13 there was a fair amount of cross and direct on what he meant by
14 "legal counsel" or whatever.
15 And so, it does seem to me about as applicable as any
16 other --
17 MR. DRESSLER: Well, except for the -- it doesn't --
18 that may be applicable to one set of counts, but not to others.
19 That's my problem with that.
20 THE COURT: The intent to defraud with respect to
21 wire fraud.
22 MR. DRESSLER: Well, it's -- the wire fraud has to do
23 with three different -- it alleges part of the same scheme, but
24 three different -- there is no -- well, I'll submit it, your
25 Honor.

1 THE COURT: Okay.
2 MR. DRESSLER: I object to it, but I'll submit it.
3 THE COURT: Well, I will give the instruction as
4 contained in the comments to the Model Instruction 316. I do
5 think it has language that's been approved by the Ninth Circuit
6 and is apt here.
7 MS. HARRIS: Your Honor, we would ask to have the
8 opportunity to submit a supplemental jury instruction given the
9 way that Mr. Murray testified, which would relate to blaming
10 the victim.
11 Mr. Dressler attempted to introduce evidence that
12 Oppenheimer had conducted a background check and didn't come up
13 with the information that Murray was, you know, under
14 indictment or charged and we would want something like --
15 that's been given in this district and in this circuit in
16 similar, like, mortgage fraud situations where the negligence
17 of the bank, you know, in not discovering the fraud or the
18 alleged fraud is not a defense if the victim has the intent to
19 deceive.
20 MR. DRESSLER: I'm going to object to that, your
21 Honor. That is not appropriate in this case, particularly with
22 regard to Oppenheimer.
23 MS. HARRIS: Actually, it is, your Honor.
24 Mr. Dressler's cross examination attempted to suggest, with Mr.
25 Benedetto, that a background check had been done on Mr. Murray.

1 And if Mr. Dressler in any way intends to argue something about
2 that background check and Mr. Murray being cleared for trading,
3 that doesn't change Mr. Murray -- what the Government's burden
4 of proof is, which is to prove an intent to defraud Oppenheimer
5 at the time he submitted that application and a failure to
6 correct information under Paragraph 29.
7 And it is improper and not an accurate statement of the
8 law for Mr. Dressler to be able to suggest to the jury that the
9 fact that a background check didn't disclose this is a defense
10 to the fraud.
11 MR. DRESSLER: Well, what I was arguing is -- that
12 would be different if they asked the question, but there is --
13 they didn't ask those questions.
14 I mean, so they are saying that if -- it's not -- the
15 argument is that you don't have to volunteer that information.
16 There is no -- you know, it's a different situation if they ask
17 a question like that: Are you being investigated by the SEC?
18 And you say no. And then they don't -- their background check
19 doesn't establish it. That's one thing.
20 But here there is no questions asked about any of that.
21 So it's not blaming the victim. It's just explaining that
22 there is no -- there was no false representation made because
23 he wasn't asked. That's a completely different situation.
24 MS. HARRIS: Well, if Mr. Dressler in any way is
25 going to suggest that the fact that Oppenheimer's background

1 investigation under the AML law did not clear Mr. Murray for
 2 the account, that's not a defense to the fraud.
 3 The Government's theory of fraud with regard to
 4 Oppenheimer was that it was a false statement; that there were
 5 \$5 million net worth and \$5 million assets and that there was a
 6 material omission under Paragraph 29 for failing to notify
 7 Oppenheimer when the assets of Market Neutral Trading had been
 8 seized. That's the Government's theory. That's the way it was
 9 charged.
 10 And it is not a defense to the fraud that Oppenheimer
 11 didn't ferret -- Oppenheimer's background check didn't ferret
 12 out any of this information or that somehow Mr. Murray was
 13 greenlighted because their background check didn't --
 14 THE COURT: I'm hearing Mr. Dressler say he's not
 15 asserting that as a defense.
 16 MR. DRESSLER: Well.
 17 THE COURT: What he's asserting is that information
 18 was never requested his argument is going to be there was no
 19 misrepresentation.
 20 You have a argument --
 21 MS. HARRIS: Right.
 22 MR. DRESSLER: They want to have their cake and eat
 23 it too, here. They are the ones that raised that issue, all
 24 right? They are the ones that asked questions of -- if you had
 25 known that he had, blah, blah, blah, that he had an SEC, after

1 the fact they are asking him that question.
 2 So I'm entitled to point out that there wasn't -- he was
 3 never asked and that they did their own background checks. I
 4 mean, that --
 5 MS. HARRIS: The background check is different --
 6 MR. DRESSLER: Excuse me.
 7 MS. HARRIS: Not being asked --
 8 THE COURT: Let him finish.
 9 MR. DRESSLER: Excuse me.
 10 I mean, you can't -- they raised that issue. I didn't
 11 raise that issue. That was raised during their case with their
 12 witnesses.
 13 MS. HARRIS: Well, your Honor --
 14 MR. DRESSLER: And I have -- there is only one way to
 15 rebut that and that's to bring up the fact that it wasn't
 16 asked. All right? And that they have their own background
 17 system. They opened the door to that.
 18 THE COURT: Why doesn't the instruction which talks
 19 about the statements made or facts omitted as part of the
 20 scheme were material; that is, it had a natural tendency to
 21 influence or were capable of influencing a person to part with
 22 the money or property to cover this whole... That's the
 23 general framework for that.
 24 You may argue it's not material because they never
 25 bothered to ask for it, et cetera, et cetera. They're going to

1 say: Yes, it was very material based on his testimony that it
 2 would have made a difference.
 3 MS. HARRIS: That's fair, your Honor, but what
 4 Mr. Dressler is suggesting is something completely different,
 5 which is Oppenheimer did a background check on him and cleared
 6 him so he's got carte blanche.
 7 What's that's akin to is Oppenheimer's negligence allowed
 8 this to go through, not my client's misrepresentations. And
 9 the fact that a victim was negligent in some way does not -- is
 10 not a defense to the fraud.
 11 THE COURT: So what about the actual clearance by
 12 Oppenheimer? How are you going --
 13 MR. DRESSLER: As they said when I came into this --
 14 when we came into this trial, the theory was that the false
 15 misrepresentation in this case was misrepresenting the assets
 16 under management, all right? And if they hadn't raised this
 17 issue of: He should have volunteered that he was arrested. He
 18 should have volunteered that he was under SEC investigation.
 19 They brought that up.
 20 And, you know, my defense to what they say was their
 21 theory coming into this trial is that he had a good faith
 22 belief that there were \$5 million worth of assets under
 23 management, all right?
 24 Then they raised this other issue, for what purpose? To
 25 say that there was an omission; that he was not -- that he

1 was -- it implies that there was some requirement for him to
 2 state that.
 3 THE COURT: All right. So your response to that is
 4 that they cleared him. They did an investigation, Oppenheimer
 5 did --
 6 MR. DRESSLER: Yes.
 7 THE COURT: -- and cleared him.
 8 Other than saying that that creates a defense -- other
 9 than creating a defense, how is that relevant?
 10 MR. DRESSLER: It's rebutting the inference that they
 11 want to draw that there was a material omission, all right?
 12 THE COURT: So you're saying it's not material
 13 because Oppenheimer did its own investigation and cleared him?
 14 MR. DRESSLER: Yes. And that there was no question
 15 asked, all right? This is not the kind of material omission
 16 that you normally see in fraud cases.
 17 THE COURT: Well, except the definition of "material"
 18 here is, quote:
 19 "That is, they had a natural tendency to
 20 influence or were capable of influencing a person to
 21 part with money or property."
 22 "Natural tendency or capable of influencing" sounds like
 23 an objective test, not did it actually influence in this case.
 24 You're saying it actually didn't influence in this case
 25 because a causative factor was their own investigation, that

1 breaks the chain causation.
 2 If you're going to raise that, then it seems to me --
 3 MR. DRESSLER: What I'm saying is that if you go in
 4 and apply for a loan and you have a brain tumor and you don't
 5 disclose that, all right, they don't -- you know, they don't
 6 ask that. It never would have been an issue in this case had
 7 they not raised it. All right?
 8 THE COURT: Them not asking is it one question. But
 9 you're saying more than that; that they did an investigation.
 10 So if somebody lied on their assets and claimed they
 11 made -- they worked for XYZ. The bank did a sloppy
 12 investigation and didn't ferret out that they, in fact, didn't
 13 have a job and didn't work for XYZ, how is that relevant? If
 14 the person knowingly lied on the bank form and tried to get a
 15 loan by lying about the employment, how is it relevant that the
 16 bank missed it in their investigation?
 17 MR. DRESSLER: It would not normally be relevant, all
 18 right? Because -- because the bank asked and then if they
 19 ask -- in other words, I wouldn't be -- if the bank asked:
 20 Have you ever been convicted of a felony? All right? And he
 21 said: No, I've never been convicted of a felony. All right?
 22 And then they do a background check and they miss it. All
 23 right? That's not the situation in this case.
 24 THE COURT: That would not than a defense, right?
 25 MR. DRESSLER: That would not be a defense. All

1 right?
 2 THE COURT: So your question here is: Did they ask
 3 for the information?
 4 MR. DRESSLER: They didn't ask for the information.
 5 THE COURT: Well, that's your --
 6 MR. DRESSLER: And the only reason I asked that
 7 question -- I mean, you know, they -- in essence, they baited
 8 me into asking that because I -- I didn't -- I didn't say
 9 anything in my opening statement about any of that, all right?
 10 And they started asking questions of Oppenheimer
 11 witnesses: If you had known that he had been, would you have
 12 approved it? All right? And so I either let it lay or I point
 13 out -- I have to point out the fact -- if I'm doing my own due
 14 diligence as a defense lawyer, I have to respond to that by
 15 saying: They didn't ask.
 16 MS. HARRIS: That's different --
 17 THE COURT: "They didn't ask" is different from
 18 saying "they asked and then investigated and didn't find it."
 19 MR. DRESSLER: Correct.
 20 THE COURT: All right. So you're not going to make
 21 the argument that -- your argument is that they didn't ask for
 22 it, not that they did their own investigation and because they
 23 screwed up, that's a defense.
 24 MR. DRESSLER: Well, it depends on -- you know,
 25 the --

1 THE COURT: It all turns on whether they asked for
 2 it. That's what you just said.
 3 MR. DRESSLER: The question is: What is their theory
 4 of the fraud? If their theory of the fraud is that he -- I'm
 5 happy -- I have to think about this a little bit. I'm thinking
 6 on my feet here.
 7 But my point is this: If they are going -- they have
 8 implied to the jury that not only did he commit fraud by
 9 misrepresenting assets under management, but he committed fraud
 10 by misrepresenting whether or not he had been convicted -- had
 11 been accused of a crime or was under investigation by the SEC.
 12 That's what -- that's what this is all about. That's what they
 13 raised it for --
 14 MS. HARRIS: No --
 15 MR. DRESSLER: Excuse me. They raised it for that
 16 purpose, essentially to add a different theory of fraud. Not
 17 in the indictment, but they raised it.
 18 I can't just sit there and let it go by. I've got to
 19 respond to it.
 20 MS. HARRIS: Your Honor, can I address this?
 21 THE COURT: Yes.
 22 MS. HARRIS: That's absolutely incorrect. I have the
 23 indictment in front of me.
 24 Mr. Murray is -- in the scheme it's alleged that he:
 25 "...defrauded Oppenheimer by providing

1 Oppenheimer with materially false information,
 2 including false information about MNT's assets in the
 3 new application and by failing to notify Oppenheimer
 4 of any changes or corrections to the MNT account
 5 application Murray submitted."
 6 So he's being charged with materially -- affirmative
 7 material misrepresentations, as well as omissions.
 8 Mr. Dressler is trying to imply to the jury that the fact
 9 that Oppenheimer's own internal due diligence did not turn up
 10 the fact that Murray was under investigation, under indictment
 11 and that his assets had be seized, that Oppenheimer's
 12 negligence in failing to discover that is a defense to this
 13 crime.
 14 And you cannot blame the victim's negligence and use that
 15 as a way to have a defense to your client's affirmative
 16 misrepresentations or omissions. And that's the Government's
 17 point. That's what the law is in the Ninth Circuit. It comes
 18 up all the time in mortgage fraud or bank fraud --
 19 THE COURT: Well, let me ask you: You don't disagree
 20 with that proposition of law; that the bank's failure to
 21 investigate well is not a defense.
 22 MR. DRESSLER: Generally speaking. But I would just
 23 say one thing, your Honor. With regard to Paragraph 29, my
 24 cross examine of Mr. Benedetto, there is nothing in that
 25 paragraph which indicates that -- that you have to advise

1 Oppenheimer that you were charged with the SEC.
 2 THE COURT: Well, I mean, that's an issue that the
 3 jury is going to get because you're going to look at the form.
 4 You're going to look at -- you know, this whole question about
 5 whether it's just governmental agencies, et cetera, et cetera,
 6 et cetera. I mean, that's an issue that's fairly, I think,
 7 teed up for the jury.
 8 We're asking -- I think what the Government is asking is
 9 something more discrete, and that is: Beyond that, if you try
 10 imply that -- whether asked for or not specifically, that it is
 11 still relevant that Oppenheimer conducted an investigation,
 12 cleared Mr. Murray and, therefore, somehow that absolves
 13 Mr. Murray of any criminal liability, then I do think we have
 14 to give an instruction on that.
 15 MR. DRESSLER: Well, I mean, my defense is that they
 16 didn't ask him and that he was under no obligation to tell.
 17 THE COURT: All right. Then this instruction has
 18 nothing -- doesn't impair that defense.
 19 Your question is a gateway. Did they ask him in the first
 20 place? If they didn't, your argument is he had no duty to
 21 disclose something they didn't ask. They only asked whether
 22 you were ever prosecuted by a governmental agency. He says no.
 23 Your argument is that he didn't lie.
 24 MR. DRESSLER: That's not with regard to Oppenheimer.
 25 I mean, that --

1 THE COURT: All right. But --
 2 MR. DRESSLER: But in terms of -- in terms of this,
 3 all right, I'm going to argue that he had a good faith belief
 4 that there were 5 million in assets under management. All
 5 right? And I'm going to argue that he had no obligation to
 6 inform them of whether or not -- he had no legal obligation and
 7 there was nothing required -- it wasn't in any application in
 8 that it is not part of -- of Paragraph 29 to -- he had no
 9 obligation under any of those things to ask that, nor did they.
 10 So that's --
 11 THE COURT: Ask what?
 12 MR. DRESSLER: To -- none of those of things required
 13 him to advise them on his own that he was -- had been charged
 14 with a crime and had an SEC lawsuit against him.
 15 So to turn that into a misrepresentation by omission is
 16 really unfair in light of the way they -- considering that they
 17 brought it up.
 18 So if they're going to say -- if they are limited -- well,
 19 I mean, the thing is that it's hard to unring a bell. The jury
 20 has heard them ask repeatedly: If you had known after the fact
 21 that he had been charged, would you have approved of the loan?
 22 So, I mean, it's in the jury's mind, as we speak, that --
 23 that that's part of the fraud in this case.
 24 MS. HARRIS: Actually, your Honor, what our argument
 25 is, is that the seizure of the \$1.8 million of Market Neutral

1 Trading's assets was a material change that was not told to
 2 Oppenheimer; that was a material omission under Paragraph 29.
 3 And Oppenheimer's negligence in coming up with that when
 4 they did the due diligence check or coming up with any of the
 5 other derogatory information on Mr. Murray is not a defense to
 6 this crime and it doesn't go to Mr. Murray's intent or good
 7 faith.
 8 The fact that the bank's internal controls failed to pick
 9 up the fact that he was under indictment and that he had had
 10 his assets seized is not a defense, and it doesn't go to
 11 Mr. Murray's state of mind at the time he submitted that
 12 application and at the time that he failed to disclose the
 13 material changes.
 14 MR. DRESSLER: That's a completely different issue,
 15 your Honor, because it has nothing to do with whether he's
 16 charged with a crime or being investigated.
 17 The fact that money was seized is certainly -- whether or
 18 not that was required under Paragraph 29 --
 19 THE COURT: Well, will the Government be arguing that
 20 part of the misrepresentation, part of the fraud is not
 21 disclosing the actual arrest as opposed to the seizure, for
 22 instance?
 23 MS. HARRIS: No. Our theory with regard to
 24 Oppenheimer is the seizure; that monies were seized in May and
 25 the account wasn't cleared for trading until June 22nd, and

1 that was a material change under Paragraph 29 --
 2 THE COURT: So it's the financial seizure, not the
 3 arrest.
 4 MS. HARRIS: No. But the financial seizure was
 5 related to Mister --
 6 THE COURT: You're not even going to argue that he
 7 had -- what the failure was on his part that imposes criminal
 8 liability is a failure to inform Oppenheimer about the seizure,
 9 which was a material change in financial circumstances.
 10 MS. HARRIS: Correct.
 11 THE COURT: Not the mere fact that he got arrested or
 12 was charged or indicted.
 13 MS. HARRIS: Right, your Honor.
 14 I agree with all of that, except that the seizure warrant
 15 was based on the fact that he had --
 16 THE COURT: It's a predicate to that.
 17 MS. HARRIS: Correct.
 18 THE COURT: The actual act, the actual disclosure --
 19 in other words, had he disclosed the seizure for whatever --
 20 you know, whatever the underlying basis was --
 21 MS. HARRIS: Right.
 22 THE COURT: -- he would have satisfied --
 23 MS. HARRIS: Exactly.
 24 But the reason that the seizure is so material is for two
 25 reasons. It affected the net worth of -- as stated in the

1 assets available to invest, but, also, the money was seized
 2 based on the allegations of fraud and the -- the desire to
 3 prevent any further assets from being dissipated.
 4 So it was material to Oppenheimer that these assets were
 5 seized, not just because --
 6 THE COURT: I understand that.
 7 MS. HARRIS: Yeah.
 8 THE COURT: So if that's the scope of their -- they
 9 are not going to claim that -- at least with respect to
 10 Oppenheimer, that there was wire fraud inasmuch as Mr. Murray
 11 didn't disclose the fact that he had been arrested, for
 12 instance.
 13 MS. HARRIS: Correct. But our point is --
 14 MR. DRESSLER: They -- excuse me.
 15 MS. HARRIS: I haven't gotten to say my point.
 16 THE COURT: Hold on.
 17 MS. HARRIS: Our point is that the -- the fact that
 18 Oppenheimer while the account was pending and before it was
 19 opened did its own attempt at due diligence and didn't turn up
 20 this information. The negligence of Oppenheimer, if you want
 21 to call it that, in not ferreting out this information.
 22 THE COURT: You mean, ferreting out the seizure as
 23 opposed to the indictment?
 24 MS. HARRIS: Right. Correct. The seizure, which, of
 25 course, was related to the indictment.

1 But be that as it may, Oppenheimer's -- the fact that
 2 Oppenheimer ran a check on Mr. Murray and this didn't come up
 3 and the account was cleared for trading is not a defense and
 4 cannot be used to say that Oppenheimer wasn't defrauded. They
 5 ran a check and cleared him for trading. That's not a defense
 6 to this case.
 7 And for Mr. Dressler to argue that would be a misstatement
 8 of the law. And so we would want, if he is intending to argue
 9 anything about Oppenheimer's internal due diligence or -- on
 10 Mr. Murray, that the jury be instructed that the victim's
 11 negligence is not a defense to the crime.
 12 THE COURT: All right.
 13 Response?
 14 MR. DRESSLER: Your Honor, here is the -- here is --
 15 with regard to the seizure of the funds, all right, and having
 16 that effect on the assets available, all right, that is a
 17 separate issue, really, from what we're talking about. Because
 18 I understand their position is that under Rule 29 and -- Rule
 19 29. Under Paragraph 29 --
 20 THE COURT: I don't know if there is a Paragraph 29.
 21 I have a fourth superseding indictment.
 22 MR. DRESSLER: No, no, no. This is Paragraph 29 of
 23 the -- of the -- of the client agreement with Oppenheimer.
 24 THE COURT: Oh.
 25 MR. DRESSLER: That's what we're talking about. All

1 right?
 2 And so if the Court will remember, all right, I did my
 3 argument and my defense to that requirement to divulge that is
 4 not based on any background check. It's based on whether or
 5 not if those assets, what I was -- what I -- I think it was
 6 apparent in my cross examination, that if the assets that were
 7 seized were different than the assets that were represented to
 8 be under management with regard to the Oppenheimer account that
 9 was involved in the Netflix trade, all right, that it didn't
 10 have to be reported under Paragraph 29 and --
 11 THE COURT: No. I understand that.
 12 MR. DRESSLER: That's a separate thing, all right? I
 13 mean, they can argue that -- that that should have been --
 14 THE COURT: All right. But this whole thing arose
 15 because of an anticipation that you were going to say something
 16 about Oppenheimer's failure to uncover something in their own
 17 internal due diligence.
 18 MR. DRESSLER: Well --
 19 THE COURT: So how is that relevant? Is it relevant?
 20 Are you going to be arguing that?
 21 MR. DRESSLER: I'm going to argue that -- that the
 22 failure or the omission to admit -- to tell Oppenheimer that he
 23 was indicted and to tell them that he was under investigation
 24 by the SEC is not a material representation because they didn't
 25 ask, period.

1 THE COURT: Well, it sounds like the Government is
 2 not going to even argue that is one of the material
 3 misrepresentations.
 4 MS. HARRIS: Correct. Correct.
 5 MR. DRESSLER: Yeah, but it's -- it's -- it's in
 6 front of the jury. I mean, you know, I have to bring -- I have
 7 to say something about it --
 8 THE COURT: Okay. I mean, you can say: The
 9 government does not argue that, you know, the failure to
 10 disclose the indictment and the arrest was part of the fraud.
 11 MR. DRESSLER: Okay.
 12 THE COURT: It's limited to --
 13 MR. DRESSLER: As long as we're clear on that, so
 14 that during rebuttal or during their argument they don't slip
 15 that in. That's what I'm concerned about.
 16 MS. HARRIS: And what we're concerned about is
 17 Mr. Dressler saying: Oppenheimer did a background check on him
 18 and they gave him the green light. He was cleared.
 19 THE COURT: It doesn't sound like he's going to make
 20 that argument.
 21 MR. DRESSLER: I'm not going to do that, all right,
 22 as long as --
 23 THE COURT: So the Government --
 24 MR. DRESSLER: As long as I get to argue that they
 25 are not saying that that was a material -- they are not

1 alleging that that's a material representation within the fraud
 2 instruction, which is what I'm hearing them say.
 3 THE COURT: Okay. It's not based on arrests or
 4 indictment, the Oppenheimer fraud, but only on the failure to
 5 report the seizure.
 6 MS. HARRIS: Correct.
 7 THE COURT: All right.
 8 MS. HARRIS: And there is not going to be any
 9 argument from Mr. Dressler that the seizure wasn't related to
 10 the arrest or indictment --
 11 THE COURT: No. His argument is going to be he
 12 didn't have to report it because he was relying on another
 13 group of \$5 million. This was -- whatever was seized was
 14 gravy. It had nothing to do with the report. That's his --
 15 your argument.
 16 MR. DRESSLER: Correct. His set of assets. Right.
 17 THE COURT: All right. And then you will not argue
 18 that Oppenheimer's bad due diligence in covering whatever is a
 19 defense.
 20 MR. DRESSLER: Correct.
 21 MS. HARRIS: That's fine.
 22 THE COURT: Okay. That makes it simple.
 23 MR. FARNHAM: To be clear, your Honor, though, the
 24 failure to disclose the indictment and the arrest and the New
 25 York Stock Exchange discipline was a material misrepresentation

1 on the Interactive Brokers form. That's different than
 2 Oppenheimer. And I am going to be arguing that.
 3 MR. DRESSLER: That's different.
 4 THE COURT: That is different.
 5 MR. DRESSLER: It's asked -- or at least to the
 6 extent it's -- there is specific questions about that and to --
 7 and I don't remember whether all three of those were on there,
 8 but I understand the concept.
 9 THE COURT: Okay. All right. And then last thing I
 10 want to note is I think there was a stipulation about
 11 interstate commerce, the wire communication.
 12 MR. DRESSLER: I think we have stipulations to the --
 13 all the wires.
 14 THE COURT: All right. So the original instruction
 15 had a thing in there. It need not -- you know, about
 16 interstate commerce, it need not be reasonably foreseeable that
 17 the defendant -- to the defendant that the wire communications
 18 would be interstate in nature. Must be reasonably foreseeable.
 19 Didn't have -- you know, et cetera, et cetera.
 20 That's -- since we stipulated to that, I don't think it
 21 would be confusing -- we don't need to give that, right?
 22 MS. HARRIS: That's correct, your Honor.
 23 MR. DRESSLER: That's correct, your Honor. I'm not
 24 going to be arguing that there were no interstate wires.
 25 THE COURT: All right. So I'm going to delete that

1 one --
 2 MS. HARRIS: Should we have an instruction just
 3 saying the parties have stipulated to the interstate nature of
 4 all the wires charged? So it's not an element -- the jury
 5 needs to find it's an element of the offense, but...
 6 MR. DRESSLER: I don't have a problem with that.
 7 THE COURT: Yeah. I'm just looking at the
 8 instruction. The instruction doesn't -- that's interesting.
 9 Maybe we already edited this out. It doesn't say anything
 10 about interstate, unless there is some other instruction.
 11 MR. DRESSLER: There is no -- if there is no
 12 instruction, then they don't -- they don't -- we don't need to
 13 stipulate, because it's not going to be an issue.
 14 THE COURT: To lay out the elements. There is a --
 15 devise a scheme to defraud. Make statements that were
 16 material. Acted with intent. Use of wire communication. And
 17 you can consider not only the words, but the circumstances.
 18 The wire is caused in one, knows it will be used in the
 19 ordinary course of business, et cetera.
 20 So, actually, we had already, I guess, removed the
 21 interstate requirement, unless it's a separate instruction,
 22 which I don't think it is. I don't think so.
 23 MR. FARNHAM: The book doesn't adapt wire fraud
 24 specifically. I think this is all borrowed from the mail fraud
 25 and adapted, which, of course, doesn't have interstate, an

1 interstate nexus.
 2 THE COURT: Okay. So I'll just -- I'm going to
 3 delete that paragraph about what interstate means and the rest
 4 of it doesn't make reference to any interstate.
 5 MR. DRESSLER: Correct.
 6 THE COURT: Okay. All right. And that's the
 7 instruction I will give.
 8 I will give you hard copies when you come in first thing
 9 Friday morning. And my intent is to read the substantive
 10 instructions. I'll reserve the last few words on jury conduct
 11 and how to handle a verdict form and stuff until after you
 12 finish your closing, and then that will be it.
 13 MS. HARRIS: Okay. Thank you, your Honor.
 14 MR. DRESSLER: Your Honor, I'm going to file my Rule
 15 29(a) motion, assuming I don't have a stroke by the time I get
 16 back to my office later this afternoon.
 17 THE COURT: Okay.
 18 MR. DRESSLER: And I will email a copy to the
 19 Government. And I'd like to get a copy to the Court as soon as
 20 possible. Can I email it to the -- is there an email I can
 21 send it to?
 22 THE COURT: Well, if you e-file it, we should get it.
 23 MR. DRESSLER: But you have to be looking for it. I
 24 mean, that's why we have Chambers copies, at least part of the
 25 reason.

1 MS. HARRIS: My understanding was this is all going
 2 to be briefed after we're done with this case. I don't
 3 understand the urgency.
 4 THE COURT: Yeah. I on -- you know, obviously I
 5 can't rule on it.
 6 MR. DRESSLER: What I'm saying is, it's going to make
 7 a difference. I mean, it -- we're going to be arguing that
 8 count to the jury and if it's a valid motion, I would like to
 9 see if I can get a ruling before we actually start our opening,
 10 make our --
 11 THE COURT: Well, I think I've already indicated that
 12 I was going to defer ruling because I haven't seen the
 13 Government's response.
 14 MR. DRESSLER: Right. But it is a -- if the Court
 15 were to grant it prior to the jury's deliberations, then I
 16 wouldn't have to argue that. That's my concern.
 17 THE COURT: You're asking me to rule on it before I
 18 get the opposition, essentially?
 19 MR. DRESSLER: No, no. No, no. I'm saying that I'm
 20 going to submit it today to both sides and maybe we could
 21 discuss it before closing arguments.
 22 MS. HARRIS: Your Honor, I object to having that
 23 done. We don't have time. We've just finished with our case.
 24 We have to put together our closing arguments.
 25 Mr. Dressler says he has been working on this for a long

1 time. The Government closed its evidence on Friday, and to put
 2 us under this pressure when we already agreed we would defer
 3 briefing on it until afterwards.
 4 The Court can always grant it after the jury has returned
 5 a verdict, if it thinks it's valid.
 6 MR. DRESSLER: Then it becomes a Rule 29(b). So --
 7 THE COURT: Well --
 8 MR. DRESSLER: It's one case and I think it's an
 9 extremely simple argument.
 10 THE COURT: Let's do this.
 11 MR. FARNHAM: But as I understand it, it's also not a
 12 case that pertains to this particular statute. It's an
 13 analogy, which is going to take some opposition.
 14 MS. HARRIS: Your Honor, we are going to have to
 15 spend the time researching this and fully briefing the Court on
 16 it, and that was the agreement of the parties.
 17 Mr. Dressler could have gotten this in much earlier than
 18 he did, and we are where we are.
 19 MR. DRESSLER: I've advised them of what the legal
 20 argument is two days ago.
 21 THE COURT: Well, under Rule 29(b), I have the
 22 authority to reserve decision, which I had indicated I was
 23 going to do.
 24 And I also thought that the parties had reached an
 25 agreement that that was a proper thing to do because I want to

1 see the authorities, unless it's so crystal clear that there is
 2 not even an argument, but --
 3 MR. DRESSLER: I mean, that's the basis of Rule 29,
 4 is that no rational juror could --
 5 THE COURT: Well, but sometimes it turns on
 6 interpretation of the law. It's not like it's so clear that
 7 the judge barely has to think about it.
 8 MR. DRESSLER: No, I understand that.
 9 THE COURT: So if you want to file it, you can file
 10 it, but I've already indicated that I was going to reserve
 11 decision and give the Government fair opportunity to respond.
 12 MR. DRESSLER: That's fine. That's fine.
 13 THE COURT: All right.
 14 MS. HARRIS: Thank you thank you, your Honor.
 15 THE COURT: Thank you.
 16 (Whereupon at 1:47 p.m. further proceedings were
 17 adjourned until Friday, October 9, 2015 at 8:15 a.m.)
 18
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 24
 25

I N D E X

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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

_____/s/ Debra Pas_____

Debra L. Pas, CSR 11916, CRR, RMR, RPR

_____/s/ Belle Ball_____

Wednesday, October 7, 2015

Volume 11
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDWARD M. CHEN

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) NO. CR 12-0278 EMC
JAMES MURRAY,)
Defendant.) San Francisco, California
) Friday
) October 9, 2015
) 8:15 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:
For Plaintiff: MELINDA HAAG
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: ROBIN HARRIS, AUSA
LLOYD FARNHAM, AUSA

For Defendant: ALAN A. DRESSLER, ESQ.
400 Montgomery Street
Suite 200
San Francisco, California 94104

Also Present: USSS AGENT ANTHONY SIMS, JR.
FBI AGENT BRIAN C. WEBER

Reported By: Debra L. Pas, CSR 11916, CRR, RMR
Belle Ball, CSR 8785, CRR, RMR
Official Reporters - US District Court

PROCEEDINGS

1 OCTOBER 9, 2015 8:26 A.M.
2
3 (Defendant present, in custody.)
4 (Proceedings held in open court, outside the presence
5 and hearing of the jury.)
6 THE COURT: Good morning, everyone.
7 MS. HARRIS: Good morning, Your Honor.
8 MR. FARNHAM: Your Honor, one thing that I wanted to
9 bring to your attention. The summary of charges.
10 THE COURT: Yes.
11 MR. FARNHAM: The parties filed one last night.
12 THE COURT: Yes.
13 MR. FARNHAM: We did -- we did, at Mr. Dressler's
14 suggestion, make one change to that.
15 THE COURT: Oh.
16 MR. FARNHAM: The aggravated identity theft counts
17 did not have a date, as obviously, they do in the indictment.
18 So we had a version where we added the dates to those two
19 counts.
20 THE COURT: Oh. Do you have that?
21 MR. FARNHAM: I do have a version.
22 (Document handed up to the Court)
23 THE COURT: Have you e-mailed that to us? I mean, we
24 need to reproduce -- I want to give the jury a couple of copies
25 of the verdict form and the summary, and I gave them several

1 copies of the instructions. So do you happen to have some
2 extra?
3 MR. FARNHAM: Certainly. I can have that e-mailed to
4 the proposed order mailbox? Is that --
5 THE COURT: Okay. All right. Why don't you do that,
6 because I want to give it to them -- well, I don't know if any
7 of you plan to display this (indicating) in your closings, but
8 if --
9 MR. FARNHAM: Yes, we might.
10 THE COURT: All right. I mean, that's fine. You
11 have agreed on it.
12 MR. DRESSLER: Yeah.
13 THE COURT: But if I can physically get a couple of
14 copies to them, so if you could e-mail it.
15 And I have -- the verdict form remains. Right? The
16 verdict form, so I'm going to explain to them that at the end
17 of -- after you've argued and I give the final filing
18 instructions, that they are going to get a verdict form and a
19 summary of charged counts, which is again not evidence but
20 simply intended to -- as a guide when they fill out their
21 verdict form.
22 MR. FARNHAM: Thank you.
23 THE COURT: Okay?
24 MR. DRESSLER: Thank you.
25 THE COURT: Time estimates at this point, so I have

1 some idea how long you will be going?
2 MS. HARRIS: I don't know exactly how long,
3 Your Honor, but I'll do my best to -- I think both parties have
4 been very respectful of the Court and the jury's time. I will
5 do my best to keep it under control, but there was a lot of
6 evidence.
7 THE COURT: What does that mean?
8 MS. HARRIS: It means I really don't know, but -- I
9 don't know. Under a couple of hours.
10 THE COURT: How many?
11 MS. HARRIS: Under a couple of hours, and probably
12 more than one. I just don't know. There was a lot of
13 evidence.
14 Your Honor, do we have time for a quick bathroom break
15 before --
16 THE COURT: Yeah. Do you have any rough estimate?
17 MR. DRESSLER: Five minutes to five days.
18 THE COURT: Thank you. That's very helpful.
19 MR. DRESSLER: Probably an hour and a half. It's
20 really hard -- despite my many years of experience, I'm
21 terrible at estimating.
22 THE COURT: Yeah.
23 MR. DRESSLER: But I have a lot of things to say.
24 THE COURT: I'll be right back.
25 (A pause in the proceedings)

1 THE COURT: All right. All the jurors are here. I'm
 2 going to read the substantive instructions and then we will go
 3 to closing argument.
 4 (The following proceedings were held in the presence
 5 of the Jury)
 6 THE COURT: Okay. You may be seated, everyone. Good
 7 morning, ladies and gentlemen. We are about to proceed to the
 8 final phase in this case.
 9 What I'm going to do this morning is to give you the
 10 instructions on the law. Then we are going hear closing
 11 arguments from each side. And because the Government has the
 12 burden of proof, it also has the right to make a rebuttal
 13 argument.
 14 When the arguments are concluded, I'll give you some
 15 final-final instructions, along with indicating where we go
 16 from there. But you will be then directed to deliberate, to
 17 commence your deliberation.
 18 These instructions are going to be up on the screen, so
 19 for those of you who want to read along, you can do that. I
 20 will also give you copies of these instructions to bring with
 21 you into the jury room, as well as a verdict form and a chart
 22 which I'll explain later on. And I will tell you too that as I
 23 mentioned earlier, you will have access to all the exhibits.
 24 So why don't we go ahead and start the process.
 25 First of all, about the duties of the jury to find facts

1 and follow the law.
 2 INSTRUCTIONS
 3 BY THE COURT:
 4 Members of the jury, now that you have heard all the
 5 evidence, it is my duty to instruct you on the law that applies
 6 to this case. A copy of these instructions will be available
 7 to you in the jury room for you to consult.
 8 It is your duty to weigh and to evaluate all the evidence
 9 received in the case and, in the process, to decide the facts.
 10 It is also your duty to apply the law as I give it to you to
 11 the facts as you find them, whether you agree with the law or
 12 not. You must decide the case solely on the evidence and the
 13 law and must not be influenced by any personal likes or
 14 dislikes, opinions, prejudices or sympathy. You will recall
 15 that you took an oath promising to do so at the beginning of
 16 the case.
 17 You must follow all of these instructions and not single
 18 out some and ignore others; they are all important. Please do
 19 not read into these instructions or anything I may have said or
 20 done any suggestion as to what verdict you should return. That
 21 is a matter entirely up to you.
 22 Charge against Defendant is not evidence, presumption of
 23 innocence, burden of proof.
 24 The indictment is not evidence. The Defendant has pleaded
 25 not guilty to the charge. The charges. The Defendant is

1 presumed to be innocent unless and until the Government proves
 2 the Defendant guilty beyond a reasonable doubt. In addition,
 3 the Defendant does not have to testify or present any evidence
 4 to prove innocence. The Government has the burden of proving
 5 every element of the charge -- or actually charges in this case
 6 -- beyond a reasonable doubt.
 7 Reasonable doubt defined.
 8 Proof beyond a reasonable doubt is proof that leaves you
 9 firmly convinced the Defendant is guilty. It is not required
 10 that the Government prove guilt beyond all possible doubt.
 11 A reasonable doubt is a doubt based upon reason and common
 12 sense and is not based purely on speculation. It may arise
 13 after a careful and impartial consideration of all the
 14 evidence, or from lack of evidence.
 15 If after a careful and impartial consideration of all the
 16 evidence, you are not convinced beyond a reasonable doubt that
 17 the Defendant is guilty, it is your duty to find the Defendant
 18 not guilty. On the other hand, if after a careful and
 19 impartial consideration of all the evidence, you are convinced
 20 beyond a reasonable doubt that the Defendant is guilty, it is
 21 your duty to find the Defendant guilty.
 22 What is evidence.
 23 The evidence you are to consider if deciding what the
 24 facts are consists of:
 25 One, the sworn testimony of any witness;

1 Two, the exhibits received in evidence;
 2 And three, any facts to which the parties have agreed.
 3 What is not evidence? In reaching your verdict, you may
 4 consider only the testimony and exhibits received in evidence.
 5 The following things are not evidence and you may not consider
 6 them in deciding what the facts are:
 7 1. Questions, statements, objections and arguments by the
 8 lawyers are not evidence. The lawyers are not witnesses.
 9 Although you must consider a lawyer's question to understand
 10 the answers of a witness, the lawyer's questions are not
 11 evidence. Similarly, what the lawyers have said in their
 12 opening statements, will say in their closing arguments, and at
 13 other times is intended to help you interpret the evidence, but
 14 it is not evidence. If the facts as you remember them differ
 15 from the way the lawyers state them, your memory of them
 16 controls.
 17 2. Any testimony that I have excluded, stricken, or
 18 instructed you to disregard is not evidence.
 19 3. Anything you may have seen or heard when the Court was
 20 not in session is not evidence. You are to decide the case
 21 solely on the evidence received at trial.
 22 Direct and circumstantial evidence. Evidence may be
 23 direct or circumstantial. Direct evidence is direct proof of a
 24 fact, such as testimony by a witness about what that witness
 25 personally saw or heard or did. Circumstantial evidence is

1 indirect evidence, that is, it is proof of one or more facts
2 from which you can find another fact.

3 You are to consider both direct and circumstantial
4 evidence. Either can be used to prove any fact. The law makes
5 no distinction between the weight to be given to either direct
6 or circumstantial evidence. It is for you to decide how much
7 weight to give to any evidence.

8 Credibility of witnesses. In deciding the facts in this
9 case, you may have to decide which testimony to believe and
10 which testimony not to believe. You may believe everything a
11 witness says, or part of it, or none of it.

12 In considering the testimony of any witness, you may take
13 into account:

- 14 1, the witness's opportunity and ability to see or hear or
- 15 know the things testified to;
- 16 2, the witness's memory;
- 17 3, the witness's manner while testifying;
- 18 4, the witness's interest in the outcome of the case, if
- 19 any;
- 20 5, the witness's bias or prejudice if any;
- 21 6, whether other evidence contradicted the witness's
- 22 testimony;
- 23 7, the reasonableness of the witness's testimony in light
- 24 of all the evidence;
- 25 And 8, any other factors that bear on believability.

1 The weight of the evidence as to a fact does not
2 necessarily depend on the number of witnesses who testify.
3 What is important is how believable the witnesses were, and how
4 much weight you think their testimony deserves.

5 Opinion evidence, expert witness.

6 You have heard testimony from a person who, because of
7 education or experience, was permitted to state opinions and
8 the reasons for his opinions.

9 Such opinion testimony should be judged like any other
10 testimony. You may accept it or reject it, and give it as much
11 weight as you think it deserves, considering the witness's
12 education and experience, the reasons given for the opinion,
13 and all the other evidence in the case.

14 Defendant's decision to testify. The Defendant has
15 testified. You should treat this testimony just as you would
16 the testimony of any other witness.

17 Summaries not received in evidence. During the trial,
18 certain charts and summaries were shown to you in order to help
19 explain the evidence in the case. These charts and summaries
20 were not admitted in evidence and will not go into the jury
21 room with you. They are not, themselves, evidence or proof of
22 any facts. If they do not correctly reflect the facts and
23 figures shown by the evidence in the case, you should disregard
24 these charts and summaries and determine the facts from the
25 underlying evidence.

1 Charts and summaries in evidence. Certain charts and
2 summaries have been admitted in evidence. Charts and summaries
3 are only as good as the underlying supporting material. You
4 should, therefore, give them only such weight as you think the
5 underlying material deserves.

6 Separate consideration of multiple counts, single
7 defendant. A separate crime is charged against the Defendant
8 in each count. You must decide each count separately. Your
9 verdict on one count should not control your verdict on another
10 count.

11 Intent to defraud, defined. An intent to defraud is an
12 intent to deceive or cheat.

13 Wire fraud. The Defendant is charged in Counts One
14 through 16 of the indictment with wire fraud in violation of
15 Section 1343 of Title 18 of the United States Code. In order
16 for the Defendant to be found guilty of that charge, the
17 Government must prove each of the following elements beyond a
18 reasonable doubt:

19 First, the Defendant knowingly participated in, devised or
20 intended to devise a scheme or plan to defraud, or a scheme or
21 plan for obtaining money or property by means of false or
22 fraudulent pretenses, representations, or promises;

23 Second, the statement made or facts omitted as part of the
24 scheme were material, that is they had a natural tendency to
25 influence or were capable of influencing a person to part with

1 money or property;

2 Third, the Defendant acted with intent to defraud, that
3 is, intent to deceive or cheat;

4 And fourth, the Defendant used or caused to be used a wire
5 communication to carry out or attempt to carry out an essential
6 part of the scheme.

7 In determining whether a scheme to defraud exists, you may
8 consider not only the Defendant's words and statements, but
9 also the circumstances in which they are used as a whole.

10 A wiring is caused when one knows that a wire will be used
11 in the ordinary course of business or when one can reasonably
12 foresee such use.

13 Good faith is a defense to wire fraud.

14 You may determine whether a defendant had an honest,
15 good-faith belief in the truth of the specific
16 misrepresentations alleged in the indictment in determining
17 whether or not the Defendant acted with intent to defraud.
18 However, a defendant's belief that the victim of the fraud will
19 be paid in the future or will sustain no economic loss is no
20 defense to the crime.

21 Fraud in connection with identification documents.

22 Aggravated identity theft. The Defendant is charged in Counts
23 21 and 22 of the indictment with aggravated identity theft in
24 violation of Section 1028A of Title 18 of the United States
25 Code. In order for the Defendant to be found guilty of that

1 charge, the Government must prove each of the following
 2 elements beyond a reasonable doubt:

3 First, the Defendant knowingly transferred, possessed, or
 4 used without legal authority a means of identification of
 5 another person;

6 And second, the Defendant knew that the means of
 7 identification belonged to a real person;

8 And third, the Defendant did so during and in relation to
 9 wire fraud.

10 Money laundering.

11 The Defendant is charged in Counts 17 through 20 of the
 12 indictment with money laundering in violation of Section 1957
 13 of Title 18 of the United States Code. In order for the
 14 Defendant to be found guilty of that charge, the Government
 15 must prove each of the following elements beyond a reasonable
 16 doubt:

17 First, the Defendant knowingly engaged or attempted to
 18 engage in a monetary transaction;

19 Second, the Defendant knew the transaction involved
 20 criminally derived property;

21 Third, the property had a value greater than \$10,000;

22 Fourth, the property was, in fact, derived from wire fraud
 23 (as alleged if Counts 17 through 20);

24 And fifth, the transaction occurred in the United States.

25 The term "monetary transaction" means the deposit,

1 withdrawal, transfer, or exchange, in or affecting interstate
 2 commerce, of funds or a monetary instrument by, through, or to
 3 a financial institution. The term "monetary transaction" does
 4 not include any transaction necessary to preserve a person's
 5 right to representation as guaranteed by the Sixth Amendment to
 6 the Constitution.

7 The term "financial institution" includes any insured
 8 bank, a commercial bank, a broker or dealer in securities or
 9 commodities and an investment banker or investment company.

10 The term "criminally derived property" means any property
 11 constituting or derived from the proceeds of a criminal
 12 offense. The Government must prove that the Defendant knew
 13 that the property involved in the monetary transaction
 14 constituted or was derived from proceeds obtained by some
 15 criminal offense. The Government does not have to prove that
 16 the Defendant knew the precise nature of the criminal offense
 17 or knew the property involved in the transaction represented
 18 the proceeds of a wire fraud.

19 Although the Government must prove that of a property at
 20 issue more than \$10,000 was criminally derived, the Government
 21 does not have to prove that all of the property at issue was
 22 criminally derived.

23 Contempt of court. The Defendant is charged in Count 23
 24 of the indictment with contempt of court in violation of
 25 Section 401(3) of Title 18 of the United States Code. In order

1 for the Defendant to be found guilty of that charge, the
 2 Government must prove each of the following elements beyond a
 3 reasonable doubt:

4 First, that the Court gave the Defendant -- gave the
 5 Defendant -- ordered the Defendant not to engage in certain
 6 activities and conduct while released on bond pending trial.

7 It should be ordered the Defendant... Yes. Ordered to
 8 Defendant not to engage in certain activities and conduct while
 9 released on bond pending trial.

10 Second, that the Defendant disobeyed or disregarded those
 11 orders.

12 Third, that the Defendant acted willingly and knowingly in
 13 disobeying those orders.

14 So at this point, I will invite the Government to proceed
 15 with its closing argument.

16 MS. HARRIS: Thank you, Your Honor.

17

18

19 MS. HARRIS: Thank you, Your Honor.

20 CLOSING ARGUMENT

21 BY MS. HARRIS:

22 Good morning, ladies and gentlemen.

23 This case is about a liar and a thief who stole millions
 24 of dollars from victims who believed his completely outrageous
 25 misrepresentations. Mr. Murray lied to investors, most of whom

1 were elderly and retired. He lied to banks. He lied to his
 2 friends. He lied to his own wife. And most heartbreakingly,
 3 he lied to his parents.

4 Murray set up fake companies; he impersonated other people
 5 over the telephone to gain access to brokerage accounts. He
 6 created false documents. He invented phony honors for himself,
 7 and a completely imaginary advanced degree. He laundered money
 8 through his criminal defense attorney's bank account that was
 9 unrelated to his defense in this case.

10 And even after he had been indicted, he continued to lie,
 11 to cheat, and deceive. He violated this Court's bail order by
 12 smuggling a computer into the Pillsbury law firm and hiding it
 13 in the ceiling of a conference room, and using it for every
 14 purpose that this Court specifically prohibited him from using
 15 it.

16 Just when you thought that there were no more lies to be
 17 told, that there was nothing else he could do to cheat and
 18 deceive, he took an oath in this courtroom before you, and he
 19 defiled these halls of justice where we come to seek the truth,
 20 and he lied to you, under oath, in this trial.

21 This case was presented to you in four parts. And the
 22 evidence of the Defendant's guilt on each of those four parts
 23 is overwhelming.

24 I'm going to walk you through that right now. We have a
 25 chart here that shows the four parts in the case. And I will

1 walk you through the evidence for each of, them but I want to
2 give you an overview now, because it's been a long trial.

3 The first part of the case involves the phony Jones Moore
4 & Associates accounting firm that the Defendant set up. And
5 I'll talk in great detail about the evidence on that. And
6 there was a credit card scam that the Defendant ran through
7 Jones Moore & Associates. That's Counts One, 2, 3, 4 and 21 of
8 the indictment that you will be deliberating on.

9 Part two of the case was presented to you with the
10 investor fraud. That also involved Jones Moore & Associates.
11 He used it for two different fraudulent purposes. The first
12 was the credit card. The second part was he used it to create
13 false accounting statements for his hedge fund, Market Neutral
14 Trading, and to defraud investors into investing in the hedge
15 fund. So that was the investor fraud. And the various victim
16 investors you heard from, Counts Five, Six, Seven, Eight, Nine,
17 Ten and Eleven.

18 Then after he did all of the investor fraud, he used the
19 entity MNT Master Fund Limited which is what all of the
20 investors' investments were transferred into, to defraud
21 Oppenheimer, the investment bank, and to do a Netflix short
22 sale transaction in an account that should have never been
23 cleared for trading because there were false representations in
24 the account.

25 And after that trade was successful, he laundered \$150,000

1 through his attorney's trust account. And I'll go through the
2 laundering on that as well. This is part three of the case.

3 The other things that happened in part three was the
4 brokerage account he opened at Event Trading in the name of
5 Giovanni de Francisci, with a fake bank account that the
6 Defendant had altered to conceal his identity. That was part
7 three. And that's Count 12. Counts 13, 14, 15 and 16 are wire
8 fraud relating to Oppenheimer.

9 17, 18, and 19 are the -- the -- and 20 are the money
10 laundering. And Counts 21 and 22 are aggravated identity theft
11 relating to the misuse of Lisa Brigulio's California driver's
12 license to set up Jones Moore & Associates and the misuse of
13 Giovanni de Francisci's name to get the account with
14 Interactive Brokers. And I'll explain all of this in detail,
15 but I just want to give you an overview of the four parts.

16 And then the last part of the case was the contempt of
17 court, when he violated this Court's bond by smuggling the
18 computer into the Pillsbury law firm.

19 So let's talk about the evidence that you have been
20 presented with. This case all began with the fake accounting
21 firm Mr. Murray, created in 2008. You will recall Lisa
22 Brigulio's testimony. That was James Murray's ex-wife. They
23 were married in October of 2008. And, remember Lisa Brigulio's
24 testimony.

25 While she was dating her soon-to-be husband, he had opened

1 up many credit cards in her name without her knowledge and
2 consent. And we showed you a prenuptial contract that Lisa
3 Brigulio drafted before she and James Murray were married.
4 That is Government Exhibit 132.

5 And, I would submit that no one on this jury has ever seen
6 a prenuptial like the one Lisa Brigulio drafted. Basically it
7 listed a series of credit cards that Mr. Murray had opened in
8 her name, without her knowledge or consent, and run up debt.

9 And she was asking her future husband to sign a contract
10 saying: You will not misuse my name anymore, open accounts in
11 my name anymore, without my consent. And we cannot go forward
12 with this where you are doing these things.

13 So she's on notice that her husband-to-be is a liar, and
14 is doing things without her knowledge and consent, and misusing
15 her identity. She explains why she married him anyway. They
16 had been dated dating a long time, she was [REDACTED],
17 and she wanted to [REDACTED].

18 Within two months of Mr. Murray marrying Lisa Brigulio, he
19 steals her identity. He stole her California driver's license,
20 and he misused her name and her driver's license to open the
21 virtual office for Jones Moore & Associates.

22 And let me just walk you through phase one of the case
23 now. We are going to move over to the ELMO so I can do this a
24 little quicker for you.

25 This was the Exhibit 1 that you were presented with. And

1 -- can you not see it?

2 (Document displayed)

3 MS. HARRIS: Okay. You will have all of this to look
4 at in the jury room.

5 But this is the application that Mr. Murray admits he
6 submitted to Brandywine in Delaware. That is the virtual
7 office company that was the first witness you heard from, Chuck
8 Boyce. Mr. Murray submits this on December 22, 2008. And his
9 name does not appear anywhere on this application. And that
10 was to conceal his role in the fraud that he intended to embark
11 on with this fake accounting firm.

12 And he forges Lisa Brigulio's signature (Indicating). And
13 he falsely lists her title as the administrative assistant to
14 R. Jones (Indicating). As you know, Lisa Brigulio was and is a
15 fourth-grade teacher in Tiburon. And no one knew that more
16 than Mr. Murray, her husband.

17 (Document displayed)

18 MS. HARRIS: He sets up the Jones Moore office. And
19 remember what Chuck Boyce said a virtual office is. That's not
20 a brick-and-mortar office where people work. That just gives
21 you a phone number so when people call, they'll hear -- the
22 number you're assigned -- "Jones Moore & Associates." Someone
23 would have no idea whether that was in Pakistan or Delaware.
24 They just hear "Jones Moore & Associates."

25 And then again, he forges Lisa Brigulio's signature

1 (Indicating) on the application for the virtual office.
 2 (Document displayed)
 3 MS. HARRIS: And there's another thing I want to
 4 point out for you. The initial credit card authorization for
 5 this virtual office that Mr. Murray set up was a credit card in
 6 Lisa Brigulio's name (Indicating). And that was in 2008. And
 7 again, another violation of the prenuptial agreement she had
 8 asked him to enter into.
 9 He uses her credit card, you see that here (Indicating),
 10 as the authorization for the monthly charges. And then, her
 11 driver's license (Indicating) which is the aggravated identity
 12 theft that Mr. Murray is charged with, one of the aggravated
 13 identity thefts. The use of this California driver's license.
 14 But the reason that I'm pointing out the credit card
 15 authorization being done under Lisa Brigulio's name is that was
 16 effective December of 2008 (Indicating). And it did not change
 17 until Mr. Murray stole David Lowe's identity in 2010
 18 (Indicating).
 19 The first time you ever see David Lowe's name associated
 20 with this virtual office is when there is a change in the
 21 credit card authorization. This is important for many reasons.
 22 First of all, this is a fake signature (Indicating), Mr. Murray
 23 again forging David Murray's signature. But it also completely
 24 undercuts Mr. Murray's testimony about the conspiracy that he
 25 and Lowe entered into to open this virtual office. Mr. Murray

1 did it on his own, and David Lowe's name is not even associated
 2 with this fake office until December of 2010.
 3 (Document taken off display)
 4 So, the virtual office is the centerpiece of part one and
 5 part two of the fraud.
 6 And Mr. Murray set up this virtual office to make the fake
 7 JMA accounting firm look real. It's set up with a Delaware
 8 address, and a Delaware phone number. And now, Mr. Murray has
 9 the tools to commit fraud.
 10 And, how do we know that Mr. Murray was behind Jones Moore
 11 & Associates and the virtual office? Well, he admitted that on
 12 the stand. But, beyond all of that, he instructed the virtual
 13 offices in Delaware -- and you'll recall this from Chuck
 14 Boyce's testimony -- that mail for Jones Moore & Associates was
 15 to be sent to another virtual office, this one at 4040 Civic
 16 Center Drive in San Rafael, California.
 17 That virtual office -- and you heard the testimony of Kiu
 18 Phung from the Regis virtual office in San Rafael -- was then
 19 instructed to send all mail to James Murray's home in Larkspur,
 20 California.
 21 So it was almost like a mail laundering servicing. It
 22 went from Delaware, the Jones Moore & Associates office, to
 23 San Rafael, the virtual office that Mr. Murray also set up, to
 24 Murray's home in Larkspur, to conceal his identity with Jones
 25 Moore & Associates.

1 And then you'll remember what Jordyn Kramer, the Secret
 2 Service agent, testified was found during the home at the
 3 search warrant: Opened mail for Jones Moore & Associates that
 4 had been forwarded from Brandywine to the virtual office in
 5 San Rafael, to Mr. Murray's home at Jones Moore & Associates.
 6 Now, there is so much overwhelming evidence that Jones
 7 Moore & Associates was a complete fraud. First of all, the
 8 Defendant is not a CPA. He doesn't even have a master's degree
 9 in finance, as his resume falsely represented to investors.
 10 He listed David Lowe as the president of Jones Moore &
 11 Associates on a Chase Paymentech application. And I'm going to
 12 show you that in a minute. That is Government Exhibit 24.
 13 Because that was when he starts using Jones Moore & Associates
 14 for the Chase Paymentech fraud.
 15 (Document displayed)
 16 MS. HARRIS: This is the application, Government
 17 Exhibit 24, that Mr. Murray submitted to Chase Paymentech,
 18 which is a merchant bank. And this is what he submitted to get
 19 a credit card swiper for the fake accounting firm.
 20 He lists himself under owner's information as the chief
 21 financial officer of Jones Moore & Associates, and he lists
 22 David Lowe, a British citizen, who has not been to the United
 23 States in over ten years, as the president of this fake firm.
 24 There's something else very important about the fraud
 25 Mr. Murray committed on Chase Paymentech. You will recall, I

1 hope, the testimony of Johnny Wong, who was the US Bank
 2 employee who testified about the two different bank statements.
 3 Market Neutral Trading had a bank account at US Bank, a
 4 legitimate bank account. This merchant application was
 5 submitted to Chase Paymentech with an altered fake Jones Moore
 6 & Associates bank account statement. Mr. Murray Photoshopped
 7 the legitimate Market Neutral Trading bank account statement.
 8 And, you were shown both. Mr. Wong testified that was a
 9 legitimate bank statement. The one that was submitted to Chase
 10 Paymentech was for Jones Moore & Associates. Jones Moore &
 11 Associates never had a bank account at US Bank.
 12 This entire application for a credit card swiper was
 13 opened with false information in the application, and a
 14 completely doctored fake bank statement.
 15 Now, once Mr. Murray submits this application and falsely
 16 represents to Chase Paymentech that Jones Moore & Associates is
 17 a legitimate bank, he is armed with a credit card swiper which
 18 he uses from a backyard shed in his house to commit credit-card
 19 fraud.
 20 Now, David Lowe testified that he had not ever heard of
 21 Chase Paymentech, had never heard of Jones Moore & Associates
 22 before 2014 when he was interviewed by the FBI, and that he
 23 hasn't been to the United States in over ten years. He also
 24 testified that he never gave James Murray his passport or
 25 authorized Mr. Murray to use it at all.

1 David Lowe's testimony is completely consistent with Lisa
2 Brigulio's testimony. You have two people on two different
3 continents, a world away from each other, who do not know each
4 other, who testified to having the exact same experience with
5 the Defendant. That is how you can assess the credibility of
6 these two witnesses.

7 Lisa Brigulio testified she never gave the Defendant her
8 California driver's license. She was completely -- there is
9 not one piece of evidence in this case that disputes that.
10 Lisa Brigulio never authorized the Defendant to use her
11 California driver's license. Lisa Brigulio had never heard of
12 Jones Moore & Associates. Lisa Brigulio was not the
13 administrative assistant to an R. Jones. She was a
14 fourth-grade teacher. And Lisa Brigulio's signature was forged
15 on Exhibit 1, and she thought it looked like her ex-husband's
16 writing.

17 Similarly, David Lowe testified that was not his signature
18 on any of the documents you saw at trial, including Exhibit 1,
19 which was used in the virtual office. David Lowe testified he
20 never gave James Murray a copy of his passport, just like Lisa
21 Brigulio. It was not David Lowe's signature. It was a
22 forgery, just like Lisa Brigulio. And David Lowe testified he
23 was not the president of Jones Moore & Associates. Just like
24 Lisa Brigulio was never an administrative assistant for this
25 fake firm. David Lowe also testified he had never heard of

1 Jones Moore & Associates, just like Lisa Brigulio.

2 Now, as you consider the credit-card fraud that Mr. Murray
3 did using the fake Jones Moore & Associates accounting firm,
4 you might ask yourself: Why did Jones Moore & Associates even
5 need a credit card machine since it was a virtual office, it
6 had no customers, and there was nothing for anyone to buy?

7 The reason it had a credit card (sic) was because the
8 Defendant was going to commit credit-card fraud.

9 Now, let me show you the credit card swipers that were
10 found at the Defendant's home. The exact credit card swiper --
11 they're all in this box. And you all will be able to look at
12 them when you are in the jury room. These were found at the
13 Defendant's home in Larkspur. And in fact, the one the that
14 Chase Paymentech shipped to the virtual office in Delaware is
15 found in Larkspur in the back shed of the Defendant's house.

16 So he's running a credit card scam through his shed in the
17 backyard of his house. He is pretending to be Jones Moore &
18 Associates in a backyard shed. And he's running hundreds of
19 credit card swipes through the terminal.

20 You heard the testimony from the Comcast employee that the
21 phone number that was associated with that credit card terminal
22 (Indicating), the thing that made it work was James Murray's
23 phone number. So he has it set up in his backyard in Larkspur,
24 California, sitting at his leisure, swiping hundreds of fake
25 purchases and hundreds of fake refunds.

1 This is a little graphic that shows how the scam worked.
2 (Document displayed)

3 MS. HARRIS: And I'm not going to spend a lot of time
4 talking about this, because Jonathan Hallford at Chase
5 Paymentech explained it to you in so much detail. But
6 basically Mr. Murray ran up \$667,000 of charges, all from the
7 man chair in the backyard shed.

8 Then he started a -- a refund scheme where in one
9 ninety-minute period -- you will recall Mr. Hallford testifying
10 about that -- from 7:30 p.m. to 9:00 one evening in March of
11 2011, Mr. Murray did hundreds of refund swipes. That's what
12 tipped Chase Paymentech off to the fraud in the first place.
13 How on earth could hundreds of Jones Moore & Associates
14 customers all need a refund for merchandise within a
15 ninety-minute period in the middle of the evening in March of
16 2011?

17 Mr. Hallford went through the hundreds and hundreds of
18 fake credit card swipes Mr. Murray did from his home. And you
19 have Government Exhibit 43 in evidence.

20 (Document displayed)

21 MS. HARRIS: I just want to show you the four that
22 were highlighted for you, because this is Counts One, Two,
23 Three and Four of the indictment. Can you see it? Can you see
24 it now? Okay.

25 This is Count One (Indicating) -- and you will have this

1 in the jury room -- Count Two, Count Three and Count Four
2 (Indicating). These are the false swipes that Mr. Murray did
3 to accomplish his credit card scam.

4 (Document taken off display)

5 MS. HARRIS: Another piece of evidence you were
6 presented with is what Mr. Murray did with the money that he
7 got from his credit card scam.

8 The credit cards that were used in this case were all
9 issued in names you've heard throughout the case: Julie
10 Leopold, Lisa Brigulio, David Lowe, Tim Palm, Gary Anderson and
11 others, some fake people, some real people. No one who gave
12 Mr. Murray authorization to sit in his backyard, swiping credit
13 cards in their name.

14 Now, you heard from Phil Villanueva that \$350,000 from the
15 Chase Paymentech credit card scam was placed into Market
16 Neutral Trading bank accounts. Ladies and gentlemen, part one
17 of this case, Mr. Murray's credit card scam, was used as the
18 seed money for his hedge fund. Market Neutral Trading was not
19 seeded by Pareto Capital, as he falsely told Paul Eckel. It
20 was seeded by a credit card scam Mr. Murray was running from
21 his backyard.

22 Part two of Mr. Murray's scheme to defraud involves the
23 lies that he told to investors, who gave him more than two and
24 a half million dollars during the scheme to defraud.

25 We are now on phase two of the charges that have been

1 presented to you. First I want to show you Mr. Murray's fake
2 resume.

3 (Document displayed)

4 MS. HARRIS: This is Exhibit 148. And it's filled
5 with lies that investors relied on. Lies as simple as where
6 Pareto Capital was located. It was not located in
7 San Francisco, California. It was a virtual office, the same
8 virtual office that the mail from Jones Moore & Associates was
9 sent to in San Rafael, California. Murray Partners. He
10 couldn't even list who his supposed partners were.

11 But the most important and significant lie that Mr. Murray
12 told was the one that induced investors to invest in the first
13 place. He claimed that he had graduated with honors from the
14 University of Arizona, *cum laude*, which he had not. And he
15 invented a completely imaginary advanced degree for himself in
16 economics.

17 (Document taken off display)

18 MS. HARRIS: This one is material to all of the
19 investors' decision to invest in Market Neutral Trading. And
20 they explained why.

21 Mr. Murray was selling a very complex strategy. His hedge
22 fund relied on quantitative analysis that all of the investors
23 thought someone with high education would need in order to
24 implement this advanced strategy. So the fake degree that
25 Murray invented for himself gave them comfort and confidence

1 that he actually had the intellectual and educational tools to
2 implement his strategy.

3 That's why he invented the fake degree in the first place.

4 They would not have invested if he did not have advanced
5 training in the areas that he falsely represented that he did.

6 You will recall the investor Nathan Gorin, who testified.
7 He was the one who came from New York. He wasn't even shown a
8 document, and he was asked, "What do you remember about
9 Mr. Murray's background?"

10 And without looking at anything, he said, "I remember that
11 he had a master's degree in finance, which was impressive to
12 me, and that he had graduated *cum laude*."

13 Mr. Pernel, the investor from South Carolina who made the
14 investment on behalf of the Polaris Investment Group, testified
15 that the advanced degree was so important to him because this
16 quantitative strategy that the Defendant was marketing required
17 someone who really had the educational background to pull that
18 strategy off. The Defendant didn't have that background. And
19 he lied to investors to convince them to make an investment.

20 Mr. Eckel, who was the third-party marketer that the
21 Defendant hired to find investors, testified that this advanced
22 degree, as well as the honors, were exactly what his investors
23 would expect of a manager with this type of hedge fund
24 strategy.

25 Richard Gibson from Texas specifically testified that the

1 Defendant's background gave him confidence and comfort with the
2 strategy.

3 The second thing that all of the investors relied on in
4 making their investment were the fake audits from Jones Moore &
5 Associates. Those audits were created by the Defendant.

6 You have heard testimony about the hard drive on the
7 computer that was recovered from his home. The metadata shows
8 Jim Murray was the creator of many of the fake audits you have
9 seen in this case. They were done from his home, the fake
10 Jones Moore & Associates office.

11 Now, let's take a look first at 2009. You heard some
12 testimony from Tina Moran of CCS Financial. That was actually
13 a real firm, not a fake firm. And in 2009, Market Neutral
14 Trading hired CCS to perform -- to overlook -- see the books
15 and records of Market Neutral Trading. And CCS prepared
16 documents that showed the profits and losses for 2009.

17 Let's take a look at Government Exhibit 140.
18 (Document displayed)

19 MS. HARRIS: This is the real statement of Market
20 Neutral Trading's financial situation in 2009. CCS, which
21 performed the real audit, shows that Market Neutral Trading
22 lost 94 percent in 2009. That's what really happened to
23 investors' money in 2009.

24 No one -- we'll just show you that 94 percent. You have
25 this in evidence. It is Government Exhibit 140. And Tina

1 Moran testified that she was dealing exclusively with Jim
2 Murray during the entire time that CCS was retained to perform
3 these audits.

4 This was what really happened in 2009. So, of course, no
5 one is going to invest in a hedge fund that lost 94 percent.

6 (Document taken off display)

7 MS. HARRIS: So Mr. Murray fires CCS, and starts
8 using Jones Moore & Associates for the next part of his scheme.
9 He's already used it to seed the hedge fund. But now he uses
10 it to prepare fake audits. And one of those fake audits was
11 provided to Phil Eckel. And it's from December of 2006.

12 (Document displayed)

13 MS. HARRIS: And I'm pointing this out to you now
14 just to show you how extensive and outrageous this fraud was.
15 This is Government Exhibit 153. And let's take a look at the
16 cover letter on Exhibit 153.

17 First, the audit is done April 20, 2007. Can you see
18 that? April 20, supposedly in Wilmington, Delaware.

19 Ladies and gentlemen, the virtual office wasn't even
20 opened until December 22, 2008. There was no Jones Moore &
21 Associates until 2008. This is completely false.

22 He lists the address that was given to him by Brandywine,
23 the virtual office address. This didn't come into existence
24 until December 22, 2008. This is a complete fraudulent
25 document.

1 And then the website that Mr. Murray purchased through
2 GoDaddy, the domain www.jonesmoore.com that's on this document,
3 that website wasn't even paid for and purchased until 2008.

4 (Document taken off display)

5 MS. HARRIS: I want to talk a little bit about the
6 audits and how important they were to the investors.

7 All of the investors testified that they would never have
8 invested in Mr. Murray's company without seeing what the
9 historical performance of the company is. And who would? You
10 would never invest in something without knowing what it had
11 done in the past. We know the truth, but the investors didn't.

12 If the investors had been told in 2009 Mr. Murray lost
13 94 percent of all of the money invested with him, not one of
14 them would have given him any money. So he invented false
15 audits. And he knew that the investors would rely on them, and
16 he knew they would be given to the investors.

17 And let me show you how we know that the audits were going
18 to the investors, and the Defendant knew that.

19 You have Government Exhibit 159, in evidence.

20 (Document displayed)

21 MS. HARRIS: This is an email between a potential
22 investor, someone who never invested but was seeking to, named
23 Fariba. And, she sends an email asking for a series of
24 different things, including "all the audited financial
25 statements for the fund."

1 Everyone is expecting an auditor, an outside auditor, not
2 one run by James Murray, that would be overlooking the books
3 and records.

4 So, Ms. Fariba is requesting the audited financial
5 statements for the fund.

6 Mr. Murray writes back, and you see this is from
7 Mr. Murray (Indicating), Market Neutral Trading:

8 "requested to be sent."

9 He does not say "These should not be given to an
10 investor." He says:

11 "requested to be sent."

12 Of course, he knew they were going investors, which is why
13 he created them in the first place.

14 Something else that you were shown during phase two of
15 this trial that is so significant is the due-diligence
16 questionnaire. That's Government's Exhibit 160. And that's
17 where all those false representations were made to Paul Eckel
18 and also to the investor Mr. Pernel, who specifically
19 requested the due-diligence questionnaire before he invested
20 \$250,000 of Polaris's money in Mr. Murray's hedge fund.

21 (Document displayed)

22 MS. HARRIS: Exhibit 160 was prepared by Mr. Murray.
23 He certified that in the due-diligence questionnaire. And sent
24 it to Paul Eckel (Indicating).

25 He claims it was prepared August 11, 2010. A mere eight

1 months after his fund lost 94 percent.

2 And the first thing he lies about is (As read):

3 "Does the firm have business relationships with
4 any service providers (sic) or professional counter
5 parties (custodians..."

6 You heard testimony that Mr. Murray actually bought the
7 website for HF Administrators. You also saw that during the
8 search of his home, his locked briefcase was recovered. And
9 when it was opened, it contained a checkbook in the name of
10 HF Administrators, with David Lowe's name. So he had a
11 checkbook to write checks for the supposed third-party
12 independent administrator that was found in his locked
13 briefcase.

14 We have the fake Jones Moore & Associates firm listed as
15 an auditor. And then we have the outrageous claim that
16 Hornstein Law Offices is the legal adviser to the fund.
17 Mr. Hornstein came into court, and told you he had nothing
18 whatsoever to do with Market Neutral Trading. That he had
19 represented Mr. Murray in a dispute with Bank of America, a
20 year before. And that he had no involvement with Market
21 Neutral Trading, did not authorize his name to be used, and in
22 fact, in later documents that Mr. Murray created, he used
23 Mr. Hornstein's false address because he didn't know
24 Mr. Hornstein had even moved addresses because Mr. Hornstein
25 wasn't the legal adviser to the fund.

1 Then Mr. Murray tells one of the biggest lies of all:

2 "Are there any conflicts of interest of which
3 the investor should be aware?"

4 "No."

5 You saw in this trial the reaction Paul Eckel had when for
6 the first time he was shown the Chase Paymentech application,
7 Exhibit 241, which was phase one of the case, and he was shown
8 that Mr. Murray had listed himself as the chief financial
9 officer of Jones Moore & Associates. Mr. Eckel did not know
10 that before he testified in this case.

11 And do you remember his reaction? He said "This is
12 unheard of. This is a complete red flag. This is a conflict
13 of interest."

14 He would never have gone forward with marketing this fund
15 if he had been told the truth, that the answer to this question
16 (Indicating) was yes, and that Mr. Murray was running Jones
17 Moore & Associates from a shed in his backyard, and that Jones
18 Moore & Associates not an independent auditor, and that in fact
19 Mr. Murray created the fake audits (Indicating).

20 Mr. Murray describes his background, and he falsely lists
21 himself again as having graduated *cum laude* in economics and
22 finance. And his imaginary degree, the master's in economics
23 (Indicating).

24 Look what Mr. Murray said in the very important
25 due-diligence questionnaire. This was -- as Mr. Eckel

1 testified, this is everything in the hedge fund world. And you
 2 heard that from one of the investors, John Pernell. He
 3 specifically asked -- Mr. Pernell asked for the due-diligence
 4 questionnaire. Because this is what investors expect in the
 5 hedge fund world. So not only was this given to Mr. Eckel, it
 6 was given to someone who directly invested in the fund.
 7 And, the question was:
 8 "Do you perform due diligence on service
 9 providers..."
 10 How can you perform due diligence on yourself? But
 11 Mr. Murray lies, and he says:
 12 "All of our service providers are
 13 well-established organizations with 10 more reputable
 14 years of experience in their field."
 15 He set up Jones Moore & Associates in 2008. Not only was
 16 it not an auditing firm, not an independent auditing firm, it
 17 had been in existence for two years. Not ten years.
 18 Same with HF Administrators. In the due-diligence
 19 questionnaire, this document that is everything in the hedge
 20 fund industry:
 21 "Does an outside firm audit the financial
 22 statements of the fund?"
 23 Perhaps Mr. Murray thought "outside" meant outside in his
 24 backyard, but I don't think so. I submit he's intentionally
 25 lied, and wrote:

1 "Jones Moore & Associates."
 2 Outside auditor of the fund.
 3 And, just in case you had any doubt about who completed
 4 and reviewed the questionnaire, Mr. Murray confirmed that he
 5 did that (indicating), on August 12, 2010.
 6 (Document taken off display)
 7 MS. HARRIS: Something else that you were shown in
 8 this trial was the slide show that was prepared for all of the
 9 investors. All of them said that they got some version of this
 10 type of marketing material before they invested in Market
 11 Neutral Trading.
 12 (Document displayed)
 13 MS. HARRIS: The slides contain the false background
 14 here. First it says the fund was seeded by Jim's prior
 15 employer, Pareto Capital, a statistical arbitrage hedge fund.
 16 Phil Villanueva explained to you exactly what seeded
 17 Market Neutral Trading. \$350,000 of credit-card fraud from the
 18 fake Jones Moore & Associates.
 19 And then we have the very important misrepresentation
 20 about Mr. Murray's honors from the University of Arizona and
 21 his fake master's degree.
 22 The investors also were all given a fund return
 23 performance chart. These are not the actual audits, the fake
 24 Jones Moore audits, but they're taken from that.
 25 And pay particular attention to what the investors were

1 told was the year-to-date return for 2009. All of the
 2 investors were told that the fund returned 13.4 percent. You
 3 know the truth, because CCS was the true auditor in 2009, and
 4 the fund lost 94 percent in 2009. But all of the investors
 5 were falsely told that the fund gained 13.4 percent.
 6 You might remember Mr. Russell's testimony about how
 7 important that was. He was the 83-year-old that came in and
 8 explained that he paid particular attention to this chart, and
 9 specifically the 2008 and 2009 years. And when he was asked
 10 why, he explained exactly why 2008, and in particular, 2009,
 11 were so important. The stock market had had the biggest drop
 12 in history, other than during the Great Depression. And so for
 13 Mr. Murray's fund to have actually gained 13.4 percent in 2009
 14 was enormously important to Mr. Russell.
 15 The stock market had had a drop of 50 percent, and yet
 16 Mr. Murray's magic and hocus-pocus had returned 13.4 percent.
 17 Of course, if Mr. Russell knew the truth, that it had
 18 really lost 94 percent, he would never have invested in Market
 19 Neutral Trading.
 20 You heard from so many of the investors who actually
 21 parted with their hard-earned retirement money that was in
 22 their IRAs, and invested based on these false recommendations
 23 about Mr. Murray's background and the performance of his fund.
 24 And remember what the investors were paying for. All of
 25 the marketing material says the most important decision you are

1 making is about the manager. He's the hundred-percent sole
 2 owner, and the one who has completely control over how the
 3 money is going to be traded.
 4 They are buying Mr. Murray. They're not investing in a
 5 mutual fund; they're investing in Mr. Murray. Mr. Murray's
 6 expertise, his educational background, and his performance
 7 record. All of which they were lied to about.
 8 Now that Mr. Murray has gotten almost two and a half
 9 million dollars for investors, he turned to another part of his
 10 fraud. And this is now phase three of the case, the fraud on
 11 Oppenheimer and Interactive Brokers.
 12 In February of 2012, Mr. Murray applied for an account
 13 with Oppenheimer. You heard the testimony from the chief
 14 operating officer, John Benedetto, from New York, of
 15 Oppenheimer. Oppenheimer is an investment bank headquartered
 16 in New York.
 17 And, this is the application Mr. Murray filled out.
 18 (Document displayed)
 19 MS. HARRIS: This is Government Exhibit 283.
 20 Mr. Murray filled this application out -- or provided the
 21 information -- you'll remember Melanie Perricone testified that
 22 at the time she was Mark Moskowitz's assistant, and she took
 23 this information straight from Mr. Murray. And you have the
 24 email traffic in evidence between Ms. Perricone and Mr. Murray.
 25 That's Government Exhibit 287.

1 So this is the February 2, 2011 (sic) application.
 2 Mr. Murray fills it out, and the name of the entity is MNT
 3 Master Fund, Limited. He makes a false representation that the
 4 net worth of MNT Master Fund, Limited is \$5 million. And then
 5 he says that the assets available to invest are \$5 million.
 6 And he lists himself, James Murray, as the chief investment
 7 officer (Indicating).
 8 The representations about MNT Master Fund's net worth and
 9 assets available to invest were completely false.
 10 (Document taken off display)
 11 (Document displayed)
 12 MS. HARRIS: Mr. Villanueva provided this chart for
 13 you, and you have this in evidence, so I'll just briefly walk
 14 you through it again. This is Government Exhibit 393.
 15 And why I wanted to show you the application again is
 16 because the entity was MNT Master Fund, Limited. This was a
 17 Cayman offshore entity that Mr. Murray set up and funneled
 18 investor money to. All of the money that was in the MNT Master
 19 Fund, Limited Cayman Islands offshore account totaled about
 20 \$2.6 million as of January 6, 2012. So, the most -- after
 21 Mr. Murray siphoned \$150,000 to France for himself
 22 (Indicating).
 23 So the most amount of investor money that was in the MNT
 24 Master Fund, Limited account -- you see that, "MNT Master Fund,
 25 Limited" (Indicating) -- was \$2.6 million. That is almost half

1 of what Mr. Murray represented were the assets of MNT Master
 2 Fund, Limited.
 3 (Document displayed)
 4 MS. HARRIS: Mr. Murray fills out this application,
 5 but the account is not cleared for trading until June of 2012.
 6 (Document taken off display)
 7 MS. HARRIS: And there were a couple of watershed
 8 events that happened in the life of Mr. Murray between February
 9 of 2012 and June 22, 2012, when the account was cleared for
 10 trading.
 11 But first, let's look at some of the documents that
 12 Mr. Murray was given by Oppenheimer.
 13 (Document displayed)
 14 MS. HARRIS: He signs a corporate client agreement.
 15 He signs that on February 2, 2012, the same day that the
 16 application is filled out.
 17 The corporate client agreement, Mr. Benedetto testified,
 18 is what governs the terms of Mr. Murray's account in the name
 19 of Market Neutral Trading Master Fund, Limited.
 20 Paragraph 29 specifically -- and this is Exhibit 285.
 21 You'll be able to look at all this in the jury room. But
 22 Paragraph 29 specifically says the client agrees to notify
 23 Oppenheimer about any changes or corrections in connection with
 24 any information contained in the new account application.
 25 There were a couple of huge changes in Mr. Murray's

1 situation.
 2 (Document taken off display)
 3 MS. HARRIS: On May 21, 2012, all of Market Neutral
 4 Trading's assets were seized by a federal seizure warrant.
 5 There were no assets available to invest in the fund. They had
 6 been seized by a federal seizure warrant.
 7 He did not tell that to Oppenheimer. And Mr. Benedetto
 8 specifically testified that had Oppenheimer known that
 9 40 percent of the assets of the entity -- and the entity,
 10 again, is MNT Master Fund, Limited -- had he known that
 11 40 percent of the assets had been seized, this account would
 12 never have been cleared for trading.
 13 The Netflix trade should never have happened because the
 14 account was opened by fraud; there were not \$5 million of
 15 investments -- there never were, there was less than half of
 16 that available; and of that \$2.6 million that was available in
 17 January, somehow by the time the federal seizure warrant was
 18 executed, there were only \$1.8 million in assets. And that was
 19 seized by the Federal Government. There was no money -- there
 20 never was \$5 million, but by the time the account was cleared,
 21 there was zero. That was not told to Oppenheimer.
 22 And based on Mr. Murray's false representations --
 23 affirmative false representations about the \$5 million and his
 24 omission about the fact that 1.8 million had been seized,
 25 Oppenheimer clears the account for trading.

1 And you heard a lot of testimony about what happened on
 2 July 24th and July 25th. A short sale of Netflix stock was
 3 executed. In order to effectuate that short sale, Oppenheimer
 4 put three and a half million dollars of its capital at risk to
 5 buy the Netflix shares that were necessary to complete the
 6 short sale.
 7 The short sale turned out profitable. It made a \$411,000
 8 profit. But Mr. Murray was not able to settle that trade. You
 9 heard the testimony that he needed to come up with \$1.7 million
 10 or half the amount that Oppenheimer had advanced for the
 11 shares. That was what was necessary to settle the trade.
 12 Because Mr. Murray had no money, because Market Neutral Trading
 13 had no money and because Mr. Murray did not have a partner who
 14 was going to settle his trades, the trade was not settled.
 15 In fact, you heard testimony from Scott Greenberg, the
 16 gentleman who lived in Marin, about Mr. Murray's frantic
 17 efforts to get Mr. Greenberg to put up \$1.8 million to settle
 18 the trade. And Mr. Murray -- Mr. Greenberg testified that he
 19 had never met Mr. Murray before. The first time he ever meets
 20 him is August 6, 2008, when Murray travels to San -- to Marin
 21 to hit Scott Greenberg up for a \$1.8 million loan. And he
 22 tells him some story about a partner in a foreign country.
 23 And Scott Greenberg testified, "I thought the whole thing
 24 was full of holes. I didn't believe him. He wouldn't let me
 25 talk to the partner. I wanted to verify the story he was

1 telling me. He would not give me the name of his partner; he
 2 would not give me contact information for his partner. I
 3 didn't believe him, and I thought it was filled with holes."
 4 That's what Mr. Greenberg thought in real time, when it
 5 was actually happening. And he did not put up the money to
 6 settle the trade.
 7 In any event, Oppenheimer has \$411,000 that Market Neutral
 8 Trading has made on this trade. And Mr. Murray then directs
 9 Oppenheimer on what to do with the money. He instructs
 10 Oppenheimer to wire the money. And not to Market Neutral
 11 Trading, not to James Murray, but now he starts laundering the
 12 proceeds of the profitable Netflix trade. He sends a letter of
 13 authorization on August 9, 2012.
 14 (Document displayed)
 15 MS. HARRIS: And this is his signature. And this is
 16 Government Exhibit 385. This is where the money laundering
 17 starts. He sends a letter to Oppenheimer, telling them to send
 18 \$150,000 to the law offices of Garrett Zelen. You have a
 19 stipulation in evidence that Mr. Zelen at the time was
 20 Mr. Murray's criminal defense lawyer in this very case.
 21 So Oppenheimer wires -- and here's the proof of the wire.
 22 (Document displayed)
 23 MS. HARRIS: This is Page 2 of Government Exhibit
 24 385, the wire to Garrett Zelen's law offices. (Indicating).
 25 Okay. And we also have the bank records showing the wire going

1 into Mr. Zelen's attorney/client trust account at US Bank.
 2 Here is the wire going in, the \$100,000 (sic) wire. All
 3 of this is in Government Exhibit 385.
 4 Mr. Murray is directing the whole money laundering
 5 transaction. He then sends a letter or an email to Mr. Zelen,
 6 his criminal defense attorney.
 7 (Document displayed)
 8 MS. HARRIS: And he helpfully clarifies for us that
 9 it should go by wire. And then (As read):
 10 "Hi, Garrett, 150K should have been received by
 11 Friday. If you could send a wire for 100K..."
 12 And this is to his father, Mike Murray. So now the
 13 laundering, this clandestine series of transfers, the money is
 14 going into Garrett Zelen's account. And then the very next day
 15 or few days later, Murray is authorizing Zelen to send a wire
 16 to Mike Murray (Indicating). That is the Defendant's father.
 17 And so, he inveigles his father unwittingly in his money
 18 laundering scheme.
 19 And you heard the testimony from the Defendant's father,
 20 Mike Murray. He had a series of text messages, all of which
 21 are in evidence. He did not expect the \$100,000 wire. He
 22 didn't know what it was for. And he simply did as he was
 23 instructed by his son.
 24 (Document displayed)
 25 MS. HARRIS: Here is the exhibit showing the \$100,000

1 wire going into Mr. Mike Murray's bank account (Indicating).
 2 This is Government Exhibit 302. It hits Mike Murray's bank
 3 account on August 15th, coming from Garrett Zelen's office.
 4 You see that. This is the wire transfer.
 5 This is also Counts 15 and 16 of the indictment, the wire
 6 fraud. And Counts 19 and 20 of the money laundering.
 7 And then, Mr. Murray by text message directs his father to
 8 send \$50,000 to the Interactive Brokers account he has set up
 9 in the name of Event Trading. I'm going to talk to you about
 10 that in a bit too, because that account was completely set up
 11 with fraud.
 12 And then \$15,000 to Mr. Murray's own Discover Bank
 13 account, James Murray. Then the remainder of the \$100,000 --
 14 Mr. Murray, as you'll recall, had access to his father's
 15 account. Mike Murray, the father, testified that his son had
 16 access to this account, and the Defendant, James Murray, used
 17 the remaining money that was in Mike Murray's account to pay
 18 off a Pareto Capital debt.
 19 So \$100,000 goes into Mike Murray's account, and out of
 20 it, almost immediately, all to accounts controlled by James
 21 Murray.
 22 (Document taken off display)
 23 MS. HARRIS: That is the money laundering part of the
 24 transaction.
 25 Now, I want to you keep something in mind as I describe

1 the next part of phase three. Mr. Murray is indicted on
 2 June 14th, 2012. He's indicted for wire fraud. And he's
 3 released on bail.
 4 And the bail has certain conditions. One of those
 5 conditions is that he is not allowed to leave San Francisco
 6 County. And another of those conditions is one that should
 7 seem self-obvious to everyone:
 8 "You shall not commit another state, federal or
 9 local crime."
 10 Now, most people who have been indicted for federal wire
 11 fraud and are out on bail would be extremely cautious about
 12 even running a red light. Not Mr. Murray. He commits another
 13 enormous fraud while he's out on bail in this case.
 14 On July 17th, 2012, a mere month of after being indicted,
 15 he opens an account with Interactive Brokers for a new entity
 16 that he has formed called Event Trading. This is Count 12 in
 17 the indictment, and also Count 22, the aggravated identity
 18 theft.
 19 You heard testimony from Marty Ward at Interactive
 20 Brokers. Interactive Brokers is an exclusively online
 21 brokerage account. Remember, he explained that everything is
 22 done electronically.
 23 Marty Ward also testified to something very, very
 24 important because it shows why Mr. Murray committed this fraud.
 25 On May 21st, all of Market Neutral Trading's accounts were held

1 at Interactive Brokers. And they were seized by the federal
2 seizure warrant. James Murray was red-flagged and Market
3 Neutral Trading was red-flagged.

4 Marty Ward testified they would never open an account
5 associated with James Murray or Market Neutral Trading. It was
6 red-flagged because of the seizure warrant.

7 So what does Mr. Murray do? He hides his identity in the
8 application to Interactive Brokers that he applies for on
9 July 17th. He opens the account in the name of Giovanni
10 de Francisci. And this account is opened with fraud from bite
11 to core.

12 First of all, Mr. Murray confirmed that he filled out the
13 account application. And I want to read you two of the
14 affirmative false representations that Mr. Murray made to
15 Interactive Brokers. We went through these both with Marty
16 Ward when he testified, and then again with James Murray when
17 he testified. And I'll talk to you about Mr. Murray's
18 testimony in a little bit.

19 First question that Mr. Murray lied to Interactive Brokers
20 was (As read):

21 "Has the organization or any of its officers or
22 authorized traders ever been the subject of an
23 investigation or proceeding by any commodities or
24 exchange or regulatory authority or self-regulatory
25 authority?"

1 You heard a great deal of testimony from witnesses from
2 Paul Eckel to John Benedetto, to Mr. Murray, himself, that the
3 New York Stock Exchange is a self-regulatory authority.

4 Mr. Murray was disciplined and suspended from the New York
5 Stock Exchange for six months. And he lied when he responded
6 "No" to this question. He was an authorized trader of Event
7 Trading. In fact, he was a 50 percent owner of the company.

8 And he answered "No" because he was concealing his
9 identity from Interactive Brokers. They would never have
10 opened this account. "Yes" answers to this question would have
11 triggered further investigation and would have disclosed
12 Mr. Murray's involvement with Event Trading.

13 The second lie that Mr. Murray told to Interactive Brokers
14 is Question 3:

15 "Have any of the principals, officers, or
16 authorized traders of the organization ever been
17 arrested for, or convicted of, a crime?"

18 Mr. Murray answered "No" (Indicating). He is an
19 authorized trader of Event Trading. That is the name of the
20 entity that this account is being opened in. And he had been
21 arrested on the federal indictment.

22 This form was supported by a fake bank statement that
23 Mr. Murray completely ginned up using Photoshop.

24 You will recall that we had testimony from the Discover
25 Bank witness about the real account that Mr. Murray had at

1 Discover Bank. And then she was shown the fake bank statement
2 for Giovanni de Francisci. And the fake bank statement,
3 Mr. Murray confirmed he did from his own house using Photoshop.

4 He put Mr. Giovanni's name on the fake bank statement that
5 was submitted to Discover Bank to verify address. He used a
6 completely fraudulent document. He lied to the questions in
7 the account application.

8 And then he supported the lies by using Giovanni
9 de Francisci's identity and creating a completely false bank
10 statement from -- for Giovanni de Francisci, in order for
11 Interactive Brokers to verify the fake address for Giovanni
12 de Francisci.

13 That is Count 12, the wire fraud, the submission of this
14 fake Interactive Brokers application, and Count 22, the use of
15 Giovanni de Francisci's identity for an unlawful purpose during
16 and in relation to this crime.

17 Let me just show you the real and the fake bank statements
18 so you have you in mind what I'm talking about.

19 This is the real James Murray Discover Bank statement.
20 (Document displayed)

21 MS. HARRIS: And this is Government Exhibit 291.
22 You'll see that it's got a Discover Bank logo on it
23 (Indicating), and the time period August 22, 2012 (sic) to
24 May 20, 2012. This is Mr. Murray's true bank statement.
25 You can also see a few little mistake Mr. Murray made with

1 the false one. This one's got a footer, and a little numbering
2 here (Indicating). This "4/12" numbering. Mr. Murray missed
3 that on the one he Photoshopped.

4 Here's the fake bank statement that was submitted to
5 Discover Bank, the same account period of time. Mr. Murray
6 missed the logo when he Photoshopped it. He made a few other
7 errors. He forgot to take the "M" for Murray off on the fake
8 bank statement. And he doesn't have the footer on it.

9 This is a completely false bank statement. It was
10 submitted for Giovanni de Francisci. And the true account
11 holder on this particular account with Discover Bank is
12 Mr. Murray (Indicating).

13 When you consider the money laundering charges that I
14 already described from the fraudulent Netflix transaction and
15 then the series of clandestine transfers from the attorney's
16 account to the father's account back to Mr. Murray, consider
17 the fact that he had a fully functional Discover bank account
18 at the time that he committed the fraud on Oppenheimer and
19 directed the money laundering.

20 If that Netflix trade had really been on the up and up, he
21 would have directed Oppenheimer to wire the proceeds directly
22 to his own bank account at Discover Bank. He had a bank
23 account. Instead, he laundered it through his defense lawyer
24 to his father, and from his father part of the money went to
25 his legitimate Discover Bank account; but he was hiding those

1 proceeds, which is classic use of money laundering.

2 One other thing I want to talk to you about with the
3 Oppenheimer fraud and the \$5 million worth of assets is,
4 Mr. Benedetto, the Chief Operating Officer of Oppenheimer,
5 testified that that was assets under the management of the
6 entity. In this case it was MNT Master Fund, Limited.

7 Mr. Benedetto has explicitly explained "assets available to
8 invest" means assets under the control of the entity.

9 Mr. Murray shares the same definition that Mr. Benedetto
10 does of "assets available to invest" and we know that because
11 at the time, February of 2012, he sent an email to Melanie
12 Perricone. That's Government's Exhibit 287.

13 In that email Melanie Perricone was asking him: What are
14 the source of the \$5 million of assets? And Mr. Murray's
15 response was: Investment.

16 So that was what Mr. Murray's state of mind was in 2012
17 when this fraud was being committed, not what he was telling
18 you on the stand in 2015 when he lied to you.

19 He shared Mr. Benedetto's exact same understanding of what
20 "assets available to invest" is. And you will see the email
21 traffic, Government's Exhibit 287. That's Mr. Murray's state
22 of mind at the time the fraud was being committed.

23 You saw something in this case that must have been deeply
24 disturbing to you. Mr. Murray was put in custody for violating
25 his original bond. And you heard testimony from Mr. Murray

1 himself that he appealed that to this Court, to Judge Chen, and
2 Judge Chen released Mr. Murray on a new bond. That bond was
3 shown to you, and I'm going to take you through that, right
4 now.

5 This is Phase 4 of the case now, the contempt of court.
6 We read to you some of the transcript of the hearing that
7 preceded Judge Chen releasing the defendant on the second
8 go-around. He's already violated his bond once. He has been
9 put in custody, and he's appealed that, and he's now going to
10 be released again.

11 And he is told explicitly -- and he is at this Court
12 appearance. We read you that. He is told explicitly that he
13 is -- and this is the Court:

14 "I indicated last time that this would be
15 something akin to a 24-hour lockdown."

16 He is not supposed to go anywhere, except from the halfway
17 house at [REDACTED] to his law -- new criminal defense
18 lawyers at Pillsbury.

19 He is given very specific conditions, and those were
20 spelled out at the hearing we read to you and they are also
21 spelled out in the bond that I'm going to go through with you.

22 But you hear me saying to the Court:

23 "As I understand it, the defendant is not going
24 to be permitted to leave the halfway house for any
25 purpose other than with pre-approval from Pretrial

1 Services to travel to the Pillsbury law firm and that
2 would have to be approved in advance by Pillsbury
3 [sic] and that somebody from Pillsbury would have to
4 escort Mr. Murray from the halfway house to the law
5 firm and the law firm back to the halfway house."

6 "THE COURT: That's correct."

7 Point No. 1.

8 Point No. 2:

9 "There will be no access to any telephone at all,
10 other than the landline at the halfway house. And I
11 would ask for further restriction on the telephone,
12 which is that there be no contact with Giovanni
13 de Francisci."

14 Very clear.

15 "Then, in addition, the Court would have in the
16 bond that the defendant shall have no access to any
17 computer, no access to the internet, and no access to
18 any cell phone, whether his own or any other person."

19 The Court clarifies exactly what it is doing at the
20 hearing that Mr. Murray is present at.

21 "Right now I want to bright line him. We are
22 just going to restrict it to telephone, landline use
23 at the halfway house, the conditions they prescribe.
24 I'm not going to allow telephone access at this
25 point."

1 You'll have this transcript, by the way, to look at when
2 you deliberate. It's Exhibit 319. So you'll be able to look
3 at that again.

4 And then the Court says -- I say:

5 "Your Honor, I think we should also put in there,
6 given what transpired while the defendant was on
7 bond" -- that refers obviously to the last violation
8 -- "that he is obviously not going to be doing any
9 trading, any work, or anything. He is under lockdown
10 at the halfway house and his only purpose for ever
11 being outside the halfway house is to go his
12 Mr. Axelbaum under the escort of somebody from
13 Pillsbury."

14 Mr. Axelbaum is his new lawyer.

15 "THE COURT: That's a fair request. No trading,
16 financial trading, transactions during this period."

17 Then Pretrial Services, Mr. Lugo, suggests that it include
18 no financial advice to any third parties, and the Court says
19 okay.

20 That is all reduced to a written bond.

21 But after this Court appearance and before the bond is
22 signed on July 19th -- and I'm going to take you through the
23 bond in a minute -- Mr. Murray has a lengthy telephone call
24 with his parents. And that had to have broken any parent's
25 heart that heard that phone call that was played to you in this

1 courtroom.

2 His parents have said to him: You cannot violate again.

3 You have to promise us you will not violate this bond. We have

4 risked everything for you. If you even see a cell phone and

5 you don't think anyone is looking, don't use the phone.

6 And Mr. Murray, in that same manner that he testified to

7 you on direct examination, not cross examination -- and we'll

8 talk about that in a minute -- says to his father: I'm not

9 going to violate. I would rather spend 10 years in jail than

10 put you at risk.

11 Ladies and gentlemen, within less than two weeks of being

12 out on bond, the new bond, the very restrictive conditions --

13 this is what he's charged with violating and this is Exhibit

14 317. This is Count 23 of the indictment.

15 (Document displayed.)

16 All the conditions are spelled out there, including the

17 ones that Judge Chen ordered at the hearing. Those are

18 attached to the bond and that's Page 3. Everything here: No

19 trading, no use of the internet, no cell phone, no computer, no

20 internet.

21 Less than two weeks after promising his parents that he

22 would not violate again, he sneaks into a conference room at

23 the Pillsbury law firm -- not the conference room that was

24 assigned to him with no computer, but a conference adjoining --

25 and he's on the internet for almost an entire day.

1 You heard from the paralegal who caught him red-handed on

2 the internet. He's typing away. Gets caught. Tries to close

3 a bunch of applications.

4 And then you heard from Ray Elquist, the Pillsbury IT

5 person who is back in Tennessee and is asked to do a forensic

6 analysis on the computer that Mr. Murray had snuck onto to find

7 out what he was doing. And there is an entire day of internet

8 usage. He's logged onto sites such as Match.com. He's

9 attempted to find contact information for Giovanni

10 de Francisci. There is log-ons trying to find Jones Moore and

11 Associates, Event Trading. Every single thing he's

12 prohibited -- oh, and trying to apply Skype, which is, as

13 you've heard testimony, a device that can be used like a

14 telephone to talk to others; trying to apply for -- to put an

15 application for Skype on the Pillsbury computer. And he's

16 logged onto a site called hidemyipaddress. What better

17 evidence do you need about Mr. Murray's state of mind?

18 But that isn't enough. Nothing stops him from committing

19 fraud, lying and cheating. He is caught red-handed at the

20 Pillsbury law firm less than two weeks after being released

21 from custody on a very restrictive 24-hour lockdown bond, and

22 he finds another way to deceive, to cheat, to lie and to commit

23 a crime. He smuggles a computer tablet into the law firm and

24 he hides it in the ceiling of the conference room that was

25 assigned to him.

1 You heard Agent Sims' testimony. A search warrant was

2 executed on that conference room and that device was removed

3 from the ceiling. He's hiding it in the ceiling because he's

4 not supposed to have it. Who hides a computer in the ceiling?

5 And you heard what he was doing on that computer. There

6 were Viber chats with Giovanni de Francisci. There was

7 research on extradition treaties and countries that do have

8 extradition treaties.

9 You saw the prior bond where Mr. Murray had agreed to

10 waive extradition if he ever fled to a foreign country that had

11 an extradition treaty. So, of course, he's researching

12 countries which don't have an extradition treaty so he can

13 potentially flee. That's on the computer tablet.

14 Everything he was prohibited from doing in the bond is on

15 the tablet that he smuggled into the ceiling. That's Count 23

16 of the indictment.

17 And it's so important to think about what he did after all

18 of this: After being charged with credit card fraud, after

19 being charged with investor fraud, after being out on the first

20 bond, committing a brand new fraud on Interactive Brokers with

21 the phony Event Trading. That's Count 12.

22 After all of that, after misusing Giovanni de Francisci's

23 identity and ginning up a completely fake bank statement to

24 support that account with Event Trading, he is being given the

25 trust of this Court not to violate his bond. He has appealed

1 to this Court to let him out again. And he betrayed that trust

2 and within two weeks violated that bond and then found a better

3 way to violate it, by smuggling a computer tablet into the

4 ceiling.

5 Something else I want to talk to you about is Mr. Murray's

6 testimony. In a criminal case the Government always bears the

7 burden of proof. And we welcome that burden and we have more

8 than met it in this case. A criminal defendant never has to

9 put on a single piece of evidence or call a single witness.

10 That is our burden.

11 But in this case the defense did put on a case, and the

12 whole defense case was Mr. Murray. So now we have to analyze

13 the defense case in the same way that we would analyze the

14 evidence the Government put on.

15 And I want to talk to you about Mr. Murray's testimony.

16 There are certain things Mr. Murray could not get around and

17 are completely undisputed in this case. And the evidence that

18 is completely undisputed is enough for you to convict him on

19 all counts.

20 He cannot get around the phony resume, the fake honors and

21 the imaginary advanced degree. All of the investors relied on

22 that fraud. He admitted it. We proved it up to you without

23 his admission. We called in the registrar from the University

24 of Arizona, Jody Payne. Mr. Murray also admitted that.

25 That is enough to convict him alone on all of the investor

1 fraud counts that are Counts 5, 6, 7, 8, 9, 10 and 11. That is
 2 undisputed. All of the investors relied on that and there was
 3 no -- nothing Mr. Murray could say or do to get around that.
 4 It's also undisputed that he used a phony Discover bank
 5 statement that he created in Giovanni de Francisci's name and
 6 he used that to defraud Interactive Brokers. Undisputed. We
 7 proved it up to you from the Discover Bank witness, Ms.
 8 Micioni. I just showed you both statements, but Mr. Murray
 9 also admitted that he used Photoshop and did that.
 10 So the undisputed evidence is enough for you to convict
 11 him on Count 12, which is the fraud on Interactive Brokers and,
 12 also, Count 22, misusing Giovanni de Francisci's name for an
 13 unlawful purpose, which was creating a fake bank statement and
 14 using that fake statement to commit wire fraud on Interactive
 15 Brokers. You have all of that evidence without a single
 16 dispute in this case.
 17 You also have undisputed evidence that Mr. Murray
 18 impersonated David Lowe on numerous phone calls to Fidelity,
 19 including phone calls related to the Jones Moore account. He
 20 impersonated Giovanni de Francisci on a phone call to access
 21 the very Event Trading account he's charged with defrauding
 22 Interactive Brokers on.
 23 It is also undisputed that Mr. Murray set up the fake
 24 Jones Moore and Associates virtual office and falsely listed
 25 Lisa Brigulio as the administrative assistant to R. Jones.

1 That is completely uncontested in this case. That is enough
 2 for you to convict Mr. Murray on Counts 1, 2, 3 and 4, the
 3 credit card scam. He used that fake virtual office that was
 4 the centerpiece, the thing that allowed him to get the credit
 5 card swiper and use in his backyard shed for Counts 1, 2, 3 and
 6 4.
 7 It's also undisputed that Mr. Murray did the credit card
 8 swipes. We proved that to you from the phone records
 9 connecting the credit card machine to Mr. Murray's home phone
 10 and through the testimony of Jonathan Hallford, the Chase
 11 Paymentech witness who showed you all of the swipes. You've
 12 got that exhibit in evidence and I highlighted the four for you
 13 that are the charged counts.
 14 It's also completely undisputed that Mr. Murray had a
 15 computer in Pillsbury's ceiling and used it for everything the
 16 Court prohibited him from doing. That is enough alone for you
 17 to convict him on Count 23.
 18 Now, let's talk about defendant's testimony. His
 19 testimony basically boils down to blaming all of his crimes on
 20 two people, both of whom live in foreign countries.
 21 First, he blames his criminal troubles on David Lowe. He
 22 says Mr. Lowe told him to set up the fake virtual office, Jones
 23 Moore and Associates, so he did. Mr. Lowe told me to set this
 24 fake office up.
 25 Basically, what he is saying is the Government should have

1 charged me with another crime, conspiracy. They missed one. I
 2 conspired with David Lowe to set up this fake office.
 3 That was his defense with David Lowe. Lowe told me to set
 4 up a fake office and I agreed to do that. We formed an
 5 agreement. We were in a conspiracy together. He's not charged
 6 with conspiracy. He's saying: You missed a count on me.
 7 He also says: I did swipe those 200 fake swipes and
 8 returns and I got the \$600,000 from the credit card company,
 9 but Lowe told me he would write me a check for that. So he's
 10 basically saying his co-conspirator, David Lowe, didn't come
 11 through with his end of the criminal bargain; to pay him
 12 back before Chase -- pay back Chase Paymentech before Chase
 13 Paymentech could discover the fraud.
 14 So in some ways the honor among thieves was that Lowe
 15 didn't fulfill his bargain on the criminal conspiracy he isn't
 16 charged with. That's what he's testifying to.
 17 But his testimony, beyond just being absurd, is completely
 18 undercut by the facts in this case. Mr. Lowe did not receive
 19 the proceeds of the fraud. Mr. Murray did. And \$350,000 of
 20 money stolen from Chase Paymentech was used to seed
 21 Mr. Murray's hedge fund. Mr. Lowe has nothing to do with that.
 22 The other foreign individual that Mr. Murray blames his
 23 criminal troubles on is Gianluca de Francisci. And this part
 24 was utterly incredible. That Mr. Gianluca de Francisci, who he
 25 meets in person for the first time in December of 2012 in

1 Monaco and he tells: I have this problem back in the United
 2 States. I'm under investigation by the SEC.
 3 In the face of that, Mr. Gianluca de Francisci, an
 4 experienced trader on the London Stock Exchange says: No
 5 problem. I will give you \$5 million. No need to reduce this
 6 to writing. I will just trust this person I have met for the
 7 first time in person and I will give you \$5 million with no
 8 written agreement whatsoever.
 9 And beyond that, let me add a little more icing on the
 10 \$5 million cake. I will allow you to do whatever trades you
 11 want and I will back up 100 percent of your losses, but I will
 12 only take 50 percent of your profits.
 13 Do you believe that? Not surprisingly, not one word of
 14 that is corroborated by anything in writing.
 15 Do you really believe that anyone would give \$5 million to
 16 someone they know is under investigation by the Securities and
 17 Exchange Commission in the United States, who they have only
 18 metaphor the first time in person, and there is no written
 19 agreement to back it up? You know that's not true.
 20 But you know that's not true because you heard from a
 21 witness, Scott Greenberg, who was asked to lend Mr. Murray
 22 \$1.8 million and had never met Mr. Murray before. And you saw
 23 the 12 points in Mr. Greenberg's email that he would have
 24 wanted satisfied before he would part with money for someone he
 25 barely knew.

1 He had 12 different things he wanted, including a criminal
2 background check, a written power of attorney and all sorts of
3 various other documents that anyone would want before they gave
4 money to anyone, whether it's \$25 or \$5 million. That was
5 absolutely unbelievable.

6 But another reason why we know it's unbelievable and a
7 complete lie is the trade for Netflix was not a loss. It was a
8 gain. And Mr. De Francisci, the supposed benefactor, did not
9 come through with what Mr. Murray said was his part of the
10 bargain for a successful trade. Not only did Mr. Murray say he
11 would back up 100 percent of my losses, but he was supposed to
12 back up the gains, the good things, the winnings, and he didn't
13 do it. Because they never had this oral agreement. That was a
14 complete lie.

15 And Mr. Murray confirms it's a lie with his emails that
16 are Government's Exhibit 287. That's what actually happened in
17 February of 2012 when he filled out the application with
18 Oppenheimer. He said that the \$5 million came from investment.

19 We showed you who the investors were and Phil Villanueva
20 tracked those investments for you. There were investors. You
21 heard from them in this case. Gianluca de Francisci was not an
22 investor in Market Neutral Trading. There was no investment
23 under the control of Market Neutral Trading Master Fund,
24 Limited that came from Gianluca de Francisci.

25 I also want to talk to you about Mr. Murray's lack of

1 credibility. Beyond just the substance of what he was
2 testifying about, there are so many other reasons why you
3 shouldn't believe him. His story was a complete lie for all
4 the reasons I've just outlined.

5 But you're going to get a jury instruction from Judge Chen
6 that's going to tell you how to evaluate the credibility of
7 witnesses. And one of those -- actually, I'll show it to you
8 so you know what I'm talking about.

9 (Document displayed)

10 I think you've already been read this instruction, but one
11 of the things that you should assess in determining whether
12 somebody is credible is, "The witness's manner while
13 testifying."

14 Mr. Murray is a professional liar. And you saw that on
15 the stand. He was so smooth in response to the scripted
16 questions his own attorney asked him, but look what happened on
17 cross examination.

18 Suddenly Mr. Murray, who, although he does haven't a
19 Master's degree is an intelligent man, does not understand the
20 question:

21 "QUESTION: Mr. Murray, wasn't it true you were
22 trying to access the Event Trading account?"

23 "ANSWER: I don't know what you mean by 'access
24 the account.' Could you repeat the question?"

25 And you see the mental machinations as he's trying to

1 fabricate a story and buy himself more time.

2 So Mr. Murray, who on the stand in front of you under
3 oath, does not understand the meaning of "access the account"
4 is then played a phone call where he is impersonating Giovanni
5 de Francisci and he says, "I need to access the account."

6 The account he needs to access is the one he has set up in
7 Giovanni de Francisci's name. That's the Event Trading account
8 with Interactive Brokers, Count 12.

9 And another reason why this account was so fraudulent is
10 because Mr. Murray set it up using Giovanni de Francisci's name
11 and Social Security number so that Interactive Brokers would
12 not find out that Mr. Murray was actually behind the account.

13 But he set it up with his own personal information for the
14 security questions. You remember the Interactive Brokers
15 person asking on the phone, "What was the name of your first
16 pet?" Mr. Murray answers, "Rosie." That's not Giovanni
17 de Francisci's pet. That's Mr. Murray's.

18 "Where were you married?" We know from Mr. Murray's
19 testimony that Giovanni de Francisci was not married, but
20 Mr. Murray was, in Tiburon, California. And that's another one
21 of the security questions.

22 So he set up the account using Giovanni de Francisci's
23 name and Social Security number -- that's the aggravated
24 identity theft Count 22 -- but his own personal information
25 because he really was the one behind the account, but he was

1 red flagged at Interactive Brokers.

2 And as you consider his testimony, think about listening
3 to him saying, "I don't understand what 'access the account'
4 means," in response to one of my questions and then the phone
5 call you heard played.

6 I've already talked to you about "whether other evidence
7 contradicted the witness's testimony." Everything that was
8 presented to you in this case contradicted Mr. Murray's
9 testimony.

10 And, finally: "The reasonableness of the witness's
11 testimony in light of all of the evidence." Mr. Murray's
12 testimony was utterly not credible. He's a proven liar. We've
13 proven that to you in this case with all the false documents he
14 created, the fake resume, and every lie he told. And the last
15 lies, unfortunately, were told to you in these halls that we
16 hold very sacred.

17 I now am going to take you briefly through the indictment.
18 I talked about most of the counts, but I want to make sure that
19 when you deliberate, you're clear on what you're deliberating.
20 You're going to get this in the jury room, but I'll briefly
21 take you through it.

22 (Document displayed)

23 And Counts 1, 2, 3 and 4 are the credit card fraud counts
24 using the fake Jones Moore and Associates. These are wire
25 fraud counts and the parties have stipulated that all wire

1 fraud counts in this case, the use of wires were used. So you
2 don't even need to worry about that part.

3 Counts 5 through 11 are the investor fraud counts for
4 Market Neutral Trading, and we showed you each of those
5 transactions. You have all of them in evidence.

6 Count 5 is Mr. Pernell. He was the gentleman from South
7 Carolina who made the \$250,000 investment for Polaris
8 Investment.

9 You heard from Richard Gibson. He was the gentleman who
10 testified by videotape from -- it was, actually, live from
11 Texas. And Mr. Gibson testified he made investment after
12 relying on the fake degrees that Mr. Murray presented and the
13 fake audits.

14 And then he referred his brother, who was part of Gibson
15 GP. Which, remember, was a trust set up in the name of
16 Mr. Richard Gibson's daughter and then the brother and various
17 other members of the Gibson family. He gave him the marketing
18 material and Gibson GP made a \$250,000 investment. That's
19 Count 7.

20 Count 8 was Nathan Gorin. And Mr. Gorin was the gentleman
21 from New York who came in and off the top of his head talked
22 about how impressed he was by Mr. Murray's educational
23 background. He made an \$100,000 investment. That's Count 8.

24 Count 9 is Richard Russell. He was the 83-year old
25 gentleman, the retired man from Washington, who had worked at

1 Boeing when he was working.

2 Counts 10 and 11 are, again, Gibson GP, the trust of
3 Mr. Gibson, Richard Gibson's brother, and they made additional
4 investments. And that's Counts 10 and 11.

5 Count 12 is the electronic transmittal of the phony Event
6 Trading application, the one that I've talked to you about that
7 Mr. Murray submitted electronically to Interactive Brokers that
8 was supported with the phony bank statement, the phony Giovanni
9 de Francisci bank statement.

10 Count 15 is based -- Count 15, 16, 17 -- I'm sorry, Count
11 13, 14, 15 and 16 relate to Oppenheimer. And these were the
12 wiring of the \$150,000 from the Netflix profits. The wire was
13 in furtherance of the scheme to defraud.

14 Mr. Murray had defrauded Oppenheimer with the false
15 representations about the \$5 million of net worth and the
16 \$5 million of assets available to invest, and he failed to tell
17 Oppenheimer about the \$1.8 million seizure.

18 After he made the Netflix trade, there were four different
19 wires related to the profits of those -- those proceeds.

20 That's Counts 15, 16 -- I'm sorry, 13, 14, 15 and 16. Those
21 are the wires of money that I took you through, the circle from
22 Oppenheimer to Zelen's bank account, wires from Zelen's bank
23 account to Mike Murray's bank account, and then wires from Mike
24 Murray's bank account, to the defendant and to the Event
25 Trading account controlled by the defendant. And those wires

1 were all in furtherance of the defendant's scheme to defraud
2 Oppenheimer.

3 Counts 17, 18, 19 and 20 are the money laundering counts.
4 Those relate directly to the Oppenheimer wiring counts.

5 And I want to make sure that you understand that the money
6 that Mr. Murray wired to his lawyer, Garrett Zelen, could not
7 possibly have been used for attorney's fees because \$100,000
8 went into Zelen's account -- 150,000 went in and 100,000
9 immediately went out at Murray's direction -- you saw the
10 email -- to Mike Murray's bank account, and then Mr. Murray
11 text messaged his dad on what he wanted done with the 100,000.
12 It immediately went out to accounts under Murray's control.
13 Those are the money laundering accounts.

14 And then we have two counts of aggravated identity theft.
15 Count 21 relates to Mr. Murray's unlawful use of Lisa
16 Brigulio's California driver's license. Remember, the
17 California driver's license was improperly used and unlawfully
18 used to set up the Jones Moore and Associates virtual office.

19 And I want to explain to you what "during and in relation
20 to a crime" means. Mr. Murray used Lisa Brigulio's
21 identification and he did not -- he set up the office in 2008,
22 but he's charged with a scheme to defraud, and the scheme was
23 broad, wide ranging and lasted for several years.

24 As part of that scheme, he committed the credit card
25 fraud, Counts 1, 2, 3 and 4. That credit card fraud could

1 never have been committed if he hadn't set up the virtual
2 office to get the Point of Sale terminal in 2010 that he used
3 to do the swipes.

4 And then the other aggravated identity theft count relates
5 to Count 12, the Event Trading account that was set up with
6 Interactive Brokers. And that's where Mr. Murray used Giovanni
7 de Francisci's name and phoned up a bank statement in
8 Mr. de Francisci's name. He used the identity for the fraud
9 that was committed on Interactive Brokers setting up the
10 statement. So that was using Giovanni de Francisci's identity
11 during and in relation to Count 12. That's the identity theft.

12 And then Count 23 is the contempt of court. We've talked
13 about that and I've showed you the Court orders. But it
14 specifically relates to what is Government's Exhibit 317. You
15 can look at this, but this is the Court order that Mr. Murray
16 violated by using the internet at the Pillsbury law firm and
17 smuggling a computer and hiding it in the ceiling.

18 The last thing I want to talk to you about is some of the
19 victims in this case. They were from all walks of life.

20 You heard from Corinna Zeibt, a friend of Mr. Murray's who
21 met him through swimming. She trusted him. She invested her
22 life savings with him in 2009 and you basically saw a broken
23 woman on the stand. Talk about a life destroyed. Her whole
24 life savings invested with someone she trusted who stole from
25 her.

1 You heard from elderly victims, most of whom don't know
 2 each other -- none of whom did -- and all of whom were
 3 investing their IRAs, the money they had worked their whole
 4 life for, in Mr. Murray's fraudulent hedge fund.
 5 You heard from Mr. Murray's wife. He betrayed her before
 6 they got married. He betrayed her while they were married.
 7 And he stole her identity and misused it to set up a fake
 8 office.
 9 You heard from investment bankers, like John Benedetto.
 10 They rely on the information they get because the honesty and
 11 the integrity of our financial markets is completely dependent
 12 on the truthfulness of those who apply for applications with
 13 banks like Oppenheimer. Oppenheimer was defrauded.
 14 You heard from Jonathan Hallford at Chase Paymentech. We
 15 live in a credit society. When you go to a store and you use
 16 your credit card, we are completely dependent on the honesty
 17 and the integrity of the vendors who fill out the applications
 18 to get the credit card swipers, not somebody who has five or
 19 six of them in their backyard shed.
 20 And you saw and heard from Mr. Murray's own father. He
 21 betrayed his parents. He violated the bond that they served as
 22 sureties on because he only thinks of himself. He only lies,
 23 cheats and uses other people for his own fraud.
 24 We have presented with you overwhelming evidence in this
 25 case. Mr. Murray has defrauded victims out of hard-earned

1 money, banks. He has impersonated other people. He has used
 2 people's identity for improper purposes. No legitimate
 3 investment rests on a lie and no lie can support a legitimate
 4 investment.
 5 Mr. Murray set up a fake accounting firm. He lied over
 6 and over and over again. He cheated. He deceived. He defiled
 7 this Court with perjury. And you have all of the evidence you
 8 need to convict him on every count in the indictment.
 9 Thank you.
 10 THE COURT: All right. Thank you, Ms. Harris.
 11 We will now take a 15-minute break and then resume to hear
 12 closing arguments from Mr. Dressler. Thank you.
 13 (Jury exits courtroom at 10:19 a.m.)
 14 THE COURT: Okay. Before we break, I think there was
 15 an error in instruction No. 17, on money laundering. When it
 16 says, the fourth element:
 17 "The property was, in fact, arrived from the wire
 18 fraud as alleged in Counts 17 through 20."
 19 I think it means 1 through 16, or is that correct?
 20 MR. DRESSLER: It's -- I think that's correct,
 21 because --
 22 MR. FARNHAM: That is how it's alleged in the
 23 indictment, your Honor. Counts 17 through 20 --
 24 MR. DRESSLER: It's tied specifically to the
 25 Oppenheimer fraud.

1 MS. HARRIS: To the Netflix fraud.
 2 MR. FARNHAM: 17 through 20 are wire transfers
 3 related to the Oppenheimer fraud. They are the Netflix trade
 4 profit wires.
 5 THE COURT: Well, okay. So I'm reading the money
 6 laundering instruction, which is No. 17, and requires, you
 7 know:
 8 "Defendant knew the transaction involved
 9 criminally derived property.
 10 "Third, the property had a value of \$10,000.
 11 "Fourth, the property was, in fact, derived from
 12 wire fraud as alleged in Counts 17 through 20."
 13 But 17 through 20 is the money laundering, not the wire
 14 fraud. So it's like referring to itself.
 15 MS. HARRIS: Oh, yeah, yeah, yeah. You're right,
 16 your Honor. It's supposed to be the --
 17 MR. FARNHAM: I'm sorry.
 18 MS. HARRIS: Yeah, there is an error in the
 19 instruction. It's the Oppenheimer fraud, 13, 14, 15 and 16.
 20 THE COURT: It should be 13 through 16.
 21 MS. HARRIS: Correct.
 22 THE COURT: Not 17 through 20.
 23 Do you want to look at that Mr. Dressler and see if
 24 you....
 25 (Brief pause.)

1 THE COURT: So 17 through -- 17 through 20 are the
 2 money laundering allegations that relate to the alleged wire
 3 fraud that's alleged in 13 through 16.
 4 Anybody disagree with my observation?
 5 MS. HARRIS: I agree with you, your Honor.
 6 MR. DRESSLER: No, your Honor.
 7 MR. FARNHAM: 13 through 16 is what you said, your
 8 Honor?
 9 THE COURT: Yes.
 10 MR. FARNHAM: Yes, that's right.
 11 MS. HARRIS: That's correct.
 12 THE COURT: So I'm going to correct it before we give
 13 it to the jury. I better re-instruct on that before you stand
 14 up, just to clarify that I had the wrong numbers so they don't
 15 get confused.
 16 All right? See you shortly.
 17 (Whereupon there was a recess in the proceedings
 18 from 10:22 a.m. until 10:36 a.m.)
 19 THE COURT: All right. Bring the jury in.
 20 And before we go any further, I will tell them that I've
 21 corrected instruction No. 17.
 22 (Jury enters courtroom at 10:38 a.m.)
 23 THE COURT: Okay. Thank you, ladies and gentlemen.
 24 You all may be seated.
 25 Before we proceed with the closing argument from

1 Mr. Dressler, I do want to correct one thing. In reading the
2 jury instructions, particularly the one on money laundering, I
3 had a wrong reference to counts in there. So let me -- you
4 will get the corrected version, but let me at least indicate to
5 you where I had corrected that mistake.

6 As you recall, the money laundering instruction stated
7 that:

8 "The defendant is charged in Counts 17 through 20
9 of the indictment with money laundering in violation
10 of Section 1957 of Title 18 of the U.S. Code. In
11 order for the defendant to be found guilty of that
12 charge, the Government must prove each of the
13 following elements beyond a reasonable doubt."

14 And I named five elements, and one of those I corrected.

15 So, again, the five elements are:

16 "First, the defendant knowingly engaged or
17 attempted to engage in a monetary transaction.

18 "Second, the defendant knew the transaction
19 involved criminally derived property.

20 "Third, the property had a value greater than
21 \$10,000.

22 "Fourth, the property was, in fact, derived from
23 wire fraud, as alleged in Counts 13 through 16."

24 I think I had said 17 through 20 and I meant 13 through
25 16, because it refers to earlier counts.

1 And then finally:

2 "The transaction occurred in the United States."

3 So you will get a copy that has the correct numbers in
4 there. So I did want to correct that. Thank you.

5 Mr. Dressler, you may proceed.

6 MR. DRESSLER: Thank you, your Honor.

7 CLOSING ARGUMENT

8 MR. DRESSLER: I have been asked by everybody in the
9 courtroom to speak up, including my client and the court
10 reporter, so I'm going to do the best I can with that. But if
11 I start dropping, raise your hand and I'll start yelling.

12 This is, obviously, a criminal case and, as the U.S.
13 Attorney pointed out, the Government has the burden of proof
14 and that proof is beyond a reasonable doubt, which is
15 basically, I think, the foundation upon which our criminal
16 justice system is based.

17 So, I have been practicing law for a long time and I have
18 never -- you get an instruction on what a reasonable doubt is,
19 and I agree -- obviously, I agree with that instruction. But I
20 think that when you consider and evaluate the in evidence this
21 case, after everything is over here and you're in the jury
22 room, you should maybe consider what proof beyond a reasonable
23 doubt is not, because that kind of helps you evaluate the
24 evidence. And that is a reasonable -- a reasonable -- let's
25 try it this way.

1 Proof beyond a reasonable doubt is not someone is possibly
2 guilty. Someone may be guilty. I think the evidence on a
3 certain count is evenly balanced. If that's your state of mind
4 at the end of the case, evenly balanced, then you have a
5 reasonable doubt.

6 I don't remember, I think there were some people that --
7 on this panel that served as jurors in civil cases, where the
8 burden of proof is by a preponderance of the evidence, which
9 means you start off like this and if one party just tips the
10 scale slightly in one direction, then (indicating). That's a
11 sufficient burden of proof for a civil case, but not in a
12 criminal case. Here, the burden of proof is heavy and, you
13 know, there is obviously a reason for that, because this is a
14 serious case. Most criminal cases are.

15 Now, I just want to say a few words about -- you know, the
16 Government has argued that millions of dollars have been stolen
17 and people have lost their life savings. I don't think that
18 there is any evidence of that.

19 But I bring this up just because you're going to hear from
20 the Government -- I'm not arguing that -- the fact that many of
21 the alleged crimes in this case, the alleged victim actually
22 made money, all right? That's not a defense to mail fraud. No
23 question about that. All right?

24 But when you review the evidence and you listen to my
25 arguments, again, it's not in evidence, but an appeal to --

1 that the Government has made in terms of that is appealing not
2 to your good judgment, but towards your emotions. And a
3 criminal case should not be decided on emotions. It should be
4 decided on the evidence that was actually presented by the
5 Government.

6 Before I get into individual counts, one of the
7 instructions that the Court gave you, I think, is a very
8 important instruction in this case; and that is:

9 "A separate crime is charged against the
10 defendant in each count. You must decide each count
11 separately. Your verdict on one count should not
12 control your verdict on any other count."

13 I think this is important in this case because there are
14 multiple related but independent schemes that are alleged here
15 and each one of them, each count or each series of related
16 counts in this case, have to be -- you have to look at the
17 evidence as to those counts separately. And as that
18 instruction says:

19 "A verdict on one count should not control your
20 verdict on any other count."

21 So I would like to start with talking about the
22 Oppenheimer fraud, which we have been referring to in this case
23 as the Netflix trade.

24 No one fails to pay for a profitable trade. No one makes
25 a trade to lose money. One of the things I'd like you to

1 consider when you evaluate the evidence with regard to these
2 alleged Oppenheimer frauds is that why would you try and spend
3 a lot of time and effort to make a trade which you hope would
4 be possible if you wouldn't be able to keep the profits from
5 that trade?

6 Mr. Murray has had a lot of experience with trading and
7 he's fully aware that you have to settle a trade. Why would
8 you do a trade like the Netflix trade if you didn't think you
9 would be able to settle it?

10 I'm not going to go read you the instruction the Court
11 gave you on wire fraud. But, obviously, wire fraud requires
12 some kind of false representation or a false -- an overt false
13 representation or a representation by omission.

14 In this case the Government is relying on two
15 misrepresentations.

16 One, that with regard to the Master Fund, Limited account,
17 No. 8064, which I have been talking about with the witnesses,
18 which is the account that the Netflix trade was done on, that
19 there were not \$5 million in assets available.

20 And the other one is the failure to advise Oppenheimer
21 about the \$1.8 million that was seized from an internet
22 broker's account.

23 And the Government's argument with regard to that or their
24 theory with regard to that is that Paragraph 29 of the
25 corporate agreement that was signed in connection with the

1 Account Information form that was signed by Mister -- or
2 submitted by Mr. Murray on February 2, 2012, they say that Rule
3 29 -- Paragraph 29 requires -- required Mr. Murray to advise
4 Oppenheimer about the \$1.8 million seizure.

5 Those are the two representation -- representations that
6 the Government alleges were committed in this case --
7 misrepresentations.

8 So there were questions asked about Mr. Benedetto, if he
9 knew about the SEC or if he knew about the indictment. Those
10 are after-the-fact things that he learned. And I think we're
11 all in agreement, that may be relevant to some other count in
12 this case, but it's not relevant to the Netflix count.

13 So the Government says Gianluca de Francisci did not have
14 \$5 million to back this trade. I ask you: Based on what
15 evidence?

16 I believe, and I'm going to talk about this in more
17 detail, that Mr. Benedetto's testimony establishes that, in
18 fact, there was no duty to advise Oppenheimer under
19 Paragraph 29 because the money that was included in that
20 account application was Mr. Gianluca's money. It wasn't --
21 that money was not the same money as was seized.

22 It's obvious that Mister -- that Mr. Gianluca de Francisci
23 did not wire \$8 million. I would suggest to you, respectfully,
24 that that's not proof beyond a reasonable doubt that he didn't
25 have it. Murray obviously thought he had it. And we don't

1 have -- in a criminal case, it's not unusual that you don't
2 have testimony of witnesses you'd like to hear from and that's
3 something that you shouldn't speculate on.

4 So you have to decide this case on the evidence that was
5 presented by both sides. And if there is a witness that you
6 think should have testified, you're not -- you really shouldn't
7 speculate as to what -- why that witness wasn't called.

8 Mr. De Benedetto [sic] testified that sometimes investors
9 failed to settle a profitable trade, and there could be many
10 reasons for that. You might consider whether someone who is
11 not a citizen of the United States -- and it appears, at least;
12 from the evidence that we have, has never invested in the
13 United States -- that that could be a factor.

14 Bottom line is, it's not our obligation to prove why he
15 didn't pay. The Government has to prove to you beyond a
16 reasonable doubt that Gianluca de Francisci did not have
17 \$5 million in assets to invest. They also have to prove to you
18 beyond a reasonable doubt that Mr. Murray knew that Mr. de
19 Francisci didn't have \$5 million to invest.

20 I think the evidence in this case in terms of how -- how
21 this trade developed over, basically, a five-month period is
22 evidence that there's certainly a reasonable doubt about
23 whether or not Mr. Murray knew that there was no money to back
24 up the trade. I mean, it's inconsistent with his behavior in
25 terms of this case and in terms of his -- this application,

1 which started in February and was pursued all the way through
2 June, when -- I think it was June 25th, when the account was
3 approved, and July 24th when the actual Netflix trade took
4 place.

5 The evidence in this case is that Mr. Murray spent a lot
6 of time and effort trying to open and get the account No. 8064
7 authorized to trade. It started in February.

8 I went through with a number of witnesses, and I think I
9 went through with Mr. Murray also, all these emails between
10 Murray and Melanie Perricone and then later with Casey Cheung.
11 Back and forth, we need this, we need that. He sent the W-8
12 in. They lost it. He had to send another one in. I mean,
13 there was a very long, kind of complicated process that
14 Mr. Murray went through to set up his account. And emails
15 you've seen have established that.

16 I mean, in this -- if Mr. Murray set up this account just
17 so he could rip off Oppenheimer, why did he go through all that
18 effort? I mean, he had -- there was another account that had
19 been opened in late 2011, all right? That was an account that
20 was not based on an offshore entity. That was an account that
21 he could have traded in January, February, March, April, May,
22 June of 2012, and he didn't do it. Why not?

23 The reason he didn't do it is he had an agreement with Mr.
24 de Francisci. Mr. de Francisci had a lot of money. Mr.
25 de Francisci was willing to back his trades. Mr. de Francisci

1 and him had -- were the beneficial owners of the account, that
 2 8064. And there is documents in both the Government exhibits
 3 and our exhibits which clearly show that there was an
 4 agreement.
 5 We have Mr. de Francisci's passport and we have his -- I
 6 believe, his driver's license. There are all kinds of
 7 documents that were submitted to Oppenheimer by Mr. Murray for
 8 the purpose of opening this account with Mr. de Francisci. He
 9 wouldn't have done that if he didn't have some belief that this
 10 was going to be a real account with a real opportunity to make
 11 some money.
 12 So if you look at Government's Exhibit 283, Government's
 13 Exhibit 250, those are Government documents that show that
 14 Mr. Murray was sending information about Mr. de Francisci to
 15 Oppenheimer.
 16 And, again, I'm harping on this, but for a reason. I
 17 mean, why would you do that if this was some fraud? I mean,
 18 again, you know, he could have -- he could have traded a
 19 different account. The only reason that I can think of that
 20 you would do this was if you really believed that there was
 21 money to back the trades.
 22 So what about the obligation, according to the Government?
 23 The obligation to tell Oppenheimer about the \$1.8 million that
 24 was seized?
 25 And, basically, the witness that they offered was

1 Mr. DeBenedetto [sic] the Chief Operating Officer of
 2 Oppenheimer, who really had, apparently, nothing to do with
 3 this trade until after the fact; who is brought in, interviewed
 4 by the Government. He is not an unbiased witness. He is there
 5 to -- he's here -- he was here -- he's called by the
 6 Government, but his -- his motivation is to protect Oppenheimer
 7 and make them look like a -- that they have certain
 8 requirements in terms of reporting changes in assets, all
 9 right?
 10 I would say that you have to take his testimony with a
 11 little grain of salt. I would also say that you have to
 12 question how much -- he's way up high in the company, Chief
 13 Operating Officer. You know, he was talking about T+5. Every
 14 other witness that testified was talking about T+3. When I
 15 called him on it, he said: Well, you have five days to pay.
 16 Really? Umm, no one else testified to that.
 17 Mr. Moskowitz, hands-on broker, was talking about T+3.
 18 You have to pay within three days.
 19 So the Government -- the key question the Government asked
 20 him was about the seizure and he said: Well, yes, it should
 21 have been reported. It's 40 percent of the assets of the
 22 company. Blah, blah, blah. All right?
 23 So I asked him a series of questions, one of which was
 24 that there is no requirement in any of the documents that were
 25 submitted in support of the MNT account used in the Netflix

1 trade or any other account, there is no requirement that you
 2 identify the assets. Where they are. Where they are located.
 3 What kind of assets there are.
 4 I think it was Moskowitz that said: This is not like
 5 applying for a home loan or a car loan where they want to know
 6 what your assets are.
 7 As I understand it, the way this business works, you walk
 8 in the door and if they know you, even in the case --
 9 Mr. Moskowitz said: I knew him. I worked with him. He said
 10 he was a trader. All right? And, bingo, he opens up an
 11 account where he can trade up to \$5 million. All right?
 12 They don't seem to be interested or it's not the practice
 13 in that industry to do anything to check what the assets are,
 14 where they are, who are the individuals that control the
 15 assets.
 16 As Mr. DeBenedetto [sic] said: It's not important to us
 17 as to where they are located. It's important to us that the
 18 client is attesting to the fact that he had 5 million available
 19 to invest with us. Fair enough.
 20 I asked him:
 21 "QUESTION: Does Oppenheimer know where the
 22 5 million is?
 23 "ANSWER: No.
 24 "QUESTION: What it consisted of?
 25 "ANSWER: No."

1 I also asked him specifically, some specific questions
 2 about Paragraph 29, which says:
 3 "The client agrees to notify the Oppenheimer
 4 office in which the client is transacting business
 5 without delay of any changes or corrections in the
 6 new account application."
 7 All right? I think it was clear from both Moskowitz and
 8 DeBenedetto's [sic] testimony that every time you open up a new
 9 account, surprise, you have to fill out a new -- a new Account
 10 Information form. All right? And that information form asked
 11 about the assets that are being pledged for this account, not
 12 some other account.
 13 And I asked him:
 14 "QUESTION: So if there were no changes in the net
 15 asset value of the 5 million under management that was
 16 contained in the new Account Information form for
 17 Market Neutral Trading, Limited, account No. 8064, if
 18 there were no changes in that account between
 19 February 2nd, 2012 and June 24th, 2012" -- or June 22nd
 20 I think I asked -- "if there were no changes in the net
 21 assets between February 2nd, 2012 and the day before
 22 the Netflix trade, no notification would be required
 23 under Paragraph 29, correct?"
 24 And he answered:
 25 "ANSWER: Correct."

1 I also asked him:

2 "QUESTION: You don't know as you sit here now
3 whether those -- that money that was seized, that
4 1,700,000, whether that was any of the assets that were
5 pledged by Market Neutral Trading, Limited at the time
6 8064 was submitted?

7 "ANSWER: I don't. I don't know."

8 So where does that leave us? That leaves us if, in fact,
9 Mr. Murray believed that Mr. de Francisci had 5 million in
10 assets, he believed that on February 2nd and he believed it on
11 July 24th when the trade was made. All right?

12 And has the Government offered you any evidence that
13 between those dates Mr. Murray -- Mr. de Francisci did not have
14 \$5 million available?

15 Mr. Murray testified about him. He was an older man. He
16 had been in banking in Europe for many, many years. No
17 evidence that that's not true. He lived in a big house.

18 So, clearly, Mr. Murray had a good faith belief that Mr.
19 de Francisci was capable of coming up with that money and that
20 he was interested in investing directly in the United States.

21 That's one of the reasons that Market Neutral Trading,
22 Limited was formed, as Mr. Murray testified. And the
23 Government's Exhibit 391, the flow chart with all the money
24 going around, confirms that.

25 He indicated that Market Neutral Trading, that the

1 paperwork was set up by a professional law firm. And
2 eventually he did agree to a background check, once they agreed
3 they weren't going to charge him \$4,000 for that.

4 So, obviously, this account was set up -- or Market
5 Neutral Trading, Limited, the entity, became an entity, was set
6 up so foreign -- so investors like Mr. de Francisci, foreign
7 investors, could invest directly in the United States.

8 I would suggest to you that despite all the smoke and
9 mirrors about this transaction, when you look at the evidence
10 that relates to this transaction, the Government has not proved
11 beyond a reasonable doubt that Mr. Murray intended to defraud
12 Oppenheimer because they haven't proved that this entity did
13 not have \$5 million in it. And they haven't proved beyond a
14 reasonable doubt that Mr. Murray was required to advise them of
15 the \$1.8 million seizure.

16 Now, Mr. Moskowitz was aware of the fact somewhere along
17 the line. Mr. Murray was telling him: I have a foreign
18 investor. He's the one that's going to be settling the trade.

19 They send an email. Of course, they sent to Mr.
20 de Francisci and that email -- in that email, I think it's on
21 the second page, Casey Cheung says, "Nice talking to you."

22 Obviously, referring to Mr. de Francisci.

23 Obviously, whatever he heard, there was some expectation
24 that that money was coming. Unfortunately, they sent it on the
25 last day. They sent it on day three. And a couple days later,

1 they busted the Facebook trade.

2 Now, that was a trade that took place on, I think, the
3 27th and -- and with regard to that trade, which I believed
4 Mr. Murray testified to, and I think the Government evidence
5 supports this, is that that was about a \$12,000 profit, that
6 trade. They kept all that money under some theory that, I
7 guess, that Mr. Murray was a day trader. So they kept that
8 money.

9 And I think it's fair to assume that -- that -- that since
10 this was the same account that the Netflix trade was on, that
11 Mr. de Francisci got some notification that non-not only had
12 they busted that other trade, but they kept all the money. And
13 that might make someone leery about sending \$1.8 million to
14 Oppenheimer late, after the period had already run.

15 Another thing that Mr. Moskowitz said was that if this
16 trade had gone the other way, they would have been looking at
17 Mr. Murray and Mr. de Francisci. They would have been looking
18 to sue them if the money for the loss didn't come through.

19 And lastly, but not leastly, Oppenheimer did borrow, or
20 however that works, 50,000 shares, which is the total of
21 \$3,500,000. Right? In order for the \$3,500,000 to be at risk
22 or to be totally lost, which I guess is the implication of what
23 they are saying -- maybe they are not. Maybe I misunderstand
24 them. I mean, Netflix stock would have to go to zero for them
25 to lose \$3,500,000. I'm not saying there couldn't have been a

1 loss, but they are exaggerating here.

2 Lastly, but not leastly, let's talk about Mr. Greenberg.
3 Is this on?

4 Okay. As usual, I always forget to though show you things
5 that I want to show you on this.

6 I'm going to show you the -- one Government Exhibit and
7 that is the due diligence form for non-U.S. shell companies.

8 The first page is Mr. Murray.

9 (Document displayed)

10 And, by the way, "Investment" (indicating) where I'm
11 pointing, all right, that does that mean? That means
12 investment. Investment. I would suggest it means investment
13 from Mr. de Francisci.

14 (Document displayed)

15 This is Mr. de Francisci -- whoops, no it's not.

16 (Document displayed)

17 This is Mr. de Francisci. He's the second beneficial
18 owner. This is what was, one of the documents that was
19 submitted to Oppenheimer in support of opening the 8064
20 account.

21 So, let's talk about Mr. Greenberg, just briefly, one of
22 the more interesting witnesses in the case. Why did they --
23 why did they call him? All right? Purportedly, the lawyer
24 were there, but, apparently, they called him to show that
25 Murray was looking for money to settle the trade because, for

1 whatever reason, Mr. de Francisci did not feel comfortable,
 2 apparently, sending \$1.8 million to Oppenheimer. All right?
 3 And Mr. Greenberg was in a position, which I guess we all wish
 4 we were in, that you could meet someone at 12:00 o'clock and at
 5 7:00 o'clock be in a position, if they satisfied your
 6 requirements, they will loan you \$1.8 million. all right?
 7 And Mr. Greenberg, his mission was just to trash
 8 Mr. Murray, all right? I don't like him. I didn't trust him.
 9 Blah, blah, blah, blah, blah, blah, blah. But I was willing to
 10 lend him \$1.8 million for possibly 24 hours.
 11 Mr. Murray went to Greenberg because he was worried that
 12 they were going to do to the Netflix trade what they did to the
 13 Facebook trade, which is keep all the profits. All right? So
 14 I think it's understandable that you would try and prevent
 15 that, if you could.
 16 Moskowitz knew that. Moskowitz sent him to Mr. Greenberg.
 17 Now, and Mr. Greenberg, he refused. And he is a
 18 statistical arbitrage person who's, obviously, made a lot of
 19 money. That's good for him. But he knows -- I mean, Moskowitz
 20 was his broker. He knows that -- that a trade like this can
 21 being settled within 24 hours. The money goes in, the money
 22 comes out. Apparently, that's because of some technical
 23 requirement about stock brokers lending money to clients in
 24 margin accounts. So the money has to come in and the money has
 25 to go out within three days. That's it. That's what that's

1 all about. All right? He refused to admit that it's a short
 2 period of time.
 3 And it's interesting. You know, Mr. Murray said --
 4 offered him a lot of money and Mr. Greenberg had all these
 5 conditions.
 6 And there is one email. All right? One email
 7 representing one meeting with Mr. Murray, probably a couple of
 8 phone calls in between. All right? And based on that, Mr.
 9 Greenberg, you know, couldn't say enough bad things about
 10 Mr. Murray. All right? And I guess he forgot in his email --
 11 (Document displayed)
 12 Now, this is a man I didn't trust. I didn't like his
 13 strategy. Blah, blah, blah, blah, blah. And he forgot in his
 14 email he said:
 15 "I truly hope this is the beginning of a long
 16 relationship and that we can resolve this issue
 17 together. Scott Greenberg."
 18 So I would just suggest he's full of it. He was trying to
 19 make a lot of money and like a lot of people when something
 20 happens to someone that you've had dealings with, let's say
 21 they get indicted like Mr. Murray did, they try and run away
 22 and hide from that fact that they had something to do with him.
 23 All right? Maybe that's understandable. But that's what was
 24 going on here.
 25 So Mr. Greenberg also said a week later -- this email a

1 dated August 6th. He said a week later: I'm in Starbucks. He
 2 was still asking for money and he's still asking for
 3 1.8 million.
 4 Well, on August 8th -- and Government exhibits reflect
 5 this -- Oppenheimer decided to just pay Mr. Murray the profit
 6 from the trade and close his account.
 7 I think I asked -- you know, what I say is not evidence,
 8 so if I'm -- and I've lived with this case a long time. So if
 9 I say something that didn't come in...
 10 My recollection is that I asked about free riding. About
 11 the fact that -- I think I asked Moskowitz about that; that,
 12 you know, if you don't settle a trade within a certain time
 13 that there -- I believe it's -- I don't think it's FINRA. I
 14 think it's the Federal -- whoever the Feds are that they were
 15 talking about. There's a requirement that you be suspended for
 16 90 days and you can't trade unless there is money in your
 17 account. All right?
 18 So I mean, they could have done that. And probably if a
 19 trade had settled, all right, they would probably would have
 20 suspended him for some period of time and then they would have
 21 let him trade again. All right? That's just the way Wall
 22 Street works, apparently. But, also, they are not required to
 23 suspend him for 90 days. They can close his accounts, and
 24 that's what they chose to do.
 25 So I have been going on and on about this, but I hope you

1 understand what I'm talking about. And what I'm talking about
 2 is that if you look at the evidence in this case -- not even
 3 from Mr. Murray's testimony, but just the documents that show
 4 what he did and all he went through to set up this account with
 5 Mr. de Francisci, as opposed to doing something with an account
 6 that didn't involve a non-U.S. corporation. When you look at
 7 that evidence, you've got -- you have an instruction about
 8 circumstantial evidence.
 9 I would suggest that is strong circumstantial evidence
 10 that Mr. Murray was not intending to defraud Oppenheimer. He
 11 had someone that he really thought had money, someone that
 12 would back him, and he wanted to set up an account with that
 13 person because he thought they both could make some money.
 14 So if you agree with me, that they have not proved this
 15 case beyond a reasonable doubt, it's your sworn duty as jurors
 16 to acquit Mr. Murray of these counts, which are 13 through 16.
 17 All right? And you're going to have a cheat sheet that will
 18 show you that.
 19 So then we have the money laundering that's related to
 20 those counts. Basically, I think that even the Government
 21 would agree with me on this. If you find that Mr. Murray did
 22 not defraud Oppenheimer and acquit him of Counts 13 through 16,
 23 then you also have to acquit him of Counts 17 through 20.
 24 Because one of the elements of the money laundering statute,
 25 the judge instructed you on that, that was -- I forget what

1 instruction it was, but you heard it and you'll have them with
2 you, is that the property was, in fact, derived from wire
3 fraud. All right? So if there is no wire fraud, there is no
4 money laundering.

5 So I'm asking you, respectfully, to acquit Mr. Murray of
6 those counts because there was no wire fraud.

7 I'd like to talk to you about the aggravated identity
8 theft in Count 21, which is the aggravated identity theft based
9 on the use of Lisa Brigulio's driver's license to open the
10 virtual office at the Brandywine.

11 Count 21 basically alleges that on or about December 22nd,
12 2008 Mr. Murray did knowingly possess and use the California
13 license -- the California driver's license of Lisa Brigulio
14 during and in relation to felony violation of the wire fraud
15 statutes as alleged in Counts 1 through 4.

16 All right? So we have use of a driver's license in 2008
17 in support of a fraud that was allegedly committed in 2011. I
18 guess, maybe you could go back to 2010, which is when the JMA
19 merchant account was set up, the one that they allege was used
20 to defraud Paymentech.

21 Well, I would suggest to you that there's a real problem
22 with that. All right? And the problem is they anticipated it,
23 but I don't think they answered the issue. And that is,
24 "during and in relation to." All right? If you were a bunch
25 of lawyers, you would say -- or better grammaticians than me,

1 that is a conjunctive term.

2 In other words, it's during and in relationship. They
3 have to prove both parts of that in order to establish that
4 this crime was committed. All right?

5 So what does "during" mean? I think it means everyday
6 common definition of that. "During" means at the same time.
7 All right? So what they are arguing that -- they are arguing
8 that thjs crime was committed in relation to this scheme to
9 defraud and that's -- if it's in relation to a scheme to
10 defraud, you have to find that the scheme to defraud actually
11 existed. And I'm going to argue that it didn't exist.

12 But just hypothetically say you found that there was a
13 scheme to defraud and that it started with JMA and went through
14 to Paymentech and whatever else they argue. All right? So
15 let's say that's true. Okay? So then I think they have a
16 legitimate argument, if you accept their theory of fraud, that
17 this was somehow in relation to those frauds that occurred 16
18 months later, I think it was. All right?

19 But that's only half the story. The other half the story
20 is that the driver's license had to be used at the same time
21 that these frauds were committed. And I don't think by any
22 stretch of the imagination you can say that a 16-month gap is
23 at the same time. All right?

24 Now, if they had charged, which they didn't, somehow that
25 this was a fraud against Brandywine, all right, the issue would

1 have been, all right, was it in relationship to defrauding
2 Brandywine? I guess the answer would be, yes, if there was a
3 fraud. And did it happen during that? Well, in that kind of
4 situation, the answer would be yes. It happened at the same
5 time. Opened the account with the license.

6 That's not what happened in this case. And this is --
7 this is over reaching by the Government. This is piling on by
8 the Government. This is, all right, how many different counts
9 can we charge him with? All right?

10 And they have chosen to charge this count. All right?
11 And, again, you have to look at the evidence with regard to
12 specific counts. I would suggest to you that you should find
13 Mr. Murray not guilty of this count, because they have not even
14 remotely proved that this happened, the use of this license
15 occurred at the same time as the Paymentech fraud 16 months
16 later.

17 If you need more evidence of that, you look at
18 Government's Exhibit 44-1. All right? The merchant account
19 was opened on May 11th, 2010. And between May 11th and
20 September 28th of 2010 it looks like -- looks like the first
21 charge is to see whether the things is working. Then there are
22 a number of \$200 gift card charges. There is no actual
23 substantial charge until September 28th, 2010 for 11,400. All
24 right? And then you'll see that there is a number of other
25 charges that occur between September and the end of December of

1 2010.

2 And although this doesn't relate specifically to this
3 count, it does relate to the Chase Paymentech thing because
4 there were no problems. Mr. Murray -- I'll get to it in a
5 little bit. I mean, Mr. Murray has an explanation of what he
6 was doing and why he was doing it, and -- running those cards.

7 And, but it appears that no refunds were issued during
8 this time period and no chargebacks were made, I believe. All
9 that happened was the money was taken out and then they were --
10 the credit cards that were used were credit cards that
11 Mr. Murray said he was responsible for.

12 In other words, Julie Leopold, Mr. Murray was not using
13 her personal credit card. I asked Agent Sims and he said it
14 was an MNT card. So that's what Mr. Murray's talking about; he
15 either permission or he was using cards that went back to
16 company accounts.

17 So there is no evidence that individuals whose cards --
18 the cards that had the name of specific individuals, there is
19 no evidence that they were put at risk. All right? And
20 Mr. Murray testified to that and we've heard nothing in this
21 case contrary to that.

22 As long as we're talking about aggravated identity theft,
23 there is another count. All right? And it's related to -- of
24 course, I've lost my cheat sheet.

25 But there is a count alleging aggravated identity theft.

1 And the underlying offense is that the Internet Brokers [sic]
2 was defrauded by the opening of the Event Trading brokerage
3 account. And the identification that was used, which serves as
4 the basis for this aggravated identity count, which is Count
5 22, is Mr. Murray's admitted Photoshopping of the Discover
6 account. And he explained why he did that. All right?

7 So before I get to the identity theft part, let's talk
8 about the fraud against -- that's alleged, but why does a count
9 of wire fraud --

10 Anybody remember what it was?

11 MS. HARRIS: 12.

12 MR. DRESSLER: 12, thank you.

13 So Count 12 alleges wire fraud against internet --
14 Interactive Brokers. All right?

15 So in order for there to be identity theft, there has to
16 be an underlying fraud. And I guess the question is -- I don't
17 guess the question. The question that you have to decide is:
18 Has the Government proved beyond a reasonable doubt that
19 internet -- Interactive Brokers was defrauded?

20 Well, there is no question. I don't remember his name, I
21 think maybe it was Marty. Whatever his name was, the person
22 that testified for Interactive Brokers, all right, clearly he
23 said that based on what happened with regard to the
24 \$1.8 million seizure from an Interactive Brokers account, they
25 were not about to issue, open a brokerage account for

1 Mr. Murray in his own name. All right?

2 And Mr. Murray, you heard his testimony. He explained
3 why -- why this account was opened in the name of Giovanni
4 de Francisci, who is Gianluca's son.

5 Now, it's obvious. I don't think there is any doubt that
6 Mr. de Francisci, Giovanni -- I'll just refer to him as
7 Giovanni; that Giovanni -- Mr. Murray had testified that
8 Giovanni acted as a kind of an interface between Mr. Murray and
9 Gianluca, the father.

10 So who opened the bank account for Event Trading? It was
11 Giovanni. And we have those records. I showed some of them
12 during -- during Mr. Murray's direct testimony. And that
13 account was opened by Giovanni de Francisci. He's a U.S.
14 citizen. He opened the account in Boston. I believe that's
15 where he went to college.

16 And what did he put down? He put down that it was -- that
17 the name of the account was -- it was a Citibank account --
18 Event Trading. All right? He put down the address, 580
19 California Street, which is where the -- the -- the trading was
20 going to be done by Mr. Murray.

21 He, obviously -- the de Francisci's obviously agreed that
22 Mr. Murray -- they wanted Mr. Murray to trade this account.
23 And this -- this is at a time when Mr. Murray was not
24 prohibited from trading. All right? But he was under
25 indictment. Clearly, there had been bad publicity. Obviously,

1 they thought -- believed that he was someone that could make
2 money. So they were still willing to back him.

3 And so he opened -- he opened the account. He filled out
4 all the information. There is no question about that. All
5 right? And the question for you to determine is: The account
6 asked for who the signatory is. And the signatory on the
7 account was going to be Mr. de Francisci. Because they didn't
8 want -- they wanted to -- they wanted to keep control of the
9 money in case other investors came in and they -- but they
10 wanted Mr. Murray to do the trading. All right?

11 Now, in Mr. Murray's mind he wasn't the signatory. All
12 right? The signatory was Giovanni de Francisci and they were
13 going to give him -- let him use their signatory power to
14 trade. Is that fraud?

15 And as I said, whether you make money or not is really not
16 a defense to fraud. But if you look at the internet --
17 Interactive Broker account for Event Trading, Interactive
18 Brokers made a lot of money off of the trades that were done on
19 account. All right? Not a defense.

20 But you should consider what is Interactive Brokers? All
21 right? Part of wire fraud is making a representation that's
22 going to make people part with their money. They are a
23 service. They provide a service on the internet. It's like
24 the telephone company. All right? You can trade using --
25 online. All right?

1 So I don't think there was any misrepresentation that was
2 made, to be considered a misrepresentation -- or, an omission
3 to indicate that Mr. Murray was going to be using the account
4 with the approval of the signatory. But I don't think it can
5 be seen as a misrepresentation that was intended to cause
6 Internet Brokers [sic] to part with any money.

7 So I don't think the Government has proved beyond a
8 reasonable doubt that there was an actual intent to defraud
9 Internet Brokers [sic] here. And if there was no fraud, then
10 there was no identity theft that was alleged in Count 22.

11 All right. Let's talk about Chase Paymentech, and let's
12 start with David Lowe.

13 You watched that deposition. All right? The Government
14 would have you believe -- it's the first time I've heard
15 this -- that somehow Mr. Lowe and Mr. Murray were
16 co-conspirators.

17 I don't think there is no evidence of that. I think that
18 the evidence is that -- and if you remember, it was a, long
19 somewhat boring deposition for most of the time. All right?
20 But if you remember it, Mr. Lowe's demeanor from the beginning
21 of that where he was: I didn't sign this. I didn't sign that.
22 I only met Murray once in 2011.

23 You know, they kept -- the U.S. Attorney kept asking him:
24 Have you ever heard of Cran Go 40? No, I have no idea. Never
25 heard of Cran Go 40. Never heard of Cran Go 40.

1 Some of the names were -- I think on some of those
2 documents it was slightly a different pronunciation or maybe a
3 couple letters. It's hard to read the writing on some of these
4 things.

5 But, clearly, he's being asked about an address, a British
6 address, and it was in a British form. Cran Go 40. Cran Go
7 40. Never heard of it. Never heard of it. Never heard of it.

8 All right? Then after about two hours, when I got my
9 chance to talk to him, I think he started to understand that
10 perhaps Mr. Murray had given me a copy the \$3 million
11 subscription agreement that he gave Mr. Murray in 2010, which
12 he admitted he did. All right? What address is on there?
13 Cran Go 40. All right?

14 When did Mr. Lowe -- you know, I would like to -- this is
15 a serious case, so I won't mimic Mr. Lowe's demeanor. But when
16 I cross examined him, you know, it was, like, all of a sudden
17 he didn't remember anything. I don't remember. It was five
18 years. Oh, God. That -- you know. I mean, he was lying. He
19 was -- he was hoping that no one would ask him any questions,
20 real questions about his relationship with Mr. Murray.

21 And is there any question in your mind that he is not a
22 scam? He's convicted of money laundering.

23 He has a website, Lombard Lowe Partners. Blah, blah,
24 blah. With partners, they have a website. And, I mean, this
25 is not a gigantic thing that they did. But, you know, we look

1 at -- the website. All right? And on that website -- and we
2 know he was convicted of money laundering. All right? We know
3 that he got sent to jail. We know that he created false
4 documents in connection with his money laundering.

5 And then on his website -- and we know, because he
6 admitted it, that he went to jail. He got two years. The
7 judge reduced it to nine or ten months, something like that.
8 And on his website he says: We, Lombard Lowe, had some minor
9 problems. We were convicted, but we were exonerated on appeal.

10 And I think it was clear from his deposition, not
11 exonerated on appeal. His sentence was reduced. There is a
12 big difference between that. One, as being a solicitor, he
13 certainly knew.

14 He said at the beginning of the deposition: I know
15 nothing about stocks. Even though he was president of a
16 company that had, I think he said, 4,000 -- there were a lot of
17 investors, all right, which traded on the London Stock
18 Exchange. It was traded at a different time on the German
19 Stock Exchange.

20 So, I mean, this is a guy that, obviously, knows things.
21 He's savvy. All right? He tried to say: I don't do any
22 investment. I don't know anything. Baloney.

23 Now, Mr. Murray told you the history between him and Mr.
24 Lowe in the setting up of various accounts. I'm not going to
25 repeat it all. He testified on Wednesday and -- it seems like

1 a long time ago, but it was short. All right? And he
2 testified that Mr. Lowe asked him to do certain things, set up
3 certain accounts.

4 And the carrot that was dangling in front of his face was,
5 you know, 10 million of foreign investment, hopefully, coming
6 into MNT. All right? And so foolishly perhaps, but I don't
7 think criminally, he agreed to open up a virtual office. He
8 agreed to reserve a domain name for JMA, Jones Moore and
9 Associates.

10 Remember the GoDaddy witness? She came in and
11 indicated -- I asked her -- you know, I think everybody was in
12 agreement when the domain name was reserved, but nobody -- she
13 couldn't tell when a website was put on that account or by
14 whom. All right?

15 And in connection with that, we have Agent Sims'
16 testimony. He looked at the GoDaddy records, which showed the
17 IP addresses that had been used to enter that website or enter
18 that domain. I'm not a computer person, so I don't know. But
19 I think you know what I'm talking about. All right? And there
20 were numerous, numerous different IP addresses that entered
21 that account. Who did that?

22 All right? We pointed out about four or five of many,
23 many entries that went back to Mr. Murray's IP address. All
24 right? And I asked Agent Sims: Well, what about -- because we
25 were trying to figure out who -- where those other addresses

1 came back to. Whether they were even -- you know, were they in
2 the United States? Were they in Europe? Were they in
3 Thailand? And Agent Sims said: No, I didn't do that. But it
4 should have been done. It probably was done, but he didn't
5 know for sure. All right?

6 Where is it? Wouldn't it be interesting to know who --
7 where those domain -- where those IP addresses were? Would you
8 be shocked if one or more or many came from places that Mr.
9 Lowe hung out? London? Monaco? Obviously, he had some kind
10 of connections with Thailand. But we don't have them. All
11 right? And why is that important?

12 It's important because -- it's kind of a negative evidence
13 that corroborates what Mr. Murray is saying; that foolishly he
14 was doing Mr. Lowe's bidding because he thought he had money.

15 (Brief pause.)

16 With regard to the credit card fraud that's alleged, all
17 right, Counts 1 through 4.

18 You know, Mr. Hallford's testimony, I think, is very
19 interesting. The alleged victim in those counts is Chase
20 Paymentech. All right? And I guess the question is: Was
21 there a representation that caused Chase Paymentech to either
22 part with money?

23 I believe Mr. Hallford testified that when there was a
24 charge, there was a simultaneous transaction of some kind -- 01
25 assume "simultaneous" in the digital world means

1 instantaneous -- that money went from Chase Paymentech to the
2 direct deposit account or the merchant account and a payment by
3 the actual bank that supported the credit card into a Chase
4 Paymentech. All right?

5 So, and then this was some kind of simultaneous
6 transaction and the question is: Was Paymentech -- assuming
7 there was a fraud, was Paymentech the victim or was it the
8 credit card company?

9 Now, Mr. Murray testified that at some point, I guess he
10 realized that money wasn't coming -- at least at that point
11 when he started charging credit cards on the Paymentech
12 account, which didn't happen until 2010 at the earliest -- that
13 he didn't think he was doing anything wrong. I mean, in his
14 mind these were credit cards that he had authorization over.

15 I think if you look at the bank records in this case, the
16 David Lowe credit card was not David Lowe's personal account.
17 It was a David Lowe credit card that went back to one of the
18 business entities that was opened -- that Mr. Murray testified
19 David Lowe wanted to have some control over. That's why his
20 name was on there.

21 And why wouldn't you believe Mr. Lowe? I mean, he was --
22 and there is no reason to disbelieve him. He was at had some
23 point a heavyweight in Hollywood and had some company, was vice
24 co-president, or whatever, of Orion Records. That indicates a
25 sophisticated person that's used to dealing with money and

1 operating businesses.

2 Mr. Murray says: I was using these credit cards to
3 generate cash. Not to line his pockets with. Although, you
4 know, there is some taking cash out of an ATM. But all that
5 money -- the fact that all that money went into MNT. All
6 right? And I don't think it was seed money. We're talking
7 here 2011. MNT was operating way before that. All right? So
8 to say that this was seed money to start up MNT is not
9 supported by the evidence. All right? And so Mr. Murray
10 thought that this was okay. All right?

11 And the real, I think, fraud that actually is being
12 alleged here is not the charging of these credit cards, but the
13 issuing of the refund. All right? Well, maybe this was a
14 foolish thing to do, but it's not a crime to be foolish. All
15 right? You have to have a criminal intent.

16 And Mr. Murray testified that he issued these funds -- I
17 mean, he issued these cards to make money to put into MNT.
18 I -- this is not a case -- this is not even a mini Bernie
19 Madoff case. I mean, there is no evidence here that Mr. Murray
20 was pocketing money. He was trying to do what he does, and
21 that is trade and have a company that trades.

22 There is no evidence that he owned his house or that he
23 had some kind of lavish lifestyle or that he was pocketing any
24 money. The only thing that the Government can point to is on
25 that Chart 391, the chart that showed all the money going in,

1 that money went to a French bank and it's still there. All
2 right? And Mr. Murray indicated, you know, he was entitled to
3 take some money out of the company for his trading services.
4 There is no indication that he wasn't entitled to that money.
5 No evidence whatsoever.

6 In any event, I mean, I think the fraud that's alleged
7 with regard to Paymentech is the refunds. All right? They
8 were all issued, or most of them, in one might. There is no
9 question about that. The records reflect that. All right?

10 Mr. Murray said that he did that because, once again, he
11 foolishly believed what Mr. Lowe was saying; that a wire was
12 coming in. All right?

13 And the interesting thing is -- you remember
14 Mr. Hallford's testimony? That was a long time ago in terms of
15 this trial. All right? And if you don't remember -- and I
16 don't want court reporter to kill me, but if you don't remember
17 what happened, you can have testimony read back.

18 In his testimony he said that when he came into the case,
19 some -- it was clear that someone from Chase Paymentech had
20 called Mr. Murray and said: We're not processing these refunds
21 because there is no money in the bank. All right? And then --
22 then -- then I think the testimony was that Mr. Murray thought
23 the money was coming in, and then they waited a day or two, and
24 someone called the bank, and the bank verified that there was
25 enough money in the bank to process the -- I think it was

1 whatever, \$300,000 worth of refunds. They did it because
2 someone at the bank, not Mr. Murray, told them the money was
3 there. All right?

4 Now, the records that are in this case, I'm sure the
5 Government -- you know, you can see from the number of exhibits
6 they have, they subpoenaed every record that had anything to do
7 with Mr. Murray, so...

8 But, apparently, at some point maybe that wire did come
9 in. Maybe it bounced. We don't know. I'm speculating,
10 certainly. But it's odd that that happened. And it didn't
11 have anything to do with Mr. Murray. All right?

12 So as Mr. Murray testified, they told him the money was in
13 there and he -- what did he do? He issued some more refunds.
14 He thought everything was okay. They never called him and said
15 that these refunds -- that there was no money, when we actually
16 processed the refund. No one called him.

17 I asked Mr. Hallford about that. It wasn't his
18 department. It was some other department. There is no
19 evidence anyone called him. No one ever asked him to make the
20 money good. They just didn't do anything. You know,
21 apparently, because they decided to -- well, I'm not going to
22 speculate, but they didn't do anything. They didn't tell him
23 and he didn't know.

24 And he didn't know until he issued these other refunds and
25 those were not processed. And he noticed that because he was

1 checking the credit cards. He checked the credit cards to keep
2 everything going so things weren't bouncing and he noticed that
3 these refunds had never been processed. He then called and was
4 told that they hadn't been processed. All right? And you
5 heard what he said. He -- he created documents so that they
6 would be chargebacks, so that money would go back to the credit
7 cards.

8 Basically, what Mr. Murray is telling you, that he did
9 this and he didn't intend to defraud anybody by doing it.

10 And I would suggest to you that the Government has not
11 proved beyond a reasonable doubt, despite all the -- despite
12 all the evidence and everything they said, have they proved
13 beyond a reasonable doubt that he intended to defraud Chase
14 Paymentech? I would suggest to you that they have not met
15 their burden as to those counts.

16 And lastly, we have the MNT counts or the investor counts.
17 I would suggest that despite the Government's argument, they
18 haven't presented any evidence that anybody lost any money
19 based on their investments in MNT.

20 391, which is Mr. Villanueva's chart of all the money
21 going around and around. Mr. Murray explained why that was.
22 That's a snapshot of one month.

23 And I think I asked him about whether they -- how hard
24 they looked for withdrawals from all those different bank
25 accounts. And it appears that they didn't look very hard to

1 find withdrawals and there is no indication of withdrawals.

2 And we know from -- well, it doesn't have any indication
3 of the list of MNT investors. That summary that listed all the
4 investors and how much they put in. That summary chart only
5 talks about money coming in. It doesn't talk about money being
6 withdrawn.

7 But one of the transactions in the 391, which is the chart
8 of all the money going around shows 500,000 going back to the
9 Citibank -- I believe it was the Citibank account, and
10 Mr. Murray indicated that that was to pay -- 500,000 was a
11 withdrawal of one of the investors in MNT.

12 Now, a few words about Corinna Zeibt. I would suggest
13 that the reason she was one of the first witnesses was that --
14 (Court reporter interruption.)

15 MR. DRESSLER: I would suggest that the reason she
16 was called early, way before the other evidence regarding these
17 counts, was that she's distraught. She thinks she lost all her
18 money. She has been following this case since the day
19 Mr. Murray was arrested. She's very upset. She's worried.

20 When I asked her: Didn't anyone tell you that there is
21 \$1.8 million that's been seized? She didn't know that. No one
22 told her. All right? So, you know, maybe she had a reason to
23 believe she lost all her money, but there is no evidence that
24 she did. There is no evidence that she lost any money.

25 I asked her -- I mean, she gave numerous emails to the

1 Government. And they asked her -- they introduced those
2 emails. They asked her questions.

3 And getting back to what I started with. They knew that
4 she was going to start crying. All right? She's an emotional
5 person and she probably has a right to be. All right? They
6 call her out of order at the beginning of the case so that she
7 would cry. So that you would immediately, which is natural,
8 feel sympathetic toward her. Who wouldn't? All right. But
9 that was a calculated move on their part.

10 And, you know, on cross examination she wasn't crying.
11 All right? And I asked her: Well, what about you said --
12 Pensco said you didn't have any money. Yes, that's true.
13 Well, where is the email from Pensco? Well, I think I gave it
14 to the Government. Where is it?

15 She didn't -- we don't have it here. I would suggest that
16 she didn't get any email. She is in a panic. Was in a panic
17 the minute she heard Mr. Murray was arrested and is still in a
18 panic. All right? And I would suggest to you that -- we all
19 laughed when she said, "I'm German" when I asked her about
20 those annotations.

21 Well, I would suggest, ladies and gentlemen, you look at
22 those annotations on those emails. All right? And tell me,
23 really, whether you think those are entered contemporaneously
24 when she talked to Mr. Murray?

25 I mean, you know, you're the jury. You're the trier of

1 the fact. You can believe whatever you want to believe, if
2 it's based on the evidence. All right? I would suggest to you
3 that that is an after-the-fact annotation and that, you know,
4 she -- she sought out Mr. Murray. She thinks he lost all her
5 money and so she's -- and she wants to be part of this case.

6 She's not charged as one of the victims in the case. And
7 so she, you know, added these little annotations. You know,
8 she obviously -- everything in this -- not everything, but, you
9 know, the public can access the Court records in this case, and
10 you can -- you can -- some of them. All right?

11 MS. HARRIS: Objection, your Honor. There is no
12 evidence of this in the case.

13 THE COURT: All right. Sustained. That remark will
14 be disregarded.

15 MR. DRESSLER: All right. All right.

16 I think it's obvious that through, let's say, the press,
17 all right, that she has knowledge of this case. She is been
18 following it closely. She came to court on numerous occasions.

19 So I would suggest that -- that those markings are not
20 contemporaneous with her conversations with Mr. Murray.

21 And one of the things I showed her was an email where she
22 was complaining about the Pensco fees and stuff like that. And
23 Mr. Murray sent her an email saying: Fine. Keep your money at
24 Fidelity. All right? He was not actively trying to get her
25 money to invest, all right? I think he saw it as a favor to

1 his wife.
 2 You also heard Mr. Murray's testimony about the audits and
 3 the accuracy of the audits. I'm not going to go through the
 4 calculation that I tried twice, once with Mr. Eckel and once
 5 with Mr. Murray here. But I think it's clear that -- that
 6 Mr. Murray had said those audits are not an accurate
 7 representation of the historical performance of the fund. All
 8 right?
 9 And if you look at the audits, they say on there they are
 10 not an accurate portrayal of the performance history of the
 11 fund. All right?
 12 The Government made a big thing about Exhibit No. 140, the
 13 CCS Financial compilation. Mr. Eckel said that -- there was an
 14 email where he said: Are there two MNTs? Because there were
 15 two employee identification numbers. And, in fact, there were
 16 different classes of MNT. There was MNT, LLC and there was
 17 MNT B. All right?
 18 Mr. Murray told you that the -- the CCS compilation, all
 19 right, looks so -- looked so bad for the last four months. He
 20 explained why that was. He told you that a small group of
 21 investors wanted to -- within the context of MNT, I guess, what
 22 he was referring to as a separately managed account. And they
 23 lost a lot of money and that counted against -- that class of
 24 MNT -- that MNT class. All right? There was another MNT
 25 class. And Mr. Murray says that that class made money. All

1 right? And that explained that difference.
 2 I think it's clear that Mr. Murray did not authorize and
 3 did not want Mr. Eckel to distribute these audits to potential
 4 investors because there was an email that the Government showed
 5 you, and I think I showed it too, where Eckel gets an email
 6 from a potential investor. There was a difference between
 7 marketing materials and audits, and Mr. Eckel sends an email to
 8 Mr. Murray: Would you please explain again what -- all right?
 9 And Mr. Murray explained. All right? The investor who saw the
 10 audit thought that it was asset -- not asset -- not
 11 asset-weighted.
 12 All right. And then Mr. Murray -- and Mr. Murray tells
 13 Mr. Eckel it was asset-weighted. All right? And in fact, if
 14 you look at the audits, they are asset-weighted. All right?
 15 And so, yes, Mr. Murray, on this Fariba email, Mr. Murray
 16 answered, he gave the Social Security number so they could do a
 17 background check.
 18 (Reporter interruption)
 19 MR. DRESSLER: Yeah. The Fariba email, all right,
 20 where the potential client was asking for a bunch of
 21 information including Mr. Murray's Social Security number,
 22 obviously for a background check that he agreed to.
 23 And then when he came to the audits, he said "requested."
 24 All right? What does that mean? He was going request it from
 25 MNT. All right.

1 And, I believe it was Mister -- I don't remember whether
 2 it was Mr. Eckel or Mr. Murray, but Mr. Murray's position was
 3 that he didn't want -- if you're going to show audits, or after
 4 the fact, he wanted to talk to these people so they would
 5 understand the difference between the performance. All right?
 6 And the example that we went through in court the other
 7 day, all right, shows that, you know, someone -- I forget
 8 which -- what -- I think it was Mr. Pernel said: No, no, no.
 9 If you've got money in, a dollar in at the beginning of the
 10 year and you stay in the whole time, and the fund makes
 11 13 percent, then you've made 13 percent.
 12 Well, that's not really accurate. And I think that the
 13 example that we showed shows that it's not accurate. All
 14 right?
 15 So there's -- I mean, the real question with regard to
 16 these counts is: What were these investors -- who were, I
 17 would suggest, sophisticated investors -- what were they really
 18 relying on? Were they relying on audits that had been done
 19 years before with regard to investments that they were involved
 20 in? Or were they really interested in audits that were going
 21 to be done by a more well-known company, which was hired to do
 22 audits going forward?
 23 So, I think there is a very real reason to believe that
 24 the MNT investors, what they really relied on, to paraphrase
 25 the U.S. Attorney, was Mr. Murray and his strategy. All right?

1 After the fact, after you've talked to the Government, after
 2 they --
 3 (Reporter interruption)
 4 MR. DRESSLER: After they've prepared you to
 5 testify -- I'm going to tie myself to this table here.
 6 After they prepared to testify, you know, they say: Yeah,
 7 oh, yes, of course, you know. I relied on the fact that he had
 8 a master's. All right?
 9 Really, what they -- sophisticated investors, I mean, I
 10 think it's common knowledge: Hedge funds blow up. They rise
 11 and they fall. And what they're investing in and what they're
 12 really looking at is the strategy. All right?
 13 These are not low-risk investments. These are investments
 14 where you pool your money with a bunch of people, you give it
 15 to someone, and hope that they make you a lot of money. All
 16 right? That's what they're relying on. All right? They're
 17 relying on Mr. Murray's strategy, all right, and the
 18 promotional materials.
 19 I couldn't understand what they were talking about, and I
 20 still don't. But I think it's clear that the investors in MNT
 21 did understand that. That's what they're relying on.
 22 If that's what they are relying on, there is no fraud
 23 here.
 24 Mr. Eckel, he was on the stand for a while. All right?
 25 And I don't know how to describe his testimony. But I think

1 that clearly, there was an issue between Mr. Eckel and
 2 Mr. Murray about what should be -- what should be shown to
 3 potential investors. All right?
 4 And Mr. Murray testified, and you saw it was signed by
 5 Mr. Eckel, the engagement letter, which clearly stated that
 6 Mr. Eckel could not give anything or use any promotional
 7 material or audits or things like that without Mr. Murray's
 8 written consent. And there was no evidence of any written
 9 consent, and there is no evidence of any oral consent.
 10 So I would suggest to you that the audits served one
 11 purpose. And that was Mr. Murray had them sent to -- directly
 12 to Mr. Eckel, so that he could be sure that -- and then present
 13 this information to potential investors -- that there were no
 14 amortized costs going forward, which would be something that
 15 was significant for an investor. All right, that makes your
 16 fund more attractive. And I don't think there is any evidence
 17 to the contrary.
 18 The other thing. Now, if Mr. Murray was the one that was
 19 creating these audits, all right, I mean, it would be very easy
 20 to have the audits be completely in synch with the marketing
 21 material. If you were making it all up, make it consistent.
 22 If you were making it all up, why would you show over the
 23 period of time, that the amount of assets under management was
 24 shrinking, as opposed to rising?
 25 I think Mr. Eckel testified that something that makes a

1 hedge fund less attractive is that over time, the amount of
 2 assets under management is shrinking. It's not -- it makes it
 3 unattractive for the kind of people that invest in hedge funds.
 4 If you were making all this up, it would be very easy to
 5 have the -- the graph going that way (Indicating), to have it
 6 go that way (Indicating). All right?
 7 So I would suggest to you, and with all due respect to
 8 Agent Sims, all right, in his rebuttal testimony -- I mean, you
 9 know what that meant, all right? Did that mean that -- I mean,
 10 he really didn't say that Mr. Murray created the audits. All
 11 right?
 12 It's clear that there was, in Mr. Murray's computer, an
 13 audit. All right? It could have been sent -- it could have
 14 been downloaded, I think, sent as a PDF and downloaded as a
 15 PDF, and it would still have the same metadata. All right?
 16 There's no evidence that I'm aware of in this case that that's
 17 not with what happened. All right?
 18 And, Mr. Murray did admit he had a relationship with --
 19 with JMA. But in his mind, and in his intent, was that it was
 20 not going to be a conflict with new investors, because JMA was
 21 not going to do any audits for the new investors. It was going
 22 to be a different entity. And that entity was reflected on
 23 some of the promotional --
 24 (Reporter interruption)
 25 MR. DRESSLER: Promotional data that was offered in

1 evidence in this case.
 2 That's why he hired Spicer Jeffries. And you have seen
 3 documents. They're in there. They're in Government exhibits.
 4 THE COURT: Mr. Dressler, it's now 12:17. I don't
 5 know if you --
 6 MR. DRESSLER: I'm just about done.
 7 THE COURT: Okay, okay.
 8 MR. DRESSLER: So with regard to these counts, I
 9 would suggest to you that there is at least a reasonable doubt
 10 as to whether Mr. Murray is guilty of defrauding the MNT
 11 investors.
 12 And I'm going to stop here. I just want to tell you that
 13 this is the only chance I get to speak to you. The way the
 14 system works is, as the Judge explained, is that the U.S.
 15 Attorney gets up and talks now.
 16 Hopefully, you understand what our position is, and you
 17 understand what I'm talking about. And that when you listen to
 18 the -- whatever the U.S. Attorney is going to say, please try
 19 to remember what our position is, and interpret what she says
 20 in connection with that. All right?
 21 I want to thank you on behalf of myself and my client.
 22 You obviously -- it's a complicated case. Everybody was paying
 23 attention. We really appreciate that.
 24 And, all I can tell you is: When you go into that jury
 25 room, please discuss the case with your fellow jurors. But

1 don't decide the case on any count until all of you have had an
 2 opportunity to exchange your views on the case, and review
 3 whatever evidence you think is appropriate.
 4 If you think that there's testimony that needs to be read
 5 over, please do that. Our system of justice depends on 12
 6 jurors that are independent and reach their own conclusions.
 7 All right?
 8 And, the law requires that you do that, that you reach
 9 your own conclusion. All right? I'm not saying you shouldn't
 10 listen to your other jurors, all right? This is a
 11 collaborative process. That's how the decision is reached.
 12 So with that, once again, thank you for your attention.
 13 And, good luck.
 14 THE COURT: Thank you, Mr. Dressler.
 15 Ms. Harris, how long do you anticipate?
 16 MS. HARRIS: Your Honor, Mr. Farnham will be doing
 17 the rebuttal.
 18 THE COURT: How long?
 19 (Off-the-Record discussion between counsel)
 20 MR. FARNHAM: Thirty-five minutes to an hour,
 21 Your Honor.
 22 THE COURT: All right, then we are going to go ahead
 23 and take our half-hour break at this point for lunch, and we
 24 will resume in 30 minutes.
 25 (Jury exits the courtroom at 12:21 p.m.)

1 THE COURT: All right. So that sounds like that's
2 going to take us through almost 2:00. Is that right?
3 MR. FARNHAM: I think that's right, Your Honor.
4 MS. HARRIS: Your Honor, we have one thing to raise.
5 It seemed that Mr. Dressler did raise a
6 negligence-on-the-victim defense to Counts One through Four
7 when he claimed that Paymentech told them there was people in
8 the account, so he just went forward with it. It sounded to us
9 like there was an attempt to blame Paymentech's negligence for
10 Mr. Murray continuing the scheme.
11 And we would renew our request for an instruction saying
12 that if any the victims failed to ferret out the fraud, that is
13 not a defense to the fraud.
14 MR. DRESSLER: I don't think I was saying that. I
15 was just repeating Mr. Hallford's testimony, and Mr. Murray's
16 response to that. I wasn't indicating it was their fault.
17 THE COURT: I don't think that argument was made. If
18 it was made, it wasn't made clear enough to warrant a special
19 instruction at this point. So I'm not going to give any
20 further instructions.
21 MS. HARRIS: Okay.
22 THE COURT: All right?
23 (Whereupon at 12:22 p.m. proceedings
24 were adjourned for noon recess.)
25

1 PROCEEDINGS
2 October 9, 2015 12:53 p.m.
3 (The following proceedings were held outside of the
4 presence of the Jury)
5 THE COURT: Ready to bring the jury out?
6 THE CLERK: Let me make sure everybody is here.
7 (A pause in the proceedings)
8 THE CLERK: They are ready, Your Honor.
9 THE COURT: All right, the jury is ready. I'm going
10 to bring them in.
11 (Jury enters the courtroom at 12:53 p.m.)
12 THE COURT: All right, you may be seated. Welcome
13 back, ladies and gentlemen. This is the opportunity now for
14 the Government to present its rebuttal argument.
15 And you may proceed, Mr. Farnham.
16 MR. FARNHAM: Thank you, Your Honor.
17 REBUTTAL ARGUMENT
18 BY MR. FARNHAM:
19 I want to first address some of the parts of this case
20 that Mr. Dressler didn't really want to talk about. Didn't
21 really want to address.
22 You know, there's not one word about the fake resume, fake
23 credentials that Mr. Murray gave to investors that he was
24 soliciting for his funds. He lied about his background; he
25 lied about his experience. He lied about everything. But

1 Mr. Dressler didn't even address that.
2 There was not one word of explanation about discrepancies
3 in the fake audits. Those audit reports were fake. There was
4 no Jones Moore & Associates. There was no auditor. There was
5 no Richard Jones. Mr. Dressler didn't address that.
6 There was nothing about the -- nothing to explain the
7 false statements in the DDQ that was given to investors. No
8 conflicts of interest, it said. False. Service providers with
9 ten years of experience. False. Jones Moore is a service
10 provider. False.
11 Mr. Dressler said that he didn't understand about the
12 metadata, and the testimony of Mr. Sims, Agent Sims, about --
13 indicating where some of those audit reports may have come
14 from. What that -- what that information shows is that when
15 Mr. Murray testified that he did not create those audits, he
16 was lying.
17 On that hard drive found at his house were documents that
18 the metadata showed were, one, created in 2010, not the dates
19 that were indicated. Two, created by converting it from a Word
20 document. And the Word -- the version of Word used was
21 licensed to Jim Murray. His name was on it. His name went to
22 the metadata. Those documents indicate that James Murray
23 created those documents.
24 There was really nothing disputing the accuracy of the CCS
25 Financial data. You heard Tina Moran testify about that. That

1 was the Market Neutral Trading performance data for 2009,
2 showed the huge loss. There was no -- there is no dispute
3 about the accuracy of that.
4 There was one -- there was an argument about whether there
5 was a different class. But I'm going to show you some evidence
6 that shows that's not true. Market Neutral Trading lost
7 everything in 2009, 94 percent. And Mr. Murray kept that from
8 investors. He lied about that.
9 And of course, maybe you expected this, but there was
10 nothing from Mr. Dressler about the contempt charge. He seems
11 to be conceding that Mr. Murray -- the evidence against
12 Mr. Murray, as with all of these charges, overwhelming. And no
13 defense was -- no defense was raised.
14 So I want to talk about a few expectations that
15 Mr. Dressler raised in his closing argument. One thing he
16 talked about was Count 21, the aggravated identity theft of
17 Lisa Brigulio's name and driver's license in order to open the
18 virtual office in December, 2008.
19 He argued that's not -- not going to meet the elements of
20 aggravated identity theft because it wasn't during and in
21 relation to the fraud.
22 Well, that's not right. The virtual office set up in 2008
23 was set up in the name of Jones Moore & Associates. It allowed
24 Jones Moore & Associates to appear to be a real entity. It had
25 -- it provided an address and a phone number that could be

1 called from the outside. It had instructions indicating when
2 someone calls, to say "This is Jones Moore & Associates. How
3 can I help you?"

4 Can we go to the ELMO?
5 (Document displayed)

6 MR. FARNHAM: I know you have seen this document
7 before. This is the virtual office application. December 22,
8 2008.
9 (Document displayed)

10 MR. FARNHAM: These are the instructions Mr. Murray
11 put on that to indicate:
12 "Please answer phone 'Jones Moore & Associates.
13 How may I help you?"
14 All of this was designed to create a facade of a real
15 business. That facade of a real business was part of the
16 scheme that was part of the -- that was the scheme that led to
17 defrauding Chase Paymentech a few months later.

18 That application to Chase Paymentech for a credit card
19 processing account in the name of Jones Moore & Associates
20 required this virtual office. The terminal, the payment
21 terminal, the credit card machine that was used for all the
22 swipes was sent to that virtual office address that was set up
23 by the this application. That application, of course, used
24 Lisa Brigulio's name.
25 That application had James Murray's name nowhere on it.

1 And this fraud began at least as of December, 2008. And
2 Lisa Brigulio's name was used in connection with, in relation
3 to, during, and because of the fraud on Chase Paymentech.

4 In fact, it started even a little earlier than that. You
5 saw evidence from the GoDaddy -- GoDaddy.com documents that the
6 domain name and the email address assess for Jones Moore &
7 Associates were actually -- actually created on December 6,
8 2008.
9 (Document displayed)

10 MR. FARNHAM: And the GoDaddy witness explained to
11 you that this was when the account was created. And Jim
12 Murray's admitted that he set this up.

13 And so even before he set up the virtual office, he was
14 getting the scheme in motion, he was setting up Jones Moore &
15 Associates email, domain name. As part of this, he set up
16 richard@jonesmoore.com. That was actually listed as the only
17 contact information for Jones Moore & Associates on the virtual
18 office application that we just looked at.

19 This was all part of the scheme, part of the wire fraud,
20 and it was during and in relation to that fraud. So don't be
21 confused about arguments about when the wire happened. This
22 was all part of the same fraud. The virtual office was opened
23 in another person's name, to deceive. To hide James Murray's
24 involvement in it. And to do that, he used Lisa Murray's
25 identity.

1 And why was that? Because this was all part of an effort to
2 deceive and to cover up his involvement. Because it was a
3 critical part of the fraud on Chase Paymentech, it was
4 committed during the wire fraud.

5 Now I want to show you the element of wire fraud, briefly.
6 I'm sorry, of aggravated identity theft.
7 (Document displayed)

8 MR. FARNHAM: These elements are the wording of the
9 aggravated identity theft charge that are also in the jury
10 instructions that you will receive, and you will be able to
11 take back with you.

12 And what these say is that first, the Government must
13 prove the Defendant knowingly transferred, possessed or used
14 without legal authority a means of identification of another
15 person. That's Lisa Brigulio's name and driver's license. We
16 have established that.

17 Second, the Defendant knew it belonged to a real person.
18 Of course, he did.

19 Third, the Defendant did so during and in relation to the
20 wire fraud.

21 It says "wire fraud." And in this case, we've alleged a
22 scheme that began even before 2008. It doesn't say "the wire."
23 The wires that are charged in this case did happen later.
24 Those are the Paymentech -- Paymentech card swipes. And I'll
25 talk about those in a minute. It says "The wire fraud."

1 So let's talk about the Chase Paymentech fraud for a
2 minute. Now that, you heard Jonathan Hallford testify about
3 that. That fraud, that sophisticated scam began in 2010 with
4 the application to open the account, again in the name of Jones
5 Moore & Associates, the same entity.

6 And one of the things that the defense raised about this
7 fraud -- first of all, there's no dispute that Mr. Murray did
8 all the credit card swipes. At his house. All times of the
9 day and night. Perhaps in his chair, sitting in that back
10 shed, that back office. He did that. 650 -- more than
11 \$650,000 with the credit card swipes.

12 There was only a couple of things the defense raises with
13 this. One is: What were the representations?
14 Well, I can tell you what they were. First, an
15 application was made in the name of Jones Moore & Associates,
16 as if it were a real entity. As if it were a real business.
17 As if it had real customers, and was providing real services.
18 But that's not true.

19 Then when the charges went through, when Mr. Murray ran
20 through cards that he admits were in multiple people's names --
21 not normal, not evidence of -- not evidence of any mistake,
22 good faith. Other people's cards, other people's names. When
23 he ran those through, Chase Paymentech saw those as real
24 charges. As real sales. As a real customer getting real
25 services from a real business.

1 Mr. Murray knew that wasn't true. He has even admitted
2 that he was just trying to get up a credit line, extend the
3 credit line from those cards, and get the money and use it.
4 That's exactly what he did. \$650,000 over the course of a
5 couple months. That's a fraud. He was defrauding Paymentech.

6 Then there was the refund part. Also a fraud. What that
7 was is Mr. Murray, starting at about 7:30 p.m. on March 30th,
8 running \$350,000 worth of refunds through that machine. Again,
9 not real refunds, not a real business returning money to a real
10 customer, but a sham transaction.

11 They were -- it got to be a little ridiculous when you
12 looked at the timing. Jonathan Hallford, I think, estimated
13 that it was one a minute that were being refunded. \$20,000 at
14 a time. Not real transactions. And a fraud on Paymentech.

15 Those refunds also led to the very real loss for
16 Paymentech. So when they did release those funds, based
17 perhaps on a mistaken verification by the bank that the funds
18 were there -- because they weren't, and I'll show you that in a
19 minute -- they released \$350,000 to those card holders. Those
20 card holders, of course, were Jim Murray.

21 Then, there were the credit card disputes that, again, Jim
22 Murray admits he did. Those disputes, which you heard Jonathan
23 Hallford say the credit card company contracts they had
24 required Chase Paymentech to issue refunds back to the cards
25 until the dispute was resolved. And that's what they did.

1 So Chase Paymentech lost another \$200,000 because they had
2 to pay back the credit card holders, the credit card companies.
3 And yet, when they went to seek the funds from Jones Moore &
4 Associates' account, as before, there's nothing in it.

5 Now, the defense to this, it's not a defense to wire
6 fraud. Let's say the story from Mr. Murray is that he thought
7 money was coming into the account. He didn't mean to defraud
8 anybody. He had -- he didn't have the intent to defraud. It
9 was just a big mistake. Maybe a misunderstanding. He would
10 have liked to pay Paymentech back, maybe, he would say. That's
11 false. And I'll show you what was happening in that account
12 when these refunds were being processed.

13 Mr. Murray claims he thought money was coming in. But,
14 there was one person who was actually taking whatever money was
15 in that account out. And that was Mr. Murray.

16 (Document displayed)

17 MR. FARNHAM: That's a statement for the linked
18 account. The account that was linked to the Paymentech credit
19 card processing account.

20 When purchases went in, the money would go into this
21 account. When refunds were processed, the money would come out
22 of this account. Or Chase Paymentech would try to get the
23 money out, if it hadn't been defrauded.

24 March 31st -- you heard Mr. Villanueva talk about this,
25 too. On March 31st, around the time that those refunds were

1 being processed, this account had a balance of \$373.

2 (Document displayed)

3 MR. FARNHAM: Not long before that, of course, on
4 March 11th 2011 and March 28, 2011 (indicating), two
5 withdrawals, two checks to MNT B LLC for 85,000, and 22,000.
6 At this point, Mr. Murray again taking money out of the
7 account. There was no money going in.

8 (Document displayed)

9 MR. FARNHAM: In April, the account balance was 87
10 cents. This is the account that Chase Paymentech would be
11 looking to, to get refunds or chargebacks or disputes, where
12 they would be looking to get the money out of. Eighty-seven
13 cents.

14 Jim Murray knew that; he was defrauding Paymentech. Every
15 dispute he put in, he was defrauding Paymentech. And he
16 claimed that he was waiting for a wire to come in from a person
17 overseas.

18 (Document displayed)

19 MR. FARNHAM: Mr. Lowe. But what was actually
20 happening at that exact time that he was processing these --
21 that Mr. Murray was swiping those \$350,000 worth of refunds was
22 that he was taking money out of the account.

23 April 1st, 2011 (indicating). Two days after he had
24 swiped all those cards for refunds, again, he was withdrawing
25 money, \$60,000, to MNT B LLC. And that is to make sure that

1 Chase Paymentech didn't get it.

2 Mr. Dressler acted like Paymentech was a purported victim
3 in this fraud. They actually lost \$550,000. All that money
4 went to those cards that Jim Murray controlled.

5 I don't think there is any question that Paymentech was
6 lied to. They were misrepresentations. It was part of a
7 scheme. And that Mr. Murray was the sole beneficiary. The
8 evidence is that he was the only person that was behind that.

9 Let's not forget an important part of his defrauding
10 Paymentech. You remember Johnny Wong, the US Bank witness,
11 talked about the fake bank statement that was submitted with
12 the Chase Paymentech application. Again, Chase Paymentech was
13 defrauded. They were fooled into thinking Jones Moore was a
14 real company, with real business and real customers.

15 You will see, you will have the instruction for wire fraud
16 when you go back in the jury room. And you will see that the
17 Paymentech fraud easily meets each of those elements.

18 Next I want to talk about the investment fraud. Also,
19 there's no one else at the center of that fraud but James
20 Murray. He is the one that ran Market Neutral Trading. He's
21 the one who gave Mr. Eckel his background. He's the one who
22 provided the marketing materials to Mr. Eckel to edit. He is
23 the one who provided all the information that Mr. Eckel used to
24 contact investors.

25 Mr. Murray is the only one who talked to Corinna Seibt.

1 That was him. The lies he told her are part of the scheme to
2 defraud. He continued those lies to other investors through
3 Mr. Eckel in 2011.

4 Let's talk about Ms. Seibt for a minute. Mr. Dressler
5 wanted to mock how upset she was. Now, let's keep this in
6 perspective. She actually approached her friend, Mr. Murray,
7 who said that he ran a successful hedge fund. And, he says she
8 came to him. That doesn't matter. He's -- he is experienced
9 in the financial industry. He says he is running a hedge fund.
10 He shouldn't have taken her life savings, no matter what. But
11 he did.

12 And the evidence about what he did with that I think is
13 clear. She invested in about the middle of 2009. It was about
14 \$150,000 total. Yet at that time, if you remember, the CCS
15 Financial records which were the -- for Market Neutral Trading,
16 they generated the statements. They kept track of the
17 investors. They kept track of the ins and outs of the fund.
18 And if those records of CCS Financial for which James Murray
19 gave them all the information, there was no record of Corinna
20 Seibt's money. And you have to ask: Why is that?

21 The reason for that is: That money disappeared. Even if
22 it had been invested in Market Neutral Trading, remember, that
23 fund the in 2009 lost 94 percent of its value. Her money was
24 either stolen before that, or lost in November and December of
25 2009.

1 accurately represent the historical performance is ridiculous.

2 The other thing Mr. Dressler addressed, that he raised, is
3 he claimed that the investors that you heard from shouldn't
4 have relied on those. Well, they did. For lots of good
5 reasons. And you heard the testimony. Mr. Gibson wanted to
6 see the last year's audits to verify the assets that were
7 there.

8 Mr. Pernell, who invested on behalf of small business
9 pension funds, wanted to verify historical performance. He
10 asked for all those audits, 2006 to 2010, and he received
11 those.

12 Mr. Russell also received the audit reports. They all
13 said they relied on them. They relied on the reports, and they
14 relied on the fact that there was an auditor. Both those
15 things were lies.

16 Now, there's also a -- also an argument that somehow, even
17 if they were false, or not accurate, that it's not Mr. Murray's
18 fault. He blamed Mr. Eckel for that, for sending them out to
19 investors. And I just want to talk about that.

20 So, and I -- I don't want to get stuck in the wordplay
21 here, but there's -- was Mr. Eckel supposed to send them out or
22 not send them out? Was he supposed to use them as marketing
23 tool or not marketing tool? It doesn't matter. Because
24 Mr. Eckel believed correctly that he could send them out.
25 Mr. Murray expected him to send them out. He knew investors

1 And her testimony was important, because she testified
2 about the same misrepresentation that other investors later
3 heard. That Jones Moore & Associates had audited the fund.
4 That it had checked on the books. It was an independent party
5 who was looking in, verifying the accuracy of the returns. The
6 money. All sorts of things that auditors do. And they verify
7 the accuracy, and they're an independent party, and people rely
8 on that. She relied on that.

9 And I want to talk about the audits, audit reports. I
10 mean, think about the scope of this fraud. Were the audits --
11 were the numbers exactly accurate, and could they have been
12 relied on? Mr. Dressler's digging into the details there.

13 Let's zoom back for a little bit. Investors were told
14 there was an auditor. Investors were told these were the
15 numbers. They were accurate. They were independently --
16 independently verified.

17 It's not about whether the percentage is exactly right as
18 to the fund performance. It's about whether these are a fraud.
19 Are fake documents.

20 And you've seen plenty of evidence about the creation of
21 those audit reports, about Mr. Murray's involvement in the
22 registering of a domain name, and making up the virtual office
23 for Jones Moore & Associates. You've seen plenty of evidence
24 that those reports were, through and through, shams.

25 To talk about whether or not the percentages in there

1 would want to see those reports, would want to verify numbers,
2 would want to see that it had been audited, look at the balance
3 sheet.

4 What investor in a hedge fund would be willing to spend
5 \$250,000 of their retirement fund without a little checking?
6 It was part of their due diligence. And that was the
7 understanding that Mr. Murray had with Mr. Eckel. There's
8 nothing to contradict that.

9 The only thing I heard Mr. Murray say was "I didn't want
10 them to be used for marketing tools." That's not the same as
11 saying he didn't think that they would be sent out by
12 Mr. Eckel. He did, and they were. Completely reasonably.

13 And Ms. Harris showed you an email where in fact
14 Mr. Murray knew that a potential investor was requesting those,
15 and was going to have them sent.

16 It is implausible -- well, it's not based on the evidence,
17 even, to say that Mr. Murray told Mr. Eckel not to send them
18 out, because that is not what he said. But it's implausible
19 that Mr. Murray would have even expected Mr. Eckel would not
20 send them out.

21 But either way, that also is not going to insulate
22 Mr. Murray from fraud here. He sent those fake audit reports
23 to Mr. Eckel. Of course, he knew full well that they were
24 going to be sent on to investors.

25 But Mr. Eckel believed those, too. He believed there was

1 an auditor. He believed there was someone checking on
 2 Mr. Murray's fund, and the assets in it.
 3 I also want to briefly talk about, really, the -- I mean,
 4 there were so many misstatements made to the investors for the
 5 investment fraud part of this case. There was the legal
 6 service provider, Val Hornstein, who had no idea his name was
 7 being used, was not the legal service provider.
 8 And remember what Mr. Murray said about that. And you can
 9 -- and it's an example of how incredible some of his testimony
 10 was. He said he thought that meant: "Who would I call if I
 11 needed some legal help." Well, that's not how any investor
 12 understood it. That's not the information they relied on. And
 13 that's not true.
 14 And you heard Mr. Hornstein talk about -- talk about how
 15 his name was being used without his permission. He was not the
 16 lawyer. He didn't review any documents. He didn't do Blue Sky
 17 compliance. That was a false representation. It was a lie.
 18 Then also, the other -- another big lie was the
 19 performance of MNT. Investors looked at that performance and
 20 relied on the information that was in those charts. The table.
 21 They thought it was a successful hedge fund.
 22 And, even Mr. Dressler doesn't dispute that, that
 23 investors are going look at what the fund does. Past
 24 performance is going to be critical. It helps you see how good
 25 a manager this person really is.

1 The lie Mr. Murray told was that the fund had always been
 2 successful, when in fact, in 2009, it had a catastrophic loss.
 3 And he hid that from investors.
 4 I want to talk a minute about that because the argument is
 5 from the defense that the CCS Financial information that you
 6 heard Tina Moran talk about was -- maybe it was accurate. But
 7 it was only a small part of Mr. Murray's fund.
 8 That's not true. When Mr. Murray said that, on the stand,
 9 to you, that wasn't true. We know that for a couple reasons.
 10 One, when Mr. Murray was asked about CCS Financial, and asked
 11 by the SEC in 2011 who his administrator was in 2009, --
 12 (Document displayed)
 13 -- he said:
 14 "Well, in 2008 it was CCS Financial, the
 15 administrator."
 16 Sorry, I'll get to that in a second.
 17 Here's where he was asked:
 18 "In 2009, who was your administrator?"
 19 And he said:
 20 "CCS Financial."
 21 He didn't say "for a separately-managed part of the fund."
 22 He didn't say "for a small part of the fund." He didn't say
 23 "for some investors." He said "CCS Financial."
 24 (Document displayed)
 25 MR. FARNHAM: He was asked more questions about it.

1 He was asked who sent quarterly statements out to the investors
 2 for MNT. He said:
 3 "Well, in 2008 it was CCS Financial, the
 4 administrator."
 5 He didn't say "a small part of the fund, some investors."
 6 Because CCS Financial records relate to Market Neutral Trading,
 7 the fund. And when that -- when those records show 94 percent
 8 loss in 2009, that's what happened to the fund.
 9 (Document displayed)
 10 MR. FARNHAM: Investors were told that in 2009, the
 11 fund made money. And in fact, the fund lost 94 percent of its
 12 value.
 13 (Document taken off display)
 14 MR. FARNHAM: Another argument raised by the defense
 15 with regard to the investment fraud is that the money -- there
 16 is no evidence that the money was lost.
 17 Well, that's not part of the case here. That's not
 18 relevant to your determination about whether he defrauded
 19 investors. They gave him real money, their retirement money.
 20 And they gave that to him, based on lies. And that's enough
 21 for wire fraud.
 22 They gave him money or property with false -- based on
 23 false representations. Those statements were material. As
 24 material as they can get. The performance of the fund, who the
 25 manager is, who the auditor is, who its service providers are.

1 Who's checking on it. There's no question that those lies were
 2 material. And there's no question that Mr. Murray knew they
 3 were false. The evidence is overwhelming on that. Many of
 4 them he admitted; many of them he can't wiggle out of.
 5 But, let's address that contention that the money is all
 6 there. The only reason the money is there is the Government
 7 seized some of it in May of 2012. But the money was not all
 8 there in May of 2012.
 9 You saw from Mr. Villanueva's testimony --
 10 (Document displayed)
 11 MR. FARNHAM: -- about the contributions into Market
 12 Neutral Trading from the time period of -- I think this is the
 13 end of 2011 -- I'm sorry. January 26, 2011, to February 27,
 14 2012. This is what investors put into the fund.
 15 Now, if you include Corinna Seibt, if you believe
 16 Mr. Murray, and her money was still there, it would be about
 17 two and a half million dollars. The amount that was seized, of
 18 course, by the Government in May of 2012 was about
 19 \$1.8 million. The money was not all there.
 20 And again, that's not the point. Mr. Murray could do
 21 whatever he wanted with the money, he says. In fact, he did.
 22 He transferred it to a new Cayman entity, without telling any
 23 of the investors that. His testimony on that was "I could do
 24 whatever I wanted."
 25 That shows the significance of this fraud. Those

1 investors put their money, their retirement money, under his
 2 control, based on false pretenses. If there's any money there,
 3 it's not because of Mr. Murray.
 4 (Document taken off display)
 5 MR. FARNHAM: And then, don't forget the evidence and
 6 testimony. Each of the investors you heard from -- Corinna
 7 Seibt, Mr. Gibson, Mr. Russell, John Pernell, Nathan Gorin --
 8 they have never received any money back.
 9 Now, if there is any doubt -- which I don't believe there
 10 is -- about whether or not Mr. Murray knew about the
 11 misrepresentations for the fund, misrepresentations that were
 12 going to investors, he reviewed and approved the information
 13 that Mr. Eckel sent out.
 14 (Document displayed)
 15 MR. FARNHAM: Here's an email from Mr. Murray to
 16 Mr. Eckel. October, 2010. It's about when their relationship
 17 started. Mr. Eckel was marketing the fund.
 18 And, it's about a presentation. "New presentation" is the
 19 subject. And Mr. Murray writes (As read):
 20 "For the MNT presentation there are some
 21 typos." (sic)
 22 A sentence that starts with "And." Some minor changes.
 23 "All else looks good."
 24 All the misstatements, all the fraudulent representations,
 25 all the lies, the performance, his background, the service

1 providers, the audits, he knew they were going to investors.
 2 He knew Mr. Eckel was going to send them out. He approved
 3 them.
 4 "All else looks good."
 5 (Document taken off display)
 6 MR. FARNHAM: Now, I have talked about the evidence
 7 tying Mr. Murray to those fake audit reports, those actual
 8 documents. Independent audit reports purportedly provided by
 9 Jones Moore & Associates, the fake entity.
 10 Mr. Murray has told you some incredible things about some
 11 of the Jones Moore & Associates -- what he claims are Jones
 12 Moore & Associates' other people. There's a Richard Jones.
 13 Someone who is not in the United States, apparently. Someone
 14 he met on a boat in Monaco, for the only -- the only time he's
 15 ever met him, he says. Mr. Murray said he had a conference
 16 call with someone named Eve Nelson.
 17 Now, how do we know that that's not true? You heard
 18 testimony from, for example, Mr. Pernell, who was the investor
 19 who invested in January of 2011. And then he was preparing to
 20 make an additional investment, and he came to meet Mr. Murray
 21 in San Francisco in 2012. And he was prepared to make an
 22 additional investment if he met the manager in person, and did
 23 a little more due diligence. And he testified about that.
 24 When he came for that meeting, Mr. Murray didn't show up. He
 25 found out later that he had been arrested.

1 So at this time, Mr. Murray had been arrested. And
 2 Mr. Pernell wanted to find out what was going on. He tried to
 3 contact the administrator and Eve Nelson. He tried to contact
 4 Richard Jones, the contact for the Jones Moore & Associates.
 5 And what happened? He testified he never heard anything back.
 6 He called them and he emailed, and no response.
 7 If these were real people working at a real firm, or real
 8 companies, why didn't Mr. Pernell ever hear back from them?
 9 I want to talk about the Oppenheimer fraud for a minute.
 10 Mr. Dressler mentioned smoke and mirrors, so let's do that.
 11 Let's simplify this. Let's get to the core of what that fraud
 12 was and the Government's evidence on that. And I think it's
 13 pretty clear.
 14 So on February 2012 Mr. Murray applied for an account. He
 15 wanted to get an account opened in the name of MNT Master Fund.
 16 He told Mr. Moskowitz. He told Oppenheimer. He told Melanie
 17 Perricone that he had \$5 million in assets to invest; that
 18 Market -- I'm sorry, that MNT Master Fund had \$5 million of net
 19 worth and assets available to invest. That's what he said.
 20 There is no dispute about that. He told them that.
 21 He told them it was from investments. And how everyone
 22 understood that at Oppenheimer, was that MNT Master Fund had
 23 \$5 million to invest. Didn't have to be in the Oppenheimer
 24 account, but that entity had to have it.
 25 And we've proven beyond a reasonable doubt that that

1 wasn't true. MNT Master Fund didn't have \$5 million to invest.
 2 If it had anything in February, it had what had been wired
 3 through a Cayman entity to an MNT Master Fund account at
 4 Interactive Brokers. That was never more than \$2.6 million.
 5 You heard Ms. Harris talk about that. And you heard the
 6 witnesses talk about that. You heard Mr. Villanueva, who
 7 traced all the money, talk about that.
 8 You also heard Mr. Murray say that that's all the investor
 9 money that existed at that time and it was all in that account
 10 at Interactive Brokers. He admitted there was no other money
 11 than what was in that Interactive Brokers account in the name
 12 of MNT Master Fund as of February, 2012.
 13 So the 5 million wasn't true. We know that. But then it
 14 got worse because in the interim, while the account was still
 15 being processed to be authorized for trading, Mr. Murray was
 16 arrested. He was charged by the SEC and, most significantly,
 17 for that Assets Available to Trade number, all of that MNT
 18 Master Fund account at Interactive Brokers were seized. So
 19 that amount went to zero.
 20 He didn't tell that to Oppenheimer, of course. Instead,
 21 he placed a trade in July. And that's when the fraud was
 22 complete. He lied to Oppenheimer about the assets he had
 23 available under the MNT Master Fund entity. He didn't tell
 24 them that those assets, that even were less than 5 million,
 25 were now gone after they were seized in May of 2012. And he

1 placed a \$3.5 million trade that went through only because --
 2 and you heard that from Mr. Moskowitz and Mr. Benedetto, that
 3 trade, the Netflix short sale trade -- you've heard a lot about
 4 that, I won't go more into that, but that was \$3.5 million
 5 worth of stock -- went through because Oppenheimer believed he
 6 had \$5 million available to invest. He had \$5 million in
 7 assets. And it wasn't true.

8 Of course, you heard the harm to Oppenheimer is their
 9 capital at risk. It doesn't matter if it was all of it. We're
 10 not required to prove how much. We're not required to prove a
 11 loss. It was a profitable trade. Oppenheimer ultimately
 12 didn't lose money, but they could have. Their money was at
 13 risk. That's fraud. When you lie to get someone else to put
 14 something of value up for you, give something of value to you,
 15 that's money or property, that's fraud.

16 So that's the evidence that the Government has presented
 17 to prove beyond a reasonable doubt that that representation was
 18 false.

19 Now -- now, we have a story that purports to make it all
 20 okay. We have a story that there was a benefactor who,
 21 although never gave any money, had promised something early on
 22 to Mr. Murray, had made an oral promise to back up the trades.

23 First of all, that's not enough. That's not what
 24 Oppenheimer was asking about. They wanted assets available to
 25 trade. But this is the defense; that there was an oral

1 agreement for Gianluca de Francisci to pay some money to back
 2 up the trade, to settle a trade.

3 Other than Mr. Murray's testimony here, there is almost
 4 nothing corroborating that. In fact, the evidence refutes it
 5 and indicates, really, that that agreement didn't exist. And
 6 that evidence, I'll just list some of that.

7 First of all, it was an oral agreement, he says. That's
 8 implausible in this industry. Who would orally promise
 9 \$5 million to a person that they had just met in person in
 10 December. That's Mr. Murray's testimony, remember. Who would
 11 orally promise \$5 million to someone they just met without a
 12 written contract, without any backup, without any backstops,
 13 without any due diligence. That's implausible. But that's the
 14 story you're expected to believe.

15 Second piece of evidence refuting that is that, in fact,
 16 the balance on that MNT Master Fund account at Oppenheimer, the
 17 one we have been talking about, was zero. Gianluca
 18 de Francisci didn't put any actual money in. You would expect
 19 that if he was going to invest in this fund, MNT Master Fund,
 20 he would put the money in and make everybody's lives easier.
 21 But no. Zero money. Zero dollars in that account when the
 22 trade was executed, because there was no agreement.

23 And then further corroborating it, after the trade was
 24 placed -- excuse me. Further refuting that there was no
 25 agreement, after the trade was placed -- first of all, that's

1 the first time there is any evidence at Oppenheimer, that
 2 anyone at Oppenheimer had heard of that agreement. And that's
 3 only because on the third day Mr. Murray asked Oppenheimer to
 4 get that money from Mr. de Francisci, so they sent an email
 5 requesting the wire. Well, Mr. de Francisci didn't pay that.
 6 He didn't pay any money in.

7 You even heard Mr. Moskowitz talk about what Mr. Murray
 8 told him throughout that time period.

9 First, Mr. Murray told Mr. Moskowitz that: I think it's
 10 coming in, but it's an international wire and it takes a few
 11 days.

12 Then Mr. Moskowitz said Mr. Murray told him: Well, the
 13 international investor has his money tied up and so he can't --
 14 he can't pay for this trade. He can't pay the settlement
 15 amount.

16 Then Mr. Murray admitted to Mr. Moskowitz that this
 17 international investor, this person he claims was going to back
 18 up his trade, wasn't going to send the money in at all because
 19 he didn't want to give assets to Mr. Murray and he didn't think
 20 that money would come back. That's probably the most accurate
 21 statement of Mr. de Francisci's state of mind we have. He was
 22 never going to send that money in. He was never going to get
 23 money -- never going to put money under Mr. Murray's control.

24 All of those of things that happened, all of the
 25 interactions with Mr. de Francisci afterwards show he had never

1 promised to give Mr. Murray \$5 million. And that's really the
 2 only defense to this. It's an uncorroborated testimony of
 3 Mr. Murray that there was an oral agreement at some point
 4 reached with Mr. de Francisci in Monaco with no written
 5 agreement, no real assets, no money that came in, no
 6 subscription agreement like you would expect with a real
 7 investment, no documentation. That's what we have.

8 You take that away, the incredible part of the story, and
 9 your left with the misstatements to Oppenheimer. MNT Master
 10 Fund has \$5 million assets available to invest. MNT Master
 11 Fund is good for the losses on this trade. MNT Master Fund has
 12 the money. And it didn't.

13 That's the fraud on Oppenheimer. And there is no doubt
 14 that it meets the elements of wire fraud because that's exactly
 15 the -- the money that Mr. Murray obtained was, in part, the
 16 risk Oppenheimer put out when they made the trade, that short
 17 sale trade. Remember, Oppenheimer had to borrow those shares
 18 and they had to pay for those shares when they borrowed them
 19 before they could sell them short. Three and a half million
 20 dollars Oppenheimer actually paid. That's money out of their
 21 pocket. Mr. Murray got the benefit of that by being able to
 22 make the short trade. They were defrauded.

23 Now, further evidence that this oral agreement wouldn't
 24 have made any sense. You heard from Mr. Greenberg.
 25 Mr. Dressler doesn't like that testimony, obviously. Mr.

1 Greenberg thought that none of this made any sense. He
 2 didn't -- he wasn't able to talk to that foreign investor that
 3 Mr. Murray -- he wasn't even told the name of that foreign
 4 investor. Mr. Murray was not willing to come clean to Mr.
 5 Greenberg about this because there was no agreement with Mr.
 6 De Francisci.

7 Mr. Greenberg acted more appropriately. He wanted a
 8 written agreement. He wanted assurances. He wanted some power
 9 of attorney and a guarantee. That's how someone in the finance
 10 industry is going to deal with a situation like that. That's
 11 why it's not plausible that Mr. de Francisci had put up any
 12 money.

13 Mr. Benedetto, of course, found it all implausible, too.
 14 He thought everything he saw indicated that the money wasn't
 15 there. He said no one reneges on a profitable trade.

16 If there had been any sort of agreement between Mr.
 17 de Francisci and Mr. Murray, Mr. de Francisci would have paid
 18 the money in to settle that trade and get the profits out. But
 19 he didn't because he was wary. He was wary then. He was wary
 20 before. There was no agreement.

21 I want to talk about the fraud on Interactive Brokers.
 22 Now, a couple things the defense has to say about this. If you
 23 remember, this is the count -- let me see which count this is.
 24 Count 12. Wire fraud, Count 12. It's also the basis of the
 25 aggravated identity theft for Count 22 because it uses

1 But the overall -- the overall reason he did that, that
 2 Mr. Murray lied on that account, was in order to hide his
 3 involvement, because otherwise it would not have been opened.

4 And when you open that account and he's the authorized
 5 trader, he had access. We heard that on the call. He's
 6 getting something from Interactive Brokers. He's getting the
 7 ability to trade.

8 Interactive Brokers, the reason Mr. Murray was red-flagged
 9 is that he was a risk. They would not have allowed him to open
 10 an account. And there is a reason for that. They would have
 11 been put at risk. So when he lied about it, when he covered up
 12 his involvement, he was putting them at risk. He was getting
 13 something of benefit. He was going to be trading, he thought.
 14 He was going to be getting their services. He was going to be
 15 getting their low commission rates because they are an online
 16 broker. He was going to be getting money and property from
 17 Interactive Brokers through fraud.

18 And, of course, you can see his intent to hide his
 19 involvement. I mean, of course, it wouldn't have been opened
 20 if they had any clue that he was involved. In fact, in the
 21 fake bank statement you'll be able to compare the two. You
 22 know, he deleted any reference to his name even when he didn't
 23 have to because he was hiding his involvement. I don't think
 24 there is any question about that.

25 And then was that identity theft? I don't think there is

1 Mr. Giovanni de Francisci's name and identifying information.
 2 But there's an argument that there was no intent to
 3 defraud here; that this was just a division of labor. You
 4 heard Mr. Murray call it housekeeping. And if that's how
 5 easily Mr. Murray is able to -- how he's able to describe
 6 making a false bank statement, falsifying a document,
 7 submitting it to a financial institution, and he's able to call
 8 it housekeeping, well, let's just say it's consistent with all
 9 the other things you've seen in this case. With how easily
 10 Mr. Murray traffics in documents in other people's names, fake
 11 identities, credit cards opened in his wife's name, his
 12 father's name, other people's names. He calls it housekeeping
 13 because, I guess, it's so easy it's not a big deal for him.
 14 But the defense there is he didn't mean to do anything wrong.

15 And then the defense argues that Interactive Brokers
 16 wasn't defrauded out of anything. Well, that's not true. This
 17 was a false statement, misrepresentation made to Interactive
 18 Brokers.

19 Mr. Murray filled out that entire application himself.
 20 He's admitted that. He submitted that online. He said his
 21 name was Giovanni de Francisci. He lied about the questions
 22 asking whether or not he has been convicted of a crime or sued
 23 by the SEC, even though he was an authorized trader on the
 24 account and even though if he had filled it out himself, he
 25 would have had to answer "Yes." Lies either way.

1 any question about that. You heard some interesting facts.
 2 You heard the phone call where Mr. Murray is giving the -- the
 3 account -- the passwords for the account. Like the security
 4 questions. And things like, first, Giovanni's name. He gives
 5 that. Then Jim Murray gives Giovanni's Social Security number.
 6 That's a means of identification. He knows that's not him.
 7 But then he gives his own -- his own place where he was married
 8 and the name of his first pet, Rosie.

9 It was Mr. Murray's intent that he would access that
 10 account. There is no evidence that Mr. de Francisci would know
 11 the name of Mr. Murray's first pet. That was for Mr. Murray to
 12 gain access to that account, to trade, to get the benefits of
 13 Interactive Brokers services. It was fraud, and it was
 14 identity theft.

15 Quickly on that, the aggravated identity theft charge.
 16 There is an element that -- that's done without lawful
 17 authority. And it is not lawful to submit an altered bank
 18 statement under any circumstances. That bank statement was not
 19 a Discover bank statement. It looked like it. Interactive
 20 Brokers thought it was. There is nothing lawful about that.
 21 It meets the elements of aggravated identity theft.

22 (Brief pause.)

23 Now, if you look at the big picture here and you see the
 24 pattern of lies that Mr. Murray has told to many people, to
 25 institutions, to Brandywine, to Paymentech, there's -- there's

1 not an institution he won't lie to. There's not a person's
 2 name -- even people close to him -- that he won't use their
 3 identity; that he won't open accounts in their name, use their
 4 IDs. Frauds big and large -- big and small. From \$550,000
 5 from Chase Paymentech to two and a half million dollars from
 6 investors who thought they were investing in a successful hedge
 7 fund.
 8 Another thing that we saw in the case that just shows what
 9 Mr. Murray is willing to do.
 10 (Photos displayed)
 11 These were the pictures from the ATM in Oakland where
 12 Mr. Murray took out more than \$10,000 on cards in someone
 13 else's name. Who does that? Over and over. One every few
 14 minutes. Taking out handfuls of money from a credit card in
 15 the name of David Lowe.
 16 This was all part of the con, the scams to get money. And
 17 you heard Mr. Villanueva tie these cards to the ETrade
 18 accounts in David Lowe's name.
 19 Now, I want to talk briefly about David Lowe. You heard
 20 the deposition. I'm sure you thought it was pretty long, but
 21 it wasn't that long. There was more time to ask questions.
 22 Mr. Dressler was there. Mr. Murray was there on the phone.
 23 You heard that he could have conferred with his attorney at any
 24 time.
 25 There were some of the questions that David Lowe was asked

1 about his investment with his -- his -- the agreement that he
 2 did sign early on about a potential investment in Market
 3 Neutral Trading that never happened. Mr. Lowe talked about
 4 that. He remembered that.
 5 Mr. Lowe was never asked about conference calls with
 6 various people, setting up -- in order to set up a complicated
 7 scam in the United States involving fake entities, fake
 8 accounting firms. He was never asked about that.
 9 He was never asked about meeting on a boat in Monaco with
 10 someone named Richard Jones. That's because that didn't
 11 happen.
 12 David Lowe had been convicted of a felony in England. But
 13 the Government didn't pick Mr. Lowe. Mr. Murray picked Mr.
 14 Lowe. He picked Mr. Lowe and his passport, which he acquired
 15 to open all these accounts. If Mr. Murray had some problem
 16 with Mr. Lowe's credibility, maybe he had that problem when he
 17 picked him to be a victim of the identity theft.
 18 When you look at the pattern of opening all these accounts
 19 in Mr. Lowe's name over and over, of using Mr. Lowe as the name
 20 on the Chase Paymentech application. Using his name on ETrade
 21 accounts, brokerage accounts. Using his name on the H.F.
 22 Administrators account that Mr. Murray has admitted he set up.
 23 Using Mr. Lowe's name on the Jones Moore bank accounts that
 24 James Murray admitted he set up. I think the evidence is clear
 25 that David Lowe's identity was used by Jim Murray to perpetrate

1 this scam, this scheme to defraud.
 2 Uncorroborated statements from Mr. Murray on the stand
 3 that no one else can verify. You can't believe those.
 4 You can believe the evidence. You can believe the
 5 pattern. You can use that evidence to understand what he was
 6 doing. You can understand that Mr. Murray was lying to lots of
 7 people. And you can understand that he meant to and that he
 8 knew what he was doing was false and wrong.
 9 I'm just about finished and when I am and I sit down, the
 10 case will be out of our hands and in yours. We're confident
 11 that you will be able to sort through the evidence because I
 12 think you have everything you need to convict Mr. Murray on
 13 every count.
 14 You have heard overwhelming evidence that would prove
 15 Mr. Murray committed these crimes beyond a reasonable doubt.
 16 It's the pattern. It's the severity of the lies. In some
 17 cases it's who he told them to. His friend Corinna Zeibt.
 18 Investors in his fund, who deserved to know the truth before
 19 they put the money in. Even his own wife. Even his parents.
 20 You have the evidence you need to see the scope of the
 21 deception, the cheating. Mr. Murray is a thief. He's a
 22 con man. And this case, where the conduct occurred over, years
 23 shows that. The fake resume. False audit reports. Fake audit
 24 entity. The tricks even after he had been investigated,
 25 arrested, charged to get one more trade through to Oppenheimer.

1 I could go on, but I'll stop. You have the evidence you
 2 need to convict Mr. Murray of all these crimes.
 3 Just a moment.
 4 (Discussion held off the record between Government
 5 counsel.)
 6 MR. FARNHAM: I think I've addressed everything. I
 7 want to thank you for your attention. I ask you to find
 8 Mr. Murray for what he is, a thief that uses sophisticated
 9 means, credit cards, investments. He plays in a hedge fund
 10 world, but he's the same as a common thief, because he lies and
 11 he cheats. Gets people's money and he does whatever he wants
 12 with it.
 13 Thank you very much.
 14 THE COURT: All right. Thank you, Mr. Farnham.
 15 **FINAL JURY INSTRUCTIONS**
 16 THE COURT: Ladies and gentlemen, let me give you
 17 have some final instructions.
 18 First of all, on the Duty to Deliberate. When you begin
 19 your deliberations elect one member of the jury as your
 20 foreperson who will preside over the deliberations and speak
 21 for you here in court. You'll then discuss the case with your
 22 fellow jurors to reach agreement, if you can do so.
 23 Your verdict, whether guilty or not guilty, must be
 24 unanimous. Each of you must decide the case for yourself, but
 25 you should do so only after you have considered all the

1 evidence, discussed it fully with the other jurors and listened
 2 to the views of your fellow jurors. Do not be afraid to change
 3 your opinion if the discussion persuades you that you should,
 4 but do not come to a decision simply because other jurors think
 5 it is right.
 6 It is important that you attempt to reach a unanimous
 7 verdict, but, of course, only if each of you do so after
 8 having made your own conscientious decision. Do not change an
 9 honest belief about the weight and effect of the evidence
 10 simply to reach a verdict.
 11 Consideration of Evidence - Conduct of the Jury. Because
 12 you must base your verdict only on the evidence received in the
 13 case and on these instructions, I remind you that you must not
 14 be exposed to any other information about the case or to the
 15 issues it involves.
 16 Except for discussing the case with your fellow jurors
 17 during your deliberation:
 18 Do not communicate with anyone in any way and do not let
 19 anyone else communicate with you in any way about the merits of
 20 the case or anything to do with it. This includes discussing
 21 the case in person, in writing, by phone or electronic means
 22 via email, text messaging or any -- any internet chat room,
 23 blog, website or other feature. This applies to communications
 24 with your family members, your employer, the media or press,
 25 and the people involved in the trial. If you are asked or

1 approached in any way about your jury service or anything about
 2 this case, you must respond that you have been ordered not to
 3 discuss the matter and to report the contact to the Court.
 4 Do not read, watch or listen to any news or media accounts
 5 or commentary about the case or anything to do with it. Do not
 6 do any research, such as consulting dictionaries, searching the
 7 internet or using other reference materials and do not make any
 8 investigation or in any other way try to learn about the case
 9 on your own.
 10 The law requires these restrictions to ensure the parties
 11 have a fair trial based on the same evidence that each party
 12 has had an opportunity to address. A juror who violates these
 13 restrictions jeopardizes the fairness of these proceedings and
 14 a mistrial could result that would require the entire trial
 15 process to start over. If any juror is exposed to any outside
 16 information, please notify the Court immediately.
 17 Useful Notes. Some of you have taken notes during the
 18 trial. Whether or not you took notes, you should rely on your
 19 own memory of what was said. Notes are only to assist your
 20 memory. You should not be overly influenced by your notes or
 21 those of your fellow jurors.
 22 Jury Consideration of Punishment. The punishment provided
 23 by law for this crime is for the Court to decide. You may not
 24 consider punishment in deciding whether the Government has
 25 proved its case against the defendant beyond a reasonable

1 doubt.
 2 Verdict Form. A verdict form has been prepared for you.
 3 After you have reached a unanimous agreement on a verdict, your
 4 foreperson should complete the verdict form according to your
 5 deliberations, sign and date it, and advise the Courtroom
 6 Deputy that you are ready to return to the courtroom.
 7 And as I've indicated earlier, with that verdict form we
 8 also have something called a Summary of Charged Counts that
 9 briefly summarizes each of the 23 counts. That summary is not
 10 evidence. It is only intended to be useful for you as a guide
 11 in going through the verdict form.
 12 Communication with the Court. If it becomes necessary
 13 during your deliberations to communicate with me, you may send
 14 a note through the Courtroom Deputy signed by any one or more
 15 of you. No member of the jury should ever attempt to
 16 communicate with me except by a signed writing, and I will
 17 respond to the jury concerning the case only in writing or here
 18 in open court.
 19 If you send out a question, I will consult with the
 20 lawyers before answering it, which may take some time. You may
 21 continue your deliberations while waiting for the answer to any
 22 question. Remember, that you are not to tell anyone, including
 23 me, how the jury stands, numerically or otherwise, on any
 24 question submitted to you, including the question of the guilt
 25 of the defendant, until after you have reached a unanimous

1 verdict or have been discharged.
 2 So with that, I will -- as I've indicated before, you will
 3 receive a copy of these written instructions. You will receive
 4 a copy of the verdict form, together with the Summary of
 5 Charged Counts.
 6 I believe we also have a photo album. We have been taking
 7 pictures, as you've noticed, of each of the witnesses to try
 8 and help you remember who the witnesses are. I think that's
 9 available.
 10 Right?
 11 THE CLERK: Yes.
 12 THE COURT: And so I'm going to direct the 12 jurors
 13 to the jury room.
 14 One thing you'll have to decide is, if you let us know,
 15 when you can, how long you plan to stay today, whether you're
 16 going to stay through the afternoon or adjourn and come back on
 17 Tuesday. There is a holiday on Monday, Federal holiday.
 18 With respect to the alternate jurors, the four of you, at
 19 this point you will not be participating in the deliberation,
 20 but we ask that you be on standby. As I mentioned, you don't
 21 have to be here in the courthouse, but if we make sure that we
 22 have your numbers to contact you if and when the need arises.
 23 So when you go retrieve your belongings in the jury room,
 24 I ask all of you not to commence any deliberations until it's
 25 just the 12 jurors and the alternates have excused themselves.

1 Because there is a chance that we may or may not see you
 2 again, the four jurors, alternate jurors, let me, in advance,
 3 thank you for your time, your consideration, your attention.
 4 And as I said at the outset, it's necessary to have alternate
 5 jurors because of the importance of these cases, that we cannot
 6 go forward if we don't have the requisite number of jurors and
 7 there are times when jurors have to be excused. And, again,
 8 throughout the course of deliberations until completion, we do
 9 ask you to be on standby. But thank you for your service.
 10 So with that, Tracy is going to show you to the jury room.
 11 (Jury exits courtroom at 2:09 p.m.)
 12 THE COURT: Okay. I assume that all the exhibits
 13 are -- the ones that are -- that have been admitted are all in
 14 order and ready to be received by the jury?
 15 MR. DRESSLER: I believe so, your Honor.
 16 THE COURT: Okay.
 17 MR. FARNHAM: (Nodding affirmatively.)
 18 THE COURT: Okay. I suggest we wait around a bit,
 19 see what the jury's plan is in terms of the rest of the day.
 20 Give us a cue.
 21 While they are deliberating, I'm going to ask that
 22 everybody stay within a 10-minute radius of the courthouse. In
 23 case questions or things arise we don't want to have too much a
 24 delay. All right?
 25 All right. Thank you, everyone. This is a hard-fought

1 case and I think the jury has been quite attentive, so let's
 2 see where we're going on this.
 3 Thank you.
 4 (Whereupon at 2:10 p.m. further proceedings were
 5 adjourned pending jury verdict.)
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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from
 the record of proceedings in the above-entitled matter.

_____/s/ Debra Pas_____

Debra L. Pas, CSR 11916, CRR, RMR, RPR

_____/s/ Belle Ball_____

Friday, October 9, 2015

1 in violation of 18 U.S.C. Section 1343, as charged in Count 12
 2 of the indictment? Yes.

3 Count 13: Has the Government proven beyond a reasonable
 4 doubt that the defendant James Murray is guilty of wire fraud
 5 in violation of 18 U.S.C. Section 1343, as charged in Count 13
 6 of the indictment? Yes.

7 Count 14: Has the Government proven beyond a reasonable
 8 doubt that the defendant James Murray is guilty of wire fraud
 9 in violation of 18 U.S.C. Section 1343, as charged in Count 14
 10 of the indictment? Yes.

11 Count 15: Has the Government proven beyond a reasonable
 12 doubt that the defendant James Murray is guilty of wire fraud
 13 in violation of 18 U.S.C. Section 1343, as charged in Count 15
 14 of the indictment? Yes.

15 Count 16: Has the Government proven beyond a reasonable
 16 doubt that the defendant James Murray is guilty of wire fraud
 17 in violation of 18 U.S.C. Section 1343, as charged in Count 16
 18 of the indictment? Yes.

19 Count 17: Has the Government proven beyond a reasonable
 20 doubt that the defendant James Murray is guilty of engaging in
 21 monetary transactions in criminally derived property, in
 22 violation of 18 U.S.C. Section 1957, as charged in Count 17 of
 23 the indictment? Yes.

24 Count 18: Has the Government proven beyond a reasonable
 25 doubt that the defendant James Murray is guilty of engaging in

1 monetary transactions in criminally derived property, in
 2 violation of 18 U.S.C. Section 1957, as charged in Count 18 of
 3 the indictment? Yes.

4 Count 19: Has the Government proven beyond a reasonable
 5 doubt that the defendant James Murray is guilty of engaging in
 6 monetary transactions in criminally derived property, in
 7 violation of 18 U.S.C. Section 1957, as charged in Count 19 of
 8 the indictment? Yes.

9 Count 20: Has the Government proven beyond a reasonable
 10 doubt that the defendant James Murray is guilty of engaging in
 11 monetary transactions in criminally derived property, in
 12 violation of 18 U.S.C. Section 1957, as charged in Count 20 of
 13 the indictment? Yes.

14 Count 21: Has the Government proven beyond a reasonable
 15 doubt that the defendant James Murray is guilty of aggravated
 16 identity theft, in violation of 18 U.S.C. Section 1028A(a)(1),
 17 as charged in Count 21 of the indictment? Yes.

18 Count 22: Has the Government proven beyond a reasonable
 19 doubt that the defendant James Murray is guilty of aggravated
 20 identity theft in violation of 18 U.S.C. Section 1028A(a)(1),
 21 as charged in Count 22 of the indictment? Yes.

22 Count 23: Has the Government proven beyond a reasonable
 23 doubt that the defendant James Murray is guilty of contempt of
 24 court, in violation of 18 U.S.C. Section 401(3), as charged in
 25 Count 23 of the indictment? Yes.

1 Dated October 13th, 2015 signed by Brigitte DeLeon,
 2 Foreperson.

3 THE COURT: All right. Ms. DeLeon, is that, in fact,
 4 the unanimous verdict of the jury on all counts?

5 FOREPERSON DE LEON: It is.

6 THE COURT: All right. Thank you.

7 Request to poll the jury?

8 MR. DRESSLER: No, your Honor.

9 THE COURT: All right. Then the verdicts will be
 10 recorded on each of the counts.

11 That will conclude your jury service, ladies and gentlemen
 12 and we will discharge you at this time, but I do so with the
 13 thanks on behalf of the parties, as well as the Court, for your
 14 dedication of the last three-plus weeks, a fairly lengthy
 15 trial. I know it's taken a fair amount of your time.

16 But as I stated at the outset, our system of justice
 17 really depends, as you've now lived through this, on this
 18 process in having members of the community serve in their
 19 capacity as jurors.

20 And you have been attentive throughout this whole process.
 21 I'm sure I speak on behalf of the parties, that we appreciate
 22 your devotion and attentiveness during this process. I know
 23 it's fairly lengthy and a lot of transactions and a lot of
 24 things that you had to follow, but we appreciate your hanging
 25 in there and rendering the service that you have.

1 So let me say a word about confidentiality. Obviously,
 2 now that this case is over, you are free to speak with anyone
 3 you wish about the case. However, if you are -- by the same
 4 token, you are under no obligation to speak with anyone about
 5 the case, and that is up to you.

6 If you do speak to somebody about the case, I would please
 7 ask you to keep in mind that -- that you remember that what
 8 people have said in the jury room was said to you with an
 9 expectation of confidence and that you would respect that
 10 confidence and privacy. If you're asked about your own views,
 11 perhaps that's one thing, but to disclose communications what
 12 others have said, I think it would be a compromise of that sort
 13 of privacy and confidentiality that I think everybody expected.

14 I do not prohibit the jurors from talking with the
 15 attorneys after the case. Sometimes it's useful to the
 16 attorneys to know whether there is something they did or the
 17 way they conducted themselves that might be useful to learn, as
 18 a learning tool in the future how they might improve or what
 19 they did well or not so well. But you are under no obligation
 20 to speak with the attorneys.

21 And so my practice is to excuse you back to the jury room.
 22 It is also my practice to meet with you briefly myself, again
 23 to thank you, but also to see if you have any comments to the
 24 Court about how we might improve things and how -- if you have
 25 any thoughts about how we could make the process more

1 effective, more efficient, et cetera, et cetera, and give any
2 feedback you might have.

3 And then if you want to, those of you who might want to
4 talk to the attorneys, if they are still here, you're free to
5 do so. If not, then you also can leave. I leave that up to
6 you.

7 So with that, Tracy, if you could show the jurors back to
8 the jury room? I'm just going to talk to the attorneys very
9 quickly.

10 (Jury exits the courtroom at 11:07 a.m.)

11 THE COURT: Okay. So we should set some further
12 dates in this matter. I know you have a motion pending, Rule
13 29 motion that I have deferred. So we need to figure out a
14 briefing time for that.

15 So I can't remember now, Mr. Dressler. Did you file the
16 full motion yet?

17 MR. DRESSLER: I have not. What I would do is file
18 it and title it under A and B of Rule 29.

19 THE COURT: Okay. And when could -- do you want to
20 set a date when you think you can file that?

21 MR. DRESSLER: How about this Friday?

22 THE COURT: Okay. Friday is the --

23 MR. DRESSLER: 16th.

24 THE COURT: 16th. How long does the Government need
25 to respond?

1 MS. HARRIS: Your Honor, could we have until
2 November 6th?

3 THE COURT: All right. And then we'll hear the
4 matter, let's say, on the calendar the 18th.

5 MS. HARRIS: That would be fine, your Honor.

6 MR. DRESSLER: Let me double check.

7 THE COURT: Am I here, Tracy?

8 THE CLERK: Let me check, Judge.

9 (Brief pause.)

10 THE CLERK: Yes, you are.

11 MR. DRESSLER: 18th is fine.

12 THE COURT: All right. We'll set it for 2:30 on our
13 criminal calendar.

14 And then sentencing date?

15 THE CLERK: Your Honor, the sentencing date would be
16 January 20th.

17 THE COURT: Okay. January 20th, 2016 at 2:30.

18 Any issues as to Mr. Murray's custodial status pending
19 sentencing?

20 MR. DRESSLER: Not at this time, your Honor.

21 THE COURT: All right. Then Mr. Murray will remain
22 in custody pending sentencing in this matter.

23 MS. HARRIS: Thank you, your Honor.

24 THE COURT: All right. Anything -- any other dates
25 you need to set at this point?

1 MS. HARRIS: I don't think so.

2 MR. DRESSLER: No, your Honor.

3 THE COURT: So I will chat with the jurors and I
4 don't know if you're interested in sticking around, but I'll
5 instruct them that if any of them want to come out and talk to
6 you, they can come out.

7 MS. HARRIS: Should we wait here?

8 THE COURT: Yes. You should wait here.

9 (Discussion held off the record between the
10 Court and the Courtroom Deputy.)

11 THE COURT: The trial exhibits. Who is going to
12 take -- is the Government going to take those back? We'll
13 arrange to get them back.

14 MR. FARNHAM: We can do that.

15 THE CLERK: But they are to be returned. Okay.

16 MR. FARNHAM: Thank you, your Honor.

17 (Proceedings adjourned.)

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CERTIFICATE OF OFFICIAL REPORTER

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

_____/s/ Debra Pas_____
Debra L. Pas, CSR 11916, CRR, RMR, RPR
Tuesday, October 13, 2015

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. SF-03615-A
HOVAN CAPITAL MANAGEMENT, INC.)

WITNESS: James M. Murray

PAGES: 1 through 94

PLACE: Securities and Exchange Commission
44 Montgomery Street, Suite 2600
San Francisco, California

DATE: Wednesday, February 23, 2011

The above-entitled matter came on for hearing,
pursuant to notice, at 10:05 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:
 2
 3 On behalf of the Securities and Exchange Commission:
 4 KAREN KREUZKAMP, A.H.
 5 ROBERT S. LEACH, BRANCH CHIEF
 6 Division of Enforcement
 7 Securities and Exchange Commission
 8 44 Montgomery Street, Suite 2600
 9 San Francisco, CA 94104
 10 (415) 705-2502 (415) 705-2501 fax
 11 kreuzkampk@sec.gov
 12
 13
 14 On behalf of the Witness:
 15 JAY R. WEILL, ESQ.
 16 Sideman & Bancroft LLP
 17 One Embarcadero Center, Eighth Floor
 18 San Francisco, CA 94111
 19 (415) 392-1960 (415) 392-0827
 20 jweill@sideman.com
 21
 22
 23
 24
 25

1 PROCEEDINGS
 2 MS. KREUZKAMP: We are on the record at 10:05 a.m.,
 3 on February 23rd, 2011.
 4 Mr. Murray, if you could raise your right hand.
 5 Whereupon,
 6 JAMES MICHAEL MURRAY
 7 was called as a witness herein and, after having
 8 been first duly sworn, was examined and testified as follows:
 9 MS. KREUZKAMP: Please, state your full name and
 10 spell it, for the record?
 11 THE WITNESS: James Michael Murray, J-a-m-e-,
 12 Michael is M-i-c-h-a-e-l, Murray is M-u-r-r-a-y.
 13 MS. KREUZKAMP: Thank you. I'm Karen Kreuzkamp and
 14 this is Robert Leach. We are both officers of the Commission
 15 for purpose of this proceeding.
 16 This is an investigation by the United States
 17 Securities and Exchange Commission in the matter of Hovan
 18 Capital Management, LLC, to determine whether there have been
 19 violations of certain provisions of the Federal Securities
 20 Laws. However, the facts developed in this investigation
 21 might constitute violations of other federal or state civil
 22 or criminal laws.
 23 Prior to the opening of the record, you were
 24 provided with a copy of the Formal Order of Investigation in
 25 this matter. It will be available for your examination

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 14 34 E-mail string 42
 15 35 Bolton Research LLC document 50
 16 36 E-mails from Murray to Hovan 63
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 during the course of this proceeding.
 2 Mr. Murray, have you had an opportunity to review
 3 the Formal Order?
 4 THE WITNESS: Yes.
 5 MS. KREUZKAMP: Prior to the opening of the record,
 6 you were provided with a copy of the Commission's
 7 Supplemental Information Form. A copy of that notice has
 8 previously been marked Exhibit 1.
 9 Mr. Murray, have you had the opportunity to read
 10 Exhibit 1?
 11 THE WITNESS: Yes.
 12 MS. KREUZKAMP: Do you have any questions
 13 concerning this notice?
 14 THE WITNESS: No.
 15 MS. KREUZKAMP: Mr. Murray, are you represented by
 16 Counsel?
 17 THE WITNESS: Yes.
 18 MS. KREUZKAMP: Would Counsel, please, identify
 19 himself?
 20 MR. WEILL: My name is Jay Weill.
 21 MS. KREUZKAMP: And please, give your firm name,
 22 address and phone number?
 23 MR. WEILL: Sideman & Bancroft, One Embarcadero
 24 Center, San Francisco, Eighth Floor, (415) 733-3939.
 25 MS. KREUZKAMP: Mr. Weill, are you representing M

1 Q You don't recall where you maintain any securities
2 or brokerage accounts?
3 A No.
4 Q If you wanted to find out where you maintained
5 securities or brokerage accounts, where would you look or who
6 would you talk to?
7 A I'd look at some notes.
8 Q What notes?
9 A Notes that I have.
10 Q And where are those notes?
11 A On a notepad.
12 Q Are they in your office, at your house?
13 A They are on an iPad.
14 Q Okay. Do you know, approximately, how many firms
15 you maintain securities or brokerage accounts at?
16 A Less than 12.
17 Q Do you know the names of any of the firms at which
18 you maintain securities or brokerage accounts?
19 MR. WEILL: Now, you're talking about personal
20 accounts?
21 MS. KREUZKAMP: Personal accounts?
22 THE WITNESS: Yeah, I don't want to speculate.
23 BY MS. KREUZKAMP:
24 Q Sitting here today, can you name even one firm at
25 which you maintain a personal securities or a brokerage

1 account?
2 A TD Ameritrade.
3 Q Can you think of any others?
4 A Not currently.
5 Q What about Market Neutral Trading, where does
6 Market Neutral Trading maintain any securities or brokerage
7 accounts?
8 A My recollection is Interactive Brokers and TD
9 Ameritrade.
10 Q Are there others that you just can't recall,
11 sitting here today?
12 A That's -- those are the only two accounts. Those
13 are what I recall.
14 Q If you wanted to find out if Market Neutral Trading
15 maintained accounts at other brokerage firms, or securities
16 firms, where would you look or who would you talk to?
17 A I'd have to do some research.
18 Q And what would that research entail?
19 A Look at some notes.
20 Q Where are those notes?
21 A I'd have to -- I'd have to look around for them. I
22 believe they're on the iPad.
23 Q Do you personally maintain any foreign accounts?
24 A Not that I recall.
25 Q And if you wanted to find that out, you would look

1 at that same iPad?
2 A I'm not sure. I could look there, yes.
3 Q There are other places you would look to see if you
4 maintain any foreign accounts?
5 A Not that I recall right now.
6 Q Okay. Market Neutral Trading, does Market Neutral
7 Trading maintain any foreign accounts?
8 A No.
9 Q Where do you personally maintain bank accounts, and
10 that includes checking, savings, money markets, IRAs, that
11 sort of thing?
12 A TD Bank.
13 Q Anywhere else?
14 A Not that I recall.
15 Q Where does Market Neutral Trading maintain its bank
16 accounts?
17 A Barclay's, is what I recall.
18 Q Anywhere else?
19 A Not that I recall.
20 Q Where would you look to see if Market Neutral
21 Trading maintained bank accounts anywhere other than
22 Barclay's?
23 A Some notes.
24 Q And where are these notes?
25 A Possibly on my iPad?

1 Q Do you have account statements from banks, for
2 Market Neutral Trading?
3 A I've produced everything that I have.
4 Q I understand that. I'm just asking, do you have
5 bank account statements for bank accounts held in the name of
6 Market Neutral Trading?
7 A No, I don't.
8 Q Does anybody maintain bank account records for
9 Market Neutral Trading?
10 A The institution would.
11 Q Barclay's?
12 A Yes.
13 Q I guess let me ask a better question. Does anybody
14 at Market Neutral Trading maintain records of the bank
15 accounts for Market Neutral Trading?
16 A Well, they're at the bank. No, no one else.
17 Q Okay. Do you have a college degree?
18 A Yes.
19 Q And at what institution did you obtain that degree?
20 A University of Arizona.
21 Q And when was that?
22 A 1987 to '91.
23 Q What degree did you obtain there?
24 A B.S. Economics.
25 Q Did you take any securities related courses, while

1 at the University of Arizona?
 2 A Yes.
 3 Q Do you recall what those courses were?
 4 A No.
 5 Q After you had received your B.S. from the
 6 University of Arizona, did you obtain any other degrees?
 7 A No.
 8 Q Have you taken any business or securities related
 9 courses anywhere other than the University of Arizona?
 10 A No.
 11 Q Do you hold or have you ever held any professional
 12 licenses?
 13 A I held a Series 63, 65 and 7.
 14 Q "Held," past tense?
 15 A Yes, past tense.
 16 Q And why do you no longer hold those licenses?
 17 A I'm not engaged in that business.
 18 Q Have you ever been the subject of a disciplinary
 19 proceeding?
 20 A Yes.
 21 Q Tell me, when was that?
 22 A Back in 1998, a security that I was trading in lost
 23 over 70 percent of its value overnight. And I was suspended
 24 for six months.
 25 Q Why were you suspended?

1 A For over concentration, is my recollection.
 2 Q Who was the disciplinary proceeding in front of?
 3 A The New York Stock Exchange.
 4 Q After the six month suspension, did you go back to
 5 work in that capacity?
 6 A At the time I wasn't employed in that capacity.
 7 BY MR. LEACH:
 8 Q You mentioned that you gave testimony back in 2007
 9 or 2006, a deposition with the mother of one of your kids?
 10 A Yes.
 11 Q Were you married before getting married to Lisa?
 12 A I can't hear the question.
 13 Q Were you previously married?
 14 A Before -- before?
 15 MS. KREUZKAMP: Your current wife.
 16 THE WITNESS: Yes.
 17 BY MR. LEACH:
 18 Q And what was her name?
 19 A Her name? Dre.
 20 Q I'm sorry, could you spell that, please?
 21 A D-r-e.
 22 Q And how many kids did you have with Dre?
 23 A Two.
 24 Q Two. But they don't live with you anymore?
 25 A No.

1 Q Market Neutral Trading, that's an LLC?
 2 A Yes.
 3 Q Who are the members of -- who's the Managing Member
 4 of Market Neutral Trading?
 5 A I am.
 6 Q And who are the members?
 7 A I don't recall.
 8 Q Does it have any employees, besides you?
 9 A Not -- no.
 10 Q Has it ever?
 11 A Yes.
 12 Q Who?
 13 A Julie Leopold.
 14 Q What was Julie Leopold's role with Market Neutral
 15 Trading?
 16 A Assistant, Head of Operations.
 17 Q Any other employees?
 18 A Not that I recall.
 19 Q And you personally were the Managing Member, was
 20 there some other entity that you served as the Managing
 21 Member through?
 22 A No. I was the Managing Member.
 23 BY MS. KREUZKAMP:
 24 Q I'm going to come back to Market Neutral Trading,
 25 but before that, where do you work today?

1 A I'm the Managing Member of Market Neutral Trading.
 2 Q And how long have you been the Managing Member?
 3 A Since 2006.
 4 Q And what did you do prior to being the Managing
 5 Member of Market Neutral Trading?
 6 A I was with Pareto Capital.
 7 Q What's Pareto Capital?
 8 A An LLC.
 9 Q What does it do?
 10 A What does it do currently?
 11 Q Or when you were --
 12 A I was trading for them.
 13 Q Did you have a title?
 14 A CIO.
 15 Q Chief Investment Officer?
 16 A Yes.
 17 Q And how long were you at Pareto Capital?
 18 A 2002 to 2006.
 19 Q Who did you report to?
 20 A Tim Palm.
 21 Q Palm is P-a-l-m?
 22 A Yes.
 23 Q And what did you -- where did you work prior to
 24 Pareto Capital?
 25 A Murray Partners, Murray Asset Management.

1 Q And how long were you there?
 2 A From 2000 to 2002, approximately. That's my
 3 recollection.
 4 Q Did you have a title?
 5 A Managing Member.
 6 Q Was this your company?
 7 A Well --
 8 Q Are you the "Murray" in the Murray Partners and
 9 Murray Asset Management?
 10 A Yes.
 11 Q Okay. What kind of company was that?
 12 A It was a -- it was an investment fund.
 13 Q And what did you do prior to working at Murray
 14 Partners, so prior to 2000?
 15 A I was -- my recollection is I was with JW Genesis
 16 Capital.
 17 Q And how long were you there?
 18 A A couple of years, approximately.
 19 Q Starting maybe in 1998 to 2000?
 20 A It was after '99, or middle of '99.
 21 Q Until about 2000, is that about right?
 22 A I don't want to guess or speculate, but you're in
 23 the right decade.
 24 Q Okay. And what did you do at JW Genesis Capital?
 25 A Trader.

1 Q From the documents we have, it looks like Market
 2 Neutral Trading was started in 2006. Is that your -- is that
 3 consistent with your recollection?
 4 A Yes.
 5 Q And what were your reasons for starting Market
 6 Neutral Trading?
 7 A My reasons? That's kind of a vague question. What
 8 do you mean?
 9 Q Well, you left one firm to form your own. Why did
 10 you do that?
 11 A Because I wanted to form my own firm.
 12 Q How many funds are part of Market Neutral Trading?
 13 A What do you mean by "funds"?
 14 Q I guess even to backup further, I'm just trying to
 15 understand the structure. So, you have an LLC -- and this
 16 goes into some questions that Mr. Leach was asking
 17 earlier -- but I guess it's not uncommon to see an LLC as a
 18 general partner of a fund and then limited partners buy-in,
 19 and the fund itself is a Limited Partnership. I'm just
 20 trying to understand what the structure of your company is?
 21 A It's an LLC.
 22 Q What does Market Neutral Trading do?
 23 A It's a dollar neutral fund.
 24 Q How many investors do you have?
 25 A Less than 10.

1 Q Who are your investors?
 2 A I think it's been asked already, that question has
 3 been asked.
 4 Q I'm sorry, I don't --
 5 A I asked it -- it was asked and answered, right? I
 6 don't recall.
 7 Q You don't know who your investors are?
 8 A No.
 9 Q If you wanted to find out who had invested in your
 10 fund, how would you do that?
 11 A I'd don't know, I'd have to think of that.
 12 BY MR. LEACH:
 13 Q Can you name any of them?
 14 A Myself.
 15 Q Anybody else?
 16 A No.
 17 BY MS. KREUZKAMP:
 18 Q How much assets under management does Market
 19 Neutral Trading have?
 20 A Less than 20 million.
 21 Q And how did it get -- or is it less than 10?
 22 A It's less than 20.
 23 Q But more than 10?
 24 A The question is vague. I mean I don't know
 25 specifically.

1 Q I'm just trying to get a sense of the size of the
 2 fund. By saying "less than 20," is that close to 20, is it
 3 close to 15, closer to 5, do you have a sense of how big the
 4 fund is, more specifically than just "less than 20 million"?
 5 A No, I don't.
 6 Q If you wanted to find out how much assets under
 7 management Market Neutral Trading had, how would you do that?
 8 A What are you defining as "assets under management"?
 9 I mean this is another -- I thought we were here to talk
 10 about what happened in 2008 and '09, and now we're talking
 11 about today. I mean I really wasn't prepared to get into all
 12 this.
 13 Q I'm just trying to figure out how much assets are
 14 being managed by Market Neutral Trading.
 15 A Well, I answered that, it's less than 20 million.
 16 Q And in order to find a more precise amount, where
 17 would you look?
 18 A I don't know where I would look.
 19 Q Is there somebody you would call?
 20 A No.
 21 Q Does Market Neutral Trading provide statements to
 22 its investors?
 23 A Yes.
 24 Q How often?
 25 A Quarterly.

1 tie that knot.
 2 Q Do you know why he -- I mean this is going to be my
 3 word, but do you know why he was so smitten with you? I mean
 4 it looks like for about a year he's sending these e-mails and
 5 he's on you to join his firm. Do you know why you?

6 A Why?

7 Q Like was he -- I guess I'll ask that one
 8 first -- do you know why he was so focused on getting you to
 9 join his firm?

10 MR. WEILL: Only if you know?

11 THE WITNESS: Yeah, I don't know. I don't really
 12 know. I'd be speculating.

13 BY MS. KREUZKAMP:

14 Q Were you surprised that he continued talking about
 15 you joining his firm for -- even though it was off and
 16 on -- but for, you know, about a year's time?

17 A No. I mean Kurt has some good ideas and he needed
 18 someone -- he needed a partner. And I think he -- I think
 19 that he felt he needed some -- another partner, a manager, in
 20 his firm, to gain the credibility that he, you know, for
 21 marketing efforts.

22 Q Were there any -- who were his managers at the time
 23 that he was recruiting you?

24 A I don't know specifically, the other names. I
 25 know -- he told me he had other managers. But I -- my

1 the bank. It's going to take some research.

2 MS. KREUZKAMP: Okay.

3 THE WITNESS: They usually take from 30 to 60 days
 4 to get back.

5 MR. WEILL: All right.

6 THE WITNESS: But I can do that.

7 MS. KREUZKAMP: All right. I appreciate that.

8 Otherwise, Mr. Murray, we have no further questions at this
 9 time. We may, however, call you again to testify in this
 10 investigation and should that be necessary, we'll contact
 11 your attorney, Mr. Weill.

12 THE WITNESS: Okay.

13 MR. WEILL: All right. Thank you.

14 MS. KREUZKAMP: We're not done.

15 MR. WEILL: Oh, I'm sorry, I wasn't trying to rush.

16 MS. KREUZKAMP: Mr. Murray, do you wish to clarify
 17 anything or add anything to the statements you have made
 18 today?

19 THE WITNESS: No.

20 MS. KREUZKAMP: Mr. Weill, do you wish to ask any
 21 clarifying questions?

22 MR. WEILL: I do not.

23 MS. KREUZKAMP: All right. Then we are off the
 24 record at 12:45 p.m. on February 23rd, 2011.

25 (Whereupon, at 12:45 p.m. the hearing was concluded.)

1 understanding was he was also asking them to join, also.

2 Q Was Lisa Lee one of his managers, does that name
 3 ring a bell?

4 A It doesn't ring a bell.

5 Q Was his brother Ed Hovan, was he one of the
 6 managers?

7 A My understanding was he was in charge of research
 8 and trading, and they had a, you know, for the HCM funds.
 9 So, I don't know, specifically, what Ed was doing on the
 10 trading side.

11 Q Okay.

12 A Or if he was doing any trading or whether he was
 13 doing any research. That's just what I was told.

14 Q But to your knowledge, Ed Hovan didn't do any
 15 research of your fund, correct?

16 A No.

17 Q Okay. I think we're just about done. One thing
 18 that I would like to be produced, that I believe was
 19 responsive to the subpoenas, is the check that you testified
 20 that you wrote to, you think, Hovan Capital Management, but
 21 possibly to Kurt, for the fee -- the third party marketing
 22 fee for the investing in your fund. I'd like to get a copy
 23 of that.

24 MR. WEILL: Can you find that, do you think?

25 THE WITNESS: I'm going to have to order it from

1 PROOFREADER'S CERTIFICATE

3 In the Matter of: Hovan Capital Management, Inc.

4 Witness: James Murray

5 File Number: SF-03615-A

6 Date: Wednesday, February 23, 2011

7 Location: San Francisco, California

9
 10 This is to certify that I, Maryann Loverro, do
 11 hereby swear and affirm that the attached proceedings before
 12 the U.S. Securities and Exchange Commission were held
 13 according to the record and that this is the original,
 14 complete, true and accurate transcript that has been compared
 15 to the reporting or recording accomplished at the hearing.

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION
2 REPORTER'S CERTIFICATE

3
4 I Richard Friant reporter, hereby verify that the
5 foregoing transcript of 93 pages is a complete, true and
6 accurate transcript of the testimony indicated, held on
7 Wednesday, February 23, 2011, at 44 Montgomery Street, Suite
8 2600, San Francisco, California, in the matter of: Hovan
9 Capial Management, Inc., SF-03615. I further certify that
10 this proceeding was recorded by me and that the foregoing
11 transcript was prepared by Maryann Loverro under my
12 direction.

13
14
15 Date:
16 Official Reporter:
17 Diversified Reporting Services, Inc.
18
19
20
21 Diversified Reporting Services, Inc.
22 Phone: (202)467-9200 Fax: (202)296-9220
23
24
25

Paul Eckel

From: Jim Murray <jmurray@marketneutraltrading.com>
Sent: Thursday, August 12, 2010 12:19 PM
To: Paul.Eckel@EmergingManager.com
Subject: RE: Contact info attached
Attachments: JIM DL2010_05_29_11_35_24.pdf; State of Delaware.pdf; MNT PPM .pdf

Would you please send us the following information, so we can start the due diligence:

1. Funds Formation document- Attached
2. Your fund's PPM Attached
3. Copy of the drivers license or passport-Attached
4. Social security number- [REDACTED]
5. all the audited financial statements for the fund-requested to be sent

6. Third party administrator's name and contact

Gary Anderson
HF Administrators, Ltd.
1201 North Orange Street Suite 7004
Wilmington, De 19801
[REDACTED]
302-573-2507 Fax
gary@hfadministration.com

7. professional reference

Charles ("Chip") Roame
Managing Principal
Tiburon Strategic Advisors
1735 Tiburon Boulevard
Tiburon, CA 94920
Tel: 415-789-2541
Email: CRoame@TiburonAdvisors.Com

8. Contact info for one of the LP's in the fund or SMA account

Tim Palm, President Pareto Capital, LLC
4040 Civic Center Drive Ste. 200
San Rafael, Ca 94903
415-259-6688
415-651-9338 Fax
Email: [REDACTED]

9. your most recent DDQ
10. copy of your ADV II

Jim Murray

415-874-3558 Direct
415-634-2782 Fax
CIO, Market Neutral Trading, LLC
505 Montgomery Street Ste 1122
San Francisco, Ca 94111

From: Fariba Ronnasi [mailto:fariba.ronnasi@latticem.com]
Sent: Wednesday, August 11, 2010 11:54 PM
To: 'Jim Murray'
Cc: michelle.hansen@latticem.com
Subject: RE: Contact info attached

Hi Jim,

Would you please send us the following information, so we can start the due diligence:

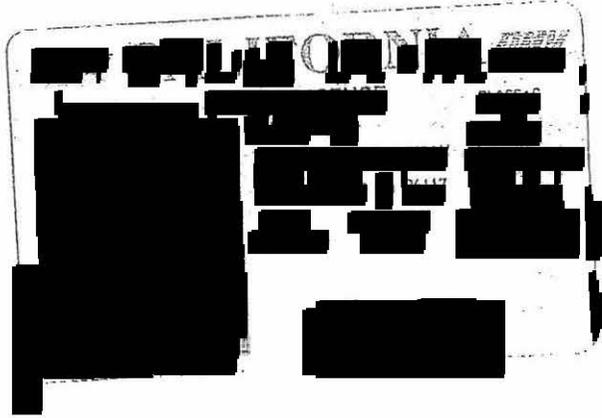
11. Funds Formation document
12. Your fund's PPM
13. Copy of the drivers license or passport
14. Social security number
15. all the audited financial statements for the fund
16. Third party administrator's name and contact
17. professional reference
18. Contact info for one of the LP's in the fund or SMA account
19. your most recent DDQ
20. copy of your ADV II

Warm regards,

Fariba Ronnasi

From: Jim Murray [mailto:jmurray@marketneutraltrading.com]
Sent: Wednesday, August 11, 2010 3:23 PM
To: Ronnasi Fariba
Subject: Contact info attached

*Jim Murray, CIO
Market Neutral Trading, LLC
505 Montgomery Street Ste. 1100
San Francisco, Ca 94111
415-874-3558
415-634-2782 Fax*



State of Delaware
Secretary of State
Division of Corporations
Delivered 5:11 PM 11/23/2005
FILED 05:11 PM 11/23/2005
SRV 030114310 - 4079894 FILE

CERTIFICATE OF FORMATION

OF

Market Neutral Trading, LLC

(A Delaware Limited Liability Company)

First: The name of the limited liability company is: Market Neutral Trading, LLC

Second: Its registered office in the State of Delaware is located at 16192 Coastal Highway, Lewes, Delaware 19958, County of Sussex. The registered agent in charge thereof is Harvard Business Services, Inc.

IN WITNESS WHEREOF, I Richard H. Bell, being fully authorized to execute and file this document have signed below and executed this Certificate of Formation on this 23rd day of November, 2005.

Richard H. Bell

Richard H. Bell
Organizer

EXHIBIT A

MARKET NEUTRAL TRADING, LLC
LIMITED LIABILITY COMPANY OPERATING AGREEMENT

I. PRELIMINARY PROVISIONS

- (1) **Effective Date:** This operating agreement of Market Neutral Trading, LLC, effective August 16, 2006 is adopted by the members whose signatures appear at the end of this agreement.
- (2) **Formation:** This limited liability company (LLC) was formed by filing Articles of Organization, a Certificate of Formation or a similar organizational document with LLC filing office of the state of Delaware on November 23, 2005. A copy of this organizational document has been placed in the LLC's records book.
- (3) **Name:** The formal name of this LLC is as stated above. However, this LLC may do business under a different name by complying with the state's fictitious or assumed business name statutes and procedures.
- (4) **Registered Office and Agent:** The registered office of this LLC and the registered agent at this address are as follows: 505 Montgomery Street, Suite 200, San Francisco, Ca 94111.

The registered office and agent may be changed from time to time as the members or managers may see fit, by filing a change of registered agent or office form with the state LLC filing office. It will not be necessary to amend this provision of the operating agreement if, and when such a change is made.

- (5) **Business Purposes:** The specific business purposes and activities contemplated by the founders of this LLC at the time of initial signing of this agreement consist of the following: Market Neutral Trading, LLC Investment. It is understood that the foregoing statement of purposes shall not serve as a limitation on the powers or abilities of this LLC, which shall be permitted to engage in any and all lawful business activities including, but not limited to, purchasing and selling the following: securities, bonds, options futures and foreign exchange currencies on margin. The use of margin and risks of using margin are understood. Leverage and or margin trading of securities, bonds, options futures and foreign exchange currency is allowed to be used by all authorized traders listed on the applicable brokerage account.

This LLC intends to engage in business activities outside the state of its formation that require the qualification of the LLC in other states', it shall obtain such qualification before engaging in such out-of-state activities.

- (6) **Duration of LLC:** The duration of this LLC shall be 30 Years.

Further, this LLC shall terminate when a proposal to dissolve the LLC is adopted by the membership of this LLC or when this LLC is otherwise terminated in accordance with law.

II. MANAGEMENT PROVISIONS

(1) **Management by Managers:** This LLC will be managed by the managers listed below. All managers who are also members of this LLC are designated as "members"; non-member managers are designated as "non-members".

Name: James M. Murray Member Non-Member

Address: 505 Montgomery Street, Suite 1100
San Francisco, CA 94111

Name: _____ Member Non-Member

Address: _____

- (2) **Non-Liability of Managers:** No manager of the LLC shall be liable for the expenses, debts, obligations or liabilities of the LLC, or for claims made against it.
- (3) **Authority and Votes of Managers:** Except as otherwise set forth in the agreement, the Articles of Organization, Certificate of Organization or similar organizational document, or as may be provided under state law, all management decisions relating to this LLC's business shall be made by its managers. Management decisions shall be approved by, James M. Murray, of the current managers of the LLC, with each manager entitled to cast one vote for or against any matter submitted to the managers for a decision.
- (4) **Term of Managers:** Each manager shall serve until the earlier of the following events:
 - (a) the manager becomes disabled, dies, retires or otherwise withdraws from management;
 - (b) the manager is removed from office; or,
 - (c) the manager's term expires, if a term has been designated in other provisions of this agreement.

Upon the happening of any of these events, a new manager may be appointed to replace the departing manager by election by members.

- (5) **Management Meetings:** Managers shall be able to discuss and approve LLC business informally, and may, at their discretion, call and hold formal management meetings according to the rules set forth in the following provisions of this operating agreement.

Regularly scheduled formal management meetings need not be held, but any manager may call such a meeting by communicating his or her request for a formal meeting to which the meeting is called. Only the business stated or summarized in the notice for the meeting shall be discussed and voted upon at the meeting

The meeting shall be held within a reasonable time after a manager has made the request for a meeting, and in no event, later than 30 days after the request for the meeting. A quorum for such a formal managers' meeting shall consist of two managers, and if a quorum is not present, the meeting shall be adjourned to a new place and time with notice of the adjourned meeting given to all managers. An adjournment shall not be necessary, however, and a managers' meeting with less than a quorum may be held if all non-attending managers agreed in writing prior to the meeting to the holding of the meeting. All such written consents to the holding of a formal management meeting shall be kept and filed with the records of the meeting.

The proceedings of all formal managers meetings shall be noted or summarized with written minutes of the meeting and a copy of the minutes shall be placed and kept in the records book of this LLC.

- (6) **Managers' Commitment to LLC:** Managers shall devote their best efforts and energy working to achieve the business objectives and financial goals of this LLC. By agreeing to serve as a manager for the LLC, each manager shall agree not to work for another business, enterprise or endeavor, owned or operated by himself or herself, or others, if such outside work, or efforts would compete with the LLC's business goals, mission, products or services, or would diminish, or impair the manager's ability to provide maximum effort and performance to managing the business of this LLC.
- (7) **Compensation of Managers:** Managers of this LLC may be paid per-meeting or per-diem amounts for attending management meetings, may be reimbursed actual expenses advanced by them to attend management meetings or attend to management business for the LLC, and may be compensated in other ways for performing their duties as managers. Managers may work in other capacities for this LLC and may be compensated separately for performing these additional services, whether as officers, staff, consultants, independent contractors, or in other capacities.

III. MEMBERSHIP PROVISIONS

- (1) **Non-Liability of Members:** No member of this LLC shall be liable for the expenses, debts, obligations or liabilities of the LLC, or for claims made against it.
- (2) **Reimbursement for Organizational Costs:** Members shall be reimbursed by the LLC for organizational expenses paid by the members. The LLC shall be authorized to elect to deduct organization expenses and start-up expenditures ratably over a period-of-time as permitted by the Internal Revenue Code and as may be advised by the LLC's tax advisor.
- (3) **Members' Percentage Interests:** A member's percentage interest in this LLC shall be computed as a fraction, the numerator of which is the total of a member's capital account and the denominator of which is the total of all capital accounts of all members. This fraction shall be expressed in this agreement as a percentage, which shall be called each member's "percentage interest" in this LLC.
- (4) **Membership Voting:** Except as otherwise may be required by the Articles of Organization, Certificate of Formation or a similar organizational document, other provisions of this operating agreement, or under the laws of this state, each member shall vote on any matter submitted to the membership for approval in proportion to the member's percentage interest in this LLC.

Further, unless defined otherwise for a particular provision of this operating agreement, the phrase "majority of members" means the vote of members whose combined votes equal more than 50% of the votes of all members in this LLC.

- (5) **Compensation:** Members shall not be paid as members of the LLC for performing any duties associated with such membership. Members may be paid, however, for any services rendered in any other capacity for the LLC, whether as officers, employees, independent contractors or otherwise.

- (6) **Members' Meetings:** The LLC shall not provide for regular members' meetings. However, any member may call a meeting by communicating his or her wish to schedule a meeting to all other members. Such notification may be in person or in writing, or by telephone, facsimile machine, or other form of electronic communication reasonably expected to be received by a member, and the other members shall then agree, either personally, in writing, or by telephone, facsimile machine, or other form of electronic communication to the member calling the meeting, to meet at a mutually acceptable time and place. Notice of the business to be transacted at the meeting need not be given to members by the member calling the meeting, and any business may be discussed and conducted at the meeting.

If all members cannot attend a meeting, it shall be postponed to a date and time when all members can attend, unless all members who do not attend have agreed in writing to the holding of the meeting without them. If a meeting is postponed, and the postponed meeting cannot be held either because all members do not attend the postponed meeting or the non-attending members have not signed a written consent to allow the postponed meeting to be held without them, a second postponed meeting may be held at a date and time announced at the first postponed meeting. The date and time of the second postponed meeting shall also be communicated to any members not attending the first postponed meeting. The second postponed meeting may be held without the attendance of all members as long as a majority of the percentage interests of the membership of this LLC is in attendance at the second postponed meeting. Written notice of the decisions or approvals made at this second postponed meeting shall be mailed or delivered to each non-attending member promptly after the holding of the second postponed meeting.

Written minutes of the discussions and proposals presented at a members' meeting, and the votes taken and matters approved at such meeting, shall be taken by one of the members, or a person designated at the meeting. A copy of the minutes of the meeting shall be placed in the LLC's records book after the meeting.

- (7) **Membership Certificates:** This LLC shall be authorized to obtain and issue certificates representing or certifying membership interests in this LLC, the name of the member, and state that the person named is a member of the LLC and is entitled to all the rights granted members of the LLC under the Articles of Organization, Certificate of Formation, or a similar organizational document, this operating agreement, and provisions of law. Each membership certificate shall be consecutively numbered and signed by one or more officers of this LLC. The Certificates shall include any additional information considered appropriate for inclusion by the members on membership certificates.

In addition to the above information, all membership certificates shall bear a prominent legend on their face or reverse side stating, summarizing or referring to any transfer restriction that may apply to memberships in this LLC under the Articles of Organization, Certificate of Formation or a similar organizational document and/or this operating agreement, and the address where a member may obtain a copy of these restrictions upon request from this LLC.

The records book of this LLC shall contain a list of the names and addresses of all persons to whom certificates have been issued, show the date of issuance of each

certificate, and record the date of all cancellations or transfers of membership certificates.

IV. TAX AND FINANCIAL PROVISIONS

- (1) **Tax Classification of LLC:** The members of this LLC intend that this LLC be initially classified as a limited partnership for federal, and, if applicable, state income tax purposes. It is understood that all members may agree to change the tax treatment of this LLC by signing, or authorizing a signature of, IRS Form 8832, Entity Classification Election, and filing it with the IRS and, if applicable, the state tax department within the prescribed time limits.
- (2) **Tax Year and Accounting Method:** The tax year of this LLC shall be December 31. The LLC shall use the FIFO method of accounting. Both the tax year and the accounting period of the LLC may be changed with the consent of all members or all managers if the LLC qualifies for such change, and may be effected by the filing of appropriate forms with the IRS and state tax authorities.
- (3) **Tax Matters Partner:** If this LLC is required under Internal Revenue Code provisions or regulations, it shall designate from among its members or member-managers a "tax matters partner" in accordance with Internal Revenue Code Section 6231(a)(7) and corresponding regulations, who will fulfill this role by being the spokesperson for the LLC in dealings with the IRS as required under the Internal Revenue Code and Regulations, and who will report to the members and managers on the progress and outcome of these dealings.
- (4) **Annual K-1 Reports:** Within 60 days after the filing tax returns of the LLC, a copy of the members K1 for the preceding tax year shall be mailed or otherwise provided to each member of the LLC, together with any additional information and forms necessary for each member to complete his or her individual state and federal income tax returns. If this LLC is classified as a partnership for income tax purposes, this additional information shall include a federal (and, if applicable, state) Form K-1 (Form 1065 – Partner's Share of Income, Credits, Deductions) or equivalent income tax reporting form.
- (5) **Bank Accounts:** The LLC shall designate one or more banks or other institutions for the deposit of the funds of the LLC, and shall establish savings, checking, investment and other such accounts as are reasonable and necessary for its business and investments. One or more employees of the LLC shall be designated with the consent of all managers to deposit and withdraw funds of the LLC, and to direct the investment of funds from, into, and among such accounts. The funds of the LLC, however and wherever deposited or invested, shall not be commingled with the personal funds of any members or managers of the LLC.
- (6) **Title to Assets:** All personal and real property of the LLC shall be held in the name of the LLC, not in the names of individual members or managers.

V. CAPITAL PROVISIONS

- (1) **Capital Contributions by Members:** Members shall make the following contributions of cash or securities as shown next to each member's name below.

The fair market values of cash and securities as agreed between the LLC and the contributing member are shown below. The percentage interest in the LLC that each member shall receive in return for his or her capital contribution is also indicated for each member.

Name of LLC Contribution Fair Market Percentage Value Interest in:

| | | |
|-----------------|-------|-------------|
| _____ | | <u>100%</u> |
| James M. Murray | | |
| _____ | | <u>100%</u> |
| Member | | |
| _____ | | <u>100%</u> |
| Member | | |
| _____ | | <u>100%</u> |
| Member | | |
| _____ | | <u>100%</u> |
| Member | | |
| _____ | | <u>100%</u> |
| Member | | |

- (2) **Additional Contributions by Members:** The members may agree, from time to time by unanimous vote, to require the payment of additional capital contributions by the members, on or by a mutually agreeable date.
- (3) **Failure to Make Contributions:** If a member fails to make a required capital contribution within the time agreed for a member's contribution, the remaining members may, by unanimous vote, agree to reschedule the time for payment of the capital contribution by the late-paying member, setting any additional repayment terms, such as a late payment penalty, rate of interest to be applied to the unpaid balance, or other monetary amount to be paid by the delinquent member, as the remaining members decide. Alternatively, the remaining members may, by unanimous vote, agree to cancel the membership of the delinquent member, provided any prior partial payments of capital made by the delinquent member are refunded promptly by the LLC to the member after the decision is made to terminate the membership of the delinquent member.
- (4) **No Interest on Capital Contributions:** No interest shall be paid on funds or property contributed as capital to this LLC, or on funds reflected in the capital amounts of the members.

- (5) **Capital Account Bookkeeping:** A capital account shall be set up and maintained on the books of the LLC for each member. It shall reflect each member's capital contribution to the LLC, increased by each member's share of profits in the LLC, decreased by each member's share of losses and expenses of the LLC, and adjusted as required in accordance with applicable provisions of the Internal Revenue Code and corresponding income tax regulation.
- (6) **Capital Contribution Withdrawals and Distributions:** Members shall be allowed to withdraw any part of their capital contributions or to receive distributions, whether in property or cash, except as otherwise allowed by this or PPM agreement.
- (7) **Allocations of Profits and Losses:** No member shall be given priority or preference with respect to other members in obtaining a return of capital contributions, distributions or allocations of the income, gains, losses, deductions, credits, or other items of the LLC. The profits and losses of the LLC, and all items of its allocated to members according to each member's percentage interest in this LLC.
- (8) **Allocation and Distribution of Cash to Members:** Cash from LLC business operations, as well as cash from a sale or other disposition of LLC capital assets, may be distributed from time-to-time to members in accordance with each member's percentage interest in the LLC, as may be decided by manager of the company.
- (9) **Allocation of Non-Cash Distributions:** If proceeds consist of property other than cash, the manager shall decide the value of the property and allocate such value among the members in accordance with each member's percentage interest in the LLC. If such non-cash proceeds are later reduced to cash, such cash may be distributed among the members as otherwise provided in this agreement.
- (10) **Allocation and Distribution of Liquidation Proceeds:** Regardless of any other provision in this agreement, if there is a distribution in liquidation of the LLC, or when any member's interest is liquidated, all items of income and loss shall be allocated to the members' capital accounts, and all appropriate credits and deductions shall then be made to these capital accounts, and all appropriate credits and deductions shall then be made to these capital accounts before any final distribution is made. A final distribution shall be made to members only to the extent of, and in proportion to, any positive balance in each member's capital account.

VI. MEMBERSHIP WITHDRAWAL AND TRANSFER PROVISIONS

- (1) **Withdrawal of Members:** A member may withdraw from the LLC by giving written notice to manager 30 days before the date the withdrawal is to be effective.
- (2) **Restrictions on the Transfer of Membership:** A member shall not transfer his or her membership in the LLC unless all non-transferring members in the LLC first agree to approve the admission of the transferee into this LLC. Further no member may encumber a part or all of his or her membership in the LLC by mortgage,

pledge, granting of a security interest, lien or otherwise, unless the encumbrance has first been approved in writing by all other members of the LLC.

Notwithstanding the above provision, any member shall be allowed to assign an economic interest in his or her membership to another person without the approval of the other members. Such an assignment shall not include a transfer of the member's voting or management rights in the LLC, and the assignee shall not become a member of the LLC.

VII. DISSOLUTION PROVISIONS

- (1) **Events That Trigger Dissolution of the LLC:** The following events shall trigger a dissolution of the LLC, except as provided:
 - (a) the death, permanent incapacity, bankruptcy, retirement, resignation or expulsion of a member, except that within 90 days of the happening of any of these events, all remaining members of the LLC may vote to continue the legal existence of the LLC, in which case the LLC shall not dissolve;
 - (b) the expiration of the term of existence of the LLC if such term is specific in the Articles of Organization, Certificate of Formation, or a similar organizational document, or this operating agreement;
 - (c) the written agreement of all members to dissolve the LLC;
 - (d) entry of a decree of dissolution of the LLC under state law.

VIII. GENERAL PROVISIONS

- (1) **Officers:** The managers of this LLC may designate one or more officers, such as a President, Vice President, Secretary and Treasurer. Persons who fill these positions need not be members or managers of the LLC. Such positions may be compensated or non-compensated according to the nature and extent of the services rendered for the LLC as a part of the duties of each office. Ministerial services only as a part of any officer position, will normally not be compensated, such as the performance of officer duties specified in this agreement, but any officer may be reimbursed by the LLC for out-of-pocket expenses paid by the officer in carrying out the duties of his or her office.
- (2) **Records:** The LLC shall keep at its principal business address, a copy of all proceedings of membership meetings, as well as books of account of the LLC's financial transactions. A list of the names and addresses of the current membership of the LLC also shall be maintained at this address, with notations on any transfers of members' interests to non-members or persons being admitted into membership in the LLC. A list of the current manager's names and addresses shall also be kept at this address.

Copies of the LLC'S Articles of Organization, Certificate of Formation or a similar organizational document, a signed copy of this operating agreement, and the LLC's tax returns for the preceding three tax years shall be kept at the principal

business address of the LLC. A statement also shall be kept at this address containing any of the following information that is applicable to this LLC.

- the amount of cash or a description and value of property contributed or agreed to be contributed as capital to the LLC by each member;
- a schedule showing when any additional capital contributions are to be made by members to this LLC;
- a statement or schedule, if appropriate, showing the rights of members to receive distributions representing a return of part or all of members capital contributions; and,
- a description of, or date when, the legal existence of the LLC will terminate under provisions in the LLC's Article of Organization, Certificate of Formation or a similar organizational document, or this operating agreement.

If one or more of the above items is included or listed in this operating agreement, it will be sufficient to keep a copy of this agreement at the principal business address of the LLC without having to prepare and keep a separate record of such item or items at this address. Any member or manager may inspect any, and all records maintained by the LLC upon reasonable notice to the LLC. Copying of the LLC's records by members and managers is allowed, but copying costs shall be paid for by the requesting member or manager.

- (3) **All Necessary Acts:** The members, managers' and officers of this LLC are authorized to perform all acts necessary to perfect the organization of this LLC and to carry out its business operations expeditiously and efficiently. The Secretary of the LLC, or other officers, or one or more manager, or all members of the LLC, may certify to other businesses, financial institutions and individuals as to the authority of one or more members, managers', or officers of this LLC to transact specific items of business on behalf of the LLC.
- (4) **Mediation and Arbitration of Disputes Among Members:** In any dispute over the provisions of this operating agreement and in other disputes among the members, if the members cannot resolve the dispute to their mutual satisfaction, the matter shall be submitted to mediation. The terms and procedure for mediation shall be arranged by the parties to the dispute.

If good-faith mediation of a dispute proves impossible or if an agreed-upon mediation outcome cannot be obtained by the members who are parties to the dispute, the dispute may be submitted to arbitration in accordance with the rules of American Arbitration Association. Any party may commence arbitration of the dispute by sending a written request for arbitration to all other parties to the dispute. The request shall state the nature of the dispute to be resolved by arbitration, and, if all parties to the dispute agree to arbitration, arbitration shall be

commenced as soon as practical after such parties receive a copy of the written request.

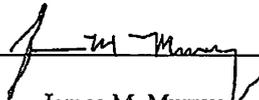
All parties shall initially share the cost of arbitration, but the prevailing party or parties may be awarded attorney fees, costs, and other expenses of arbitration. All arbitration decisions shall be final, binding and conclusive on all the parties to arbitration, and legal judgment may be entered based upon such decision in accordance with applicable law in any court having jurisdiction to do so.

- (5) **Entire Agreement:** This operating agreement represents the entire agreement among the members of this LLC, and it shall not be amended, modified or replaced except by a written instrument executed by all the parties to this agreement who are current members of this LLC, as well as any and all additional parties who became members of this LLC after the adoption of this agreement. This agreement replaced and supersedes all prior written and oral agreements among any and all members of this LLC.
- (6) **Severability:** If any provision of this agreement is determined by a court or arbitrator to be invalid, unenforceable or otherwise ineffective, that provision shall be severed from the rest of this agreement, and the remaining provisions shall remain in effect and enforceable.

IX. SIGNATURES OF MEMBERS, MEMBERS' SPOUSES, AND MANAGERS

- (1) **Execution of Agreement:** In witness whereof, the members of this LLC sign and adopt this agreement as the operating agreement of this LLC.

Date: August 16, 2006

Signature: 

Printed Name: James M. Murray, Member

Date: _____

Signature: _____

Printed Name: _____, Member

(2) **Consent of Spouses:** The undersigned are spouses of members of this LLC who have signed this operating agreement in the preceding provision. These spouses have read this agreement and agree to be bound by its terms in any matter in which they have a financial interest, including restrictions on the transfer of memberships and the terms under which memberships in this LLC may be sold or otherwise transferred.

Date: _____

Signature: _____

Printed Name: _____

Spouse of: _____

Date: _____

Signature: _____

Printed Name: _____

Spouse of: _____

Date: _____

Signature: _____

Printed Name: _____

Spouse of: _____

Date: _____

Signature: _____

Printed Name: _____

Spouse of: _____

Date: _____

Signature: _____

Printed Name: _____

Spouse of: _____

Date: _____

Signature: _____

Printed Name: _____

Spouse of: _____

- (3) **Signatures of Managers:** The undersigned managers of this limited liability company have read this agreement and agree to be bound by its terms in discharging their duties as manager.

Date: August 16, 2006

Signature: _____

Printed Name: James M. Murray, Manager

Date: _____

Signature: _____

Printed Name: _____, Manager

Date: _____

Signature: _____

Printed Name: _____, Manager

EXHIBIT B

MARKET NEUTRAL TRADING, LLC
TERMS AND CONDITIONS OF SUBSCRIPTION AGREEMENT

The following provisions, together with the Limited LLC Agreement (the "LLC Agreement") of Market Neutral Trading, LLC (the "LLC"), are the terms and conditions on which investors in the LLC subscribe for Limited LLC interests and apply to become Members in the LLC. Each prospective investor in the LLC accepts these terms and conditions by signing the signature page to such investor's Confidential Investor Questionnaire ("*Questionnaire*"). These terms and conditions are sometimes referred to, collectively with the Questionnaire, as the "*Agreement*" or the "*Subscription Agreement*".

1. **Agreement to Subscribe for Interests.** The undersigned ("*Subscriber*") hereby offers to purchase a limited LLC interest (the "*Interest*") in Market Neutral Trading, LLC, a Delaware limited LLC (the "*LLC*"), in the amount set forth on the signature page to the Subscriber's Questionnaire. Subscriber agrees that (a) the LLC's Investment Manager, ("*James Murray*") may reject Member's offer to purchase an Interest for any reason; (b) as of the date designated by the Investment Manager when (if at all) the Investment Manager accepts this Member Agreement and Member's subscription funds on behalf of the LLC, Member shall become obligated under the terms and conditions of this document and of the LLC Agreement as an Owner-Member; and (c) by executing the signature page of the Questionnaire, Subscriber agrees to be bound by those terms and conditions.
2. **Representations and Warranties.** Subscriber hereby represents and warrants as follows, with the understanding the LLC will rely on the accuracy of these representations to establish the eligibility of this offering for certain registration exemptions under federal and state securities laws, and to enable the LLC to comply with certain other laws and regulations:
 - (a) **Interests Not Registered.** Subscriber understands that the LLC's offer and its sale to Subscriber of an Interest have not been registered under the Securities Act of 1933, as amended (the "*1933 Act*"), or registered or qualified under state securities laws, on the ground, among others, that Interests are being offered and sold in a transaction that does not involve any public offering within the meaning of Section 4(2) of the 1933 Act and Rule 506 of Regulation D thereunder. Subscriber understands that no federal or state agency as passed on the merits or fairness of this investment.
 - (b) **Interest Acquired for Investment.** Subscriber is acquiring the Interest with Subscriber's own funds and for Subscriber's own account (or for a designated custodial or trust account, if Subscriber is a custodian or trustee) for investment and not with a view to the distribution of any interest therein. No other person will own any part of Subscriber's Interest or have any right to acquire such a part.
 - (c) **Review of Offering Materials and Independent Advice.** Subscriber has carefully reviewed the Confidential Offering Memorandum (the "*Offering Memorandum*") relating to the LLC's Agreement of LLC (the "*LLC Agreement*") and its exhibits and has discussed with LLC representatives any questions Owner-Member may have had as to such materials or the LLC or the business, operations or financial condition of the LLC. Subscriber understands the risks of this investment, as described in the "Certain Risk Factors" section and other portions of the Offering Memorandum.
 - (d) **Offer Made Privately.** The LLC's offer of Interests was privately communicated to Subscriber. At no time has Subscriber received information concerning this offering or the LLC from any newspaper, magazine, television or radio broadcast, leaflet or other

advertisement, public promotional meeting or any other form of general advertising or general solicitation.

- (e) **Subscriber Able to Bear Risks and Protect Own Interests.** Subscriber is able to bear the economic risks associated with this investment, and the possibility that some or all of the amount invested will be lost if the LLC is not successful.
- (f) **Representations of Entity Subscribers.** If Subscriber is an entity, then:
- (1) Subscriber has or will have substantial business activities or investments other than its investment in the LLC and was not specifically formed for the purpose of purchasing Interests;
 - (2) under Subscriber's governing documents and in practice, Subscriber's investment decisions are based on the investment objectives of Subscriber and its owners generally, not on the particular investment objectives of any one or more of its owners; and
 - (3) under Subscriber's governing documents and in practice, the participation of each owner of Subscriber in each investment made by Subscriber is based on the owners' ownership percentages or on some other allocation provision that (a) does not result in varying levels of participation among owners based on the nature, amount or other characteristics of a particular investment; and (b) cannot be varied for particular investments made by Subscriber as a result of any election or other decision by any such owner in connection with a particular investment, any exercise of judgment or discretion made by Subscriber's investment decision-maker(s) in connection with a particular investment, or any other reason.
- (g) **Authority.** Subscriber is duly authorized to enter into this Subscription Agreement (including the power of attorney granted herein), and the person signing this Subscription Agreement on behalf of Subscriber is authorized to do so, under all applicable governing documents (e.g., LLC agreement, trust instrument, pension plan, certificate of incorporation, bylaws, operating agreement). Each individual who may participate in Subscriber's investment decision is over twenty-one years of age (or the age of majority in such individual state of residence). This Subscription Agreement constitutes a legal, valid and binding agreement of Subscriber enforceable against Subscriber in accordance with its terms.
- (h) **Self-Direction.** The individual whose signature appears on the signature page certifies that the shareholders, partners, benefit plan participants or other holders of equity or beneficial interests in the undersigned corporation, LLC, trust, benefit plan or other entity are not permitted and have not been provided the opportunity to decide individually whether or how much to contribute to or to participate in the undersigned's investment in the LLC.
- (i) **Taxpayer Identification Number; No Backup Withholding; Not a Foreign Entity.** Under penalty of perjury, Subscriber certifies that the taxpayer identification number being supplied herewith by Subscriber is Subscriber's correct taxpayer identification number and that Subscriber is not subject to backup withholding under Section 3406(a)(1)(c) of the Internal Revenue Code. If Subscriber is an entity, then (1) Subscriber is not a foreign corporation, foreign LLC, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and Regulations thereunder; and (2) if Subscriber hereafter becomes such a foreign entity, Subscriber shall notify the General Partner within 60 days thereafter.

3. **Transfer Restrictions.** Subscriber understands that, except to the extent withdrawals are permitted under the LLC Agreement, Subscribers must hold the Interests indefinitely, that no market is ever likely to develop for the Interests, and that transfers of Interests are subject to further restrictions under the LLC Agreement, although withdrawals of capital are permitted on certain conditions described in the LLC Agreement. Subscriber agrees that (1) Subscriber will not attempt to transfer the Interest in violation of these transfer restrictions; (2) the LLC may note these transfer restrictions in its records and refuse to recognize any transfer which violates these transfer restrictions, or any proposed transfer for which the LLC has not received an acceptable opinion of counsel stating that the proposed transfer will not violate these restrictions; and (3) if the LLC ever issues a certificate evidencing the Interest, one or more legends required under federal and/or applicable state securities laws and regulations may be imprinted thereon-One of such legends shall read substantially as follows:

‘THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT OR AN OPINION OR OTHER EVIDENCE SATISFACTORY TO THE GENERAL PARTNER THAT SUCH REGISTRATION IS NOT REQUIRED.’

4. **Indemnification.** Subscriber agrees to indemnify and hold harmless the LLC and the Investment Manager, and each of their employees, agents, and attorneys, from and against any and all loss, liability, claims, damage, and expense (including any expense reasonably incurred in investigating, preparing or defending against any litigation commenced or threatened or any claim whatsoever) related to any false representation or warranty or any breach of agreement by Subscriber contained herein or in any other document furnished by the Subscriber to the LLC in connection with this transaction.
5. **Power of Attorney.** Subscriber hereby irrevocably constitutes and appoints the Investment Manager, Subscriber’s true and lawful attorney-in-fact, with full power and authority in Subscriber’s name, place and stead to execute, deliver, certify, acknowledge, swear to, file, record and publish all documents and other instruments described in the section of the LLC Agreement entitled “Appointment of the Investment Manager as Attorney-in-Fact,” which is hereby incorporated in this paragraph by this reference.
6. **Agreement Binding on Subscriber’s Successors.** The representations, warranties and agreements in this Subscription Agreement shall be binding on Subscriber’s successors, assigns, heirs and legal representatives and shall inure to the benefit of the respective successors and assigns of the LLC and the General Partner.
7. **Arbitration.** Any controversy between Subscriber and the LLC or the Investment Manager, involving the LLC, this Agreement, or the LLC Agreement will be submitted to arbitration on the request of any party to any such controversy in the county and state in which the General Partner maintains its principal office at the time such request is made. The arbitration will comply with and be governed by the provisions of the commercial arbitration rules of the American Arbitration Association and no party to any such controversy shall be entitled to any punitive damages. All parties shall initially share the cost of arbitration, but the prevailing party or parties may be awarded attorney fees, costs and other expenses of arbitration. Judgment may be entered upon any award granted in any such arbitration in any court of competent jurisdiction in the county and state in which the General Partner maintains its principal office at the time the award is rendered. By signing the Agreement, Subscriber agrees to waive his or her or its right to seek remedies in court, including any right to a jury trial; provided, however, that nothing in this paragraph will constitute a waiver of any right any party to this Agreement may have to choose a judicial form to the extent such a waiver would violate applicable law.

8. **Governing Law.** This Agreement shall be governed by the laws of the State of California as such laws are applied to agreements that are made in California by California residents and that are to be performed wholly within California, excluding the conflict-of-laws rules of California.

EXHIBIT C

**MARKET NEUTRAL TRADING , LLC
SUBSCRIPTION INSTRUCTIONS**

1. Please complete, date and sign the Confidential Investor Questionnaire. By signing the Investor Questionnaire, the Subscriber agrees to the LLC's Agreement of LLC (Exhibit A to the Confidential Offering Memorandum) and to the "Terms and Conditions of Subscription Agreement" (part of this Exhibit B to the Confidential Offering Memorandum).
2. Please keep a copy of all completed and signed documents for your records.
3. Please send the original of your completed, dated and signed Investor Questionnaire to:

Market Neutral Trading , LLC
505 Montgomery Street, Suite 1100
San Francisco, California 94111

4. Please enclose your check for your subscription amount, payable to "Market Neutral Trading, LLC" If you prefer to wire-transfer the subscription amount, wait until Market Neutral Trading, LLC notifies you that your subscription has been accepted, then wire-transfer your subscription amount to the LLC's custodial account as follows:

| | |
|----------------------------|-----------------------------------|
| Bank: | Bank America |
| | 555 California Street |
| | San Francisco, California 94111 |
| ABA Number: | 026009593 |
| For credit to: | Merrill Lynch _____ |
| Account Number: | _____ |
| For the further credit of: | Market Neutral Trading, LLC _____ |
| Account Number: | _____ |

To ensure proper processing, please call us at (415) 874-3558 to confirm your wire transfer.

5. If your subscription is accepted, the Investment Manager will countersign your Investor Questionnaire to confirm your admission to the LLC and will send you a copy of the signature page bearing the Investment Manager's signature. Your check will not be deposited until your subscription has been accepted. It will be returned promptly if your subscription is not accepted.

CONFIDENTIALITY: Information furnished in your Investor Questionnaire will be kept strictly confidential, except that the Investment Manager may present the information to such regulatory bodies or other parties as may be appropriate to establish the availability of exemptions from certain securities law registration requirements or the compliance of the LLC and this offering with applicable securities laws.

QUESTIONS:

Market Neutral Trading, LLC
Attention: Jim Murray
505 Montgomery Street, Suite 1100
San Francisco, CA 94111
(415) 874-3558
Fax (415) 634-2782

EXHIBIT D

**MARKET NEUTRAL TRADING , LLC
CONFIDENTIAL INVESTOR QUESTIONNAIRE**

If you have any doubt as to the meaning or implication of any of the terminology or the significance of any of the following questions, please contact Market Neutral Trading , LLC, 505 Montgomery Street, Suite 1100, San Francisco, Ca 94111.

If the answer to any question is "None" or "Not Applicable", please so state.

I. SUBSCRIBER INFORMATION

Please provide information as to Subscriber, not any person completing this Questionnaire on Subscriber's behalf, except that if you are acting as a custodian for a minor whose funds will be invested, please so indicate and complete the information as to both yourself and the minor. If the Interest will be held by more than one person, in joint tenancy or as tenants in common (as opposed to as community property), please provide all information for each joint Subscriber, using a copy of this Questionnaire.

GENERAL INFORMATION:

Full Name of Subscriber (or custodian):

Subscriber's **SOCIAL SECURITY** or, if an entity, **TAXPAYER I.D. No.:** _____

**** No Subscriber will be admitted without a Social Security or Taxpayer I.D. Number ****

Home
Address: _____

Home
Phone: _____

Business
Address: _____

Business
Phone: _____

Business
Fax: _____

Marital Status (if applicable): Married Single Divorced Other _____

State of principal residence: _____

If Subscriber is
a custodian and minor's
state of residence is
different from subscriber's,
list minor's state of residence:

SUBSCRIBER'S EDUCATION:

College/University Degree/Major Year

EMPLOYMENT OF SUBSCRIBER:

Name and address of Employer: _____

Nature of Employment: _____

If self-employed, nature of business: _____

OTHER EXPERIENCE OF SUBSCRIBER:

Other positions/background related to financial, business, accounting, economics, taxation or investment matters that demonstrate investment sophistication:

TYPE OF SUBSCRIBER OR PROPOSED FORM OF OWNERSHIP. Please check appropriate box:

- Individual Trust Joint/Tenants in Common with Spouse
- LLC Limited Liability Company Ira, Irra, Keogh, Sep, Profit Sharing, 401K
- Corporation Joint/Tenants in Common with Person other than Spouse

If Subscriber is a corporation, trust, LLC's, association or other entity, please identify which type of entity, the jurisdiction under the laws of which Subscriber is organized and existing, and the jurisdiction where Subscriber's principal place of business is located:

DUPLICATE REPORTS: If duplicate reports should be sent to an accountant, business manager, or other adviser, provide the following information for each person authorized to receive them:

Name: _____

Address: _____

Telephone: _____ Fax: _____

**II. INVESTMENT BACKGROUND AND OBJECTIVES OF SUBSCRIBER
(OR CUSTODIAN FOR MINOR)**

Approximate number of _____ year(s) Subscriber (or custodian) has been investing.

Approximate current portfolio value: \$ _____

*Please check frequency of
Subscriber's (or custodian's)*

investments in:

| | <u>Often</u> | <u>Occasionally</u> | <u>Seldom</u> | <u>Never</u> |
|--|--------------------------|--------------------------|--------------------------|--------------------------|
| Real estate, other than principal residence (directly or through LLCs or other entities managed by others) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Tax shelter programs (real estate, leasing, oil and gas, cattle breeding) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Marketable securities (stocks, principals, bonds, debentures, notes) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Commodity futures | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Speculative or venture capital investments other private investment funds, including hedge funds and commodity pools | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Order of investment objectives of Subscriber (or of minor(s), *not* custodian): Number preferences from 1 (most preferred) to 3 (least preferred). *Reminder* this investment is most appropriate for persons seeking capital appreciation.

Capital appreciation: _____

Current income: _____

Liquidity: _____

III. QUESTIONS TO DETERMINE STATUS OF SUBSCRIBER

Each Subscriber must be qualified. *Please check all boxes below that describe Subscriber.* If Subscriber is a custodian acting for one or more minors, responses below should apply to each minor, *not* to the custodian. (*Note: If Subscriber is investing less than \$75,000 certain methods of qualifying may not be adequate.*)

- SOPHISTICATED INDIVIDUAL WITH LESS THAN A \$1 MILLION NET WORTH.** A natural person who has sufficient knowledge and experience in financial and business matters to be able to evaluate the merits and risk of the investment, accepts those risks and who has an individual net worth, or joint net worth with his or her spouse, of less than \$1 million.
- INDIVIDUAL WITH \$1 MILLION NET WORTH.** A natural person whose individual net worth, or joint net worth with his or her spouse, exceeds \$1 million.
- INDIVIDUAL WITH \$1 ½ MILLION NET WORTH.** A natural person whose individual net worth, or joint net worth with his or her spouse, exceeds \$1 ½ million.
- INDIVIDUAL WITH \$200,000 INDIVIDUAL ANNUAL INCOME.** A natural person (not an entity) who had an individual income in excess of \$200,000 in each of preceding two years, and has a reasonable expectation of reaching same income level in current year.
- INDIVIDUAL WITH \$300,000 JOINT ANNUAL INCOME.** A natural person (not an entity) who had an individual income in excess of \$300,000 in each of preceding two years, and has a reasonable expectation of reaching same income level in current year.

- CORPORATIONS OR LLCs.** A corporation, LLC, or similar entity that has at least \$5 million of assets and was not formed for the specific purpose of acquiring an Interest.
- REVOCABLE TRUST OF AN INDIVIDUAL WITH \$1 MILLION NET WORTH.** A trust that is revocable by its grantors and *each* of whose grantors is a natural person whose individual net worth, or joint net worth with his or her spouse, exceeds \$1 million.
- REVOCABLE TRUST OF AN INDIVIDUAL WITH \$1 ½ MILLION NET WORTH.** A trust that is revocable by its grantors and *each* of whose grantors is a natural person whose individual net worth, or joint net worth with his or her spouse, exceeds \$1,500,000.
- IRREVOCABLE TRUST.** A trust (other than an ERISA employee benefit plan) that (i), is not revocable by its grantor(s), (ii), has at least \$5 million of assets, (iii), was not formed for the specific purpose of acquiring an Interest, and (iv), is directed by a person who has such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of an investment in the LLC.
- OTHER INSTITUTIONAL INVESTOR** (*check one*). A bank, as defined in Section 3(a)(2) of the 1933 Act (whether acting for its own account or in a fiduciary capacity); a savings and loan association or similar institution, as defined in Section 3(a)(5)(A) of the 1933 Act (whether acting for its own account or in a fiduciary capacity); a broker-dealer registered under the Exchange Act; an insurance company, as defined in Section 2(13) of the 1933 Act; an investment company registered under the ICA; "business development company," as defined in Section 2(a)(48) of the ICA; a small business investment company licensed under Section 301(c) or (d) of the Small Business Investment Act of 1958, as amended, or a "private business development company" as defined in Section 202(a)(22) of the Advisers Act.
- ENTITY OWNED ENTIRELY BY ACCREDITED INVESTORS.** A corporation, LLC or similar entity, *each* of whose equity owners is either a natural person whose individual net worth, or joint net worth with his or her spouse, exceeds \$1 million, or an entity, *each* of whose equity owners meets this test.
- ENTITY OWNED ENTIRELY BY INDIVIDUALS WITH \$1 ½ MILLION NET WORTH.** A corporation, LLC, or similar entity, *each* of whose equity owners is either a natural person whose individual net worth, or joint net worth with his or her spouse, exceeds \$1,500,000, or an entity, *each* of whose equity owners meets this test.
- AN EMPLOYEE BENEFIT PLAN (AS DEFINED BY ERISA)** (*check one*). An employee benefit plan with total assets in excess of \$5,000,000; an employee benefit plan (as defined in ERISA) whose investment decisions are made by a plan fiduciary which is either a bank, a savings and loan association, or an insurance company (as defined in §3(a) of the Securities Act of 1933), or, an investment adviser registered as such under the Investment Advisers Act of 1940, a self-directed employee benefit plan (as defined in ERISA), in which all participants are accredited investors.
- AN INDIVIDUAL RETIREMENT ACCOUNT (IRA) OF AN INDIVIDUAL WITH \$1 MILLION NET WORTH.** An IRA of a person who has an individual net worth, or combined net worth together with his or her spouse, in excess of \$1,000,000 (net worth means the total excess of total assets at fair market value, including home and personal property, over total liabilities).
- AN INDIVIDUAL RETIREMENT ACCOUNT (IRA) OF AN INDIVIDUAL WITH \$1 ½ MILLION NET WORTH.** An IRA of a person who has an individual net worth, or a combined net worth together with his or her spouse, in excess of \$1,500,000 (net worth means the total excess of total assets at fair market value, including home and personal property, over total liabilities).

IV. QUESTIONS TO DETERMINE ELIGIBILITY TO PARTICIPATE IN "HOT ISSUES"

The Investment Manager and its counsel or the LLC's independent accountants will rely on the following information in making representations to broker-dealers that sell securities to the LLC and such broker-dealers will in turn, rely on such information in determining whether Subscriber may participate in profits (if any), from "certain" public offerings ("hot issues") in which the LLC may invest. If Subscriber does not provide adequate information below, he or she will be presumed to be ineligible to participate in such profits.

A. NATURAL PERSONS; CERTAIN TRUSTS

Provide the following information to each natural person who will have a Beneficial Interest¹ in the Interest. If Subscriber is a revocable trust, provide the information as to each grantor (trustor) of the trust.

1. **Employment and Business Connections.** Provide a complete description of Subscriber's current employment and corporate directorships.

2. **Restricted Characteristics.** Check each of the following that describes Subscriber.

- A member² of the NASD or a non-Member broker or dealer (a "Broker-Dealer").
 - An officer, director, general partner, employee, or agent of a Broker-Dealer or a Person Associated³ with a Broker-Dealer.
 - A member of the immediate family of a person described in either of the preceding two items, if this box is checked, please provide the following information about the extent to which the Broker-Dealer or Associated Person contributes to the support of Subscriber.
 - He or she contributes directly or indirectly to Subscriber's support to a material extent;
 - He or she contributes directly or indirectly to Subscriber's support but not to a material extent. Provide the name of the broker or dealer with which the contributing person is associated, or
 - He or she does not contribute directly or indirectly to Subscriber's support.
-

EXHIBIT E

MARKET NEUTRAL TRADING , LLC
SIGNATURE PAGE

SUBSCRIPTION AMOUNT: Subscriber hereby agrees to invest the following amount in a Limited LLC Interest.

\$ _____

Subscriber represents and warrants that the information provided above is true and correct in all material respects. By signing below, Subscriber agrees to become a limited partner of Market Neutral Trading , LLC under the terms and conditions of the LLC's Agreement of Limited LLC (as amended through the date Subscriber executes this Questionnaire) and the "Terms and Conditions of Subscription Agreement", each of which is incorporated fully herein by this reference. Subscriber has received and read such Agreements. In addition, Subscriber agrees to deliver to the Investment Manager, if represented, a copy of any documentation necessary to establish the authority of the person signing this document on behalf of Subscriber (e.g., corporate articles of incorporation, bylaws, and authorizing resolutions; LLC agreement; operating agreement; declaration of trust). Each person signing below represents and warrants that he or she has all requisite power and authority to execute this document (and through it, the Terms and Conditions of Subscription Agreement and the LLC's Agreement of Limited LLC) on behalf of Subscriber.

The undersigned has executed this Agreement on this _____ day of _____, 20_____

For Individual Investors

Signature

Print Name

Signature

Print Name

For Corporate, LLC, Trust, Employee Benefit Plan or Other Entity Investors:

Print Exact Name of Entity as it should appear in all LLC Records

By: _____
Signature of Authorized Signatory

By: _____
Additional Signature (if required by governing instruments)

Print Name

Print Name

Title: _____

Title: _____

AGREEMENT OF CUSTODIAN OF INDIVIDUAL RETIREMENT ACCOUNT: The undersigned, being the custodian of the above named individual retirement account, hereby accepts and agrees to this Subscription, and to the terms and conditions set forth in the LLC Agreement and this Subscription Agreement.

By: _____
Signature of Authorized Signatory

By: _____
Print Name of Authorized Signatory

**** DO NOT WRITE BELOW THIS POINT ****

SUBSCRIPTION ACCEPTED _____, 20_____

Market Neutral Trading B, LLC
Investment Manager

By: _____
Jim Murray, Investment Manager

MARKET NEUTRAL TRADING , LLC

***INVESTMENT IN THIS LIMITED LIABILITY COMPANY
INVOLVES A MODERATE DEGREE OF RISK***

Market Neutral Trading, LLC (the "Company") is a Delaware limited liability Company organized in November 2005 which seeks preservation of capital & capital appreciation while minimizing market risk by investing in securities. The company seeks to accomplish this objective by investing an equal percentage of fund assets in long and short equities.

The Company may utilize leverage, as permitted by the Company's broker/dealers. There can be no assurance that the investment objectives of the Company will be achieved. See "INVESTMENT METHODOLOGY," "MANAGEMENT OF THE COMPANY," "CONFLICTS OF INTEREST," and "RISK FACTORS."

The Membership Interests are being privately offered and sold by the Company directly on a best efforts basis pursuant to an exemption from the registration provisions of the Securities Act of 1933, as amended (the "Act"), provided for in Regulation D under the Act and Rule 506 thereof to qualified persons as defined in Rule 501 of Regulation D. There will be no sales charges upon subscription for Interests. The minimum Interest that may be purchased is \$250,000, unless waived by James Murray. Interests may be purchased as of the close of business on any Business Day, subject to certain restrictions. All subscriptions received from prospective investors will be held in a separate, non-interest bearing account until the acceptance of the subscription by the Investment Manager. If a subscription for an Interest is rejected in whole or in part (which is in the sole discretion of the Company), the rejected subscription funds or the rejected portion thereof will be returned to the subscriber, within 3 days of the Company's receipt of the subscription. The Company may reject any subscription in whole or in part for any reason. Interests are transferable only with the consent of the Company. Upon the close of business on the last business day of a calendar quarter following the twelfth calendar month after the day in which an Interest is purchased and each calendar quarter-end thereafter, all or a portion of such Interest may be redeemed on 30 days' prior written notice to the Company, subject to certain restrictions. No secondary market for the Interests exists, and none is likely to develop. See "PURCHASE PROCEDURE."

THE INTERESTS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

**COMPANY
Market Neutral Trading, LLC**

The date of this Confidential Private Offering Memorandum (the "Memorandum")
is August 1, 2006

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NOTICES

NO PERSON IS AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS NOT CONTAINED HEREIN, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED. THE DELIVERY OF THIS MEMORANDUM AT ANY TIME DOES NOT IMPLY THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AS OF ANY TIME SUBSEQUENT TO THE DATE OF ITS ISSUE.

THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, A SECURITY IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR SOLICITATION IN SUCH JURISDICTION.

INVESTMENT IN THE INTERESTS INVOLVES A HIGH DEGREE OF RISK AND IS SUITABLE ONLY FOR A SOPHISTICATED INVESTOR FOR WHICH SUCH INVESTMENT DOES NOT CONSTITUTE A COMPLETE INVESTMENT PROGRAM AND WHICH FULLY UNDERSTANDS AND IS WILLING TO ASSUME THE RISKS INVOLVED. ONLY A PERSON OR ENTITY WHICH QUALIFIES FOR PURPOSES OF THE ACT ^{may} INVEST IN THE INTERESTS. NO PERSON, WHICH IS NOT CAPABLE INDEPENDENTLY OF EVALUATING ANY INFORMATION, CONTAINED IN THIS MEMORANDUM AND THE RISKS INVOLVED IN THE PURCHASE OF THE INTERESTS SHOULD CONSIDER DOING SO.

A PROSPECTIVE PURCHASER OF INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS MEMORANDUM AS TAX OR LEGAL ADVICE. THE PROSPECTIVE PURCHASER AND ITS INVESTMENT, TAX, LEGAL OR OTHER ADVISERS SHOULD REVIEW THIS MEMORANDUM.

EXECUTIVE OFFICERS AND REPRESENTATIVES OF THE COMPANY ARE AVAILABLE TO EACH PROSPECTIVE INVESTOR AND/OR ITS REPRESENTATIVES TO ANSWER QUESTIONS CONCERNING THE TERMS AND CONDITIONS OF THIS OFFERING OF INTERESTS AND TO FURNISH ANY ADDITIONAL INFORMATION, TO THE EXTENT THAT THEY POSSESS OR CAN ACQUIRE IT WITHOUT UNREASONABLE EFFORT OR EXPENSE, NECESSARY TO VERIFY THE ACCURACY OF THE INFORMATION SET FORTH HEREIN OR TO ENABLE IT TO EVALUATE THE MERITS AND RISKS RELATING TO THE PURCHASE OF INTERESTS.

BY ACCEPTING RECEIPT OF THIS MEMORANDUM, EACH PROSPECTIVE INVESTOR AGREES NOT TO DUPLICATE OR TO FURNISH COPIES OF THIS MEMORANDUM TO PERSONS OTHER THAN SUCH OFFEREE'S INVESTMENT, TAX, ACCOUNTING OR LEGAL ADVISERS AND AGREES TO RETURN THIS MEMORANDUM TO THE COMPANY PROMPTLY AFTER SUCH TIME AS SUCH OFFEREE'S IS NO LONGER CONSIDERING AN INVESTMENT IN THE INTERESTS.

THIS MEMORANDUM DOES NOT CONTAIN AN UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE A MATERIAL FACT NECESSARY TO MAKE THE STATEMENTS MADE HEREIN, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING. IT CONTAINS A FAIR SUMMARY OF THE MATERIAL TERMS OF DOCUMENTS PURPORTED TO BE SUMMARIZED HEREIN.

NASAA UNIFORM LEGEND

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE INTERESTS HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS MEMORANDUM, ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE INTERESTS ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND may NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT, AND ANY APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MIGHT BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

SUMMARY

The following summary briefly describes the offering of Interests in Market Neutral Trading LLC and is qualified in its entirety by the detailed information appearing elsewhere in this Memorandum.

The Company: Market Neutral Trading LLC is a Delaware limited Company organized in November 2005. The Company's principal office is at 505 Montgomery Street Suite 1100, San Francisco, California 94111; its telephone number is or 415-874-3558; facsimile 415-634-2782.

Company: Market Neutral Trading, LLC is a Delaware limited liability company.

Investment Objective: The Company's investment objective is to seek substantial capital appreciation while attempting to eliminate and or minimize stock market risk by investing in risk arbitrage merger and acquisition's and employing market neutral trading strategies. Leverage may be used in an attempt to increase the overall return on the Company's capital, but such leverage also may increase the volatility of the Company's returns and the risk of loss. There can be no assurance that the Company's investment objective will be achieved. See "RISK FACTORS."

Offering: Interests are being privately offered and sold by the Company pursuant to an exemption from the registration provisions of the Act provided for in Regulation D and Rule 506. The minimum Membership Ownership Interest that may be purchased is \$250,000, unless waived by the Company. Membership owners Interests may be purchased as of the close of business on the last Business Day of each calendar month, subject to certain restrictions. The maximum total amount of Interests that may be accepted by the Company pursuant to this offering is \$50,000,000.

Term: Unless earlier dissolved, the Company shall cease doing business on December 31, 2050, and shall thereupon be dissolved.

Additional Capital Contributions: Member Owners (as hereinafter defined), with the consent of the Company, may make additional capital contributions on any Business Day.

Allocation of Profits and Losses: Each Owner Member in the Company and the Company will have a Book Capital Account (as hereinafter defined) and a Tax Capital Account (as hereinafter defined), the initial balance of each of which will be the amount contributed to the Company by such Owner Member. Any increase or decrease in the Net Asset Value (as defined in the Limited Liability Company Agreement) of the Company will be allocated among the Owner Members on a monthly basis and will be added to or subtracted from the Book Capital Accounts of the Owner Members in the ratio that each Owner Member's Book Capital Account bears to all Owner Members' Book Capital Accounts. The fund will not accept capital contributions subsequent to the fund reaching \$35,000,000 in Net Asset Value. Upon reaching \$50,000,000 in Net Asset Value all amounts in excess of this amount will be distributed to members on a pro rata basis as determined by their Capital Account balance.

Incentive Allocation: At the end of each calendar quarter, the Investment Manager, Mr. Murray, will be paid an Incentive Allocation equal to 25% for each member.

Expenses: The Company is obligated to pay transaction fees, custodial fees, and other trading and investment related expenses. In addition, the Company also is obligated to pay its legal, accounting, administration, auditing, filing, administrative and other regular operating expenses and extraordinary expenses which may occur in the operation of the Company's business.

Redemptions: Upon the close of business on the last business day of a calendar quarter following the twelfth calendar month after the day in which an Interest is purchased and each calendar quarter-end thereafter, all or a portion of such Interest may be redeemed on 30 days' prior written notice to the Company, subject to certain restrictions.

Reports and Pricing: At the end of each quarter, the Company will prepare and send to each Owner Member an un-audited quarterly statement that will report the Net Asset Value of the Company and any changes therein. For purposes of preparing such quarterly statements, the Company will price the Company's portfolio securities based upon the last reported sale prices on the valuation date for such securities. In addition, following the end of each fiscal year, an audited annual report of the Company, certified by the Company's independent auditors, shall be prepared and mailed to each Owner Member.

Risk Factors: The investment program of the Company involves moderate risks. The Company is a recently formed entity in a moderate-risk field, and while there are comparable risk arbitrage and market neutral performance histories, there is limited specific performance history for Market Neutral Trading, LLC upon which to evaluate its likely performance. There is no present expectation that a secondary market in the Interests will develop, and there are restrictions on transfers of Interests. Substantial risks are involved in investing in and trading equities. Equities, in which the Company invests, are extremely sensitive to corporate announcements and overall market movements. Investments in options may be subject to greater fluctuation than investments in the underlying securities. The Company may use leverage in investing the Company's assets. While this use of leverage may increase the Company's overall rate of return, it also may increase losses incurred by the Company and the volatility of the Company's returns. See "RISK FACTORS."

Conflicts of Interests: Certain inherent and potential conflicts of interests exist in the nature and operations of the Company. See "CONFLICTS OF INTEREST."

Additional Information: Prospective investors desiring further information concerning the terms and conditions of this offering of Interests should contact Market Neutral Trading LLC at 505 Montgomery Street Suite 1100, San Francisco, Ca 94111. Telephone inquiries may be directed to Jim Murray at 415-874-3558.

THE COMPANY

Market Neutral Trading, LLC is a Delaware limited Liability Company organized in November 2005 under the Delaware Limited Liability Act. The Company will manage the affairs of the Company pursuant to the provisions of the Company's Limited Liability Company Agreement (attached hereto as Exhibit A). See "MANAGEMENT OF THE COMPANY" and "CONFLICTS OF INTEREST." The business offices of the Company and the Company are located at 505 Montgomery Street Suite 1100, San Francisco, California 94111; its telephone number is 415-874-3558; facsimile 415-634-2782. The Company was formed to provide investors with an opportunity to participate in the Company's investment program that seeks substantial capital appreciation while attempting to remove or eliminate market direction risk by investing in, and trading risk arbitrage merger's and acquisitions and investing in market neutral trading strategies within various industries. The Company may use leverage in an attempt to increase the overall return on the Company's capital. The investment style utilized by the Company can be characterized as moderate. There can be no assurance that the Company's investment objective will be achieved. See "INVESTMENT METHODOLOGY" and "RISK FACTORS."

The proceeds of this offering will be applied to the investment objectives of the Company. See "SUMMARY OF THE LIMITED LIABILITY COMPANY AGREEMENT."

Subscribers whose subscriptions are accepted will become Owner Members of the Company ("Owner Members"). A Limited Liability Company was chosen as the investment vehicle because it affords the investors the protection of limited liability.

OFFERING OF INTERESTS

Interests may be purchased as of the close of business on any Business Day. All capital contributions received from investors will be placed in a separate, non-interest bearing account. The amount of each investor's subscription will be contributed to the Company, upon the acceptance of the subscription by the Company. If a subscription for an Interest is rejected in whole or in part (which is in the sole discretion of the Company), the rejected subscription funds or the rejected portion thereof will be returned to the subscriber, within 30 days of the Company's receipt of the subscription. The Company will determine whether to accept or reject a subscription as promptly as possible following its receipt.

Suitability Requirements

The Company is only offering Interests for sale to qualified investors, and the Company may reject any subscription for an Interest, in whole or in part, for any reason. There is no maximum amount of capital contributions that may be accepted by the Company pursuant to this offering of Interests. Participation in the Company pursuant to this offering of Interests is limited to investors who, either alone or in conjunction with their respective purchaser representative(s) (as defined in Rule 501(h) of Regulation D), are qualified to invest in the Company by:

- (a) their knowledge and acceptance of the risks associated with highly leveraged trading in volatile markets and,
- (b) their financial ability to accept such risks.

Interests which are offered hereby should only be purchased by those persons who can afford the possible loss of their entire investment and may only be purchased by those investors who represent and warrant that they are purchasing the Interests for their own account for investment purposes without any present intention to resell, distribute or otherwise transfer, or dispose of the Interests.

An organization or entity subscribing for Interests is defined as an "accredited investor" if it is:

- (A) a bank as defined in Section 3(a)(2) of the Act,
- (B) a savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Act,
- (C) a broker or dealer registered pursuant to Section 15 of the Securities and Exchange Act of 1934, as amended (the "1934 Act"),
- (D) an insurance company as defined in Section 2(13) of the Act,
- (E) an investment company registered under the Investment Company Act of 1940, as amended (the "IC Act"),
- (F) a business development company as defined in Section 2(a)(48) of the IC Act,
- (G) a small business investment company licensed by the United States Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958, as amended,
- (H) a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000,
- (I) an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of ERISA, which is either a bank, savings and loan association, insurance company or registered investment adviser ("Plan Fiduciary") or an employee benefit plan that has total assets in excess of \$5,000,000 or, if the plan is self-directed, with investment decisions made solely by persons who are accredited investors,
- (J) a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, as amended (the "1940 Act"),
- (K) an organization described in Section 501(c)(3) of the Code, a corporation, a Massachusetts or similar business trust or a Company, not formed for the specific purpose of acquiring Interests, with total assets in excess of \$5,000,000,
- (L) a trust with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring an Interest, whose purchase is directed by a sophisticated person as described in Rule 502(b)(2)(ii) of Regulation D or,
- (M) an entity of which all of the equity owners are accredited investors.

Generally, to be an "accredited investor", an investor who is a natural person must:

- (A) have a current net worth, individually or jointly with one's spouse, in excess of \$1,000,000 or,
- (B) have had an individual income in excess of \$200,000, or joint income with one's spouse in excess of \$300,000, in each of the two most recent taxable years and reasonably expect to earn the same level of income in the current taxable year.

The Company intends to register as an investment adviser with state of California. The Advisers Act generally prohibits a registered investment adviser from entering into or performing any investment advisory contract that provides for compensation to the adviser based on a share of capital gains or capital

appreciation in a client's account (a "Performance Fee Contract"). Pursuant to Rule 205-3 of the Advisers Act the Company will only enter into a Performance Fee Contract and receive a performance fee from Owner Members who either:

- (i) have \$750,000 under management with the adviser,
- (ii) have a net worth of \$1,500,000,
- (iii) are "qualified purchasers" under Section 2(a)(51)(A) of the IC Act, or (iv) are "knowledgeable employees" of the investment adviser.

Transferability

Prospective investors should note that Member Ownership Interests are not freely transferable. A registration statement covering the Interests has not been filed with the Securities and Exchange Commission under the Act, and no such registration of the Member Ownership Interests by the Company is contemplated as of the date of this Memorandum. The Act would prohibit transfer or sale of the Interests in the absence of such registration unless; an exemption to the Act's registration requirements was applicable to such transfer or sale. In addition, the prior consent of the Company is required for the transfer of any Interests.

Capital Contribution

Capital Contributions must be in cash or securities.

Purchase Procedure

In order to subscribe for an Interest, an investor must complete, execute and date a Subscription Agreement/Power of Attorney and deliver or mail such document to Market Neutral Trading, LLC, 505 Montgomery Street, Suite 1100, San Francisco, California 94111. Contributions should be made by check, electronic wire transfer, DTC or Acats transfer to the designated custodian for credit to Market Neutral Trading, LLC.

Investors who designate one or more purchase representatives to assist them in evaluating the merits and risks of an investment in the Company also must complete and deliver to the Company certain purchase representative documentation which may be obtained from the Company.

EMPLOYEE BENEFIT PLANS SUBJECT TO ERISA

General

Each respective Owner Member which is an employee benefit plan or trust (an "ERISA Plan") within the meaning of, and subject to, the provisions of ERISA, or an individual retirement account ("IRA") or Keogh Plan subject to the Code, should consider the matters described below in determining whether to invest in the Company.

In addition, ERISA plan fiduciaries must give appropriate consideration to, among other things, the role that an investment in the Company plays in such ERISA Plan's portfolio, taking into consideration whether the investment is designed reasonably to further the ERISA Plan's purposes, an examination of the risk and return factors, the portfolio's composition with regard to diversification, the liquidity and current return of the total portfolio relative to the ERISA Plan's objectives and the limited right of Owner Members to withdraw all or any part of their capital accounts or to transfer their interests in the Company.

If the assets of the Company were regarded as "plan assets" of an ERISA Plan, an IRA, or a Keogh Plan (collectively, the "Plans"), the Company would be a "fiduciary" (as defined in ERISA) with respect to such Plans and would be subject to the obligations and liabilities imposed on fiduciaries by ERISA. Moreover, various other requirements of ERISA also would be imposed on the Company. In particular, rules restricting transactions with "parties in interest" and prohibiting transactions involving conflicts of interest on the part of fiduciaries would be imposed on the Company which might result in violation of ERISA unless the Company obtained an appropriate exemption from the Department of Labor (the "DOL") allowing the Company to conduct its operations as described herein.

A regulation adopted by the DOL (the "Regulation") provides that when a Plan invests in another entity, the Plan's assets include both the equity interest and an undivided interest in each of the underlying assets of the entity, unless it is established that, among other exceptions, the equity participation in the entity by "benefit plan investors" ("Benefit Plan Investors") is not "significant."

Under the Plan Regulations, participation by Benefit Plan Investors is "significant" on any date if, immediately after the last acquisition, 25% or more of the value of any class of equity interests in the entity (disregarding the holding of the Company or its affiliates other than Benefit Plan Investors) is held by Benefit Plan Investors. The Company intends to limit the participation in the Company by Benefit Plan investors to the extent necessary so that participation by Benefit Plan investors will not be "significant" within the meaning of the Plan Regulations. Therefore, it is not expected that the Company's assets will constitute "plan assets" of plans that acquire interests.

Furthermore, for purposes of determining whether Benefit Plan Investors hold twenty-five (25%) percent or more of the value of any class of equity interest, those equity interests held by the Company or any other person other than a Benefit Plan Investor who has discretionary authority or control with respect to the assets of the Company or any person who provides investment advice for a fee (direct or indirect) with respect to such assets or any affiliate of such person, will be disregarded.

It is the current intent of the Company to limit the aggregate investment by Plans to less than twenty-five (25%) percent of the value of the Owner Members' Interests so that equity participation of Benefit Plan Investors will not be considered "significant." The Company reserves the right, however, to waive the twenty-five (25%) percent limitation and thereafter to cause the Company to comply with the applicable provisions of ERISA and the code. In such case, the Company would provide notice to the existing Owner Members.

WHETHER OR NOT THE UNDERLYING ASSETS OF THE COMPANY ARE DEEMED PLAN ASSETS UNDER THE REGULATION, AN INVESTMENT IN THE COMPANY BY A PLAN IS SUBJECT TO ERISA AND TO THE CODE. ACCORDINGLY, FIDUCIARIES OF PLANS SHOULD

CONSULT THEIR OWN COUNSEL AS TO THE CONSEQUENCES UNDER ERISA OR THE CODE OF AN INVESTMENT IN THE COMPANY.

Certain prospective Plan investors may currently maintain relationships with the Company or an Affiliate thereof. Each of such persons may be deemed to be a party in interest to and/or fiduciary of any Plan to which it provides investment management, investment advisory, or other services. ERISA prohibits plan assets from being used for the benefit of a party in interest and also prohibits a Plan fiduciary from using its position to cause the Plan to make an investment from which it or certain third parties in which such fiduciary has an interest would receive a fee or other consideration. Under such circumstances, Plan investors should consult with counsel to determine if participation in the Company is a transaction, which is prohibited by ERISA or the Code. In some such cases, additional conditions may be imposed on such Plan investors and the fiduciaries of such a Plan are required to represent that the decision to invest in the Company was made by them as fiduciaries who are independent of such affiliated persons who are duly authorized to make such investment decision and who have not relied on any advice or recommendation of such affiliated persons as a primary basis for making the decision to purchase interests.

Unrelated Business Taxable Income

Qualified Plans are generally exempt from federal income taxation under the Code. However, Qualified Plans are subject to federal income taxation to the extent that they have any "unrelated business taxable income" ("UBTI") (as determined in accordance with Sections 511-514 of the Code) in any taxable year. Since the Company's business will constitute an unrelated trade or business with respect to a Qualified Plan, which invests in the Company, such Qualified Plan's share of Company income, whether or not distributed, will constitute unrelated business taxable income to the Qualified Plan, except to the extent that a statutory exemption is available. Interest income, and capital gains on securities, to the extent not "debt financed," are generally exempt from UBTI. However, an investor, which borrows money to invest in the Company, may, as a result, cause that investor to become subject to UBTI. **Moreover, because the Company is expected to use margin debt to finance certain investments, it is likely the Company will generate UBTI.**

FIDUCIARIES SHOULD CONSULT THEIR OWN TAX ADVISERS REGARDING THE FEDERAL INCOME TAX CONSEQUENCES OF INVESTING ASSETS OF A QUALIFIED PLAN IN THE COMPANY. ACCEPTANCE OF SUBSCRIPTIONS ON BEHALF OF INDIVIDUAL RETIREMENT ACCOUNTS OR OTHER EMPLOYEE BENEFIT PLANS IS IN NO RESPECT A REPRESENTATION BY THE COMPANY, THE COMPANY OR ANY OTHER PARTY THAT THIS INVESTMENT MEETS ALL RELEVANT LEGAL REQUIREMENTS WITH RESPECT TO INVESTMENTS BY ANY PARTICULAR PLAN. THE PERSON WITH INVESTMENT DISCRETION SHOULD CONSULT WITH HIS OR HER ATTORNEY AND FINANCIAL ADVISERS AS TO THE PROPRIETY OF SUCH AN INVESTMENT IN LIGHT OF THE CIRCUMSTANCES OF THAT PARTICULAR PLAN AND CURRENT TAX LAW.

INVESTMENT METHODOLOGY

The investment objective is to remove and or eliminate market direction risk by pursuing market-neutral and risk arbitrage equity strategies. All investment decisions will be made exclusively by the Investment Manager, in its sole and absolute discretion. The Company will be free to pursue such investment strategies, as it deems fit or appropriate at any given time. The following discussion of investment strategy is intended only to provide an overview of potential strategies which may be used by the Company but which are subject to change as market conditions may warrant.

Objective and General Approach

The Company, Market Neutral Trading, LLC, was organized to seek capital appreciation while attempting to minimize or eliminate market direction risk. Any current income will be incidental to the Company's primary investment approach. The Company employs a series of proprietary models and utilizes a broad cross-section of investment styles to identify investment opportunities. The Company

invests primarily in US domestic equities. Equity investments will be identified through fundamental and technical analysis. The Company may employ margin to leverage positions.

In an effort to identify equity investments, selection is based primarily on fundamental merger and acquisition and risk arbitrage analysis and the analysis of disparities of competing company market valuations. The Company considers increasing earnings momentum, relative price strength, market share and many other factors, and fundamental valuation analysis.. After using the aforementioned screens, the Company will utilize technical and charting tools to assess supply-demand relationships in the context of the general market.

Short sales and positions in options instruments may be established for speculative and/or for hedging purposes, as part of an overall strategy to reduce market risk in its portfolio. The Company believes that the Company's basic trading strategy, by its nature, reduces the Company's overall risk exposure to underlying market movements.

Investment Authority and Restrictions

The Investment Manager has broad authority under the Company Agreement to acquire, purchase, invest in, hold for investment, own, exchange, assign, sell or otherwise dispose of, trade in, on margin or otherwise, sell short, lend, lease, mortgage, pledge or otherwise deal in "Securities" (as hereinafter defined). The Investment Manager may employ an aggressive investment policy and utilize sophisticated trading techniques such as, but not limited to, selling short, borrowing money for the purchase of securities and currency contracts and purchasing and selling put and call options (or combinations thereof), and may also make more conservative investments, including, but not limited to, investment in cash, deposit accounts and cash equivalents, and or investing in various internet retail or wholesale businesses as and when determined appropriate by the Investment Manager.

The Investment Manager will not invest directly in real estate or, unless properly registered, in commodities, commodity futures contracts or financial futures contracts. In addition, the Company may sell any, all or substantially all of the assets of the Company and collect and administer proceeds of any such sale and engage in such other activities related to the foregoing as the Investment Manager deems necessary, advisable or convenient to the promotion or conduct of the business of the Company.

The term "Securities" includes foreign or domestic stocks, investment company securities, Company interests, bonds, warrants, debentures, puts, calls, straddles, notes, currencies or combinations thereof, any other debt obligations, any certificates, receipts, forward or spot contracts, repurchase agreements or other agreements or instruments representing rights to receive, purchase, subscribe for or sell any of the foregoing, or representing any other rights or interests therein or in any property or assets created or issued by any foreign or domestic persons, firms, associations, corporations or governments, agencies or subdivisions thereof, and futures contracts and options of all types, including without limitation futures contracts and options regarding Securities, commodities and financial market indices, except that the Company will not invest in any instrument, future, option, commitment or other contract, investment or commodity interest that would, if the Company were to invest, trade or deal in it, cause the Company to be considered a commodity pool operator, unless and until the effectiveness of appropriate registration as a commodity pool operator or otherwise upon compliance with applicable regulations of the Commodity Futures Trading Commission.

The Investment Manager may invest from time to time in securities of an issuer that would constitute more than 10% of a class of the outstanding stock of that company, if the Investment Manager determines in its discretion that such an investment is appropriate.

Options Strategy

The Investment Managers has experience trading options and intends to use a number of option strategies for the Company, including purchasing calls and/or puts, vertical and horizontal spreading, and naked and covered writing. As transactions vary in characteristics, so will the appropriate options strategy for a given situation. For example, writing a covered option may make sense to the Company in one

situation, and not another. Hedging in options may reduce the risks of both short selling and taking long positions in certain transactions. The Investment Manager recalculates and adjusts portfolio hedges as market conditions warrant. The Investment Manager also may establish options positions when it believes that options or other derivative securities present more favorable risk/return relationships than owning the underlying security.

Holding Period and Turnover

The Investment Manager generally establishes investment positions with expected short-term holding periods, although the Investment Manager may hold positions in select issues for longer periods. As a result of the investment policies described in this Memorandum, the Investment Manager expects to engage in a substantial number of portfolio transactions. Therefore, the Company's portfolio turnover rate, and hence its trading expenses and other transactional costs, may be substantial, given the nature and frequency of its trading activity.

Short Sales

The Investment Manager intends to engage in short sales of securities. Selling securities short involves selling securities that the Company does not own. In order to make delivery to the purchaser, the Company would have to borrow securities from a third party lender. The Company subsequently returns the borrowed securities to the lender by delivering to the lender the securities it receives in the transaction or by purchasing securities in the open market. The Company generally pledges cash with the lender equal to the market price of the borrowed securities. This deposit may be increased or decreased in accordance with changes in the market price of the borrowed securities. During the period in which the securities are borrowed, the lender typically retains his right to receive interest and dividends accruing to the securities. In exchange, in addition to lending the securities, the lender will, pay the Company a fee for the use of the Company's cash. This fee is based on prevailing interest rates, the availability of the particular security for borrowing and other market factors. Short-selling activities are subject to restrictions imposed by the federal securities laws.

Leveraged Purchase of Securities

The Investment Manager may use leverage in investing the Company's assets. Borrowing money to purchase instruments may provide the Company's portfolio with the opportunity for greater capital appreciation but at the same time will increase the portfolio's risk of loss with respect to that instrument. Although leverage increases returns to the Company if it earns a greater return on the incremental investments purchased with the borrowed funds than it pays for such funds, the use of leverage decreases returns to the Company if it fails to earn as much on such incremental investments as it pays for such funds. The amount of borrowings which the Company may have outstanding at any time may be large in relation to its capital. In particular, it should be noted that options inherently contain much greater leverage than does a purchase of the underlying security inasmuch as only a small portion of the value of the underlying security, is required in order to invest in such options. In addition, the level of interest rates generally, and the rates at which the Company can borrow in particular, will be an expense of the Company and will therefore affect the operating results of the Company. The Investment Manager intends to maximize its investment position by borrowing funds to the fullest extent permitted by law. As a result, the possibilities of profit and risk of loss will be increased. The level of interest rates and the amount of borrowing will affect the operating results of the Company. Fluctuations in the market value of the portfolio of a heavily leveraged investment have a disproportionately large effect in relation to the return or loss on the investment.

When a trader purchases an option, there is no margin requirement. When a trader sells an option, on the other hand, the trader is required to deposit margin in an amount determined by the margin requirements established for the contract underlying the option, and, in addition, an amount substantially equal to the current premium for the option. The margin requirements imposed on the writing of the options, although adjusted to reflect the probability that out-of-the-money options will not be exercised, can in fact be higher than those imposed in dealing in the underlying markets directly. Complicated margin

requirements apply to "spreads" and "conversions," which are complex trading strategies in which a trader acquires a mixture of related securities and options positions.

Margin requirements are computed each day. When the market value of a particular open position changes to a point where the margin on deposit does not satisfy maintenance margin requirements, a margin call is made. If the margin call is not met within a reasonable time, the traders' position may be closed out. With respect to the Company's trading, the Company, and not the Owner Members personally, will be subject to margin calls.

The Company anticipates that most of its funds will generally be invested in securities or other instruments or deposited to satisfy margin requirements and does not generally intend to maintain substantial cash balances outside of margin accounts for long periods of time. To the extent the Company has excess funds that are not invested or deposited to satisfy margin requirements, such funds are expected to be held in interest bearing money market or trading accounts or high-grade short-term investments, in each case in the United States. The Investment Manager may at his discretion invest in various wholesale & or retail business inventory offerings from distressed or bankrupt retail businesses.

Cash and Cash Equivalents

The Company reserves the right to maintain significant amounts in cash, particularly when the Company believes the Company should follow a temporary defensive posture, or when the Company determines that opportunities for investing are unattractive. Among the cash equivalents which the Company may acquire are: obligations of the United States Government, its agencies or instrumentalities; commercial paper, and certificates of deposit and bankers' acceptances issued by domestic branches of U.S. banks that are members of the Bank Insurance Fund. The Company also may enter into repurchase or reverse repurchase agreements, may purchase shares of money market mutual funds properly registered under the securities laws, and may receive interest paid on its credit balances with securities firms or others. There is no restriction on the amount of time that Company funds may be held prior to being utilized. All funds will be received in the name of the Company, and funds held as margin deposits will be properly segregated in accordance with applicable regulations.

Relationship with Portfolio Companies and Investment Restrictions

The Company will not ordinarily acquire investment positions with the intention of seeking control or substantially influencing the control of a particular issuer. However, there may be situations that, in the judgment of the Company, require active efforts to seek changes in particular management policies or strategies. In such situations, the Company may, either alone or with other investors, make its views known to management and may seek to influence, in a manner consistent with the Company's investment objectives and resources, the management or policies of a particular issuer. In no circumstances will the Company take legal or management control or become involved in the day-to-day management of a portfolio company.

Diversification and Concentration

While it is the objective to remove market direction risk, it is not a goal of the Company to maintain a highly diversified portfolio. The Company focuses on a limited number of investments that it can follow closely. Moreover, the Company Agreement imposes no limits on the concentration of the Company's investments in particular securities, businesses, industries, or sectors. There are instances where the Company may feel that it is in the best interest of the Company to effect a transaction outside of these guidelines. This may represent a special risk in that the level of diversification of the Company's portfolio may be lower than a well-diversified portfolio.

Inherent Risks

An investment in the Company should be viewed as a moderately aggressive investment. It is not intended as a complete investment program and is designed only for investors who have adequate means of providing for their needs and contingencies without relying on distributions or withdrawals from their Company accounts, which are financially able, maintain their investment and who can afford the loss of

their investment. There can be no assurance that the Company will achieve its investment objectives. All potential investors in the Company should understand the investment approaches and techniques that the Company expects to use in the management of the Company and the particular risks associated with those approaches and techniques. See "RISK FACTORS."

MANAGEMENT OF THE COMPANY

The Company, Market Neutral Trading, LLC. is a Delaware Limited Liability Company formed in August 2008. The Company, Market Neutral Trading, LLC has been formed solely for the purposes stated in this Memorandum.

Mr. Murray will make all the investment decisions for the Company. Mr. Murray will administer all investments of the Company. However, Mr. Murray will not coordinate or administer all financial activities, including preparation of tax returns, financial statements, and, to the extent deemed advisable or appropriate by the Company, special financial reports, and quarterly statements to Owner Members. Mr. Murray has unlimited authority to administer investments on behalf of the Company.

A major factor in an Investor's decision to invest in the Company is the Investor's opinion of the Investment Manager, James M. Murray. He will supervise all the Company's investment and activities but the Investment Manager will select a neutral party to administer & prepare the tax returns, financial statements, and, to the extent deemed advisable or appropriate by the Company, special financial reports, and quarterly statements to Owner Members.

Investment Manager of the Company

James Murray is the investment manager of the company. Prior to this period, Mr. Murray was the Investment Manager for the investment fund Murray Partners LP, Pareto Capital LLC & worked as an Investment Advisor at MurrayAsset Management LLC. Prior to that time, Mr. Murray was a proprietary equity trader at JW Genesis Capital. For the past fifteen years, Mr. Murray has been investing assets utilizing strategies substantially similar to those intended to be utilized by the Company. Mr. Murray received his BS, Cum Laude in Economics and MS Economics from the University of Arizona. See "CONFLICTS OF INTEREST" and "RISK FACTORS."

The Company intends to employ additional personnel in the future as analysts or managers.

There has never been any material civil or criminal actions, suits, or proceedings brought against the Company or its Investment Manager.

INCENTIVE ALLOCATION

At the end of each calendar quarter, the investment Manager shall be allotted an incentive equal to 25% of the Net New Appreciation of each Owner Member's Book Capital Account.

If an Owner Member experiences net losses following the allocation of an incentive to the Company, the Company will retain all incentives previously allocated, but no further Incentive Allocations will be charged to the Owner Member until additional Net New Appreciation is achieved.

Member experiences net losses following the allocation of an incentive to the Company, the Company will retain all incentives previously allocated, but no further Incentive Allocations will be charged to the Owner Member until additional Net New Appreciation is achieved.

Net New Appreciation, for the purpose of calculating the Incentive Allocation shall mean the increase, if any, in an Owner Member's Book Capital Account over the Owner Member's highest prior Book Capital Account from which a profit share was allocated to the Company, adjusted for contributions and withdrawals. For purposes of calculating Net New Appreciation, extraordinary expenses and taxes

shall be excluded. Once an Incentive Allocation is assessed, it is not refundable even if the Owner Member incurs losses thereafter.

Prospective investors should note that even though Incentive Allocations are computed and allocable as of the end of each calendar quarter, such Incentive Allocations would accrue monthly. Owner Members who redeem all or a portion of their Interest as of any date other than the end of a calendar quarter will be charged an Incentive Allocation, if earned, on the amount of the redemption. Incentive allocations will be charged even though the Company may not be entitled to an Incentive Allocation had the Interest been held through the end of the calendar quarter on account of losses incurred subsequent to the redemption. Incentive allocations charged on redemptions prior to the end of the first Calculation Period will be retained by the Company and thereafter be allocated to the Company. See "CONFLICTS OF INTEREST."

SUMMARY OF FEES AND EXPENSES

Expenses

The Company will be obligated to pay other annual operating expenses on an ongoing basis, including periodic legal, accounting, auditing, filing, administrative and other regular operating expenses and extraordinary expenses, if any, as well as continuing offering expenses. The Company will provide office space, if necessary, and certain support services. The Company will be obligated to pay its other direct and indirect operating and trading related expenses. See "SUMMARY OF THE LIMITED LIABILITY COMPANY AGREEMENT" and "CONFLICTS OF INTERESTS."

TAX CONSIDERATIONS

The following paragraphs summarize certain federal income tax aspects of an investment in the Company by investors. The discussion is based on certain provisions of the Internal Revenue Code of 1986, as amended (the "Code"), the applicable Treasury Regulations promulgated or proposed there under (hereinafter the "Regulations"), current positions of the Internal Revenue Service (the "IRS") contained in published Revenue Rulings and Revenue Procedures, current administrative positions of the IRS and existing judicial decisions, all of which are subject to changes or modifications at anytime. The Company will not request any rulings from the IRS on the tax consequences described below or any other issues. A court might reach a contrary conclusion with respect to the issues addressed if the matter were contested. Future legislation, administrative action or court decisions may significantly change the conclusions expressed herein, and any such legislation, action, or decisions may have a retroactive effect with respect to the transactions contemplated herein.

THE INCOME TAX LAWS APPLICABLE TO COMPANYS ARE EXTREMELY COMPLEX, AND THE FOLLOWING SUMMARY IS NOT EXHAUSTIVE AND DOES NOT CONSTITUTE TAX ADVICE. A PERSON CONSIDERING INVESTMENT IN THE COMPANY MUST CONSULT HIS TAX ADVISER IN ORDER TO FULLY UNDERSTAND THE FEDERAL, STATE, LOCAL, AND FOREIGN INCOME TAX CONSEQUENCES OF SUCH AN INVESTMENT IN HIS PARTICULAR SITUATION. NO REPRESENTATION IS MADE AS TO THE TAX CONSEQUENCES OF THE OPERATION OF THE COMPANY.

Tax Status of the Company – Risk Factors

The investment program of the Company involves moderate risks. The Company is a recently formed entity in a moderate-risk field, and while there is extensive performance data for risk arbitrage and market neutral strategies, there is no specific operating history of Market Neutral Trading, LLC upon which to evaluate its likely performance. There is no present expectation that a secondary market in the Interests will develop, and there are restrictions on transfers of Interests. Substantial risks are involved in investing in and trading equities. Equities, in which the Company invests, are sensitive to corporate announcements and the overall market movements. Investments in options may be subject to greater fluctuation than investments in the underlying securities. The Company may use leverage in investing the Company's assets. While this use

of leverage may increase the Company's overall rate of return, it also may increase losses incurred by the Company and the volatility of the Company's returns. See "RISK FACTORS."

The federal income tax consequences of an investment in the Company will depend in part upon the Company being recognized as a Limited Liability Company for federal income tax purposes and not as an association taxable as a corporation. No ruling will be sought from the IRS nor will an opinion be sought from counsel to the Company that the Company is taxable as a Company for federal income tax purposes. Pursuant to Treasury Regulations, the Company intends to elect to have the Company classified as a Partnership for Federal income tax purposes.

Publicly Traded Company's

The Revenue Act of 1987 (the "1987 Act") enacted various provisions, which affect any Company that is classified as a publicly traded Company. As discussed below, the Company does not believe Market Neutral Trading, LLC should be classified as a publicly traded Company.

General Principles of Company Taxation

It is assumed in the following discussion that, as discussed in "Tax Status of the Company" herein, the Company will be treated as such for federal income tax purposes.

Section 721(a) of the Code provides generally that no gain or loss is recognized by a Company or any of its Owner Members upon the contribution of property to the Company in exchange for an interest in the Company. Under section 721(b) of the Code, this general non-recognition rule does not apply to gain realized on a transfer of property to a Company if:

- (i) more than 80 percent of the value of the Company's assets (excluding cash and nonconvertible debt obligations) immediately after the transfer are held for investment and are readily marketable stocks or securities, and,
- (ii) the transfer results, directly or indirectly, in diversification of the transferor's interests.

A transfer of stocks or securities to a Company will not be treated as resulting in a diversification of the transferor's interests for these purposes, and consequently will not trigger recognition of gain, if each transferor transfers a diversified portfolio of stocks and securities, which is generally defined as a portfolio not more than 25 percent of the value of which is invested in the stocks or securities of any one issuer (other than the Government) and not more than 50 percent of the value of which is invested in the stocks and securities of five or fewer non-government issuers.

Section 701 of the Code provides that no federal income tax will be paid by the Company as an entity. Each Owner Member will report on his federal income tax return his allocable share, determined by the Company Agreement, of the income, gains, losses, deductions and credits of the Company, whether or not any actual distribution is made to such Owner Member during his taxable year. An Owner Member will generally be entitled to deduct on his personal income tax return his allocable share of Company losses, if any, but only to the extent of the tax basis of his Company interest at the end of the Company year in which such losses occur. An Owner Member's right to currently deduct losses from the Company's operations will be further limited to the amount for which the Owner Member is considered "at risk."

Generally, the taxable revenue of the Company will be computed in the same manner as the taxable revenue of an individual. Section 703. The character of any items of revenue, including but not limited to income, gain, loss, deduction or credit included in the Company's tax return will be reported as though the Owner Member realized those items directly from the same source as the Company. Section 702(b). The Company Agreement will determine the Owner Member's share of such items.

Section 704 of the Code provides that an Owner Member's share of any item of income; gain, loss, deduction or credit will be governed by the Company Agreement unless the Company Agreement does not allocate such item or unless the allocation does not have substantial economic effect. The Company

believes the allocations under the Company Agreement have substantial economic effect within the meaning of Section 704 of the Code and the Treasury Regulations promulgated there under The Company Agreement provides that the Company may make amendments to the extent necessary to comply with the substantial economic effect test. In the event the allocations are determined not to have substantial economic effect, then each Owner Member's share of an item will be allocated in accordance with the Owner Member's respective interest in the Company. This could result in an Owner Member recognizing a greater or lesser amount of an item than he would have recognized under the Company Agreement. The timing in which an Owner Member recognizes a particular item could also be different than he would have recognized under the Company Agreement.

Company Not a Dealer

Because the Company will purchase and sell securities for its own account and not for the account of others, will not hold itself out as a dealer, will not have any salesmen, and will not maintain an inventory of securities for tax purposes, it is anticipated that the operations of the Company will not be such as to render the Company a dealer. There can be no assurance that the IRS will not determine that, for tax purposes, the Company is a dealer (or should for other reasons be comparably treated). In the event the IRS was to prevail on this issue, transactions, which would otherwise have received capital gain or loss treatment, may result in ordinary income or loss.

Gains or Losses

Generally, the gains and losses realized by a trader or investor on the sale of securities are capital gains and losses. Thus, the Company expects that its gains and losses from its securities transactions typically will be capital gains and capital losses. These capital gains and losses may be long-term or short-term depending, in general, upon the length of time the Company maintains a particular investment position and, in some cases, upon the nature of the transaction. Property held for more than one year will be eligible for long-term capital gain or loss treatment. The maximum rate of tax on long-term capital gains is 15 percent (except on certain sales of real property, collectibles, and qualified small business stock). Property held for less than one year generally will be treated as a short-term capital gain or loss. The maximum rate or tax on short-term capital gains is 39.6 percent. The application of certain rules relating to short sales, to so called "straddle" and "wash sale" transactions and to "Section 1256 contracts" may serve to alter the manner in which the Company's holding period for a security is determined or may otherwise affect the characterization of gain or losses as long-term, short-term, or ordinary, and also the timing of the realization of certain gains or losses.

The Company may realize ordinary income from interest and dividends on its investments.

Section 1256 Contracts

In the case of "Section 1256 contracts," the Code generally applies a "mark to market" system of taxing unrealized gains and losses on such contracts and otherwise provides for special rules of taxation. A Section 1256 contract includes certain regulated futures contracts, certain foreign currency forward contracts, and certain options contracts.

Under these rules, Section 1256 contracts held by the Company at the end of each taxable year of the Company may be treated for federal income tax purposes as if the Company for their fair market value sold them on the last Business Day of such taxable year. The net gain or loss, if any, resulting from such deemed sales (known as "marking to market"), together with any gain or loss resulting from actual sales of Section 1256 contracts, must be taken into account by the Company in computing its taxable income for such year. If a Section 1256 contract held by the Company at the end of a taxable year is sold in the following year, the amount of any gain or loss realized on such sale will be adjusted to reflect the gain or loss previously taken into account under the "mark to market" rules.

Capital gains and losses from such Section 1256 contracts generally are characterized as short-term capital gains or losses to the extent of 40% thereof and as long-term capital gains or losses to the extent of 60% thereof. Such gains and losses will be taxed under the general rules described above.

Short Sales/Constructive Sales

Gain or loss from a short sale of property is generally considered as capital gain or loss to the extent the property used to close the short sale constitutes a capital asset in the Company's hands. Except with respect to certain situations where the property used by the Company to close a short sale has a long-term holding period on the date of the short sale, special rules would generally treat the gains on short sales as short-term capital gains. These rules may also terminate the running of the holding period of "substantially identical property" held by the Company. Moreover, a loss on a short sale will be treated as a long-term capital loss if, on the date of the short sale, "substantially identical property" has been held by the Company for more than one year.

Section 1259 of the Code requires that the Company recognize gain on the constructive sale of any appreciated financial position in stock, a Company interest, or certain debt instruments. A constructive sale of an appreciated financial position occurs if among other things, the Company enters into:

- (1) a short sale of the same or substantially identical property (a transaction commonly known as a "short sale against the box"),
- (2) an offsetting notional principal contract with respect to the same or substantially identical property, or
- (3) a futures or forward contract to deliver the same or substantially identical property.

Exceptions to the foregoing apply to certain transactions closed within 30 days after the close of the taxable year and to transactions involving non-marketable securities that settle within one year. Future Treasury regulations will determine the extent to which the constructive sale provision will apply to other commonly encountered transactions, such as identified hedging or straddle transactions under Sections 1092, 1221, and 1256 of the Code and "collar" transactions.

Effect of Straddle Rules on Owner Members' Securities Positions

The Service may treat certain positions in securities held (directly or indirectly) by an Owner Member and its indirect interest in similar securities held by the Company as "straddles" for federal income tax purposes. The application of the "straddle" rules in such a case could affect an Owner Member's holding period for the securities involved and may defer the recognition of losses with respect to such securities. In addition, if either of the Owner Member's positions in such a transaction is an "appreciated financial position," application of the "straddle" rules may trigger a constructive sale of that position under the rules described above.

Conversion of Ordinary Income to Capital Gain

Section 1258 of the Code re-characterizes capital gain from a "conversion transaction" as ordinary income, with certain limitations. Conversion transactions are defined as transactions in which substantially all the expected return is attributable to the time value of money and either:

- (a) the transaction consists of the acquisition of property by the taxpayer and a substantially contemporaneous agreement to sell the same or substantially identical property in the future;
- (b) the transaction qualifies as a "straddle" (within the meaning of Section 1092(c) of The Code);
- (c) the transaction is one that was marketed or sold to the taxpayer on the basis that it would have the economic characteristics of a loan but the interest-like return would be taxed as capital gain; or
- (d) the transaction is described as a conversion transaction in Treasury regulations.

The amount of gain so re-characterized will not exceed the amount of interest that would have accrued on the taxpayers' net investment for the relevant period at a yield equal to 120% of the "applicable rate".

Owner Member's Deduction of Company Losses

Under Section 704(d) of the Code, an Owner Member is permitted to deduct his share of Company losses only to the extent of his adjusted basis in his Company interest at the end of the Company year in 20____ which the losses occurred. Any excess of Company losses over the Owner Member's adjusted basis must be carried over and may be deducted in subsequent taxable years at the time, and to the extent that the Owner Member's basis in his Company interest exceeds zero.

Generally, a Owner Member's tax basis for his interest in the Company at a particular time represents the sum of:

- (a) the total amount of money or market value of securities/property he contributed to the Company, plus,
- (b) the adjusted basis of any property contributed by him, plus,
- (c) the Owner Member's share of Company net income, minus,
- (d) the Owner Member's share of Company tax losses and distributions, plus,
- (e) the Owner Member's pro rata share of certain Company liabilities.

Under the Section 752 Regulations, how the Company's liabilities are allocated to The Owner Members depends on whether the liability is recourse or non-recourse. A liability that is recourse to the Company is allocated among the Company's in the manner that they share losses. A non-recourse liability is allocated to an Owner Member except to the extent an Owner Member is required to contribute additional capital to the Company. Non-recourse liabilities are allocated among the Owner Members based on their sharing of profits of the Company.

Limitation of Losses to Amounts at Risk

Section 465 of the Code limits certain taxpayers' losses from certain activities to the amount they are "at risk" in the activities. Taxpayers subject to the "at risk" rules are individuals, an S corporation, and certain closely held corporations. The activities subject to the "at risk" limitations are all activities except the holding of real estate. A Owner Member subject to the "at risk" rules will not be permitted to deduct in any year losses arising from his interest in the Company to the extent the losses exceed the amount he is considered to have "at risk" in the Company at the close of that year.

A taxpayer is considered to be "at risk" in any activity to the extent of his cash contribution to the activity, his basis in other property contributed to the activity and his personal liability for repayments of amounts borrowed for use in the activity. With respect to amounts borrowed for use in the activity, the taxpayer is not considered to be "at risk" even if he is personally liable for repayment if the borrowing was from a person who has an "interest" in the activity other than an interest as a creditor. Even if a taxpayer is personally liable for repayment of amounts borrowed for use in the activity, and even if the amount borrowed is borrowed from a person whose only interest in the activity is an interest as a creditor, a taxpayer will not be considered "at risk" in the activity to the extent his investment in the activity is protected against loss through guarantees, stop loss agreements, or other similar arrangements.

Each Owner Member will be at risk initially for the amount of his capital contribution. An Owner Members amount "at risk" will be increased by his income from the Company and will be decreased by his losses from the Company and distributions to him. If an Owner Member's amount "at risk" decreases to zero, he can take no further losses until he has an "at risk" amount to cover the losses. An Owner Member

is subject to a recapture of losses previously allowed to the extent that his amount "at risk" is reduced below zero (limited to loss amounts previously allowed to the Owner Member over any amounts previously recaptured). The potential recapture effects of distributions of Company debts, if any, are uncertain, and the ultimate interpretation of the new recapture mechanism may have adverse effects upon an Owner Member.

Passive Losses

Section 469 of the Code prohibits individuals, trusts, estates, personal service corporations, and certain closely held C corporations from deducting "passive activity losses" from other income. A passive activity is one that involves the conduct of any trade or business in which the taxpayer does not materially participate. Limited Company interests are treated as interests in a passive activity without regard to whether the taxpayer materially participates in the activity. Proposed and Temporary Treasury Regulations provide that the trading of personal property such as stocks, bonds and other securities, for the account of owners of interests in the activity, will not be treated as a passive activity. Temp. Reg. § 1.469-1T(e)(6). Accordingly, an Owner Member's distributive share of items of income, gain, deduction, or loss from the Company will not be available to offset passive losses from sources outside the Company. Company gains allowable to Owner Members will, however, be available to offset losses with respect to "portfolio" investments. Moreover, any Company losses allocable to Owner Members will be available to offset other income, regardless of source. Final Treasury Regulations may modify the Proposed and Temporary Regulations and such regulations may be retroactive in effect.

Sale of Interests

Although the sale and transfer of a Limited Company Interest is severely restricted under the Company Agreement, in the event an Owner Member does sell its Company Interest, the gain or loss recognized by an Owner Member who is neither a dealer in securities nor in Company interests should be treated as capital gain or loss. Gain or loss realized from the sale of a Company Interest, which has been held for less than one year, will generally be taxable as short-term capital gain or loss. Gain or loss realized from the sale of a Company Interest that has been held for more than one year will generally be taxable as long-term capital gain or loss. The maximum rate of tax on short-term capital gain is 39.6 percent and the maximum rate of tax on long-term capital gain is 15 percent.

That portion of the selling Owner Member's gain allocable to "unrealized receivables" as defined in Section 751 would be treated as ordinary income. Included in "unrealized receivables" is any market discount bond and short-term obligations, but only to the extent they would have given rise to ordinary income if the selling Owner Member's proportionate share of the Company's properties had been sold at that time. Transfers of Company Interests by reason of death, gifts, transfers in certain tax free transactions and involuntary conversions in certain circumstances will not be subject to ordinary income treatment.

If the sale or other transfer of a Company Interest was made other than at the end of any taxable year, the profits and losses of the Company for the entire taxable year will be allocated between the transferor and the transferee based on the period of time during the taxable year that the Company Interest was owned.

Termination will cause the Company's taxable year to end with respect to all Owner Members and could have potentially adverse federal income tax consequences, including a change in the adjusted tax basis of Company property and the bunching of taxable income within one taxable period.

Profit Motive

Section 183 of the Code provides limitations for deductions attributable to an "activity not engaged in for profit." The term "activity not engaged in for profit" means any activity other than one that constitutes a trade or business or one that is engaged in for the production or collection of income or for the management, conservation, or maintenance of property held for the production of income. The determination of whether an activity is engaged in for profit is based on all the facts and circumstances and no one factor is Determinative.

Section 183 of the Code creates a presumption that an activity is engaged in for profit if, for any three or more years out of five consecutive taxable years, the gross income derived from such activity exceeds the deductions attributable thereto. Thus, while it is the general intention of the Company to seek and maintain economic profit, if the Company fails to produce a profit in at least three of five consecutive years, this presumption will not be available and the possibility of successful challenge by the IRS substantially increased. If Section 183 of the Code is successfully asserted by the IRS, no deduction will be allowed.

Since the test of whether an activity is deemed to be engaged in for profit is based on the facts and circumstances existing from time to time, no assurance can be given that Section 183 of the Code may not be applied in the future to disallow deductions taken by the investors with respect to their interest in the Company.

It should be noted that if the IRS were to challenge the Owner Members' deduction of Company losses for lack of profit motive, each Owner Member could have the burden of proving that the Company did in fact enter into the transaction with a reasonable expectation of profit and that his own investment in the Company was made with the requisite profit motive.

Alternative Minimum Tax

In certain cases, an Owner Member's tax savings from the deduction of losses from the Company may be reduced by the alternative minimum tax ("AMT").

Potential investors in the Company should consult their personal tax advisors to determine whether an investment in the Company may subject them to the alternative minimum tax or an increased alternative minimum tax.

Reimbursement of Costs

The Company will be entitled to reimbursement for certain expenditures relating to the business of the Company. Pursuant to Section 707(c) of the Code, a payment to an Owner Member for services, determined without regard to the income of the Company, is deductible by the Company if it is an ordinary and necessary business expense that is reasonable in amount. Therefore, there can be no assurance that the IRS will not take the position that the fees payable to the Company or the amounts reimbursed to the Company are not deductible by the Company in whole or in part. Due to the factual nature of the issue, the Company cannot predict the outcome of any challenge as to the reasonableness of the fees paid to the Company or as to the characterization of the fees for federal income tax purposes.

Under The Tax Reform Act of 1986, investment expenses (e.g., investment advisory fees) of an individual are deductible only to the extent they exceed 2% of his adjusted gross income. Pursuant to Temporary Regulations issued by the Treasury Department, this limitation on deductibility would not apply to an individual Owner Member's share of the investment expenses of the Company to the extent that the Company is engaged in a trade or business within the meaning of the Code.

Whether the Company will be held to be engaged in a trade or business or in an investment activity will depend on the extent and nature of the Company's trading activity in any taxable year. This issue is largely resolved on an analysis of facts, any of which will be known only in the future. Moreover, it is unclear what legal standards would be applied to those facts.

The consequences of this limitation will vary depending upon the personal tax situation of each taxpayer. Accordingly, non-corporate Owner Members should consult their tax advisors with respect to the application of this limitation.

Adjustment of Cost Basis of Company Assets

The Company may agree, in the sole discretion of the Company, to make the election permitted under Section 754 of the Code to have the cost basis of its assets adjusted in the case of a distribution of property or in the case of a transfer of any Company Interest or interest therein.

In the case of such a transfer, such election will affect only the transferee party by requiring an adjustment of the basis of Company property, which will reflect the difference between the cost to him of the Company Interest and his proportionate share of the Company's basis for its underlying property. Such adjustment may produce a difference between the amount of gains or losses on sales and other dispositions of Company property reportable by the transferee Owner Member, and the amount thereof reportable by other Owner Members. Because the Company may have "unrealized receivables" (as defined in Section 751 of the Code) at the time of any transfer, the failure to make such an election may have adverse tax consequences to a potential transferee. Thus, if the Company does not agree in advance to make the election under Section 754 of the Code, the number of prospective transferees of a Company Interest may be limited. It should also be noted that once the election under Section 754 of the Code is made, it is applicable to all other and subsequent transfers and may not be revoked without the consent of the IRS.

Limitations on Interest Deductions

Section 265(a)(2) of the Code disallows any deduction for interest paid by a taxpayer on indebtedness incurred or continued for the purpose of purchasing or carrying tax-exempt obligations. In Revenue Procedure 72-18, 1972-1 C.B. 740, the IRS stated that the proscribed purpose will be deemed to exist with respect to indebtedness incurred to finance a "portfolio investment," and that a limited Company interest will be regarded as a "portfolio investment." Therefore, in the case of a Owner Member owning tax-exempt obligations, the IRS might take the position that his allocable portion of any interest expense of the Company, or any interest expense incurred by him to purchase or carry a Company Interest, should be considered as incurred to enable him to continue to carry tax-exempt obligations, and that the Owner Member would not be allowed to deduct all or a portion of such interest.

In general, Section 163(d) of the Code limits the amount of investment interest (other than qualified residence interest and interest expense taken into account in determining income or loss arising from passive activities) that a non-corporate taxpayer can deduct in any taxable year to the net investment income of the taxpayer for the year. Net investment income is the excess of gross income from property held for investment plus any net short-term gain attributable to the disposition of property held for investment over investment expenses (other than interest) which are directly connected with the production of investment income. Net investment income does not include any income that is considered to arise from passive activities.

In the case of the Company, each Owner Member must take into account separately his share of the Company's investment interest. If an Owner Member cannot deduct his investment interest because of the limitations imposed by Section 163(d) of the Code, such excess may be carried forward to future years, when the same limitations would apply.

Tax-Exempt Investors

The Company may have income, which if derived directly by an Owner Member that is exempt from tax under Section 501(a) of the Code would be considered unrelated business taxable income, as defined in Section 512(a) of the Code. In addition, an Owner Member that is an exempt organization under Section 501(a) of the Code will be subject to tax on its "unrelated debt-financed income" pursuant to Section 514 of the Code. Each potential investor that is tax-exempt is urged to consult its own tax advisor about the tax consequences to it of an investment in the Company.

Audits

The tax treatment of items of Company income, loss, deductions and credit will be determined in the unified audit of the Company and in subsequent unified administrative judicial proceedings, rather than in separate proceedings for each of the Owner Members. Generally, all Owner Members will be bound by the decision in the unified proceedings. The Company, as the "Tax Matters Owner Member" will represent

the Company in the unified proceedings. The Tax Matters Owner Member will have considerable authority to make decisions affecting the tax treatment and procedural rights of all of the Owner Members. For example, it will decide how to report the Company's items on its tax returns. All Owner Members are required on their own returns, to treat Company items in a manner that is consistent with the treatment of the items on the Company's return (or attach a statement to the return identifying the inconsistency). In addition, the Company will have the right on behalf of all Owner Members to extend the statute of limitations with respect to the Owner Members' tax liability on Company items.

Simplified unified audit procedures will be available to "electing large Company's" in taxable years beginning after December 31, 1997. Whether the Company will be eligible to elect the application of these procedures cannot be determined at present. The decision to become an "electing large Company" shall, in any event be made solely by the Company.

An audit of The Company may result in the disallowance, reallocation, deferral, or allocation of income or losses claimed by the Company. Any such change may require that an Owner Member pay additional tax and interest.

An audit of the Company's information tax return may cause an audit of the individual income tax returns of an Owner Member. Hence, any audit might result in adjustments by the IRS to an Owner Member's items of income or loss unrelated to the Company.

The legal and accounting costs incurred in connection with any audit of the Company's tax returns will be borne by the Company. Owner Members will bear the costs of audits of their own returns.

Penalties and Interest on Deficiencies

Section 6662 of the Code imposes a penalty of twenty percent of any substantial understatement of federal income tax. There is a substantial understatement of income tax for any taxable year if the amount of the understatement exceeds the greatest of ten percent (10%) of the tax required to be shown on the return for the year or \$5,000. In the case of a Company item not attributable to a tax shelter, the amount of understatement does not include any portion of the understatement attributable to

- (a) the treatment of any item if there was substantial authority for such treatment or,
- (b) any item with respect to which the relevant facts affecting the item's tax treatment were adequately disclosed in the Company's return.

In the case of a tax shelter, the penalty for substantial understatements of income tax may be avoided only if a more rigorous set of standards is satisfied. The Company believes that the Company is not a tax shelter within the standards set forth by certain Treasury Regulations regarding the substantial understatement penalty.

Any additional federal income tax due as a result of any such adjustment will bear interest. Interest will be compounded daily and the rates are adjusted quarterly, determined during the first month of each quarter to take effect the following quarter, and are based upon the federal short-term interest rate plus three percentage points. If the deficiency is deemed to be attributable to a "tax motivated transaction," the deficiency relating to a Company item may bear interest at 120% of the normal rate.

Foreign Investors

A Owner Member who is a nonresident alien individual, foreign corporation, foreign Company, foreign trust or foreign estate (a "Foreign Person") generally is not subject to taxation by the United States on United States source capital gains from trading in capital assets for a taxable year, provided that such Foreign Person is not engaged in a trade or business within the United States during its taxable year, and provided further that such Foreign Person, in the case of an individual, does not spend more than 182 days in the United States during its taxable year. A Foreign Person is not subject to United States tax on certain original issue discount and certain interest income from United States sources provided that such Foreign Person is not engaged in a trade or business within the United States during such taxable year. However, a Foreign Person is generally subject to United States tax on United States source dividend income. As explained below, an investment in the Company could cause a Foreign Person to be engaged in a trade or business within the United States for the foregoing purposes if the Company is so engaged. If a Foreign Person is engaged in a trade or business within the United States during a taxable year by reason of owning an Interest, such Foreign Person will be required to file a United States income tax return for such year and pay tax at regular United States rates on its net income which is effectively connected with the trade or business conducted within the United States.

If the Company were considered to be engaged in a trade or business within the United States, a Foreign Person, which is an Owner Member, would also be considered to be so engaged. In this connection, Treasury regulations provide a general rule that a Foreign Person will not be considered engaged in a trade or business within the United States solely on account of granting the Company discretion to effect stock, security or certain exchange-traded commodity transactions for the account of the Company. The rule, however, is not available to a Foreign Person, which is a dealer in stocks, securities, or commodities. Because the Company has its principal office in the United States, the rule is also not available if the principal business of the Company is trading in stocks or securities. Whether a taxpayer Each investor must consult his or her tax advisor for advice as to state and local taxes which may be payable in connection with an investment in the Company. such as the Company would be considered to be so engaged in the principal business of trading in stocks or securities or engaged in a trade or business within the United States is a question of fact for which no clear answer is available. Consequently, there is a risk that a Foreign Person's allocable share of income of the Company will be treated as effectively connected with the conduct of a United States trade or business and therefore subject to United States Federal income tax at regular rates of tax and, in the case of a Foreign Person which is a foreign corporation, an additional 30% branch profits tax.

If the Company has taxable income in any year, which is effectively connected with the conduct of a trade or business within the United States, the Company will be required to pay a withholding tax with respect to the portion of such taxable income, which is allocable to Foreign Persons. The withholding will be required whether or not the Company makes distributions to a Foreign Person. The rate of withholding will be equal to the highest rate of Federal income tax applicable to each such Foreign Person. Each Foreign Person's proportionate share of such withheld tax will be treated as actually distributed to such Foreign Person during the Company's taxable year in which the tax was paid and will constitute a refundable credit against the Foreign Person's Federal income tax liability, which may be claimed on the Foreign Person's United States Federal income tax return. Withholding is also required on United States source dividends, certain original issue discounts, and certain interest, which is not effectively connected with a trade or business, conducted within the United States at the rate of 30%, unless reduced by treaty. A Foreign Person is generally not subject to United States tax on interest income derived from registered obligations (for which the Foreign Person provides a statement of foreign status) or bank deposits or on the discount earned on non-interest bearing obligations with a maturity date of less than 184 days, provided, that such Foreign Person is not engaged in a trade or business within the United States during such taxable year. The withholding tax on this non-effectively connected income is nonrefundable and is imposed upon gross income, without reduction for expenses. Prospective investors which are not United States persons (as defined in the Code) are urged to consult their tax advisers regarding the potential effect of the United States tax laws (and the rules and regulations promulgated thereunder) upon such persons' investments in the Company.

State and Local Taxes

In addition to the federal income tax consequences described above, prospective investors should consider potential state and local tax consequences of an investment in the Company. An investor's distributive share of the taxable income or loss of the Company may be required to be included in determining his reportable income for state or local tax purposes in the state or locality in which he is a resident. In addition, other states or localities in which the Company may operate may require the filing of returns by nonresident Owner Members and impose a tax on nonresident Owner Members determined with reference to their pro-rata share of Company income derived from the state or locality.

Each investor must consult his or her tax advisor for advice as to state and local taxes which may be payable in connection with an investment in the Company.

CONFLICTS OF INTEREST

The contractual and other arrangements among the Company, the Company, and their affiliates are subject to various conflicts of interest in their relations with the Company. The contractual and other arrangements among the Company, the Company, and their Affiliates have been established by the Company and are not the result of arms-length negotiations. Accordingly, prospective investors should carefully consider the following conflicts of interest before purchasing any Interests. The following conflicts of interest do not purport to be a complete or exhaustive explanation of the conflicts involved in this offering. Prospective investors should read the entire investment summary and the exhibits hereto and should ask such questions of and obtain such additional information from the Company, as they shall deem necessary before deciding to invest in the Company.

In evaluating these conflicts of interests, potential investors should be aware that the Company has a responsibility to the Owner Members to exercise good faith and fairness in all dealings affecting the Company. In the event that an Owner Member believes that the Investment Manager has violated its duty to the Owner Members, it may seek legal relief for itself, or on behalf of the Company under applicable laws and regulations to recover damages from or require an accounting by the Company. Owner Members should be aware that the performance by the Investment Manager of its responsibilities to the Company would be measured by the terms of the Limited Liability Company Agreement and applicable law. Owner Members should be aware that it may be difficult to establish that the Company's trading has been excessive due to the broad trading discretion given to the Company under the Limited Liability Company Agreement, the authority given to the Company to enter into the Limited Liability Company Agreement under the Subscription Agreement/Power of Attorney, the exculpatory provisions in the Limited Liability Company Agreement and the absence of judicial or administrative standards defining excessive trading.

Non-Arms-Length Agreements

All agreements and arrangements, including those relating to compensation, expense reimbursements, and indemnification between Mr. Murray and among the Company and their affiliates, are not the result of arms-length negotiations. The Company will determine whether the various Affiliates of the Company and Mr. Murray are, in accordance with the terms of the Company Agreement, entitled to exculpation and indemnification.

Incentive Allocation and Fees

The structure of the Incentive Allocation may involve a conflict of interest, because it may create an incentive for Mr. Murray to cause the Company to make riskier or more speculative investments than it otherwise would. In some cases, the Incentive Allocation charged by the Company may be greater than the total fees and other benefits provided by other investment advisors for similar services; in other cases, the benefits to the Company may be lower.

Competition with the Company from Affiliated Companies for Securities Transactions

The Investment Manager, of the Company, Mr. Murray, pursuant to the Company Agreement, may cause to be formed other Company's in the future, some of which may have investment objectives that

are the same or similar to those of the Company. Accordingly, the Company anticipates that it may, in certain circumstances, compete with such affiliated Company's as may come into existence for the same or similar securities. This may be the case notwithstanding that the Company may have significantly dissimilar investment objectives from the affiliated Company's.

Notwithstanding significantly different investment objectives, assuming particular securities are "suitable" for the Company and other limited Company's with which the Company (or its Affiliates) are affiliated, conflicts of interest may arise as to which of the Company's (including the Company) should proceed to acquire the investment securities. The Company will seek to resolve these conflicts in as equitable a manner as possible under the prevailing facts and circumstances, but there is no assurance that any such conflicts will be resolved in a manner advantageous to the Company.

Competition with the Company from Managed Accounts for Securities Transactions

The Company is free to manage accounts for investors, investment vehicles, itself, its employees, its principals, and their respective families, and is free to trade on the basis of methods similar or identical to those employed by the Company in the performance of services for the Company, or methods, which are entirely independent of such methods. Owner Members will not be permitted to inspect the records of accounts or any written policies relating to such Company or its affiliates, except in the discretion of Mr. Murray.

It is possible that orders for the account of the Company or its investment manager may be entered in advance of the Company for legitimate and explainable reasons such as a neutral order allocation system, a different trading program, or a higher risk level of trading. However, any such proprietary trading.

Competition with the Company from Affiliates of the Company for the Time and Services of Common Officers and Directors

Mr. Murray, the investment manager, is involved in other activities in addition to the management of the Company. Without limiting the generality of the foregoing, Mr. Murray may become involved in other activities other than the Company from time to time. Accordingly, conflicts of interest may arise in the allocation of time to the management of the Company. Mr. Murray will devote such time to the affairs of the Company as he, within his sole discretion, determine to be necessary for the benefit of the Company in accordance with his fiduciary duties.

Conflicts as to Investment Opportunities

The Company is obligated to use its best efforts to provide the Company with continuing and suitable investment opportunities consistent with its investment objectives, policies and strategies; however, the Company is not required to present to the Company any investment opportunity which has come to its attention even if such opportunity is consistent with the investment objectives, policies and strategies of the Company. Accordingly, the Company may not be given the opportunity to participate in certain investments made by the Company and its Affiliates. In addition, if the Company rejects an investment opportunity for any reason, the Company and its Affiliates may accept it. The Company will endeavor to resolve conflicts of interest with respect to investment opportunities in a manner deemed equitable to all to the extent possible under the prevailing facts and circumstances and consistent with the Company's fiduciary duties.

RISK FACTORS

Prospective investors should carefully consider the risks involved in an investment in the Company, including but not limited to those discussed below. Many of those risks are discussed more fully elsewhere in this Memorandum. Prospective investors should consult their own legal, tax, and financial advisers as to all these risks and an investment in the Company generally.

GENERAL

The transactions in which the Company will generally engage involve significant trading risks. No assurance can be given that Owner Members will realize a profit on their investment. Moreover, each Owner Member may lose some or all of its investment. Because of the nature of the Company's investment activities, the results of the Company's operations may fluctuate from month to month and from period to period. Accordingly, investors should understand that the results of a particular period would not necessarily be indicative of results in future periods.

Limited Operating History

Although Mr. Murray has had over 15 years of experience investing assets with investment objectives the same as those of the Company, the Company is a newly formed organization with limited operating history. See "MANAGEMENT OF THE COMPANY."

Reliance on the Company

The success of the Company will depend on the ability of the Company to develop and implement investment strategies to achieve the Company's investment objectives. The Company's investment performance could be materially adversely affected if Mr. Murray were to die, become ill or disabled, or otherwise cease to be involved in the active management of the Company's portfolio. Except under specified circumstances, if Market Neutral Trading, LLC, is dissolved, or becomes insolvent, the Company will be dissolved.

Company-Owner/Members Will Not Participate In Management

Purchasers of the Interests will become Owner Members in the Company and, as such, will not be entitled to participate in the management of the Company limited to Mr. Murray's discretion. The Limited Liability Company Agreement and the Company Act, provide Owner Members with certain voting and other rights.

Operating Deficits

The expenses of operating the Company (including Management Fees payable to the Investment Manager and organizational costs and expenses) could exceed its income, requiring that the difference be paid out of the Company's capital, reducing the Company's investments and potential for profitability. See "SUMMARY OF FEES AND EXPENSES" and "INCENTIVE ALLOCATION."

INVESTMENT RISKS

All securities investing and trading activities risk the loss of capital. While the Company's investment objective and strategy is to minimize or eliminate these risks, there can be no assurance that the Company's investment and trading activities will be successful or that Owner Members will not suffer losses. The following discussion sets forth some of the more significant risks associated with the Company's proposed activities.

Investments May Be Speculative

Trading Commissions/Transaction Costs

The Company's activities involve a high level of trading, and while the Company has relationships in place to minimize the transactions, the turnover of its portfolio may generate substantial transaction costs. These costs will be borne by the Company regardless of its profitability.

Risks of Options Trading

In seeking to enhance performance or hedge assets, the Company may purchase and sell call and put options. Both the purchasing and selling of call and put options entail risks. Although an option buyer's risk is limited to the amount of the purchase price of the option, an investment in an option may be

subject to greater fluctuation than an investment in the underlying security. In theory, an uncovered call writer's loss is potentially unlimited, but in practice, the loss is limited by the term of existence of the call. The risk for a writer of a put option is that the price of the underlying security may fall below the exercise price. Successful use of options will depend upon the ability of the Company to predict correctly movements in the direction of the underlying security generally.

Short Selling

Short sales can, in some circumstances, substantially increase the impact of adverse price movements on the Company's portfolio. A short sale creates the risk of a theoretically unlimited loss, in that the price of the underlying security could theoretically increase without limit, thus increasing the cost to the Company of buying securities to cover the short position.

Use of Leverage

The Company Agreement authorizes the Company, in the Company's sole discretion, to leverage the Company's investment positions by borrowing funds from securities broker-dealers, banks, or others. Such leverage, if employed, would increase both the possibilities for profit and the risk of loss. Margin borrowings are usually from securities brokers and dealers and typically are secured by the borrower's securities and other assets. Under certain circumstances, such a lender may demand an increase in the collateral that secures the borrower's obligations, and if the borrower were unable to provide additional collateral, the lender could liquidate assets held in the account to satisfy the borrower's obligation. If the Company were to become subject to liquidation in that manner it could suffer extremely adverse consequences. In addition, the amount of the Company's borrowings (if any) and the interest rates on those borrowings, which would fluctuate, could have a significant effect on the Company's profitability.

Concentration of Investments

The Company Agreement does not limit the amount of the Company's capital that may be committed to any single investment, industry, or sector. The Company will attempt to spread the Company's capital among a number of investments. However, the Company Agreement imposes no limits on the concentration of the Company's investments in particular securities, industries, or sectors and at times the Company may hold a relatively small number of securities positions, each representing a relatively large portion of the Company's capital. Losses incurred in such positions could have a materially adverse effect on the Company's overall financial condition.

General Economic and Market Conditions

General economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws, and national and international political circumstances may affect the success of the Company's activities. These factors may affect the level and volatility of securities prices and the liquidity of the Company's investments. Unexpected volatility or liquidity could impair the Company's profitability or result in losses.

Changes in Investment Strategies

The Limited Liability Company Agreement gives the Investment Manager broad discretion to expand, revise, or contract the Company's business without the consent of the Owner Members. Thus, the investment strategies of the Company may be altered without prior approval by, or notice to, the Owner Members if the Company determines that such change is in the best interests of the Company. Any such decision to engage in a new activity could result in the exposure of the Company's capital to additional risks that may be substantial. See "SUMMARY OF LIMITED LIABILITY COMPANY AGREEMENT."

Limited Liquidity of Some Investments

Some of the securities in which the Company invests may be relatively illiquid, either because they are thinly traded, or because they are subject to transfer restrictions. The Company may not be able

promptly to liquidate those investments if the need should arise, and its ability to realize gains, or to avoid losses in periods of rapid market activity may therefore be affected. In addition, the value assigned to such securities for purposes of determining Owner Members' Company percentages and determining Net Profits and Net Losses may differ from the value the Company is ultimately able to realize.

Insolvency of Brokers and Others

The Company will be subject to the risk of failure of the trading firms that execute its trades, the clearing firms that such brokers use, or the clearinghouses of which such clearing firms are members. In the event of a failure of a broker/dealer used by the Company, the United States Securities Investor Protection Company ("SIPC") provides a maximum of \$500,000 of account insurance, only \$100,000 of which may be taken in cash.

COMPANY RISKS

Tax Liability Without Distributions

Owner Members will be liable to pay taxes on their allocable shares of Company taxable income. However, the Company does not intend to make significant distributions to the Owner Members corresponding to profits, but instead intends to re-invest substantially all of the Company's income and gains for the foreseeable future. Taxable income can be expected to differ from Net Profit, primarily because generally only realized gains and losses are considered for income tax purposes but Net Profit and Net Loss will include unrealized gains and losses. It is possible that sales of appreciated securities in a particular period could cause some Owner Members to have taxable gain for that period at the same time that unrealized losses result in an overall Net Loss. It will generally be necessary for Owner Members to pay such tax liabilities out of separate funds or withdrawals from the Company. There are limitations on an Owner Member's right to withdraw funds from the Company. See "OFFERING OF INTERESTS" and "TAX CONSIDERATIONS."

Limited Liquidity

An investment in the Company is relatively illiquid and is not suitable for an investor who needs liquidity. There is no public market for Interests and the Company Agreement imposes significant limitations on Owner Members' abilities to transfer Interests. In addition, rights to withdraw funds from the Company are subject to several limitations. An Owner Member may withdraw funds only at the end of a calendar quarter following the twelfth full calendar month after the day in which an interest is purchased. Thereafter, only at the end of each calendar quarter and then only after giving 30 days' notice and subject to certain dollar limitations unless the Company consents (which it may decline to do, in its sole and absolute discretion) to a deviation from one or more of such procedures or limitations. The Company has the discretion to deliver amounts withdrawn in securities rather than cash. Further, as to all or a portion of a withdrawn amount, the Company may establish a segregated portfolio of some of the Company's securities and liquidate those securities for the withdrawing Owner Member's account. In either such case, the securities so delivered or segregated may be relatively illiquid and the Owner Member would bear the risk of a decline in their value after the effective time of his or her withdrawal. These facts, taken together, will significantly affect the liquidity of an Owner Member's investment in the Company, See "OFFERING OF INTERESTS" and "SUMMARY OF THE LIMITED LIABILITY COMPANY AGREEMENT."

Effect of Substantial Withdrawals

Substantial withdrawals by Owner Members within a short period of time could require the Company to liquidate securities or investment positions more rapidly than would otherwise be desirable, possibly reducing the value of the Company's assets or investments and/or disrupting the Company's investment strategy. Reduction in the size of the Company could make it more difficult to generate a positive return or to recoup losses due to, among other things, reductions in the Company's ability to take advantage of particular investment opportunities or decreases in the ratio of its income to its expenses.

Potential Mandatory Withdrawal

The Company may, in its sole discretion at any month-end on 10 days notice, require an Owner Member to withdraw all or a portion of his or her capital account balance. Such mandatory withdrawal could result in adverse tax and/or economic consequences to such Owner Member. See "SUMMARY OF THE LIMITED LIABILITY COMPANY AGREEMENT."

OTHER RISKS

Tax Considerations

For a more detailed discussion of the income tax considerations associated with an investment in the Company, see the discussion below under "TAX CONSIDERATIONS."

Limitations on Deductions

Tax laws in certain cases may limit an Owner Member's ability to deduct certain losses and expenditures allocable to such Owner Member.

Foreign Investors

The Company may be subject to certain reporting and withholding obligations as to foreign investors. Foreign investors should consult with their own advisors regarding the federal, state, and foreign income tax consequences of an investment in the Company. See "TAX CONSIDERATIONS - FOREIGN INVESTORS."

Allocations

The Company intends to allocate all items of taxable income, gain, loss, deduction, and credit among the Owner Members in a manner that is generally consistent with the economic sharing arrangements. It is currently expected that the Company will use a method of allocation that complies with one of the "safe harbors" provided in applicable Treasury Regulations. However, the Company retains discretion to allocate items in a manner that deviates from such safe harbor, and there can be no assurance that the Internal Revenue Service will respect such allocations. See "TAX CONSIDERATIONS."

Possibility of Taxation as a Corporation

It is the Company's belief that under current Federal income tax law, the Company will be taxed as a Partnership and not as a corporation. This status has not been confirmed by a ruling from, and such opinion is not binding upon, the IRS. No such ruling has been or will be requested. The facts and authorities relied upon by counsel in their opinion may change in the future, including with respect to regulations which may be promulgated under recent amendments to Federal tax statutes. If the Company were treated as a corporation for Federal income tax purposes, the income and deductions of the Company would be reflected only on its own tax return rather than being passed through to the Owner Members, and income would be taxed to the Company at corporate rates. No losses of the Company would be allowable as deductions of the Owner Members. In addition, all or a portion of any distributions made by the Company to the Owner Members, other than liquidating distributions, would constitute dividends to the extent of the Company's current or accumulated earnings and profits, and the amount of such distributions would not be deductible by the Company in computing its taxable income. See "TAX CONSIDERATIONS."

Possibility of Tax Audits

Under the terms of the allocation provisions in the Limited Liability Company Agreement, Owner Members experiencing depreciation in their Book Capital Accounts during the fiscal year may be allocated capital loss for Federal income tax purposes even though the Company realized a net capital gain for the year. Conversely, Owner Members experiencing appreciation in their Book Capital Accounts during the fiscal year may be allocated capital gain for Federal income tax purposes, even though the Company realized a net capital loss for the year. As a result, the Company's method of allocating gain and loss to the

Owner Members may enhance the possibility that the IRS might audit the Company's tax return and individual Owner Members' returns. See "TAX CONSIDERATIONS."

If the Company's tax return were to be audited by the IRS, there can be no assurance that adjustments would not be made to the return as a result of such an audit. The Company audit procedures have been simplified and adjustments may be made at the Company level that will bind all the Owner Members. An Owner Member of a Company is to be designated as the "tax matters Owner Member," which is to be the Company's primary representative with respect to the IRS and will possess the power to extend the statute of limitations for assessment and collection with respect to such audits for all Owner Members. By executing the Limited Liability Company Agreement, the Owner Members appoint the Company to act as the "tax matters Owner Member" of the Company. If an audit of the Company return results in an adjustment, the Owner Members' returns may be audited. Any expenses incurred in an audit of their individual returns must be borne by the Owner Members. Furthermore, interest charged by the IRS on tax deficiencies is substantial and is compounded daily.

Other Possible Tax Law Changes

No assurance can be given that legislative, administrative, or judicial changes will not occur which will alter either prospectively or retroactively, the tax considerations or risk factors discussed in this Memorandum. Existing and prospective Owner Members should seek, and must rely on, the advice of their own tax advisers with respect to the possible impact on their investment of any future proposed tax legislation or administrative or judicial action.

Regulatory Matters

Investment Company Regulation

The Company intends to rely on the provisions of Section 3(c)(1) of the Federal Investment Company Act of 1940 (the "ICA") to avoid requirements that it register as an "investment company" under and comply with the substantive provisions of the ICA. If the Company were registered as an investment company, the ICA would require, among other things, that the Company have a board of directors some of whom were unrelated to the Company, compel certain custodial arrangements, and regulate the relationship and transactions between the Company and the Company. Compliance with some of those provisions could possibly reduce certain risks of loss by the Company or Owner Members, although such compliance could significantly increase the Company's operating expenses and limit the Company's investment and trading activities. Interpretations of Section 3(c)(1) are complex and uncertain in several respects and, as a result, there can be no assurance that the Company will remain entitled to rely on that Section. If the Company were found not to have been entitled to such reliance, it and the Company could be subject to legal actions by the SEC and others and the Company could be forced to terminate its business under adverse circumstances.

Private Offering Exemption

The Company intends to offer Interests on a continuing basis without registration under any securities laws in reliance on an exemption for "transactions by an issuer not involving any public offering." While the Company believes reliance on such exemptions is justified, there can be no assurance that factors such as the manner in which offers and sales are made, concurrent offerings by other Company's, the scope of disclosure provided, failures to make notices, filings, or changes in applicable laws, regulations, or interpretations will not cause the Company to fail to qualify for such exemptions under Federal or one or more states' laws. Failure to so qualify could result in the rescission of sales of Interests at prices higher than the current value of those Interests, potentially affecting materially the Company's performance and business. Further, even non-meritorious claims that offers and sales of Interests were not made in compliance with applicable securities laws could materially and adversely affect the Company's ability to conduct the Company's business.

Other

The Company and the Company will be subject to various other regulations, securities laws and others rules, laws, or regulations that could limit some aspects of the Company's operations or subject the Company or the Company to the risk of sanctions for noncompliance.

Litigation

The Company might become subject to a lawsuit or court proceeding or regulatory action stemming from the activities of the Company or for reasons beyond its control. In the event that such litigation or events did occur, the Company would bear the additional costs of defending against it, be at further risk if the case were to be lost and may be forced to suspend redemptions of Interests due to the resulting illiquidity of the Company's investments. The Investment Manager will notify all Member Owners within 30 days if the Company is involved in any court proceeding.

Possible Indemnification Obligations

The Company is generally obligated to indemnify the Company under the Limited Liability Company Agreement against any liability they or their respective affiliates may incur in connection with their relationship with the Company.

No Minimum Size of Company

The Company may begin operations without attaining any particular level of capitalization. At low asset levels, the Company may be unable to diversify its investments as fully as would otherwise be desirable or to take advantage of potential economies of scale, including the ability to obtain the most timely and valuable research and trading information from securities brokers. It is possible that even if the Company operates for a period with substantial capital, Owner Members' withdrawals could diminish the Company's assets to a level that does not permit the most efficient and effective implementation of the Company's investment program.

THIS FOREGOING LIST OF CONFLICTS OF INTEREST AND RISK FACTORS DOES NOT PURPORT TO BE A COMPLETE EXPLANATION OF THE RISKS INVOLVED IN THIS OFFERING. POTENTIAL INVESTORS SHOULD READ THE ENTIRE MEMORANDUM BEFORE DETERMINING TO INVEST IN THE COMPANY.

TRADING AND TRANSACTIONAL PRACTICES

In the course of its investment activities the Company will incur transaction expenses, including trading fee's. The Investment Manager will have complete discretion in deciding what brokers and dealers the Company will use and in negotiating rates of trading compensation. In addition to using brokers as agents and paying commissions, the Company may buy or sell securities directly from or to dealers acting as principal at prices that include markups or markdowns.

Selection Criteria, Generally

In choosing brokers and dealers, the Company will not be required to consider any particular criteria. For the most part, the Company will seek the best combination of trading expenses and execution quality but, as discussed below, the Company is not required to select the broker or dealer that charges the lowest transaction cost, even if that broker provides execution quality comparable to other brokers or dealers. In evaluating "execution quality" - historical net prices (after markups, markdowns or other transaction-related compensation) on other transactions will be a principal factor, but other factors will also be relevant, including: the execution, clearance, and settlement and error correction capabilities of the broker or dealer generally and in connection with securities of the type and in the amounts to be bought or sold; the broker's or dealer's willingness to commit capital; reliability and financial stability; the size of the transaction; availability of securities to borrow for short sales; and the market for the security.

Trading, Custody, and Clearing and Settling

The Company intends to enter into a "prime trading" arrangement with a registered broker/dealer (the "Prime Broker"). Under this arrangement, the Broker will provide certain record-keeping services and perform the following functions, among others:

- (i) arrange for the receipt and delivery of securities bought, sold, borrowed, and lent,
- (ii) make and receive payments for securities;
- (iii) maintain custody of cash and securities;
- (iv) deliver cash to the Company's bank accounts; and
- (v) tender securities in connection with tender offers, exchange offers, mergers, or other corporate reorganizations.

The Company may pay for custodial and related services either in cash or by allocating a portion of its trading business to the Prime Broker. The Company is not committed to continue its "prime trading" relationship with the Prime Broker for any minimum period. If the Company uses another custodian, it may be required to pay separate fees in cash.

SUMMARY OF THE LIMITED LIABILITY COMPANY AGREEMENT

The rights and duties of the Company and the Owner Members are governed by provisions of the Company Act and by the Limited Liability Company Agreement. Certain features of the Limited Liability Company Agreement are outlined below, but reference is made to the Limited Liability Company Agreement for complete details of its terms and conditions.

Management Responsibilities of the Company

Under the terms of the Limited Liability Company Agreement, the Company is vested with exclusive responsibility for managing the business and the affairs of the Company. Owner Members will not participate in management decisions affecting the Company and they will have no voice in the operations of the Company. The responsibilities of the Company include, without limitation, making all investment decisions for the Company, selecting brokers and dealers to execute transactions for the Company, determining whether the Company will make distributions, administering redemptions and the admission of Owner Members, preparing and distributing quarterly and annual reports to the Owner Members, filing reports required by governmental agencies, and administering other matters relevant to the business of the Company.

The Company also has the power on behalf of the Company to:

- (a) purchase, hold, sell, sell short and trade securities;
- (b) borrow money, on a secured or unsecured basis, from banks, brokers, financial institutions, or other persons;
- (c) open, maintain and close bank accounts;
- (d) appoint other investment managers and/or investment vehicles for the investment of the Company's assets; and,
- (e) generally, to act for the Company in all matters incidental to the foregoing including the preparation and filing of all Company tax returns and the making of such tax elections and determinations as appear to it appropriate.

Exercise of Rights by Owner Members

The Limited Liability Company Agreement provides that meetings of the Owner Members may be called by the Company for any matters for which the Owner Members may vote as set forth in the Limited Liability Company Agreement. The Investment Manager may not withdraw from the Company without 90 days' prior written notice thereof to the Owner Members.

Sharing of Profits and Losses

Under the terms of the Limited Liability Company Agreement, Mr. Murray has sole discretion as to the distribution of profits, if any, to the Owner Members. The Company does not intend to make a distribution if, in its opinion, the reduction in the amount of assets under management after giving effect to the distribution would not be in the best interests of the Company or the Owner Members. Any distributions made by the Company to the Owner Members shall be made in cash or in securities, at the sole discretion of Mr. Murray, on a pro rata basis based upon the relative balance in each Owner Member's Book Capital Account as of the last day of the period to which the distribution relates. See "RISK FACTORS" and "CONFLICTS OF INTERESTS."

Each Owner Member in the Company and the Company (individually, a "Owner Member" and collectively, the "Owner Members") will have a book capital account ("Book Capital Account") and a tax capital account ("Tax Capital Account"), the initial balance of each of which will be the amount contributed to the Company by such Owner Member. Any increase or decrease in the Net Asset Value of the Company will be allocated among the Owner Members on a monthly basis and will be added to or subtracted from the Book Capital Accounts of the Owner Members in the ratio that each Owner Member's Book Capital Account bears to all Owner Members' Book Capital Accounts.

In general, for Federal income tax purposes, all items of ordinary income and deduction are allocated among the Owner Members in proportion to their relative Book Capital Account balances during the period when such income is earned or such expense is incurred. Capital gain [including gain attributable to Section 1256 contracts ("Section 1256 contracts") under the Internal Revenue Code of 1986, as amended (the "Code")] shall generally be allocated among the Owner Members experiencing appreciation in their Book Capital Accounts during the year in proportion to the relative appreciation experienced. Capital loss (including loss attributable to Section 1256 contracts) shall generally be allocated among the Owner Members experiencing depreciation in their Book Capital Accounts during the year in the same manner. See "TAX CONSIDERATIONS."

Redemptions

All or a portion of an investor's initial capital contribution and Interest may be redeemed upon the close of business on the last business day of a calendar quarter following the twelfth full calendar month after the day in which an Interest is purchased and each calendar quarter-end thereafter ("Redemption Date"). Redemptions of profits in excess of the initial capital contribution may be distributed at the manager's discretion or upon request by member. The Company must receive 30 days' prior written notice (including by facsimile) of a request for redemption. Distribution of the amount of redemption shall be made as soon as practicable following said Redemption Date; and final settlement of the full amount of such distribution shall be made as promptly as possible after completion of final reconciliation of valuations for the Redemption Date (generally not to exceed 120 days after withdrawal).

An Owner Member will be deemed to have withdrawn from the Company upon its giving notice of redemption of its entire Interest in the Company. The withdrawal of an Owner Member will not terminate the Company. It will terminate the interest of the withdrawn Owner Member in the Company except that such Owner Member shall have access to the books and records of the Company and to such data as may be necessary to give full information with respect to its distributive interest.

Mr. Murray, in his sole and absolute discretion, may cause the Company to purchase and redeem all of the Company Interests of any Owner Member effective any month-end upon ten (10) days prior written notice. The purchase and redemption price payable to the Owner Member after the giving of such

notice shall be the value of the Owner Member's Book Capital Account on the effective date. An Owner Member who withdraws all of his Capital Account will be deemed to have withdrawn from the Company as an Owner Member.

Accounts, Records and Reports and Pricing

The books of accounts and records of the Company will be maintained by an elected non owner member using generally accepted accounting principles, and will be open for inspection at the elected non owner's office by any Owner Member at reasonable times and reasonable intervals.

As of the end of each calendar quarter, the Company will prepare and send to each Owner Member an un-audited quarterly statement. The Company may, but is not required to, disclose to the Owner Members the investments that the Company has made. The quarterly statement will report performance of the fund, the value of an Owner Member's Capital Account and other information. For purposes of preparing such quarterly statements, the Company will price the Company's portfolio of securities based upon the prices (as reported by the Company's Prime Broker) for such securities. In addition, as of the end of each fiscal year, an audited annual report of the Company shall be prepared and mailed to each Owner Member. This report will contain a Statement of Financial Condition for the fiscal year, information necessary for the preparation of Federal income tax returns, and other information. The Company may elect to have the first audit period be inception through December 31, 2006.

Purchase of "Hot Issues"

From time-to-time the Company may purchase securities, which are part of a public distribution. If such securities trade at a premium in the secondary market immediately after the distribution process has commenced, the National Association of Securities Dealers, Inc. ("NASD") has taken the position in its Conduct Rules that such securities are part of a "hot" issue and, accordingly, members of the NASD may not sell such securities to an account in which a member, or person affiliated with or related to a member, of the NASD has an interest. In addition, in the case of certain other persons, participation is permitted in hot issues only in certain circumstances.

In view of this restriction, the Company Agreement provides a mechanism for the purchase of securities in a public distribution without presenting any problems to an Owner Member who would or might be deemed to come within the NASD prohibition or to the Company. In essence, the mechanism provided for in the Company Agreement for hot issues is for the Company to have, in addition to its regular accounts, a special account (the "Hot Issues Account"), the sole purpose of which will be to purchase securities which are part of a public distribution. Only those Owner Members who do not fall within the prohibition of the NASD will have a beneficial interest in the Hot Issues Account.

To effect a transaction in the Hot Issues Account, the requisite funds will be transferred to the Hot Issues Account from one or more of the Company's regular accounts. Each security purchased in the Hot Issues Account will be sold on the first day it may be publicly traded, either in the open market or sold at the closing price of that day to the regular account of the Company. After sale to a regular account of the Company, such security will cease to be treated differently from any other security held by the Company. Any gain or loss realized in the Hot Issues Account will be allocated only among Owner Members who are non-restricted persons.

Liabilities

An Owner Member's capital contribution is subject to the risks of the Company's business. However, under the provisions of the Company Act, a Owner Member will not be personally liable for any debts or losses of the Company beyond the amount of its capital contribution and profits attributable thereto (if any), plus interest thereon. Each Interest, when issued, will be fully paid and non-assessable. Losses in excess of the Company's assets will be the obligation of Mr. Murray. It should be noted that an Owner Member would not be able to exercise any management functions with respect to the Company's operations. See "RISK FACTORS."

The Limited Liability Company Agreement provides that the Company Investment Manager and its affiliates shall not be liable to the Company or to any of the Owner Members for any act or failure to act taken or omitted by them in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Company if such act or failure to act did not involve negligence, misconduct or a breach of fiduciary obligations.

Indemnification

The Limited Liability Company Agreement provides that in any threatened, pending or completed action, suit or proceeding to which the Company was or is a party or is threatened to be made a party by reason of the fact that it is or was the Company of the Company, the Company shall indemnify, defend, and hold harmless the Company and its "affiliates" (as defined below) from and against any loss, liability, damage, cost, expense (including, without limitation, attorneys' and accountants' fees and expenses incurred in defense of any demands, claims or lawsuits), judgments and amounts paid in settlement (collectively, "Losses"), incurred by them if the Company acted in good faith and in a manner it reasonably believed to be in or not opposed to, the best interests of the Company and, provided that the omission, act or conduct that was the basis for such Losses was not the result of misconduct or negligence and was taken or omitted in good faith and in the reasonable belief that it was taken or omitted in, or not opposed to the best interests of the Company. Any indemnification under the Limited Liability Company Agreement, unless ordered by a court, shall be made by the Company only as authorized in the specific case and only upon a determination by independent legal counsel in a written opinion that indemnification of the Company is proper under the circumstances. To the extent that the Company has been successful on the merits or otherwise in defense of any action, claim, suit or proceeding, or issue or matter presented therein, the opinion of independent legal counsel shall not be required and the Company shall indemnify them against any Losses incurred by them in connection therewith.

The Company may advance funds to the Investment Manager and its affiliates for legal expenses and other costs incurred as a result of a legal action if the Company or its affiliates, as applicable, undertake to repay the advanced funds to the Company in cases in which they would not be entitled to indemnification under the Limited Liability Company Agreement.

For purposes of indemnification as used in the Limited Liability Company Agreement, the term "affiliate" of the Company shall mean:

- (a) any natural person, Company, corporation, association or other legal entity directly or indirectly owning, controlling or holding with power to vote 10% or more of the outstanding voting securities of the Company;
- (b) any Company, corporation, association or other legal entity 10% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the Company;
- (c) any natural person, Company, corporation, association or other legal entity directly or indirectly controlling, controlled by, or under common control with, the Company; or,
- (d) any person who is a Owner Member, officer, director, or Investment Manager of the Company.

In the event the Investment Manager or the Company or any of its affiliates is made a party to any claim, dispute or litigation or otherwise incurs any Losses as a result of or in connection with:

- (a) any Owner Member's (or its assignee's) activities, obligations or liabilities unrelated to the Company's business, or,
- (b) any failure or alleged failure on the part of the Investment Manager, affiliates or the Company to withhold from income allocated or deemed to be allocated to any Owner

Member or its assignees (whether or not distributed) any amounts with respect to which Federal income tax withholding was required or alleged to have been required, such Owner Member (or its assignees cumulatively) shall indemnify and reimburse the Investment Manager and the Company for all Losses incurred by the Company and the Company in connection therewith.

Termination

Unless earlier dissolved, the Company shall cease doing business on December 31, 2050 and shall thereupon be dissolved. The Company also shall cease doing business and shall be dissolved upon the occurrence of certain other events, including the following:

- (a) The insolvency or bankruptcy of the Company, or,
- (b) The dissolution or other cessation to exist as a legal entity of the Company, at the election of the Company or upon the retirement, adjudication of bankruptcy or insolvency of the Company, unless a successor Company has been elected by the Owner Members or admitted by the Company prior to the date of any such event and such successor Company elects to continue the business of the Company.

The Limited Liability Company Agreement provides that in the event of the dissolution of or liquidation of the Company, its affairs shall be wound up and all assets shall be liquidated as promptly as is consistent with obtaining the fair value thereof and the proceeds there from shall be applied and distributed in the following order:

- (a) to the expenses of liquidation and termination and to creditors, in the order of priority as provided by law; and,
- (b) to the Owner Members in accordance with their respective Book.

Fiscal Year

The Company's fiscal year will end on December 31 of each year.

Arbitration

The Company Agreement and Subscription Agreement provide that any dispute involving the Company, the Company Agreement, or any subscription for Interests will be settled by arbitration in the county and state in which the Company maintains its principal office at the time of such dispute in accordance with the rules of the Arbitration Association of America ("AAA") applying Delaware law. By signing those agreements, each Owner Member agrees to waive his or her right to seek remedies in court, including any right to a jury trial. Among other things, this means that discovery will not be permitted except as required by the AAA's rules, that no punitive damages will be awarded and that a party's right to appeal or seek modification of any arbitration ruling or award will be severely limited. Judgment may be entered upon any arbitration award in any court of competent jurisdiction in the county and state in which the Company maintains its principal office at the time the award is rendered or as otherwise provided by law.

Miscellaneous Provisions

The Investment Manager may do business with any person, firm, or corporation notwithstanding that such person, firm, or corporation is an Owner Member or an affiliate of any Owner Members or of the Company.

The Investment Manager is not required to devote its full business time to the Company and will continue to have other business interests, including acting in the same or similar capacity for other Company's or entities.

Email

Mailbox:

Msg. Date (Eastern) Thu Aug 12, 2010 11:20AM ET
From jmurray@marketneutraltrading.com
To Paul.Eckel@EmergingManager.com
Subject RE: Fariba

Hi Paul,

Daily's attached.....i did a rough update of an old DDQ I had-it's attached let me know your thoughts.

Jim Murray

415-874-3558 Direct

415-634-2782 Fax

CIO, Market Neutral Trading, LLC

505 Montgomery Street Ste 1122

San Francisco, Ca 94111

From: Paul Eckel [mailto:Paul.Eckel@EmergingManager.com]
Sent: Thursday, August 12, 2010 10:54 AM
To: 'Jim Murray'
Subject: Fariba

Can you send me daily returns of the fund?

Fariba asked for a DDQ – I said we are working on it. I have create a few good ones in the past.

Manager Questionnaire

MNT Market Neutral Trading, LLC

August 11, 2010

Private and Confidential

The information enclosed herein is of a highly confidential nature. It is for the sole use of the intended recipient and is intended solely for the purpose of conducting the due diligence review of the fund named above. It is not to be duplicated, copied, e-mailed, or otherwise distributed to third parties without the prior written consent of Market Neutral Trading, LLC. Receipt of this document constitutes agreement by the recipient to abide by this confidentiality constraint.

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| I. Product Description | |
|---|--|
| <i>Fund Name:</i> | Market Neutral Trading, LLC ("MNT") |
| <i>Inception Date:</i> | August 15, 2006 |
| <i>Feeder Name:</i> | |
| <i>Manager</i> | Market Neutral Trading, LLC |
| <i>Strategy:</i> | U.S. Equity Long/Short Market Neutral Statistical Arbitrage. |
| <i>Investment Objective: (Including target return and risk)</i> | Market Neutral Trading, LLC's objective is growth and capital preservation independent of securities markets performance and or direction. It is achieved through our proprietary statistical arbitrage model of +-5% dollar neutral. |
| <i>Domicile:</i> | Market Neutral Trading, LLC: Delaware Registered LLC, Office's in San Francisco, California. |
| <i>Structure:</i> | Limited Liability Investment Company. |
| <i>Market Neutral Trading, LLC Assets Under Management:</i> | |
| <i>Total</i> | \$10.1 mm |
| <i>Traditional</i> | \$5.8 mm |
| <i>Alternative</i> | \$4.3mm |
| <i>Minimum Investment:</i> | US \$250,000 |
| <i>Minimum Incremental Investment:</i> | U.S. \$1,000 |
| <i>Fees:</i> | Management: 2% quarterly in advance. |
| | Incentive: 20% quarterly in arrears. |
| <i>High Watermark:</i> | Yes. |
| <i>Conditions for Subscription and Redemption:</i> | <p>Inflows are accepted at the 1st business day of the month. All paperwork must be signed and received 5 days prior to this date.</p> <p>Redemptions require 30 days written notice, at the end of each calendar month. Once the third party administrator has calculated the month-end value, a minimum of 95% (ninety-five percent) of that value will be redeemed within 30 days of the redemption date if 30 days prior redemption notice has been given. The final 5% will be held in escrow, and will be redeemed within approximately 90 days after the end of that calendar year, or 30 days after receipt of our annual audit for that calendar year, whichever takes longer. If redemption occurs prior to a 12-month holding period, a redemption penalty of 3% of the initial placement amount will be assessed.</p> <p>The fund is open ended, with 99 maximum Limited Partners.</p> |
| <i>Liquidity:</i> | Monthly with 30 days written notice. |
| <i>Lockup:</i> | None. |
| <i>Gate:</i> | None. |
| <i>Early Redemption penalty:</i> | For redemptions prior to 12 months from subscription: Early Redemption Fee of 3% of initially invested NAV at time of redemption. |

| II. Background and Compliance | |
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| 1. Contact Information | |
| <i>Fund/Company Name:</i> | Market Neutral Trading, LLC |
| <i>Person(s) to contact, including title(s):</i> | Jim Murray, CIO |
| <i>Address:</i> | 505 Montgomery Street, Suite 1100 San Francisco, CA 94111 |
| <i>Office Telephone:</i> | 415-874-3558 |
| <i>Fax:</i> | 415-634-2782 |
| <i>Website:</i> | www.marketneutraltrading.com |
| 2. Where are your principal offices? <i>List all branch office or affiliate locations (if any):</i> | MINT headquarters are at 505 Montgomery Street Suite 1100, San Francisco, CA 94111 on the corner of Montgomery and Sacramento in the heart of the San Francisco financial district. |
| 3. Provide a short history of the firm. | Market Neutral Trading, LLC. MNT is a Limited Liability Company formed and domiciled in Delaware. Jim Murray, the Manager of MNT, owns 100% interest in Market Neutral Trading, LLC. Mr. Murray maintains 100% voting power and control of Market Neutral Trading, LLC. Market Neutral Trading, LLC was established in November 2005 and began operations in August of 2006. |
| 4. What is the current legal and ownership structure of the firm? Explain any changes over the past three years. <i>Are there plans for any future changes in ownership? If yes, explain.</i> | See question #3 immediately above. No changes planned. |
| 5. Does the firm engage in any other business other than management of alternative investments? Briefly, describe the nature of that business and the percent of your total business so engaged. | No. |

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| <p>6. Does the firm manage investments of any other asset classes (for example, traditional assets)?</p> | <p>No.</p> |
| <p>7. Does the firm specialize in any particular product or group of products?</p> | <p>Market Neutral Trading, LLC specialized in applying statistical arbitrage to long and short equity investment positions.</p> |
| <p>8. Provide a chart of the legal structure of the firm. List all branch and/or affiliate offices.</p> | <p>Market Neutral Trading, LLC is located at 505 Montgomery Street Ste. 1100, San Francisco, CA 94111. Market Neutral Trading, LLC is a limited liability corporation domiciled in Delaware that distributes all of its excess profits to profit sharing employees and affiliates on a quarterly basis.</p> |
| <p>9. Does the fund have a board of directors?</p> | <p>Market Neutral Trading, LLC has no directors.</p> |
| <p>10. Have any directors, officers, management, or other employees of the fund or manager, ever been investigated disciplined, suspended (including revocation or suspension of licenses), subpoenaed, indicted, prosecuted, or barred from investment activities by state or federal government regulatory authorities? If so, explain.</p> | <p>No.</p> |
| <p>11. List the firm's registration type and date of registration with any regulatory or supervisory authorities.</p> | <p>Market Neutral Trading, LLC is exempt from registration and currently not registered with the SEC or the states of Delaware or California.</p> |
| <p>12. When was the firm last inspected by these authorities? Describe the outcome of that inspection.</p> | <p>N/A.</p> |
| <p>13. Is the firm or any affiliate involved with its hedge fund business a Registered Investment Advisor? If any affiliate is so registered, provide the name of the affiliate</p> | <p>N/A.</p> |

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| <p>14. Is your firm affiliated with a broker dealer?</p> <p>If so, what is the name of the broker-dealer, and is it a member of the NASD? Describe the nature of your firm's relationship with the broker-dealer.</p> | <p>No.</p> <p>N/A.</p> |
| <p>15. Does the firm have business relationships with any serious providers or professional counter parties (custodians, administrators, auditors, legal advisors, external marketers, banks, etc.)?</p> | <p><u>Administrator:</u> HF Administrators, Ltd. 1201 North Orange Street Suite 7004 Wilmington, De 19801 302-884-6723 302-573-2507 Fax Website: www.hfadministration.com</p> <p><u>Prime Broker:</u> Interactive Brokers Group, Inc. One Pickwick Plaza Greenwich, CT 06830 Phone: 203-618-5800 Fax: 203-618-5835 Website: www.interactivebrokers.com</p> <p><u>Auditor:</u> <u>Jones, Moore & Associates, LTD</u> 1521 Concord Pike Suite 301 Wilmington, DE 19803 Phone: 302-824-7088 Website: www.jonesmoore.com</p> <p><u>Legal Advisors:</u> <u>Hornstein Law Offices</u> 20 California Street, 7th Floor San Francisco, CA 94111 Phone: 415.454.1490 Website: www.hornsteinlaw.com</p> |
| <p>16. Are there any conflicts of interests of which the investor should be aware?</p> | <p>No.</p> |
| <p>17. Provide Client References.</p> | <p>Provided upon request.</p> |

| III. Capital Base | |
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| 1. What type of investor is your primary target? | Family Offices, Fund of Funds & Institutions. |
| 2. Provide a list of the firm's investment vehicles open to new investors. Indicate whether these investors invest with you via a fund (specify fund name), onshore, offshore, or in a separate account. | Market Neutral Trading, LLC. We allow separately managed accounts with a minimum investment of \$5mm per account. |
| 3. Provide the history of the Fund's total assets since inception. | MINT incepted the Fund on August 1, 2006, with 4MM comprised of corporate incubation money of 3MM and Member contribution of 1MM. After obtaining a one-year track record, we began raising assets in August of 2007, and have increased assts to 10.5MM. We will soft close the fund at \$150MM in assets, hard close it at \$200mm. |
| 4. Provide the total number of investors, the median value of the fund's accounts, and the value of the largest account. What percentage of the capital comes from the partners and employees? | Number of Investors: 5 |
| | Median Value: \$ |
| | Largest Account Value \$ |
| | Partners and Employees: \$750,000 |
| 5. What percentage of the key principals' liquid net worth is invested in the fund? | Approximately 50% |
| 6. What is the percentage of firm's assets and number of accounts in hedge fund strategies for each of the following investor types: | a. Corporations/Pension Funds: 50% |
| | b. Public Retirement Systems Traders: 0 |
| | c. Foundations Endowments: 0 |
| | d. High Net Worth Individuals: 50% |
| | e. Funds of Funds Private Equity: 0% |
| | f. Family Offices: 0% |
| 7. What percentage of your assets is onshore vs. offshore? | Onshore: 90% |
| | Offshore: 10% |

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| <p>8. What is the largest percentage of assets under management....</p> <p>a) <i>invested by any one client, and;</i></p> <p>b) <i>invested by your three largest clients?</i></p> | <p>a) 30%</p> <p>b) 80%</p> |
| <p>9. Is there a limit to the size of the total assets your firm will manage? If yes, state the amount and how it was derived.</p> <p><i>Is there a limit to the size of an investment by any one investor in the fund? If so, state the amount and how it was derived.</i></p> | <p>We think that this strategy might begin to lose some of its effectiveness due to liquidity above the \$200MM level. We plan to soft close the fund to new contributions at \$150MM and will return gains quarterly to investors after reaching \$200MM.</p> <p>We are comfortable with investment sizes as large a \$40 MM, and would consider larger investments if lockup periods were added to protect the liquidity of the Fund. Liquidity is strength of the Fund. This number was derives by the firms desire to ultimately have at least 10 large, unrelated investors in the Fund.</p> |
| <p>10. Do you accept separate managed accounts for the Fund strategy?</p> <p><i>What is the minimum size separate account you will allow?</i></p> | <p>We will allow separately managed accounts, our prime broker allows us to run them side-by-side, seamlessly.</p> <p>US \$5 MM</p> |

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| <p>6. <i>How do you attract and retain new, talented people?</i></p> | <p>Attracting people at the incubation level has required offering substantial profit sharing and delegation of power inside of the firm. We think that profit sharing as an incentive for all employees as the primary source of increase in future compensation at the firm is a healthy long-term model.</p> <p>Our location in downtown San Francisco provides a desirable location for young energetic talent. All employees share in the profits of MNT. Percentage sharing of these profits will be reviewed annually and be adjusted by merit.</p> |
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| V. Portfolio Structure and Composition | |
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| 1. <i>How would you classify your investment strategy?</i> | The Market Neutral Trading Fund is a Market-Neutral U.S. Domestic Long/Short Strategy. The Fund maintains a Dollar-neutral fixed market exposure and seeks to diversify and implement its proprietary statistical arbitrage strategy throughout multiple industries. |
| 2. <i>What benchmark is appropriate for your fund and why?</i> | We use the HFR Market Neutral Hedge Index as our primary benchmark, as it is the largest, most well established market-neutral equity index of Funds currently open to new investor capital. We also use net returns of the 3-Mo LIBOR Index and the S&P 500 Index as secondary benchmarks. |
| 3. <i>What type(s) of securities do you use?</i> | <p>The Fund purchases and sells short mostly U.S. exchange traded equities, and less than 5% of NAV in foreign exchange traded equities.</p> <p>The Fund may hedge existing long or short equity positions with equity options in order to lower risk exposure to the Fund. The Fund may never carry naked option positions, speculate with options, or write uncovered options at any time.</p> <p>The Fund may buy or sell short ETF Trusts in order to maintain a Dollar neutral investment portfolio in times of high volatility or portfolio imbalance.</p> <p>The Fund's assets also may be invested in money market instruments or cash if the General Partner believes market conditions warrant this activity, although the Fund intends to be fully invested at all times.</p> |
| 4. <i>How are investment decisions made (e.g. fundamental vs. model-driven, individual portfolio manager vs. investment committee, top-down vs. bottom-up)?</i> | <p>Top-Down strategy, risk management and asset allocation is managed by Jim Murray, MNT's Chief Investment Officer. Portfolio net \$ exposure, sub-industry group weightings, maximum gross position size, gross long exposure, gross short exposure and style drift are monitored on a continuous basis by Mr. Murray.</p> <p>Bottom-Up portfolio management/stock selection is made by Mr. Murray but primarily is automated based on MNT's proprietary statistical arbitrage model.</p> |
| 5. <i>a) What has been the average number of positions in the portfolio since inception? Gross position allocation limits?</i> | 50 on the long side, and approximately 50 on the short side, we Our maximum long marked-to-market maximum gross position size is 10% of NAV, our maximum short marked-to-market maximum gross position is 10% of NAV. |

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| <p>b) As a percentage of the portfolio, what is the maximum net allocation to any portfolio constituent on the long and short side?</p> <p>c) What are the maximum gross exposures to the market, both short and long? Maximum Net Exposures?</p> <p>d) What net percentage of the portfolio is in the ten largest positions?</p> | <p>The Fund has a Maximum Gross Exposure to any single long or short portfolio constituent is 10%.</p> <p>The Fund has a Maximum Gross Overnight Exposure of +200%; and Maximum Gross Overnight -200%. The Fund must maintain net dollar-weighted market neutrality on all overnight positions:</p> <p>(-10.00% of NAV < Net \$ Exposure < +10.00%).</p> <p>Maximum is 50%.</p> |
| <p>6. How many positions have been added to the portfolio in the last 12 months AND how many positions have exited the portfolio in the last 12 months?</p> | <p>The fund's proprietary statistical arbitrage model is set to (and has executed in the past 12 months) potentially enter and exit over 250 long and short equity positions.</p> |
| <p>7. On average, what percentage of the investments in the portfolio is priced by the firm's traders? By exchange or OTC transactions?</p> | <p>Nothing is priced internally, all trade and price on exchanges by third party, unaffiliated brokers with all agency trades.</p> |
| <p>8. What is your average net exposure (gross longs minus gross shorts)?</p> | <p>Average % Gross long: +97.5% Average % Gross short: -97.5% Average % Net long: 0% Average Net Portfolio Beta: -0.20 < Beta < 0.00</p> <p><u>LONG # of positions (max, min, avg):</u> 250 0, 50</p> <p><u>SHORT # of positions (max, min, avg):</u> 250 0, 50</p> <p><u>GROSS LONG (max, min, avg):</u> +150%, +0%, +97.5%</p> <p><u>GROSS SHORT (max, min, avg):</u> -150%, 0%, -97.5%</p> <p><u>NET \$ EXPOSURE (max, min, avg):</u> +10.0%, -10.0%, 2.00%</p> |
| <p>9. On average, what percentage of your return is generated by long positions? By short positions? By short interest credit (i.e. short rebates)?</p> | <p>Long Alpha: This is correlated with market direction. On the aggregate, a rising equity market will increase percentage of return generated by long positions and decrease percentage of returns generated by short positions. We currently have no precise measure of long and short alpha. All of the Fund's investments are executed in highly correlated pairs, we trade the volatility between the longs and the shorts. Currently short interest credit is very close to zero, until interest rates increase.</p> |

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| <p>10. On average, what percentage of your return is generated by long positions? By short positions? By short interest credit (i.e. short rebates)?</p> | <p>Short Interest Credit, Rebates and Dividends: -0% of Fund returns with the Fed Funds rate currently at 0%.</p> <p>Higher interest rates result in the increase of Credits and Rebates as a percentage of the Fund's returns.</p> | | | |
| <p>11. List the three largest drawdowns for the fund, their magnitude, and how long it took to recover.</p> | | Time Frame | Magnitude | Recovery Time |
| | Drawdown 1 | November 2006 | -1.55% | 1 month |
| | Drawdown 2 | January 2007 | -2.98% | 1 month |
| | Drawdown 3 | April 2007 | -1.39% | 1 month |
| <p>12. How quickly, and by what method (e.g., in increments, all at once, etc.)? Do you deploy additional capital?</p> | <p>New capital is deployed gradually or immediately depending on market conditions.</p> | | | |
| <p>13. Describe in detail the portfolio management process for your LONG portfolio, including the portfolio construction process.</p> | <p>The Long Alpha Portfolio is constructed 30% based on theory and 70% based on data. The theory components include components such as mean regression, price to book, earnings to price, short interest. Examples of Data are detailed and comprehensive statistics based on several types of relationships between the long position and a counterparty short position. The goal of the Alpha data model is to research recurring patterns, attempt to identify the catalysts, monitor the foundational catalysts, and make adjustments as needed.</p> | | | |
| <p>14. Describe in detail the portfolio management process for your SHORT portfolio, including the portfolio construction process.</p> | <p>The Short Alpha Portfolio is constructed 30% based on theory and 70% based on data. The theory components include components such as mean regression, price to book, earnings to price, short interest. Examples of Data are detailed and comprehensive statistics based on several types of relationships between the long position and a counterparty short position. The goal of the Alpha data model is to research recurring patterns, attempt to identify the catalysts, monitor the foundational catalysts, and make adjustments as needed.</p> | | | |

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| <p>15. Discuss any changes to the process over the past five years.</p> | <p>Previous portfolios (prior to August 2006 inception) had a higher bias towards the theoretical alpha model.</p> |
| <p>16. How often and on what basis is the portfolio allocation reviewed?</p> | <p>Allocation limits are reviewed constantly by live alarms.</p> |
| <p>16. How often and on what basis is the portfolio allocation reviewed?</p> | <p>Allocation limits are reviewed constantly by live alarms.</p> |
| <p>17. If you use leverage, state the policy provisions governing its use.</p> | <p>MNT maintains an overnight Fund gross long maximum of +150% of net equity, and Fund gross short maximum of -150% of equity.</p> |
| <p>18. Describe the quantitative models and tools you use for research, portfolio construction, and trading. What enhancements are you contemplating?</p> | <p>MNT conducts statistical modeling calculations and updates to the statistical database, which are done daily with tick data. MNT uses industry leading news services and wires and has relationships with several investment research firms.</p> |
| <p>19. Is the fund fully invested? If not, how is the surplus capital invested?</p> | <p>Significant cash balances should never exist in the Fund; Short credit balances in the Fund generate low returns based on the current Fed Funds rate.</p> |

| VI. Investment Philosophy | |
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| <p>1. <i>What market environment(s) do you perceive to be the most/least favorable for your strategy?</i></p> | <p>The fund thrives in volatile and high volume mean regressing equity markets regardless of equity market direction.</p> <p>The Fund models have behaved extremely well in bull markets, with breakout returns in the high teens or low twenties possible.</p> <p>The fund may not perform as well in a market with low volatility or volume.</p> |
| <p>2. <i>State the investment philosophy, strategy, style, and distinguishing characteristics of your firm's investment product.</i></p> | <p>The Market Neutral Trading strategy is based on a proprietary statistical arbitrage model that designates pairs of highly correlated, highly liquid US equities. The Fund's objective is to generate returns regardless of the equity market and security price direction based on relative price disparities between the selected investment pairs. The trading algorithms and automated order entry system in entering the positions; and aggressively managed stop losses and profit taking strategies are designed for entering and exiting positions are critical to the success of the strategy. The primary objectives of the Fund are to create consistent annual returns in excess of the HFR Equity Market Neutral Hedge Index and the 3-Mo LIBOR Index; and to maintain moderate standard deviations and annual drawdowns while providing monthly liquidity.</p> |
| <p>3. <i>Has the fund ever deviated from its initial strategy for any reason, including changes due to increases/decreases in assets under management or changes in market conditions? If so, describe.</i></p> | <p>No.</p> |
| <p>4. <i>What role does macroeconomic research play in the investment decision-making process?</i></p> | <p>The Fund is quantitatively designed to remove market risk from the equation, our macroeconomic exposures are static. We do not actively hedge our exposure to the US Dollar. However, macroeconomics are always considered and factored into application of arbitrage model to various industries. This portfolio always maintains dollar neutrality as well as industry neutrality to avoid macro-economic exposure.</p> |

| VII. Performance | |
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| 1. Provide calendar monthly net performance on your fund since inception. | Market Neutral Trading, LLC Net Returns (%): |
| 2. Has the performance been reviewed and/or audited by a third party? | Yes. |
| 3. Provide corresponding benchmark returns for the same period | HFR Market Neutral Hedge Index Net Returns (%): 3-Mo. LIBOR Index Net Returns (%): S&P 500 Index Net Returns (%): |
| 4. Show cumulative and annualized comparisons of Fund performance versus benchmarks since inception* **. | * Results indicated include management fees of 0.5% of NAV per quarter, billed quarterly in advance; as well as all legal and accounting expenses; and 20% incentive allocations as if a Limited Partner had invested since strategy inception on August 1, 2006. ** Results for time-period ended July 2010. Results for HFR Hedge Indices are estimated until final results are released 20 days after each calendar month. |
| 5. How often is performance information generated? | The Fund issues monthly performance estimates by the 5th business day after each month, and 3rd party capital account statements by the 15th calendar day after the close of each month. Our third party administrator (HF Administrators) calculates the monthly NAV independently from the General Partner. |

VIII. Risk Management and Operations

1. Describe your risk management policies.

The fund has a static range in net dollar exposure: -10.0% of NAV < \$ Net Exposure < +10.0% of NAV. This Fund is a dollar-neutral market neutral strategy, a NON-DIRECTIONAL long/short strategy.

Risk management is done with an objective on removing unnecessary risk relative to the return objective.

Mean Diversion -Maximum Day Loss Limits on MD Algorithm trades 4 tenths of one percent.

Mean Reversion Maximum Day Loss Limits on MR Algorithm trades 8 tenths of one percent.

Relative Strength Algo-Maximum drawdown on RS Algorithm trades 6 tenths of one percent.

MM/Event/Opportunistic Stop loss entered at 2% drawdown 7.5% maximum position size.

Risk Arbitrage price algo trades.

Medium Term Mean Regression plan for 5 standard deviation (based on proprietary measures) move.

Dividend Spread Strategy

Entry of all trades is aggressive limit orders simultaneous buy/sell short except for approximately 20% of the time when naked long/short sent with natural stop of counterparty if spread range still in buy/sell range, otherwise it's standard stop.

Maximum Net Exposure (\$LMV-\$SMV) Intraday 30%.

Entry into MD, MR, MR Med. Term, MS in black box accomplished 80% of the time with aggressive limit orders-the other 20% if there are certain historical conditions in S&P 500 Futures relative to it's applicable day trading orders are sent long or sell short for execution for price improvement and counter party is put on only if within buy or sell spread range for the counter party's natural stop.

Maximum Gross

Overnight Long 200% Maximum Gross + Max Gross Overnight Short 200%=\$LMV+\$SMV.

Position Size of medium term trades start out at Maximum size of 2% net equity with ability to withstand fundamental move against position of 5 standard deviations (based on proprietary measurements) up to 10.0% Max Position Size-MR algorithmic trading and DM algorithm trading applied to medium term position to mitigate against drawdown.

If any engine of the system is down all existing positions liquidated within 2 hours; no new positions will be added until resolution; engines defined as statistic updates, algorithmic trading system errors, co location computer systems, news services, phone systems, trade system features/functionality.

If account down 5% or more from previous day closing equity no new positions until factors are determined and a written plan is put into place with contingent provisions for further drawdown.

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| | <p>We maintain our maximum mark-to-market long position size strictly at +10.0% of NAV, and our maximum mark-to-market short position size strictly at -10.0% of NAV without exception.</p> <p>All of our holdings are liquid and trade on major exchanges, and therefore have efficient 3rd party pricing. Market Neutral Trading, LLC Net Returns (%):</p> |
| 2. <i>What types of risk do you track on a consistent basis?</i> | All of the above risk management policies are continuously monitored by our portfolio managers. The CIO reviews the portfolio's risk management on a daily basis after the close of trading. |
| 3. <i>How does the firm measure risk?</i> | <p>We measure risk in terms of projected:</p> <ul style="list-style-type: none"> -Downdrafts (we project the Fund to have maximum downdrafts of < 5.0%). -Standard Deviation (we project the Fund to have a standard deviation of approximately 10%). -Net \$ Exposure (the Fund maintains the net \$ exposure of the Fund: -10% < Net \$ Exposure < +10%). -R-Squared (the Fund maintains the R-Squared of the Fund <0.2). |
| 4. <i>Does the firm establish position limits for correlated funds? If yes, explain.</i> | N/A. |
| 5. <i>How is asset allocation determined?</i> | Asset allocation is determined by proprietary statistical arbitrage model. |
| 6. <i>Do you perform due diligence on service providers (for example, administrators, auditors, or custodians)? Briefly, describe your process for these checks.</i> | All of our service providers are well-established organizations with 10 or more reputable years of experience in their field. We chose our vendors extremely conservatively. We value referrals from current customers the most. |
| 7. <i>In addition to portfolio risk, what do you perceive to be your business risk(s)?</i> | Business Risk: MNT has existed since August of 2006. A general malaise among investors toward equity markets could affect the business. |
| 8. <i>Do you have one or more Prime Brokers? If so, who?</i> | MNT uses Interactive Brokers and Dimension/Lek Securities. |
| 9. <i>Who is in charge of operations?</i> | |

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| <p>10. How is the fund administered? If administered in-house,</p> <p>a) <i>What are the administrator's tasks?</i></p> <p>b) <i>How often is NAV calculated or estimated?</i></p> <p>c) <i>Are the results reviewed by an impartial third party?</i></p> <p>d) <i>What systems are used for administration? Were the systems developed in-house or are they provided by a third-party vendor?</i></p> <p><i>If administration is outsourced?</i></p> <p>a) <i>Which tasks are performed by the service provider? Which tasks (if any) are kept in-house?</i></p> <p>b) <i>Provide the name of the provider(s) and how long the firm has used these providers</i></p> <p>c) <i>Has the firm ever terminated its relationship with any service providers (including auditors)? If so, explain why.</i></p> | <p>Fund Administration is outsourced, (see below):</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>Yes, we use a third-party administrator (see below):</p> <p>Calculation of monthly capital accounts, calculation of quarterly high- water levels., generation of monthly statements. No tasks are performed in-house. Data is provided directly from our Prime Broker to our Fund Administrator.</p> <p>No.</p> |
| <p>11. Does an outside firm audit the financial statements of the fund? If so, provide the name of the auditing firm and the inception date of this relationship.</p> | <p>Jones, Moore & Associates, LTD 1521 Concord Pike, Suite 301 Wilmington, DE 19803 Phone: 302-824-7088 Website: www.jonesmoore.com</p> |

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| <p><i>Is the auditor's opinion unqualified? If not, why?</i></p> | <p>It is qualified due to the continued accrual to investors of Fund of startup costs over a 5-year period. These accruals and all expenses of the Fund are limited to 1% of NAV per annum by prospectus.</p> |
| <p><i>12. Describe your disaster recovery plans.</i></p> | <p>Tape backup that is performed daily and kept offsite. Our direct phone lines are forwardable to any operational phone line, including cell phones by remote technology. We have battery-powered backups of our servers for 48 hours, which will allow for an orderly shutdown and transfer of data elsewhere.</p> |

| IX. Transparency | |
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| 1. <i>What kind of information do you provide to investors on a regular basis?</i> | Performance estimates monthly from MNT's internal estimates. Capital account updates directly to clients monthly from our 3rd party administrator. Annual audit. |
| 2. <i>In what form, and how often do you provide this information?</i> | Our third party administrator provides emailed or faxed capital account statements directly to clients. |
| 3. <i>Do you provide audited reports to investors?</i> | Our Funds are audited annually each calendar year, with audit results expected within 90 days of year-end. We have sample audits available by email or overnight mail. |
| 4. <i>Can investors request customized reports?</i> | Yes, we can create customized reports at the discretion of the manager, to be agreed upon in advance of placement. |
| 5. <i>Do you publish articles in the press or in academic journals? If so, provide a sample of your publication(s).</i> | N/A, |
| 6. <i>What level of transparency will you provide to your investors?</i> | Full transparency in separately managed accounts only. |

| X. Differentiation | |
|---|--|
| 1. <i>What differentiates your firm from others with a similar style?</i> | The combination of the discretionary adoption of pairs chosen by a trading algorithm allows Market Neutral trading to adjust to quickly changing trends in the marketplace. Instead of "Man vs Machine", this Fund is "Man <i>and</i> Machine". |
| 2. <i>What do you perceive to be your competitive edge?</i> | <p>Size of Fund, Trading Skill, Proprietary Statistical Arbitrage Model, Reduction of Market Risk, Stop Losses & Risk Controls, Size of Fund</p> <p>The small size of our fund relative to other Market Neutral Funds allows us to reduce risk and obtain production from statistical arbitrage that would not be possible for larger funds.</p> <p>Trading Skill: The Trading Skills necessary to implement this strategy have been worked on by Mr. Murray for several years prior to MNT's inception. They have been partially automated with MNT's trading programs although a large amount of the trading is still completed manually.</p> <p>Proprietary Statistical Arbitrage Model: The model has been back tested for years and is constantly being adjusted by Mr. Murray for changing market anomalies and conditions.</p> <p>Reduction of Market Risk: MNT's has identified one of the biggest hurdles for fund managers (picking market direction) and seeks to eliminate it. By having an equal amount invested in short and long investments, MNT seeks to profit not from securities directions but by the relative disparities and changes within the long and short investments.</p> <p>Stop Losses: Strict stop losses shadow every established pair that is chosen in the model. The losses stopped or the gains scalped are monitored on a non-discretionary basis.</p> <p>Risk Controls: Maintenance of an Industry Neutral, Market Capitalization-Neutral portfolio with small position sizes further enhances the dollar-neutrality of the entire portfolio.</p> |

XI. Certification

Provide the name and title of the officer of your firm who prepared and reviewed this questionnaire.

| | |
|---------------|--|
| Name: | Jim Murray |
| Title: | President & Chief Investment Officer – Market Neutral Trading, LLC |
| Date: | 08/12/10 |

Market Neutral Trading, LLC

Pool Balance Sheet
January 31, 2009
(Unaudited)

| ASSETS | |
|-------------------------------|----------------------------|
| Cash in Checking | 19,837.15 |
| Deposit in Transit | 33,804.89 |
| Equity at Interactive Brokers | 99,990.00 |
| Equity at Rox | <u>2,015,484.91</u> |
| Broker Balance | <u>2,115,474.91</u> |
| Total Assets | <u><u>2,169,116.95</u></u> |
| LIABILITIES | |
| Accrued Incentive Fees | 38,030.42 |
| Accrued Oper/Admin Expenses | 38.96 |
| Pending Additions | 121,113.49 |
| Pending Withdrawals | <u>(190,572.00)</u> |
| Total Liabilities | <u>(31,389.13)</u> |
| EQUITY | |
| Redemptions | <u>(18,194.32)</u> |
| Current Year Net Income | <u>124,278.79</u> |
| Total Equity | <u><u>2,200,506.08</u></u> |
| Total Liabilities and Equity | <u><u>2,169,116.95</u></u> |

SECMNT-0000345

JM-SEC-0000345
EXH 141-0001

Market Neutral Trading, LLC

Income Statement

January 31, 2009

(Unaudited)

| | Fund | |
|-------------------------------------|-------------------|-------------------|
| | Current Month | Year to Date |
| Realized Trading Gain/(Loss) | 166,133.89 | 166,133.89 |
| Trading Income | 166,133.89 | 166,133.89 |
| Total Income | 166,133.89 | 166,133.89 |
| Incentive Fees | (38,030.42) | (38,030.42) |
| Operational/Administrative Expenses | (3,100.00) | (3,100.00) |
| Interest Expense | (724.68) | (724.68) |
| Total Expenses | (41,855.10) | (41,855.10) |
| Net Trading Gain/(Loss) | <u>124,278.79</u> | <u>124,278.79</u> |

Statement of Changes in Net Asset Value

| | |
|---------------------------|---------------------|
| Beginning Net Asset Value | 2,094,421.61 |
| Additions | |
| Withdrawals | (18,194.32) |
| Other Capital Changes | |
| Profit/(Loss) | <u>124,278.79</u> |
| Ending Net Asset Value | <u>2,200,506.08</u> |

Performance 5.99%

Market Neutral Trading, LLC

SECMNT-0000346

JM-SEC-0000346
EXH 141-0002

03/25/09
14:28:06

MARKET NEUTRAL TRADING, LLC
Journal for January, 2009

Page 1

| Account | Person | Debit | Credit | Description |
|-----------------------------------|--------------------|------------|------------|---------------------------|
| Transaction: 1 on 01/31/09 | | | | |
| 100 - Cash - Checking | Pool | | 118,959.55 | US Bank |
| 105 - Deposit in Transit | | | 30,000.00 | |
| 225 - Pending partner additions | | | 5.00 | |
| 225 - Pending partner additions | | | 12.49 | |
| 225 - Pending partner additions | | | 548.00 | |
| 225 - Pending partner additions | | | 548.00 | |
| 215 - Accrued oper/admin expenses | | | 15.47 | |
| 225 - Pending partner additions | | | 120,000.00 | |
| 105 - Deposit in Transit | | | 30,000.00 | |
| 215 - Accrued oper/admin expenses | | 6.00 | | |
| 215 - Accrued oper/admin expenses | | 175.00 | | |
| 215 - Accrued oper/admin expenses | | 18.17 | | |
| 215 - Accrued oper/admin expenses | | 260.00 | | |
| 215 - Accrued oper/admin expenses | | 150.00 | | |
| 215 - Accrued oper/admin expenses | | 50.00 | | |
| 215 - Accrued oper/admin expenses | | 75.00 | | |
| 215 - Accrued oper/admin expenses | | 175.00 | | |
| 230 - Pending partner withdrawals | | 7,000.00 | | |
| 230 - Pending partner withdrawals | | 72,512.00 | | |
| 230 - Pending partner withdrawals | | 77,460.00 | | |
| 230 - Pending partner withdrawals | | 3,000.00 | | |
| 230 - Pending partner withdrawals | | 6,450.00 | | |
| 230 - Pending partner withdrawals | | 10,000.00 | | |
| 105 - Deposit in Transit | | 100,000.00 | | |
| 215 - Accrued oper/admin expenses | | 62.39 | | |
| 215 - Accrued oper/admin expenses | | 1,000.00 | | |
| 215 - Accrued oper/admin expenses | | 244.95 | | |
| 230 - Pending partner withdrawals | | 2,000.00 | | |
| 230 - Pending partner withdrawals | | 1,000.00 | | |
| 230 - Pending partner withdrawals | | 4,100.00 | | |
| 230 - Pending partner withdrawals | | 1,000.00 | | |
| 230 - Pending partner withdrawals | | 10,000.00 | | |
| 230 - Pending partner withdrawals | | 2,500.00 | | |
| 215 - Accrued oper/admin expenses | | 850.00 | | |
| Transaction: 2 | | | | |
| 110 - Interactive Brokers | Pool | | 10.00 | Interactive Brokers |
| 215 - Accrued oper/admin expenses | | 10.00 | | |
| Transaction: 3 | | | | |
| 111 - Equity at Rox | Pool | 205,409.21 | | Rox |
| 105 - Deposit in Transit | | 30,000.00 | | |
| 105 - Deposit in Transit | | 30,000.00 | | |
| 105 - Deposit in Transit | | | 100,000.00 | |
| 517 - Interest Expense | | 724.68 | | |
| 400 - Short Term Realized | | | 166,133.89 | |
| Transaction: 4 | | | | |
| 305 - Cash Withdrawals | General 1 Managing | 11,744.32 | | Accrue Pending Withdrawal |
| 230 - Pending partner withdrawals | | | 11,744.32 | |
| Transaction: 5 | | | | |
| 305 - Cash Withdrawals | Limited 3 Guernsey | 6,450.00 | | Accrue Pending Withdrawal |
| 230 - Pending partner withdrawals | | | 6,450.00 | |

SECmnt-0000347

JM-SEC-0000347
EXH 141-0003

MARKET NEUTRAL TRADING, LLC
Journal for January, 2009

| Account | Person | Debit | Credit | Description |
|--|--------------------|-------------------|-------------------|-------------|
| Transaction: 7 | | | | |
| 515 - Operational/administrative expense | Pool | 3,100.00 | | Admin |
| 215 - Accrued oper/admin expenses | | | 3,100.00 | |
| Transaction: 8 | | | | |
| 510 - Incentive Allocation | Limited 1 Citco | 9,889.39 | | Incentive |
| 210 - Accrued incentive fees | | | 9,889.39 | |
| 510 - Incentive Allocation | 2 Hcm | 18,369.15 | | |
| 210 - Accrued incentive fees | | | 18,369.15 | |
| 510 - Incentive Allocation | 3 Guernsey | 9,771.88 | | |
| 210 - Accrued incentive fees | | | 9,771.88 | |
| Transaction: 9 | | | | |
| 511 - Incentive Allocation to GP | Limited 1 Citco | | 9,889.39 | Allocation |
| 800 - Non-Allocating Short Term | | 10,122.43 | | |
| 915 - Non-Allocating Admin | | | 188.88 | |
| 917 - Non-Allocating Interest Expense | | | 44.16 | |
| 511 - Incentive Allocation to GP | 2 Hcm | | 18,369.15 | |
| 800 - Non-Allocating Short Term | | 18,802.01 | | |
| 915 - Non-Allocating Admin | | | 350.84 | |
| 917 - Non-Allocating Interest Expense | | | 82.02 | |
| 511 - Incentive Allocation to GP | 3 Guernsey | | 9,771.88 | |
| 800 - Non-Allocating Short Term | | 10,002.15 | | |
| 915 - Non-Allocating Admin | | | 186.64 | |
| 917 - Non-Allocating Interest Expense | | | 43.63 | |
| 511 - Incentive Allocation to GP | General 1 Managing | 38,030.42 | | |
| 800 - Non-Allocating Short Term | | | 38,926.59 | |
| 915 - Non-Allocating Admin | | 726.36 | | |
| 917 - Non-Allocating Interest Expense | | 169.81 | | |
| Total | | <u>703,410.32</u> | <u>703,410.32</u> | |
| Report Total | | <u>703,410.32</u> | <u>703,410.32</u> | |

SECmnt-0000348

JM-SEC-0000348
EXH 141-0004

03/25/09
14:28:07

MARKET NEUTRAL TRADING, LLC
Pool Trial Balance for January, 2009

Page: 1

| Acct Code | Account Name | Beginning of Month | | Month Posting | | End of Month | |
|--------------|------------------------------------|---------------------|---------------------|-------------------|-------------------|---------------------|---------------------|
| | | Debit | Credit | Debit | Credit | Debit | Credit |
| 100 | Cash - Checking | 138,796.70 | | | 118,959.55 | 19,837.15 | |
| 105 | Deposit In Transit | 33,804.89 | | | | 33,804.89 | |
| 110 | Interactive Brokers | 100,000.00 | | | 10.00 | 99,990.00 | |
| 111 | Equity At Rox | 1,810,075.70 | | 205,409.21 | | 2,015,484.91 | |
| 210 | Accrued Incentive Fees | | | | 38,030.42 | | 38,030.42 |
| 215 | Accrued Oper/admin Expenses | | | | 38.96 | | 38.96 |
| 225 | Pending Partner Additions | | | | 121,113.49 | | 121,113.49 |
| 230 | Pending Partner Withdrawals | 11,744.32 | | 178,827.68 | | 190,572.00 | |
| 301 | December 31, 2008 Equity | | 2,094,421.61 | | | | 2,094,421.61 |
| 305 | Cash Withdrawals | | | 18,194.32 | | 18,194.32 | |
| 400 | Short Term Realized | | | | 166,133.89 | | 166,133.89 |
| 510 | Incentive Allocation | | | 38,030.42 | | 38,030.42 | |
| 515 | Operational/Administrative Expense | | | 3,100.00 | | 3,100.00 | |
| 517 | Interest Expense | | | 724.68 | | 724.68 | |
| Total | | 2,094,421.61 | 2,094,421.61 | 444,286.31 | 444,286.31 | 2,419,738.37 | 2,419,738.37 |
| | Total of income and expense | | | | 124,278.79 | | 124,278.79 |
| | 14 accounts listed | | | | | | |

SECmnt-0000349

JM-SEC-0000349
EXH 141-0005

03/25/09
14:28:07

Market Neutral Trading, LLC
General Ledger Report for January

Page 1

| Trans ID | Pool Number | Description | Debit | Credit | Trans Date |
|---|-------------|---------------------|---------------------------|--------------|------------|
| Account: 100 - Cash - Checking | | | | | |
| | | | <i>Beginning Balance:</i> | 138,796.70 | |
| 1 | Pool | US Bank | | 118,959.55 | 01/31/09 |
| | | | <i>Ending Balance:</i> | 19,837.15 | |
| Account: 105 - Deposit in Transit | | | | | |
| | | | <i>Beginning Balance:</i> | 33,804.89 | |
| 1 | Pool | US Bank | | 30,000.00 | 01/31/09 |
| 1 | Pool | US Bank | | 30,000.00 | 01/31/09 |
| 1 | Pool | US Bank | 100,000.00 | | 01/31/09 |
| 3 | Pool | Rox | 30,000.00 | | 01/31/09 |
| 3 | Pool | Rox | 30,000.00 | | 01/31/09 |
| 3 | Pool | Rox | | 100,000.00 | 01/31/09 |
| | | | <i>Ending Balance:</i> | 33,804.89 | |
| Account: 110 - Interactive Brokers | | | | | |
| | | | <i>Beginning Balance:</i> | 100,000.00 | |
| 2 | Pool | Interactive Brokers | | 10.00 | 01/31/09 |
| | | | <i>Ending Balance:</i> | 99,990.00 | |
| Account: 111 - Equity at Rox | | | | | |
| | | | <i>Beginning Balance:</i> | 1,810,075.70 | |
| 3 | Pool | Rox | | 205,409.21 | 01/31/09 |
| | | | <i>Ending Balance:</i> | 2,015,484.91 | |
| Account: 210 - Accrued incentive fees | | | | | |
| | | | <i>Beginning Balance:</i> | 0.00 | |
| 8 | Limited | 1 Incentive | | 9,889.39 | 01/31/09 |
| 8 | Limited | 2 Incentive | | 18,369.15 | 01/31/09 |
| 8 | Limited | 3 Incentive | | 9,771.88 | 01/31/09 |
| | | | <i>Ending Balance:</i> | 38,030.42 | |
| Account: 215 - Accrued oper/admin expenses | | | | | |
| | | | <i>Beginning Balance:</i> | 0.00 | |
| 1 | Pool | US Bank | | 15.47 | 01/31/09 |
| 1 | Pool | US Bank | 6.00 | | 01/31/09 |
| 1 | Pool | US Bank | 175.00 | | 01/31/09 |
| 1 | Pool | US Bank | 18.17 | | 01/31/09 |
| 1 | Pool | US Bank | 260.00 | | 01/31/09 |
| 1 | Pool | US Bank | 150.00 | | 01/31/09 |
| 1 | Pool | US Bank | 50.00 | | 01/31/09 |
| 1 | Pool | US Bank | 75.00 | | 01/31/09 |
| 1 | Pool | US Bank | 175.00 | | 01/31/09 |
| 1 | Pool | US Bank | 62.39 | | 01/31/09 |
| 1 | Pool | US Bank | 1,000.00 | | 01/31/09 |
| 1 | Pool | US Bank | 244.95 | | 01/31/09 |
| 1 | Pool | US Bank | 850.00 | | 01/31/09 |
| 2 | Pool | Interactive Brokers | 10.00 | | 01/31/09 |
| 7 | Pool | Admin | | 3,100.00 | 01/31/09 |
| | | | <i>Ending Balance:</i> | 38.96 | |
| Account: 225 - Pending partner additions | | | | | |

SECmnt-0000350

JM-SEC-0000350
EXH 141-0006

03/25/09
14:28:07

Market Neutral Trading, LLC
General Ledger Report for January

Page 2

| Trans ID | Pool Number | Description | Debit | Credit | Trans Date |
|---|-------------|-----------------------------|------------|--------------|------------|
| Account: 225 - Pending partner additions | | | | | |
| | | <i>Beginning Balance:</i> | 0.00 | 0.00 | |
| 1 | Pool | US Bank | | 5.00 | 01/31/09 |
| 1 | Pool | US Bank | | 12.49 | 01/31/09 |
| 1 | Pool | US Bank | | 548.00 | 01/31/09 |
| 1 | Pool | US Bank | | 548.00 | 01/31/09 |
| 1 | Pool | US Bank | | 120,000.00 | 01/31/09 |
| | | <i>Ending Balance:</i> | | 121,113.49 | |
| Account: 230 - Pending partner withdrawals | | | | | |
| | | <i>Beginning Balance:</i> | 11,744.32 | | |
| 1 | Pool | US Bank | 7,000.00 | | 01/31/09 |
| 1 | Pool | US Bank | 72,512.00 | | 01/31/09 |
| 1 | Pool | US Bank | 77,460.00 | | 01/31/09 |
| 1 | Pool | US Bank | 3,000.00 | | 01/31/09 |
| 1 | Pool | US Bank | 6,450.00 | | 01/31/09 |
| 1 | Pool | US Bank | 10,000.00 | | 01/31/09 |
| 1 | Pool | US Bank | 2,000.00 | | 01/31/09 |
| 1 | Pool | US Bank | 1,000.00 | | 01/31/09 |
| 1 | Pool | US Bank | 4,100.00 | | 01/31/09 |
| 1 | Pool | US Bank | 1,000.00 | | 01/31/09 |
| 1 | Pool | US Bank | 10,000.00 | | 01/31/09 |
| 1 | Pool | US Bank | 2,500.00 | | 01/31/09 |
| 4 | General | 1 Accrue Pending Withdrawal | | 11,744.32 | 01/31/09 |
| 5 | Limited | 3 Accrue Pending Withdrawal | | 6,450.00 | 01/31/09 |
| | | <i>Ending Balance:</i> | 190,572.00 | | |
| Account: 301 - December 31, 2008 Equity | | | | | |
| | | <i>Beginning Balance:</i> | | 2,094,421.61 | |
| | | <i>Ending Balance:</i> | | 2,094,421.61 | |
| Account: 305 - Cash Withdrawals | | | | | |
| | | <i>Beginning Balance:</i> | 0.00 | 0.00 | |
| 4 | General | 1 Accrue Pending Withdrawal | 11,744.32 | | 01/31/09 |
| 5 | Limited | 3 Accrue Pending Withdrawal | 6,450.00 | | 01/31/09 |
| | | <i>Ending Balance:</i> | 18,194.32 | | |
| Account: 400 - Short Term Realized | | | | | |
| | | <i>Beginning Balance:</i> | 0.00 | 0.00 | |
| 3 | Pool | Rox | | 166,133.89 | 01/31/09 |
| | | <i>Ending Balance:</i> | | 166,133.89 | |
| Account: 510 - Incentive Allocation | | | | | |
| | | <i>Beginning Balance:</i> | 0.00 | 0.00 | |
| 8 | Limited | 1 Incentive | 9,889.39 | | 01/31/09 |
| 8 | Limited | 2 Incentive | 18,369.15 | | 01/31/09 |
| 8 | Limited | 3 Incentive | 9,771.88 | | 01/31/09 |
| | | <i>Ending Balance:</i> | 38,030.42 | | |
| Account: 511 - Incentive Allocation to GP | | | | | |
| | | <i>Beginning Balance:</i> | 0.00 | 0.00 | |
| 9 | Limited | 1 Allocation | | 9,889.39 | 01/31/09 |

SECMNT-0000351

JM-SEC-0000351
EXH 141-0007

03/25/09
14:28:07

Market Neutral Trading, LLC
General Ledger Report for January

Page 3

| Trans ID | Pool Number | Description | Debit | Credit | Trans Date |
|--|-------------|---------------------------|-----------|-----------|------------|
| Account: 511 - Incentive Allocation to GP | | | | | |
| 9 | Limited | 2 Allocation | | 18,369.15 | 01/31/09 |
| 9 | Limited | 3 Allocation | | 9,771.88 | 01/31/09 |
| 9 | General | 1 Allocation | 38,030.42 | | 01/31/09 |
| | | <i>Ending Balance:</i> | 0.00 | 0.00 | |
| Account: 515 - Operational/administrative expense | | | | | |
| | | <i>Beginning Balance:</i> | 0.00 | 0.00 | |
| 7 | Pool | Admin | 3,100.00 | | 01/31/09 |
| | | <i>Ending Balance:</i> | 3,100.00 | | |
| Account: 517 - Interest Expense | | | | | |
| | | <i>Beginning Balance:</i> | 0.00 | 0.00 | |
| 3 | Pool | Rox | 724.68 | | 01/31/09 |
| | | <i>Ending Balance:</i> | 724.68 | | |
| Account: 800 - Non-Allocating Short Term | | | | | |
| | | <i>Beginning Balance:</i> | 0.00 | 0.00 | |
| 9 | Limited | 1 Allocation | 10,122.43 | | 01/31/09 |
| 9 | Limited | 2 Allocation | 18,802.01 | | 01/31/09 |
| 9 | Limited | 3 Allocation | 10,002.15 | | 01/31/09 |
| 9 | General | 1 Allocation | | 38,926.59 | 01/31/09 |
| | | <i>Ending Balance:</i> | 0.00 | 0.00 | |
| Account: 915 - Non-Allocating Admin | | | | | |
| | | <i>Beginning Balance:</i> | 0.00 | 0.00 | |
| 9 | Limited | 1 Allocation | | 188.88 | 01/31/09 |
| 9 | Limited | 2 Allocation | | 350.84 | 01/31/09 |
| 9 | Limited | 3 Allocation | | 186.64 | 01/31/09 |
| 9 | General | 1 Allocation | 726.36 | | 01/31/09 |
| | | <i>Ending Balance:</i> | 0.00 | 0.00 | |
| Account: 917 - Non-Allocating Interest Expense | | | | | |
| | | <i>Beginning Balance:</i> | 0.00 | 0.00 | |
| 9 | Limited | 1 Allocation | | 44.16 | 01/31/09 |
| 9 | Limited | 2 Allocation | | 82.02 | 01/31/09 |
| 9 | Limited | 3 Allocation | | 43.63 | 01/31/09 |
| 9 | General | 1 Allocation | 169.81 | | 01/31/09 |
| | | <i>Ending Balance:</i> | 0.00 | 0.00 | |

SECMNT-0000352

JM-SEC-0000352
EXH 141-0008

Market Neutral Trading, LLC

Incentive Fee

25.00%

Quarterly

| Partner | January 2009 Profit | January 2009 Incentive | January 2009 Accrued Incentive | January 2009 Carryforward Basis |
|---------|-------------------------|---------------------------|-----------------------------------|------------------------------------|
| 1 | 10,187.54 | 0.00 | 0.00 | 10,187.54 |
| 1 | 39,557.55 | 9,889.39 | 9,889.39 | 39,557.55 |
| 2 | 73,476.59 | 18,369.15 | 18,369.15 | 73,476.59 |
| 3 | 39,087.53 | 9,771.88 | 9,771.88 | 39,087.53 |
| | <u>162,309.21</u> | <u>38,030.42</u> | <u>38,030.42</u> | <u>162,309.21</u> |
| | Prior Incentive Fee | 0.00 | | |
| | Fees Paid | <u>0.00</u> | | |
| | Total Accrued Incentive | <u>38,030.42</u> | | |

SECMNT-0000353

JM-SEC-0000353
EXH 141-0009

03/25/09
14:28:07

MARKET NEUTRAL TRADING, LLC
Distribution Ledger for 01/31/09

Page 1

| Account | Starting Investment | Month Gain/(Loss) | Additions/ Withdrawals | Other Changes | Ending Equity |
|--------------------|------------------------|----------------------|---------------------------|------------------|---------------------|
| 1 Managing Member | 142,061.40 | 10,187.54 | (11,744.32) | | 140,504.62 |
| 1 Citco | 506,012.30 | 29,668.16 | | | 535,680.46 |
| 2 Hcm | 939,897.91 | 55,107.44 | | | 995,005.35 |
| 3 Guernsey | 506,450.00 | 29,315.65 | (6,450.00) | | 529,315.65 |
| Grand Total | 2,094,421.61 | 124,278.79 | (18,194.32) | | 2,200,506.08 |

SECmnt-0000354

JM-SEC-0000354
EXH 141-0010

Paul Eckel

From: Jim Murray <jmurray@marketneutraltrading.com>
Sent: Thursday, July 15, 2010 4:28 PM
To: Paul.Eckel@EmergingManager.com
Subject: RE: family office
Attachments: MNT_Summary_June2010.pdf; J Murray 2010 Resume.pdf; MNT Strategy Presentation.ppt

Hi Paul,

Attached are documents per your request.

Best regards,

Jim Murray

415-874-3558 Direct
415-634-2782 Fax
CIO, Market Neutral Trading, LLC
505 Montgomery Street Ste 1100
San Francisco, Ca 94111

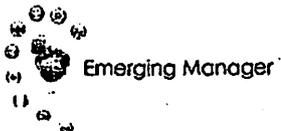
From: Paul Eckel [mailto:Paul.Eckel@EmergingManager.com]
Sent: Wednesday, July 14, 2010 7:29 PM
To: jmurray@marketneutraltrading.com
Subject: family office

Hi Jim,

Thomas of Persistent gave me your contact information. I've attached my firm's presentation. Our business focus is raising capital for quant managers.

I have a family office contact who will be in San Fran next week. Could I see your presentation and June performance report to determine if there is a potential fit with my contact?

Regards,
Paul Eckel



646 576 6383
Paul.Eckel@EmergingManager.com

"Marketer of the Year" award - Opal Financial Group

Email

Mailbox:

Msg. Date (Eastern) Wed Jul 21, 2010 6:20PM ET

From jmurray@marketneutraltrading.com

To "<Paul.Eckel@EmergingManager.com>" <Paul.Eckel@EmergingManager.com>

Subject Re: Investor

Hi Paul

It's a slow time during trading day Thursday so it could work. How about skype will that work for you? I have had good results US to Europe with it.

Does your company hold the investable funds for emerging managers or do you refer others to invest direct? Are you able to invest in separate accounts?

I do not have anything else to send to you at this stage other than my monthly newsletters since inception.

I run a small fund with a programmer, database manager and admin but they are all outsourced. For example my programmer is in Romania.

Jim

On Jul 21, 2010, at 9:10 PM, "Paul Eckel" <Paul.Eckel@EmergingManager.com> wrote:

Hi Jim,

I have significant investment interest in your strategy. I'm in Europe thru the end of the week – 10 hours ahead of you. Are you available Thursday morning 10am PST to speak?

Do you have any additional documentation to send me in the meantime? DDQ, etc.
How many individuals do you employ?

Thanks.

<image003.jpg>

<EMERGING MANAGER, LLC - June.pdf>

Report Generated 3/25/2015 12:32 PM ET by Paul Eckel

Email

Mailbox:

Msg. Date (Eastern) Wed Aug 04, 2010 8:54AM ET
From jmurray@marketneutraltrading.com
To Paul.Eckel@EmergingManager.com
Subject RE: See you Thursday at 730. Do you have a July estimate?

Jim Murray

415-874-3558 Direct

415-634-2782 Fax

CIO, Market Neutral Trading, LLC

505 Montgomery Street Ste 1122

San Francisco, Ca 94111

From: Paul Eckel [mailto:Paul.Eckel@EmergingManager.com]
Sent: Tuesday, August 03, 2010 7:24 PM
To: 'Jim Murray'
Subject: RE: See you Thursday at 730. Do you have a July estimate?

Can I get the June letter – unless the July is ready

Mailbox:

Email

Msg. Date (Eastern) Wed Aug 04, 2010 3:51PM ET
From jmurray@marketneutraltrading.com
To "Jim Murray" <jmurray@marketneutraltrading.com>
Subject July 2010 Newsletter

Jim Murray

415-874-3558 Direct

415-634-2782 Fax

CIO, Market Neutral Trading, LLC

505 Montgomery Street Ste 1122

San Francisco, Ca 94111

Report Generated 3/25/2015 12:39 PM ET by Paul Eckel

31 Montgomery Street, Suite 1100, New York, NY 10007
 Tel: 212 360 1000 Fax: 212 360 1001
 www.mntllc.com

| | Market Neutral Trading, LLC | HFR Equity Market Neutral Hedge Index | Platinum LIBOR Index | S&P 500 Index |
|--|-----------------------------|---------------------------------------|----------------------|---------------|
| Net Annualized Return Since Inception: | 29.53% | 0.07% | 2.74% | -3.62% |
| Cumulative Net Return Since Inception: | 181.48% | 0.26% | 11.43% | -13.71% |
| Last 24 mo Net Return: | 41.47% | -5.10% | 1.75% | -14.13% |
| Last 12 mo Net Return: | 28.43% | 1.54% | 0.31% | 7.93% |
| Last 6 mo Net Return: | 16.70% | 0.99% | 0.18% | -5.80% |
| % up months | 77.08% | 56.25% | 100.00% | 60.42% |
| Max Drawdown: | -2.98% | -3.41% | 0.00% | -46.70% |
| Beta: | 0.06 | 0.15 | -0.01 | 1.00 |
| Annualized St. Deviation: | 10.59 | 4.09 | 0.58 | 19.13 |
| R-squared vs S&P 500 | 0.05 | 0.26 | 0.00 | 1.00 |
| Sharpe Ratio (Risk Free Rate = 4.50%) | 2.53 | -0.66 | 0.00 | -0.33 |

In July of 2010 Market Neutral Trading, LLC returned an estimated net +0.92% to investors. During the same time period, the HFR Equity Market Neutral Hedge Index returned +0.12%, the 3-mo LIBOR Index returned +0.04%, and the S&P 500 Index returned +7.73% to investors. Since Fund inception on August 15, 2006, Market Neutral Trading, LLC has returned a net annualized +29.53%; while the HFR Equity Market Neutral Hedge Index has returned +0.07%, the 3-mo LIBOR Index has returned +2.74%, and the S&P 500 Index has returned -3.62% per annum to investors. (see disclosures* **)

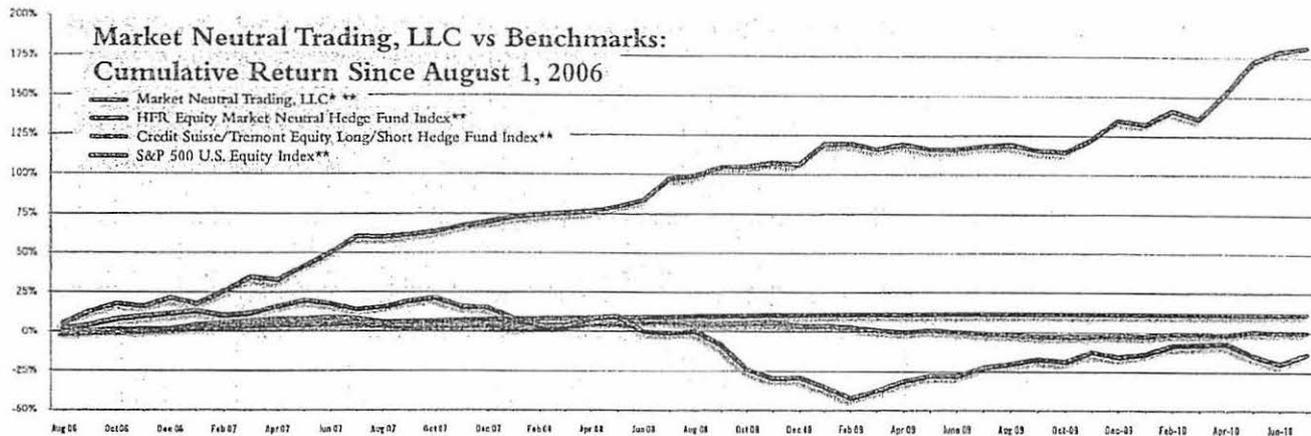


TABLE 1 - Market Neutral Trading, LLC* **

| Annual | Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|--------|------|--------|-------|--------|--------|--------|-------|-------|--------|--------|--------|--------|--------|
| 21.23% | 2006 | | | | | | | | 5.40% | 6.77% | 4.67% | -1.55% | 4.54% |
| 40.08% | 2007 | -2.98% | 6.44% | 7.33% | -1.39% | 6.99% | 5.66% | 6.88% | -0.08% | 0.98% | 1.12% | 2.34% | 1.59% |
| 21.94% | 2008 | 2.02% | 0.65% | 0.58% | 0.59% | 1.85% | 2.27% | 7.49% | 0.73% | 3.11% | 0.11% | 1.33% | -0.50% |
| 13.44% | 2009 | 6.01% | 0.21% | -1.67% | 1.39% | -1.43% | 0.13% | 0.89% | 0.36% | -1.59% | -0.59% | 3.91% | 5.43% |
| 19.84% | 2010 | -1.05% | 3.78% | -2.21% | 7.03% | 7.90% | 2.39% | 0.92% | | | | | |

TABLE 2 - HFR Equity Market Neutral Hedge Index **

| Annual | Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|--------|------|--------|--------|--------|--------|-------|--------|--------|--------|--------|-------|--------|--------|
| 2.13% | 2006 | | | | | | | | -0.54% | 1.32% | 0.97% | -0.53% | 0.91% |
| 3.10% | 2007 | 2.45% | 0.86% | 1.20% | 0.97% | 0.06% | 0.94% | -0.42% | -2.17% | -1.73% | 0.16% | 0.15% | 0.67% |
| -1.17% | 2008 | -2.75% | 0.79% | 2.05% | 1.03% | 0.23% | 1.02% | -0.03% | -1.91% | -0.24% | 0.19% | 0.69% | -2.13% |
| -5.59% | 2009 | 0.01% | -0.95% | -1.56% | 0.00% | 1.44% | -0.97% | -1.11% | -0.61% | -1.24% | 0.02% | 0.28% | 0.45% |
| 2.05% | 2010 | -0.49% | 1.55% | -0.04% | -0.38% | 2.08% | -0.77% | 0.12% | | | | | |

TABLE 3 - 3-Month LIBOR Index**

| Annual | Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|--------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 2.21% | 2006 | | | | | | | | 0.44% | 0.44% | 0.44% | 0.44% | 0.44% |
| 5.16% | 2007 | 0.44% | 0.44% | 0.44% | 0.44% | 0.44% | 0.44% | 0.45% | 0.44% | 0.41% | 0.41% | 0.40% | 0.32% |
| 2.76% | 2008 | 0.25% | 0.24% | 0.23% | 0.23% | 0.23% | 0.23% | 0.23% | 0.24% | 0.29% | 0.26% | 0.17% | 0.13% |
| 0.66% | 2009 | 0.10% | 0.10% | 0.10% | 0.08% | 0.06% | 0.05% | 0.04% | 0.03% | 0.03% | 0.02% | 0.02% | 0.02% |
| 0.22% | 2010 | 0.02% | 0.02% | 0.02% | 0.03% | 0.04% | 0.04% | 0.04% | | | | | |

TABLE 4 - S&P 500 US Equity Index **

| Annual | Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|---------|------|--------|---------|--------|-------|--------|--------|--------|-------|--------|---------|--------|--------|
| 11.09% | 2006 | | | | | | | | 2.13% | 2.46% | 3.15% | 1.65% | 1.26% |
| 3.53% | 2007 | 1.41% | -2.18% | 1.00% | 4.33% | 3.25% | -1.78% | -3.20% | 1.29% | 3.58% | 1.48% | -4.40% | -0.86% |
| -38.49% | 2008 | -6.12% | -3.48% | -0.60% | 4.75% | 1.07% | -8.60% | -0.99% | 1.22% | -9.08% | -16.94% | -7.48% | 0.78% |
| 18.89% | 2009 | -8.57% | -10.99% | 8.54% | 9.39% | 5.31% | 0.02% | 7.41% | 3.36% | 3.57% | -1.98% | 7.62% | -3.70% |
| 2.58% | 2010 | 2.85% | 3.26% | 0.74% | 0.73% | -8.20% | -6.13% | 7.73% | | | | | |

Fund Overview

Market Neutral Trading, LLC ("MNT"), is a market neutral U.S. equity long/short hedge fund. Net dollar exposure, net capitalization exposure, sub-industry exposure and gross position sizes are monitored continuously. MNT's objective is growth and capital preservation independent of equity market performance. Achieved through a proprietary statistical arbitrage model, the primary objectives of the Fund are to create consistent annual returns while maintaining moderate standard deviations and providing monthly liquidity. The Fund is also available offshore through Offshore Market Neutral Trading, LTD. MNT's British Virgin Islands master feeder.

Investment Terms & Administration

Delaware Limited Liability Corporation: Market Neutral Trading, LLC
 BVI Offshore Investment Company: Offshore Market Neutral Trading, LTD
 Senior Portfolio Manager: James Murray
 Contributions: Monthly - 5 days written notice
 Minimum Investment: US \$250,000
 Fees: 0% mgmt fee & 25% incentive fee
 Withdrawals: Monthly - 30 days written notice
 Lockup: None
 <12 Month Early Redemption Penalty: 3% of initial investment
 Custodian/Prime Broker: Interactive Brokers
 Auditor: Jones, Moore & Associates, Ltd.
 Administrator: I.F.E Administrators, Ltd.

* This monthly performance update is a publication of Market Neutral Trading, LLC. Information presented is believed to be factual and up-to-date, but we do not guarantee its accuracy and it should not be regarded as a complete analysis of the subjects covered. All expressions of opinion reflect the judgment of the authors as of the date of publication and are subject to change. The performance information provided herein is historical and should not be taken as any indication of future performance. Among other things, growth of assets under management of the investment adviser may adversely affect investment performance. Also, future investments will be made under different economic conditions and may be made in different securities using different investment strategies. The performance statistics disclosed herein show the approximate percentage increase (decrease) in the net asset value in Market Neutral Trading, LLC's interests, adjusted to account for unrealized gains and losses, reinvestment of all dividends and deduction of the management fees and incentive fees paid to the General Partner, other expenses and the effect of additions and withdrawals of capital, among other things that the Manager has determined are necessary to fairly and accurately present the results of the partnership. Any comparison of the partnership's performance to a single market index is imperfect because the partnership's portfolio may contain different securities, may include margin trading and other leverage and it may be more or less diversified as the Standard and Poor's 500 Index or other indices. Due to the differences between the partnership's investment strategy and the methodology used to compute most indices, the Manager cautions subscribers that no indices are directly comparable to the results of the partnership. ** Results for time period ended Friday, July 30, 2010; results for Credit Suisse/Tremont Hedge Fund Indices are estimated until final results released 15 days after the end of each calendar month.

505 Montgomery Street
Suite 1100
San Francisco, CA 94111
Phone: 415 874-3558
Fax: 415 634-2782
info@marketneutraltrading.com

Comment on July 2010

MNT's investment objective is capital preservation and capital appreciation independent of equity market direction. MNT uses its proprietary statistical arbitrage model to profit from the differential between prices of specific long and short equity investments. MNT's Alpha Model currently is a combination of theoretical and data based strategies applied to several different time periods.

July was an outstanding month for all the major equity indices and compared to those numbers MNT's results seem insignificant. The major market averages are now in positive territory and I continue to keep a close eye on the possibility the performance chasing performance phenomenon we saw in 2009. While I think it's unlikely it is an

Table 1: Performance Chart

| | Market Neutral Trading, LLC | HERX Market Neutral Hedge Index | 3-Month LIBOR Index | S&P 500 Index |
|--|-----------------------------|---------------------------------|---------------------|---------------|
| Net Annualized Return Since Inception: | 29.53% | 0.07% | 2.74% | -3.62% |
| Cumulative Net Return Since Inception: | 181.48% | 0.26% | 11.43% | -13.71% |
| Last 24 mo Net Return: | 41.47% | -5.10% | 1.75% | -14.13% |
| Last 12 mo Net Return: | 28.43% | 1.54% | 0.31% | 7.93% |
| Last 6 mo Net Return: | 16.70% | 0.99% | 0.18% | -5.80% |
| % up months | 77.08% | 56.25% | 100.00% | 60.42% |
| Max Drawdown: | -2.98% | -3.41% | 0.00% | -46.70% |
| Beta: | 0.06 | 0.15 | -0.01 | 1.00 |
| Annualized St. Deviation: | 10.59 | 4.09 | 0.58 | 19.13 |
| R-squared vs S&P 500 | 0.05 | 0.26 | 0.00 | 1.00 |
| Sharpe Ratio (Risk Free Rate = 4.50%) | 2.53 | -0.66 | 0.00 | -0.33 |

important point to keep in mind. Those types of markets are the ones I have found can cause extreme types of market performance. This is significant as it requires a change in perspective and some adjustments to how we view the data based strategies. We had a nice run up in volatility and now it's subsided quite a bit for July. Now that earnings season is over I would expect August to be a relatively quiet month which should provide a welcomed start to

Table 2: Annual Chart

| | Market Neutral Trading, LLC | | | | | HERX Market Neutral Hedge Index | | | | | 3-Month LIBOR Index | | | | |
|--------|-----------------------------|--------|--------|--------|--------|---------------------------------|--------|--------|--------|--------|---------------------|-------|-------|-------|-------|
| | 2006 | 2007 | 2008 | 2009 | 2010 | 2006 | 2007 | 2008 | 2009 | 2010 | 2006 | 2007 | 2008 | 2009 | 2010 |
| Annual | 21.23% | 40.08% | 21.94% | 13.44% | 19.84% | 2.13% | 3.10% | -1.17% | -5.59% | 2.05% | 2.21% | 5.16% | 2.76% | 0.66% | 0.22% |
| Jan | | -2.98% | 2.02% | 6.01% | -1.05% | | 2.45% | -2.75% | 0.01% | -0.49% | | 0.44% | 0.25% | 0.10% | 0.02% |
| Feb | | 6.44% | 0.65% | 0.21% | 3.78% | | 0.86% | 0.79% | -0.95% | 1.55% | | 0.44% | 0.24% | 0.10% | 0.02% |
| Mar | | 7.33% | 0.58% | -1.67% | -2.21% | | 1.20% | 2.05% | -1.56% | -0.04% | | 0.44% | 0.23% | 0.10% | 0.02% |
| Apr | | -1.39% | 0.59% | 1.39% | 7.08% | | 0.97% | 1.03% | 0.00% | -0.38% | | 0.44% | 0.23% | 0.08% | 0.03% |
| May | | 6.99% | 1.85% | -1.43% | 7.90% | | 0.06% | 0.23% | 1.44% | 2.08% | | 0.44% | 0.23% | 0.06% | 0.04% |
| Jun | | 5.66% | 2.27% | 0.13% | 2.39% | | 0.94% | 1.02% | -0.97% | -0.77% | | 0.44% | 0.23% | 0.05% | 0.04% |
| Jul | | 6.88% | 7.49% | 0.89% | 0.92% | | -0.42% | -0.03% | -1.11% | 0.12% | | 0.45% | 0.23% | 0.04% | 0.04% |
| Aug | 5.40% | -0.08% | 0.73% | 0.36% | | -0.54% | -2.17% | -1.91% | -0.61% | | 0.44% | 0.44% | 0.24% | 0.03% | |
| Sep | 6.77% | 0.98% | 3.11% | -1.59% | | 1.32% | -1.73% | -0.24% | -1.24% | | 0.44% | 0.41% | 0.29% | 0.03% | |
| Oct | 4.67% | 1.12% | 0.11% | -0.59% | | 0.97% | 0.16% | 0.19% | 0.02% | | 0.44% | 0.41% | 0.26% | 0.02% | |
| Nov | -1.55% | 2.34% | 1.33% | 3.91% | | -0.53% | 0.15% | 0.59% | 0.28% | | 0.44% | 0.40% | 0.17% | 0.02% | |
| Dec | 4.54% | 1.59% | -0.50% | 5.43% | | 0.91% | 0.67% | -2.13% | 0.45% | | 0.44% | 0.32% | 0.13% | 0.02% | |

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MNT
Market Neutral Trading, LLC

505 Montgomery Street
Suite 1100
San Francisco, CA 94111
Phone: 415 874-3558
Fax: 415 634-2782
info@marketneutraltrading.com

Newsletter

Page 2

September. September has traditionally been a weak and busy month and I would expect with any weakness we'll also see the fear index increase which should hopefully bring good production for the Alpha Model. September should also be helped mid month as 3Q earnings results begin.

So in short I continue to be concerned with any possibility of what unexpected event or condition could be challenging and require adjustments but am hopeful and reasonably confident things will continue to progress for August and especially September.

Best Regards,

Jim

Market Neutral Trading, LLC
Actual Performance

| Month | Beginning Equity (1) | Additions (2) | Withdrawals (3) | Net Performance (5) | Ending Equity (6) | Monthly Rate of Return (7) | \$ 1000 Index (8) |
|-------|----------------------|------------------|------------------|---------------------|-------------------|----------------------------|-------------------|
| 2009 | | | | | | | 1,000 |
| Jan | 2,094,422 | 0 | 18,194 | 124,279 | 2,200,506 | 5.99% | 1,060 |
| Feb | 2,200,506 | 841,113 | 905,572 | 3,856 | 2,139,904 | 0.18% | 1,062 |
| Mar | 2,139,904 | 0 | 0 | (35,801) | 2,104,103 | -1.67% | 1,044 |
| Apr | 2,104,103 | 47,882 | 49,256 | 28,257 | 2,130,986 | 1.34% | 1,058 |
| May | 2,130,986 | 5,000 | 0 | (30,442) | 2,105,545 | -1.43% | 1,043 |
| Jun | 2,105,545 | 328,900 | 286,147 | 2,799 | 2,151,096 | 0.13% | 1,044 |
| Jul | 2,151,096 | 120,200 | 100,303 | 19,366 | 2,190,360 | 0.89% | 1,054 |
| Aug | 2,190,360 | 71,014 | 258,400 | 7,287 | 2,010,261 | 0.36% | 1,057 |
| Sept | 2,010,261 | 0 | 5,236 | (882,722) | 1,122,303 | -44.03% | 592 |
| Oct | 1,122,303 | 291,951 | 723,873 | (307,204) | 383,178 | -44.50% | 329 |
| Nov | 383,178 | 31,000 | 83,400 | (267,112) | 63,666 | -80.75% | 63 |
| Dec | 63,666 | 149,861 | 0 | (41,067) | 172,460 | -19.23% | 51 |
| | | <u>1,886,922</u> | <u>2,430,382</u> | <u>(1,378,501)</u> | | <u>-94.89%</u> | |

Past performance is not indicative of future results.

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JM-SEC-0000738
EXH 140-0001

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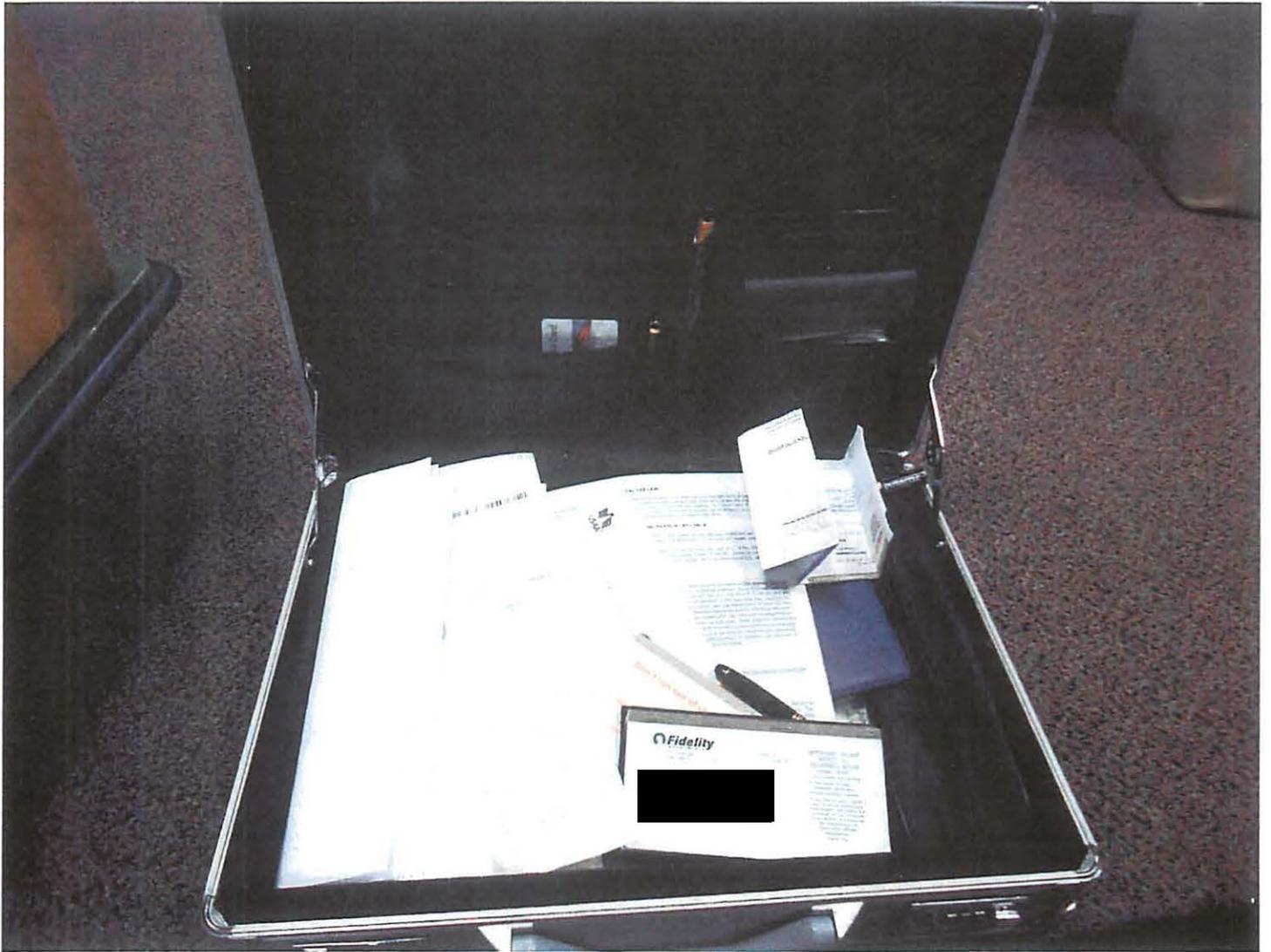
MARKET NEUTRAL TRADING, LLC
Distribution Ledger for 12/31/09

Page 1

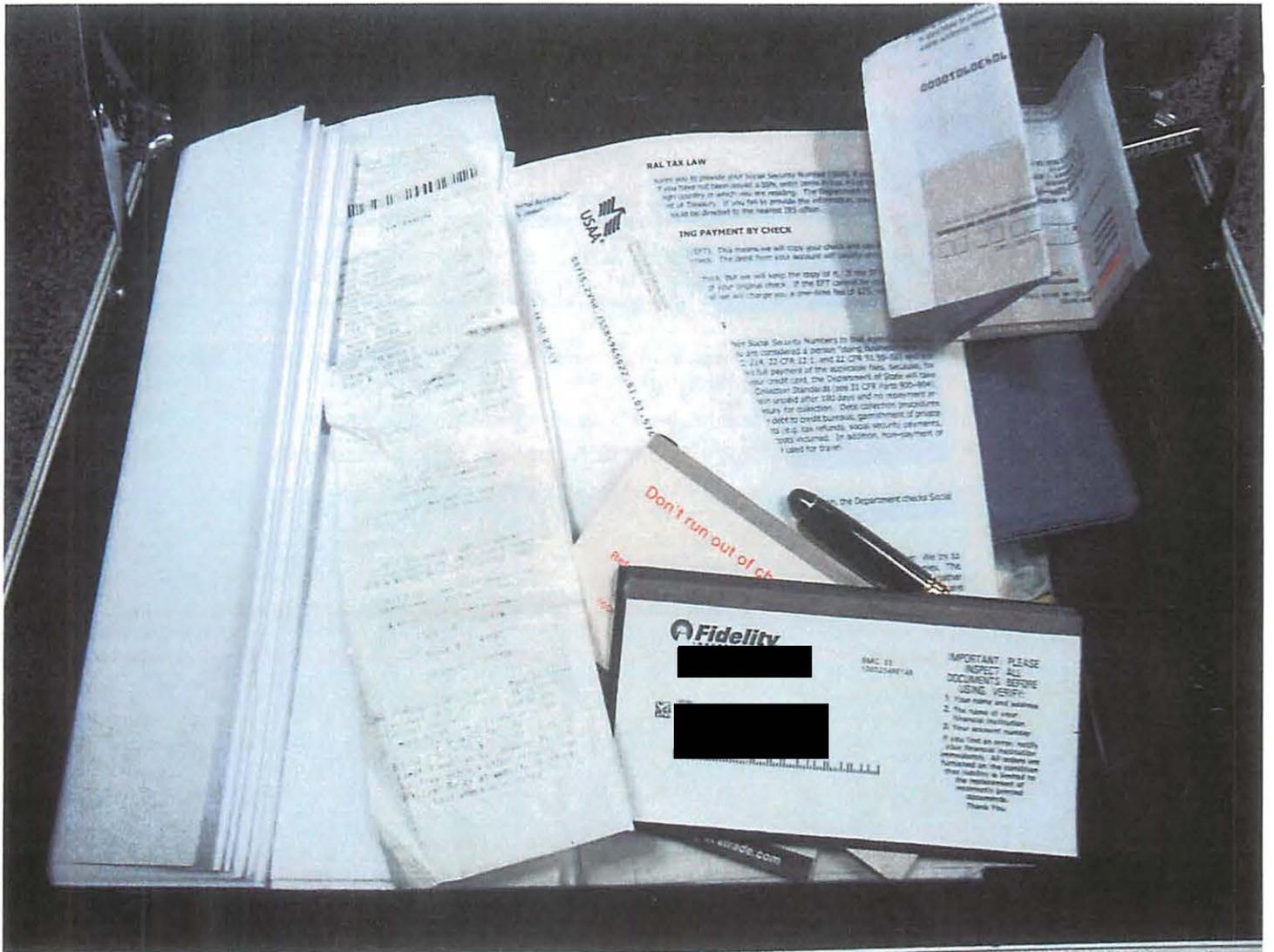
| Account | Starting Investment | Month Gain/(Loss) | Additions/ Withdrawals | Other Changes | Ending Equity |
|--------------------------|------------------------|----------------------|---------------------------|------------------|-------------------|
| 1 Managing Member | 3,132.39 | (29,424.43) | 149,861.00 | | 123,568.96 |
| 1 Citco | 30,266.72 | (5,821.04) | | | 24,445.68 |
| 3 Guemsey | 30,266.72 | (5,821.04) | | | 24,445.68 |
| Total for A Class | 63,665.83 | (41,066.51) | 149,861.00 | | 172,460.32 |
| Grand Total | 63,665.83 | (41,066.51) | 149,861.00 | | 172,460.32 |

SECmnt-0000748

JM-SEC-0000748
EXH 140-0011



24-031462
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24-03465
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P.O. BOX 5421
CINCINNATI, OH 45250-5421

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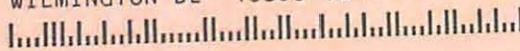
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WILMINGTON DE 19801-1155

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where your account is located.**

All orders are furnished on the condition
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of an incorrectly printed order

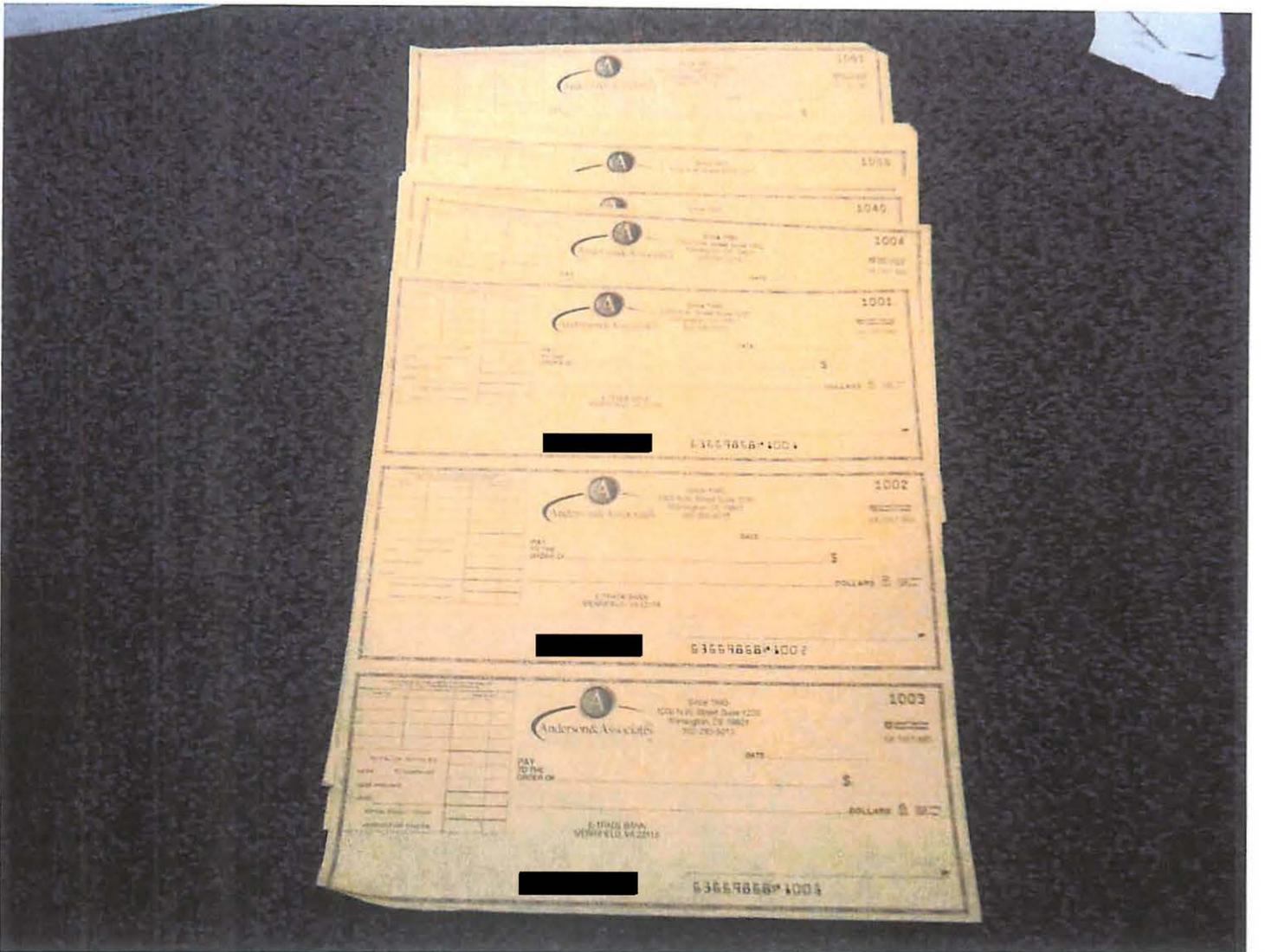
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BARCLAYS MARKET NEUTRAL TRADING B
 225 MONTGOMERY STREET
 SUITE 1500
 SAN FRANCISCO, CA 94111-2695

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Pay to the order of _____ \$ _____

For _____

⑆03⑆400⑆57⑆ [REDACTED] 0⑆26

JONES MOORE & ASSOC LTD
 128 CONCORD PIKE SUITE 301
 WILMINGTON, DE 19801

Fidelity Account 1001

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Fidelity

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 SAN FRANCISCO, CA 94111-2695

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Merrill Lynch

⑆08⑆30⑆267⑆ [REDACTED] 0328

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 DAVID B. LOWE
 JONES, MOORE & ASSOCIATE
 128 CONCORD PIKE SUITE 301
 WILMINGTON, DE 19801

⑆3673727⑆

⑆ [REDACTED] ⑆

E*TRADE COMPLETE 1002

JAMES M. MURRAY
 [REDACTED]
 SAN FRANCISCO, CA [REDACTED]

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For _____

E*TRADE Bank, Member FDIC, VA 22138

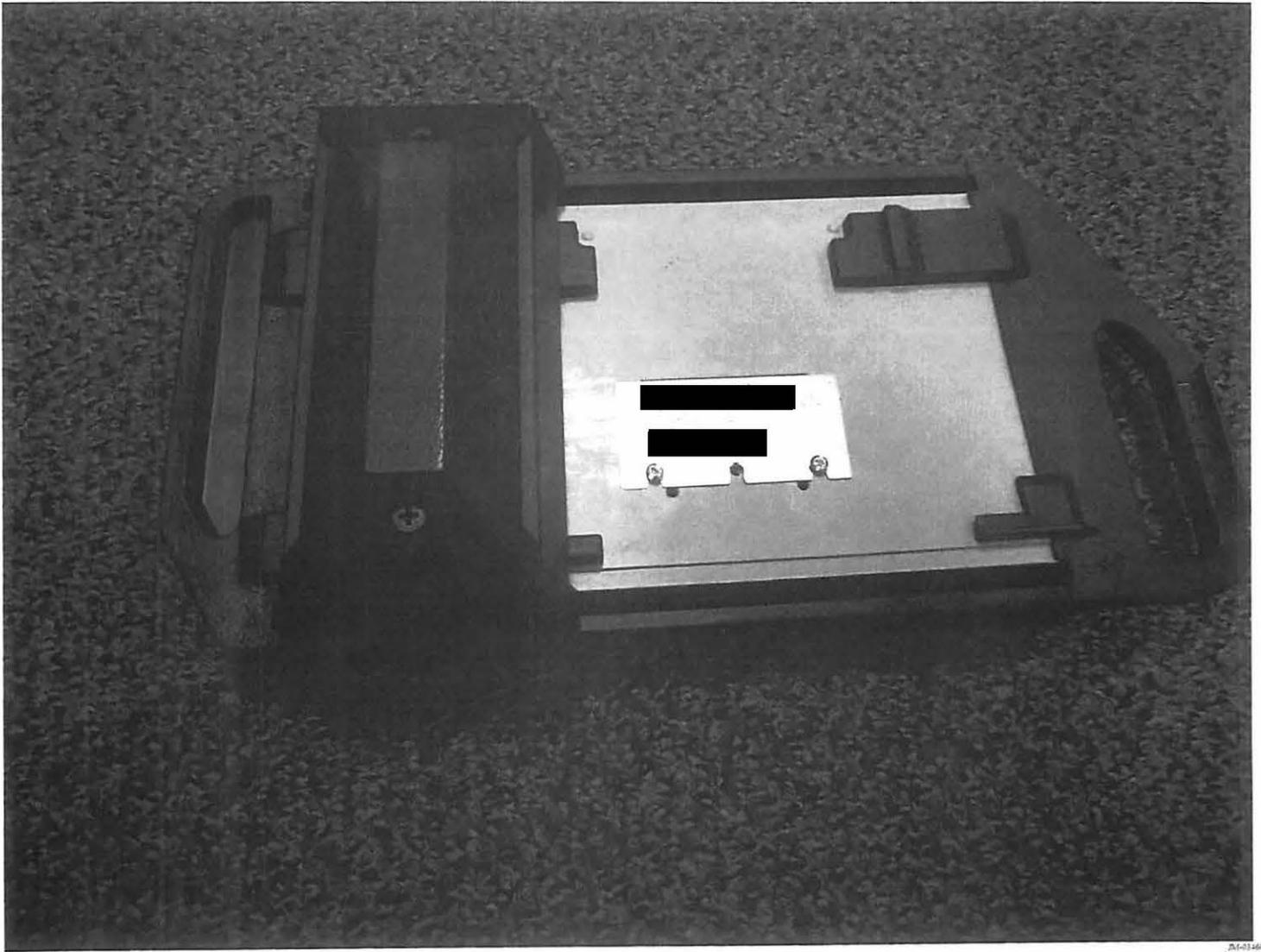
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JONES, MOORE & ASSOCIATE
WILMINGTON DE

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EXH 102-0021



26-014602

EXH 102-0022

EXH 102-0022



EXH 102-0024

EXH 102-0024

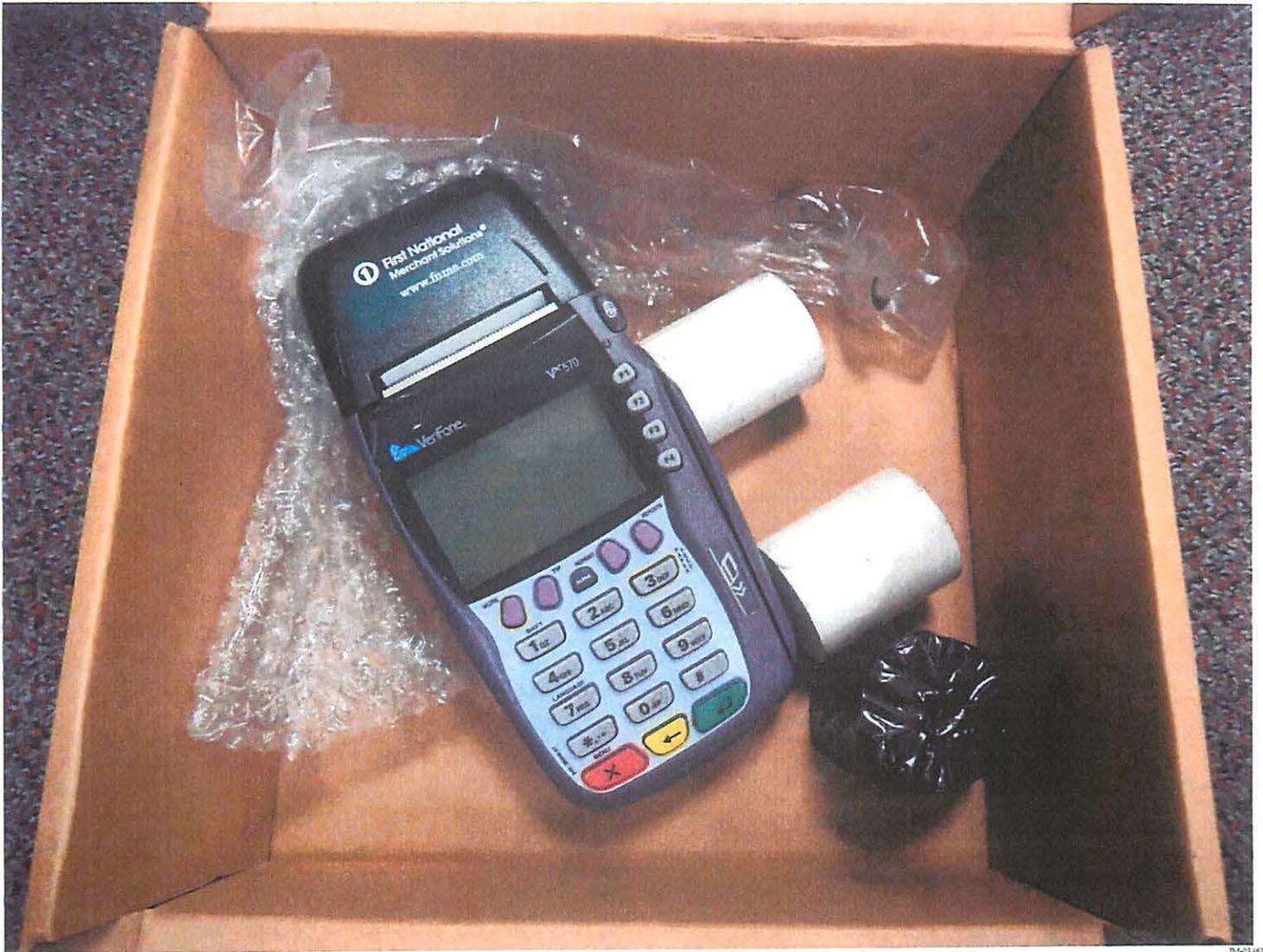


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EXH 102-0027

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EXH 102-0034

EXH 102-0034



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EXH 102-0038

EXH 102-0038

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
) Plaintiff,)
) CASE NO.
V.) CR-12-0278 EMC
)
JAMES MURRAY,)
) Defendant.)

AUDIOTAPED TRANSCRIPTION OF
VIDEOTAPED DEPOSITION OF DAVID BERESFORD LOWE
THURSDAY, APRIL 9, 2015

BEHMKE REPORTING AND VIDEO SERVICES, INC.
BY: JILL BAIONI, CSR NO. 8812
160 SPEAR STREET, SUITE 300
SAN FRANCISCO, CALIFORNIA 94105
(415) 597-5600

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Audiotaped Transcription of Videotaped Deposition of
DAVID BERESFORD LOWE, taken on behalf of Plaintiff, at
the United States Embassy, Bangkok, Thailand, Thursday,
April 9, 2015, transcribed by Jill Baioni, Certified
Shorthand Reporter No. 8812.

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APPEARANCES OF COUNSEL:
FOR PLAINTIFF UNITED STATES OF AMERICA:
UNITED STATES ATTORNEY'S OFFICE
BY: ROBIN LESLIE HARRIS, ATTORNEY AT LAW
450 Golden Gate Avenue
San Francisco, California 94102
Telephone: (415) 436-7016
Email: robin.harris2@usdoj.gov

FOR DEFENDANT JAMES MURRAY:
ALAN AZER DRESSLER, ATTORNEY AT LAW
400 Montgomery Street
Suite 200
San Francisco, California 94104
Telephone: (415) 421-7980
Email: alandressler@aol.com

ALSO PRESENT:
SPECIAL AGENT BRIAN WEBER
PAUL J. HERMAN, CONSUL
KRIENKRAI KARNTAROJ, VIDEOGRAPHER

PRESENT TELEPHONICALLY:
JAMES MURRAY
MIRANDA PRINGLE-DRESSLER

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THURSDAY, APRIL 9, 2015

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-oOo-

QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:

PAGE LINE

None.

1 THURSDAY, APRIL 9, 2015

2
3 MS. HARRIS: Good morning, everyone. I'm
4 Robin Harris, an assistant United States attorney from
5 the Northern District of California. And we're at the
6 United States Embassy in Bangkok, Thailand. And I
7 wanted everyone to say their name on the record and
8 also confirm that we have audio feed to Mr. James
9 Murray.

10 And Mr. Murray, if you could confirm for us
11 that you can hear the audio of the questions and
12 answers. And also, Mr. Murray, you have the ability
13 to confer with your attorney, Mr. Dressler, who's
14 present with us in Bangkok, at any time. So if you
15 would like to confer with Mr. Dressler in private,
16 please let us know and we will stop the proceedings
17 and have you have the opportunity to confer with
18 Mr. Dressler and then we will reconvene the
19 proceedings. So you just need to let us know that.

20 Can you confirm that you can hear what I've
21 just said?

22 MR. MURRAY: You're coming in very faintly.
23 If it can be a little louder, that would be better.

24 MS. HARRIS: All right. Mr. Murray, we'll
25 start over.

1 in Thailand?

2 A. I do.

3 Q. And where do you reside for the part of the
4 year that you're not in Thailand?

5 A. I usually spend the time in between Monaco and
6 Saint-Tropez.

7 Q. Okay. Have you ever been employed in the
8 United States?

9 A. Yes, I have.

10 Q. When was that?

11 A. I was employed in respect of Orion Pictures
12 Corporation by a company called Cinefin, Inc.

13 Q. Can you -- can you spell that for us?

14 A. Cinefin is C-i-n-e-f-i-n. Short for Cinema
15 Finance Corporation. And that was approximately mid
16 '90s for two years, 18 months.

17 Q. Would it be fair to say that was between the
18 time period of 1994 and 1995?

19 A. That's correct.

20 Q. Okay. When was the last time you were in the
21 United States?

22 A. I can't -- can't recall exactly but it would
23 have -- would be over ten years ago.

24 Q. Have you ever been to the state of Delaware?

25 A. I have never been to the state of Delaware.

1 Q. And did I understand you correctly that the
2 company was never formed?

3 A. Not -- not to my knowledge, no. And I
4 certainly -- if it was, I was not involved in it.

5 Q. And you mentioned Mr. Gian Luca DiFrancisci's
6 son. What is his name?

7 A. Giovanni DiFrancisci.

8 Q. Did you ever give a copy of your passport to
9 Giovanni DiFrancisci?

10 A. I don't recall so doing, no.

11 Q. Did you ever give your social security number
12 to Giovanni DiFrancisci for any purpose?

13 A. Certainly not.

14 Q. At any time from 2008 forward have you ever
15 provided your British passport to any company in the
16 United States to open an account for anything?

17 A. I have not.

18 Q. At any time after 2008 did you ever authorize
19 James Murray to use your British passport for any
20 purpose?

21 A. I did not.

22 Q. At any time after 2008 did you authorize
23 anyone in the United States to use your British
24 passport for any purpose, including bank -- opening
25 bank accounts?

1 A. I did not.

2 Q. Have you ever heard of a company called Jones

3 Moore & Associates?

4 A. I have not.

5 Q. Have you ever heard of a company called

6 Anderson & Associates?

7 A. I have not.

8 Q. I'm gonna hand you what's been marked as

9 Government's Exhibit 1 for identification. Which for

10 the record I will identify as a Virtual Office

11 Agreement for -- from Brandywine. And I would ask you

12 if you've ever seen Government's Exhibit 1 before

13 today.

14 (Exhibit 1 having been previously marked was

15 referenced.)

16 A. No.

17 Q. Drawing your attention to page 5 of

18 Government's Exhibit 1, can you take a look at page 5,

19 please.

20 A. I have it.

21 Q. Okay. Page 5 of Government's Exhibit 1 is

22 titled an Authorization For Automatic Credit Card

23 Charge.

24 Do you see that?

25 A. I see that.

1 MR. DRESSLER: Excuse me for one second.
2 Would you mind if I just look over your shoulder?

3 MS. HARRIS: That's fine.

4 MR. DRESSLER: I don't have those documents
5 with me.

6 MS. HARRIS: Q: And do you see where it
7 says: I, Jones Moore & Associates, authorize
8 Brandywine Executive Center to charge the exact amount
9 of each invoice presented to me by Brandywine
10 Executive Center to my credit card indicated below?
11 Do you see that?

12 A. I see that.

13 Q. And then there's a Visa credit card ending in
14 the last three digits 912.

15 As of August 27th, 2010, did you have a Visa
16 credit card for Jones Moore & Associates that ended in
17 the last three digits 912?

18 A. I did not.

19 Q. Okay. And then do you see where on page 5 of
20 Government's Exhibit 1 it says the name as it appears
21 on credit card, and do you see that it says:
22 David Lowe? Do you see that?

23 A. I see that.

24 Q. Okay. And underneath that there's a billing
25 address of 1521 Concord Pike, Suite 301, Wilmington,

1 Delaware.

2 Has that at any time ever been a billing
3 address for you?

4 A. No.

5 Q. Okay. There's also a cardholder number --
6 telephone number, [REDACTED].

7 Have you ever heard of that telephone number
8 before today?

9 A. I have not.

10 Q. Was that ever your telephone number?

11 A. Never.

12 Q. There is a signature in the lower left-hand
13 corner of page 5 of Government's Exhibit 1.

14 Is that your signature?

15 A. It is not.

16 Q. Do you know whose signature it is?

17 A. I do not.

18 Q. Did you ever authorize anyone to sign page 1
19 of -- page 5 of Government's Exhibit 1 on your behalf?

20 A. I did not.

21 Q. Okay. There is a title and it has you listed
22 as the president of Jones Moore & Associates.

23 Have you ever been the president of something
24 called Jones Moore & Associates?

25 A. I've never heard of Jones Moore & Associates.

1 THE WITNESS: That is my signature.
2 MR. HERMAN: Okay.
3 And then second one is for myself just to say
4 that this took place.
5 And the second -- the third one is for the
6 video recorder.
7 Mr. Boy (phonetic), could you please come
8 over here and sign for me? Sign it right there.
9 Okay. Thank you very much.
10 Okay. So that's that. I can go across the
11 street, make a very quick photo- -- across the hall,
12 make a very quick photocopy of all these and give you
13 the originals.
14 MS. HARRIS: Thank you.
15 MR. HERMAN: If that's okay.
16 MS. HARRIS: Yes.
17 MR. DRESSLER: Yeah.
18 MR. HERMAN: Okay.
19 MR. DRESSLER: Can I have a copy? You make
20 a --
21 MR. HERMAN: Oh, two, two copies? Sure.
22 Okay.
23 MR. DRESSLER: Thank you.
24 MS. HARRIS: So now we're officially
25 concluded and we can go off the record.

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MR. DRESSLER: Correct.
(The deposition concluded.)

DAVID BERESFORD LOWE

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN MATEO)

I hereby certify that the witness in the foregoing deposition, DAVID BERESFORD LOWE, was duly sworn to testify to the truth, the whole truth and nothing but the truth, in the within-entitled cause; that said deposition was taken at the place herein named; and that the deposition is a true record of the witness's testimony as transcribed by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

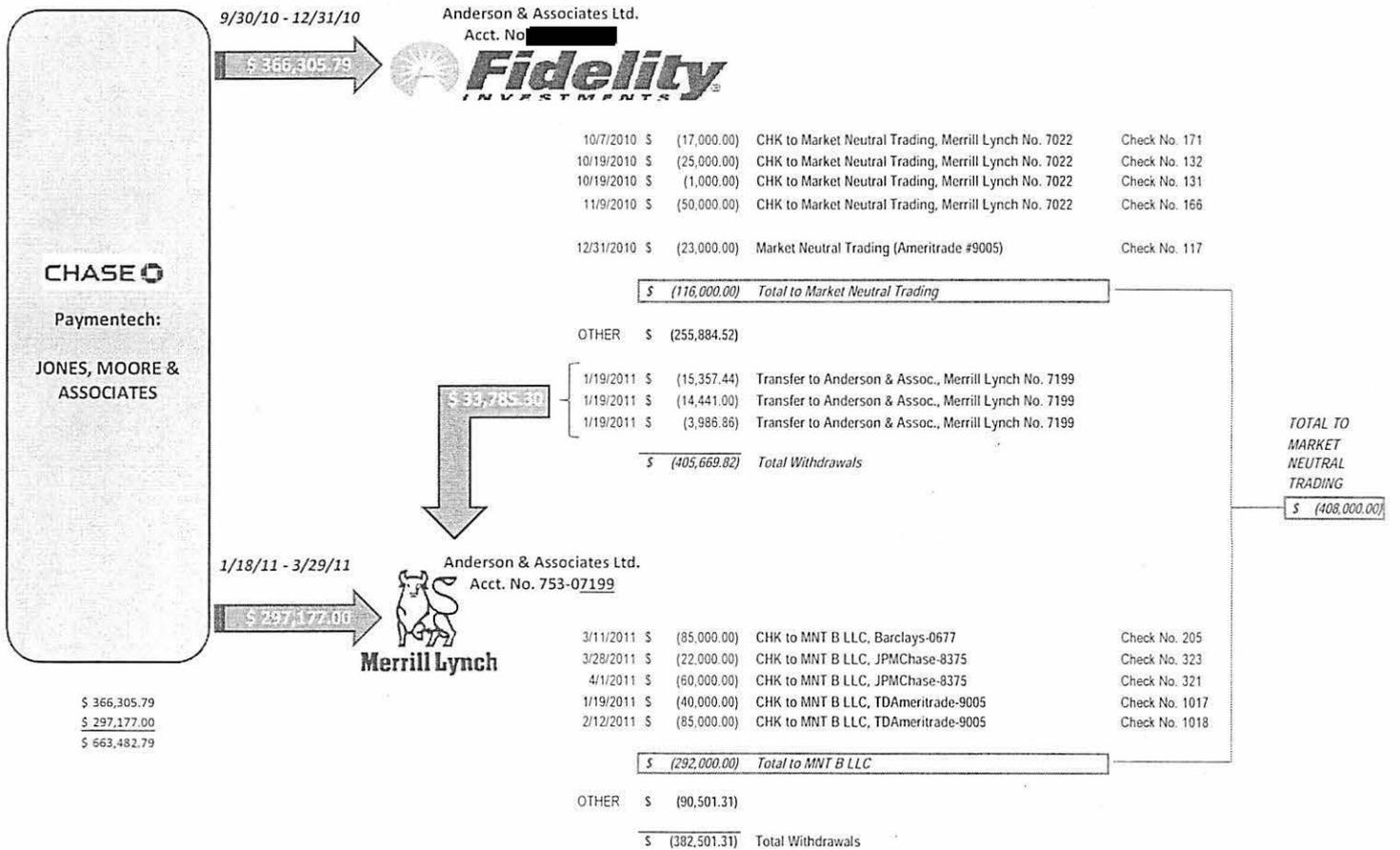
I further certify that I am not interested in the outcome of the said action, nor connected with nor related to any of the parties in said action, nor to their respective counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of May, 2015.

Jill Baioni

JILL BAIONI, CSR NO. 8812

JONES, MOORE ASSOCIATES Transfers to ANDERSON ASSOCIATES with Distributions to MARKET NEUTRAL TRADING ("MNT")



EXH 390-0001

NETFLIX SHORT SALE PROCEEDS

OPPENHEIMER
MNT MASTER FUND LTD.
Account # [REDACTED]

"Short Selling"
NETFLIX
Sell Short
Buy Back

Gain: \$411,007.98
7/27/12 - 7/30/12

Two Transfers Totaling:
\$ 410,882.65

① ②
WIRETRANSFER 8/10/12 **WIRETRANSFER**
\$ 150,000.00

\$ 260,882.65

Law Offices of
Garrett J. Zelen
Attorney Client Trust
USbank

8/15/12
③ **WIRETRANSFER**
\$100,000.00

Event Trading GP, LLC
Interactive Brokers
Acct. # [REDACTED]

8/16/12
WIRETRANSFER ④
\$50,000.00

Michael J. Murray
Bank of America.
Acct. # [REDACTED]

DISCOVER
BANK
James Murray

8/16/12
WIRETRANSFER ⑤
\$15,000.00

NETFLIX SHORT SALE PROCEEDS

OPPENHEIMER
MNT MASTER FUND LTD.
Account # [REDACTED]

"Short Selling"
NETFLIX
Sell Short
Buy Back

Gain: \$411,007.98
7/27/12 - 7/30/12

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WIRETRANSFER 8/10/12 **WIRETRANSFER**
\$ 150,000.00

\$ 260,882.65

Law Offices of
Garrett J. Zelen
Attorney Client Trust
USbank

8/15/12
③ **WIRETRANSFER**
\$100,000.00

Event Trading GP, LLC
Interactive Brokers
Acct. # [REDACTED]

8/16/12
WIRETRANSFER ④
\$50,000.00

Michael J. Murray
Bank of America.
Acct. # [REDACTED]

DISCOVER
BANK
James Murray

8/16/12
WIRETRANSFER ⑤
\$15,000.00

AO 91 (Rev. 08/09) Criminal Complaint

UNITED STATES DISTRICT COURT

for the Northern District of California

United States of America v.

JAMES MURRAY a/k/a JIM MURRAY

Defendant(s)

Case No. 3 12 0 189

FILED JESSICA S. RADD DISTRICT COURT NORTHERN CALIFORNIA

MEJ

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of February 1 and February 12, 2012 in the county of San Francisco in the Northern District of California, the defendant(s) violated:

Code Section 18 USC § 1343

Offense Description Wire Fraud

This criminal complaint is based on these facts:

See attached Affidavit of Senior Special Agent Jessica S. Radd

Continued on the attached sheet.

Approved as to form:

Robin Harris Assistant U.S. Attorney Robin Harris

Complainant's signature

Special Agent Jessica S. Radd Printed name and title

Sworn to before me and signed in my presence.

Date: 2-16-12

Judge's signature

City and state: San Francisco, California

Chief Magistrate Judge Maria Elena-James Printed name and title

Handwritten initials and marks

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Jessica S. Radd, Special Agent of the United States Secret Service, being duly sworn, hereby declare as follows:

1. I am a Special Agent with the United States Secret Service (hereinafter referred to as "USSS") and have been so employed since June of 2008. I am currently assigned to the Financial Crimes Squad in the San Francisco Field Office. As part of my official duties, it is my responsibility to investigate financial crimes including identity theft, counterfeit identifications, counterfeit currency, counterfeit traveler's checks, counterfeit corporate checks, counterfeit personal checks, as well as other cases involving counterfeit securities, bank fraud, wire fraud and other financial crimes. As a federal agent, I am authorized to investigate violations of the laws of the United States and am a law enforcement officer with authority to execute warrants issued under the authority of the United States.

2. The statements contained in this affidavit are based on information from my investigation as well as my training, experience, and knowledge of this investigation. Because this affidavit is being submitted for the limited purpose of seeking a criminal complaint and arrest warrant, I have not included each and every fact known to me concerning this investigation. I have set forth only those facts that I believe are necessary to establish probable cause to believe that James MURRAY aka "Jim" Murray committed Wire Fraud in violation of 18 U.S.C. § 1343.

Applicable Law

3. 18 U.S.C. § 1343 states whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire,

radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

Facts Supporting Probable Cause

4. On April 19, 2011, this affiant received an email from a Chase Paymentech Senior Risk Analyst who initiated a mass email to multiple financial institution investigators advising that a merchant (Jones, Moore & Associates) and the account holder Jim MURRAY had processed over \$650,000.00 on cardholders' credit/debit cards. (Note: Chase Paymentech is a merchant bank located in Dallas, Texas and Tampa, Florida, that provides merchant accounts to businesses. These merchant accounts allow businesses to accept payment by credit and debit cards through a point-of-sale terminal.) According to the April 19, 2011 email, cardholders disputed the charges claiming either goods were not delivered or services were not rendered. Jones, Moore & Associates subsequently issued refunds on these credit/debit cards. Specifically, the Chase Paymentech email advised that Jones, Moore & Associates did not have the funds available in the bank account associated with this particular merchant account to cover the refunds sent back to the credit/debit cards which resulted in a financial loss for Chase Paymentech. Additionally, according to the Chase Paymentech Analyst's e-mail, the Analyst conducted an investigative search for cardholders' name and address for the credit/debit cards charged through the Jones, Moore & Associates merchant account. According to the analyst, these cardholders and addresses "tie back to Jim MURRAY via LexisNexis" including cards belonging to Jim MURRAY's wife Lisa Murray.

5. On April 27, 2011, the Chase Paymentech Analyst advised this affiant that Chase Paymentech had incurred \$349,895.00 in actual loss for covering the refunds sent back to the credit/debit cardholders which Jones, Moore & Associates could not fund. Additionally, the analyst advised that the total refunds attempted by Jones, Moore & Associates totaled \$607,420.00. Chase Paymentech stopped/denied \$257,525.00 in attempted refunds by Jones, Moore & Associates prior to completing and approving the remaining transactions.

6. I learned from reviewing documents provided by Chase Paymentech that Jim MURRAY submitted a merchant account application to Chase Paymentech for Jones, Moore & Associates, 1521 Concord Pike #301, Wilmington, DE, on May 5, 2010. The application identified Jim MURRAY as the CFO (Chief Financial Officer) of Jones, Moore & Associates and David Lowe as the President. According to the application, the Demand Deposit Account (DDA) established upon opening the account was account number [REDACTED] at E*Trade. (Note: The DDA is the bank account the funds are transferred to after Chase Paymentech processes credit/debit cards or internet transactions for a merchant. In this case, any credit/debit card transaction conducted by Jones, Moore & Associates resulted in Chase Paymentech processing the charge, then transferring funds for the transaction to Jones, Moore & Associates' DDA account at E*Trade.) Between May 5, 2010, and closure of the Chase Paymentech Jones, Moore & Associates account in April 2011, there were multiple DDAs associated with the merchant account which were further associated with Jim MURRAY. These accounts are:

- a. E*Trade Account Number [REDACTED] (Jones, Moore & Associates).
 - i. Jim MURRAY was identified using this account by me through ATM video which I personally reviewed. On June 11, 2010, MURRAY withdrew \$4,000.00 from this account in eight (8) sequential

transactions at the same Wells Fargo ATM in Oakland, CA.

- b. E*Trade Account Number [REDACTED] (Jones, Moore & Associates).
 - i. Jim MURRAY was identified using this account by me through ATM video which I personally reviewed. On June 11, 2010, MURRAY withdrew \$4,000.00 from this account in eight (8) sequential transactions at the same Wells Fargo ATM in Oakland, CA.
- c. Fidelity Investments Account Number [REDACTED] (Anderson & Associates).
 - i. Jim MURRAY is associated to this account through the Anderson & Associates' business address. Anderson & Associates' business address is a Regus Virtual Office location at: 1000 Northwest Street Suite 1200, Wilmington, DE. Regus is a business who rents office space and provides virtual office amenities (i.e. receptionist to answer phone, mail receiving and forwarding, etc.). According to Regus, the Anderson & Associates office in Wilmington, DE, is not staffed. All phone calls and mail sent to Anderson & Associates are forwarded to 4040 Civic Center Dr. Ste. 200, San Rafael, CA. In February 2009, upon establishment of the virtual office agreement, James MURRAY's California driver's license was provided. Additionally, when mail is received at this location in Wilmington, DE, it is forwarded to Tim Palm, 4040 Civic Center Dr. Ste. 200, San Rafael, CA. Regus maintains the virtual office capability at 4040 Civic Center Dr. Ste. 200, San Rafael, CA, and through the virtual office agreement, mail sent to Tim Palm at the San Rafael, CA, address is subsequently

forwarded to Jim MURRAY's residence at 206 William Ave., Larkspur, CA. Additionally, MURRAY's phone number [REDACTED] is listed on the Anderson & Associates' Regus Virtual Office agreement and the point-of-contact phone number.

- d. Merrill Lynch Account Number [REDACTED] (Anderson & Associates)
 - i. Jim MURRAY was identified using this account by me through ATM video which I personally reviewed. On March 25, 2011, MURRAY withdrew \$500.00 from this account at a Bank of America ATM in San Francisco, CA. Additionally, on March 28, 2011, MURRAY withdrew \$500.00 from this account at a Bank of America ATM in San Francisco, CA.

7. Chase Paymentech provided this affiant with a spreadsheet identifying all the credit/debit card transactions conducted through the Jones, Moore & Associates merchant account. Between May 5, 2010, and March 26, 2011, Jones, Moore & Associates processed 106 approved sales credit/debit card transactions through the assigned point-of-sale terminal. Additionally, Chase Paymentech identified that between March 30, 2011, and April 6, 2011, Jones, Moore & Associates conducted 79 credit/debit card refunds through the assigned point-of-sale terminal. According to Chase Paymentech, Jones, Moore & Associates' DDA at Merrill Lynch did not have the money in April 2011 to cover the refunds processed through the point-of-sale terminal. These refunds totaled \$607,420.00; however, Chase Paymentech was able to stop/cancel \$257,525.00 worth of refund transactions. The difference, \$349,895.00, reflects Jim MURRAY's gain and Chase Paymentech's loss. (See paragraph 5)

8. I further identified that the credit/debit cards processed by Jones, Moore &

Associates belong to James **MURRAY**, family members of **MURRAY**, or associates of **MURRAY**. These associates are additional cardholders on Pareto Capital LLC accounts, which I learned are accounts managed by **MURRAY**, or are cardholders with accounts **MURRAY** is associated with (i.e. the aforementioned Merrill Lynch Anderson & Associates account).

9. Paragraphs 7 and 8 further identifies that Jim **MURRAY** initially incurred a financial loss when he processed the credit/debit cards belonging to himself, his associates, family members, and businesses. However, **MURRAY** received the profits in the DDA established with Chase Paymentech as listed in paragraph 6. Roughly a couple weeks to a couple months after the initial sales transactions conducted by **MURRAY** on the credit/debit cards, **MURRAY** issued refunds through the Jones, Moore & Associates point-of-sale terminal in the same amount initially charged on the respective credit/debit cards. **MURRAY** essentially cancelled out the initial credit/debit card charges through these refunds on the credit/debit cards belonging to **MURRAY**, his associates, family members, and businesses. Due to a zero balance in the DDA associated with the Chase Paymentech Jones, Moore & Associates account in April 2011, Chase Paymentech was forced to fund these refunds and incurred the financial loss. See paragraph 14 for further explanation of these transactions.

10. I learned from reviewing phone records I received during this investigation that the Chase Paymentech Jones, Moore & Associates point-of-sale credit/debit card transactions were conducted through a point-of-sale terminal connected to phone number 415-891-8371. This number is referenced by Chase Paymentech as the ANI (automatic number identification) associated to Jones, Moore & Associates' merchant account. During the course of my investigation, I learned that the ANI is similar to a caller identification service. The ANI allows Chase Paymentech to identify the phone number that a business is using for the credit card

processing machine/point-of-sale terminal to conduct its transactions. On June 30, 2011, your affiant reviewed records from Comcast Cable Communications, the service provider for phone number 415-891-8371. These Comcast Cable Communications records identified Lisa (Jim Murray's wife) and Jim MURRAY as the subscribers for [REDACTED]. The service address for [REDACTED] was listed as: [REDACTED], CA [REDACTED]. This means that the ANI/phone number associated with the credit card transactions for Jones, Moore & Associates is the same phone number that the MURRAY's have for their personal residence. During a federal search warrant executed on November 3, 2011, at Jim MURRAY's residence at [REDACTED] [REDACTED], Larkspur, CA, agents of the USSS seized the Chase Paymentech point-of-sale terminal, serial number: 210-847-856, as evidence in this investigation. According to the Chase Paymentech Analyst, Chase Paymentech shipped this point-of-sale terminal serial number: 210-847-856 to Jones, Moore & Associates on May 11, 2010.

11. On April 27, 2011, this affiant contacted Merrill Lynch/Visa Fraud Liaison regarding the Jones, Moore & Associates merchant activity in connection to the Chase Paymentech financial loss. The Merrill Lynch fraud liaison verified telephonically that Chase Paymentech funds were being transferred into the Merrill Lynch Anderson & Associates, Ltd. account. Additionally, the Merrill Lynch fraud liaison advised that there were ATM transactions conducted on the same Anderson & Associates, Ltd. account. According to the Merrill Lynch fraud liaison, the business credit card [REDACTED] that was used at various ATMs in the San Francisco Bay Area was originally mailed to an individual named David Lowe at [REDACTED] [REDACTED] Larkspur, CA, phone number [REDACTED]. (Note: David Lowe is listed as the account holder for multiple accounts for Jones, Moore & Associates and Anderson & Associates at various financial institutions. A color copy of Lowe's United Kingdom passport,

used to open these aforementioned accounts, was located in MURRAY's hardshell briefcase at MURRAY's residence in Larkspur, CA, during the November 3, 2011 federal search warrant.) As aforementioned in this affidavit, this address (206 William Avenue, Larkspur, CA) is Lisa and James MURRAY's private residence. The Merrill Lynch/Visa Fraud Liaison provided me with the dates and times David Lowe's Anderson & Associates credit card number [REDACTED] [REDACTED] was used to withdraw funds at the Bank of America San Francisco Main location. Those dates and times are 3/25/11 at 12:39:45 and 3/28/11 at 19:43:30. David Lowe's connection to the MURRAYs is currently not known to investigators.

12. In May 2011, this affiant contacted a Bank of America Investigator requesting Bank of America ATM video from the San Francisco Main location on 3/25/11 at 12:39:45 and 3/28/11 at 19:43:30. On May 23, 2011, this affiant reviewed the Bank of America ATM video preserved from the San Francisco Main ATM on 3/25/11 at 12:39:45 and 3/28/11 at 19:43:30 and concluded that the person at the ATM video was James MURRAY based on a comparison of the individual in the video to the CA DMV photo of James MURRAY. The credit card utilized in the 3/25/11 and 3/28/11 transactions ([REDACTED]) belongs to a Merrill Lynch account for Anderson & Associates, cardholder David Lowe. I reviewed an Anderson & Associates account statement for account number [REDACTED] which lists a \$500.00 ATM withdrawal on both 3/25/11 and 3/28/11 which this affiant previously identified James MURRAY as conducting the transaction.

13. Specifically, two fraudulent wire fraud transactions conducted by Jim MURRAY are:

- a. February 1, 2011 – \$20,000.00 Transaction:
 - i. On February 1, 2011, MURRAY charged via point-of-sale terminal

\$20,000.00 on credit card number [REDACTED] (David Lowe's Visa card associated with Merrill Lynch Anderson & Associates checking account number [REDACTED] 9) through Chase Paymentech Jones, Moore & Associates' point-of-sale terminal. This point-of-sale terminal utilized the phone line for phone number 415-891-8371 to initialize the electronic transaction. This point-of-sale terminal transaction was routed by interstate wire through Chase Paymentech which is located in Tampa, Florida.

- ii. On February 3, 2011, Chase Paymentech credited \$20,000.00 to the Jones, Moore & Associates DDA Merrill Lynch Anderson & Associates account number [REDACTED].

(Note: This is the same Merrill Lynch Anderson & Associates bank account the \$20,000.00 was deducted from during the point-of-sale terminal transaction in paragraph 13.a.i.)

- iii. On February 12, 2011, the \$20,000.00 Chase Paymentech deposit into the Merrill Lynch account number [REDACTED] was subsequently withdrawn via check #1018 paid to Market Neutral Trading, B. On February 23, 2011, check #1018 for \$85,000.00 was deposited into a TD Ameritrade Market Neutral Trading B account belonging to Jim MURRAY. Jim MURRAY opened this TD Ameritrade Market Neutral Trading B account in June 2010 and the statements are sent to MURRAY's attention.
- iv. On March 30, 2011, via Chase Paymentech Jones, Moore &

Associates' point-of-sale terminal, **MURRAY** refunded \$20,000.00 back on credit card number [REDACTED] (David Lowe's Visa card associated with Merrill Lynch Anderson & Associates checking account number [REDACTED]). This point-of-sale terminal utilized the phone line for phone number [REDACTED], Jim **MURRAY**'s home phone number, to initiate the electronic transaction.

- v. On April 4, 2011, the \$20,000.00 refund to Merrill Lynch Anderson & Associates checking account number [REDACTED] was withdrawn via check #321 which was in the amount of \$60,000.00 paid to Market Neutral Trading. On April 4, 2011, check #321 for \$60,000.00 was deposited into a JPMorgan Chase Market Neutral Trading account associated with Jim **MURRAY**.
 - vi. Chase Paymentech was unable to recover the \$20,000.00 refunded on March 30, 2011, and subsequently incurred a \$20,000.00 financial loss due to this transaction.
- b. February 12, 2011 – \$20,000.00 Transaction:
- i. On February 12, 2011, **MURRAY** charged via point-of-sale terminal \$20,000.00 on credit card number [REDACTED] (David Lowe's Visa Signature card associated with Merrill Lynch Anderson & Associates checking account number [REDACTED]) through Chase Paymentech Jones, Moore & Associates' point-of-sale terminal. This point-of-sale terminal utilized the phone line for phone number 415-891-8371 to initialize the electronic transaction. This point-of-sale

terminal transaction was routed by interstate wire through Chase Paymentech which is located in Tampa, Florida.

(Note: This is the same credit card number utilized by **MURRAY** at a Bank of America ATM located in San Francisco, CA, referenced in paragraphs 11 and 12.)

- ii. On February 12, 2011, Chase Paymentech credited \$20,000.00 to the Jones, Moore & Associates' DDA Merrill Lynch Anderson & Associates checking account number [REDACTED]

(Note: This is the same Merrill Lynch Anderson & Associates checking account the \$20,000.00 was deducted from during the point-of-sale terminal transaction in paragraph 13.b.i.)

- iii. On February 12, 2011, the \$20,000.00 Chase Paymentech deposit into the Merrill Lynch checking account number [REDACTED] was subsequently withdrawn via check #1018 paid to Market Neutral Trading, B. On February 23, 2011, check #1018 for \$85,000.00 was deposited to a TD Ameritrade Market Neutral Trading B account belonging to Jim **MURRAY**. Jim **MURRAY** opened this TD Ameritrade Market Neutral Trading B account in June 2010 and the statements are sent to **MURRAY**'s attention.

- iv. On March 30, 2011, via Chase Paymentech Jones, Moore & Associates' point-of-sale terminal, **MURRAY** refunded \$20,000.00 back on credit card [REDACTED] (Merrill Lynch Anderson & Associates checking account number [REDACTED]). This

point-of-sale terminal utilized the phone line for phone number [REDACTED] to initiate the electronic transaction.

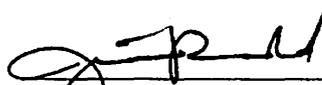
- v. On April 4, 2011, the \$20,000.00 refund to Merrill Lynch Anderson & Associates checking account number [REDACTED] was withdrawn via check #321 for \$60,000.00 paid to Market Neutral Trading. On April 4, 2011, check #321 for \$60,000.00 was deposited into a JPMorgan Chase Market Neutral Trading account associated with Jim **MURRAY**.
- vi. Chase Paymentech was unable to recover the \$20,000.00 refunded on March 30, 2011, and subsequently incurred a \$20,000.00 financial loss due to this transaction.

Conclusion

14. Based on the foregoing, I believe that there is probable cause to believe that at least since 2010, Jim **MURRAY** knowingly conducted multiple credit/debit card transactions with credit/debit cards associated to **MURRAY** through a point-of-sale terminal located at **MURRAY**'s private residence. **MURRAY** benefited from receiving the sale transaction proceeds then subsequently refunded the credit/debit cards associated to **MURRAY** when no funds were available. These transactions were accomplished by an interstate wire because when the transactions are transmitted from the Jones, Moore & Associates' point-of-sale terminal located in Larkspur, California, the transactions' authorization transmits by wire to Chase Paymentech's Payment Network Service Front End Network which is located in Tampa, Florida. These actions resulted in a financial loss to the financial institution providing the point-of-sale terminal account. These transactions violate 18 U.S.C. § 1343, Wire Fraud. I therefore

respectfully request that the Court issue the requested criminal complaint and arrest warrant.

I declare under penalty of perjury under the laws of the United States that to the best of my knowledge the foregoing is true and correct.



Jessica S. Radd
Special Agent, U.S. Secret Service

Sworn to before me this
14th day of February 2012



THE HONORABLE MARIA ELENA-JAMES
CHIEF UNITED STATES MAGISTRATE JUDGE
NORTHERN DISTRICT OF CALIFORNIA

AO 442 (Rev. 01/09) Arrest Warrant

UNITED STATES DISTRICT COURT

for the Northern District of California

United States of America
v.

JAMES MURRAY
a/k/a JIM MURRAY

Defendant

Case No.

FILED 12 70189

MAR 14 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay (name of person to be arrested) James Murray a/k/a Jim Murray who is accused of an offense or violation based on the following document filed with the court:

- Indictment Superseding Indictment Information Superseding Information Complaint Probation Violation Petition Supervised Release Violation Petition Violation Notice Order of the Court

This offense is briefly described as follows:

18 USC § 1343 - Wire Fraud
2608

Date: 2-16-12

Issuing officer's signature

City and state: San Francisco, California

Honorable Maria Elena-James, U.S. Magistrate Judge
Printed name and title

EXECUTED

Return
This warrant was received on (date) 2/10/12, and the person was arrested on (date) 3/13/12
at (city and state) SAN FRANCISCO, CA.
Date: 3/14/2012
Arresting officer's signature
JESSICA RADD, SA
Printed name and title

[Redacted signatures and stamps]

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN FRANCISCO

UNITED STATES OF AMERICA,

v.

JAMES MURRAY,

CR 12-0278 EMC

DEFENDANT(S).

FILED
2015 MAR 17 P 2:13
RICHARD W. FLETCHER
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

4th Supervising **INDICTMENT**

Title 18 U.S.C. § 1343 - Wire Fraud;
Title 18 U.S.C. § 1957 - Money Laundering
Title 18 U.S.C. § 1028A(a)(1) - Aggravated Identity Theft;
Title 18 U.S.C. § 401(3) - Contempt;
Title 18 U.S.C. § 981(a)(1)(c) and Title 28; U.S.C. § 2461(c) Forfeiture Allegation

A true bill.

[Signature]

Foreman

Filed in open court this 17th day of

March 2015

MARIA-ELENA JAMES
UNITED STATES MAGISTRATE JUDGE

[Signature]
Clerk

ROSE MAHER

NO PROCESS

Bail, \$ _____

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: INFORMATION INDICTMENT

Matter Sealed: Juvenile Other than Juvenile
 Pre-Indictment Plea Superseding Defendant Added
 Indictment Charges/Counts Added
 Information

Name of District Court, and/or Judge/Magistrate Location (City)

UNITED STATES DISTRICT COURT Northern California (SF)
 DISTRICT OF Divisional Office

Name and Office of Person Melinda Haag
 Furnishing Information on U.S. Atty Other U.S. Agency
 THIS FORM Phone No. _____

Name of Asst. U.S. Attorney Robin Harris
 (if assigned)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)
 Federal Bureau of Investigation

person is awaiting trial in another Federal or State Court
 (give name of court)

this person/proceeding transferred from another district
 per (circle one) FRCrP 20, 21 or 40. Show District

this is a re prosecution of charges
 previously dismissed which were
 dismissed on motion of:
 U.S. Atty Defense

this prosecution relates to a
 pending case involving this same
 defendant. (Notice of Related
 Case mus) still be filed with the
 Clerk.)

prior proceedings or appearance(s)
 before U.S. Magistrate Judge
 regarding this defendant were
 recorded under

SHOW
 DOCKET NO.
CR 12-0278 EMC

MAG. JUDGE
 CASE NO.

Place of San Francisco County

CASE NO. CR 12-0278 EMC

USA vs.

Defendant: James Murray

Address:

Interpreter Required Dialect: _____

Birth Date [REDACTED] Male Female Alien
 (if applicable)

Social Security Number _____

DEFENDANT

Issue: Warrant Summons

Location Status:

Arrest Date _____ or Date Transferred to Federal Custody _____

Currently in Federal Custody
 Currently in State Custody
 Writ Required
 Currently on bond
 Fugitive

Defense Counsel (if any): Alan Dressler

FPD CJA RET'D
 Appointed on Target Letter

This report amends AO 257 previously submitted

OFFENSE CHARGED - U.S.C. CITATION - STATUTORY MAXIMUM PENALTIES - ADDITIONAL INFORMATION OR COMMENTS

Total # of Counts _____

| Set | Title & Section/Offense Level (Petty = 1 / Misdemeanor = 3 / Felony = 4) | Description of Offense Charged | Count(s) |
|-----|---|--------------------------------|----------|
| | SEE ATTACHED | | |
| | | | |
| | | | |
| | | | |

2015 MAR 17 10 21 AM
 FILED
 RICHARD M. VIER
 CLERK, U.S. DISTRICT COURT
 NORTHERN CALIFORNIA

***United States v. James Murray, CR 12-0278 EMC
Fourth Superseding Indictment
Attachment to Penalty Sheet
Maximum Penalties (Each Count)***

| | |
|------------------------------------|--|
| <u>Counts 1 through 16:</u> | Wire Fraud (18 U.S.C. § 1343) |
| Imprisonment: | 20 years (each count) |
| Fine: | \$250,000 (or two times gross gain or loss, whichever is greater) |
| Supervised Release: | 3 years |
| Special Assessment: | \$100 |
| Restitution: | To be determined by the Court |
| <u>Counts 17 - 20:</u> | Engaging in Monetary Transactions in Criminally Derived Property (18 U.S.C. § 1957) |
| Imprisonment: | 10 years (each count) |
| Fine: | \$250,000 (or two times amount of criminally derived property) |
| Supervised Release: | 3 years |
| Special Assessment: | \$100 |
| Restitution: | To be determined by the Court |
| <u>Counts 21 and 22:</u> | Aggravated Identity Theft (18 U.S.C. § 1028A(a)(1)) |
| Imprisonment: | 2 years (mandatory consecutive sentence) |
| Fine: | \$250,000 (two times gross gain or loss, whichever is greater) |
| Supervised Release: | 1 years |
| Special Assessment: | \$100 |
| Restitution: | To be determined by the Court |
| <u>Count 23:</u> | Contempt of Court (18 U.S.C. § 401(3)) |
| Imprisonment: | A term of imprisonment and fine |
| Special Assessment: | \$100 |

1 MELINDA HAAG (CABN 132612)
United States Attorney

FILED
2015 MAR 17 P 2:13
RICHARD W. WIEYING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

| | | |
|------------------------------|---|---|
| 11 UNITED STATES OF AMERICA, |) | No. CR 12-00278 EMC |
| 12 Plaintiff, |) | <u>VIOLATIONS</u> : Title 18, United States Code, Section |
| 13 v. |) | 1343 – Wire Fraud; Title 18 U.S.C. § 1957 – Money |
| 14 JAMES MURRAY |) | Laundering; Title 18 U.S.C. § 1028A(a)(1) – |
| 15 (a/k/a JIM MURRAY), |) | Aggravated Identity Theft; Title 18 U.S.C. § 401(3) – |
| 16 Defendant. |) | Contempt; Title 18 U.S.C. § 981(a)(1)(c) and Title 28 |
| |) | U.S.C. § 2461(c) – Forfeiture Allegation |
| |) | SAN FRANCISCO VENUE |

17
18 FOURTH SUPERSEDING INDICTMENT

19 The Grand Jury charges:

20 Introductory Allegations

21 At all times relevant to this Fourth Superseding Indictment:

22 1. Defendant, JAMES MURRAY a/k/a JIM MURRAY (“MURRAY”), was an individual
23 who resided in Larkspur and San Francisco, California, and conducted business in Larkspur and San
24 Francisco, California.

25 2. Chase Paymentech was a merchant bank located in Tampa, Florida, that provided
26 merchant accounts to businesses. Merchant accounts enabled businesses to accept payment for goods
27 and services by credit and debit cards through a point-of-sale terminal. The point-of-sale terminal
28 operated and was connected through a telephone line typically associated with the business.

1 3. Merchant banks credited businesses' accounts at the time of the transaction with the
2 expectation that the bank would be paid by the credit card company. Likewise, merchant banks covered
3 credit card refunds for their business customers pending reimbursement through the businesses'
4 merchant accounts.

5 4. Jones, Moore & Associates ("JMA") was a Delaware corporation with a stated principal
6 place of business in Wilmington, Delaware. JMA purported to provide audit and accounting services.
7 On or about May 5, 2010, MURRAY submitted a merchant account application to Chase Paymentech
8 for JMA that identified MURRAY as the CFO of JMA. The point-of-sale terminal for the JMA
9 merchant account was connected to MURRAY's telephone number, [REDACTED] at his residence in
10 Larkspur, California.

11 5. Market Neutral Trading, LLC ("MNT") was a Delaware limited liability company, with
12 its principal place of business at 580 California Street, Suite 1256, in San Francisco, California. MNT's
13 marketing materials identified MNT as a hedge fund that employed "a series of proprietary models and
14 utilizes a broad cross-section of investment styles to identify investment opportunities" and invested
15 primarily in domestic equities. MNT's sole member and investment advisor was MURRAY.

16 6. Emerging Manager was a limited liability company that provided consulting services and
17 assistance in raising capital to emerging investment funds. Emerging Manager also solicited individual
18 and institutional investors for emerging investment funds. PE was the managing member of Emerging
19 Manager.

20 7. Oppenheimer & Co ("Oppenheimer") was an investment bank headquartered in New
21 York, New York. Oppenheimer provided financial services to high net worth investors, individuals,
22 businesses, and institutions.

23 8. Interactive Brokers ("IB") was an online based discount brokerage house, headquartered
24 in Greenwich, Connecticut. IB provided direct access to trade execution and clearing services to
25 institutional and professional traders for a wide variety of electronically traded products, including
26 stocks, options, futures, and bonds. IB's new account application form required applicants to confirm
27 whether (i) any of its officers or authorized traders had ever been the subject of an investigation or
28 proceeding by, among other regulatory authorities, the Securities and Exchange Commission and,

1 (ii) any of the principals, officers, or authorized traders had ever been arrested for, or convicted of, a
2 crime.

3 9. Event Trading GP was a limited liability company that was formed by MURRAY and
4 others, including GDF, on or about November 23, 2011. At all times relevant to this Fourth Superseding
5 Indictment, Event Trading's principal place of business was 580 California Street, Suite 1256, San
6 Francisco, California. The Event Trading Operating Agreement specified that its business purpose was
7 to "engage in any and all lawful business activities including, but not limited to, purchasing and selling
8 the following: securities, bonds, options, futures and foreign exchange currencies on margin."

9 10. On or about July 19, 2013, the United States District Court released MURRAY on a bond
10 that set conditions that prohibited MURRAY from using a computer or other means of accessing the
11 Internet and from conducting trading through third parties or giving financial advice and that required
12 MURRAY to reside at a Halfway House located at [REDACTED] Francisco, California.

13 The Scheme to Defraud

14 11. Beginning in or about 2007 and continuing until at least February, 2014, defendant
15 MURRAY, through the entity he controlled called JMA, and in his role as the sole investment advisor
16 for MNT and as a member of Event Trading (1) defrauded victim merchant banks, including Chase
17 Paymentech, by submitting refund requests to merchant banks for credit card charges processed through
18 JMA's merchant account without disclosing that JMA was not a legitimate merchant business and there
19 were no funds in the JMA merchant account to cover the refund requests, (2) defrauded victim investors
20 in MNT by soliciting them with materially false information including false audit reports about MNT's
21 historical performance that were supposedly prepared by JMA when, in fact, as MURRAY well knew,
22 JMA was not an auditing firm and conducted no audits of MNT, (3) defrauded Oppenheimer by
23 providing Oppenheimer with materially false information including false information about MNT's
24 assets in the New Account Application and by failing to notify Oppenheimer of any changes or
25 corrections to the MNT Account Application MURRAY submitted to Oppenheimer, (4) defrauded IB by
26 submitting a phony Discover Money Market Account statement to IB in connection with opening an
27 account with IB for Event Trading, which statement falsely listed GDF's name and Event Trading's
28 address as the account holder on the Discover Money Market Account and, (5) used a computer in order

1 to attempt to activate an online trading account in the name of MNT by submitting a phony Marin
2 Municipal Water District bill.

3 12. MURRAY accomplished this fraud by committing or causing to be committed the
4 following acts, among others:

- 5 (a) On or about December 22, 2008, MURRAY entered into a Virtual Office
6 Agreement with Brandywine Executive Center ("BEC") in Wilmington,
7 Delaware, for BEC to serve as a virtual office for JMA by providing voice mail
8 and mail forwarding services for JMA;
- 9 (b) The Client Data Information Sheet MURRAY submitted to BEC as part of the
10 Virtual Office Agreement between JMA and BEC listed Lisa B. as the
11 Administrative Assistant to "R. Jones" and authorized automatic credit card
12 charges for services rendered by BEC to JMA to be charged to a VISA
13 CitiBusiness credit card issued in the name of Lisa B.;
- 14 (c) The Virtual Office Agreement between JMA and BEC was established by using
15 the California Driver's License of Lisa B. as identifying information for the
16 Virtual Office client, JMA;
- 17 (d) In or about September 2010, MURRAY hired Emerging Manager to provide
18 services to MNT, including soliciting investors for MNT;
- 19 (e) On October 21, 2010, MURRAY sent an email to a fictitious individual, "Richard
20 Jones," of JMA instructing "Michelle or Richard" to send audit reports prepared
21 by JMA for MNT to PE;
- 22 (f) Sometime after October 21, 2010, PE created marketing materials to solicit
23 investors for MNT, which materials contained false and misleading information
24 PE received from the JMA "audits" MURRAY caused to be sent to PE;
- 25 (g) After October 2010, MURRAY provided PE with false and misleading monthly
26 performance data for MNT, which PE used to update the "Fund Returns,"
27 reported in the marketing presentation PE created to solicit investors for MNT;
28

- 1 (h) PE provided potential investors in MNT with false and misleading information
2 that PE received from MURRAY, including the JMA audit reports;
- 3 (i) From at least January 2011 through February 2012, based on the false and
4 misleading information investors received about MNT, including phony JMA
5 audit reports, investors wire transferred more than \$2,457,964 into MNT's bank
6 account;
- 7 (j) In January and February 2011, MURRAY used credit cards issued in his name
8 and other people's names to incur charges processed through a Chase Paymentech
9 point of sale terminal issued to JMA;
- 10 (k) In March and April 2011, MURRAY submitted refund requests to Chase
11 Paymentech for credit card charges incurred on various credit cards which were
12 processed through JMA's merchant account without disclosing that there were no
13 funds in the JMA merchant account to cover the refund requests because the
14 funds had previously been deposited into another account MURRAY controlled
15 and accessed for his own personal use;
- 16 (l) On February 2, 2012, MURRAY submitted a new account application to
17 Oppenheimer on behalf of MNT in which he falsely represented that MNT had
18 \$5 million worth of assets to invest with Oppenheimer;
- 19 (m) On July 17, 2012, MURRAY electronically transmitted a new account application
20 to IB for Event Trading that included an altered Discover Money Market Account
21 Statement that falsely listed GDF's name as the account holder;
- 22 (n) On July 24, 2012, MURRAY, using MNT's Oppenheimer account, executed a
23 short sale trade involving 50,000 shares of Netflix stock that had been loaned to
24 MNT by Oppenheimer based upon Murray's representation to Oppenheimer that
25 MNT had \$5 million worth of assets available to invest;
- 26 (o) On July 24 and July 25, 2012, MURRAY, operating on behalf of MNT, covered
27 his short position by purchasing 50,000 shares of Netflix stock, resulting in a gain
28 of approximately \$410,000 for MNT MasterFund, LLC;

- 1 (p) On August 9, 2012, MURRAY instructed Oppenheimer to wire transfer \$150,000
2 from the proceeds of the gain on the Netflix trade to the attorney-client trust
3 account of his personal criminal defense attorney, GZ;
- 4 (q) On August 14, 2012, MURRAY caused GZ to wire transfer \$100,000 from GZ's
5 attorney-client trust account to MM's bank account and GZ did so on or about
6 August 15, 2012;
- 7 (r) On August 16, 2012, at MURRAY's direction, MM wire transferred \$15,000 to
8 MURRAY's personal bank account and \$50,000 to an Event Trading corporate
9 account controlled by MURRAY;
- 10 (s) On or about November 12, 2013 MURRAY obtained a computer tablet with
11 Internet capability;
- 12 (t) Between November, 2013 and February, 2014, MURRAY used a computer and
13 the Internet to contact GDF and GDF's father and,
- 14 (u) Beginning in or about November, 2013 and continuing through February, 2014,
15 MURRAY used a computer and the Internet to transmit documents, including a
16 phony Marin Municipal Water District bill, in an attempt to activate a trading
17 account in the name of MNT.

18 13. The JMA audit reports used to solicit investors for MNT were false because, among other
19 reasons: (i) JMA is not an auditing firm and conducted no audits of MNT, as MURRAY well knew
20 because MURRAY controlled both JMA and MNT, and (ii) the performance returns JMA reported to
21 PE did not accurately report MNT's actual return for each fiscal years 2008, 2009, and 2010, which
22 fiscal years JMA purported to audit MNT. In addition, the marketing presentation used to solicit
23 investors for MNT was false because, among other reasons, the performance returns it reported did not
24 accurately reflect MNT's actual returns for fiscal years 2008, 2009, and 2010.

25 14. The refund requests MURRAY submitted to Chase Paymentech for credit card charges
26 processed through JMA's merchant account were false because, as MURRAY well knew, (i) JMA was
27 not a legitimate merchant business and, therefore, conducted no legitimate financial transactions and (ii)
28 there were no funds in JMA's merchant account to cover the refunds issued by Chase Paymentech,

1 because MURRAY had transferred the funds in the JMA account to a personal account MURRAY
2 controlled.

3 15. The account information MURRAY submitted to Oppenheimer was false because, as
4 MURRAY well knew, (i) MNT did not have \$5 million of assets in February 2012, and (ii) in May 2012
5 MNT's assets were seized, so there were no MNT assets to put at risk to support MNT's transaction
6 involving the 50,000 shares of Netflix stock that Oppenheimer advanced to MNT for the trade
7 MURRAY transacted in July 2012.

8 16. The account information that MURRAY electronically submitted to IB was
9 false because, as MURRAY well knew, (i) GDF was not the account holder for the Discover Money
10 Market Account Statement for the stated time period, (ii) the Discover Money Market Account
11 Statement had been altered to conceal the fact that MURRAY was the named account holder, and, (iii)
12 MNT had been investigated by the Securities and Exchange Commission and MURRAY had been
13 charged with and arrested for a crime.

14 17. The Marin Municipal Water bill that MURRAY electronically submitted in December,
15 2013 to attempt to activate a trading account in the name of MNT was false because the bill listed
16 MURRAY's address for the meter read time period of September 15, 2013 through November 14, 2013
17 as a residence in Belvedere, California, and as MURRAY well knew, (i) MURRAY resided at the
18 Halfway House at [REDACTED], San Francisco during the time period September 15, 2013 through
19 November 14, 2013 and (ii) MURRAY was not an account holder with the Marin Municipal Water
20 Department during the time period September 15, 2013 through November 14, 2013.

21 COUNTS ONE THROUGH SIXTEEN: (18 U.S.C. § 1343 – Wire Fraud)

22 18. Paragraphs 1 through 17 are realleged and incorporated here by reference.

23 19. Beginning in or about 2007 and continuing until at least February 2014, in the Northern
24 District of California and elsewhere, the defendant,

25 JAMES MURRAY,

26 did knowingly devise and intend to devise a material scheme and artifice to defraud, and to obtain
27 money and property by means of materially false and fraudulent pretenses, representations, and
28 promises, and omission and concealment of material facts, and, for the purpose of executing his schemes

1 and artifices to defraud, did transmit and cause to be transmitted by means of wire communication in
 2 interstate commerce, certain writings, signs, signals, pictures, and sounds, namely, wire communications
 3 as described below:

| Count | Date | Description of Wire Communication |
|-------|-------------------|--|
| 1 | February 1, 2011 | \$20,000 charge on Visa Credit Card number ending in [REDACTED] via point-of-sale terminal using phone number [REDACTED] to Chase Paymentech in Tampa, Florida |
| 2 | February 12, 2011 | \$20,000 charge on Visa Credit Card number ending in [REDACTED] via point-of-sale terminal using phone number [REDACTED] to Chase Paymentech in Tampa, Florida |
| 3 | February 2, 2011 | \$20,000 charge on Barclays Gold Card number ending in [REDACTED] via point-of-sale terminal using phone number [REDACTED] to Chase Paymentech in Tampa, Florida |
| 4 | January 27, 2011 | \$20,000 charge on Barclays Gold Card number ending in [REDACTED] via point-of-sale terminal using phone number [REDACTED] to Chase Paymentech in Tampa, Florida |
| 5 | January 26, 2011 | \$250,000 transfer of funds from First Federal Savings & Loan into MNT account at Barclays Wealth/Barclays Capital, Inc. |
| 6 | April 21, 2011 | \$250,000 transfer of funds from Cole Taylor Bank into MNT account at JP Morgan Chase |
| 7 | April 29, 2011 | \$250,000 transfer of funds from The Independent Bank into MNT account at JP Morgan Chase |
| 8 | August 2, 2011 | \$100,000 transfer of funds from Cole Taylor Bank into MNT account at JP Morgan Chase |
| 9 | August 11, 2011 | \$149,900 transfer of funds from Cole Taylor Bank into MNT account at JP Morgan Chase |
| 10 | December 23, 2011 | \$75,000 transfer of funds from The Independent Bank into MNT account at Citibank |
| 11 | February 27, 2012 | \$50,000 transfer of funds from The Independent Bank into MNT account at Citibank |
| 12 | July 17, 2012 | Electronic transmittal of April 22, 2012-May 20, 2012 Discover Money Market Account Statement from Event Trading to Interactive Brokers |
| 13 | August 9, 2012 | \$150,000 transfer of funds from MNT account at Oppenheimer to GZ attorney-client trust account |
| 14 | August 15, 2012 | \$100,000 transfer of funds from GZ attorney-client trust account to MM's bank account |

| Count | Date | Description of Wire Communication |
|-------|-----------------|---|
| 15 | August 16, 2012 | \$15,000 transfer of funds from MM's bank account to Murray's bank account at Discover Bank |
| 16 | August 16, 2012 | \$50,000 transfer of funds from MM's bank account to Event Trading account at Interactive Brokers |

Each in violation of Title 18, United States Code, Section 1343.

COUNTS SEVENTEEN THROUGH TWENTY: (18 U.S.C. § 1957 – Engaging in Monetary Transactions in Criminally Derived Property)

20. Paragraphs 1 through 17 and Counts Twelve through Sixteen are realleged and incorporated as if fully set forth here.

21. On or about the dates set forth below, in the Northern District of California and elsewhere, the defendant,

JAMES MURRAY,

did knowingly engage in a monetary transaction by, through, and to a financial institution, in and affecting interstate commerce, involving criminally derived property of a value greater than \$10,000, said property having in fact been derived from a specified unlawful activity, namely, wire fraud, as set forth below:

| Count | Approx. Date | Description of Transaction |
|-------|-----------------|--|
| 17 | August 9, 2012 | \$150,000 transfer from MNT account at Oppenheimer to U.S. Bank account ending in [REDACTED] |
| 18 | August 15, 2012 | \$100,000 transfer from U.S. Bank account ending in 7958 to Bank of America account ending in 5168 |
| 19 | August 16, 2012 | \$15,000 transfer from Bank of America account ending in [REDACTED] to Discover bank account ending in [REDACTED] |
| 20 | August 16, 2012 | \$50,000 transfer from Bank of America account ending in [REDACTED] to Event Trading account at Interactive Brokers ending in [REDACTED] |

Each in violation of Title 18, United States Code, Section 1957.

1 COUNT TWENTY-ONE: (18 U.S.C. § 1028A(a)(1) – Aggravated Identity Theft)

2 22. The factual allegations in paragraphs 1 through 17, including the scheme to defraud
3 described therein, are re-alleged and incorporated herein as if set forth in full.

4 23. On or about December 22, 2008, in the Northern District of California, the
5 defendant,

6 JAMES MURRAY,

7 did knowingly possess and use, without lawful authority, a means of identification of another person,
8 namely, the California Driver's License of Lisa B., during and in relation to felony violations of Title
9 18, United States Code, Section 1343, as alleged in Counts One through Four; in violation of Title 18,
10 United States Code, Section 1028A(a)(1).

11 COUNT TWENTY-TWO: (18 U.S.C. § 1028A(a)(1) – Aggravated Identity Theft)

12 24. The factual allegations in paragraphs 1 through 12, and paragraph 16, including the
13 scheme to defraud described therein, are re-alleged and incorporated herein as if set forth in full.

14 25. On or about July 17, 2012, in the Northern District of California, the
15 defendant,

16 JAMES MURRAY,

17 did knowingly possess and use, without lawful authority, a means of identification of another person,
18 namely, the name of GDF, during and in relation to a felony violation of Title 18, United States Code,
19 Section 1343, as alleged in Count Twelve; in violation of Title 18, United States Code, Section
20 1028A(a)(1).

21 COUNT TWENTY-THREE: (18 U.S.C. § 401(3) – Contempt of Court)

22 26. Beginning in or about August 2013 and continuing through in or about February 26,
23 2014, in the Northern District of California, the defendant,

24 JAMES MURRAY,

25 did knowingly and intentionally disobey and resist a lawful order, rule, decree, and command of a court
26 of the United States, namely, an order of United States District Judge Edward M. Chen in criminal case
27 CR-12-0278-EMC, in the United States District Court for the Northern District of California, San
28 Francisco Division, that the defendant shall be released on bond with restrictive conditions including,

1 among others: (1) No access to cell phone. Access only to land line at the halfway house. Defendant
2 shall not make any calls at the lawyer's office except those related to the defense in which defense
3 counsel jointly participates. No contact with Mr. Di Francisci; (2) No computer or other means of
4 accessing the Internet. Defendant may use computer of counsel's office if it has no Internet access; (3)
5 No access to credit card or use of credit card; (4) No trading through third parties or giving of financial
6 advice; (5) Defendant shall have no contact with LM outside the presence of counsel. Murray disobeyed
7 and resisted this lawful order, rule, decree, and command of a court of the United States by, among other
8 acts, knowingly and intentionally: (i) obtaining a computer with Internet capability; (ii) accessing the
9 Internet with that computer and other computers; (iii) using the Internet to attempt to activate a trading
10 account he had opened in the name of MNT; (iv) contacting Mr. Di Francisci, referred to elsewhere in
11 this Fourth Superseding Indictment as "GDF" and Mr. Di Francisci's father; (v) using a computer and
12 the Internet through "Cloud Magic" to gain access to the email of LM, who is referred to elsewhere in
13 this Fourth Superseding Indictment as Lisa B., all in violation of Title 18, United States Code, Section
14 401(3).

15 FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c))

16 25. The allegations of Counts One through Twenty of this Fourth Superseding Indictment are
17 realleged and fully incorporated herein for the purpose of alleging forfeiture pursuant to the provisions
18 of 18 U.S.C. ' 981(a)(1)(C) and 28 U.S.C. ' 2461(c).

19 26. Upon a conviction of any offense alleged in Counts One through Twenty, the defendant,
20 JAMES MURRAY,
21 shall forfeit to the United States all property constituting and derived from proceeds traceable to said
22 offense, including but not limited to a sum of money equal to \$3,605,740.04 representing the amount of
23 proceeds obtained as a result of the offense.

24 27. If any of said property, as a result of any act or omission of the defendant:

- 25 (a) cannot be located upon the exercise of due diligence;
26 (b) has been transferred or sold to or deposited with, a third person;
27 (c) has been placed beyond the jurisdiction of the Court;
28 (d) has been substantially diminished in value; or

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(e) has been commingled with other property which cannot be subdivided without difficulty; any and all interest defendant has in other property shall be vested in the United States and forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c) and Rule 32.2 of the Federal Rules of Criminal Procedure.

DATED: March 11, 2015

A TRUE BILL

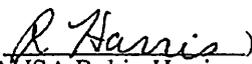


FOREPERSON

MELINDA HAAG
United States Attorney



DAVID R. CALLAWAY
Chief, Criminal Division

(Approved as to form: )
AUSA Robin Harris

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United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

No. CR-12-0278 EMC

VERDICT FORM

v.

JAMES MURRAY,
Defendant.

We, the members of the Jury in this action, have reached the following unanimous verdict with respect to each Count of the Indictment:

Count 1: Has the government proven beyond a reasonable doubt that the defendant James Murray is guilty of wire fraud, in violation of 18 U.S.C. § 1343, as charged in Count 1 of the indictment?

Yes, Guilty No, Not Guilty

Count 2: Has the government proven beyond a reasonable doubt that the defendant James Murray is guilty of wire fraud, in violation of 18 U.S.C. § 1343, as charged in Count 2 of the indictment?

Yes, Guilty No, Not Guilty

United States District Court
For the Northern District of California

1 Count 3: Has the government proven beyond a reasonable doubt that the defendant James Murray is
2 guilty of wire fraud, in violation of 18 U.S.C. § 1343, as charged in Count 3 of the indictment?

3
4 Yes, Guilty No, Not Guilty

5
6 Count 4: Has the government proven beyond a reasonable doubt that the defendant James Murray is
7 guilty of wire fraud, in violation of 18 U.S.C. § 1343, as charged in Count 4 of the indictment?

8
9 Yes, Guilty No, Not Guilty

10
11 Count 5: Has the government proven beyond a reasonable doubt that the defendant James Murray is
12 guilty of wire fraud, in violation of 18 U.S.C. § 1343, as charged in Count 5 of the indictment?

13
14 Yes, Guilty No, Not Guilty

15
16 Count 6: Has the government proven beyond a reasonable doubt that the defendant James Murray is
17 guilty of wire fraud, in violation of 18 U.S.C. § 1343, as charged in Count 6 of the indictment?

18
19 Yes, Guilty No, Not Guilty

20
21 Count 7: Has the government proven beyond a reasonable doubt that the defendant James Murray is
22 guilty of wire fraud, in violation of 18 U.S.C. § 1343, as charged in Count 7 of the indictment?

23
24 Yes, Guilty No, Not Guilty

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United States District Court
For the Northern District of California

1 Count 13: Has the government proven beyond a reasonable doubt that the defendant James Murray
2 is guilty of wire fraud, in violation of 18 U.S.C. § 1343, as charged in Count 13 of the indictment?

3
4 Yes, Guilty No, Not Guilty

5
6 Count 14: Has the government proven beyond a reasonable doubt that the defendant James Murray
7 is guilty of wire fraud, in violation of 18 U.S.C. § 1343, as charged in Count 14 of the indictment?

8
9 Yes, Guilty No, Not Guilty

10
11 Count 15: Has the government proven beyond a reasonable doubt that the defendant James Murray
12 is guilty of wire fraud, in violation of 18 U.S.C. § 1343, as charged in Count 15 of the indictment?

13
14 Yes, Guilty No, Not Guilty

15
16 Count 16: Has the government proven beyond a reasonable doubt that the defendant James Murray
17 is guilty of wire fraud, in violation of 18 U.S.C. § 1343, as charged in Count 16 of the indictment?

18
19 Yes, Guilty No, Not Guilty

20
21 Count 17: Has the government proven beyond a reasonable doubt that the defendant James Murray
22 is guilty of engaging in monetary transactions in criminally derived property, in violation of 18
23 U.S.C. § 1957, as charged in Count 17 of the indictment?

24
25 Yes, Guilty No, Not Guilty

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United States District Court
For the Northern District of California

1 Count 18: Has the government proven beyond a reasonable doubt that the defendant James Murray
2 is guilty of engaging in monetary transactions in criminally derived property, in violation of 18
3 U.S.C. § 1957, as charged in Count 18 of the indictment?

4
5 Yes, Guilty No, Not Guilty
6

7 Count 19: Has the government proven beyond a reasonable doubt that the defendant James Murray
8 is guilty of engaging in monetary transactions in criminally derived property, in violation of 18
9 U.S.C. § 1957, as charged in Count 19 of the indictment?

10
11 Yes, Guilty No, Not Guilty
12

13 Count 20: Has the government proven beyond a reasonable doubt that the defendant James Murray
14 is guilty of engaging in monetary transactions in criminally derived property, in violation of 18
15 U.S.C. § 1957, as charged in Count 20 of the indictment?

16
17 Yes, Guilty No, Not Guilty
18

19 Count 21: Has the government proven beyond a reasonable doubt that the defendant James Murray
20 is guilty of aggravated identify theft, in violation of 18 U.S.C. § 1028A(a)(1), as charged in Count 21
21 of the indictment?

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23 Yes, Guilty No, Not Guilty
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1 Count 22: Has the government proven beyond a reasonable doubt that the defendant James Murray
2 is guilty of aggravated identify theft, in violation of 18 U.S.C. § 1028A(a)(1), as charged in Count 22
3 of the indictment?

4
5 Yes, Guilty No, Not Guilty

6
7 Count 23: Has the government proven beyond a reasonable doubt that the defendant James Murray
8 is guilty of contempt of court, in violation of 18 U.S.C. § 401(3), as charged in Count 23 of the
9 indictment?

10
11 Yes, Guilty No, Not Guilty

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15 DATED: 10/13/15

Richard A. ...
JURY FOREPERSON

United States District Court
For the Northern District of California