UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:  

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) File No. OIG-509

OIG-509  

)  

WITNESS: Number 43

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Washington, DC 20549

DATE: Thursday, May 14, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 9:25 a.m.

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On behalf of the Securities and Exchange Commission:

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background?

A  I graduated in 1993 from the United States Coast Guard Academy. My major was management. I graduated in January of 1999 from New York University with a master's in business administration, emphasis was in finance.

Q  And what do you do between '93 and '99?

A  When I graduated from the Coast Guard Academy, I had a five-year commitment, so I was in the United States Coast Guard. At the last -- I think the last two years of my service time, I started the part-time program at NYU, so I did business school at night.

Q  Okay. And so then in 1999, you graduated. How long was that program, the master's program from NYU?

A  I did that part-time. It was approximately three and a half years.

Q  On a part-time basis?

A  Yes.

Q  Okay. And so after you got your master's from NYU, what did you do then?

A  Actually, prior -- I completed my service time in the Coast Guard Academy -- in the Coast Guard in approximately May of 1998, at which time I started an equity trading position at First New York Securities. My last semester at NYU, I was also working at First New York Securities.
Q Okay. What -- so what was your title at First New York Securities?

A I was initially an assistant equity trader. After approximately one year, I became an equity trader, which I was given approximately $1 million in capital that I could use overnight and I was able to trade intraday as well.

Q How long did you do that for?

A I was an assistant for a year. I traded my own book for two years, and then the last two years, I worked for a hedge fund under the First New York umbrella. It's called FNY Millennium Partners.

Q What years were that, the two years that you worked for FNY Millennium Partners?

A I believe it was 2001 and 2002.

Q What did you do after that?

A The hedge fund -- the woman who ran the hedge fund was moving to another firm. I did not want to go with her to the new firm, so I stayed at First New York. So at the beginning of 2003, I went back to trading my own book, but I was also seeking employment as a trader elsewhere. I was hired by a firm called Axiom Global. I stayed there a very brief time. I wasn't happy with the position. It really wasn't trading. It was more to me sort of doing currency spreadsheets. It just wasn't a good fit, so I left there and took a -- I'm not sure. There might've been a month or two...
off, but I took a sort of similar position that I had at First New York as an equity trader at a firm called Schonfeld Securities. Again, I didn't stay there very long, maybe a month or two.

I was -- I also -- I found a job at a firm called Louis Dreyfus. It's a big corporation that trades commodities and they were looking to start an equity trading desk and they brought me onboard to do that. At the same time I was interviewing for that position, I also had applied to the SEC. So I started at Louis Dreyfus, but once the SEC position was made available to me, I decided to take the position with the SEC.

Q So how long did you work for Louis Dreyfus?
A Approximately two months.

Q Okay. And how long did you work for Axiom?
A Approximately two weeks.

Q Oh, okay. And what year is this?
A This is all in 2003.

Q Okay. So 2003, you worked for really four places, right --
A Yes.

Q -- with the SEC being the fourth?
A Yes.

Q Okay.

BY MS. STEIBER:
Q: And when you were trading, did you trade options?

A: We did. We traded equity -- equities and equity options.

Q: Did you trade them on an exchange or did you trade over the counter?

A: They were all exchange traded. We traded them with counterparties, though. We traded with -- I can't think of the name, but it's a broker-dealer that we would call up and they would execute the orders. I think they actually had option four brokers is how they executed them.

Q: And did you -- how did that work operationally? Did you get a contract and did you execute the contract? Could you just --

A: Well, I did more of the frontend. I did the trading aspect, so I would call up and I would say, you know, "What's the price of -- I want to buy 300 General Electric March 20 calls," and they would come back to me and say, "$1.20," and I would say, "Done." And then I'd fill out the trade ticket and then send it to the back office and then it would get processed. The next day I would make sure that, you know, the position hit the sheets properly.

BY MR. KOTZ:

Q: So when exactly did you start with the SEC?

Okay. And what was your first position with the SEC?

I was brought onboard as a securities compliance examiner. My level was a nine.

And who was your supervisor at that time?

My branch chief was [OCIE Assistant Regional Director].

Okay. And so how long did you serve as a securities examiner?

My title was securities compliance examiner, and I stayed -- that was my title until I earned sufficient accounting credits to be -- to become a staff accountant.

When did you become a staff accountant?

It was approximately three years, so I believe in -- I'm sorry. I believe it was in 2007, November of 2007.

Okay.

I went 9, 11, 12, 13. At the point I reached level 13 is when I became a staff accountant, and each of those increments was one year.

Okay. All right. So you started as a securities compliance examiner as an SK-9.

Correct.

And when did you become an 11?

One year later.

Okay. So say November 2004?

Right.
Q Okay. All right. In the period between November 2003 to November 2004 where you were a securities compliance examiner at the SK-9 level, what were you doing?

A I was conducting examinations. I conducted approximately three examinations. The first examination, I was sent out within the first week that I showed up at the SEC. The exam was approximately halfway done and lasted another, I would say, four weeks.

Q And what was your role in that exam that you went on immediately -- almost immediately after you joined the SEC?

A Really it was just to sort of get my feet wet, just to see how the exam process worked. I was shown some very, you know, basic reviews that were done, like, for brokers, like churning and things like that.

Q Okay. So you first come in, you're there a week, you go in to kind of see what the exam's like. The exam had already started.

A Uh-huh.

Q You continued to work on the exam for a few weeks until it ends. What do you do next?

A Following that, the -- you know, we did the -- sort of the end of exam process, which is putting together work papers and writing the report and things like that. That may have lasted two to three weeks, and then my second exam -- I
was assigned to my second exam and that started in January of that month.

Q January --

Q January of 2004 you did your second exam. And how long did that last?
A That was a very long exam. I would say four to five months.

Q Okay. So say until about June 2004 or May 2004?
A Correct.

Q Okay. And then did you do another exam after that?
A I did a third exam, which I recall it being pretty long as well, three to four months I would say.

Q And did that start right after the second exam?
A No, I would say we had a month or two to wrap things up.

Q Okay. So the third exam took you until around November of 2004 when you became the SK-9 -- 11?
A Yeah. I mean it may have been September/October. I'm not sure exactly.

Q Okay. And then shortly after the third exam ended, you got bumped up to an SK-11; is that right?
A Every year I was promoted to the next level.
Q Okay.
A So --
Q All right. And so then when you became a staff accountant -- or I'm sorry. When you became an SK-11, did you have the same branch chief?

A There was a turnover. I'm not -- I think -- I'm pretty sure I did. My branch chief subsequently became

Q Okay.

A I'm not sure -- I don't recall exactly when.

Q was promoted to assistant regional director. became branch chief.

Q Okay. And so the third exam ends. You get bumped up to an SK-9 because it was about a year after you came in, right?

A Eleven.

Q I'm sorry, 11. And then you worked on additional exams after that?

A I do recall -- yeah, we did one exam. It was very short, maybe a month, but, yeah, that's --

Q Okay. And on these exams, I think we talked about four exams, were you the lead person on those exams?

A No.

Q Okay. So the branch chief was the lead person? Was there another auditor?

A There was always another auditor on the exam.

Q Okay.
There were instances where -- you know, every exam is sort of different. In some cases, you know, there will be a branch chief that's very involved. In other exams, really the lead examiner will be more involved. I've done exams where the ARD has been very involved. It just -- it really sort of depends on the firm and the type of reviews that are being done.

Q Okay. So then you get bumped up to an 11 in November 2004, and then after -- you said you did a short exam. And what did you do after that?

A I'm sorry; I'm blanking out. I think the next exam that I was assigned to was the Madoff exam, if I'm correct.

Q Okay. Okay. And then you got promoted again or you got a grade increase in November of 2005?

A Correct.

Q Okay. So that would go up to a SK-13?

A Twelve.

Q Twelve. Oh, okay. So it goes from a 9 to 11 to a 12.

A Correct.

Q Okay. Okay. And what about after that? Then the next bump up was to staff accountant in November of 2007?

A Correct, that was in November of 2007.

Q Okay.

A So I had -- I was sort of attending accounting --
taking accounting classes prior to that, and then once I earned sufficient accounting credits, I applied to become a staff accountant.

Q And is that your current position today?
A Correct.

Q Okay. And who's your current supervisor?
A My current supervisor is Michael Kress.

Q How long has he been your supervisor?
A I believe approximately one year. There was a shift. I was moved from branch to his branch.

Q Okay. Did at any point you work for John Nee or Bob Sollazzo?
A Directly?

Q Well, in the chain. I mean in some --
A Currently -- currently John Nee is in my chain.

Q Okay.
A Michael Kress reports to John Nee.

Q Okay. And then Nee reports to Sollazzo?
A Correct.

Q And so throughout the entire period, you were reporting to Sollazzo because he was always at the top of the chain; is that right?
A Correct.

Q And what about Nee?
A Well, my initial branch chief was who reported to who reported to John Nee.

Q Okay.

A Subsequently it was who -- I believe reports to Richard Lee.

Q Okay.

A And then about a year ago, I was switched to Michael Kress's branch, who reports to John Nee who reports to Bob Sollazzo.

Q Okay. Any particular reason that you were switched to Kress's branch or --

A My understanding was that it was a better fit for sort of my background and the types of exams that they envision me working on.

Q Okay. Okay. All right. Let me ask you the next kind of set of questions. When did you first hear of Bernard Madoff of Madoff Securities?

A I first heard of the firm when I was assigned to the exam.

Q Okay. So before that -- before you were assigned to the exam, you had never heard the name Bernie Madoff?

A No. I mean I may have heard, just as a trader, Madoff, but not -- I mean I never really focused on it as anything -- any other -- like an unusual or unique firm.
Okay, but the name was familiar to you when you began the exam, the Madoff name?

I believe it was because they're a pretty prominent market maker.

Okay. Had you heard anything about their market making operation?

No.

You were just kind of aware that they were one of the large ones?

As a trader, the big market makers are listed on the screens. So I think their four letters designation is MADF. So that's what I recall.

Okay. You mentioned that you were assigned to the Madoff 2005 cause exam.

Correct.

Prior -- when you were assigned to that 2005 cause exam, what awareness, if any, did you have of previous exams that the SEC had done of Bernard Madoff and Madoff Securities?

I wasn't aware of any -- I didn't see any reports. I think Mr. Sollazzo may have mentioned we had looked at them at some point, but I don't -- I didn't see any reports or anything.

When did Sollazzo say we had looked at them at some point? That was at the beginning of the exam?
A: I don't recall it being at the beginning of the exam. At some point maybe after we had been there or we had sort of had some dealings. I'm not exactly sure.

Q: Okay. Did he say anything specific about what they had looked at?

A: No.

Q: Did he reference the fact that Madoff was looked at by the SEC for a Ponzi scheme?

A: No.

Q: Okay. Let me show you a document. We're going to mark this as Exhibit 3.

A: Okay.

(SEC Exhibit No. 3 was marked for identification.)

BY MR. KOTZ:

Q: This is a November 16, 1992 memorandum and it says on it, "NASD cause examination, subject Bernard L. Madoff, 885 3rd Avenue," and you see there's a CC to Bob Sollazzo.

A: Correct.

Q: Have you ever seen this document before?

A: No.

Q: So you weren't aware any specifics about a 1992 exam that the SEC did of Bernard Madoff?

A: Correct.

Q: Were you aware -- and at some point -- isn't it the
case that at some point in the middle of the 2005 cause exam you became aware that the Washington OCIE headquarters office had done or was doing an exam?

A Correct.

Q But when you started the 2005 cause exam of Madoff, you weren't aware of that exam going on?

A Correct.

Q Okay. Were there any searches done by you when you started the 2005 Madoff cause exam of databases to determine whether there were other exams that were done of Madoff by the SEC?

A Normally that's what we would do as part of the pre-examination work. I don't recall specifically doing, you know, that sort of a search.

Q Okay. Okay. And so you were assigned to work on the 2005 cause exam. Were you told what your role would be in that exam?

A We didn't really -- there were no roles designated. On most exams, there really aren't. It's more, you know, this it the exam, and they have some sort of discussions about the firm, but really you kind of just attack it as a team.

Q Okay, but was it your understanding that you would have a pretty prominent role in the examination?

A I don't think any more so than any other exam. I
mean typically I'm given or assigned to exams where they're
sort of trading related issues.

Q Okay.

A And I guess just from my background, that makes
sense.

Q Okay. So were you aware that they waited to do the
exam until you came on because they wanted your particular
expertise on the exam?

A No.

Q Okay. But you were aware that one of the reasons
you were assigned to that exam was because of your trading
experience?

A I thought it made sense based on sort of the
suspicions regarding the firm.

Q And you were aware that that was a factor that they
had in their mind as to why you were assigned?

A Well, I think I -- I thought that's why we were
basically doing the exam was based on some suspicions
regarding the firm.

Q Right, but were you aware that one of the reasons
that you were specifically put on the exam was because of
your previous trading experience outside the SEC?

A I mean that was not directly said to me.

Q Okay. Okay. In the other exams that you did prior
to the Madoff exam, was there a branch chief on the exam?
Usually. There was one exam where there was no
branch chief. There was just an ARD.

Q Okay. Was there a branch chief on the Madoff cause
exam?

A No.

Q Okay. So what is the role that a branch chief
usually plays on a cause exam?

A I think a branch chief generally plays the same
role on a cause exam or just an oversight exam.

Q Okay.

A It's -- I guess it's really to serve as someone
overseeing the exam, someone with a little more experience
that you can speak with to get ideas, to discuss issues with.
Some, based on their experience, obviously are more helpful
than others.

Q Okay. Generally when a branch chief is working on
an exam, is the branch chief onsite at times?

A It really -- it varies dramatically. In some cases
they're onsite practically every day. In other cases,
they're rarely onsite.

Q Okay. Okay. In this case because you didn't have
a branch chief, who served in that role?

A Well, I don't -- I think we sort of tried to keep
Mr. Nee updated as far as what we were finding, any issues we
were having. The things that would, I suppose, normally go
to a branch chief were going to him.

Q Did -- was John Nee in the field at all during the examination?

A I recall him being in the field once, I believe.

Q Okay. So on one day?

A Correct. I think an afternoon.

Q Okay. What about Bob Sollazzo? Did he have any particular role in the examination?

A No, I don't recall having any formal discussions with him. We may have bumped into him in the hall and sort of let him know how things were going.

Q Okay. Was he -- he was never in the field, though, during the examination?

A No.

Q Okay. Did you have occasion to interact with Bernie Madoff during the examination?

A Yes.

Q Okay. How often would you interact with Bernie Madoff?

A Daily. He was our primary -- really exclusive contact for the firm.

Q And how long -- so when you say daily, for how long of a period of time?

A Intraday.

Q No, no. I mean, in other words, how long of a
period of time were you onsite such that you would interact with him daily?

A We were there two and a half or three months, I would say.

Q Okay.

A So there was a time where we were -- I'm sorry. There was a time when I think we had vacations or we were moving off -- moving to a new office where we weren't, but essentially it was two and a half to three months.

Q Okay. And so you interacted with Bernie Madoff daily during that two and a half to three months?

A Correct.

Q And how -- for how long of a period during a day would you interact with Bernie Madoff?

A It varied. I mean in some cases it was for several hours. In other cases, very little, maybe a "Good morning" or a "Hello," but in some cases it was for numerous hours.

Q Okay. Did you have interactions with other Madoff family members during the cause exam?

A Very little. We may have -- I think we were actually conducting the exam out of one of the son's offices, so he might walk through occasionally, but really didn't have any conversations with him. Bernie's brother, Peter Madoff, was the compliance officer, so we may have had a meeting or two with him, but very little interaction.
Q What about Shana Madoff?
A She was a compliance person as well. The only --
my only recollection of dealing with her was when we were
conducting or asking about emails and that's --
Q Okay.
A -- my only --
Q But that was a relatively small amount of time?
A Correct, maybe a day or so.
Q Okay. Did you ever speak to Bernie Madoff after
completing the examination?
A No.
Q Okay. Did you find it odd at all that your primary
contact on the exam was the head of the firm?
A Yes.
Q How come?
A It just seemed odd to me that someone of his
stature, at least what we knew to be his stature, would be
dealing with us directly. You know, at smaller firms, you
sometimes have that situation where you'll deal with a very
senior person, but at most firms, you'll deal with the
compliance person.
Q Particularly a firm the size of Madoff Securities?
A Correct, with the businesses that he had.
Q Okay. When you first were assigned to the Madoff
cause exam in 2005, did you have any role in determining what
1 the focus of the exam was or was that focus kind of
determined for you?

2 A That focus was determined for me.

3 Q Okay. How did you understand what the focus was?

4 A Well, we had been given -- I believe we had been
given a report or some emails that sort of alleged suspicious
activities at the firm.

5 Q Okay.

6 A So I think that was to be our emphasis, but sort of
any firm we do, we try to look at as much as we can.

7 Q Okay. All right. Why don't I show you those
e-mails. We're going to mark this as Exhibit 4.

8 (SEC Exhibit No. 4 was marked for
identification.)

9 BY MR. KOTZ:

10 Q This is a memorandum from Dorothy Eschwie to Robert
Sollazzo and Richard Lee dated April 22, 2004, and it has
attached to it several pages of emails. If you could take a
look at this document and tell me if this is the document
that you're referring to of what you received as a basis to
start the Madoff cause exam in 2005.

11 A Yes, I believe these are the emails that --

12 Q Okay. And so did you review these emails carefully
before you started the 2005 cause exam?

13 A Definitely reviewed the emails.
Q Okay. And so was it your understanding that the exam was precipitated because of these emails and you were supposed to look into issues in these emails?

A Yes. I mean I think most cause exams, you're sort of -- you definitely want to be aware of what people are suspecting, but it doesn't limit you or --

Q Okay, but this was kind of starting point. These emails were a starting point for what you should look at during the Madoff cause exam?

A Yes.

Q Okay. All right. I'm going to ask you a couple questions about some points in this -- in these emails. If you can look on the third page of the document. Yeah, that's the page right there. By the way, there's some handwriting on this.

A Yes.

Q Is that your handwriting?

A Yes.

Q Okay. We've asked a lot of people whose handwriting it was. Finally got to the guy.

A I barely got through the second grade. I don't write very well --

Q No, actually this is pretty good considering some of the handwriting I haven't been able to read at all. So I mean I could see you're saying, "Is this just an investment?"
So you -- and you underlined "Total return swap agreement," do you think?

A Correct.

Q Okay. And you say, "Is this just an investment?" Is that what you wrote in your --

A I did write --

Q You wrote that?

A I don't think I fully understood the term "total swap agreement." I think I was sort of struggling with understanding that.

Q Okay. And then if you could look on the next page just to kind of ask you about the handwriting.

A Okay.

Q There is a star and there's some underlines under -

A Yeah.

Q -- totally independent evidence, many of the executions are highly unusual." Was that your underlining and starring?

A Yes.

Q Okay. Okay. All right. Let me ask you a few questions -- go back and ask you a few questions about these documents, so go back to the page before. If you see the third full paragraph, it says, "Another point to make here is that not only are we unsure as to how makes money for us,
we are even more unsure as to how he makes money from us, i.e., why does he let us make so much money? Why doesn't he capture that for himself? There could very well be a legitimate reason, but I haven't heard any explanation we can be sure of."

It says, "Additionally, there is a 4 billion Madoff pass-through fund, Fairfield Century, that charges 0 and 20 percent. It's not clear why Madoff allows an outside group to make $100 million per year in fees for doing absolutely nothing unless he gets a piece of that." Do you know what they were getting at here in this email? What is the point?

A I think the point is that they're questioning why Bernard Madoff would not set up his own fund and collect the 20 percent profits himself.

Q Uh-huh. So did it seem as though he was leaving kind of a lot of money on the table, allowing other people to make significant sums of money for not doing very much?

A Yes.

Q And was that something that concerned you as well when you read this --

A Yes.

Q -- in terms of the cause exam?

A Yes.

Q Okay. So were there actions that were taken in the cause exam to look into this issue?
A Yes.
Q Okay.
A I asked Bernard Madoff directly why he would do this, why doesn't he want to set up a fund and collect the fees himself.
Q Okay. And what did he say?
A His response was essentially, "A lot of people ask me that question. I'm not a marketing person. I don't want to deal with customers. I have no interest in doing that. I'm perfectly happy making my commission equivalent 4 cents per share."
Q Okay. And did you find his answer suspicious at all?
A Most people on Wall Street are extremely greedy, so yeah. I mean people don't typically -- I mean -- but, you know, it's hard to -- to sort of rebut that. You know, at that point I wasn't sure what else I could say to him.
Q Okay. So there wasn't anything further on that point that was done?
A Correct.
Q All right. So let me ask you about another point in here in this same email. It says, "The point is that as we don't know why he does what he does, we have no idea if there are conflicts in his business that could come to some regulator's attention. Throw in that his brother-in-law is
his auditor and his son is also high up in the organization, imagine that, and you have the risk of some very -- some nasty allegations, the freezings of accounts, et cetera, et cetera."

Just generally, conflicts and potentially having a brother-in-law as an auditor, is that something that would be a red flag to an examiner?

A Yes.

Q Okay. Was this something that at the time when you looked at this email for the 2005 cause exam, you were concerned about?

A I think we were really -- my recollection is during the pre-exam, I came across some returns and it was about a four-year period where he was only down, I think, four or five months and my recollection is that returns weren't extremely high, but they were very consistent.

Q Right.

A So my concern was he was somehow cheating the market, taking advantage of, you know, his regular orders to the benefit of his other accounts.

Q Right.

A So really my focus was on his trading and how, you know, the conflicts that could be occurring based on his trading.

Q Okay. Did you ever look into who the auditor was,
whether actually his brother-in-law was his auditor?

A I don't recall looking into that.

Q Okay. Okay. Going back in the same document, if you see the last full paragraph, it says, "High seasonal money managers and Madoff's head would look pretty good above Eliot Spitzer's mantel. I propose that unless we figure out a way to get comfortable with the regulatory tail risk in a hurry, we get out."

Did you get a sense that, at least according to these individuals, Madoff was doing something illegal? That would be why there would be a reference to Eliot Spitzer's mantel?

A I think a lot of people were suspicious for years. I think this, you know, was sort of another thing in my mind, and again, this was sort of pre-exam, so we had some -- we had an idea or I had a mentality of what to -- what I thought the firm would be going in. So that's, you know, something I really wanted to sort of emphasize and focus on.

Q And you understood that at least the folks at [Investment Adviser #1] believed that Madoff may be violating the law?

A I see what you're saying. I don't think at the time I just imagined that. I mean I think I was -- violating the law in that I thought he was sort of cheating the market or front running or --

Q Okay.
A -- cherry picking, not necessarily stealing.

Q Okay. Okay. And then if you could turn to the next page, this is the part that you underlined and put an asterisk. "We at have totally independent evidence that Madoff executions are highly unusual."

A Yes.

Q Did you or anyone else on the exam team go back to and ask them what that totally independent evidence was?

A No.

Q Any particular reason?

A My understanding is that we really, as an agency, don't do that and I mean it wasn't my call. I didn't ask to, nor was I directed, but it's just an understanding that we sort of do our examinations and investigations without going to sort of third parties.

Q Okay. Okay. Going to the next email, you see at the top the second paragraph, it says, "I also looked at some daily volume data." Do you see that, sir?

A Yes.

Q "On and around the OEX option transaction dates as indicated by Madoff's statements." And then going further down a little bit --

A Uh-huh.

Q -- there's a little bit of analysis, and then under
the third paragraph of .1, it says, "By this measure, Madoff could only do 750 million. That is with him doing 100 percent of the option volume in his chosen strike with the generous 50 percent assumption." Do you see that?

A Yes.

Q Okay. Do you know what he's saying there? First of all, why would he look at the daily volume data on and around the OEX option transaction dates as indicated by Madoff's statements?

A Well, I think he's looking sort of at -- he's just looking at option trading activity and volume and comparing it to the quantity being traded by Mr. Madoff.

Q Okay. And then when he says, "By this measure, Madoff could only do 750 million, that's with him doing 100 percent of the option volume in his chosen strike," what is he saying here about the volume?

A He's essentially saying that according to the exchange -- according to the quantity of options traded on the exchange, he would only be able to do $750 million worth. That's exchange traded.

Q Okay. And then if you see at .4, it says, "We examined this issue before. We concluded maybe he does the options in the OTC market. We have spoken to several market makers and OTC equity options. None of them claim to see any significant volume in OEX options." What was the point
there?

A Well, I think you can either trade the options, exchange traded, or over-the-counter and these folks seemed to have contacted some over-the-counter options traders and they weren't aware of Madoff's volume.

Q So was he saying in this email that Madoff is saying he's doing these options, but he couldn't see the volume anywhere, so he was questioning whether that was actually true?

A Correct.

Q Was that an issue that was a concern when you did the pre-exam material for the 2005 Madoff cause exam?

A I don't recall focusing on the options. We were more focused on the equities.

Q Okay. And then in -- if you look at paragraph 2, it says -- .2, "Another important point, in every case the MRB examined the option strike calls, the ones closest to the close in the underlying market. Of course the market close is not known until the close. Does this mean that all the options are done almost at the close?" What does that mean?

Do you know?

A I believe they're saying -- I'm not -- I don't -- actually, I don't know.

Q Okay. Okay. And then if you look at 5 -- .5, it says in the second full paragraph, second full sentence, "Are
we to believe that the market makers would take on 15 billion
of market risk at the close? Of course they might -- might
be willing to take the option risk if Madoff provided the
market hedge in the underlying, i.e., they did the whole
package with Madoff. We already note that the trades in the
underlying compare with the closing prices, but leave the OTC
counterparties showing losses as our account always shows
gains." And then if you look at the next page, he says, "But
the risk must be covered somewhere if he's doing these trades
at all. So we need an OTC counterparty, not necessarily a
bank, who's willing to do the basket of the options plus the
underlying with Madoff at prices unfavorable to the OTC
counterparty in 10 to 15 billion. Any suggestions who that
might be? None of it seems to add up."

Do you know what the point is there?

A He's saying that if somebody's going to take the
opposite side, the counterparty to the options trading would
either have to, you know, be exposed or have to hedge
themselves, and he's saying that it's a lot of money to
hedge.

Q Right. Was that something that was a concern when
you reviewed these emails in connection with pre-exam for the
Madoff 2005 cause exam?

A I recall thinking about it or seeing it. I just
don't recall the focus -- the amount of focus we put into it.
Q  Okay. Do you know if at any point in time anything was done to kind of look into this issue of who the possible OTC counterparty could be?

A  Well, during the exam, we were told he no longer traded options.

Q  Okay.

A  Subsequent to the exam, the 2006 investigation, we looked into this issue and we -- I think we got a list of option counterparties. That's my recollection.

Q  Okay. And was there any effort to contact the list -- the folks on the --

A  Not to my knowledge.

Q  Okay. Okay.

BY MS. STEIBER:

Q  Did you discuss these emails with John Nee or anyone else?

A  I don't recall discussing them. I think we sort of worked on our own.

BY MR. KOTZ:

Q  Okay. Okay. Why don't we go to the next document. Okay, let's see the next document marked as Exhibit 5.

(SEC Exhibit No. 5 was marked for identification.)

BY MR. KOTZ:

Q  This is an email from Dorothy Eschwie to Robert
Sollazzo, 05/11/2004, 5:21 p.m. And the email from Dorothy Eschwie responds to an email from Sollazzo dated Tuesday, May 11, 2004, 3:22 p.m., where he says, "We believe this matter is worthy of an examination where resources permit." Said, "The trading scheme appears somewhat complex. We'll have to assign an experienced examiner who has sophisticated knowledge of option. When the time is right, we will strike."

Did -- so did you know that, I mean, that was the case and that you were the guy with this sophisticated knowledge of options?

A No.

Q Okay. And then at the end of this email Sollazzo says, "The story, especially the consistent high returns earned over an extended period, makes you wonder." Sollazzo has testified that that was his understanding of kind of the, you know, the basic issue from the emails. Is that consistent with your understanding of what the issue was kind of in a nutshell?

A Right. I had a little more detail of --

Q Sure.

A -- what might be causing those returns, but yes.

Q And so you had said earlier that one of the central issues you were looking at in the Madoff cause exam was how Madoff was able to generate these consistent high returns.
A Correct.

Q Okay. And did you also think it was important to look at why there was so little volatility in Madoff's returns, you know, as kind of part of this issue of that they were so consistent and high over time?

A Yes, I recall -- again, my thinking was that it was not -- was not the -- how high the returns were for the year. It was more just the consistency, and I recall it wasn't a lot per month. It was more half a percent or one percent, and yeah, that's --

Q Okay, but in your experience, had you seen any other situations where returns were so consistent over such a long period of time?

A No.

Q Okay. So that was something that was suspicious and should be looked into?

A Yes.

Q Okay. Okay. I'm going to show you another set of documents. I don't know whether you ever saw these documents. We did not see the documents in the work papers and they're internal emails, so we wanted to just ask you about them.

A Okay.

Q I'm going to mark it as Exhibit 6.
(SEC Exhibit No. 6 was marked for identification.)

BY MR. KOTZ:

Q. It's an email from dated Thursday, November 13, 2003, and it has numerous pages of additional emails, and I just want to know if in the course of preparing for or conducting the 2005 cause exam of Madoff, did you ever see these documents?

A. The first page looks familiar.

Q. Okay. The first page?

A. Yes.

Q. What about the rest of it?

A. The second page looks familiar to me.

Q. Okay.

A. The third page does not look familiar to me.

Q. Okay.

A. I'm not sure about the fourth page.

Q. Okay. I mean the fourth page --

A. Yeah.

Q. -- the second part of the fourth page is just the previous email you saw.

A. Okay.

Q. It's just the first part.

A. Okay.

Q. Have you -- do you recognize the first part where
is -- from where it says, "We
did not know that they are two different people"? Just the
first kind of blurb.

A Right here. That doesn't look familiar to me.

Q Okay. All right. Keep going, keep going.

A Yep.

Q Okay. Why don't we go -- because some of these are
kind of similar versions of the previous email. Why don't we
go -- if you look a few pages further, at the top it says,
"Subject Re," from date Friday, November
14th, 2003, 12:09. Yeah --

A Okay.

Q -- that document.

A Okay.

Q The part -- do you think you saw that? Just the top part.

A The top part? I don't recall seeing that.

Q Okay. And then the next document, it says at the
top, "Subject Re," from date Friday, 14
November 2003, 12:33 to . The top part as well
where it starts, "Like background radiation, my concern about
Madoff."

A I don't recall seeing this.

Q Okay. Okay. Thank you. All right. We'll show
you the next document we'll mark as Exhibit 7.
BY MR. KOTZ:

Q This is an email from John Nee to Dorothy Eschwie, 12/22/2004, 11:03 a.m. Yeah. Now, the previous document that we showed you from Dorothy Eschwie to Sollazzo, which attached the emails which precipitated the exam, which we marked as --

A Yes, I know what you're referring to.

Q -- okay -- as Exhibit 4, that was dated April 22, 2004. Were you aware of kind of the time lag between that -- when that came in on April 22, 2004 and you see in this email in Exhibit 7 that I'm showing you where they're talking about after the new year, they plan to do an exam at Madoff. Were you aware of that time lag at all?

A No, I just conduct exams. I don't really --

Q Okay. So you don't have any role in, you know, when exams are going to be started?

A No.

Q Okay. So when you're told to do an exam, you do it?

A Yes.

Q Okay.

BY MS. STEIBER:

Q And do you recall when the actual exam work
1 started?
2 A It was around April Fool's Day, I remember.
3 BY MR. KOTZ:
4 Q April of 2005?
5 A April 1 of 2005, correct.
6 Q Okay.
7 BY MS. STEIBER:
8 Q And do you recall when you started to go in the
9 field at Madoff?
10 A Right about that time, April of 2005, I believe.
11 Q Okay.
12 BY MR. KOTZ:
13 Q Okay. I want to talk a little bit about some of
14 the pre-exam work. Mark the next document as Exhibit 8.
15 (SEC Exhibit No. 8 was marked for
16 identification.)
17 BY MR. KOTZ:
18 Q This is an email from you to Ostrow dated
19 03/30/2005, 11:55 a.m., and it is responding to an email from
20 Ostrow to Lamore and Paul Pocress, Wednesday, March 30, 2005,
21 11:16 a.m. Do you remember receiving this email and -- just
22 to get a sense of why you were looking at this?
23 A I don’t recall specifically receiving it, but I
24 think as part of background -- as part of pre-examination
25 background work, you sort of look for articles, look for
anything related to the firm that we can. So this was -- this was obviously found as part of the sort of background work.

Q Okay. And so what did you kind of determine as part of the background work, that, you know, Madoff had a reputation? You know, here it refers to it as the Madoff Dynasty.

A Yeah, I mean I think -- I think on Wall Street, people either are highly educated and sort of go that route or sometimes they're street smart and they make their way based on being street savvy and street smart, and I think Bernard Madoff was sort of a street smart kind of guy.

Q Okay. All right. Let me show you the next document we're going to mark as Exhibit 9.

(SEC Exhibit No. 9 was marked for identification.)

BY MR. KOTZ:

Q This is an email from Ostrow to you, 03/28/2005, 4:14 p.m., and this also references -- does it reference some background information about Bernard Madoff?

A Correct.

Q Okay. And in here it mentions that he and his family have been deeply involved in leading the dramatic transformation that is currently underway in U.S. securities trading. So were you to understand that Bernard Madoff and
his family had pretty dramatic influence on the securities industry when you started the exam?

A I think when we started the exam somewhat, but during the course of the exam, he made a point to tell us that and emphasize that.

Q Okay. And then -- and then later on in this email, it says, "He had served as chairman of the board of directors of the NASDAQ Stock Market as well as the member of the board of governors of the NASD, a member of numerous NASD committees." It also says that he opened a London office which became one of the first U.S. members of the London Stock Exchange and was a founding member of the board of directors of the International Securities Clearing Corporation in London. So you certainly had the sense that, you know, he was a kind of a pretty impressive figure and influential?

A Yes.

Q Were you excited to work on an exam with somebody who was kind of this well-known or this --

A I would -- I mean I sort of try to take every exam I'm eager and excited to work on. You know, this guy, I didn't expect -- you know, during the pre-exam, I didn't sort of expect to have the interaction --

Q Right.

A -- I ended up having with him. So --
Q Right.

A -- I mean while it was an impressive sort of background, I just wasn't anticipating that.

Q That you'd actually be speaking to him so much?

A Right, if at all.

Q Right. Right. Okay. Okay. As you went through the exam and were speaking to him, was it exciting in some way that you got to speak to this guy, you know, for so many hours every day who was so well-known and --

A I think it was he's a -- clearly he's a wonderful storyteller, very captivating speaker, and he has an incredible or had an incredible background of knowledge in the industry. So for me that was very interesting. I mean it became a little frustrating at times, though, because, you know, we obviously were there to conduct business, and so it can be sort of distracting.

Q But it was better than dealing with kind of a -- your own compliance person?

A Yes.

Q Okay. Okay. Let me show you the next document we're going to mark as Exhibit 10.

(SEC Exhibit No. 10 was marked for identification.)

BY MR. KOTZ:

Q And this is an email from John Nee to William
Ostrow and you dated 12/22/2004, 2:17 p.m. Do you see that?

A Yes.

Q And you see it attaches most recent NASD exam report for Bernard Madoff?

A Yes.

Q Why would you -- or why would Nee send you this document? Excuse me.

A I think it's a normal practice as part of pre-exam to -- you'd want to look at prior reports such as this.

Q Okay. And when the SEC does their exams, do they look back at other exams that NASD/FINRA has done of entities or kind of rely on them in terms of previous exam work?

A Typically. In oversight exams, very much that's emphasized because you're overseeing what they did.

Q But even in a cause exam?

A Try to. I mean any way you can get information about the firm, you try to.

Q Okay.

BY MS. STEIBER:

Q How helpful have you found NASD exams in the past?

A The exams I worked on, not very helpful.

BY MR. KOTZ:

Q Okay. All right. If you could look at the first page of this exam report, it references that the firm is also a member of CSE, MSRB, DTC, OCC, NSCC, and SIPC. Does this
indicate that these are organizations that you could get
information or data from regarding the firm?
A I suppose so, but it's not a normal practice to
reach out to them.
Q Okay.

BY MS. STEIBER:
Q Who told you it's not a normal practice?
A No one's told me. I -- just from my experience.

BY MR. KOTZ:
Q Normal practice within the SEC, you mean?
A I guess in the exam program, I haven't experienced
ever reaching out to I don't think any of these entities.
Q Okay.

BY MS. STEIBER:
Q Did you -- who regulates DTC? Do you know?
A I believe the SEC does.

BY MR. KOTZ:
Q Okay. Let me show you a couple more pages in this.
A I'd just say I've never done an exam of them, so --
Q If you look at page 12 of this document, you can
see on the left-hand side -- upper left-hand side it has the
page numbers. At the bottom of page 12, it says, "Internal
audit." It says, "Question, does the staff responsible for
conducting internal audits have an appropriate degree of
independence from the departments and people they audit?"
Then there's a response, "N/A," not applicable. And if you look at the next page it says, "Description of finding and root cause analysis. The firm does not have an internal audit department. The firm has approximately 80 employees. Trading, financials, compliance, et cetera reviewed on a daily basis by the appointed supervisory personnel. The firm's business has not changed since its inception. The firm primarily deals with broker-dealers and trading for its own account."

The fact that the firm does not have an internal audit department, is that something that is odd?

A I don't know -- I mean I don't know the requirements. You know, in some cases you might have one or two person broker-dealer that would -- I would assume they would not have an internal department, but a firm like Goldman Sachs would certainly have an internal department.

Q What about a firm the size of Madoff? Would it be odd that it doesn't have an internal audit department and, you know, Bernie Madoff was responsible for all the firm's internal controls?

A I just -- I don't know how to answer that. I mean he -- you know, it was a family run business. It wasn't a public company, so I mean I don't think during the pre-exam, I gave it any thought.

Q Okay. Okay. All right. Let's go to the next
document and mark this as Exhibit 11.

(SEC Exhibit No. 11 was marked for identification.)

BY MR. KOTZ:

Q This is an email from Ostrow to Nee, Thursday, March 24, 2005, 1:12 p.m., and it attaches, it looks like, an initial documentation request list to Bernard Madoff Investment Securities, LLC, dated April 1, 2005. Do you know if you had any involvement in crafting or reviewing or editing this documentation request?

A I believe I did.

Q Okay. Let me ask you a couple questions on it. You don't remember how much involvement John Nee did? He mentions corrections. Do you remember what his corrections were?

A I don't remember his corrections. I would say normally -- normally before going out to an exam, you know, the examiners will put together the initial request list and then the supervisor will normally have some input. I don't -- I don't recall what his input was.

Q Okay. Did you all look at those emails and craft the documentation list based on those emails or was there some other process used?

A I think generally we'll have -- we have sort of standard -- we have standard information that we request, and
then based on the exam, you somewhat tailor it.

Q Do you know how much this one was tailored to the particular precipitating cause of the exam?

A I don't recall. I think if it would've been probably in the sales practice section if it was tailored.

Q Okay.

A In some cases, I'll just say that especially in cause exams, that's not disclosed to the registrant. So you don't want to limit or you don't want to tip your hand to them maybe too early, so sometimes you intentionally maybe not put things in.

Q Okay. Do you think that might've happened here?

A I just don't recall. I --

Q Okay. Why wasn't there any request for trading data in connection with the documentation request?

A I don't know.

Q Okay. Okay. Why don't we go to the next document. The next document we're going to mark is Exhibit 12.

(SEC Exhibit No. 12 was marked for identification.)

BY MR. KOTZ:

Q This is an email from to you dated 03/31/2005, 3:51 p.m.

A Okay.

Q And you're responding to --
responding to you saying, "Hi, thanks for the information regarding Madoff, Peter," and responds, "No problem." Do you recall what the information you got from was?

A I don't.

Q Okay. Do you remember worked on the investment advisor's side? Do you know that?

A Yes, I know that.

Q Okay. I want to show you another document to be able to refresh your recollection.

A Okay.

Q We'll mark this Exhibit 13.

(SEC Exhibit No. 13 was marked for identification.)

BY MR. KOTZ:

Q This is an email dated 04/14/2005 from Ostrow to you, 2:41 p.m., and it references.

A At this point, we were at the firm conducting the exam, I believe.

Q 04/14/2005 is this email, so if you said it started on April 1st --

A Yes.

Q In here he -- Ostrow says to you, "I just finished boxing the rest of the items Christy found. I have only a few other things to do. Do you want me to contact the IA guy
to find the name of the mutual fund he was at?" And you respond, "Okay, his name was [redacted]." Do you remember that [redacted] did some work on a Madoff related matter on the IA side and you were asking him questions about that?

A: I vaguely do. I just -- I don't have a good recollection of the discussion or if he --

Q: Okay. There was an exam done of [redacted]?

A: That doesn't --

Q: Okay.

A: -- ring a bell.

Q: Okay. So you don't remember if [redacted] was able to give you any specific information that was helpful in your Madoff cause exam?

A: I don't.

Q: Do you think he was or do you think you would remember if he was -- if he did?

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

Q: Okay. Okay. Okay. I'll show you the next document. Okay. We'll mark the next document as Exhibit 14.

(SEC Exhibit No. 14 was marked for identification.)

BY MR. KOTZ:

Q: This is an email from John Nee to William Ostrow, 04/25/2005, 4:26 p.m., and if you go to the second page of this document, there's a reference to a very similar article
to the one we originally read on Bernie and hedge funds and it actually quotes an article by Erin Arvedlund in Barron's dated May 7, 2001. Have you seen this article as part of pre-exam work for that 2005 Madoff cause exam?

A Yes, I believe so.

Q Okay. I'm going to ask you a couple questions about this article. If you look at the first page of the article, the third paragraph, it says, "What few on the street know is that Bernie Madoff also manages more than 6 billion for wealthy individuals." So were you aware at that time when you were starting the Madoff cause exam of the amount of Madoff's management of funds? It says, "That's enough to rank Madoff's operations among the world's five largest hedge funds."

A I recall reading this article and seeing that, yes.

Q Okay. Okay. And if you then -- if you turn to the next page of it --

A Okay.

Q -- kind of in the middle of the page the paragraph starts, "Still" --

A Yes.

Q -- "some on Wall Street remain skeptical about how Madoff activity -- Madoff achieves such stunning double digit returns using options alone. Three options strategists for major investment banks told Barron's they couldn't understand
how Madoff churns out such numbers using this strategy. Adds a former Madoff investor, 'Anybody who's a seasoned hedge-fund investor knows the split-strike conversion is not the whole story. To take it at face value is a bit naive.'" So was it your understanding at that time that Madoff's claim that he was achieving these returns using the split-strike conversion strategy was at least suspect to some?

A Yes.

Q Okay. Going further down in this page to the second to last paragraph, it says, "What Madoff told us was if you invest with me, you must never tell anyone you've invested with me. It's no one's business what goes on here." And then later he says, "When he couldn't explain to my satisfaction how they were up or down a particular month, he added, 'I pulled the money out.'" Were you aware also in -- when you began the Madoff cause exam that there was this issue of secrecy, that Madoff was very secretive, asking people to be very secretive about even investing with him?

A Yes, I remember reading that in this article.

Q And was that something that struck you as suspicious?

A Yes, to a certain degree, but on Wall Street, a lot of hedge funds are very secretive.

Q Now, when those hedge funds are secretive, are they secretive about the particular strategy they use or are they
also secretive like Madoff about letting anybody even know
that they invested with him?

A I know it more from the perspective of they don't
want you to know their positions, what they're doing as far
as trading.

Q Okay. Okay. I'll show you the next document.

Mark this as Exhibit 15.

(SEC Exhibit No. 15 was marked for
identification.)

BY MR. KOTZ:

Q This is the other article that's referenced in the
previous document, Exhibit 14, and I'll first ask you -- this
is an article by Michael Ocrant called Madoff Tops Charts:
Skeptics Ask How, dated May 2001. We're going to mark it as
Exhibit 15. First, have you seen this document before and
are those your handwriting notes?

A Yes, I've seen the document before and yes, those
are my handwritten notes.

Q Those are a little bit harder to read, so maybe
you'll help us out with that --

A Sure.

Q -- although I think maybe it's been copied a couple
of times, so maybe that's why. If you look over here --

A Okay.

Q -- it's -- has the words, "OTC options," two
underlines, "Who is writing these OTC contracts?"

A Yes.

Q Is that what it says?

A Yes.

Q And do you know what you were -- what was the point there?

A I --

Q What you were trying --

A -- was trying to figure out who the counterparty was.

Q Okay. And that was an issue that was also addressed, I think, in that emails, right?

A Correct.

Q Okay. And then above that, will you read what that says there, "Off" --

A Offsetting costs.

Q Okay. And then there's one, two, and three.

A Right, that's the strategy that Bernard Madoff was supposedly using.

Q Okay. And what does it say there for one, two, and three?

A Number one says, "Buy baskets similar to index, 30 to 35 names." Number two says, "So OTM," which stands for out-of-the-money calls. And number three says, "Buy OTM," which is out-of-the-money puts.
Q: Okay. And so that was Madoff's explanation of how he was able to achieve these returns, that was his strategy?

A: I don't know if it was Madoff's explanation --

Q: Okay.

A: -- or how I understood the split-strike conversion strategy to work.

Q: From the articles or other pre-exam work you did?

A: Correct.

Q: Okay. Okay. And then right over here above where it says, "Section cover story" --

A: Yes.

Q: -- do you see what those words are?

A: Yes.

Q: What are they?

A: At the top it says, "Madoff" and --

Q: Okay.

A: -- it's circled. And I've -- it looks like I've made some sort of note that says, "Manages money," and then below that I have essentially four items leading to Madoff and it says, "Feeder number one, feeder number two, feeder number three," and under feeder number three I say, "Thema," and then nothing's written under the fourth line.

Q: Okay. So is it fair to say that, you know, you scrutinized or analyzed this article pretty carefully. You wrote all these notes?
Q Do you recall when you wrote all these notes? At the same time?

BY MR. KOTZ:
Q Was that when you first got the article, in the pre-exam, or do you think it might've been later while you were doing the --

A I don't recall -- I don't recall going back to this article during the exam. I just -- I think we were just doing things real time, so I imagine this was pre-exam.

Q Okay. Okay, let me ask you a couple of things about the article. If you could turn to the second page --

A Yes.

Q -- there's a bunch of things that you star. One is, "He has reported losses of no more than 55 basis points in just four of the past 139 consecutive months." Do you see that?

A Yes.

Q And then further down you have a star next to, "What is striking to most observers is not so much the annual returns, which though considered somewhat high for the strategy could be attributed to the firm's market making and trade execution capabilities." And then this you underline,
"But the ability to provide such smooth returns with so little volatility." So is it fair to say given the underlines and the starring, that those were issues you were particularly struck by?

A Yes.

Q Okay. Okay. All right. And then we'll go to the next page. Again, you have something with a star and that's the sentence, "But among other things, they also marvel at the seemingly astonishing ability to time the market and move to cash in the underlying securities before market conditions turn negative and the related ability to buy and sell the underlying stocks without noticeably affecting the market."

That you also -- it seems was something that you were particularly concerned about.

A I definitely thought it was an issue, correct.

Q Okay. Particularly the ability of Madoff of to time the market, was that something that was --

A Yes.

Q -- a concern?

A That was -- that was my focus.

Q Your focus in the cause exam?

A Yes.

Q Okay.

A I mean with my trading background, I mean that's what stuck out to me.
Q Okay.

BY MS. STEIBER:

Q Why did it stick out to you?

A Because it's very hard to generate such consistent returns.

Q And did you discuss the issue of returns with Nee or anyone else?

A I don't remember having a discussion, but he was aware of it. I just remember some sort of talk back and forth about the returns, you know, that they're really good, but I don't -- it's not like -- you know, we were just I guess trying to figure out how he was doing it.

BY MR. KOTZ:

Q What about this part of this sentence where it says, "And the related ability to buy and sell the underlying stocks without noticeably affecting the market"? Do you see that?

A Yes.

Q "And the related ability to buy and sell the underlying stocks without noticeably affecting the market" --

A Yes.

Q -- in your experience, if you had a 7 to 12 billion dollar hedge fund buying and selling S&P 100 stocks, would you expect this volume to be noticed in the market?

A Yes, depending on how the orders were executed --
Q Okay.
A -- but in general, I mean I think it's a lot of capital.
Q And one would think that if it was really happening, there would be some evidence of that in the market, right?
A Again, depending on how the orders were executed, over multiple days or throughout the day, it would be less noticeable --
Q Okay, but it's still noticeable?
A I would think so.
Q Okay. Okay. Okay. Yeah, the next document is Exhibit 16.

(SEC Exhibit No. 16 was marked for identification.)

BY MR. KOTZ:

Q This is an email dated 04/20/2005 from Ostrow to Nee, and Ostrow is reporting back to Nee, "Just to make you aware of the current situation, Bernard Madoff is getting increasingly agitated regarding our examination. He keeps on insisting in knowing exactly what we are looking for. He repeatedly mentions front running as something we should be looking for. He thinks our request for an execution data and three securities is outrageous. We keep informing Bernard that this is an examination of his book and records and we
are only requesting information that would apply to SEC and NASD rules and regulations."

Now, this is 04/20/2005, so this is shortly after you start. Do you remember that, you know, pretty soon after you started, Madoff was already agitated regarding the exam?

A Yes. I -- I'll just take a step back and say --

Q Sure.

A -- you know, prior to doing -- our normal course of business in New York is to not make the registrant aware of an exam before we go out and do it. We show up unannounced. In this case, for the larger firms, we typically announce ahead of times that we're going. Mr. Nee typically focuses on the larger firm exams.

For this examination of Bernard Madoff, he called, I believe, Peter Madoff, the compliance officer, to let him know that we would be conducting an exam of Bernie Madoff and within, I believe -- I believe I recall within five minutes or, you know, shortly thereafter, Bernard Madoff called Mr. Nee back and wanted to know essentially, "What's this about? Why you doing an exam," et cetera. So I think, you know, from the very beginning that we informed him that we were doing the exam, he was, you know, sort of agitated or just not easy to deal with. He was difficult.

Q And was that a little bit suspicious that he seemed so agitated at an exam?
A lot -- most registrants are. I mean it's not, I'm sure -- you know, it's not a pleasant thing when we come in because they're trying to conduct business, and based on sort of the information I had beforehand about him being secretive and so forth, I guess it wasn't incredibly unusual, but definitely during the course of the exam, like Mr. Ostrow said, you know, he got pretty agitated and, you know, he was pretty upset.

BY MS. STEIBER:

Q Now, you said Nee's notice to him was out of the ordinary for a cause exam; is that right?

A Well, just typically we don't announce beforehand, but in some cases we do such as at a large firm because it enables them to get the documents together and so forth, so that when we show up, we're not sitting there with nothing to do. We have, like, documents right away to look at.

Q What would be the reason for not providing notice to the registrant? So they can't, you know, create documents?

A Create documents or destroy documents, things like that.

BY MR. KOTZ:

Q And wouldn't that be more pronounced in a situation like this where, you know, there were these suspicions about Madoff, he was secretive? Wouldn't it be a detriment to let
him know in advance that the exam was happening?

A Well, I think -- I think the mentality of his firm was that, again, he was cheating. He was taking advantage of the market somehow. Never -- never was it thought at any time that there was some sort of criminal activity or he was creating fake documents or certainly not a Ponzi scheme. Our focus was on his trading, and we thought, you know, we could identify that by getting the trading documents we needed. You know, we just -- it just never occurred to anyone that he would be, you know, creating these --

BY MS. STEIBER:

Q But even in a front running exam, couldn't he create false documents so that you wouldn't see that he was front running?

A Well, I think -- I don't think that would -- it's really realistic. I mean I think the trading documents, normally you can -- I mean I guess you're correct. It just really isn't a thought, I mean, if you're going to a major firm. Goldman Sachs, I mean -- the trading is the trading. So you just wouldn't -- or at least at the time we never anticipated that being possible, to create, you know, false trading documents.

BY MR. KOTZ:

Q In this email, Exhibit 16, Ostrow says, "He
repeatedly mentions front running is something we should be
looking for." Bernie Madoff was mentioning front running is something we should be looking for?

A Well, I think -- if I remember this correctly, we were asking for documents or something and he got -- I mean I think this email was sent because it was actually -- it was sort of disconcerting how angry he became. I mean his veins were popping out of his neck, and during that -- it was a -- I think his brother Peter might've been there, and he just repeatedly said, you know, "What are you looking for?" And his voice level got increasingly loud and the veins were popping out, and one of us -- I may have said something, you know, "What do you want us to look for? What do you think we're looking for?" And then he -- that's when he said something like, you know, "Front running. Aren't you looking for front running," or something -- something to that effect.

Q So he was kind of reacting to the fact that some of your document requests related to issues other than front running? Was that the concern?

A I just don't think he knew -- I think he was frustrated because he couldn't figure out exactly why we were there, and I think at this point, we had asked him about all of his businesses and he had not revealed his investment advisory business. So I think we were hinting around things, trying to get him to admit or acknowledge he was conducting this business, and I think that frustrated him.
Q Okay. And so when Ostrow would report back to Nee that Madoff was getting agitated, do you know what the response was from Nee?

A I don't think we got any response.

Q Okay. Okay. Okay. We're going to mark the next document as Exhibit 17.

(SEC Exhibit No. 17 was marked for identification.)

BY MR. KOTZ:

Q This is an email from you to John Nee, 04/28/2005, and it says on the top, "Re FRB and Market Reg Training and Basel Capital Accord and CSE Rule." And I guess you're relating back to John what's going on. You mention, "Bernie came in this morning and told us the reg NMS. William took a shot across his bow regarding whether anyone else uses/has access to his algorithm. After pausing he said; 'No, it's for us.' I stated that it seems the algorithm has the capacity to handle more money. He didn't respond. He then went to story mode regarding why no one can make money in the markets. Market 100 points up, down 100 points. He then looked at his watch and left. According to Bernie, compliance is only Peter M. Since Peter's son is back in the hospital, it may be a few days before we have an opportunity to sit down and speak to him. We expect to get emails and trading data next week. He was appalled that we asked for..."
ten days worth of trading data since no one has ever asked for that."

Do you remember that -- his particular response on the request for ten days worth of trading data?

A He was appalled at pretty much everything we asked for.

Q Okay.

A I don't remember that particular response, but he was -- again, I would describe him as sort of difficult to deal with, sort of evasive.

Q Defensive?

A Protective.

Q Okay. Was there a lot of pushback from him in the exam?

A There was some pushback, but it wasn't nasty or mean-hearted. It was more, "Why do you need that? What are you looking at?" You know --

Q All right. And did -- were there ever any times where got Nee involved because of the pushback or because he was getting agitated?

A I don't recall any.

Q Okay. Did you feel like you were getting sufficient support from Nee in terms of, you know, "I know he's difficult, I know he's pushing back, but, you know, you've got to go in and do what you've got to do"?
A I guess at that point, I really didn't know what was appropriate and what was not appropriate. My -- I think my goal -- my goal was really just to keep him informed as to what was going on and I felt like it was his -- his decision on whether he felt to come out or to be more involved based on what we were sending him. I mean so my objective was really to keep him as sort of informed as possible.

Q But at a point did Nee come and say, "Look, guys, obviously, you know, he's a difficult guy. You know, I'm going to come onsite more and help you out or, you know, get in the middle, get more involved"?

A I don't recall that.

Q Okay. All right, the next document.

MR. TALARICO: That didn't come up.

THE WITNESS: Okay.

MR. TALARICO: That's your explanation --

THE WITNESS: Okay.

MR. TALARICO: -- and that was related to --

THE WITNESS: We can get to that --

MR. TALARICO: Yeah, Exhibit 15. Okay. Well, if you do, you do. I'm just saying.

THE WITNESS: Okay.

MR. TALARICO: Okay.

MS. STEIBER: Do you want to go off?

MR. TALARICO: No, we're okay.
THE WITNESS: We're okay.

BY MR. KOTZ:

Q Okay. And I'll show you the next document we'll mark as Exhibit 18.

(SEC Exhibit No. 18 was marked for identification.)

BY MR. KOTZ:

Q This is an email from John Nee to you, 04/26/2005, and there's an attachment which is a document request that you say, "We intend to submit to Bernie tomorrow." Just one thing about this document request. The second page of the request --

A Yes.

Q -- it says, "All executions in accounts FS-1 and FS-2 for January 1, 2005 through March 31, 2005." What were accounts FS-1 and FS-2?

A I just don't recall, but the date of this request, I believe, is before he acknowledged the business. So I imagine that these accounts related to his market making.

I'm just not sure.

Q Okay.

BY MS. STEIBER:

Q Would -- now why would you be requesting data only from market making accounts?

A I think at that point, that's all he provided us
information about. I think that's the only accounts we
officially knew about, so I believe that's why.

Q So how would you even be able to do a front running
exam from market making accounts?

A Well, I'm not sure at this point -- you know, we
knew he had a proprietary trading business and a market
making business. So I think the idea was to get a handle on
his market making, sort of the order flow, and again,
before -- you know, as part of the pre-exam, we had an idea
of what the firm would be, the types of orders, the types of
clients, and then as we got into the exam, you know, we
learned more about the firm and it was sort of different than
what we expected. Whereas we expected to see lots of, you
know, institutional, large orders, multi 100,000 share
orders, we got to the firm and the market making side of the
business was -- it was more retail investors, small orders,
things like that. So --

BY MR. KOTZ:

Q Let's go to the next document. Mark the next one
as Exhibit 19.

(SEC Exhibit No. 19 was marked for
identification.)

BY MR. KOTZ:

Q This is an email from you to John Nee and Ostrow,
05/03/2005, 10:46 a.m. You say, "Hi, John. I know you have
mentioned that Barclays may be conducting prime brokerage services for some of the funds." And later on, "There are no transactions with Lehman, Goldman, Merrill, et cetera. After going to sit with his staff, he stated that Barclays clears for the brokers in London." What does that mean that Barclays clears for the brokers in London?

A Well, I think Barclays was the -- I imagine the prime broker and ensured that when one of the -- when a trade was done by his London office against a counterparty, that it cleared and settled properly. Barclays is doing that.

Q Okay. And then later on it says, "Additionally, in the same operating account, I came across some weird descriptions and I asked Bernie to explain."

A Yes.

Q Do you know what those weird descriptions were?

A I think I listed them, OB/ --

Q Okay.

A -- or I'm sorry, O/B melon pit, I believe --

Q Did he explain what they were?

A He gave me an explanation. I don't recall exactly what it was.

Q Do you recall if it kind of resolved the issue or -

A I think so. To the best of my knowledge, I think I sort of sent this to John to see if he felt that it seemed
Q: Did you get anything back from John?
A: I don't recall on this. I'm not sure what I got.
Q: Okay. I'll show you the next document. Mark it as Exhibit 20.

(SEC Exhibit No. 20 was marked for identification.)

BY MR. KOTZ:
Q: It's an email from John to you and William Ostrow, 05/03/2005, 3:18 p.m., and it attaches a letter from John Nee to Erin Ashley Mansfield, Director of Compliance, Barclays Capital, Inc., May 3, 2005, and the letter it seems asks for all trading done by or on behalf of any of the following, the time period March 1, 2005 through March 31, 2005.

How come this request was sent to Barclays?
A: I think John -- right, I think Mr. Nee put this request together. I don't remember having any sort of discussion. I think it was just part of -- maybe because he wasn't acknowledging that the accounts existed or --
Q: Okay.
A: I think that may have been it.
Q: Yeah. And if you look at the document, which we're going to mark as Exhibit 21, an email from you to William Ostrow, 05/03/2005 at 3:47 p.m., you can see going all the way back, John Nee, "Dear Ms. Mansfield, attached please find
our information request." And then you say to Nee, "The request looked good. I suspect it will generate some fireworks. I'll let you know if there's any fallout from your request." And then after Nee responds, "Thanks," you respond, "I'm ready to call his bluff on his refusal to admit the money management side of the business. So your document request is perfect timing."

A Yes.

(SEC Exhibit No. 21 was marked for identification.)

BY MR. KOTZ:

Q Does that refresh your recollection about what this --

A Yeah. Yes. I think, again, you know, Bernard Madoff was extremely difficult to deal with. He wouldn't -- various issues came up that he would just not acknowledge or not admit to, and this whole -- I mean, again, our emphasis was to look at the LIA business, and at this point, he hadn't -- he hadn't acknowledged that it existed. So I think -- and he had shown some sort of aggression or irritation during the exam. So I -- my thought was because word on Wall Street travels very quickly, my thought was if Mr. Nee sends this request to Barclays, it's -- they're going to pick up the phone and immediately call Bernard Madoff and he'll come walking into that -- into our office immediately. So that's
kind of what I anticipated.

Q And give you a hard time about it?

A "What's this all about," and things like that.

Sure.

Q And so if you have a situation where a guy's being evasive or not providing the information, you would also want to go to outside third parties to get information because you didn't necessarily get as much as you needed from him?

A You know, from my experience, I mean almost every exam, you have this problem --

Q Okay.

A -- where people, you know, they don't want to deal with us. They provide incomplete paperwork and the answers are incomplete. So you do this round and round situation. So I don't -- I don't know that this was anything more unusual. Again, the thinking was he's secretive, you know, he's quirky, things like that.

Q Okay. Okay. So I'm going to show you the next document which is the response from Erin Ashley Mansfield to John Nee dated May 16, 2005, which we're going to mark as Exhibit 22.

(SEC Exhibit No. 22 was marked for identification.)

BY MR. KOTZ:

Q You could see in the response that Mansfield
makes -- it says, "No relevant transaction activity occurred during the period March 1, 2005 to March 31, 2005. There were no other customer relationships identified at Barclays Capital, Inc. for the other names provided in your inquiry letter."

So Barclays comes back and says there was no transaction activity in that period. What was your response or the team's response to that information?

A Well, I never saw this letter.

Q Okay.

A I don't know that anything more than a very brief conversation or email, you know, took place between Mr. Nee and Mr. Ostrow and myself. I think it sort of -- we were focused on the exam at this point. We were conducting the exam, whereas Mr. Nee seemed to be in the office taking care of this issue. So -- and my recollection is that while something like they didn't see any activity, there's another Barclays, a separate Barclays that may have had the activity, but I don't -- I don't recall spending very much time dealing with it or thinking about it.

Q Okay. Was there any discussion of going to that other Barclays to see trading activity?

A No, I don't recall any discussion. I guess, you know, I'm not sure that we were depending on where the Barclays -- these other Barclays entity was located. I don't
know that we had jurisdiction.

Q  But do you remember that being an issue discussed, the possible jurisdictional issue at the time?

A  I don't remember that being discussed.

Q  Okay. Okay. I mean when we want to try to get his recollections at the time, not --

MR. TALARICO: Sure. Well, I'm just going based on what -- I just remember -- do you want to go off a second or do you want me to put this on?

MR. KOTZ: We can go off the record.

(Whereupon, a brief recess was taken.)

BY MR. KOTZ:

Q  Okay. Let me show you the next document. This is an email from you to William Ostrow, 05/04/2004, 10:12 a.m. Mark it as Exhibit 23.

(SEC Exhibit No. 23 was marked for identification.)

BY MR. KOTZ:

Q  And you're responding to Ostrow who says the -- in an email Wednesday, May 4, 2005, 11:11 a.m., "The salary information is interesting. The letter John Nee sent to Barclays seems right on target. Any more info on the OCC options account?"

Do you know, first of all -- then there's a reference in an email from you to Ostrow about salary
information for nine individuals. "The most interesting part of the salary and bonus information is the high amount paid to compliance guy. Also, why did his salary drop dramatically in 2003 and then jump in 2004?" Do you remember this issue about the salary?

A I don't remember the issue regarding salary. I remember requesting salary information, and I think we actually included Bernard Madoff on that list, and I recall his -- his response was, "I take whatever I need for a salary."

Q So he never gave you a specific amount that he made?

A Correct.

Q Do you remember anything particularly unusual or interesting about anyone's salary, like this compliance guy?

A I guess in this email I say, "The high amount paid to the compliance guy," and the drop in -- the salary drop between 2003 -- I'm sorry. "The salary dropped dramatically in 2003 and then jumped in 2004." I don't remember at this point focusing on that as a huge issue.

Q Okay. Do you remember if that kind of issue was ever resolved?

A I don't recall, but I'm sure I asked and I'm sure I was given an explanation.

Q From Madoff?
Q Okay. And you say -- Ostrow says here, "Any more info on the OCC options account?" Do you know what that reference is to?

A I don't. I just don't recall.

Q All right. All right. We'll show the next document we'll mark as Exhibit 24.

(SEC Exhibit No. 24 was marked for identification.)

BY MR. KOTZ:

Q This is an email from Ostrow to you, 05/18/2005, 10:24 a.m. This is about a complaint, customer complaining about a trade done through Fidelity which in turn was routed through Madoff. Do you remember at any point in time where the exam team that worked on the 2005 cause exam of Madoff was given a complaint to look into?

A I don't -- I don't recall it. I just don't -- I don't recall it.

Q Okay. Okay.

A I think -- I mean there's complaints against firms sort of all the time, but -- especially a market making firm like this, so I don't recall.

BY MS. STEIBER:

Q Do you recall you were specifically given this complaint because you were working on the Madoff examination
when this complaint came in? So it's --
A I mean I just -- I see the email. I just -- I just
don't recall. I just don't think it was a big part of the
exam. I just don't.
Q Okay.

BY MR. KOTZ:
Q Okay. All right. Let me show you the next
document. Mark it as Exhibit 25.

(SEC Exhibit No. 25 was marked for
identification.)

BY MR. KOTZ:
Q It's an email from you to John Nee and Ostrow,
05/23/2005, 10:56 a.m., and it's forwarding an article
regarding the status of foreign affiliates and you say,
"Interesting that this article was forwarded." Was there an
issue about Madoff's foreign affiliates?
A MSIL, Madoff Securities International London --
again, I think this is one of the -- this is one of the
issues that we had difficulty with him. I think on his
letterhead it said MSIL was an affiliate, and -- but if my
recollection's correct, he -- he refused to acknowledge that
it was an affiliate. So we, you know, would go back and
forth, and it got to the point where I think, you know,
"We're going to call it an affiliate and, you know, if you
don't want to call it an affiliate, you don't have to," but I
do recall something to that effect.

BY MS. STEIBER:

Q Do you know if that issue ever got resolved about the affiliate?

A I think we just -- I don't recall if -- I don't think he ever admitted that it was an affiliate, but I think we felt that it was an affiliate if my memory's correct.

BY MR. KOTZ:

Q Okay. All right. Let me show you the next document. Mark it as Exhibit 26.

(SEC Exhibit No. 26 was marked for identification.)

BY MR. KOTZ:

Q This is an email from Ostrow to you, Tuesday, May 24, 2005, 11:57 a.m. It has attachments to it. Do you know what those attachments are?

A These appear to be trade executions for Bernard Madoff's market making business.

Q Okay.

A And on the left, the first column, I believe are his accounts, the account that it was traded in. The second column is the stock. The third column's date -- do you want to continue?

Q That's okay. So these were for the market making business, not the investment advisory side?
Q Did you get something similar for the investment advisory side?

A We got a trade blotter for the investment advisory side, I believe.

Q But not something like this?

A My recollection is that it was a huge document. It was like a paper-based document for the trade blotter. When I -- I think this was electronic or something.

BY MS. STEIBER:

Q Did you get electronic records for the investment advisory business?

A I think the account statements may have been electronic, but I don't -- I don't think the trade blotter was electronic.

Q Was that unusual considering that the market making trades, you know, electronically?

A I don't -- I don't know that I thought at the time it was unusual. I just -- I don't know.

Q Can you tell -- tell from this data if any of the trades take place during non-U.S. trading hours?

A Well, it appears that the fourth column from the left is the time of the trade, execution time of the trade. I mean, I guess U.S. -- normal U.S. market hours are 9:30 to 4:00, but certainly, these stocks can trade in the after
hours market. So some of these execution times appear to be after 1600 or 4:00.

Q And you're pretty certain that there is no investment advisor trades reflected in this document, right?

A Yes, I believe -- I believe the accounts on the far left were the accounts -- sort of the way he annotated the market making accounts.

Q Okay.

(SEC Exhibit No. 27 was marked for identification.)

BY MR. KOTZ:

Q Okay. For the next document, we'll mark as Exhibit 27. This is an e-mail from you to William Ostrow, 5-24-2005, 2:51 p.m. At the bottom of the document, there's an e-mail from you to Ostrow, Tuesday, May 24th, 2005, 2:36 p.m. In the last paragraph it says, "He wants an idea of when we're going to finish the exam. He's getting more aggressive about trying to find out. I told him we would speak to him tomorrow. Based upon our questions and requests, he should have a better idea." And then at the top, you say, "Again, be ready for his badgering about us leaving."

So was Madoff aggressive about trying to get you guys to finish already?

A Every firm is aggressive about us trying to get up.

Q But I only asked about the Madoff one.
A  Yes, I believe he's aggressive.

Q  Did -- when you had these conversations with Bernie Madoff, did he throw in names of people he knew and his various political connections?

A  Yes. I remember him throwing in a couple of names, actually, SEC employees. One was -- one was the commissioner, Commissioner Annette Nazareth. He'd throw in -- at one point I believe an individual named Henry Kaufman who was formerly Salomon and Smith Brothers -- Salomon chief economist. I think he was there one day. And I think he actually -- at the time we conducted the exam was the time when Chairman Cox took over, and he seemed to have -- he thought he had some insight as to who was going to get named. And I think he actually even named at one point in the past he was in the running to become commissioner of the SEC.

Q  Chairman you mean?

A  Yes.

BY MS. STEIBER:

Q  What did he say about his relationship with Annette Nazareth?

A  I don't recall what he said. I'm not sure if it was in reference to a meeting he had or rulemaking or something, but I just remember that name. It just struck me as -- I mean, oftentimes on exams, people will drop names,
but that was -- you know, that's a commissioner at the SEC is a pretty big name, I'd say, to mention.

BY MR. KOTZ:

Q So he was doing that to try to impress you with all his connections, do you think?

A I would say so.

BY MS. STEIBER:

Q And do you think he was doing it to intimidate you, like I want to hurry up and finish this exam, I know all these other people I could call if you don't finish up when I think you should?

A Well, we take the stance that we -- like it doesn't matter. I mean, he can say whatever he wants to say. I mean, generally, until we get the work done, we're not going to leave. Until we get our documents, we won't leave.

Q But do you think that was his -- maybe his intention, to try to intimidate you?

A It's possible. I don't -- I mean, I'm not sure exactly what he was thinking.

BY MR. KOTZ:

Q Okay. Do you want to take five minutes?

A Yes.

(A recess was taken.)

(SEC Exhibit No. 28 was marked for identification.)
BY MR. KOTZ:

Q  All right. The next document we're going to mark as Exhibit 28, and that's an e-mail from you to John Nee and William Ostrow, 5-25-2005, 9:54 a.m. And in this e-mail, the last paragraph you say, "FYI, he's started to bash the SEC program for not having a full understanding of time slicing, et cetera, et cetera." You defended the program. Then you say, "Anyway, I look forward to speaking to him regarding the hedge fund issue which was opportunistically -- he has opportunistically failed to mention to us."

So tell us a little about these conversations back and forth about the hedge fund issue, what you meant by "he has opportunistically failed to mention to us."

A  Well, before that, I'll just say one of the -- you know, his firm was -- he promoted how advanced technology, you know, they really utilized a lot of technology to help them execute orders and so forth. And I think, you know, this Robo and automatic market making and so forth was really a way to eliminate actual human traders. So we talked a lot about that, and then he brought up the fact that they used algorithms to help execute orders. And, I mean, from my experience, I had never used algorithms or had been familiar with them from my trading, so I said, "You know, we really don't have a good handle on algorithmic trading."

And I think, you know, that's when he started
bashing us for how could you not, algorithmic is the wave of
the future, you know, et cetera, et cetera.

So I'm not sure. I know you've asked about the
hedge fund issue.

Q Yeah, you say, "He has opportunistically failed to
mention to you." What does that mean?

A I just -- I don't recall what I'm referring to,
what issue. I don't know if it was the IA -- IA hedge fund
or his proprietary trading hedge funds that I'm referring to
because at this point, it seems like May 25th, we were still
talking a lot about the market making and, you know, Robo
trading and so forth. So at this point, we may have also
been focused on his proprietary trading hedge funds.

Q Okay.

A How they -- how they operated, they had a couple
different strategies and so forth. So we spent some time on
that.

Q And was he sort of not willing to give you
information about that aspect, his proprietary trading?

A He really -- I mean, it was tough getting any
information from him. So you really had to pull it out of
him.

Q Okay. Were there situations where he would say
something and then later on you would realize it wasn't
entirely truthful what he was saying?
A  Sure. I mean, it started off I would say, you
know, by his failure to acknowledge the IA business even
existed. It wasn't until -- it wasn't until we put the
articles in front of him and said, "How can -- how can you
say you don't manage money for anyone?"

And he said, "Oh, you know, that's not -- we're not
a money -- you know, that's not managing money. We execute
orders for these certain funds."

BY MS. STEIBER:

Q  How long into the exam did it take you to show him
those articles and --

A  It was awhile. I mean, it was -- I mean, I think
we tried to do it sort of methodically by allowing -- you
know, giving him the opportunity to tell us about it. So it
was probably three or so weeks, three, four weeks into the
exam before he actually or we actually presented that hedge
fund article.

Q  Why did you wait so long when that was what you
were trying to get to right at the beginning of the exam?

A  Well, I think -- I mean, part of it, we're trying
to sort of build background information and understand the
firm, how it all operates. And especially when you're
looking for things like front running and cherry picking or
whatever, you sort of want to understand where the orders
are, what the order flow. So in some cases for cause exams,
you try to get as much information as you can before you really focus on that one issue that you're there for because, you know, you don't want him to cut you off like -- you know, sometimes like e-mails, for example, you don't ask for till the end of the exam because it's typically something that people get very upset about when you ask them for their e-mails.

Q But didn't you have a certain time frame that this exam had to be completed in when you started the exam?

A No. I mean, they sort of generate projected lengths, I think, for exams, but if issues arise, you know, exams can be extended.

BY MR. KOTZ:

Q But Ostrow testified that he felt like from Nee's perspective he -- Nee really wanted the exam to be finished in the period that was set. Was that not your sense?

A I didn't get that sense. I mean, I've never -- I think my -- my feeling is if you can explain well enough to the supervisor why it's taking longer than it should, they normally will give you additional time. And I don't recall in the Madoff case -- in the Madoff exam that we were feeling any extra pressure.

BY MS. STEIBER:

Q Okay. So you were in no real hurry to get to this investment advisor issue, it sounds like?
I A We were trying to get to it, but we were sort of trying to get as much information surrounding it that we could until we were ready to like really focus on it.

BY MR. KOTZ:

Q Okay. Let's go to the next one.

(SEC Exhibit No. 29 was marked for identification.)

BY MR. KOTZ:

Q This is an e-mail from Ostrow to you, 5-26-2005, 1:57 p.m. He says, "That's the feeling I had, that we were not getting all e-mails."

And then at the bottom, there's an e-mail from you to Ostrow, Thursday, May 26, 2005, 11:55 a.m. "Shana just gave me another explanation regarding the firm's e-mail retention policy. Basically, she has the ability to determine that an e-mail is non-business-related spam and delete it from the system forever. That just doesn't seem right."

Was that a concern to you that Shana could just delete whatever e-mails she had?

A I think that was a concern to both Mr. Ostrow and me, but I don't know -- I think the firm is permitted to determine what's considered personal versus business.

Q But if you have somebody like Shana who's in the compliance unit making determinations on her own which e-mails can be deleted, isn't that a concern?
A: I guess I don't know what's typical at most firms. Again, I think they have the ability to when the provide e-mails to us as regulators to decide what's considered business versus what's considered personal. So I don't know that it struck me at that point.

Q: Was there a concern in the fact that you weren't getting the e-mails like Ostrow mentions here at the top of this e-mail chain?

A: I think it was another sort of frustration, another frustration, frustrating part of the exam. It's -- often exams, you know, e-mails are a real stickler issue, a real touch issue.

Q: And so you felt like Madoff was not being -- was not giving you all the e-mails that you were seeking?

A: I don't -- I don't know about that. I remember that a lot of people didn't have e-mails or didn't e-mail accounts.

Q: Do you remember Bernie saying he didn't use e-mail?

A: Yes.

Q: Did you think that was odd given that, you know, he was promoting himself as being in the forefront of advanced technology?

A: Yeah, I don't -- I don't know that I thought of it as that he couldn't. Like, I think he had the technological capabilities of having e-mail. I mean, other people within
the firm had it. He just chose not to have an account, and I think, you know, sort of -- it may be in line with his secretive nature. And I think he may have made a comment to the fact that, you know, business is conducted by phone. Like, you know, it's not necessary to e-mail back and forth, something like that.

BY MS. STEIBER:

Q And you found that credible, that he wasn't e-mailing?

A I didn't think at the time he was lying. I didn't know really what to think. I mean, I took it but, yeah.

BY MR. KOTZ:

Q Okay. Let's go to the next document.

(SEC Exhibit No. 30 was marked for identification.)

BY MR. KOTZ:

Q It's marked as Exhibit 30. This is an e-mail from you to , 4-27-2005 at 3:15 p.m. Do you remember having these discussions with ? He had worked, I think, for some other company and that company had some relationship to Madoff and you were trying to get some information from him?

A Yes.

Q What do you remember about that?

A -- I remember initially I learned
that he had worked somewhere that had invested money with Bernie Madoff informally in the office, I think. Often we'll say what are you working on, what are you working on. And I think I said I was working on Madoff, and he said, "Oh, we used to have money there."

And I think I requested or I asked him if -- sort of some background because I think we were having trouble sort of getting anywhere at that point and what's going on, do you know anything about Madoff, can you help me out. But at some point, I think was relatively new to the firm or new to the SEC, and at some point he said he had some sort of employment agreement that precluded him from speaking about his prior position. And I think Mr. Nee said, you know, it's sort of off limits. You can no longer talk to him about that.

Q Okay. And so that you never got the information you needed from or asked for from --

A From.

Q From, I'm sorry.

A No, I don't recall, and I don't recall ever -- I think we were sort of not permitted to use it, sort of learned outside the scope of the exam or something to that effect.

Q Okay. But did you ever go -- did you ever have anyone go back to the company that he had previously worked
for and try to seek any information?

A No. I googled it. I think I tried to use the Internet to search for it, and I couldn't find anything.

Q Okay. I'm going to go to the next document.

(SEC Exhibit No. 31 was marked for identification.)

BY MR. KOTZ:

Q The document we'll mark as Exhibit 31. This is an e-mail from Ostrow to you, 5-27-2005, 2:13 p.m. This was something related to Auriga International. And Ostrow's saying to you, "Bernie stops in asking about Auriga International, whether or not it should be on the list."

You respond, "Hey, he said he's not familiar with Auriga International. It could be investor through one of the feeder funds."

And Ostrow says, "That's weird because Bloomberg reports Auriga has discretionary funds with B. Madoff."

Remember this issue?

A I don't remember that name at all.

Q Okay. Do you remember generally kind of catching Bernie in lies? Ostrow testified that he felt like Bernie lied to you-all on numerous occasions?

A Well, I think extremely evasive which -- so he starts off by saying he doesn't have this investment advisory business. Put the article in front of him. "Oh, I have a
few accounts."

"How much in assets?"

He says, "4 or 6 billion."

Okay. So we submit a request for the information. It comes back. It's 15 or 16 accounts with 8 billion. You know, to me, the -- I don't know if that's evasive or lying, but that's not good. And then, of course, you know, the strategy, you know, it's supposed to be with options. After we learned he had the accounts, he says he doesn't have options. These sorts of things, I mean, we now know are lies. Back then, I don't know that we -- you know, we knew that.

Q But did you get the sense, though, generally that kind of he would change his story as new information was brought to his attention? So if you didn't know something, he would say X and then when you found that out, he would change his story to something else?

A Yes.

Q Okay. All right. Let's go to the next document.

(SEC Exhibit No. 32 was marked for identification.)

BY MR. KOTZ:

Q The next document we'll mark as Exhibit 32. This is an e-mail from Bob Sollazzo to John Nee, 5-26-2005, 3:56 p.m. And Sollazzo says to Nee here, "Bernie is 'fessing up.
1 I could only access part of the memo, but it sounds like we may have something to review, directed executions. You wonder what is his benefit beyond commissions."

   Do you know what he was referring to when he said, "Bernie's 'fessing up"?

   A I'm speculating, but I assume it's that he has -- he's managing money for outside accounts.

   Q And this point about you wonder what is his benefit beyond commissions, do you think that that's that issue we talked about earlier about, you know --

   A Yes, that beyond, you know, he's not taking a percentage of the profits while he's allowing other people to do that.

   Q And then attached to that is a draft of a memorandum. It says, "Objective, discuss Bernard L. Madoff business in relation to hedge fund articles written about the firm."

   You see there's a reference on the first page of that in the last paragraph, "B. Madoff developed the model approximately eight years ago and is the only individual authorized to execute trades on behalf of the 15 entities using the model."

   So at this point, he kind of 'fessed up to 15 entities?

   A Yes, I think this is what I referred to earlier
when I said we put the articles in front of him and he finally acknowledged it.

Q Now, was there a kind of a limit in terms of registration, a certain number of clients that you could have before you have to register?

A I know now there is. I think at the time I did not know. It's 15.

Q Okay.

BY MS. STEIBER:

Q So when you brought this issue of the 15 entities that he's 'fessed up to Nee, did Nee suggest that you should get Bernie to register as an investment advisor?

A I don't recall. I don't recall. I don't recall having that discussion or talking about that.

BY MR. KOTZ:

Q Okay. The last paragraph for this document, it says, "B. Madoff was surprised that the staff was unaware that Madoff conducted this type of business since he had discussions regarding the firm's hedge fund relationships with SEC officials approximately one and a half years earlier." It says -- and then the footnote, "B. Madoff stated he communicated with Lori Richards and John McCarthy regarding the firm's hedge fund relationships."

So isn't it a fact that you found out about the SEC conducting another examination of Madoff from Madoff
himself? A Yes.

Q Was that somewhat embarrassing that you guys didn't know about that before?

A Yes.

Q And in that communication with -- he had with you when he talked about how he communicated with Lori Richards and John McCarthy, was -- do you think he was kind of -- was he also saying oh, he talked to Lori Richards who obviously was very high up at the SEC as a way to show who -- who he's been dealing with?

A I'm not sure I thought that at the time. I mean, I was sort of shocked that Washington had looked at this issue and also, it was -- once he finally acknowledged it, he became -- it was pretty condescending, I think, and because we didn't -- weren't even aware of it, I think that was sort of the tone he looked like when I didn't understand algorithmic trading. So I think that's kind of what my thinking was at that point. And then we asked, I think, who -- you know, who did you deal with or speak with so we could follow up with them.

Q Okay. All right. Let me show you the next document and mark it as Exhibit 33.

(SEC Exhibit No. 33 was marked for identification.)
Q It's an e-mail, 5-26-2005 from John Nee to you, copy Ostrow, 1:18 p.m., Exhibit 33. And it attaches the same document, but in this e-mail Nee says, "Thanks, Pete. In talking to William, I asked him to find out more about the actual execution and clearance of the trades. Executing brokers London exchange, prime brokers were used. I think they used Barclays. Show them the article. Were all of U.K. affiliate?"

Do you know if you and/or Ostrow were ever able to find out more about the actual execution and clearance of the trades?

A We asked -- we asked Bernard about this. My recollection is that Barclays -- Barclays London served as the clearance and settlement for the account that conducted this business. His -- his London MSIO, his London affiliate served as a settlement agent. Bernard said that in order to conduct securities trades in Europe, you had to have a settlement agent, and that's how it went.

Q Did you do anything further beyond talking to Bernie Madoff to resolve this issue?

A No.

Q All right. Let's go to the next document. Mark this as Exhibit 34.

(SEC Exhibit No. 34 was marked for identification.)
BY MR. KOTZ:

Q This is an e-mail from Eric Swanson to John Nee, 5-26-2005, 3:57 p.m.

So when you found out from Bernie Madoff that there was this other headquarters --

A Yes.

Q -- then John Nee went back to the folks in headquarters to ask about it, right? What do you remember?

A Yes. I remember taking their names down. I'm not sure. We ended up having some sort of conference call.

Q Okay.

A I guess John contacted them first.

Q Okay. Do you remember who was on the conference call?

A From New York, it was myself, John Nee, and William Ostrow. From Washington, I believe it was two people, Eric Swanson and Mark Donohue.

Q Okay. Do you remember on that call -- we've had testimony to this effect -- somebody from Washington specifically stated, "You should just be aware that Madoff was a well-connected and powerful individual"?

A Yes, something to that effect. I'm not sure if those were the exact words, but it struck me as odd at the time. It's what I remember from that call was -- you know, we're always professional, of course, when we go do our
I exams, but that kind of elevates your sense of your need to be professional.

Q Who do you remember saying that? Was it Swanson or Donohue?

A I don't think I knew who was speaking when we were on the conference call, so I'm not sure. And I think it was early -- sort of early on in the conference call.

Q But you think it was one of those two?

A I believe so.

BY MS. STEIBER:

Q Do you recall what they said about the focus of their exam?

A It seems similar to what we were looking at, and so, you know, we requested -- I think they sent up documents or requested them. And some of those documents appeared to be very similar to sort of the stuff we were looking at.

Q And did they -- do you recall what they concluded in their exam?

A I don't think they wrote a report. I mean, I think -- I think I asked John Nee about the report, and he said oftentimes they'll, you know, conduct -- I don't know if it's exams or inquiries and not write a report. I thought it was strange.

BY MR. KOTZ:

Q Did you have the impression, though, that they had
kind of finished their work and come to a conclusion, just
not written their report?

A I remember being it several months before -- a year
and a half or so before, so I thought -- I mean, obviously,
we -- you know, we have sort of a time constraint or somewhat
of a -- I mean, we don't go beyond five, six, seven months
generally. So for them to be -- this to be a year, year and
a half later, I think I thought they were pretty much done.

Q And did they indicate to you what their conclusion
was, if any?

A I don't recall any conclusion being told to us.

Q Okay. Did they provide to you any substance about
what they did, what questions they asked, what information
they gleaned?

A I think they sent out, you know, a lot of
documents, and I think some of that information was contained
in the documents.

BY MS. STEIBER:

Q Do you think they discouraged you from thinking
that Madoff was engaged in illegal activity?

A No, no, I don't -- I don't think they did that. I
think that the one comment that you made earlier was what I
remember as sticking out.

BY MR. KOTZ:

Q Other than the documents that they sent you and
we'll show you a cover letter for those documents, did you get any other substantive information from them about what they did or what they found or didn't find?

A No.

Q Okay. All right.

BY MS. STEIBER:

Q What was your reaction to finding out headquarters had done this -- pretty much this exam already? Did you have any reaction to it? Like gosh, why are we in here, what are we doing, we should --

A Yes, that type of reaction and like the word you used earlier, sort of embarrassing, I mean.

BY MR. KOTZ:

Q Did you kind of feel like well, they've already looked at some of these issues and so why do we have to look at them again?

A Somewhat.

Q Okay. I want to show you the next document. We'll mark it as Exhibit 35.

(SEC Exhibit No. 35 was marked for identification.)

BY MR. KOTZ:

Q This is a letter from Jacqueline Wood to John Nee, a cover letter dated June 9th, 2005, and it references various documents that were sent. Is this -- do you think
that these are the documents that were sent up from Washington or sent down from Washington about their exam?

A Yes.

Q Okay. And do you remember if you ever understand specifically what precipitated the Washington exam of Madoff?

A No, not at the time. I'll just -- as far as part of your investigation into this matter --

Q Okay.

A -- when I came back from the Madoff assignment that I was most recently on, I came back to my office and I realized that the boxes of documents they had shipped down did not include the two boxes that came up from Washington. So at that point, I called Mr. Nee who told me to go through them and copy any of the memos and any -- not all the documents, just the memos. So at that point, I did come across some sort of complaint or suspicious -- someone suspicious of Madoff. But at the time, back in '05, I don't recall.

Q Okay. Let me show that document. We'll mark it as Exhibit 36.

(SEC Exhibit No. 36 was marked for identification.)

BY MR. KOTZ:

Q It's an e-mail from [redacted] to Mavis Kelly, Wednesday, May 21, 2003, 5:47 p.m. Is this the
document that you say you realized was within the materials
that DC headquarters had sent to you as part of their Madoff
exam?
A    Correct.
Q    Okay. But at the time when you were conducting
your 2005 cause exam of Madoff, had you read this document?
A    I had conducted some sort of like cursory review of
the documents, but it seemed so similar to what we were
receiving in real time, that I didn't spend a lot of focus
and I just -- this didn't stick out to me at the time.
Q    Okay. So you may have glanced at it, but you
didn't really kind of analyze it.
A    Right, right.
BY MS. STEIBER:
Q    And you say you never considered calling
A    No. Like that's not a call like an examiner would
make. That would be -- you -- this is the sort of thing you
might bring to a supervisor and then sort of --
BY MR. KOTZ:
Q    And you didn't bring that -- that idea to anybody's
attention about calling?
A    No.
BY MS. STEIBER:
Q    Did John Nee look at the documents that you
received from headquarters?

A I don't believe so.

Q Did William Ostrow look at the documents that you received from headquarters?

A I don't know. The documents were in my space. We had cubes at the time, so I'm not sure if he did or not.

Q Do you recall the trading data that DC provided you with, did you ever look at it?

A I may have flipped through it. I think it was in hard copy format, so I didn't do any sort of analysis. I sort of felt like they probably had done that.

Q Did you recall that it reflected options trading?

A I'm not sure. I'm not sure.

Q If it had reflected options trading, the DC data, and you had looked it, would that have been a red flag to you? Because would it be inconsistent with what Bernie Madoff had told you?

A Yeah, if I recall correctly, he stated he stopped doing it in 2004, stopped trading options in 2004. But I guess it would have been suspicious, like his sort of refusal to acknowledge the business, refusal to acknowledge his MSIO was an affiliate. But I mean, you know, if he's not going to provide the documents and he's going to say he doesn't do it anymore, whether it's Bernard Madoff or anyone else, it's hard -- I mean, it's hard to know -- I mean, other than to
tell your supervisor, there's not -- not much more you can do
with the registrant.

BY MR. KOTZ:

Q Okay. Why don't we go to the next document and
mark it as Exhibit 37.

(SEC Exhibit No. 37 was marked for
identification.)

BY MR. KOTZ:

Q This is an e-mail from you to William Ostrow,
5-27-2005, 8:06 a.m. And if you look at the last -- the
second page of this document. There's an e-mail at the
bottom of the page from Ostrow to you, "Friday, May 27th,
2005, 8:31 a.m. He says, "Maybe we should put in motion a
written request for." And then the next page has several
things on it, one, two, three, four, five, six. "One,
customer statements and confirmations; two, correspondence;
three, what markets in London is Bernie using? How does his
securities settle? Would not be DTC or NSCC. Four,
description of the algorithm. Five, what is Barclays' role
in facilitating the transactions? Six, what role does the
U.K. office play?"

Do you recall whether a written request was ever
sent for that information?

A I don't recall.

Q You don't recall there being a written request?
A I don't recall putting together a written request for this information. I do recall speaking about like Barclays and the role of the U.K. office, as we discussed earlier.

A Okay.

Q What about, "What markets in London is Bernie using? How does his securities settle?" Do you remember asking Bernie that question?

A We definitely got into the strategy on how he was able to execute his orders.

Q Okay. Did you review account statements?

A We received account statements, yes.

Q Okay. And did you ever notice that the account balances on the account statements went to zero at the end of every month?

A I know that now. I'm not -- I don't know -- I don't recall seeing that back then.

BY MS. STEIBER:

Q If you had noticed it at the time, would that have raised a red flag?

A Well, I think -- I believe the way he explained the business was that the security -- it was each of the 15 or 16 accounts had an account like a custody account elsewhere. And then it was set up in a RVP/DVP format, receipt versus payment, delivery versus payment. So in order for him to be
able to access the money in the custody accounts, he had to
deliver the securities and vice versa. So I think that's
why -- I guess that's why, I mean. I'm not sure if I
answered that.

Q Well, no, I'm saying wouldn't -- if it -- he was
supposedly going to zero every month, wouldn't that raise
some suspicions about transaction costs, how could he making
be these returns with these significant transaction costs of
going into cash?

A I -- no, I don't think he was going -- I mean,
according to the documents that we were provided, he wasn't
going -- he wasn't zeroing out every month. In some cases,
he had -- he had the strategy going for multiple months. So
which I think was different than what some people had raised
in articles or during the pre-exam.

Q Going back to that prior issue that you just raised
about the custody of assets, did he ever produce any
documentation of these custody of asset issues, supposedly
from the bank that was custodying the assets?

A No.

BY MR. KOTZ:

Q Okay. In this same e-mail on page 2 of 4, e-mail
string, you say to Ostrow on Friday, May 27th, 2005,
8:35 a.m., "Okay. I'll write this request. I asked about
correspondence, and he said there were none, of course." And
then it says, "I'll address any missing docs as well."

Were there -- was there a concern that Madoff was not being forthright or providing all the information or that you would ask him about correspondence and he had said there were none? Was that kind of an overall concern in the exam?

A Yes. I mean, I think we thought it was strange there was such a lack of -- or there was no correspondence.

Q Okay. And then later on, Ostrow says to you, above, Friday, May 27th, 2005, 8:39 a.m., "Even as you hand the request to him, you can say if some of the questions don't apply, you can just write NA on it and give it to us a copy. Questions like Barclays or the U.K. office might not apply, according to Bernie."

Wouldn't that be odd for an examiner to say in connection to a cause exam, here's a request. You can say -- you can write NA.

A Well, I just think we wanted him to acknowledge in writing that certain things didn't apply to him rather than him just giving us a verbal response. I think that was -- I believe that's the idea.

Q Did you get him to acknowledge in writing these things?

A I don't recall.

Q You don't recall doing it?

A I don't recall receiving anything in writing.
Q Okay.

BY MS. STEIBER:

Q And why would questions like Barclays or the U.S. [sic] office might not apply according to Bernie, I don't understand.

A I imagine it's because -- does the SEC have jurisdiction over London offices or affiliates?

Q Did you ever research that issue?

A I did not.

BY MR. KOTZ:

Q Okay. Why don't we go to the next one?

(SEC Exhibit No. 38 was marked for identification.)

BY MR. KOTZ:

Q Okay. So we're going to mark as Exhibit 38. This is an e-mail from you to William Ostrow, Friday; May 27th, 2005, 10:48 a.m. And then below that is an e-mail from you to Ostrow Friday, May 27, 2005, 10:28 a.m. And there's a reference to Commerce Bank. "One of the brokers Bernie mentioned was Commerce Bank which I believe they either built or they were going to build the technology platform for."

Do you or Ostrow ever contact Commerce Bank to verify its relationship with Madoff?

A No.
Okay. There's a reference to regarding the settlement and clearance process. "He stated that Barclays clears the trades and then delivers the funds, shares to the customers. There's no prime broker. Barclays clears the trades for Madoff."

Isn't that inconsistent with the letter before that Nee got back from Barclays which said that there was no transaction activity?

A Right. I'm not sure if -- if we're referring to Barclays -- which Barclays. I think there was an issue about two different Barclays.

Okay. Do you know if at the time you thought let's go back to the Barclays letter and look at it vis-à-vis the point in this, that Bernie was saying about Barclays?

A I know we did not go back.

And then above Ostrow says in an e-mail to you, Friday, May 27th, 2005, 10:43 a.m., "We also want to know how that basket of trades is submitted to the 50 brokers in London. Maybe he just logs onto Barclays' website and is interfaced with them. How's the basket represented to these 50 brokers? Is it showing that Madoff being the customer? Is Barclays considered the customer? Is the whole side shown at once? Does it get shown piecemeal it's done over three days? Why does he use Barclays as opposed to his London affiliate? What does Barclays charge per share?"
And then you say in response at 10:48 a.m., "Good points, but I suggest we hold off on these questions until we receive the statements and other information."

Do you recall whether you got back to those questions?

A I recall getting an explanation of how sort of the transaction process worked.

Q From Bernie?

A Yes, verbally.

SEC Exhibit No. 39 was marked for identification.

BY MR. KOTZ:

Q Okay. The next document marked is Exhibit 39. This is an e-mail from you to Ostrow, 5-27-2005, 2:44 p.m.

A Which page? Sorry.

Q Turn to the last page of this document. There's an e-mail from you to Nee and Ostrow, Friday, May 27, 2005, 2:06 p.m. And you say, "Bernie failed to give me the account information for Thema U.S. equity fund which I noted in yellow on the attached spreadsheet."

Do you remember this issue in terms of not getting this information from Madoff?

A I don't recall it.

BY MS. STEIBER:

Q And then a little above that, you said -- Ostrow
1 says to you, "Did he get you the RVP/DVP instruction sheet?
2 Also, we'd like a list of corresponding contacts of each
3 account or who is the investment manager that is authorized
4 to call on behalf of the fund and increase the trading
5 limits."
6
7 You said, "I'll ask him to provide this
8 information."
9
10 But you had testified earlier you don't think he
11 ever provided that information.
12
13 A Correct.
14
15 Q And then up above that, William Ostrow says, "Try
16 to get a month or two of a big account like Fairfield Sentry,
17 Kingate or Tremont printed out today and put in geek bag just
18 so we get a feel for what the rest should look like.
19 Otherwise, he has three days to come up with a sample."
20
21 Do you recall this issue of Bill Ostrow not
22 trusting the -- the statements that Madoff was providing and
23 wanting to put them in this geek bag?
24
25 A I don't recall ever thinking or discussing with him
26 the fact that he might be fabricating statements.
27
28 BY MR. KOTZ:
29
30 Q What about this issue of the geek bag, just the
31 idea that when you asked for something, you don't give him
32 significant time to come up with it as a method in the exam?
33
34 A I don't think -- I think Mr. Ostrow in general was
pretty good about -- you know, is very suspicious of people and things. So I don't know that he was particularly concerned about this one exam or about Bernie doing that sort of thing. I'm not sure if he -- I don't know that his -- he was any more concerned or he wouldn't say anything differently if he was on another firm.

Q Did you get the feeling during the exam that Ostrow was being too suspicious?

A No. I mean, he's -- I would say people think, you know, he's a good examiner. He's sort of relentless and, you know, that's -- you know, that's a good thing, I think. You know, Bernard sort of felt that. I mean, he felt William really pushing him on things.

BY MS. STEIBER:

Q Okay. And then if you move up a little bit, you write to Bill Ostrow, "I submitted the request. He said this instruction sheet was provided. It is the sheet that was the custodian bank's along with the account number that I listed on the spreadsheet."

A I'm sorry. Could you tell me what page it is?

Q Sorry. As you move up, you say in the e-mail that you submitted this request to Bernie and Bernie replied oh, I already gave you these documents. Do you recall this issue about the DVP/RVP?

A I'm sorry. Could you repeat the question?
Okay. I'm sorry. Let's go -- let's continue going up the chain. You say on May 27th to Bill Ostrow, "I submitted the requests."

A Yeah.

Q That's for the DVP/RVP instruction sheet. It was provided. You know, Bernie replies that it was provided.

A Okay.

Q And then if you move up the chain, Ostrow says to you, "Wouldn't those account numbers you listed in the spreadsheet correspond to the account at Barclays or the Madoff account number? I can't believe that is the bank account information for each of the 15 accounts. I can't believe that Bank of America and HSBC both have account ranges that start with 1FR."

Do you recall this issue of receiving a document from Bernie Madoff that Mr. Ostrow found suspicious or found didn't add up to what he would have expected to have been produced?

A I don't really -- I don't recall this e-mail or this issue.

MS. STEIBER: Could we go off the record for just a minute?

MR. KOTZ: Let's go off the record.

(A recess was taken.)

BY MS. STEIBER:
1    Q    I'd like to show you a document and mark it as
2    Exhibit 40.
3
4    (SEC Exhibit No. 40 was marked for
5    identification.)
6
7    BY MS. STEIBER:
8    Q    And I just want to know -- I think these are
9    documents that were produced by Madoff, and if you look at
10    these --
11
12    MR. KOTZ: Let's just identify the document. It's
13    a list of entities, a two-page document with a list of
14    entities on the first and addresses and telephone numbers,
15    and then two columns on the second page.
16
17    BY MS. STEIBER:
18    Q    Do you recall when these were produced, whether it
19    was during your exam or later on during an investigation by
20    enforcement?
21    A    I'm not sure. I recall seeing this, certainly this
22    first page. I'm not sure if it was part of the exam or the
23    investigation.
24    Q    Okay. What about the second page?
25    A    This doesn't look familiar to me. I don't recall
26    seeing this second page.
27    Q    Okay.
28
29    BY MR. KOTZ:
30    Q    Okay. Show you the next document. We're going to
mark it as Exhibit 41.

(SEC Exhibit No. 41 was marked for identification.)

BY MR. KOTZ:

Q This is an e-mail from John Nee to you of 6-1-2005, 7:29 p.m. Seen in this e-mail chain, Mark Schonfeld, who I guess was the head of the New York office sends an e-mail around saying, "Chairman Donaldson will be stepping down effective June 30. Here's a link to press release."

You say to Nee, "Bernie told us he was on the short list when Chairman Donaldson was selected. Maybe this time."

And Nee says, "Maybe you and William can be his aides."

So Bernie did say that he was on the short list for the next chairman?

A Something to that effect, I recall it.

Q Okay. So did you think at the time that it was a possibility that Bernie Madoff would be the next chairman of the SEC? He was a well respected figure. Ostrow said he thought it was possible.

A I don't know. I took it as blowhard comment. I mean, trying to talk about his status in the industry and status on the markets. But I don't know that I ever thought he could really be chairman. I just -- I don't know.

Q And then isn't it true that -- and this is
something Ostrow testified to as well that Bernie told you
who was going to be the next chairman, that it was going to
be Chris Cox several weeks before it was announced at the
SEC?

A I don't think it was several weeks before. I think
right about the time it was announced -- I don't even -- I'm
not even sure he said who it was going to be. He may have
said he knows. There may have been news reports or press
releases about the next chairman about the next chairman of
the SEC is going to be named, and he may have said something
like I know who it's going to be or something. I don't
recall specifically him knowing prior to the announcement,
certainly not weeks before.

Q That was what Ostrow said. You think maybe he had
a different conversation with Bernie?

A I don't think -- I mean, I'm not even sure the
chairman was selected weeks before. I mean, I don't know --

Q No, no, no. What Ostrow said was that several
weeks before it was announced who the next person was.
Donaldson stepped down. Then there was a lot of speculation
as to the different people, who would be the next chairman.

A Right.

Q According to Ostrow, Bernie told him at least that
the next chairman's going to be Chris Cox, and several weeks
later, it was announced to be Chris Cox.
A: I don't recall that.

Q: Okay. All right. Let me show you the next document. I'm going to mark it as Exhibit 42.

(SEC Exhibit No. 42 was marked for identification.)

BY MR. KOTZ:

Q: This is an e-mail from you to William Ostrow, 6-1-2005, 11:09 a.m. If you go to the last page of this e-mail string in Exhibit 42, there's an e-mail from you to John Nee and William Ostrow, Wednesday, June 1, 2005, 10:11 a.m. And it says, "Cliff Notes version of my discussion with Bernie this morning. Bernie reiterated that his model only identifies the basket of securities in the S&P 100 which will replicate the S&P 100 at the least cost number of securities in shares. Does not tell them when to enter and exit the market. Bernie's gut feel tells him when to enter and exit the market. His gut feel includes his observations of the trading room here in New York, what his European contacts are telling him, what he reads in industry papers and publications."

A: Yes.

Q: In your experience, was that possible that Bernie had this gut feel based on his observations of the trading room in New York, what his contacts were telling him and
reading in papers and publications exactly when to enter and
exit the market?

A. I've heard -- I've never seen the returns, but
Steve Cohen is known as the greatest, you know, hedge fund
trader out there. And I think his returns are similar and
consistent with what Bernard Madoff was producing.

Q So you didn't -- it didn't strike you as anything
particularly odd that Bernie had this gut feel based on
observations of the trading room, what Europeans are telling
him and reading in the newspapers that he was able to achieve
the returns he was able to achieve with so little volatility?

A I asked him repeatedly, you know. I thought his
gut feel was, you know, strange, suspicious. You know, I
kept trying to press him. I thought there was something
else. You know, I thought, you know, he was getting some
sort of insight into the overall broad market that other
people weren't getting. So I repeatedly sort of pressed him
on that.

Q Did you ever figure out that -- the answer to that
question, what he was getting?

A No, I don't -- I mean, I don't -- he never
acknowledged -- and I think in testimony during the
investigation, he talked about some models or something.

Q But in the examination --

A Right.
Q -- he tells you this is his gut, it's his gut feel. You don't -- you think it's suspicious that his gut feel would be able to achieve that. How come you never get to the bottom of how he was able to do it?

A Right. I mean, I think we asked repeatedly over and over again -- I went -- you know --

Q You asked Bernie?

A I asked Bernie repeatedly over and over again, and at some point, I mean, I'm not sure what else to do.

Q Well, but if you're doing a cause exam, the SEC's doing a cause exam of a registrant and you're suspicious that he may be engaged in inappropriate or illegal activity, you're telling all you can do is ask him whether he's engaged in illegal or inappropriate activity, he says "no," there's nothing more you can do?

A Well, I think the -- the suspicions were such that he was stealing from the market, he was front running, he was cherry picking. Mr. Nee's thought was that it had something to do with the systems, data mining, analyzing order flow. Based on what we learned during the exam, it didn't seem possible that either he was front running, he was cherry picking or there was -- there was data analysis going on. At that point, I don't think we had any other -- we weren't sure what else to do.

Q What about taking further efforts to try to do
figure out what he was doing to achieve these returns given
that it couldn't be his gut feel?

A Well, I think we sort of tried to get trade
documents, trade blotters, trade executions reports, things
like that. At the time, it appeared -- they appeared
legitimate. You know, the other -- I mean, coming from the
industry, you know, it's very -- there's a lot of networking
that goes on. You can pick up the phone and call other
people whether you're analyzing a company or what have you.
The SEC doesn't seem to be that way. We don't have an open
relationship with the industry. So, you know, I think
ideally we could have spoken to professionals in the industry
to get their insight into the returns he was generating, the
strategy he was using and find out if it made sense.

Q So at that point in the exam, even though you
had -- were unable to get to the answer of how he was able to
achieve these consistent returns with so little volatility,
it was your understanding that there was nothing more that
the SEC could do?

A It was my understanding -- right. I didn't have
any other suggestions at that point.

Q Okay. Yeah, let me ask you something more about
this document, if you could look at page 3 of 4. Ostrow says
to you on June 1, 2005, 10:14 a.m., "Let me know if there
were any transactions during the time period we requested,
February 28th to March 11th, 2005 for Kingate and I will
guess -- I will check to see if there are on the database of
orders entered."

You respond, "Hilarious. Nothing. Only
transactions on Feb 18 and March 15th."

So wasn't that odd that you checked to see if there
were any transactions and there weren't any? What do you
mean by "hilarious"?

A I think that during this time that he had a
basket -- he had this -- supposedly had this strategy on. So
there's a basket of securities. He was long and he
had -- just he would long the securities. So I'm not sure
why the dates -- I'm not sure why Mr. Ostrow is asking me
specifically about those dates.

Q Yeah, he was checking to see if there were
transactions during a certain time period, and you found
there weren't any.

A Okay.

Q So -- but why would that be -- I don't understand
the hilarious, nothing. Wouldn't that be a major red flag
rather than hilarious?

A No. Again, I think he had the basket on during
this time period. So on -- and I think on
February -- sometime in mid February, he adjusted the basket
and then in mid March, he closed out the basket. I'm not
Q Okay. And then you can see on the front page of this document, page 1 of 4, Exhibit 42, you say in e-mail to Ostrow, Wednesday, June 1, 2005, 10:59 a.m., "Hey, I'm not quite sure what's going on with these statements. I'll show you later, but it seems clear as mud to me."

Remember what the issue was with his statements?

A His statements were not easy to read. They were -- you know, I think most people when you have an account with a broker-dealer, it has sort of the securities you have, the trades you made during the month, your balance. His, I believe, just had the securities listed, no balances, information like that.

Q So did you ever get to a point where you were able to understand the statements better?

A I think we had a better understanding. At some point we asked Bernie to explain them to us.

Q And then you were able to understand them?

A We were able to understand the information that was on there, sure, yes.

Q Okay. Okay. And then he responds to you, 11:07 a.m., "It's a funny way and I'm sure appropriate way to put it. I guess his stomach and gut were churning if he was buying and selling on the same day."

And then you respond, "I don't know, but assuming
he bought on or about 125 and sold on or about 315, he timed
the market pretty well."

So is it fair to say that you were aware at the
time that his timing abilities were extraordinary?
A Yes.
Q Okay. And suspicious?
A Yes. I think we tried to -- we did a little
historical look back to see just the market in general, sort
of the timing of his purchases and sales. And one of the
things that seemed that when there was sort of a downturn in
the market -- and there's an indicator that's used often in
the market called the volatility index. So it's sort of a
contrarian indicator. When the volatility index goes up,
it's because the market has gone down a lot. And I remember
seeing an article or some information about, you know, high
points in the volatility index. And it seemed like he was
pretty well correlated. He would buy when the volatility
index spiked, hence the market was down. But that's -- so I
think, yes. I mean, he seemed like a pretty -- you know, he
was entering the baskets at a pretty good time.

BY MS. STEIBER:
Q Did you ever consider going to -- or discuss with
Mr. Nee going to OEA to have them do an analysis to see if
his timing was even possible?
A I don't recall having any conversation with Mr. Nee
about that. I believe during the investigation part, OEA was contacted.

BY MR. KOTZ:

Q But you didn't think about contacting them during the exam part?

A No. I'm not even sure I knew that existed, so.

Q Okay. Let's go to the next document.

(SEC Exhibit No. 43 was marked for identification.)

BY MR. KOTZ:

Q Marked as Exhibit 43, this is an e-mail from Nee to Sollazzo, 6-2-2005, 10:04 a.m. And at the bottom of this page, there's an e-mail from Nee to you and Ostrow, Thursday, June 2nd, 2005, 9:27 a.m. It says, "William and Pete, Bob spoke to Macaroli" --

A Macaroli.

Q -- "Macaroli yesterday and he agreed the document associated with the black box model should be subject to the books and records requirements since the model is used in the conducting of the firm's business."

Do you -- did you -- do you remember this issue where you were trying to get information about the black box and there was a question of whether you were able to?

A Yes. I believe it was sort of a verbal request initially for information regarding -- Bernard referred to it
as Model MA206. That's when -- initially, he sort of balked
at wanting to provide any information about that. So I
believe I contacted Mr. Nee who contacted Mr. Macaroli.

Q And so did you understand that after the
conversations between Nee and Macaroli or how they were
responded back to you that there was nothing proprietary or
otherwise that you weren't able to get from Madoff in the
eval?

A Yes.

Q Okay. Let's go to the next one. Mark this as
Exhibit 44.

(SEC Exhibit No. 44 was marked for
identification.)

BY MR. KOTZ:

Q This is an e-mail from you to John Nee, 6-6-2005,
7:47 a.m. You say, "Hey, John, we still have not received
the hedge fund" --

A I'm sorry. I don't think I have that.

MS. STEIBER: Oh, I'm sorry.

THE WITNESS: Okay.

BY MR. KOTZ:

Q "Hey, John, we still have not received the hedge
fund contact list nor do the statements contain the address
of the 15 entities. We're going to ask him again today for
this information."
Do you remember that issue in terms of trying to get this hedge fund contact list or addresses?

A I don't recall it.

BY MS. STEIBER:

Q Do you recall if this is the list we showed you as a previous Exhibit 35?

A I have seen that list. I've just -- I'm not sure if it was in the exam or the investigation.

BY MR. KOTZ:

Q Going back to -- I'm sorry. Going back to Exhibit 43 for a second, in this e-mail that you sent John Nee June 2nd, 2005, 10:03 a.m., you say, "I don't believe the retail customer order flow from Madoff's market making business has anything to do with his hedge fund model. Granted, his purchase and subsequent sale time was excellent. Buy low and sell high but he held the basket for approximately six weeks, therefore, I don't believe he's using any short-term signals that would come from his retail order flow."

Was the point there that you didn't find evidence of front running?

A Yes.

Q Okay. But then you say, "I suspect that he is extremely well connected to European order flow information through his brokers and possibly the investors in his fund and is timing the market based on that information rather
than his retail order flow information."

Do you know whether if that was true what you suspect, would that have been legal or illegal?

A I'm not sure if I knew it was legal or illegal. I think at this point I was just trying to theorize how he could be timing the market so well.

Q Did you ever go back, talk to Nee or Sollazzo or anyone else, say this is a suspicion I have, how would we go about determining whether this is accurate and whether this is illegal activity?

A I never had that conversation.

Q Okay. All right. Let's go to the next document. I'm going to mark this next document as Exhibit 45.

(SEC Exhibit No. 45 was marked for identification.)

BY MR. KOTZ:

Q This is an e-mail from John Nee to Ostrow with a copy to you, 6-7-2005 at 1:47 p.m. First, if you look down, Ostrow sends an e-mail to Nee with a copy to you, June 7, 2005, 12:26 p.m. "We're reviewing all the basket trades conducted by the 15 or so entities using Bernie's proprietary model. For all of 2004, Madoff executed close to 2 billion shares of stock which represents a commission equivalent of approximately 82 million 0.4 cents a share. It appears that without this commission equivalent business derived from the
hedge funds, we estimate that the firm would lose 10 to $20 million per year."

Do you remember this kind of revelation during the exam that, in fact, the market making business was losing money and actually, it was the investment side business that was propping up the market making business?

A I don't remember discussing this or even --

Q Do you remember --

A I don't recall even seeing this e-mail. I mean, again, I think, you know, my focus was trying to figure out sort of how he's generating his returns.

Q You don't remember at any point in time that Bernie Madoff big market making business, well-known market maker and then you come and do an exam and see the market maker loses 10 to $20 million a year. It's only propped up because of his investment advisor side which you guys weren't even aware of when you started.

A We never discussed that. I don't recall discussing that.

Q Okay. Would that have been sort of a major revelation in an exam to find out that, you know, what you originally thought was so different from what you found in the exam?

A I don't know that that's the right characterization. I think that I guess it would have been
surprising to learn that, you know, his sophisticated market
making operation was a money loser.

Q And, in fact, he had this other operation which
wasn't well known at all before which was the money maker.
A Yes. I mean, I think in our report we noted that
the majority of the revenues for the firm were generated by
that -- by the IA business.

Q Okay.

BY MS. STEIBER:

Q So it was notable to you?

A It's definitely striking that his -- this -- one of
the three businesses generated so much and it was, you know,
essentially very small number of people doing this.

BY MR. KOTZ:

Q Okay. And then in this e-mail that Ostrow sends on
June 7th, 2005, 12:26 p.m., he also says, "Another issue we
have is with the London affiliated office of Madoff. Since
the London affiliated Madoff service is a settlement agent
for the U.S. office through Barclays, we will be researching
whether the London office should be deemed a branch versus an
affiliate."

There was some discussion about that before. And
then Nee responds to Ostrow with a copy to you, 6-7-2005,
1:47 p.m. "Thanks for the update. Be sure to keep your eyes
on the prize. The branch versus affiliate issue is a
secondary, tertiary issue at best. I also don't think we'd get that far with the IA issue as broker-dealers can, as you know, act in an advisory capacity."

Now, Ostrow testified that this was a very significant e-mail in the course of the examination where John Nee was saying I want you to keep your focus to a specific issue, the front running issue. Was that your understanding?

A My interpretation of be sure to keep your eyes on the prize was that he wanted us to focus on the IA business, the issues that we thought -- suspected, front running, cherry picking or his theory of data analysis, order flow analysis. You know, we started, you know, getting involved with the branch versus affiliate issue and other issues, and I think John was just trying to keep us focused on, you know, what we wanted to emphasize.

Q But if there are other issues that come up in the course of an exam, shouldn't you follow up on them and not just focus on whatever you started with months ago?

A Yes, yes.

Q So would you rather have followed up on some of those issues than be told to keep your eye on the prize?

A I don't think we were told not to follow up on them. I think he was just trying to keep us primarily focused on why we were there.
Q So did you follow up on these other issues?
A I didn't follow up on them.
Q So you raised an issue. Nee wasn't telling you not
to follow up, but you decided yourself not to follow up?
A I didn't raise the issue. I think Mr. Ostrow did.
Q Okay.
A I think he was sort of focused on the branch versus
affiliate more so than me.
Q Okay. Okay. Let's continue. The next e-mail
we're going to mark as Exhibit 46.

(SEC Exhibit No. 46 was marked for
identification.)

BY MR. KOTZ:
Q This is from Ostrow to Nee, 6-8-2005, 8:43 a.m. If
you could look kind of back all the way to the second-to-last
page, page 2 of 3, there's an e-mail from Ostrow to Nee with
a copy to you, June 7, 2005, 3:11 p.m. "On one of the days
we requested trades, Bernie was closing a basket. I asked
why we did not have these trades on the CD with all trades
entered between 2-28-05 and 3-11-05. Bernie stated that
because the basket was originally entered into in January
there were not orders entered in March but only executions of
orders placed previously. How could this be if a specific
price is now known and you're relying on the fluctuation of
stocks in a basket? Lamore views it as a standing limit
order good till cancel. What is your take?"

And then Nee responds, "What was the actual
language we used in the request? It could be a matter of
semantics."

And then if you could look on the next page, Ostrow
responds to Nee saying, "A large portion of this exam has
come down to semantics."

Do you remember this issue about semantics being a
concern?

A Yes, I think it goes back to Bernard being
difficult, being evasive. He didn't deem the investment
advisory business an investment advisory business. He deemed
it an execution -- executing trading platform. So throughout
the exam, there were things that would come up where we would
have discussions about and he would just refuse to sort of
acknowledge it. So I guess semantics is the right word, I
mean.

Q So how did you deal with that situation where he
would kind of use this semantics to stop questions or not
give information?

A Well, I think we would go back and forth until a
point where -- for instance, the investment advisory
business, we were going to deem it an investment advisory
business even though he didn't want to call it that.

Q But you were getting different information from him
about how many clients he had, right?

A Yes, right. So it started off he didn't really acknowledge the business, and then it was a handful, four, six. And then when he actually provided the documents, it was more.

Q But isn't it possible that it could have been even more than that? It could have been hundreds, right?

A Now, we know, yes.

Q But even at the time, if he's telling you -- you ask about a particular business, he says I don't have it and you have evidence that he has it. He says oh, I only have a few. Then you have evidence that he has more. He says well, I only have 15. At that point, is there any reason to believe he's telling you the truth then?

A I guess not.

Q Let's go to the next one. Mark the next document as Exhibit 47.

(SEC Exhibit No. 47 was marked for identification.)

BY MR. KOTZ:

Q This is an e-mail, 6-16-2005, 8:29 a.m., John Nee to Ostrow and you. Below this, Ostrow sends an e-mail to Nee with a copy to you, June 15, 2005, 4:55 -- I'm sorry -- 4:54 p.m. "Bernie's provided us all the documents recently requested. We still have some outstanding
questions. We'll stop by to see if you have any thoughts.

We would still like to visit some of the hedge funds.

Example, Tremont in Rye, New York and Fairfield in
Connecticut or New York. We want to gain an understanding
from the hedge funds from their perspective the strategy used
by Madoff."

Do you remember Ostrow suggesting that you visit
some of the hedge funds?

A Yes.

Q Did you agree with that suggestion?

A Yes, I thought it was a good idea.

Q Did you guys visit the hedge funds?

A No.

Q How come?

A When we went back to the office, we spoke to
Mr. Nee. We had a discussion about visiting the hedge funds
and Mr. Nee said essentially no, we could not do that. He
was concerned about potentially being liable if the hedge
funds turned around and pulled their assets from Bernard
Madoff.

Q Do you remember if he specifically said the SEC
could get sued if you did that?

A I don't recall specifically the SEC. He may have
even thought personally he could be sued.

Q Okay. Personally, meaning him, John Nee?
Q So he indicated that he might be sued personally if you went through this?

A I think he said us, individually rather than the agency.

Q Okay. And so basically, he made the determination not to go and he was the boss, so you didn't go?

A Right.

Q Okay.

BY MS. STEIBER:

Q Back to this e-mail, what did the staff learn with regard to this MISS system?

A I think we -- I think we were provided some information about the MISS system, a document that discussed it, but I think it was sort of the -- I think it helped sort of route orders and sort of used in the -- as part of the advanced technology that he used.

Q And did you consider requesting documents or data from this MISS system so that you would be able to have some electronic tracing of these alleged trades Madoff was making for the investment advisor business?

A I don't recall any. I think we asked for certain documents like the trade blotter. I'm not sure we ever thought to go specifically to a system.

Q Okay. Have you become aware of any other systems
that may have been able to provide trading activity reports or logs? And I'm going to show you an article I'm going to mark as Exhibit 48 called "Could Trade Messages Help Unravel Madoff Fraud" written by John Sandman.

(SEC Exhibit No. 48 was marked for identification.)

BY MS. STEIBER:

Q And see if you are familiar with the system that is discussed in this article. Let me just direct you to the second column.

A Sure.

Q It talks -- at the last full paragraph, second column talks about this FIX technology that apparently Madoff Securities had. Were you ever familiar with this FIX technology as a source of trade data?

A I remember seeing that term. I don't recall exactly what it was, FIX. I think it was referred to as the FIX technology.

Q But you never considered requesting these FIX logs?

A I don't think we ever requested the FIX logs, but I know again, Mr. Nee was pretty focused on the systems and, I guess, the technology. So I don't recall. We definitely touched on things related.

Q But you don't recall requesting any FIX logs?

A I don't recall any.
BY MR. KOTZ:

Q Okay. Let's go to the next document. We're going to mark it as Exhibit 49.

(SEC Exhibit No. 49 was marked for identification.)

BY MR. KOTZ:

Q This is an e-mail from you to Ostrow, July 5, 2005, 11:03 a.m. with an attachment. It's a one-page document. It's some kind of memorandum summary to obtain an understanding of the registrant's financial condition and business operation from the perspective of an independent auditor. What is the purpose of this document?

A This is for exams for different sections. We typically put them in different folders. And this appears to be a what's called summary control sheet. So if you review information, you write up a summary control sheet and include it with the folder.

Q Okay. Did you draft this document?

A Yes. It appears to be based on my initials.

Q Okay. That PAL at the bottom?

A Correct.

Q Okay. It references here, "The annual audit was prepared by the firm's independent auditors Friehling & Horowitz."

Had you ever heard of Friehling & Horowitz when you
1. did this exam?
   A No.
2. Q Did you take any actions to look into Friehling & Horowitz during the cause exam?
   A No.
3. Q Okay. Go to the next document. Mark it as Exhibit 50.
   (SEC Exhibit No. 50 was marked for identification.)
4. 
5. BY MR. KOTZ:
6. Q This is an e-mail from you to Ostrow, 7-5-2005, 8:34 a.m. and it also has an attached document. It's a two-and-a-half-page summary. Is this summary also a document that you prepared?
   A I believe so based on the initials at the end, yes.
7. Q Right. And this is kind of for the -- for the report. You put together these summaries and then you incorporate this into the report?
   A Correct. Again, it's sort of included with each folder and then can sort of be used, translated into a report.
8. Q Okay. And so in this document, you summarize the two articles about Bernie Madoff, right?
   A Yes.
9. Q Now, I guess what I don't understand is the
document summarizes what it said in the article and then has Madoff's response, you see. So for the Barron's article, it says, "According to the article," and then you, you know, you quote several things from the article. Then you say, "According to Arvedlund," et cetera, et cetera. And then, you know, it just ends with the discussion of exactly what was in the article. Then you go to the MarHedge article, and you describe what was written in the MarHedge article, right?

A  Yes.

Q  But I guess I'm trying to understand what is the purpose of this. Wouldn't there -- shouldn't there be some kind of analysis of what you think of the points in the article based on your exam? This just regurgitates what the article says.

A  Yeah, I think it's a summary of -- it's intended to be a summary of the articles. The -- what you were -- the items that you wanted to look into for the exam should be contained in another folder. So if you're, you know, looking for front running, then that would be in another folder.

Q  Was there any analysis done in the cause exam of the statements made in these two articles?

A  I think what -- you know, my recollection of these articles was people were very suspicious of his returns. They were suspicious of somehow using the market making business to either smooth returns or using order flow
analysis to help him either front run or, you know, if he had big orders to short of cherry pick during the day and then put those into the hedge fund, to the investment advisory hedge funds. Based on -- based on what we saw as the trading activity from the trade blotter and based on the execution times of the trades, it didn't seem as though either of those two suspicions made sense.

Q Did you go point by point of the information in the articles and then write here's what we found in response to what was written in the articles?

A We didn't do that. I mean, I don't -- the articles were written in 2001, so at some level, it was used for background information to help us think of things and ideas to look at. But I think that when we did the exam, it was a few years later, so we weren't testing or really trying to figure out if the article was completely accurate.

Q Okay. Okay. Let's go to the next document.

(SEC Exhibit No. 51 was marked for identification.)

BY MR. KOTZ:

Q The document is Exhibit 51. This is another e-mail from you to Ostrow, Thursday, July 21st, 2005, 9:33 a.m. and it attaches another document to analyze the firm's market making and proprietary trading activity.

What was the overall kind of conclusion of this
summary or your findings in this issue?

A My recollection is these are -- these were stocks that he traded in his market making business, and what we found was -- what I found was that for certain order types, he seemed to not be giving appropriate execution prices for these order types.

Q Okay.

A So we found that -- I believe that was cited as a violation in the report.

Q Okay. On the last page of this document, you say, "The staff suspects the firm is using the bad tick reason as an excuse to not program the MISS system."

What does that mean?

A Well, I think the MISS system again was their -- their technology that allowed them to -- allowed them to execute orders automatically without human intervention. It's part of their overall system. So when we presented this issue to them, they explained that whatever order type it was, that they were having -- that we cited as they were giving inferior price or execution prices to, it was very hard to program the system and that, you know, bad ticks when they -- when they -- the term bad ticks mean, you know, if a stock is trading at 25, there could be a price of 26 that somehow gets into the market system, and that's considered a bad tick because it really didn't trade at 26.
1 It traded at 25.

2 Q Okay. I'm going to go to the next document. Mark
3 the next document as Exhibit 52.

4 (SEC Exhibit No. 52 was marked for
5 identification.)

6 BY MR. KOTZ:

7 Q It's an e-mail from you to Ostrow, Monday, July 25,
8 2005, 8:51 a.m. and it attaches another summary, "To gain an
9 understanding of Bernard L. Madoff Investment Securities,
10 written supervisory compliance procedures."
11 And this is a document you drafted as well, right?
12 A Yes.
13 Q Okay. So this talks about written supervisory
14 procedures, right?
15 A Yes.
16 Q What about the issue of family members in key
17 executive positions in the firm? Is that a potential
18 supervisory compliance procedure issue?
19 A It is.
20 Q How come that's not referenced in this document?
21 A I raised that issue to -- you know, it's one of the
22 things that, you know, as we conducted the exam, we certainly
23 communicated back to Mr. Nee. And, you know, nobody seemed
24 to have a problem with that.
25 Q So you went back to Nee, Nee didn't seem to think
it was a concern, so you didn't put it in the document?

A Right.

Q Okay. What about lack of an independent custodian, was that an issue that was also raised?

A That they were self -- self clearing firm?

Q Right. Wouldn't that be a supervisory compliance procedure issue?

A I don't think I thought that at the time. I mean, I don't know that I had enough experience to know if that should be considered.

Q That kind of issue?

A Correct.

Q Okay. What about the e-mail retention policy issue, the fact that Shana in the compliance department could delete whatever she wanted if she determined that it was spam, would that be a supervisory compliance procedure issue?

A The fact that she -- I mean, I think the fact that -- now sitting here, the fact that she was a family member is, to me, a bigger issue than she could delete personal issues before providing them to us.

Q But isn't it that she could determine whether the e-mail was personal or not, so you wouldn't know whether it was personal. She would delete whatever she wanted.

A My understanding is that every registrant can do that before they provide us e-mails.
Okay. But I mean, isn't that something, though, that generally you would put in a summary of issues and maybe it happens a lot, but nevertheless, it's a compliance issue. You would reference it as something that you found.

Well, I think that's permissible at any registrant, so I don't -- I don't think it's --

BY MS. STEIBER:

You didn't think it increased the risks that -- the issues that increased the risks should have been in this memo?

Right.

They should have been put in the memo or they shouldn't have been put in the memo, things that increased the risk --

No --

-- like the family members, the lack of segregation of duties?

I don't -- I think we didn't realize at the time. I mean, we didn't -- again, firms have the ability to do that. I don't necessarily agree with it, and at the time I may have even said it's strange. I don't recall saying that, but I was pretty new to this whole examination program. So I mean, if firms are -- if we as the SEC permit firms to delete personal e-mails or to decide whether or not something's
personal or not, I mean, as an examiner, I don't know that I can do anything or it should be included in a document like this.

BY MR. KOTZ:

Q Okay. And the next document we'll mark as Exhibit 53.

(SEC Exhibit No. 53 was marked for identification.)

BY MR. KOTZ:

Q This is a e-mail from you to Ostrow, Thursday, July 28th, 2005, 8:11 a.m. And this is another summary that is attached to this document, several page summary. "Gaining an understanding of B.L.M's investment advisory business."

And again, this is a document you prepared?

A Correct.

Q Okay. Now, this was to gain an understanding of B.L.M.'s investment advisory business. Did you ever think about the question of how Madoff could personally trade so many trades per year. Didn't he say that he personally did the trading, Bernie Madoff?

A He was responsible. He was the -- made the decision on whether or not to enter or exit the market, yes.

Q Okay. But did he do the trading as well?

A The trading, my understanding, it's all fake, but it was all electronic or for the most electronic. So he sort
of leveraged off the technology he built in his other 
businesses to help him execute the orders for his IA 
business.

Q But he was the one who -- he himself did it all, 
right, according to him?

A No, I believe he said he had someone help him, 
Frank DiPascali. During the exam is -- I believe is what we 
learned. I mean, subsequently, I know a lot more, but during 
the exam, my recollection is he said he had one other person 
helping him.

BY MS. STEIBER:

Q And did you interview that person who was helping 
him do the trading during the exam?

A No.

BY MR. KOTZ:

Q What about the issue of the options volume? You 
know, there were questions of we don't see the volume. 
Questions about the low volatility compared to the market, 
his returns aren't correlated to the market necessarily, just 
the fact that he was able to achieve those consistent 
returns. How come that information is not put in this 
memorandum which summarizes his investment advisory business?

A I think again this is a summary control sheet of 
sort of what we found. I don't -- not in every case does it 
have sort of the analysis or something like that. And so for
this case, I'm not sure why -- I'm not sure why we chose not
to or didn't include it.

BY MS. STEIBER:

Q  Is it -- is it a summary of what you found or is it
a summary of what Bernie Madoff told you? If you start going
through the memo --

A  The summary control sheet, I mean, it's -- it can
be -- I guess it's -- I guess it can include analysis of what
you learned. In some cases, it's just straight, you know,
summarizing issues you come across. In other cases, it's
issues you come across and then as well as analysis or things
you learned.

BY MR. KOTZ:

Q  Okay. Why don't we go to the next document. We'll
mark it as Exhibit 54.

(SEC Exhibit No. 54 was marked for
identification.)

BY MR. KOTZ:

Q  This is an e-mail from you to John Nee, 9-1-2005,
4:50 p.m. It attaches an e-mail and a document. And this is
the final cause exam report of the Madoff examination, right?

A  Yes, it appears to be.

Q  Now, who drafted that report?

A  I would suspect I drafted the majority of it, but
I'm sure William had input -- Mr. Ostrow had inputs and then
it's forwarded to Mr. Nee.

Q Do you know how much input Mr. Nee had?
A My recollection is that I sent it to him. Usually, the way it work is the examiner will draft the report, send it to the supervisor. The supervisor will send it back for corrections, questions, addition. My recollection in this case is I sent it to him, and he made the corrections and finished and finalized the report.

Q Do you remember if there were a lot of corrections that he made?
A I don't recall if there were a lot or not.

Q Do you remember if it was more kind of substantive corrections of more editorial? Did he take anything out?
A I would characterize them as editorial.

Q Okay. Did he take anything out, any kind of substantive thing out that you had put in or Ostrow had put in?
A Not that I recall.

Q Okay. All right. I want to ask you a couple questions about the actual document.
A Okay.

Q If you look at the document and you have a background section, right?
A Yes.

Q Background section talks about a little bit of
background about B.L.M., Bernie L. Madoff Securities. Then
you have a section, examination and purpose of scope, on page
3, risk assessment. And then at the bottom of page 3, you
have examination findings. Do you see that?
   A Yes.
   Q Okay. So these are the findings in the
examination, starting really on page 4. Page 4 has Barron's
and MarHedge articles. This document essentially simply
regurgitates what was in the articles. All right. Do you
see -- if you're reading it, it's similar to the previous
control sheet.
   A Okay.
   Q It simply states what was in the articles. Then
the next section is business structure, IA business structure
on page 5. Business structure talks a little bit about the
background of Bernie's business and then -- okay. So if you
look on page 6, it has some information. Most of this
information is according to Bernie Madoff. You see it says
several times, three times in the first paragraph on this
page, "According to B. Madoff, according to B. Madoff,
according to this document." Then the next paragraph,
"According to B. Madoff," and the next paragraph again,
"According to B. Madoff."

And then finally, if you look on page 7, again,
"According to B. Madoff." Then you have, "See Model MA2.06,
according to B.L.M., this is information that Madoff provided about his operations," right?

A Yes.

Q And then if you look on page 8, you have another two paragraphs that talk about Madoff's operations according to him. And then you have a testing section. The testing section is on page 8. It's two paragraphs, one big paragraph, one small paragraph. Then if you go to 9, you have firm trading and market making background. Again, this is background information to page 10. And then you have B. testing and you have about a page and a half of testing. And then on page 12 is just the e-mail review and the conclusion. And I guess what I'm struck by in this document is, you know, it's a 12-page report of the cause examination, but almost all of it -- I'd venture to say 90 percent of it -- is information that Bernie Madoff supplied to you. Other than the testing sections which are relatively short, everything else in here is simply what Bernie said. Do you see that?

A Yes. He was our primary contact, and we got the information from him, yes.

Q But it doesn't seem like there's much analysis other than this is what Bernie told us. I don't see anywhere other than those testing sections where you say well, Bernie said this but we looked at this issue, we had this question. And there were open questions, right? He talked about the
volume, how he was able to achieve the returns. How come
none of that is in there?

A Well, the option volume issue and the questions
that were raised there went away because, you know, according
to Bernard that he no longer traded options. That sort of
went away.

Q Okay. What about the kind of central issue in the
beginning which was he has these very consistent returns?
You were never able to figure out why, right? And there was
still some suspicions. How come none of that is in this
report?

A I don't know.

Q And was there a sense in general from Nee or in
general in the SEC exam program that, you know, when you
wrote a report you were supposed to only write up the issues
that you resolved? If there were open issues, those issues
aren't generally put in a report.

A I mean, the report was written -- I mean, I
don't -- I'm not really sure how to answer that. I mean, we
wrote the report or I wrote the report or William and I wrote
the report as we thought best to do that, provided it to the
supervisor and then based on his feedback, if questions were
outstanding, then we would adjust the report.

Q Okay. So at no point did Nee or anyone else come
back to you and say wait a minute. You know, you should put
in some of these open questions that you had.

A Correct.

BY MS. STEIBER:

Q But you don't say anything here about wanting to go visit the hedge funds because you still had open questions. Did Nee ever say anything to you about that issue, like you should leave that out of the report, we're done?

A No.

BY MR. KOTZ:

Q Okay. We're going to take a break, and we can figure out what we want to do. But one more question just before the break. In the 2005 cause exam that you did of Bernard Madoff, were you looking at the question of whether Madoff was running a Ponzi scheme?

A No.

MR. TALARICO: Why would you expect him to put a question in the report?

MR. KOTZ: Want to go off the record?

MR. TALARICO: No. Why would you expect him to put a question in the -- well, it doesn't matter. Yeah, we can go off.

MR. KOTZ: Let's go off.

(A lunch recess was taken.)

MR. KOTZ: Okay. We're continuing at 1:55 p.m.

BY MR. KOTZ:
Q I just want to ask you a couple questions to follow up on some things from before. In some examinations, we've seen a planning memorandum that kind of lays out the scope of the exam. Was there one like that in this case? We haven't come across anything.

A No, I don't believe there was one, and I believe they became more -- they were written subsequent to that exam. It seems -- I did a larger firm exam, and I think I remember putting -- helping to put something like that together.

Q Okay. So you do understand that there are planning memos with -- in general with these types of exams, but that may not have been something they did at the time?

A Correct.

Q And also, you mentioned previously that NASD exams were not necessarily always helpful. Is there anything you can elaborate on? Was there a particular aspect of it that sometimes you felt like they didn't give you or go deep enough or what?

A Well, I think -- in general I think the NASD exams are a little less in-depth. It's more -- it's more checklist-type reviews that they conduct. So they don't go into great detail about specific areas.

Q Okay. At some point in time after the cause exam closed, you became area that enforcement was looking into
Madoff; is that right?

A  I became aware of a report written by Harry Markopolos.

Q  Okay. I'm going to show you some e-mails and ask you some questions about that. Okay. The first e-mail we're going to mark as Exhibit 55.

(SEC Exhibit No. 55 was marked for identification.)

BY MR. KOTZ:

Q  And this is an e-mail dated 11-7-2005, 9:35 a.m. from you to John Nee. And if you go back to the beginning of the e-mail string on page really 2 of 3 of this e-mail, it's an e-mail from John Dugan who's in the Boston office to Walter Ricciardi, David Bergers, other various people in the Boston office. And it says, "Subject, meeting with informant." Today you can see it says, "In a nutshell an informant came in, passed on information about Bernard L. Madoff." And it says, "In fact, the informant believes that Madoff cannot possibly be achieving the returns that the hedge funds claim he's getting. The informant believes that Madoff may be running one giant Ponzi scheme and there are signs that it may be close to crashing down on him."

Do you see that?

A  Yes.

Q  Okay. And then so then this get forwarded up, and
then if you see on page 1 of 3, it gets forwarded from Doria Bachenheimer who's in the enforcement division to Bob Sollazzo. And he says, "Hi, Bob, we're going to look into this. Do you know who the exam team is on Madoff?"

And then Sollazzo then forwards it on -- responds to Doria Bachenheimer with a CC to John Nee and says, "These are basically some of the same issues we investigated, and I recognize at least one of the hedge funds, Fairfield Sentry. Some of these comments are not new. I remember looking into a similar allegation back in the 90s at Madoff."

Do you know what he was referring to in terms of similar allegations in the 90s?

A I don't -- I don't know. I just remember a comment, offhanded comments such, you know, we looked -- we looked at him before, but there was never any detail.

Q Okay. At this point, did Sollazzo ever say to you by the way, here's what happened in the 90s, we looked at Madoff for a Ponzi scheme, here's what we found?

A No, no detail.

Q Okay. And then John Nee responds to you, "Oh, no."

Was John Nee concerned perhaps that this was a new matter that was coming up with some information and he was concerned that you guys hadn't spotted it in the exam? Is that maybe why he says "oh, no"?

A I'm not sure why he said oh, no. But, I mean,
because we conducted the exam, anything -- you know, any sort
of issue like this would, you know, be disconcerting, I
guess.

Q  Okay. And he says these are basically some of the
same issues we investigated. Do you know whether he's
referring to in your exam that you conducted, Sollazzo says
to Bachenheimer with a copy to Nee?
A  Could you point that out to me?
Q  Sure. Sollazzo says these are basically some of
the same issues we investigated, right?
A  Yes.
Q  And he's referring back to an e-mail from John
Dugan in which, "The informant says that Madoff may be
running one giant Ponzi scheme and there are signs it may be
close to crashing down on him."

But isn't it true that you guys didn't at least in
the examination look at the Ponzi scheme issue at all?
A  That's correct.
Q  So --
A  We never thought we -- that never -- anything like
that was never raised.
Q  So, I mean, I'm not sure exactly what he's
referring to, but it would inaccurate, don't you think, to
say that the issues that Harry Markopolos was raising -- he
being the informant -- were the same issues that you guys
looked at in the exam, right?

A Correct, certainly not the issues regarding the Ponzi scheme.

Q Okay. And then you say in the response to Nee you'd "be happy to sit down with anyone, provide them with an understanding of Madoff's strategy and our findings." And you say, "I don't believe we missed anything."

Do you know what you referred to there?

A Just, you know, sort of our emphasis of the exam, I thought we had done a -- or we had at least gotten the documents that would disprove the front running and cherry picking.

Q Right. You didn't mean to say in there I don't believe we missed anything that you -- you didn't miss anything relating to the Ponzi scheme, right?

A Correct.

Q All right. Let's go to the next document.

(SEC Exhibit No. 56 was marked for identification.)

BY MR. KOTZ:

Q Okay. The next document is an e-mail from you to Simona Suh, 11-10-2005, 3:34 p.m. and we're going to mark that as Exhibit 56.

So if you go to page -- this is a very long string of e-mail, but if you go to page 3 of 5, it seems like they
were setting up a meeting with Simona and the enforcement folks about this matter, is that right, and Meaghan Cheung?

A Correct.

Q So you met with them? Who was in this meeting?

A My recollection of what first happened after we got the report was there was sort of a flurry of activity. Everyone, you know -- at least I was nauseous. So we -- you know, they asked me to -- I think it was Mr. Sollazzo asked me speak with them, help them out as best I can, give them some background on the firm. In my -- my first memory of discussing it, there was a meeting with myself, Ms. Suh, an individual named Steven Johnson, an individual named Robert DeLeonardis, and it was -- it was just initial thoughts sort of meeting, what we thought was going on.

Q Now, you said you were nauseous?

A Sure. I mean, I did the exam. I helped conduct the exam of this firm, and when a report like that comes out with the title that has the word "Ponzi" in it, I mean, yes, I was nauseous.

Q You felt like somebody might blame you for not finding something in the exam or you might look bad?

A Well, I mean, I just feel responsible. I mean, I was there.

Q Okay. Okay. And then if you look on the first page of this document, page 1 of 5, in the e-mail to Simona
Suh, Monday, November 7, 2005, 2:36 p.m. --

A Can I just take one step back --

Q Sure.

A -- to that meeting? You know, one of the things I recall from that meeting, so I was -- you know, I was pretty upset when that report first came out, and one of the things that I emphasized at that meeting from what I recall is -- are the returns. Steven Johnson was a trader as well in the industry. I believe he traded -- he was a market working trader. And we had a discussion where we were talking about the returns, and I think -- my recollection is Steve felt that the returns were possible. He worked for someone who was that good who could generate those sorts of returns, and that I sort of spoke up and said, "I don't think -- I think you really need to look into this. This is abnormally consistent."

And I think I was a little overly emotional, you know, sort of the trader came out in me. And I remember, you know, someone -- I think it was Simona saying, you know, calm down, let's take a step back, you know. And I almost felt like I got -- you know, I sort of lost my -- a little bit of professionalism at that point, so going forward, I definitely sort of tried to tone it down a little with my thoughts and sort of my thinking about the exam and what was going on. I never held anything back, but I certainly, you know, tried to
take a more calm approach.

Q So did you get the impression that Steven Johnson and the other enforcement attorneys were kind of initially skeptical about Markopolos' allegations?

A I think so. I mean, I think they felt because of -- I think he was looking for money or looking or concerned about -- I think he wanted to remain anonymous because he was concerned about his family or something being killed or -- I think that someone discredited him a little bit, but I think, you know, the red flags were the red flags, that they were still going to go through them.

Q Okay. All right. Let me ask you about this e-mail at the bottom of page 1 of 5 in Exhibit 56. It's an e-mail from you to Simona, and you say, "Attached is a spreadsheet that helped to explain Madoff's strategy. As you can see, it's pretty plain vanilla."

What did you mean by plain vanilla?

A It didn't seem to be an exotic strategy where he's trading currency, he's trading mortgage-backed securities. He was just trading equities.

Q And so given that it was a plain vanilla strategy, wasn't it more likely that there was something else to the story? In other words, how was he able to achieve these returns with a plain vanilla strategy? It wasn't like he had some fancy, complicated strategy that could explain the
returns. It was a plain vanilla strategy that a lot of other people used, and so wouldn't it be more likely because of a plain vanilla strategy that -- that there needs to be some explanation for the returns?

A Right. I don't know that a lot of people used it, but, I mean, it wasn't -- right. The types of securities he was trading weren't exotic. I think it goes back to, you know, the very start, the pre-exam work that I did. You know, you always sort of consistency that he was able to generate.

Q And the consistency would be even more in question given that the strategy was plain vanilla, right?

A Yes. I mean, for instance, Steve A. Cohen pretty much just trades stock and options which you would consider plain vanilla as well, but he has, you know, exceptional returns.

Q Okay. But, I mean, overall in order to achieve those kinds of returns, in general you would think there would be some kind of elaborate, complicated strategy. Otherwise, everybody could do it, right?

A Right. I mean, he had some edge, and the question was what was his edge.

Q Okay. You also say, "Thus we don't believe that he is front running his market making desk."

And that was the conclusion of the exam, right?
A Right.

Q And so were you aware that Harry Markopolos' complaint essentially said there were two options of what was happening to explain Madoff's returns. One was front running which I think he termed as less likely, and one was Ponzi scheme which he termed as more likely. So given that there wasn't front running which you had determined in your cause exam, wouldn't that lead one to believe that it's more likely of the two that it would be a Ponzi scheme?

A I would think so, yes.

Q And then if you see in this e-mail, Simona asks to you, "Is it correct that the statements in the spreadsheet and the CD and the work papers is generated by B.L.M., not the custodians? If so, do you know whether the custodians provide any statements directly to the customers?"

A Yes.

Q Okay. And then you say, "I don't know what the custodians provide to the hedge funds. However, I would expect that the funds have online access to their account at the custodian banks and can review the activity, cash, stocks, et cetera."

Do you see that?

A Yes.

Q Did you check that? You say I would expect that that would be the case, but in the exam, did you check that
to confirm that?

A No. Again, during the exam, we chose or we were directed not to speak to the hedge funds.

Q Right. Okay. All right. Why don't we go to the next document? Okay. The next document we're going to mark as Exhibit 57.

(SEC Exhibit No. 57 was marked for identification.)

BY MR. KOTZ:

Q And this is a e-mail from you to John Nee and William Ostrow, 11-10-2005, 12:21 p.m. with an attachment.
And this is -- there's an e-mail from you and below that is Harry Markopolos' e-mail to Meaghan Cheung. And it says -- it's dated Monday, November 7th, 2005. And he says, "Meaghan, I spent some time over the weekend further improving my analysis on why Madoff Investment Securities, LLC is likely a Ponzi scheme."

Okay. Did you understand that basically the primary part of Harry Markopolos' complaint was his allegation that Madoff was running a Ponzi scheme? I mean, if you could see in his complaint, if you turn to the next page. He says, "There are two possible scenarios that involve fraud by Madoff Securities. One, Scenario No. 1, unlikely." And that talks about front running. And then you can see on the next page, it says, "Scenario No. 2, highly
likely. Madoff Securities is the world's largest Ponzi scheme."

I mean, wouldn't you agree that the essence of Harry Markopolos' complaint here is that Madoff was running a Ponzi scheme?

A Yes. If you're going to prioritize what you're going to look at, I would say that it is correct. But again, you know, I was -- just so everyone knows, I mean, my role in this was sort of support enforcement and assist them as directed. I had no sort of authority in what we could look at, what to prioritize, who to speak with.

Q Right. Did enforcement prioritize the Ponzi scheme in their investigation of Madoff?

A I don't recall that. I recall going sort of one by one through the red flags. I think that was the methodology but not ever really expressed to me. I assumed to be.

Q You say in this e-mail to Nee and Ostrow, 11-10-2005, 12:21 p.m. "In short, these are basically the same allegations we have heard before."

But you hadn't heard allegations about a Ponzi scheme before, right?

A Right, that's correct. I was -- that was incorrect.

Q And you say this thing about the author's motives are to make money. You mentioned that that was something
that Steve Johnson raised as well?

A No.

Q Okay. That was something --

A I think that was -- my sense was speaking with the attorneys initially, Meaghan Cheung and Simona Suh, was that somewhat -- they were somewhat skeptical of Markopolos because he had added, you know, the fact that he was looking to make money and sort of paranoid as well.

Q Okay. But under the question of making money, wouldn't Harry Markopolos only make money if actually something was found?

A I'm not familiar with how that works, but I assume that's correct.

Q Okay. So if the guy was looking to make money, would there be any point to send allegations to the SEC that are just kind of made up that have no basis? Would he make any money that way?

A No.

Q So I don't understand why that would be a matter of skepticism, that he was making money. I mean, wouldn't he have the same interest as the SEC? In other words, he'd only want to bring to you guys stuff that actually comes to something. Otherwise, he's wasting his time and doesn't make any money. I mean, it's in his interest to help find the Ponzi scheme and to identify a Ponzi scheme, right?
Q Okay. Why don't we -- let's talk a little bit about the document. So at that time, did you read Harry Markopolos' submission?

A Yes.

Q Okay. And you went over this with the enforcement folks or separately?

A Separately.

Q What did you -- did you -- what was your general sense of the document?

A Lengthy.

Q Okay.

A Well put together.

Q Okay.

A Definitely, work was put into it.

Q Okay.

A Effort.

Q I'm going to show you a document -- the next exhibit we're going to mark as 58.

(SEC Exhibit No. 58 was marked for identification.)

BY MR. KOTZ:

Q I believe that this may be the complaint with your notes on it.

A Okay.
Q. So why don't we work with that one. We're going to mark this as Exhibit 58. Are these your notes?

A. Yes.

Q. Okay. Can you see what you write there at the top? I know some of it is cut off.

A. Yes. I'll read it from the top. "We cannot reveal Bernie's strategy to this guy." The second note is "Did he pitch this case to Washington?" And then my third note is "Why not go directly to NERO?"

Q. Okay. Well, what did you have in mind with these points?

A. Well, I was -- I guess I was concerned about not knowing his ultimate motives. I think from the industry people who are jealous of other people and think that maybe they have some edge that they can sort of look into -- maybe looking to get the information or the edge that Bernie had.

Q. Okay. But rather than focus on the personality of the individual who provides information, wouldn't -- wouldn't one just focus on what the information is, take it based on the information, follow up based on the information?

A. Sure. I mean, ultimately, that's what you do.

Q. Okay. Then at the bottom of the page on the right side, there's an arrow, and it says something like multi billion.

A. "Multi billion dollar funds."
Q What is the rest?
A "Do no due diligence."
Q Okay. So what was your point there?
A I suspect I felt like if you're a fund to funds with multi billions of dollars that you would do sufficient or good due diligence on a manager that's taking your money.
Q Right. Okay. If you look on the second page of this document, at the bottom of the page, you write, "Wrong" with an arrow, right?
A Yes.
Q Why -- what was wrong there?
A Well, during our exam we learned that -- or we were told that he had approximately $8 billion under management, and in this report, he's noting 20 to 50 billion.
Q Now, that 8 billion number, you got that from Bernie Madoff, right?
A Correct.
Q And Markopolos is saying that Bernie Madoff is a liar and running a Ponzi scheme?
A Correct.
Q So, I mean, is it -- do you know that that's wrong or you're just saying Bernie Madoff doesn't agree with that statement?
A It's the latter. I mean, I don't know that that's wrong. I'm just -- as I'm -- when I first got the report,
I'm making notes.

Q Okay. Okay. So in terms of the particular red flags in this report, you say you went through them and I guess it sounds like enforcement went through them one by one. What are the particular red flags that, you know, you felt like were clear issues that needed to be followed up on? A Well, I think if you get a report like this, every red flag has to be followed up on this, I mean.

Q Okay. Were there particular red flags that you thought were more credible than others? Did you find the red flags --

A Well, just based on the exam, I thought some were maybe less credible than others.

Q Okay.

A But again, that's knowledge I learned during the exam and the fake documents that I was provided.

Q Right. But it was also knowledge you learned straight from Bernie Madoff, right?

A In -- in many cases, yes.

Q Okay. So if you knew something that Bernie Madoff told you and that would contradict something that Harry Markopolos said in this document, that doesn't necessarily mean that Harry's wrong. It could be Bernie was lying.

A That's correct.

Q Okay. So your understanding was the enforcement
staff kind of went through this point by point, flag by flag?

A I believe that's what their objective was.

Q Okay. And do you know what they concluded as to particular red flags?

A I don't.

Q So did they ask you for your comments on the red flags?

A No, I never -- I mean, we had a meeting or two or three, but it was never detailed sort of -- never really sought my analysis or understanding of the red flags and so forth.

Q Okay. Did you ever talk to Harry Markopolos?

A No.

Q What about the other individuals that are identified? There's several other individuals identified in this document. Did you talk to anyone else outside the SEC about these issues?

BY MR. WILSON:

Q Do you who any of these individuals are? Have you ever heard of them?

A No, I was not familiar with them. I'm not looking at it now, but back then I recall not knowing any of those people.

BY MR. KOTZ:

Q Do you know if the enforcement attorneys contacted
Harry Markopolos?

A    I believe I've read that Meaghan Cheung did, but at the time, I don't believe I was aware that she ever spoke to him directly.

Q    Okay. Did the enforcement attorneys ever comment about Harry Markopolos at all?

A    No. I think just what I -- what I mentioned earlier about him, you know, sort of the motives, questioning his motives. But it wasn't -- I don't -- I still think, you know, they really were focused on going through the red flags that he presented.

Q    Did they ever mention anything about the fact that he kept calling a lot and kind of was bugging them?

A    No.

Q    Okay. I'll show you the next document. Mark it as Exhibit 59.

(SEC Exhibit No. 59 was marked for identification.)

BY MR. KOTZ:

Q    This is an e-mail from you to John Nee, 11-10-2005, 11:51 a.m. Now, in this e-mail, Exhibit 59, John Nee responds to your previous e-mail that we showed you where you say these are basically the same allegations we've heard before. He says, "No, Pete, I don't think have anything to add. I think the report speaks for itself. There's still a
little mystery as to what Madoff does, but a Ponzi schemer
directly trading on immediate customer order flow doesn't
likely from what we've seen."
Now, John Nee is saying that, but isn't it the case
that John Nee would really have no way of knowing whether a
Ponzi scheme was likely since the examination didn't actually
look at that issue?
A That's correct.
Q And you also say you were "a bit spooked, but
having a read the informant's analysis, I feel much better
that he is incorrect."
What'd you mean by that?
A I don't know. I must have been referring to the
red flags and what -- you know, what we learned during the
examination being contradictory to the red flags.
Q But again, what you learned during the examination
was from Bernie himself?
A That's correct.
Q Okay.
A But, I mean, the documents, you know, were from
Bernie himself but they were from systems at Madoff.
Q Okay. Show the next document. Mark it as Exhibit
60.
(SEC Exhibit No. 60 was marked for
identification.)
BY MR. KOTZ:

Q Okay. This is an e-mail from you to Lamore -- I'm sorry -- from Ostrow to you, 11-14-2005, 10:36 a.m. And below it is an e-mail from you to Meaghan and Simona, and you say, "In order to refute all of his allegations, we need -- may need to request some documentation from one or more of the fund to funds, FOF. In particular, I would suggest obtaining the marketing material regarding the strategy, 2005 statements, including trade confirmations and a copy of the audit performed on the FOF."

Why -- why did you think that those were things that needed -- needed to be done?

A I think the marketing material may have been because of the strategy, the fact that he told us he no longer traded options.

Q So did you feel that an important issue in this investigation would be determine whether Bernie was telling the truth when he said he didn't trade options?

A Yes. I recall, you know, sitting in the testimony when he -- basically, you know, it was my word versus his word, and, you know, that was -- you know, that's one of the biggest things that I remember from his testimony. I mean, it was my word versus his word.

Q So in the testimony, Bernie Madoff admitted to trading options, right?
Correct. He supplied documents prior to his testimony that included options.

And he had previously told you that he didn't trade options?

During the examination, he told us he did not trade in options.

So that would be a pretty major suspicious red flag in an investigation of somebody for a fraud or a Ponzi scheme, that he told you one thing in the exam and then under oath he told a different story, right?

Yes.

And you pointed that out to the enforcement people? I was furious. I didn't -- I didn't think it needed to be pointed out. I mean, my report is my report, you know. That's -- I mean, that's official, an official report. I mean, it's not -- you know, there's nothing questionable that should go in that report. So essentially, it became my word versus his word. He explained it away by saying that we must have requested documents related to the model which the options don't include, but I knew that wasn't the case.

Now, did Simona and/or Meaghan give the impression that they weren't -- didn't necessarily believe you that Bernie had said this before?

No. We never -- I don't ever remember having a
around. I didn't -- I mean, I never -- I mean, I couldn't imagine someone doing this Ponzi scheme. And, you know, I know the report was written, the Markopolos report, but it was just -- it was unimaginable. I mean, I just --

Q Even though that was what enforcement was investigating, whether he was running a Ponzi scheme?

A Yeah. I mean, I thought -- I mean, obviously, you have to go through the steps to ensure that it's not, but it just -- I mean, it was just --

Q But you knew at that point that Bernie Madoff was a liar, right?

A Yes. I didn't -- I didn't -- right, I agree. He -- there were too many inconsistencies with what he told me.

Q And so if he's a liar, then there was at least the possibility that he was engaging in fraud, right?

A Right. But, I mean, lying or misleading to fraud, Ponzi scheme to me was a huge step, a huge leap.

Q Okay. Okay. What about requesting documentation from one or more of the fund to funds? Why were you suggesting that that be done?

A Well, I just -- I think I believed, you know, it was a third -- it was a third party, something we considered during the exam. So I thought it was an idea or a suggestion that they should hear.
Q Now, if Madoff self cleared, generated his own trade confirmations and client statements, wouldn't the documents he sent his clients be the same?

A He self -- during the examination, he told us he self cleared his proprietary market making business. The IA business was supposedly cleared through Barclays. It wasn't self -- self clearing.

Q Right. But you never confirmed that, right?

A Correct.

Q So wasn't it possible that given he said he self cleared in his market making business, he might have self cleared on the other side, too? And so getting the information from the fund to funds wouldn't really tell you anything.

A Well, my thinking, I think, was he -- the assets were actually custodied offshore so that they would actually have information regarding -- regarding the money or the assets.

Q Okay. Was there any discussion of maybe going to an independent source rather than his feeder fund to get confirmation?

A I don't recall that.

Q Okay. And then Ostrow says, "You also mentioned to me the FOF materials should not refer to the strategies but strike conversion since no options were involved in recent
years." And then it says, "In addition, the main thing that informant does not know is that the trades are done in Europe."

But again, that information is simply from Bernie Madoff. There was no attempt to confirm that?

A Correct.

Q Okay. Now, were you familiar with the split strike conversion strategy that Madoff was saying he was using?

A Prior to the examination, no.

Q But what about as you went through the examination, did you gain an understanding of it?

A Yes.

Q Could you execute a split -- the split strike conversion strategy without trading options?

A No, it was part of the strategy.

Q So how could he have executed the split strike conversion strategy if he said he wasn't trading options?

A Well, I think when he stopped trading options it was no longer a split strike conversion strategy. It was more of a, you know, almost like an index fund, long mutual fund.

Q Did Bernie Madoff tell you that he'd stopped using the split strike conversion strategy?

A He told us he stopped trading options.

Q Did he say anything about he had a new strategy
1 without options?
2 A No.
3 Q Okay. Now, this issue about trades being done in
4 Europe, do you know if there was any discussion among the
5 enforcement staff of trying to get information about trading
6 in Europe?
7 A I don't know.
8 Q You don't -- you're not aware of any effort in that
9 respect?
10 A No.
11 Q All right. Let's go to the next document. We're
12 going to mark that as Exhibit 61.
13 (SEC Exhibit No. 61 was marked for
14 identification.)
15 BY MR. KOTZ:
16 Q This is an e-mail from you to Simona Suh,
17 11-17-2005, 10:18 a.m. Now, below it Simona says to you and
18 Meaghan Cheung, Wednesday, 11-16-2005, 6:48 p.m., "Meaghan,
19 prior to sending out this request, maybe it makes sense for
20 us to call Fairfield's legal or compliance department to warn
21 about the request and also to give a heads-up as to its
22 scope."
23 Do you see that? That's the middle paragraph in
24 Simona's e-mail.
25 A Okay.
Q Do you know why in an enforcement investigation of fraud you would call up the entity first to warn them about the request and give them a heads-up?

A I have no idea.

Q Would it seem to you, odd, that if you're doing an investigation of fraud that you would call the entity you're getting information from and tell them, "Hey, I'm going to be asking for some documents or some information soon."

A I guess, yes.

Q Okay. Did you ever get the sense that there was a concern on the part of -- Simona or Meaghan's part of not offending Fairfield or wanting to make sure that they were not upset about this request?

A No, I never got that sense.

Q Okay. Do you know if Fairfield did provide information to --

A Yes.

Q Yes. Okay. Did you review those documentation?

A I helped review some of those documents.

Q What did you find?

A My recollection is I reviewed some option trading and I found one instance where it seemed as though a very strange trade where one leg of the option -- I'm sorry, one leg of the split-strike conversion strategy was taken off and put back on a couple days later for around a $5 million
profit. And I pointed that out to Ms. Suh and I believe it was asked about during the testimony of Bernie Madoff.

Q Okay. All right, let me show you the next document we're going to mark as exhibit 62. This is an e-mail from Doria Bachenheimer to Andrew Calamari, 11/22/2005, 10:29 a.m.

Doria says to Andrew, "The exam team doesn't think there's anything here. Simona is going to seek information from some of the hedge funds on a voluntary basis to test some of the explanations that Madoff gave to the exam team. If they work out we won't do anything."

Now, did it seem to you at the time that for whatever reason, Doria or the rest of the enforcement team on the Madoff case wasn't looking to do very much? I mean they get this very long involved complaint and they decide they're going to seek information on a voluntary basis and after that not do anything?

(SEC Exhibit No. 62 was marked for identification.)

A I remember Ms. Suh working extremely hard on this. I can't speak to either Meaghan Cheung or Doria Bachenheimer, but there was a lot of information that Simona was reviewing.

Q But was there kind of an initial sense when they got the complaint and the matter was opened that there probably wouldn't be anything there?

A I don't know if I could evaluate whether or not how
serious they took it. I know that we met and, you know,
talked about sort of going through the red flags, I just, you
know, how serious they took the complaint I don't know. But
for me, I mean, just the title of the report in and of itself
was pretty serious, so I figured not only them but pretty
much everyone, the top people in enforcement would be
following up on it.

Q So you took it very seriously, Harry Markopolos' complaint?

A Yes.

Q And you felt that it was important to do a thorough
analysis or investigation of the points that Harry made?

A Yes, both because of calling it a Ponzi scheme and
also just the size. The size of what he was alleging in the
Ponzi scheme was enormous.

Q Right. And is it fair to say that even after the
exam there were things that didn't add up and so that maybe
brought a little more credibility to having somebody look at
this issue?

A Yes.

Q Okay. All right, why don't we go to the next
document? The next one we're going to mark as exhibit 63.
And this is an e-mail from you to John Nee, 12/14/2005, 9:10
a.m.
MR. TALARICO: Do you have another one?

MR. KOTZ: Yeah, sorry.

BY MR. KOTZ:

Q Okay. This is kind of an interesting e-mail.

Let's go to the back page first.

A Okay.

Q Simona sends and e-mail to you and Meaghan Cheung, Tuesday, December 13, 2005, 3:17 p.m. And in here -- in this second full paragraph Simona says, "Well, I've not yet completed the review of the general binder. One odd discrepancy did catch my eye, as you know, Madoff told Peter he stopped using options as part of his trading strategy in January 2004, yet the account statements and trade confirmations produced by Fairfield Greenwich show trading in S&P index option all through 2004 and up to October 2005."

A Yes.

Q So this was a pretty significant finding, don't you think?

A Yes.

Q Okay. And do you think that Simona appreciated that, she refers to it as kind of an odd discrepancy?

A I think she did. You know, again, during the testimony he somewhat explained it away.
Q Now, she says to you, "Peter, would you have time to take a look at the data and see if I'm missing some obvious and innocent explanation for this?" Did you do that?

A I reviewed -- I definitely reviewed option trading data, I'm not sure if that's what's being referred to.

Q Did you find some obvious and innocent explanation for why he told you that he wasn't doing options and then the documents show that he was?

A No.

Q And you, I assume, reported that back to Simona?

A I assume so, I --

Q Okay. Then there's an e-mail, this is kind of a little bit eerie. John Nee sends an e-mail to you, Wednesday, December 14, 2005, 8:04 a.m. "Did you see the Madoff scandal in The Post, something about a hedge fund and a manager, something blowing up, a scandal?" And you respond, "You are hilarious."

A I'm not sure if that article actually was just speaking about a hedge fund in general or --

Q I think it was a joke --

A Oh.

Q -- and he was referring to, you know, Harry Markopolos said this is a big Ponzi scheme, it's going to come out any day. And Nee is saying, "Hey, did you see in the paper, a Ponzi scheme came out?" And you're responding
that it was a joke.

A I'm not sure, because when I say "it looks like I'm in for a lot of fun," I don't -- I mean, I think that's, you know, it -- I think it was saying jokingly that I'm going to have -- there's going to be a lot of work to do.

Q Okay. And then you say at the top in the e-mail to John Nee, 12/14/2005, 9:10 a.m., "I'm actually looking forward to looking at the documents, trying to figure out how they structured everything. The letter Simona from the GC was clear as mud." What did you mean by that?

A The last part?

Q Yeah, the letter from -- to Simona from the GC was clear as mud.

A I just -- I don't recall what that letter is, I'm not sure what I'm referring to.

Q Okay. Okay, I'll show you the next document.

Let's mark this as exhibit 64. And this is an e-mail from you to Simona, 12/13/2005, 5:46 p.m. And this is in response to an -- another response to Simona's e-mail we showed you previously where she asked you to look at documents and you say, "Hi Simona, I will definitely make time to help review these documents. The option strategy account is an issue because Madoff specifically told us that he stopped incorporating options as of January 1, 2004 because it became too complicated."
Now, did that strike you as kind of an odd explanation for -- from Madoff that he would stop incorporating options because it was too complicated? Did Madoff seem like the kind of guy who would have trouble with complicated issues?

(SEC Exhibit No. 64 as marked for identification.)

A It was odd.

Q Okay. And so it seems to indicate clearly here that, you know, you were interested and had concerns and were going to make whatever time was needed to help with this investigation, right?

A Yes.

Q Okay. Okay, why don’t we go to the next document. Okay, let’s mark this as exhibit 65. This is an e-mail from Simona to you, 12/14/2005, 7:42 p.m.

And in this e-mail Simona says, "Fairfield Century's private placement memo discloses the following potential conflict of interest. The broker-dealer through with the fund conducts its SEC investment activities in its role as a market-maker may affect transactions in equity securities with the fund as principal. This may provide such broker dealer with the ability to use the fund's assets to enhance its equity market-making function."

Do you know what that was referring to?
(SEC Exhibit No. 65 was marked for identification.)

A I don't, but it would seem to indicate sort of that the assets could be -- I'm not -- I'm just -- I'm not sure.

Q Do you know if this issue was ever -- do you remember this issue ever being followed up on?

A I don't remember.

Q And then Simona says, "What is this about? I'm sure this is basic stuff but I am still pretty new to all things BD." Did you get the sense that Simona was kind of inexperienced with these kinds of matters?

A I think there were certainly aspects of the investigation that, you know, she may not have had, nor I had, sort of a level of expertise.

Q Were there other people in the Commission who had that level of expertise?

A I don't know. I mean, if I knew I think I would have recommended to go to them. We did, at one point, seek assistance from the Office of Economic Analysis, but I don't think they were able to provide any assistance.

Q What was the particular expertise that you felt you and Simona didn't have?

A Well I think an understanding was the actual strategy that he was -- that he had claimed to do, not just the split-strike conversion strategy but the actual -- the
execution of the orders overseas, you know, was that feasible, was that possible. I think that was a question that we didn't get answered that, you know, would have been helpful.

Q  Do you know if there's an Office of International Affairs at the SEC that deals with those issues?
A  I do know there's an Office of International Affairs, but did not know that they would deal with an issue like that.

Q  Do you know if there was any efforts made to go to them, given that this was an international issue you would go to the Office of International Affairs?
A  I don't recall anyone speaking about that.
Q  Okay. Was there any effort to go to anyone else in either the BD side or the IA side that might have more experience on these kinds of issues that you and Simona didn't have?
A  I know I tried to reach out to some people, I think Michael Kress is someone I reached out to at one point to try to get some guidance, somebody that had more experience. I don't know if Simona did or not.
Q  Okay. Is it fair to say that Simona had difficulty understanding Bernie's operation?
A  I would say yes.
Q  Okay. All right, let's go to the next document.
We'll mark the next document as exhibit 66. This is an e-mail from Simona to you, 12/21/2005, 1:25 p.m.

The top of the e-mail you say -- she says, "Thanks," but previously there's an e-mail from her to you, Wednesday, December 21, 2005, 12:14 p.m. where she says, "The relative's firm that audits Madoff, it's not Berkow, Schechter & Company LLP by any chance? This company audits Greenwich Century LP. The domestic -- events with Madoff. Thanks." And you say, "Friedling & Horowitz, CPAs PC. And she says, "Thanks," to you.

Do you know if there was any further follow up by Simona or the enforcement team on the issue of the auditor?

(SEC Exhibit No. 66 was marked for identification.)

A I don't know.

Q You're not aware of any?

A No.

Q Now, Simona is saying in this e-mail that "the relative's firm that audits Madoff," right?

A Yes.

Q Wouldn't it be -- wouldn't it seem logical that if Simona believes that in the context of this kind of investigation that a relative audits Madoff, to look at that?

A Yes, a relative's firm is certainly a question.

Q Okay. Are you aware that after the Madoff -- in
mid-the Ponzi scheme, folks went in to look at the books and records and a guy named [redacted] who is an enforcement attorney, looked at the audit records of Friehling & Horowitz?

A Yes.

Q And in fact, as [redacted] testified to me that in a very short period of time he realized that there were no work papers and there was no real auditing done. Were you aware of that?

A I believe I'm aware he got charged, I'm not sure -- I didn't know that it was a short amount of time.

Q Okay. Did you think that if Friehling & Horowitz was followed up on that same information would have been discovered that there was no work papers and no real auditing done?

A I imagine.

Q Okay. Okay, let's go to the next document. Okay, we're going to mark this as exhibit 67. This is an e-mail from you to [redacted], 12/22/2005, 9:25 a.m. Who is this guy [redacted]?

(SEC Exhibit No. 67 was marked for identification.)

A [redacted], he was my initial branch chief. At this point he may have been promoted to assistant regional director, and I was doing -- at this point I was doing a --
an examination for him of a market-making trader at JP Morgan Securities.

Q Okay. During this time period when you were assisting enforcement with their Madoff investigation, were you kind of working on a whole bunch of things at the same time and maybe had difficulty with competing interests for your time?

A Yes. I mean, my role -- again, I mean, I'm a broker-dealer examiner, so my primary function is to conduct broker-dealer examinations. You know, Mr. Sollazzo asked me to provide assistance to the attorneys as I could so that's what I tried to do.

Q But were there times at which some of your supervisors in the BD side kind of said, "Look, you know, focus on what you're supposed to do. Don't spend too much time on the enforcement examination, you got to get your exams done?"

A I don't recall any specific instance, but in general I think that's been communicated to the broker-dealer examiners.

Q Was that something that was communicated to you while you were helping enforcement with their investigation of Madoff?

A I don't recall that specifically being communicated to me.
Okay. And you say in this e-mail, "I'll be writing up my notes from the Fairfield -- Madoff Fairfield Greenwich Group conference call that I participated in yesterday. Also, I'm going to provide the attorneys with a list of differences, lies, from what we were told and provided during the Madoff exam versus what we learned about Madoff's operation for various documents provided by FFG and during the conference call yesterday."

So, even before Madoff's testimony, based on this conference call you learned that there were lies or differences between what Madoff told you in the exam and what you found out now.

Well, I think the options trading in and of itself.

Q Was there anything else, because you say "list of differences, lies," plural? Were there any other lies or differences that you recall?

A I don't specifically recall which -- any additional ones.

Q Okay. Do you know if this issue was ever kind of raised higher? You have a very, very prominent individual and you're finding out that he lied to you in the exam, do you know if this was ever kind of raised above Meaghan or above anyone in your circle?

A I know, you know, just the testimony of Bernard Madoff was sat in on by Doria Bachenheimer, who's an ARD, but
I don't know above her who knew about this.

Q Did the fact that you learned during the enforcement investigation that Madoff had lied to you, did that cause you to question the findings in your examination since in some ways you relied on what Bernie Madoff said?

A Yes, but I felt the investigation was being conducted and it would identify any, you know, what was going on. If there were -- was in fact, a problem.

Q But isn't it fair to say it kind of changed your perspective on the exam given that now you were realizing that a lot -- that at least some of the things you were told were lies.

A Yes.

Q Okay. Okay, let's go to the next e-mail. Mark it as exhibit 68. And this is an e-mail from you to Simona, 12/22/2005, 7:10 p.m. And, actually, down here in the e-mail to Meaghan and Simona, Thursday, December 22, 2005, 12:31 p.m., you do list a few of the discrepancies between the Madoff exam and our recent communication with FFG.

SEC Exhibit No. 68 was marked for identification.

A Okay.

Q And so you say, "According to Bernie Madoff, all equity transactions occur in Europe and clear through Barclays Capital. According to yesterday's call he believed
the equity transactions occurred through Madoff's trading
desk in New York in conjunction with Madoff's market-making
operations. Also, this individual did not seem to know that
Madoff's London office served as the settlement agent for the
trades."

So does -- didn't this call into question Madoff's
claim at all that the equity transactions occurred in Europe?
A Yes.
Q Okay. So, previously, there was information that
Madoff was trading equities, but no one could see the volume.
And that was a question of whether he was really trading
those equities, right?
A Yes.
Q Well, the response from Bernie Madoff was he's
trading them in Europe.
A Yes.
Q Now you see he's not trading them in Europe.
A This individual is saying that he's not trading
them in Europe.
Q Right. Okay. Wouldn't that give a lot of credence
to the Ponzi scheme allegation?
A Yes. I mean, I think all red flags needed to be
reviewed.
Q Okay. And then the number two, "I am certain that
Bernie -- in the examination he no longer incorporated
options into the hedge fund strategy because it became too complicated, however, made a point to tell us that the hedge funds themselves may use options but he's not involved, he's unaware they are using options.

And according to this guy in the statements provided, he does use over-the-counter S&P calls and puts. I believe we should find out more about the counterparties to these options transactions and the agreements arranged between Madoff and the counterparties."

Do you know if that was ever done?

A I believe that we got a list of counterparties -- or the exam -- I'm sorry, the investigator -- the investigation team received a list of the counterparties for the option transactions.

Q And did they follow up with people on that list?

A I don't know.

Q Do you know what would have happened if they had followed up with the counterparties to these options transactions?

A I think the same thing would have happened if they spoke to the counterparties to the equities and they didn't exist, they didn't trade, so --

Q So the Ponzi scheme would have been revealed, right?

A I believe so.
Q So if they had done, essentially, what you suggested, "Find out more about the counterparties at the options transactions and follow it up," the Ponzi scheme would have been revealed, right?

A Yes.

Q Okay. And then in number three you say, "As we previously discussed there's a second 2.5 billion FFG equity account which Bernie Madoff failed to give us an account statement for. At this point, however, I don't know what documents were accurate during the examination." Do you see that?

A Yes.

Q So at this point in time you weren't sure whether Bernie Madoff had given you accurate or false documents in the exam, right?

A Yes.

Q And that was conveyed to the enforcement lawyers?

A Yes.

Q Okay. Do you know if there was any discussion at any point in time among the enforcement staff about subpoenaing records from Bernie Madoff?

A I don't recall any -- I mean we received records from Fairfield Greenwich Group, but I don't recall any subpoena.

Q Any discussion of a subpoena?
I A Correct.

Q Did you deal mostly with Simona or Meaghan Cheung as well?

A Just Simona.

Q You didn't deal much with Meaghan at all?

A No. A couple of meetings I sat in on with her, but my -- exclusively I dealt with Simona.

Q Did it seem like Simona was more involved in the case than Meaghan?

A Yes.

Q Did it seem like Meaghan was involved at all in the case?

A It's hard to evaluate how much she was involved because I don't know what happened between Simona and Meaghan, but it seemed as though Simona did the bulk of the work.

Q Okay. You say on the first page of this exhibit, 68, "Thanks for putting together the interview memo, you're doing all the work, you're a machine. After I compare your memo to my notes I'll be certain to destroy my notes." Why would you be destroying your notes?

A Well, I think -- my recollection is that we only wanted one set of notes for the interview --

Q Do you find that odd that that was a suggestion to destroy notes?
A No, I mean I -- I don't think I ever worked with the enforcement staff.

Q Okay, so you assumed that this was kind of protocol that they had?

A Yeah, I believe I was even told it was so that we have one consistent set of notes or something to that effect.

Q Okay. Okay, let's go to the next document. Okay, mark the next document as exhibit 69, this is an e-mail from Doria to Meaghan Cheung and Simona, 12/29/2005, 11:13 a.m.

Doria says at the bottom to Sollazzo, "Peter is looking at the trading records for us, he's been very helpful, but I was wondering if you could direct us to someone in the office who is particularly knowledgeable about options trading."

And then Sollazzo responds, "Peter is one of our more knowledgeable staffers in respect to trading practices. We don't have anyone in BD who is particularly knowledgeable in options trading."

Do you know -- I mean, were you the -- really the most knowledgeable person in all of BD about options trading?

(SEC Exhibit No. 69 was marked for identification.)

A I can't speculate on that. I mean, I don't know of anyone else who has traded equity options in my group.

Q Okay. And then Doria says to Meaghan and Simona,
"When Peter is finished his review of the trading let's call Bill Dale in OEA. He may be able to give us some general advice, maybe it'll help to -- find something by analyzing the trading."

You mentioned earlier there was some efforts to talk to OEA, what do you know about that?

A I participated in a conference call, I believe one or two, with OEA. I don't remember who, if it was Bill Dale or not. I believe we were -- Simona was going to send to OEA some of the trading data and see if they could analyze it. And I'm not sure if they were able to or not, I don't believe I ever heard anything back on that.

Q From Simona?

A From Simona, right. Correct.

Q Okay. Let's go to the next document. Short -- off the record for a minute.

(A brief recess was taken.)

BY MR. KOTZ:

Q Okay, we're going to mark the next document as exhibit 70. Okay, this is an e-mail from Simona to you and Meaghan, 12/22/2005, 5:33 p.m. And it attaches a memo of the interview with this guy from Fairfield Greenwich Group.

(SEC Exhibit No. 70 was marked for identification.)

A How do you say his name?
Q: Do you know how to say his name?
A: I don't.

Q: In this telephone call with this individual from Fairfield Greenwich Group, Amit Vijayegiya, did you find him credible?
A: I don't -- I don't really recall.

Q: Okay. But, I mean, would he have any reason to provide false information, do you think?
A: I don't think so.

Q: Okay. If you look at a couple of things in this document, look at page 3, the second full paragraph. The middle of the paragraph it says, "With respect to the timing of SSCS implementations, AV said he believe the computerized model of BLM gave signals when to implement the strategy. This seems inconsistent with Madoff's statement to our exam staff that he makes these decision personally based on his gut feel."

A: Yes.

Q: So is this, again, kind of another situation where it seems as though a lot of the information -- you now realize that a lot of the information you got in the exam didn't turn out to be correct?
A: Yes.

Q: Okay. And so if they're different versions of how Bernie Madoff achieves those returns with such consistency,
wouldn't that make the allegations seem more credible in terms of coming up with another explanation for how he was able to achieve the returns?

A Yes, I think it would raise the concern level.

Q Okay. So if you had a -- had you had any experience with Ponzi schemes prior to this investigation?

A No.

Q But you do understand that in a Ponzi scheme -- if you were doing a Ponzi scheme that's one way to get consistent returns, right? Because there's no real trading, you can just make them up.

A Yes.

Q Okay. Okay, why don't we go to the next document? The next document is exhibit 71. This is an e-mail from you to Simona, 12/23/2005, 11:41 a.m.

(SEC Exhibit No. 71 was marked for identification.)

A Yes.

Q Simona says to you at the bottom of the page, "For your reading pleasure. He sounded very somber and concerned and it sounded like he was mostly concerned about your friend Bernie. I talked to Meaghan about this and while she found this annoying, she too agreed there's not much else we can do about this." And then you can see there's an attachment which is the call memo.
Do you remember what the issue was here in terms of their concern that their inquiry may have serious consequences from Madoff? Because it seems like this was an effort for the General Counsel of Fairfield Greenwich Group to kind of push back against the investigation.

A: I don't recall.

Q: Okay. You respond to Simona by saying -- on Friday, 12/23/2005, 7:59 a.m., "Bernie can be very intimidating. Do you know what McKefrey meant by when he said, "Our inquiry may have serious consequences from Madoff?" If there's no problem with his activity then why would there be serious consequences?" Do you see that?

A: Yes.

Q: What did you mean by "Bernie can be very intimidating?"

A: I think, you know, during the exam he, like I said earlier, he'd become volatile, condescending, you know, espouse how much knowledge he had on the markets and so forth. Intimidating might be a little strong, but --

Q: Well you said "very intimidating," though.

A: When he's screaming at you and he's, you know -- if you, for instance, when we discussed algorithm -- algorithmic trading, even though I was a trader before I had no knowledge in that. I mean, he can belittle you to the point were you, you know, you feel pretty low.
Q And -- but I think, you know, you correctly point out here that all the pushback, whether it's from Bernie or from this guy, is kind of a red flag in an of itself. As you say, "If there's no problem with his activity, why would there be serious consequences?"

A That's correct.

Q And then Simona responds, "Well, I guess even if the fact that we are looking at Bernie gets out it's a big deal for his reputation, et cetera." So did it seem that she was a little bit downplaying that point that you made?

A I guess so. Lawyers can sometimes, I think, you know, do that sort of thing.

Q Okay. Yeah, we've had testimony previously that there was some concern among exam staff at times that the enforcement staff didn't necessarily treat you -- the exam staff -- as well as they might have. They didn't kind of appreciate your perspectives on things. You weren't kind of one of them. Did you feel that at all?

A At times, you know, I've sort of presented things to them where they're extremely receptive. I've worked with some of them extremely closely and they really value my opinion, my experience and so forth. Others, less so. It really -- I think it's sort of enforcement attorney dependent.

Q What about in connection with the Madoff
investigation, were there times where you felt like they weren't taking you as seriously, being as receptive as they could have been?

A It's hard to say. I mean, a lot of the -- I think a lot of the communications I had with them were when I was working in the field, not necessarily dealing with them on a fact-to-face basis --

Q Okay.

A -- so it's kind of hard to tell. Never to my face did they sort of belittle me or say anything that indicated that, but I have no idea what was going on behind the scenes.

Q Okay. All right, why don't we go to the next document?

A Okay.

Q All right. The next document we're going to mark as exhibit 72. And this is an e-mail from Meaghan to Simona and you dated 12/28/2005, 7:41 p.m.

(SEC Exhibit No. 72 was marked for identification.)

MR. TALARICO: Okay, thanks.

THE WITNESS: What page is that, I'm sorry.

MR. TALARICO: He's not there yet.

THE WITNESS: Oh.

BY MR. KOTZ:

Q Yeah, we're going to look at page 2 of 3, there's
an e-mail from Simona to Meaghan with a copy to you, Tuesday, December 27, 2005, 3:40 p.m.

And there's one, two, three in this e-mail and three it says, "Peter has been analyzing the Fairfield account statements and he has found, in fact, that the number of S&P100 index options traded by Madoff, reportedly over-the-counter, is in order of magnitude greater than the total exchange traded volume for these options."

A Yes.

Q What was the consequence of that? What did that mean?

A Well it's similar to what had been raised before regarding the number of options that traded on the exchange versus he was supposedly trading.

Q Okay. And did it also confirm one of the points that Harry Markopolos made in his complaint?

A Which point was that?

Q That, you know, the options don't add up.

A Yes. Again, we were told it was sort of over-the-counter options, so again, it makes sense that it -- the fact that the number of traded on the exchange may not make sense relative to the over-the-counter market.

MR. TALARICO: Can we go off for one second?

MR. KOTZ: Sure.

(A brief recess was taken.)
BY MR. KOTZ:

Q Back on the record. Yeah, so this point about the options that you noted here in the e-mail, Tuesday, December 27, 2005, or that Simona noted in the e-mail about your analysis, that was an issue that was raised both by and by Markopolos, is that right?

A I believe so.

Q Yeah, okay. Okay, and then in four Simona says to Meaghan and you, "Last week Peter raised questions about the custody arrangements for Fairfield assets traded through BLM."

A Yes.

Q Do you know if that was ever followed up on?

A I don't.

Q And then on the first page of this document Simona's e-mail to you with a copy to Meaghan Cheung, 12/28/2005, 10:05 a.m., she says, "We can add a request for documents sufficient to identify all persons who has custody of the assets in the Fairfield, Kingate and Tremont accounts during the relevant period." Do you know if that was ever done?

A I don't.

Q Okay. Let's go to the next document. All right, the next document we're going to mark as exhibit 73, and this is an e-mail from Simona Suh to you, 12/28/2005, 10:27 a.m.
This is in response to Simona saying we can add a request for documents sufficient to identify all persons who have custody of the assets in Kingate and Tremont accounts. And you respond to here, "Sounds good. I'll sleep better with the answer to this question." So does this indicate that you thought that this was a significant issue to follow up on?

(SEC Exhibit No. 73 was marked for identification.)

A Yes.

Q Okay. And then you say, "On a side note, if Bernie calls me regarding the request list, I do intend to speak to him about it or refer him to you. I'm still puzzled by the options trade I pointed out to you yesterday. I ran it by the exam supervisor, John Nee, and he thought it was strange too." Do you know what that was all about? Do you remember your conversation with Nee?

A I believe that's the trade that I seemed to identify that generated a huge profit for the Fairfield Greenwich Group.

Q Right, and what was Nee's response to that?

A I don't think -- I don't recall what his response was.

Q Okay, but he obviously thought it was strange, or at least you said that here.
Okay. Okay, so we can move on here now. Okay, the next document is dated 12/29/2005, 2:06 p.m., from Simona to you. Exhibit -- mark it as exhibit 74.

And in this e-mail Simona says Happy New Year to you and then you previously said to her, "I appreciate the heads-up regarding the timing of our Madoff workload. I'm in the process of completing a few projects and have been assigned to begin an exam in late January, early February on Wall Street. In my opinion Madoff should take precedence over any of my current or future works. I will speak to the supervisor next week."

Why did you think that Madoff should take precedence over any of your current or future work?

A The Markopolos report title alone, I think, should have made it important to take precedence.

Q Did your supervisors necessarily agree that this matter, helping enforcement out, should take precedence over your current exam work?

A I don't recall specifically. I mean, I know I was assigned to an exam beginning in early February. And sort of the exams, you know, you start them when you're supposed to. Sometimes you'll start them and they'll try to get you back,
you know, as time permits, back to the office.

Q Kind of in hindsight, do you wish you had been able
to spend more time assisting enforcement in this
investigation?

A Yes. Like I said, I mean, I think clearly now it
was -- it should have been the priority of the entire agency,
so, yes.

Q But at least for your supervisors it was one of
many priorities with the other priorities being the exam work
that they were charged with doing?

A Correct. I mean we're the BD program so our goal
is to do BD exams.

Q Not help enforcement with their investigations.

A Correct.

Q Okay. Okay, let's go to the next document. Okay,
the next document we're going to get -- the next document
we're going to mark as exhibit 75. This is an e-mail from
you to Simona, 12/29/2005, 4:51 p.m.

And in this you're responding to Simona saying,
"Ugh, I wish he'd just get a lawyer. But did he make it
sound as though -- he did make it sound as though he was
planning to handle the whole thing himself, bad idea for him
and a lot more hassle for us."

(SEC Exhibit No. 75 was marked for
identification.)
1 A That's Simona to me?
2 Q Right.
3 A Okay.
4 Q And then you respond, "Yes, he will handle EVERYTHING himself, which always seems strange to us."
5 A Yes.
6 Q You had testified previously that you thought that was odd that he was always the point person.
7 A Correct.
8 Q And did Simona also share that concern that this was odd when she said, "Bad idea for him."
9 A I remember her saying it was sort of frustrating not having some sort of buffer between the firm and Bernard and her. I think her -- my recollection she said it would make, sort of, the investigation a lot easier if she could deal with an attorney.
10 Q Right. Was there also any discussion of the fact that since the allegation was he was running a Ponzi scheme and he was very secretive that they would be suspicious that he was handling everything by himself without a lawyer?
11 A I never had that discussion. I don't know if Meaghan or Simona or Doria had that discussion.
12 Q Okay. Okay, we'll go to the next document. We'll mark the next document as exhibit 76. This is an e-mail from you to John Nee, 1/17/2006, 10:17 a.m.
And this is when Bernie had now produced his statements for the options accounts and sub-accounts, the ones he withheld from you, and option trading agreements. "So, it looks like he is telling us now that he is in fact trading options," that's according to Simona to you, Friday, January 13, 2006, 5:08 p.m.

And then Simona says, "What's annoying is that he clearly created special write-ups in response to our requests instead of producing existing documents. The write-ups are helpful, but he should also be producing everything existing. Oh well, we'll see if we need to pursue this issue." Do you see that?

(SEC Exhibit No. 76 was marked for identification.)

A Yes.

Q That strike you as a little bit odd? You're investigating Bernie Madoff for a Ponzi scheme, instead of producing existing documents he's producing special write-ups. Wouldn't that be suspicious?

A Yes.

Q And isn't Simona's reaction a little bit odd in terms of, "Oh well, we'll see if we need to pursue this issue?" Wouldn't it me more logical that she had a much stronger reaction like, "This is very suspicious?" "Oh well?"
A Yes, I agree.

Q Okay. Do you think that there was something going on there in terms of the enforcement lawyers seemed to be very trusting of Bernie Madoff or not believing that he could be engaged in this Ponzi scheme even though he kept lying over and over again?

A Could you repeat the question?

Q Do you think that the enforcement lawyers were for some reason continuing to trust Bernie Madoff in not believing that he was involved in a Ponzi scheme even though there were a lot of suspicious activity and he seemed to be lying a lot?

A I'm not quite sure what they were thinking. I mean, I just know what they asked me to do and, sort of, what I did. A lot of it happened -- I didn't even sit on the same floor as them, so I'm not sure I can answer that.

Q Did you have any indication from the folks on the enforcement team, Meaghan, Simona, or others, that they believed there was a possibility that Bernie Madoff was running a Ponzi scheme?

A I don't recall hearing that. I mean, again, I think their objective is just go through the red flags one by one.

Q But at the end of the day, wouldn't you agree the objective in looking at Harry Markopolos' complaint was to
determine whether his central allegation, that Bernie was running a Ponzi scheme, was true or not?

A Yes, that's should be the priority and the objective.

Q Do you know if that was ever done, whether they ever confirmed one way or another?

A I don't.

Q Okay. And then Simona says to you in the same e-mail, Friday, January 13, 2006, 5:08 p.m., "Doria has suggested we talk to somebody in the Office of Economic Analysis about Bernie's trading. To be honest, I'm not entirely sure what questions we'd want to ask them, so if you have any thoughts on what they can do for us, let me know." Do you remember if you gave them any feedback on what to ask Office of Economic Analysis?

A I don't even think I understood what they did, so no, I don't believe I gave her any feedback.

Q Okay. And then he's -- she says to you also, "If you have time at some point during the next week or so, no rush at all, could you go over your notes from the exam and find places where you made -- where you made notes of conversations about Bernie no longer trading options?" Do you know if you did that?

A I don't recall. I'm not sure.

Q Okay. Okay, let's go to the next document. Okay,
the next document we're going to mark as exhibit 77. This is
an e-mail from you to Simona, 1/20/2006, 2:18 p.m.

If you go to the bottom of this page Simona says to
you in an e-mail, January 19, 2006, 3:53 p.m., "I have been
having -- I have been having trouble figuring out how to tell
from the produced account statements the balances of assets
managed for each customer. Each statement includes an ending
new balance and also the total values of securities
positions, in the former it's usually lower than the later,
even zero. If you could take a look at the statements and
try to figure out what these number mean that would be
helpful. Also, I'm am puzzled by the fact that the ending
balances in the equities sub-accounts also equal the ending
balances in the corresponding option sub accounts. Do you
know how that works?"

And then you respond in an e-mail, Friday, January
20, 2006, 11:24 a.m. to Simona, "Unfortunately, after
reviewing the accounts and speaking with my supervisor, I
don't have clean answers to your questions."

And then Simona responds to you on Friday, January
20, 2006, 12:29 p.m., "Thank you. I am glad I'm not the only
one confused."

And then you respond to her at 2:18 p.m. on January
20, "Ha, no problem. It's very confusing to me as well." Do
you see that?
(SEC Exhibit No. 77 was marked for identification.)

A Yes.

Q Given the confusion -- so, you acknowledge that there were matters here involving Madoff's operations and particularly the account that you and Simona both had trouble understanding?

A Yes.

Q So given that lack of understanding and confusion, why didn't anyone go to Harry Markopolos and ask him? Was that ever raised?

A I don't know that they didn't. I didn't do it.

Q Was that ever discussed?

A I never heard that discussed.

Q And from Harry Markopolos' complaint, did you get the impression that he might have had some of the answers to these questions? Had a better understanding based on the complaint he filed?

A Yes, I mean, like I said earlier, I think speaking to people in the industry is a good thing and should be done.

Q And in this case you had a person in the industry who was available to speak to, right?

A Yes.

Q And were you aware that Harry Markopolos also identified other names in his complaint of individuals who
were experts in the field who you could have spoken to?

A Yes.

Q But you're not aware of any point Simona coming back and saying, "We're all confused about these issues, I'm going to call Harry Markopolos about it?"

A Right.

Q That never happened?

A I don't believe that ever happened.

Q Okay. And then ever particularly one of the areas of confusion you note in the e-mail to Simona on 11:24 a.m. on Friday, January 20, 2006, is, "I do believe your questions go back to the custody of assets issue." Do you see that?

MR. TALARICO: Second line. However -- starting with "however."

THE WITNESS: Yes.

BY MR. KOTZ:

Q And that was a pretty significant issue, the custody of assets, right?

A Yes.

Q Okay. So knowing what you know now, do you think that if you had able to get to the bottom of the custody and assets issue by perhaps going back to Harry Markopolos that the Ponzi scheme would have been uncovered?

A Yes.

Q Okay. Okay, let's go to the next document. Okay,
the next document we're going to mark as exhibit 78. This is an e-mail from you to Simona, 1/25/2006, 4:19 p.m.

Simona, in an e-mail below in this exhibit, on Wednesday, January 25, 2006, 2:24 p.m. writes to you, "When you have time, could you check if we have information on commission rates that BLM charges other non-IA customers? Are the rates as uniform as in the IA business, same rate for everybody? Are they lower, higher than the IA business rates?" And then she continues in the next e-mail on 2:31 p.m., "The question below as far as for both for equities and options."

Do you know why she was interested in this issue about BLM commission rates?

(SEC Exhibit No. 78 was marked for identification.)

A I don't know.

Q And you respond, "BLM doesn't trade options for customers." What did you base that on?

A I know he's a, you know, he had a market-making business, but in his market-making business he only traded equities, he didn't trade options. I believe that's what I'm referring to.

Q Okay. Simona wasn't aware of that?

A I'm not sure if she was or not.

Q Do you remember that -- this commission issue
becoming an issue that continued or --

A I don't remember that, you know, being an issue.

Q What about the issue of him trading options for customers, do you know if that was further discussed?

A Only in the testimony it came out.

Q Okay. Okay, why don't we go to the next document? Mark the next document as exhibit 79. And this is an e-mail to Simona dated 1/27/2006, 1:01 p.m.

First, let's go to the bottom of the page. There's an e-mail you sent to Simona, Friday, January 27, 2006, 10:38 a.m. The first point you say, "I meant to ask Frank why the strategy is implemented only in Europe and during European trading hours and not New York time. What if there is breaking news having huge impact on the market such as 9/11?"

I assume that's Frank DiPascali in that?

(SEC Exhibit No. 79 was marked for identification.)

MR. TALARICO: Is that right?


BY MR. KOTZ:

Q DiPascali, sorry. Do you know if that question was ever asked?

A I don't know. It -- this must have been after his testimony and I didn't -- I don't know.

Q Do you know if that was ever followed up on at all,
the question of why the strategy was implemented only in
Europe and during European trading hours?
A I don't.
Q You're not aware that it was followed up?
A I'm not aware if it was followed up.
Q Okay. Then in number 2 you reference a point that
has been referenced before which is, "I am still puzzled that
Bernie is able to always find counterparties willing to trade
options in the side that he needs to for the strategy without
freaking out the market. Talk about having difficulty
finding liquidity, try calling a large broker-dealer in the
U.S. with such a huge options order. I'm confident that you
would move, scare, the market. Maybe the counterparties are
able to hedge themselves somehow but I don't see how."
Isn't this the same issue that was raised in the
e-mail?
A No. The e-mails is talking about the volume of options traded on the exchange and
they're saying that based on the amount of assets that he had
in the strategy he wouldn't be able to trade that quantity of
options on the exchange. So, in other words, for the S&P100
contract, the call options on the exchange according to
Bloomberg, 1000 contracts may have traded, but based on the
amount of assets in his strategy you would need to trade
5000. So I think those were the issues that were raised by
But if you traded them in the over-the-counter markets you may be able to find someone to trade 5000. My point here is that even if you find someone in the over-the-counter markets to trade those options with, they're still going to have to hedge it somewhere.

Q Right. Didn't the e-mail, though, talk about difficulty of finding counterparties in the over-the-counter markets?

A It may, I haven't -- I mean I -- I would like to see it actually to stir my memory.

Q Okay. This is exhibit 4.

A Okay. Yes, it did.

Q Okay, so this issue that you raised in this e-mail, January 27, 2006, to Simona is the same e-mail -- same issue that was raised in the e-mails?

A Yes.

Q Okay. Do you know if that issue was ever resolved? To your knowledge was that issue resolved in the enforcement investigation?

A Not to my knowledge.

Q Okay, and then Simona responds on Friday, January 27, 2006 at 11:46 a.m., to you, "On the momentum tools issue, if we had any real reason to suspect some kind of wrongdoing in Bernie's market-timing decisions I would send a document
request on the issue. But I'm not sure how much stress we
want to put on him is all we suspect is disclosure problems.
I will talk to Meaghan about it. We can definitely question
him about it."

Did you have -- did you agree at that time that
there was no real reason to suspect some kind of wrongdoing
in Bernie's market-timing decisions and it was only
disclosure problems?

A I didn't suspect that.

Q So you believed that there was a real reason to
suspect some kind of wrongdoing in Bernie's market-timing
decisions, right?

A I still wasn't clear on how he was doing that,
right.

Q Yeah. What about his point about, "I'm not sure
how much stress we want to put on him if all we suspect is
disclosure problems?" Why was that a consideration in an
enforcement investigation, how much stress to put on Bernie
Madoff?

A I'm not sure. Simona is not -- I'm not sure
English is her first language, so it could be a little bit of
a translation. Stress, I think stress -- I read it stress
making him uptight, but stress to her might be like emphasis,
work. I'm not sure if I'm explaining that properly, but --

Q But even if it's emphasis, work, would it seem odd
to you that in an enforcement investigation of fraud there
would be a concern from the enforcement lawyers about stress
or work they would put on the subject?
A I agree.
Q Okay. Okay, give me the next one. Okay, we're
going to mark the next document as exhibit 80. This is an e-
mail dated 1/27/2006, 3:43 p.m. from Peter -- from you to
Simona Suh.

And halfway down in this e-mail string there's an
e-mail from you to Simona, Friday, January 27, 2006, 3:31
p.m. You say, "When we were conducting the exam there was a
day when Weintraub was in our office without Bernie. I think
that she was dropping off some data or something. We seized
the opportunity to ask her about the systems.

After a couple of minutes an employee came into the
office and said, "Liz, you're urgently needed," thus she left
before we could get into much detail about anything. When I
asked Bernie later why she was urgently needed he said
something like, "Her lunch arrived." That was strange to
William and I because it was around 3:00 p.m. William and I
suspected that Bernie sent the employee to our office because
he did not want her speaking with us alone"

Wasn't that a pretty suspicious event?

(SEC Exhibit No. 80 was marked for
identification.)
A Yes, it -- you know, along with Bernie being so secretive and --

Q And being the only person who was your contact?

A Yes.

Q And not -- essentially, not letting you talk to anybody else?

A Yes.

Q And particularly, as you now -- or enforcement is now looking at him in terms of a Ponzi scheme, this would be suspicious.

A Right, that's why I think I communicated that.

Q Do you remember if there was any further discussion about this?

A I don't.

Q You don't remember any such discussion?

A I don't remember any such discussion.

Q Okay. Okay, let's go to the next document. Okay, the -- document we're going to mark as exhibit 81. This is an e-mail from Simona to you, 2/6/2006, 5:34 p.m.

Below is an e-mail in this e-mail string from Simona dated Monday, February 6, 2006, 4:21 p.m. to Vance Anthony. Was this the reference to Office of Economic Analysis that we discussed before?

(SEC Exhibit No. 81 was marked for identification.)
A I don't recognize that name, but it seems as though
that's what it is.

Q Okay. Take a look a little -- brief -- review this
e-mail from Simona and try to get a sense for me of what
exactly she was asking Office of Economic Analysis to do.

A I think she was trying to determine if the returns
that he was supposedly generating made sense or possible.

Q But to your knowledge, nothing came back from
Office of Economic Analysis.

A I don't recall anything coming back from them.

BY MS. STEIBER:

Q Was there a discussion of why the Markopolos
complaint wasn't sent to Office of Economic Analysis?

A No.

BY MR. KOTZ:

Q Okay. The next document we're going to mark as
exhibit 82. This is an e-mail from you to Simona, 3/15/2006,
11:33 a.m.

In this e-mail string below you ask Simona in an e-
mail dated Tuesday, March 14, 2006 at 12:13 p.m., "Perhaps we
could ask the FSA so share information regarding the
activities of Madoff Securities International London, MSIL."

What is the FSA?

(SEC Exhibit No. 82 was marked for
identification.)
A: It's the one -- it's the UK's equivalent of the SEC.

Q: Okay. And then Simona responds, "Unfortunately, I doubt we can avoid going through our OIA no matter how many cooperation agreements the SEC signs. My experiences with that office so far have been less than satisfying. Besides, I think UK was never a problem for us, from what I've heard FSA generally cooperates with the SEC."

Do you remember Simona saying anything about her concerns about OIA, Office of International Affairs?

A: I see the e-mails but I don't recall having any discussions.

Q: Did you all ask the FSA for information?

A: Not to my knowledge.

Q: Okay. Next document I'm going to mark as exhibit 32. This is an email from Simona -- I'm sorry --

MR. TALARICO: 83.

BY MR. KOTZ:

Q: 83, that's a big mistake. Exhibit 83, e-mail from Simona to you, 4/28/2006, 3:09 p.m.

And then Simona at the bottom of this e-mail string says to you in an e-mail on Friday, April 28, 2006 at 12:53 p.m., "OEA finally responded that they want to talk next week, are you available?" And then you say, "I returned from the field today, good timing."
And Simona says to you back from talking to Van Anthony last week, "My impression is they have not done any analysis yet but have only found us an expert on options trading, Stewart Mayhew." And you say, "Okay. I wonder where they had to go to find this options expert since it took three-and-a-half months." Simona says, "I suspect they had to go to the office next door."

Do you recall frustration about OEA not responding to you in a timely way or not responding to you and Simona in a timely way?

(SEC Exhibit No. 83 was marked for identification.)

A I think Simona was dealing with them more directly. I do sense there was some frustration. I really -- I think I was in the field, I wasn't dealing with them directly.

Q Okay. Okay, we'll go to the next document, mark it as exhibit 84 -- not 32 but 84. And this is an e-mail from Simona to Vance Anthony, 4/28/2006, 4:40 p.m.

Do you remember a conference call that was set up with the folks in OEA?

(SEC Exhibit No. 84 was marked for identification.)

A Yes. I remember participating in it, I don't remember much of the content.

Q Do you remember if it was a long call or just a few
minutes?

A I think it was not a long call but it took a little
time to explain sort of what we were trying to do.

Q Now, this call was several months after documents
had been sent to OEA. Do you recall that enforcement kind of
expected OEA to have some information already and yet on the
call they had to kind of go back and explain to them again
what they wanted?

A I remember something to that effect.

Q Okay. Do you remember Stewart Mayhew as a guy
being on the call? Kind of -- he was supposedly an options
expert.

A The name doesn't sound familiar but I'm not -- he
may have been on the call.

Q Okay. Okay, next document we're going to mark as
exhibit 85. This is an e-mail from you to Simona, 5/4/2006,
9:08 a.m.

(SEC Exhibit No. 85 was marked for
identification.)

MR. TALARICO: Thanks. You want to --

THE WITNESS: Sure.

BY MR. KOTZ:

Q And you, in the bottom of the e-mail string, say to
Simona in an e-mail, Thursday, May 4, 2006, at 8:50 a.m., "I
will create a spreadsheet for the days in which the strategy
was implemented versus the S&P500's performance broad-market prior to and while the strategy was being implemented." Do you know what the purpose of that was?

A I think we were just trying to compare the returns of the overall market versus what he was supposedly generating for Fairfield Century.

Q Do you know if this was information that the Office of Economic Analysis asked for?

A I don't think so but I'm not sure.

Q Okay. And then you say, "I can also review the options agreements for settlement terms and whether the options are European versus American style." Simona says, "I don't think we have the options agreement though, I could be wrong, I'll check." Do you know if you ever got the options agreements to review?

A I reviewed the options trading but the options agreements I don't recall reviewing.

Q Okay. Okay, we're going to mark the next document as exhibit 86. This is an e-mail from you to Simona, 5/8/2006, 11:11 a.m., OEA spreadsheet. Do you remember compiling this -- putting this spreadsheet together?

A I don't, but I believe I put it together.
Q You say in the e-mail -- cover e-mail to the spreadsheet, "I believe we should ask Madoff for documentation regarding the yellow-highlighted options trades whenever those type of requests become appropriate. These trades seem too good to be true." Is it fair to say that as you continued to assist enforcement in their investigation you became more and more suspicious of Madoff?

A I think as -- you know, going through, like, identifying, you know, strange trades that seem to generate profits out of thin air, and as well as the testimony, yes, I would say that's correct.

Q All right, let's go to the next document. All right, I'm going to ask you -- show you another document marked as exhibit 87. This is an e-mail from Simona to Vance Anthony, Stewart Mayhew, 5/9/2006, 2:43 p.m., cc to you, Meaghan Cheung and William Dale.

And they say, "Attached is a spreadsheet that Peter Lamore prepared based on the account statements Madoff provided to Fairfield Century Limited." Just -- if you could just look at the spreadsheet and just confirm that this is the spreadsheet that you created that was then sent to Vance Anthony and Stewart Mayhew.

(SEC Exhibit No. 87 was marked for identification.)

A I believe it is based on the heading.
Okay. The next one is 88. The next document we're going to mark as exhibit 88. This is an e-mail from you to Simona, 5/12/2006, 9:15 a.m.

In this e-mail you say, "Hi Simona, I've spoken to Ellen Hersch in our office regarding DTC. She suggested that I speak to Sunam Varghese, the branch chief familiar with DTC. I've left a message for Sunam to call me back." Do you know if you ever did speak to Sunam Varghese?

(SEC Exhibit No. 88 was marked for identification.)

A I don't recall speaking to her.

Q Okay. Do you know if anybody contacted DTC in connection with Madoff -- in connection with the investigation?

A I'm not aware of anyone during the investigation contacting DTC.

Q Were you aware that after Bernie Madoff confessed, enforcement lawyers went in and contacted DTC and immediately verified that there were no trades?

A Say that again.

Q Are you aware that after Madoff confessed to the Ponzi scheme, enforcement lawyers and examiners went into Madoff's firm and contacted DTC to check on some of Madoff's trades and in a short period of time determined that, in fact, there were no trades.
A: I'm not aware that's how they determined there were no trades.

Q: Okay. Are you aware of another way in which they determined there were no trades?

A: I think just --

MR. TALARICO: Yeah, sure.

MR. KOTZ: Sure.

BY MR. KOTZ:

Q: Okay. I heard something about a DTC terminal at Madoff's headquarters in Madoff's offices. Were you aware of that?

A: I was not aware of that during the examination or the investigation.

Q: But afterwards you were aware of it? After Madoff confessed?

A: I've heard that -- yes, after he confessed.

Q: Okay. All right, let me ask you another question about this e-mail in front of you. In the e-mail from Simona to Meaghan with a copy to you on Wednesday, May 10, 2006, 4:55 p.m. -- there's five sevens, but in one of -- the second seven it says, "Rob suggested that we talk to his contact at CBOE --"

A: Yes.

Q: Do you know -- you know what -- do you know what CBOE is?
A I do.

Q Okay, Chicago Board of Options Exchange?

A Correct.

Q Make sure I get it right. "Rob suggested that we talk to his contact at CBOE about the volume of Bernie's option in trading. Peter, Steve and I will try calling him on Friday afternoon." Do you know if that call was ever made to CBOE?

A I believe we did speak to someone in CBOE, I don't know if it happened on that day.

Q Okay. What was the conversation with the guy at CBOE?

A My recollection, it was regarding the quantity of options that Bernie Madoff was supposedly trading in the over-the-counter markets and whether or not that seemed reasonable, could be done, and things like that.

Q So what did the individual at CBOE tell you?

A It seemed as though he thought it was possible. I don't -- that's kind of the extent to what I recall from that conference call.

Q How long of a call was that, do you remember?

A I don't recall. I don't think it was extremely long.

Q Do you remember any particular individual that you talked to at CBOE?
A: I don't. I think Rob DeLeonardis may have set it up.

Q: Okay. Was there any effort to confirm any specific options trading with CBOE?

A: I don't recall, I think it was more just generally.

Q: Okay. It says in here also, "Peter will find out who examines DTC, hopefully they will be able to give us more information about what data to ask for in what format." Do you know if you were able to find that out?

A: I don't recall.

Q: You don’t recall finding it out?

A: I don't.

Q: And then it says, "Unless you disagree we will hold off making requests to Bank of New York and Barclays until Bernie's testimony when we should be able to talk to him in more detail about the function of those accounts." Do you know -- do you -- are you aware of whether those requests to Bank of New York and Barclays were ever made?

A: I don't know.

Q: Okay. There's also a reference to talking to the head of market surveillance in DC. Do you know if that was done?

A: I don't know.

Q: Do you know if there was any conversation with anybody at NASD?
Regarding Madoff?

Yeah.

Not that I'm aware of.

Okay. Okay, we'll mark the next document as exhibit 89. This is an e-mail from you to Simona, 5/16/2006, 7:27 a.m.

You say, "I spoke to our DTC contact in BD regarding our DTC questions, however, I didn't get any clear answers. The only piece of advice was to find out if MISL participates in DTC." Do you remember this conversation, who the DTC contact person in BD was?

(SEC Exhibit No. 89 was marked for identification.)

I don't remember speaking -- I mean, I imagine it was Sunam Varghese but I don't -- I just don't recall having that conversation.

Do you recall something about not getting clear answers from somebody about DTC?

I just don't recall that conversation.

Okay. Okay, the next document we're going to mark as exhibit 90. This is an e-mail to Simona Suh, 6/26/2006, 2:16 p.m.

In this e-mail it says at the top, and I believe it is from you although it's not clearly referenced, "I don't understand why these accounts were excluded during our exam.
when we asked for a list of all customers." Do you know what
that referred to?

(SEC Exhibit No. 90 was marked for
identification.)

A I don't recall this.

Q Okay. There's a reference in the e-mail from
Simona, June 26, 2006, 12:49 p.m., in the -- under II, "On
the other hand, when we ultimately do talk to Bernie about
registration it may be helpful to know if we should consider
these accounts to be advisory accounts. For now we can wait
to see what IM says on the issue."

Do you know if the Division IM, Investment
Management, was ever contacted?

A I don't know.

Q You don't -- you're not aware that they were.

A I'm not aware that they were.

Q Okay. Okay, the next document we're going to mark
as exhibit 91. This is an e-mail from you to

dated 12/13/2008, 1:19 p.m.

First, what was your reaction when you heard on
December 11th that Bernie Madoff had admitted to a Ponzi
scheme?

(SEC Exhibit No. 91 was marked for
identification.)

A I guess just utterly shocked. I mean, despite, you
know, everything we went through you just never think -- you can't imagine, I mean, it's just sort of unimaginable. I mean, it's -- it turned from sort of shocking to anger to, you know, sort of other emotions, so --

Q Okay. You say in an e-mail to shortly after that, "I agree that additional authority access would have possibly enabled us to detect it. Our hesitancy towards rocking the boat also is something that should be reconsidered. I'll explain when we chat." What did you mean by hesitancy toward rocking the boat?

A I just think that, in general, the agency, you know, we don't reach out to third parties. You know, we don't seek assistance from the industry, people who are doing trading, you know, on a daily basis, we don't have a good contact to really do that.

And there -- in general I think there's -- you know, we try to be professional and so forth on exams, but at some point when somebody isn't telling you the truth, misleading you, you know, instead of dealing with them on an exam level they should probably haul them in for testimony.

And sometimes the exam program, I think, is -- can sort of not be taken seriously at times. You know, if the people are going to give us, you know, half answers or incomplete documents, you know, sort of right now we try to remain professional, try to continue the exam, but maybe a
harder line might be necessary.

Q So there are times as an examiner where you feel like you're trying to find some information out and you're really kind of at the behest of the registrant as to whether -- as to whatever they tell you?

A Every exam.

Q And so, the agency maybe isn't aggressive or assertive enough in exams in your opinion? A Yes. When, you know, when incomplete documents are provided despite whatever explanation they give you, I mean, I think it's sometimes necessary for enforcement or someone to raise the bar and make it a serious matter.

Q And is that a view necessarily shared by your superiors in the exam side?

A I don't know, I mean, I've never had the discussion, this is my opinion.

Q Okay. Do you think that this hesitancy towards rocking the boat may be even more pronounced where you have somebody like Bernie Madoff who's a well-known person in industry?

A I mean, I'd like to say that we're sort of professional and that sort of thing, treat everyone equally, but maybe at senior levels that could be the case.

Q But even at a junior level, isn't there a greater concern in rocking the boat with somebody who has the ability
to make a call, who has connections, who knows people, who's
well-known.

A Well, I think it's -- it's not only just the person
but the type of firm. Because if you're dealing with a, you
know, a penny-stock firm, you know, it's much easier to call
them out, you know, say to their face that you think they're
a liar rather than if you're at a Goldman Sachs and you're
dealing with a compliance person. You know, sort of the
level of professionalism that's expected differs by the type
of firm you're dealing with.

Q And it would be very difficult for you in your
position to tell Bernie Madoff that he's a liar.

A Absolutely.

Q Okay. And in some ways was that made clear to you
initially in the phone call with headquarters when they
talked about their exam of Bernie Madoff and said, "Just
remember, Bernie Madoff is a influential figure?"

A Yes. I mean, I think it caused us to remain
professional.

Q Okay. In this same e-mail string below, you also
say to , "I just can't believe I've been duped
again by another industry superstar."

A Yes.

Q Do you know what that refers to?

A Yes. When I was a trader I was an execution trader
for a woman, her name was [blurred], and she was accused of insider trading. And I was her execution trader so I was called in for testimony and had to deal with that as well. And, you know, here I thought she was a great trader when it turns out -- well, she was a very good trader but she also was doing this on the side, which I had no idea about.

Q And that was before you got to the SEC?
A Correct.

Q Okay. All right, next document. The next document is an e-mail from you dated 12/15/2008, 3:08 p.m. to Michelle Trillhaase.

(SEC Exhibit No. 92 was marked for identification.)

A Yes.

Q If you look at the second page of this e-mail, page 2 of 3, there's an e-mail from you to Michelle Trillhaase, Sunday, December 14, 2008, 4:33 p.m. You say, "It's been a tough couple of days for me. Although I gave the exam and follow-up investigation 110 percent we just didn't uncover it. I think we were very close, probably only one or two phone calls away from blowing it open." What were those one or two phone calls away?

A You know, I think had we been able to contact the counterparties to the -- equities of the options, I think that would have, you know, that would have been the call that
would have revealed the entire Ponzi scheme because there
would have been no executions.

Q Okay. Just for the record, this is exhibit 92, the
12/15/2008 e-mail from you to Michelle Trillhaase. Why don't
we go off the record for a second?

(A brief recess was taken.)

BY MR. KOTZ:

Q Was there a time period in the enforcement
investigation where there was a lot of work done and then
kind of the case was a little dormant?

A I mean, I was -- you know, I was on another exam, I
mean, I was conducting a broker-dealer examination at the
time, so I mean, I'm not sure I recall, sort of -- any sort
of dormant period.

Q So, Bernie Madoff comes in, gives testimony, and
you know, it was described to us that during his testimony
you were sort of jumping up and down as to all the things he
was saying that turned out to be -- that were false or at
least inconsistent with what he told you.

A Right. I mean, I think it was -- I don't know if --
jumping up and down is -- to me it was obvious that it was
-- the strategy was different, the number of accounts, in
particular, was different, the assets under management were
different. And, I mean, I just want to --

MR. TALARICO: No, she's still on, go ahead.
THE WITNESS: I want to emphasize that, you know, during the testimony when -- I'm not sure why but I'm pretty sure that they emphasized that they needed to ask about additional accounts, because there's additional accounts. I don't remember how I knew, why I knew, but I said, "You need to ask that question." So in the testimony there was, "Are there additional accounts?" "No." "Are you sure there are additional accounts?" "No." "Are you positively sure there are additional accounts?" "Well, there might be a few additional accounts."

So I'm sitting there thinking, "You got to be kidding me, I mean, this is huge. This guy just lied on the record testimony to your face." So, I mean, did I -- I don't think it was necessary -- I mean, it -- they did it to them, it's not like they weren't there, so --

BY MR. KOTZ:

Q Was there any consideration in charging Madoff with perjury?

A I never heard that. Again, once I left the testimony, honest, I don't recall having any substantive discussions about the investigation at all.

Q So you weren't involved in the investigation post-Madoff testimony?

A Correct.

Q Do you have any idea why?
A  No.

Q  Did you follow up to see what happened with this investigation?

A  I may have crossed paths with Simona in the corridor and I said, you know, "What happened?" And I think something like, "He's going to register as an IA." And I just -- you know, I don't think I had much of a reaction, I think I was just so stunned, you know, based on the testimony.

Q  You were stunned that what? That they didn't find more?

A  Right, that that, sort of, was it. I mean, again, I just remember sitting there in the testimony thinking he's lying during the testimony. It was just remarkable to me.

Q  And did you get the sense that the enforcement lawyers didn't share that perception or didn't share that concern that you had?

A  I don't think I ever discussed it with them, I just -- I mean, to me, I was a relatively new guy, you know, they'd been doing this a long time. I mean, I didn't even know what the process was if they thought he was lying what to do, you know, charge him with perjury or what have you. I just, you know, was in sort of a more support role at that point.

Q  And so was it odd that you were pretty heavily
involved, we showed all these e-mails assisting, seemed to be kind of instrumental in some ways in providing information to them, and then suddenly it dropped off?

A Yes, I was -- wasn't in charge of directing what was going on, I guess, more of a support role, but it was odd to me, yes.

Q And you have no idea why all of a sudden they stopped communicating with you and seeking your assistance?

A I have no idea.

Q Okay. I don't want to ask you too many questions, but just generally, you were chosen to work on the examination post-Madoff confessing, right?

A Correct.

Q Is there any concern about the fact that you had worked on the exam previously, maybe you shouldn't be the person who works on it after Bernie confessed?

A I think Mr. Nee raised that concern to Mr. Sollazzo and to me and then I raised it again to Mr. Kress, maybe Mr. Sollazzo as well. And, you know, right after the whole thing was exposed, you know, Andrew Calamari asked me to talk to him. And his -- he was just interested to understand what sort of analysis I performed as part of the investigation.

And in conjunction with that I said to him, you know, I am participating now in the current Madoff matter, you know, do you think that's -- that makes sense or is that
okay? I said, you know, I don't want this to become a problem down the road, something to that effect. And he said, really, it's Bob Sollazzo's call. So at that point, I mean, I just, you know, do what I'm told.

Q And Sollazzo determined that you should stay on the post-Madoff confession exam?

A He thought it was fine.

Q As part of that effort, are you doing a Ponzi exam -- Ponzi scheme exam -- sorry? I mean, what is it exactly that you're doing?
BY MS. STEIBER:

Q Well, early on, what did you do try to trace customer assets, if anything?

A We had a -- one of the things we received were bank statements, so we were able to -- not myself, but another colleague, has put together spreadsheets regarding wire activity, check activity, things like that. So that's sort of the analysis that was done.

Q Are you familiar with the steps of a basic Ponzi exam? If you were an examiner and there's -- you believed there could be a possible Ponzi exam, the steps that you would take?

A I mean, I've never really reviewed any sort of module or anything.

Q Have you ever been on a Ponzi exam?

A No.

MR. KOTZ: Okay. I think we're done. Just one thing I wanted to --

MS. STEIBER: Quick can we ask a couple of questions?

MR. KOTZ: Oh, okay.

MS. STEIBER: This one --

MR. KOTZ: Sure.
Q Anything else like that?
A Not that I'm aware of.

BY MR. WILSON:

MR. KOTZ: Okay, I just want to ask and caution you if you could not discuss this testimony with anyone to preserve the integrity of the investigation.

THE WITNESS: Yes.

MR. KOTZ: Otherwise, thank you very much for your time. We're off the record.

(Whereupon, at 4:20 p.m. the examination was concluded.)

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