



1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

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5 NOELLE FRANGIPANE, ESQ. Deputy Inspector General

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16 On behalf of the Witness:

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P R O C E E D I N G S

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MR. KOTZ: Okay. All right, we are on the record at 9:35 a.m. on May 27, 2009 at the United States Securities and Exchange Commission.

I'm going to swear you in if that's all right.

MS. SUH: Sure.

MR. KOTZ: Would you please raise your right hand? Whereupon,

SIMONA KANEVSKI SUH

was called as a witness and, having been first duly sworn, was examined and testified as follows:

MR. KOTZ: Could you state and spell your full name for the record?

THE WITNESS: Simona Suh, S-i-m-o-n-a S-u-h.

MR. KOTZ: Okay. Ms. Suh, my name is David Kotz; I'm the Inspector General of the United States Securities and Exchange Commission. And I have with me my colleagues from the Office of Inspector General, Heidi Steiber, David Fielder and David Witherspoon. And I see you are represented by counsel, Susan Brune and Paul Fraioli.

This is an investigation by the Office of Inspector General, case number OIG-509. I'm going to ask you certain questions and you'll have to provide answers under oath. The court reporter will record and later transcribe everything that is said. Please, therefore, provide verbal answers to

1 left?

2 A Yes, she wasn't happy with the branch chief job.  
3 She wasn't happy with all the administrative burdens that  
4 that job entailed. She wanted to spend more time with her  
5 children.

6 Q Okay. Was she -- was it the administrative side of  
7 the branch chief job, not so much the investigating that she  
8 was unhappy with or was it more general?

9 A I think she was generally unhappy, primarily with  
10 the administrative side of the job. I -- she has mentioned  
11 that she did not feel like she was growing in that position.  
12 That's my understanding of her reasons.

13 Q Okay. Chris Wilson from my office has just joined  
14 us, for the record.

15 Okay, so before you worked on the Madoff case, had  
16 you done any Ponzi scheme cases before?

17 A Never.

18 Q Okay. And you hadn't done that many investigations  
19 overall?

20 A That's correct.

21 Q Okay. Why don't we start showing you some  
22 documents? Okay, this we're going to mark as Exhibit 3. And  
23 this is an e-mail from Doria Bachenheimer to you and Meaghan  
24 Cheung, 11/3/2005, 5:07 p.m., and we're going to mark this as  
25 Exhibit 3.

1           And if you see, if you go to the second page of  
2 this document there's an e-mail from John Dugan in the Boston  
3 Office dated October 25, 2005 to Walter Ricciardi, David  
4 Bergers, talking about a meeting with an informant. And then  
5 it seems to be forwarded up and Doria sends an e-mail to you  
6 and Meaghan Cheung on November 3, 2005, 5:05 p.m., saying,  
7 "Here's a new case for Simona. If you want to come by and  
8 we'll call John Dugan to see what he can tell us?"

9           So, were you ever advised as to, you know,  
10 specifically why you were assigned this matter?

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

13           A     No. Doria knew that I had time because I had --  
14 Bear Stearns was not active and that I had completed the bulk  
15 of the work on the AIG, so she knew that if a new matter came  
16 along I would have been able to take it.

17           Q     Okay. And was this case kind of presented to you  
18 in any particular way that you can recall? I mean how were  
19 you told about it? What were you told?

20           A     I got the -- this e-mail and I got -- shortly  
21 thereafter I got my -- report. And I was --

22           Q     Okay.

23           A     And then that was a new case that I was  
24 investigating.

25           Q     Okay, so it wasn't conveyed in any particular way,

1 "Here's a good case, here's a bad case, here's an interesting  
2 case?" Just -- you were just given it.

3 A "Here is a case, it's an allegation of a Ponzi  
4 scheme."

5 Q Okay. And had you heard of Bernie Madoff before  
6 you got this case?

7 A No.

8 Q Okay. All right. Okay, we're going to mark the  
9 next document as Exhibit 4. This is an e-mail from Doria  
10 Bachenheimer to Andrew Calamari, Meaghan Cheung and you,  
11 Friday, November 4, 2005, 1:33 a.m.

12 You can see this is a kind of a continuation of the  
13 previous exhibit, Exhibit 3, and if you see in this e-mail  
14 Bob Sollazzo has -- sends an e-mail to Doria Bachenheimer  
15 with a copy to John Nee saying, "These are basically some of  
16 the same issues we investigated and I recognize at least one  
17 of the hedge funds, Fairfield Century. Some of these  
18 comments are not new, I remember looking into similar -- a  
19 similar allegations back in the 90's at Madoff."

20 So did you understand at the time that these were  
21 issues that had already been looked at?

22 (SEC Exhibit No. 4 was marked  
23 for identification.)

24 A Yes. I know that soon after receiving this  
25 assignment I learned that our exam staff had examined the

1 firm just the previous summer and looked at the same  
2 allegations and I learned that they did not refer the  
3 examination findings to enforcement.

4           So we did know that it had been looked at, also  
5 very soon after receiving the case I learned from a member of  
6 the exam team, Peter Lamore, that he -- the Washington office  
7 had also looked at the same allegations about a  
8 year-and-a-half earlier, and I had looked at the records from  
9 the examination by the New York office and also the records  
10 that Washington office had forwarded to New York office.

11           Q     Okay. What about the reference in Bob Sollazzo's  
12 e-mails to similar allegations back in the 90's at Madoff?  
13 Were you informed that there was an investigation that was  
14 conducted in the 90's?

15           A     I was not aware of the 90's investigation.

16           Q     Okay. Were you aware that they -- there actually  
17 was an enforcement investigation relating to allegations of a  
18 Ponzi scheme in the 90's regarding Madoff?

19           A     I was not.

20           Q     Okay. Now, you said that you understood that the  
21 same allegations were looked at by Lamore's group and then by  
22 the Washington office but you also said that you understood  
23 that the case was alleging a Ponzi scheme. Did you  
24 understand that Lamore's group or the Washington office's  
25 group had looked into allegations of a Ponzi scheme in their

1 exam?

2 A I learned after talking to Peter that the focus of  
3 their exam was the front-running allegation, which was listed  
4 as the second allegation in the Markopolos report. I knew  
5 that their primary focus was front-running.

6 Q Did you think at that time that the examiners had  
7 looked at any aspect of the Ponzi scheme allegation in their  
8 examination?

9 A I don't think so. I knew that they had looked at  
10 the account statements and I knew that they had tested the  
11 prices in the account statements and that they had  
12 discussions with Mr. Madoff about, you know, the purported --  
13 the strategy that he was implementing in his accounts and the  
14 advisory part of his business. I did not believe that they  
15 focused on a Ponzi scheme allegation.

16 Q Okay. And this -- I'll give you a little back up  
17 for this before I ask the question. As going through this  
18 investigation, you know, we've asked all the examiners about  
19 what the focus was and they said the focus was on  
20 front-running not on the Ponzi scheme at all in the  
21 examination. Yet, in some of the e-mails that we see,  
22 including this one, it seems like initially what was conveyed  
23 to you and the other enforcement folks was, "These are the  
24 same issues we've already looked at, there's nothing here."

25 And we were, I guess, surprised by that given that

1 they hadn't at least looked at those issues. So did you get  
2 the feeling at any point in time that the exam folks were  
3 kind of down-playing some of the allegations in Harry  
4 Markopolos's complaint by saying they'd already looked at it,  
5 there was really nothing new here?

6 A I don't think so. I mean, they -- first of all,  
7 the front-running allegation was in the report, so they did  
8 focus on that. They -- also their, the examination as I  
9 understood it, was prompted I guess, by the allegations in  
10 the Barron's article. So the same allegations may refer to  
11 the overlap between the Markopolos report and the Barron's  
12 article. Peter had remained involved in the enforcement's  
13 investigation throughout the investigation and he understood  
14 that the Ponzi allegation was -- my impression was that he  
15 understood that the Ponzi allegation was a separate issue.

16 Q Okay. So you said that the exam team had looked  
17 into front-running, had they made a determination as to  
18 whether there was front-running?

19 A I understood from -- and from talking to Peter they  
20 had -- they decided that there wasn't front-running.

21 Q And so at that point did you kind of determine that  
22 that wasn't something you needed to look at because the exam  
23 folks had already looked at it or did you feel like, you  
24 know, in the enforcement context there might be other things  
25 you could do with respect to the front-running issue?



1           A     I noticed he sent it twice to us, but this is --  
2 looks like it's the first one.

3           Q     Okay. So when you first got the complaint I assume  
4 you had an opportunity to review it?

5           A     Yes.

6           Q     Okay. What were your initial impressions of it?

7           A     Well, I understood that he was making a very  
8 serious allegation and that he was -- and he was alleging a  
9 very large fraud. I also understood that he did not have  
10 personal knowledge of the underlying fraud, so he was not  
11 sort of a typical whistle-blower in the sense that he was not  
12 an insider to the scheme. And the -- most of his -- most of  
13 the points that he was making were in substance that the  
14 returns were too good to be true. And then he raised several  
15 other legitimate and serious red-flags such as the  
16 secretiveness of Mr. Madoff and then another --

17          Q     Okay. Had you received or seen other complaints  
18 that were the focus of investigations prior to this one?

19          A     Do you mean complaints from members of the public  
20 or --

21          Q     Anything. You did investigations before, some of  
22 them are precipitated by complaints like in this case, so  
23 were there situations prior to that where you had, you know,  
24 started with other complaints?

25          A     I don't think so.

1 Q Okay. Now, so was -- is it fair to say that it was  
2 clear that the issue that he was alleging was a Ponzi scheme?

3 A Yes.

4 Q And so where there particular steps that needed to  
5 be taken when you do a Ponzi scheme case investigation that  
6 you were aware of at the time?

7 A I did not know at the time. I had not done Ponzi  
8 scheme cases. One issue that Doria raised early on and that  
9 remains kind of on our agenda is verifying the transactions,  
10 the transactions that he was reporting to his clients.

11 Initially, until we understood how he conducted  
12 that business, the question that we focused on was whether  
13 he's reporting false returns. That issue was fairly earlier  
14 put to rest because we learned that he was not reporting  
15 returns but he was reporting transactions by providing  
16 account statements and trade confirmations.

17 Q Okay. Do you know if Meaghan Cheung had done any  
18 Ponzi scheme cases before?

19 A I do not know.

20 Q Okay. What about Doria Bachenheimer?

21 A I do not know either.

22 Q Okay. Did Meaghan or others have any initial  
23 reaction to Markopolos's complaint that you can remember?

24 A Doria's reaction, I remember distinctly that the  
25 scope of the allegation was so vast that it's -- we need to

1 focus on it. So just the size of the alleged fraud is so big  
2 that it would -- we need to look at it.

3 Q Okay. And was there any sense in terms of the  
4 complexity of the matter or the complexity of the issues that  
5 were raised by Harry Markopolos?

6 A Well, his -- while his -- the analysis in his  
7 report and the calculations did seem complex, they ultimately  
8 did seem to come down to the point that the returns are too  
9 good to be true. So -- and also as we learned more about the  
10 trading and the business that Madoff was conducting, we  
11 learned that the strategy was not particularly complicated.  
12 Peter -- I was told that Peter had worked as a trader and  
13 later on another staff member, Steven Johnson, who was -- I  
14 was also told was a former trader, was involved in this, they  
15 both had the impression that the strategy itself was sort of  
16 a plain vanilla common strategy.

17 Q Okay. Okay, why don't we go to the next document?  
18 Okay, mark the next document as Exhibit 6. This is an e-mail  
19 from you to Meaghan Cheung, 11/4/2005, 2:18 p.m.

20 If you see in here in the e-mail string you send an  
21 email to Meaghan Cheung, Friday, November 4, 2005, 2:16 p.m.  
22 citing some prior statements from Harry Markopolos. "The  
23 Iraqi cities go up in flames, so do Bush's reelection hopes."  
24 What was the relevance of these statements, do you know?

25 (SEC Exhibit No. 6 was marked

1 for identification.)

2 A Well, we -- I remember the day after getting this  
3 report I just Googled him and I was trying to find out his  
4 background and that was the only thing I could find I think.

5 Q Okay. Did it strike you in any way, these  
6 particular statements he made about Bush's reelection hopes?

7 A No. That aspect was not really relevant. We were  
8 just trying find out who exactly he is and what he does and  
9 so on, just to get his background. And I remember not being  
10 able to find much and it looks like I just cut and pasted  
11 some things I found on the internet.

12 Q Okay. And so Meaghan Cheung then says to you, "I  
13 have some qualms about his self-identified independent fraud  
14 and the analyst, but who knows?" Do you know what that was  
15 referring to?

16 A Well, she was referring to Harry Markopolos. I  
17 assume she was skeptical about him but I don't really know.

18 Q Right, well, were you skeptical about him because  
19 he was a self-identified independent fraud analyst or  
20 another -- for other reasons?

21 A No. The only concern I did have was that he did  
22 not have personal knowledge of the fraud and the red flags he  
23 was raising were in substance, the returns are too good to be  
24 true red flags or other indicators that are not really  
25 evidence or -- they are not personal knowledge based. So

1 that was my concern. I didn't have any -- I didn't give much  
2 thought to his motivation or background.

3 Q Okay. So the fact that he had talked about a  
4 bounty, did that have any impact on you?

5 A No.

6 Q Okay. And then it says up here -- you say, "We  
7 might want to talk to Mike Garrity in Boston about the past  
8 work Markopolos submitted to the SEC's Boston office." Did  
9 you end up speaking with Mike Garrity?

10 A I believe Meaghan did. I never did.

11 Q Okay. Did you speak with anybody in the Boston  
12 office about Harry Markopolos?

13 A I did not.

14 Q Okay. Did Meaghan ever tell you that she had and  
15 got some kind of report?

16 A Yes, she did, and the report she got was that the  
17 Boston office had worked with him in the past and that some  
18 tips had panned out and had led to cases and others did not.

19 Q Okay. Yeah, let me show you the next document.  
20 Mark it as Exhibit 7. It's an e-mail from Meaghan to Doria  
21 and you, 12/5/2005, 3:03 p.m. It looks like -- right, it is  
22 that she spoke to David Bergers in the Boston office and they  
23 said their "past experience with him had been that Markopolos  
24 had very good sources, can be credulous and immediately  
25 believes what his sources tell him even when they advised

1 that some of his tips had panned out and some have been very  
2 good cases, others have turned out to be nothing." And so  
3 what was the reaction from that? I mean did that make any  
4 difference?

5 (SEC Exhibit No. 7 was marked  
6 for identification.)

7 A I don't think so. I mean, his report said what it  
8 said and the allegation was very serious and I -- the fact  
9 that some of his tips had panned out gave him greater  
10 credibility and there wasn't -- we really didn't give much  
11 thought or time to his track record.

12 Q Okay. What -- but the fact that he had very good  
13 sources, was that something that would allow you to, you  
14 know, maybe want to contact the people he identified in his  
15 complaint, you know, as being the people who were very good  
16 according to the Boston office?

17 A Not in connection with this particular e-mail, but  
18 I remember at some point asking Meaghan about the people  
19 identified in his report and whether we wanted to contact  
20 them, and her reaction was no.

21 Q Did she say why?

22 A I don't think so. I don't believe she did.

23 Q Okay. So you didn't contact them?

24 A No.

25 Q Okay. And then in the original e-mail that I

1 showed you, Harry Markopolos says, "You and the team leader  
2 on the case are always welcome to contact me. If you'd like  
3 to meet at your offices in New York I can rearrange other  
4 business and make a trip to New York city with about a week's  
5 notice." Was there a discussion about taking Harry  
6 Markopolos up on that offer?

7 A I know Meaghan spoke to him on the phone. I don't  
8 think she ultimately met with him, I know I didn't.

9 Q Okay. Did you ever have a discussion with Meaghan  
10 about whether you should meet with him?

11 A No.

12 Q Okay, let me show you the next document. Okay,  
13 we'll mark this next document as Exhibit 8. This is an  
14 e-mail from Meaghan to you, Monday, November 7, 2005, 1:49  
15 p.m. And this looks like this is a second version of Harry  
16 Markopolos's complaint that was sent to you.

17 (SEC Exhibit No. 8 was marked  
18 for identification.)

19 A Yes.

20 Q Okay. Okay, let me ask you a couple of questions  
21 about this complaint. If you look at the page 1 of the  
22 document attached to Exhibit 8, in this he says, "There are  
23 two possible scenarios that involve fraud by Madoff  
24 Securities. Scenario number 1, unlikely," and it refers to  
25 front-running, and then, "scenario number 2, highly likely,

1 Madoff Securities is the world's largest Ponzi scheme."

2 Now you had said earlier that the front-running  
3 issue had kind of already been looked at, so is it fair to  
4 say that your focus was scenario number 2, whether Madoff  
5 Securities was a Ponzi scheme?

6 A Yes.

7 Q Okay. All right. Let's look at a couple of red  
8 flags. And there are some handwritten notes on this  
9 document, not very many, I was wondering if you could maybe  
10 identify them. If you look at page 4, is that your  
11 handwriting?

12 A I think so.

13 Q Okay. Do you know what it says there? No  
14 something?

15 A No. No, I'm sorry. No promise maybe or -- but I  
16 don't know.

17 Q Okay. And then the other one right below that, is  
18 that secrecy?

19 A Secrecy probably, yeah.

20 Q So was that a particular red flag that you thought  
21 was a concern, that secrecy issue?

22 A I don't -- it was definitely a red flag and it was  
23 an issue that we were aware of and I was aware of. I think  
24 if I made notes on this it was more to help myself work  
25 through it, not to highlight anything that was kind of more --

1 Q Okay.

2 A -- particularly --

3 Q And then if you look on page 6 --

4 A Right.

5 Q -- there's a question mark in a circle.

6 A In red?

7 Q Is that yours? Do you know what that referred to?

8 A It's possible that I was flagging to myself that  
9 the number was higher than the number that the exam team  
10 learned, because the exam team learned from Madoff that the  
11 assets under management were, I believe, under \$10 billion  
12 and this is substantially higher.

13 Q Okay. Now, you said you worked with Peter Lamore  
14 from the exam team?

15 A Yes.

16 Q Did you ever deal with William Ostrow at all?

17 A I did not. I knew that he was on the exam team,  
18 but Peter was our contact person.

19 Q Okay. And so Peter assigned shortly after the  
20 complaint came in?

21 A I don't think he was assigned because he's not in  
22 enforcement, but he, I guess, was -- his help was offered to  
23 us from the exam point as from the exam side and so -- and he  
24 remained involved.

25 Q Okay. Did Peter convey to you any impression that

1 he had of the allegations that Madoff was running a Ponzi  
2 scheme, given that he had already done an examination?

3 A He -- his -- he understood that we were looking at  
4 the Ponzi allegation and we talked with him and with others  
5 on the team about the question of verifying the transactions,  
6 so he understood what the concern was. But I don't think he  
7 expressed a view as to how -- whether this was -- the report  
8 was, you know, credible or not credible.

9 Q Okay. Or how likely it was that, in fact, Madoff  
10 was running a Ponzi scheme? Did he ever say, you know, "I  
11 did an exam, I don't -- I think it's unlikely?" Or, "I did  
12 an exam, looks like --"

13 A Not specifically as to the Ponzi allegation.

14 Q Okay. As to other allegations?

15 A The front-running.

16 Q The front-running, right.

17 A The front-running he made clear that they didn't --

18 Q Right, right, got you. Okay.

19 A -- think it was.

20 Q Okay, great. Okay. All right, let me ask you  
21 about another couple of red flags. Look on -- if you could  
22 look at page 10, "Red flag number 16, Madoff has perfect  
23 market-timing ability." Was that something that you kind of  
24 looked at initially? Did you ever talk to Lamore about  
25 Madoff's explanation in the exam about his market-timing

1 ability?

2 A We did. I know that Peter had spoken to Madoff  
3 about his market-timing decisions and we questioned Madoff  
4 himself about that. We questioned the other witnesses about  
5 that issue too, and the answer that we were getting was that  
6 he has access to a lot of market information, that he's very  
7 experienced industry insider and that he does have good  
8 market-timing ability.

9 Q Okay. Now what about red flag number 17, it  
10 references, "Madoff does not allow outside performance  
11 audits." And then it references in here, "They were told not  
12 only -- no, only Madoff's brother-in-law, who owns his own  
13 accounting firm, is allowed to audit performance for reasons  
14 of secrecy." Was this an issue that you looked at in terms  
15 of the accounting firm?

16 A We knew that it was not the brother-in-law, that it  
17 was a small auditing firm that was Madoff's auditor and we  
18 knew that it was not the major firm. We also knew that  
19 performance audit per se was not a lesson-learned at auditing  
20 performance in terms of rate of return. It was not really an  
21 issue because, again, he was reporting transactions not  
22 returns.

23 Q Okay. Look on page 12, I think there's some  
24 handwriting there as well.

25 A This is my handwriting, I think it says, "Seems

1 true."

2 Q And do you think you were referring to the  
3 allegation or --

4 A I think I was referring to the fact that the  
5 financial statements that we saw, and they may have been from  
6 the exam, did show cash positions, not securities positions,  
7 as of year end.

8 Q So at least in this instance you were able to  
9 verify that Markopolos's claim, even though he wasn't an  
10 insider, was true.

11 A Yes.

12 Q Okay. Now what about the next one, red flag 27?  
13 "Several equity derivatives professionals will all tell you  
14 that the split strike conversion strategy at BM runs is an  
15 outright fraud and cannot possibly achieve 12 percent average  
16 annual returns with only seven down months during a  
17 14-and-a-half year time period." We're talking about the  
18 returns, is that something that kind of struck you that at  
19 least according to this he couldn't possibly achieve those  
20 returns?

21 A I didn't know what to think at that time about the  
22 number itself. I did not know enough about this industry to  
23 place that number. I recall that when we got documents from  
24 Fairfield Greenwich the returns in more recent years were  
25 lower than that. And I recall Peter remarking something like

1 what these returns -- the actual returns that we did see in  
2 the Fairfield documents were not exorbitant.

3 Q Okay. What about in terms of the consistency of  
4 the returns? Did you have any understanding of how likely it  
5 was that one person could achieve such consistent returns  
6 over 14-and-a-half years with only seven down months?

7 A I did not have a view about how likely or unlikely  
8 that was, but I understood that that was a concern and a  
9 question and we raised that question with Madoff. His  
10 explanation was, again, was that he achieves that by being  
11 out of the market for substantial portions of the time and  
12 not being invested all the time. Ultimately, the question  
13 still was verifying the transactions as opposed to verifying  
14 the returns.

15 Q Okay. But you didn't contact any of the  
16 individuals here listed on page 12 and 13 who could have  
17 discussed, I guess, how unlikely it was for those kinds of  
18 consistent returns to be kept over that long a period of  
19 time?

20 A That's correct, we did not.

21 Q Okay. Now, did you ever at any time go back kind  
22 of at the end of the investigation, look back through the red  
23 flags and kind of check off that you've, you know, looked at  
24 and resolved each one?

25 A I know that I had throughout the time been

1 periodically doing that to the report and looking at it.

2 Q Okay. So were there particular red flags that you  
3 focused on more than others or would you say you tried to  
4 focus on all of them?

5 A All of them. And the -- my purpose in going back  
6 to -- during the investigation was to make sure that we're  
7 not overlooking something, but the bulk of the red flags did  
8 make the point that the returns are too good to be true. And  
9 we initially focused on figuring out how returns are  
10 calculated, and then we learned that they are calculated from  
11 statements and trade confirmations. Then the question was  
12 were these transactions completely made up or is everything  
13 completely made up or -- or not.

14 Q Okay. So do you feel at the end of the  
15 investigation you had kind of resolved all the red flags that  
16 Harry Markopolos brought forward in his complaint?

17 A I don't think I ever thought of it in those terms.  
18 I know that at the end of the investigation, somewhere around  
19 June and July, my -- the focus of the investigation towards  
20 the end of the investigation became to achieve a registration  
21 of the advisory business as an investment advisor. And  
22 towards the end of the investigation, the direction that I  
23 got from Doria and Meaghan was that our goal here would be to  
24 have him register as an investment advisor and then we're  
25 done. And that was the focus at the end.

1 Q Okay, so given the focus at the end, is it fair to  
2 say that you hadn't resolved each one of the red flags in  
3 Harry Markopolos's complaint when you closed the  
4 investigation?

5 A That we had not?

6 Q Yeah.

7 A That's probably correct.

8 Q Okay. At any point in time -- you hadn't heard of  
9 Madoff you said before, but at any point in time during the  
10 investigation did you learn that Madoff was kind of an  
11 influential figure in the industry, worked for NASDAQ, et  
12 cetera?

13 A Well, after we got in touch with the exam team we  
14 did learn that people in the industry did know him. His name  
15 was new to Meaghan, as far as I understood, and to Doria and  
16 to me, but when we spoke to the examiners, they knew the firm  
17 and they knew that it was a long-time Wall Street firm.

18 Q Okay. And did that have any impact on your  
19 thinking in terms of this was a long-time Wall Street firm,  
20 it's maybe less likely that he was running a Ponzi scheme all  
21 this time?

22 A It's certainly true that he didn't fit the profile  
23 of a Ponzi schemer, at least as we -- in the world that we  
24 knew then. And -- but also, I never had a concern in terms  
25 of, you know, stepping on the wrong toe or anything like

1 that, and I had no impression that anybody else did.

2 Q Okay. Okay, we'll go to the next document. Okay,  
3 the next document is an 11/6/05 e-mail from Meaghan to you,  
4 12:46 p.m. We're going to mark it as Exhibit 9.

5 And if you see in this document in the e-mail  
6 string is an e-mail from you to Meaghan, Wednesday, November  
7 16, 12:36. It talks about standard subpoena cover letter  
8 from enforcement and you say, "I was not sure whether to  
9 include the standard paragraph on SEC policy concerning  
10 settlements and I skipped it for now given that this is a  
11 voluntary cooperation request and our inquiry is more in the  
12 nature of an audit." Do you know what you referred to that  
13 this Madoff investigation was more in the nature of an audit,  
14 if that's what you're referring to here?

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

17 A I'm not sure. I know that at the time we were  
18 drafting the document request to Fairfield, the only thing we  
19 did have was the Markopolos report. And while it did raise  
20 some legitimate and serious red flags, it did not include, I  
21 guess, specific evidence of wrongdoing or we did not have  
22 access to a person with personal knowledge of wrongdoing. So  
23 I'm not sure whether or not by audit I'm -- I -- maybe I  
24 meant that we're just checking to make sure that it's -- or  
25 something like that. But I don't know.

1 Q Okay. Okay, we'll mark the next document as  
2 Exhibit 10. This is an e-mail from Peter Lamore to you,  
3 11/7/2005, 3:35 p.m., and it has attachments to it.

4 Look on the second page, page 2 of 4, okay?  
5 There's an e-mail from Peter Lamore to you on November 7,  
6 2005, 1:25 p.m. He says, "I believe we reference in our  
7 report that Washington, Eric Swanson, requested documents  
8 from Madoff about 1.5 years ago in connection with an  
9 informant making allegations against Madoff's investment  
10 advisor hedge fund business. We obtained a copy of the  
11 document sent to Washington but didn't find that particularly  
12 helpful. Also, I don't believe that Washington produced a  
13 report in relation to the Madoff documents requested."

14 Did you ever look at any of the documents from the  
15 Washington review?

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

18 A Yes.

19 Q Okay.

20 A I borrowed from Peter quite a few documents, I  
21 think it was -- may have been a box or more, and it was  
22 mostly account statements but it was also correspondence  
23 between Swanson and Madoff and also a few write-ups of the  
24 strategy and to trading that Madoff produced to Swanson. And  
25 they seemed very similar to what Madoff produced to the exam

1 staff and later to us.

2 Q Okay. Did you ever see the complaint that led to  
3 the Washington examination?

4 A I don't think so.

5 Q Okay. Did you ever see a complaint that led to  
6 the -- or documentation that led to the New York examination  
7 from Investment Adviser #1 ?

8 A I did not -- Investment Adviser #1 ?

9 Q Yeah.

10 A I did -- I don't know what prompted the exam of  
11 Investment Adviser #1 .

12 Q Right.

13 A I did see the e-mails that came out of that exam  
14 that led to the exam of Madoff.

15 Q Okay and did you have any impression of those  
16 e-mails? Did they seem consistent with what Harry Markopolos  
17 was saying?

18 A Yes. And I asked the examiners who worked on the  
19 Investment Adviser #1 exam about, you know, what did they find out  
20 about those e-mails and they said that the author has  
21 basically backed away and said it was nothing specific, it  
22 was just rumors, and --

23 Q Really?

24 A Yeah.

25 Q Did you ever talk to anybody at Investment Adviser #1

1 Investment Adviser #1

1

2 A I did not.

3 Q Who told you that?

4 A I do not remember the name, if I see the name of  
5 the people on the --

6 BY MS. STEIBER:

7 Q Is it Thomas Anasoulas?

8 A It's possible. I don't remember, but it was a  
9 person who worked on the Investment Adviser #1 exam.

10 Q Was it Dorothy Eschwie?

11 A She may have been the one who ultimately gave me  
12 the answer. I know it was the exam done from -- I know that  
13 the exam was done by her group and I think she was on the  
14 e-mails that were forwarded to me, but I don't remember who  
15 specifically I talked to about those e-mails.

16 BY MR. KOTZ:

17 Q And -- but you never saw a complaint by someone  
18 named [REDACTED] that had some of the same allegations  
19 that Harry Markopolos made later?

20 A The name does not sound familiar.

21 Q Okay. And you don't remember any complaint that,  
22 you know, relatively long complaint with detailed information  
23 that led to the Washington examination?

24 A Similar to the Markopolos report or -- no, I  
25 mean --

1 Q Not as detailed.

2 A The only other thing I remember is the e-mails from  
3 the Investment Adviser #1 exam.

4 Q Okay. Do you think that that might have been  
5 helpful to know that another entity had made allegations  
6 sometime later that at least raised some of the same issues  
7 that Harry Markopolos did?

8 A Yes, now I think that it would be.

9 Q Okay. Okay, and then on the first page of this  
10 document, Exhibit 10, there's a reference in it, I think you  
11 referenced it previously yourself, to Lamore saying that  
12 Madoff's strategy was pretty plain vanilla.

13 A Right.

14 Q Right. Now, Lamore said to us in testimony that  
15 the fact that Madoff was running -- using a plain vanilla  
16 strategy was even more suspicious in that how could he  
17 achieve these returns when his strategy was nothing  
18 extraordinary. Did you have that same understanding?

19 A I don't think I had that view at the time. I  
20 understood what the strategy was supposed to be, I understood  
21 how he reported the transactions, I understood that he --  
22 that the exam staff had to check the verifiable information  
23 from account statements in terms of prices. I don't think I  
24 had the view one way or the other on this particular point.

25 Q Okay. Then there is a -- there's an attachment to

1 Exhibit 10, do you know what that was, that spreadsheet?

2 A I think that's a spreadsheet that Peter generated.  
3 Either he generated from Madoff's account statements that he  
4 got during the exam or Madoff produced to him and he printed  
5 out, but it was one of the exam work papers. It was an  
6 account statement for, I believe, one of the Tremont  
7 accounts.

8 Q So did you have an understanding of the  
9 spreadsheet?

10 A Yes.

11 Q And do you have an understanding of how Lamore  
12 described Madoff's strategy?

13 A Yes.

14 Q Okay. Now, in Exhibit 10 in the e-mail, Madoff --  
15 Lamore also says, "Also, you should be aware that the stocks  
16 are traded in Europe, not during U.S. trading hours."

17 A Right.

18 Q Do you know how Lamore learned that? Do you know  
19 what he based that information on?

20 A He learned that from Bernie Madoff. And I believe  
21 he also learned it -- it was consistent with the times of the  
22 trades that he saw in the --

23 Q Okay, but did Lamore do anything to verify that  
24 Madoff was trading stocks in Europe other than just hearing  
25 it from Bernie Madoff?

1           A     I don't know.

2           Q     Okay. Did you ever get the impression from Lamore  
3 that nearly everything that he learned in the examination of  
4 Madoff came from Madoff himself?

5           A     I did know that Bernie Madoff controlled, sort of,  
6 the exam -- not controlled the exam, but he wanted to be the  
7 sole point of contact for the examiners. And I know that  
8 Peter was, on our side, the point of contact.

9           Q     Did you ever read the exam report that Lamore did?

10          A     Yes.

11          Q     Did you notice that in the exam report nearly the  
12 entire report recites what Bernie Madoff says?

13          A     I knew that, yes.

14          Q     Okay. So a lot of the information that Lamore was  
15 getting that he was telling you was just based on what --  
16 something Bernie Madoff told him.

17          A     Yes.

18          Q     Okay and given that you were investigating Bernie  
19 Madoff for essentially being a liar and a fraud, wouldn't you  
20 be very skeptical that any of this stuff was true?

21          A     That's true and that makes sense to me now. At the  
22 same time, I was told that Peter was an industry expert and I  
23 thought that if there were things that jumped out at him as  
24 things that didn't make sense, I deferred to his judgment on  
25 that point.

1 Q Okay. Did Peter ever indicate to you that he felt  
2 Bernie Madoff was trustworthy in terms of the things that he  
3 was saying to him in the exam?

4 A No. We knew that Bernie Madoff was secretive. I  
5 think the impression that I got from Peter early on when he  
6 had described his experience during the exam to us, was that  
7 Madoff was very secretive and eccentric, that he was  
8 autocratic, that he did not like delegating in any part of  
9 his activity, and that the business, despite being a big  
10 business, was pretty much run as a family business. And we  
11 knew that he was secretive and that he was not eager to share  
12 information with us.

13 Q Did Lamore ever convey to you, as he told us in  
14 testimony, that he believed Bernie Madoff lied to him on  
15 multiple occasions in the exam?

16 A Yes.

17 Q Okay.

18 A We learned that when we got documents from  
19 Fairfield. We learned -- Madoff told Peter that he had  
20 stopped trading options as part of his strategy.

21 Q Right.

22 A We got documents from Fairfield and we saw options  
23 trading reported in the account statements. And it was a big  
24 red flag and it bothered me a lot and we focused on that  
25 and -- the red flags --

1 Q Even after the investigation closed?

2 A Yes.

3 Q Okay. All right, let me show you the next  
4 document. Okay, the next document we're going to mark as  
5 Exhibit 11. This is an e-mail from Ostrow to Lamore, 11/14,  
6 2005, 10:36 a.m.

7 And below it is an e-mail from Peter Lamore to you  
8 and Meaghan and in this Lamore says, "In general the  
9 informant raises some valid questions, but I believe most of  
10 his allegations can be refuted based on the examination that  
11 we conducted this year."

12 Did you understand that this referred to the  
13 front-running allegations?

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

16 A I think at the time when I got the e-mail I think  
17 it was probably before we first met with Peter, so at that  
18 time I probably did not understand either way. Soon  
19 thereafter we did meet and we talked about the exam and I  
20 soon did learn that what he was talking about was  
21 front-running.

22 Q Okay. But -- well, we've gotten testimony from a  
23 variety of people on this and we talked to Peter Lamore about  
24 it as well, and essentially what we've been told is that, I  
25 mean, this was -- we don't know why this statement was made

1 but that this is not an accurate statement. In other words,  
2 "most of the allegations can be refuted based on the exam  
3 that we conducted this year," well, the primary allegation in  
4 the Markopolos complaint is a Ponzi scheme and the exam team  
5 didn't even look at the Ponzi scheme. So, I mean, it seems  
6 to me that what is being conveyed to you here is not exactly  
7 accurate in terms of what the exam team looked at.

8 A That may be true. I did not give much thought to  
9 this because it was, you know, a very high-level summary and  
10 we did meet soon after and we talked in more detail.

11 Q Okay. But I mean if you're working on an  
12 investigation and there was just an exam done of that same  
13 entity, I mean, wouldn't that in some ways factor into what  
14 you think of the investigation, that there was an exam done?

15 A Yes, of course. I mean --

16 Q If the examiners are telling you that most of the  
17 allegations can be refuted, wouldn't you kind of begin the  
18 investigation thinking, "Well, there may not be that much  
19 here because they just did an exam and it looks like, you  
20 know, they did a lot of work and they didn't think these  
21 allegations were, you know, would pan out?"

22 A I think that's true. Certainly the fact that  
23 multiple exam teams had gone into the firm made the -- made  
24 the Ponzi allegation less likely. It seemed like they were  
25 there, they're onsite, they see their operation, they are

1 supposed to be industry experts.

2 Q The examiners made clear to you that they had never  
3 looked at all at the Ponzi scheme element.

4 A I don't think they said it that -- in that term --  
5 in those terms. I know that they looked at primarily what  
6 was in the Barron's article and the front-running.

7 Q Okay. Did Lamore or anyone else on the exam team  
8 ever indicate to you that they felt like there were more  
9 issues that they should look at in connection with the exam  
10 but were essentially instructed to focus to focus only on  
11 front-running?

12 A No. I was not told that. I mean, I know that they  
13 did not refer their findings to enforcement and from the  
14 other two cases I was working on at that time I saw that  
15 referrals are made fairly easily on not particularly huge  
16 matters, so the fact that they conducted an exam and chose  
17 not to refer to enforcement did give us some comfort.

18 Q Right. Did Lamore or anyone else on the exam team  
19 ever tell you that they wanted to do more work as part of the  
20 exam but their supervisor instructed them not to?

21 A No.

22 Q Okay. Did Lamore or anyone else on the exam team  
23 give you the impression that they felt there were significant  
24 open questions about Madoff's operation when they finished  
25 the exam?

1 A No. No.

2 Q Okay. Okay, in this document Lamore says, "In  
3 order to refute all of his allegations we may need to request  
4 some documentation from one or more of the fund to funds."  
5 You see that?

6 A Yes.

7 Q And he says, "I would suggest obtaining the  
8 marketing material around the strategy, 2005 statements and  
9 trade confirmations, capital allocated to the strategy in  
10 order to compare them to what we were given by Bernie Madoff,  
11 and a copy of the audit performed on the fund to funds." Did  
12 you understand at that time that Madoff was self-clearing and  
13 generating his own trade confirmations and client statements?

14 A I'm -- I certainly did not understand that on  
15 November 13th --

16 Q Okay.

17 A -- but I realized that soon thereafter after we  
18 learned -- got documents from Fairfield and also interviewed  
19 a person from Fairfield and took Tucker's testimony, took  
20 DiPascali's testimony, I understood that.

21 Q Okay. So is it fair to say given that, that the  
22 documents that Madoff sent his clients, the fund to funds  
23 wouldn't actually refute any of the allegations in  
24 Markopolos's complaint given that Madoff was self-clearing?  
25 Right?

1 A So can you --

2 Q Well, Lamore is saying in order to refute all of  
3 his -- he's saying most of his allegations can be refuted  
4 based on the exam, even though the exam didn't look at the  
5 Ponzi scheme at all. Then he says, "In order to refute all  
6 of his allegations," everything, "all we have to do is  
7 request some documentation from one or more of the fund to  
8 funds." Well if Madoff was self-clearing wouldn't those  
9 documents not actually tell you anything?

10 A That's true. And we -- I'm sure I did not have  
11 that view on November 14th, but I understood that later in  
12 the investigation.

13 Q Okay. But, again, Ostrow says to Lamore in this  
14 e-mail, 11/14/2005, 10:36 a.m., "In addition, the main thing  
15 the informant does not know is that the trades are done in  
16 Europe." You see that?

17 A Yes.

18 Q But isn't it a -- isn't it true that the only  
19 reason why Ostrow or Lamore thought that trades were done in  
20 Europe were because Bernie Madoff told them the trades were  
21 done in Europe?

22 A That's true. And because the records that he  
23 showed them showed time -- trade times that were consistent  
24 with that.

25 Q Okay. But there really wasn't anything done to

1 verify that. And so the fact that Harry Markopolos says one  
2 thing, Bernie Madoff says another, and -- but it's the way  
3 it's being couched is the informant doesn't know this, based  
4 just on Bernie Madoff saying it.

5 A That's fair.

6 Q All right. So I mean on some level, you know,  
7 because we saw some notes that were taken by the examiners on  
8 Markopolos's complaint, so in a reference once where  
9 Markopolos says, "trades done in Europe," the examiner wrote,  
10 "Wrong." Well, you could have put that on, you know, Madoff  
11 is running a Ponzi scheme because if you ask Madoff he would  
12 say that was wrong too. I mean, you know, it was just based  
13 simply on Bernie's word.

14 A Yes.

15 Q Okay.

16 A To the best of my knowledge, I mean I --

17 Q Right.

18 A -- can't tell you what they did on the exam  
19 obviously --

20 Q Right.

21 A -- or everything they did on the exam.

22 Q Okay. Now, you talked about verifying  
23 transactions. Was there any discussion about verifying trade  
24 data and account balances from independent sources?

25 A Yes.

1 Q Okay.

2 A There was. We had -- it was during the time when  
3 Stephen Johnson was also involved, and we had several  
4 conversations. We had conversations with a depository trust  
5 company, we had conversations with NASD regulation, and  
6 Chicago Board of Options Exchange, the CBOE, and the question  
7 was or became once we learned more about this business, how  
8 do you verify transactions independently.

9 One avenue we explored was DTC records. We had a  
10 call or more with a compliance person there and the bottom  
11 line that came out of that conversation or those  
12 conversations, there may have been more than one, was that we  
13 concluded there was no feasible -- it wasn't feasible to  
14 confirm the trading through DTC because there was no way to  
15 segregate the trading for the advisory business into  
16 separate -- the trading in any account from the trading of  
17 the Madoff firm.

18 We spoke to NASD regulation. I got the name from  
19 Rob DeLeonardis -- got a contact name in NASD regulation,  
20 somebody I believe was fairly high up, Personal Privacy,  
21 and I think we talked about -- tried to find out what they  
22 had done on Madoff. We learned that they had conducted  
23 investigations of the firm as well. I don't believe we came  
24 out of the conversation with any suggestions for what to do.

25 Then we talked with CBOE and we talked about how do

1 you -- how we can verify the options part of the trading.  
2 We -- I remember we learned that for over-the-counter options  
3 there was no -- they can't help us verifying over-the-counter  
4 transactions.

5           And so we came to the view that the only way to  
6 verify the transactions was to go to the counterparties.  
7 Madoff produced to us the list of dealers that were European  
8 financial institutions. He produced a fairly long list and  
9 the bulk of the list were dealers with whom he said he traded  
10 equities, and then at the end of the list there was -- I  
11 would say about, roughly 10 European financial institutions  
12 with whom he said he traded options.

13           And we thought, is there a way to go to these  
14 counterparties and verify the trading? I prepared document  
15 requests to two of them, RBS and UBS, and they were to the  
16 domestic affiliates of those foreign institutions. We sent  
17 the request to both, I believe it was in June, had  
18 conversations with compliance or legal departments at both  
19 UBS and RBS.

20           The bottom line on both inquiries is that while the  
21 accounts were which we were looking to get information, those  
22 accounts were at the foreign affiliates and both institutions  
23 took the position that these are separate legal entities, as  
24 I understand, which usually happens in these situations, they  
25 took the position that these are separate legal entities,

1 foreign entities, and to get the records from them you have  
2 to go straight to the foreign entities.

3 I knew at the time that it was -- getting foreign  
4 records was an area where we had to go through Office of  
5 International Affairs and sort of be very careful, in the  
6 sense that we'd been instructed on many occasions about  
7 possible criminal liability and so on if you ask for the  
8 wrong thing from the wrong country. So, I knew that it was  
9 sort of an area where we needed to make sure that we did  
10 things right. I believe it was UBS, one of the two suggested  
11 that we get Madoff's consent to get the records from the  
12 foreign affiliate and even provided the consent letter -- or  
13 the draft consent letter.

14 And I spoke to Meaghan about it and asked whether  
15 we would pursue this and she said no. And that was very  
16 close to the end of the investigation, it was in July, and  
17 the focus at that time was on the registration issue. In  
18 retrospect I do think that that's an avenue we should have  
19 pursued.

20 Q Okay, well, we have a lot of documents about all  
21 those different things so we'll go through them in detail.  
22 But, you know, at the end of the day you weren't able to  
23 verify the trade data and account balances from independent  
24 sources?

25 A That's right.

1 Q Okay. All right, we can get into some of the  
2 specifics as we go through. Okay.

3 BY MR. FIELDER:

4 Q Before you move on David, I just want to ask, my  
5 understand is when you're going to the counterparties you're  
6 looking at confirmation. When you were contemplating doing  
7 that you're looking at confirmation of the options first,  
8 right?

9 A Yes.

10 Q You didn't think you were looking for confirmation  
11 of the equity trades?

12 A Right. We thought that it would be an easier place  
13 to start because there were fewer counterparties so  
14 presumably the transactions would be split in smaller chunks  
15 and the volume I think was lower.

16 Q Did you have an understanding of how or where you  
17 would go to verify the equity trades? You said you came to  
18 the conclusion DTC was not practical.

19 A It was -- we started with the options but the issue  
20 was the same because all the institutions on the list and the  
21 accounts were at foreign entities. So we started with the  
22 options really -- it was the same sort of question, I guess,  
23 for the equities. We didn't focus on the equities part of it  
24 on the counterparty part of it.

25 Q Okay, but there's no counterparties to the equity

1 trades, that's what's confusing.

2 A Oh, I'm sorry, you're right. No, we did not focus  
3 on that end.

4 Q Okay.

5 BY MR. KOTZ:

6 Q Okay, we'll go to the next document. Mark it as  
7 Exhibit 12. This is an e-mail from Peter Lamore to you,  
8 11/17/2005, 10:18 a.m.

9 And below it there's an e-mail from you to Lamore  
10 and Meaghan Cheung, 11/16/2005, where you say, "Meaghan,  
11 prior to sending out this request, maybe it makes sense for  
12 us to call Fairfield's legal or compliance department to warn  
13 about the request and also to give a heads-up as to its  
14 scope." Why would you warn Fairfield's legal and compliance  
15 department about a request in an investigation of a Ponzi  
16 scheme?

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

19 A For Fairfield it was -- this was common practice  
20 when we send out a document request or a subpoena. It's  
21 helpful in terms of logistics, just how it will be managed,  
22 to call so that the people there know what you are  
23 investigating -- I mean not know what you investigate but  
24 know that the request is coming and what kind of documents  
25 it's looking for, because it's easy for subpoenas to get lost

1 or for faxes to get lost.

2           So it's -- it was not intended to give the heads-up  
3 in terms of investigating a Ponzi scheme, but a heads-up in  
4 terms of here's a document request, we will be asking for  
5 these kinds of documents, here is the person you should be  
6 calling and -- it's to establish contact so that the  
7 production of documents goes more smoothly.

8           Q     Right, but if you are investigating a potential  
9 Ponzi scheme and there may be a concern the documents would  
10 be created, wouldn't it give them a heads-up by telling them  
11 that the request is coming?

12          A     Well, they're getting it on the same day by fax, so  
13 I don't think it gives away more than the actual request that  
14 arrives.

15          Q     Okay. And so Lamore is saying in here in response  
16 to your e-mail, "We want to make sure that they at least  
17 provide us with confirms and statements for the same months  
18 that DC received and we received for our latest exam." Did  
19 you get that in the end?

20          A     I'm sorry --

21          Q     First page, the second full paragraph of Lamore's  
22 e-mail to you, the last sentence. "We want to make sure that  
23 they at least provide us with confirms and statements for the  
24 same months that DC received and we received for our latest  
25 exam."

1           A     I'm pretty sure we did. I know we covered the time  
2 period that the exam staff covered so that we could  
3 compare -- the point was to try to compare the information we  
4 get from Fairfield to information that was given to the  
5 examiners, and I know that our request covered at least the  
6 New York exam's timeframe, I'm not sure about DC.

7           Q     Okay. Okay, I'm going to show you the next  
8 document marked as Exhibit 13. This is an e-mail from Peter  
9 to you, 12/13/2005, 5:46 p.m.

10                     Okay, if you look at the second page, which is an  
11 e-mail from you to Peter and Meaghan, Tuesday, December 13,  
12 2005, 3:17 p.m., you say, "Just with the data produced so  
13 far, it looks like we should be able to verify whether the  
14 information Madoff provided to Fairfield Greenwich matches  
15 the data that Madoff gave to Peter and his team. We will  
16 need to make additional requests if we try matching this data  
17 with the information that Fairfield Greenwich provides to its  
18 investors."

19                     What is the point of trying to verify that the  
20 information that Mayfield -- Madoff provided to Fairfield  
21 matches the information that Madoff gave to OC?

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

24           A     Well, if it didn't match it certainly would be a  
25 huge red flag.

1 Q Okay.

2 A If he was giving one set of transactions to the  
3 exam staff and a different set of transactions -- also at  
4 that point -- right, right, at that point we already knew  
5 what he was providing to them, yes.

6 Q But it wouldn't really go to the Ponzi scheme  
7 issue, right?

8 A That's right.

9 Q Okay. Okay and then you say also, "While I have  
10 not yet completed the review of the general binder, one odd  
11 discrepancy did catch my eye. As you know, Madoff told Peter  
12 that he stopped using options as part of his trading strategy  
13 in January 2004, yet the account statements and trade  
14 confirmations produced by Fairfield Greenwich show trading in  
15 S&P100 index options all through 2004 up to October 2005, the  
16 last month for which data was produced."

17 And then you say, "Peter, when you have some time,  
18 take a look at the data and see if I'm missing some obvious  
19 and innocent explanation for this." Did Peter come up with  
20 any obvious or innocent explanation for that?

21 A No. We came to the conclusion that Madoff did not  
22 give them full information and that was the conclusion.

23 Q Okay. Is it fair to say that would be kind of very  
24 suspicious, particularly in light of the allegations of a  
25 Ponzi scheme --

1 A Yes.

2 Q -- that he came -- okay.

3 A And it was a major reason that the investigation  
4 continued and proceeded.

5 Q Okay. And this discrepancy, was that resolved by  
6 the end of the investigation?

7 A We did confront Madoff with the discovery during  
8 his testimony. He attempted to portray this as a  
9 misunderstanding. It did bother me. I did not think it was  
10 resolved. I did believe that he was not forthright.

11 Q So the explanation that Madoff gave in his  
12 testimony didn't convince you?

13 A That's correct.

14 Q Okay. Okay, let's go to the next document. Okay,  
15 mark the next document as Exhibit 14. This is an e-mail from  
16 you to Peter Lamore, 12/14/2005, 7:42 p.m.

17 It references Fairfield Century's private placement  
18 memo discloses the following potential conflict of interest.  
19 And then you say, "What is this about? I'm sure this is  
20 basic stuff but I am still pretty new to all things BD." I  
21 assume that means broker-dealer?

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

24 A Right.

25 Q So is it fair to say that you were pretty

1 inexperienced in these issues when you were working on this  
2 exam -- on this investigation?

3 A Yes. You know, I had worked on Bear Stearns  
4 even -- it was technically a broker-dealer case but it was  
5 really about very idiosyncratic part of the operations and  
6 did not really deal with the mechanics of trading. The AIG  
7 matter was an accounting fraud case so that certainly did not  
8 involve trading. And I had never been inside a broker-dealer  
9 and a broker-dealer's office, so it's true, I was pretty  
10 unfamiliar with the trading aspects.

11 Q And yet you were doing the lion's share of the work  
12 on this investigation, right?

13 A Yes.

14 Q So do you feel that maybe you could have gotten  
15 more guidance from your superiors who had been more familiar  
16 with broker-dealers in this investigation?

17 A That's probably true.

18 Q I mean, you know, it's a very serious claim against  
19 a very sophisticated industry individual who had been doing  
20 this for many, many years. And weren't you in some ways  
21 overmatched by somebody like Bernie Madoff given your  
22 experience with broker-dealers?

23 A I was -- I mean, I recognized that he had much more  
24 experience than I did and I recognized the limitations of my  
25 knowledge of the industry. I did take some comfort in the

1 fact that Peter and Stephen were there and I was told that  
2 they were industry insiders and knew the industry. And I did  
3 go to Meaghan, primarily Meaghan but also Doria, for guidance  
4 in terms of which investigative steps to take.

5 Q Did Peter Lamore ever indicate to you that he  
6 himself was having trouble understanding some aspects of  
7 matters in the Madoff investigation?

8 A I don't remember that.

9 Q Okay. Why don't we go to the next document? Mark  
10 it as Exhibit 15. This is an e-mail from you to Linda Moran,  
11 a little hard to read the date --

12 MR. WITHERSPOON: I think it's December 15th.

13 BY MR. KOTZ:

14 Q December 15, 2005, 5:02 p.m. Do you remember  
15 anything about Linda Moran, what she was looking at, I guess?

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

18 A I know that, as I always do when I start a new  
19 case, I ran the names through NRSI and I remember seeing a  
20 lot of old -- getting a lot of hits for I think mostly older  
21 matters where there is Madoff family members listed, I  
22 believe primarily as witnesses.

23 I don't remember getting a response that was, you  
24 know, a concern I guess. I know that I reached out to some  
25 staff members about some of the hits that they got on NRSI, I

1 don't remember getting a response that was a concern.

2 Q Okay. If you had received information that there  
3 was another complaint at that same time from an investor  
4 making some of the same allegations about Madoff, would that  
5 have been helpful in doing your investigation?

6 A Yes.

7 Q Okay. Okay, we'll go to the next document. Okay,  
8 the next document we're going to mark as Exhibit 16. This is  
9 an e-mail from Meaghan to you, 12/19/2005, 1:06 p.m., and it  
10 forwards an e-mail from Harry Markopolos to Meaghan Cheung.

11 So did you have a -- is that Kanaveski?

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

14 A Kanevski, that's my married name.

15 Q Oh, okay. Sorry, I just wanted to double-check  
16 that.

17 A I mean that's my maiden name and Suh is my married  
18 name.

19 Q Okay. So this was a forwarded e-mail from Harry  
20 Markopolos which he had sent to Meaghan Cheung. And in it,  
21 Harry Markopolos references that he had a 40-minute telephone  
22 conversation with Michael Ocrant who wrote a story for  
23 MarHedge published May 2001 entitled "Madoff Tops Charts,  
24 Skeptics Ask How." Did you ever read that article?

25 A Yes.

1 Q Did you ever have any conversation with Mr. Ocrant?

2 A No, I did not.

3 Q Was that ever discussed, reaching out to somebody  
4 else like Ocrant?

5 A It was not discussed. In terms of reaching out to  
6 the press, as I'm sure you know, there was a big issue soon  
7 after this time about subpoenas to the press and there was a  
8 policy distributed about how subpoenas to the press should be  
9 handled. Even before then, just from my own knowledge of the  
10 protections that the press gets, I would be very careful  
11 about reaching out to the press for information in an  
12 investigation, so I would not do that without substantial  
13 consultation with my supervisors. It was never discussed in  
14 the context of this particular investigation.

15 Q Okay. What about John Wilke, senior investigative  
16 reporter for the Wall Street Journal, was that ever discussed  
17 about reaching out to him?

18 A No.

19 Q Okay. And then Harry says, "I've also compiles  
20 several pages of contact information that might be useful to  
21 the SEC's investigation. I'll try to get that to you next  
22 week." Do you know if you ever got that?

23 A I know I did not see that. I don't believe Meaghan  
24 got it either but I don't know.

25 Q And then he also says, "If I'm coming to town I'll

1 call ahead see if you'd like to meet with me. I've got a  
2 several-inch-thick file folder on Madoff that I would be  
3 happy to let you copy if the SEC has any interest." Do you  
4 know if you ever got that?

5 A I don't think so.

6 Q Do you have any -- do you know why it seems as  
7 though from the e-mails Harry Markopolos was kind of trying  
8 to meet with Meaghan but she didn't seem interested in  
9 meeting with him?

10 A I don't know what her reasons were. I know her  
11 general impression of him was -- she was skeptical of him,  
12 but I don't know what her reasons for not meeting with him  
13 were.

14 Q In what way was she skeptical of him?

15 A I think she -- and I may be -- what I've read in  
16 the press about -- or in his testimony, I think, about his  
17 conversation with her -- I remember -- I remember hearing  
18 that she thought he was kind of condescending to the SEC in  
19 terms of SEC expertise and knowledge, but I also have since  
20 read that he remembers her being condescending to him. So --  
21 but I don't really know what happened there.

22 Q Did Meaghan ever say to you during the course of  
23 the investigation, you know, "Harry keeps bugging me, Harry  
24 keeps calling me, Harry wants to meet with me," anything like  
25 that?

1           A     No. No, other than what you see in the e-mails. I  
2 don't remember anything in addition to that.

3           Q     Okay. Okay, mark the next document as Exhibit 17.  
4 This is an e-mail from Meaghan to you and Peter Lamore,  
5 Wednesday, December 21, 2005, 12:52 p.m. This also is a  
6 forward of a e-mail from Harry Markopolos to Meaghan Cheung  
7 where he attaches the MarHedge article.

8                     There's a couple reference also in the e-mail that  
9 Harry Markopolos writes to Meaghan Cheung on Wednesday,  
10 December 21, and he says in there, "Know also Madoff's size,  
11 \$7 billion in 2001, which was huge five years ago, Ocrant  
12 believes Madoff was actually running at least \$12 billion to  
13 \$13 billion at time according to some folks he had spoken to.  
14 Now I expect he's in the \$30 billion range or thereabouts."

15                     Did you have any sense of how big Madoff was at  
16 this time?

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

19           A     Well I knew that the exam staff believed it was --  
20 and the information that he provided to the exam staff put  
21 the assets about -- under \$10 billion. Under \$10 billion.

22           Q     Under \$10 billion. I thought you said \$110  
23 billion.

24           A     No, no, under \$10 billion.

25           Q     Okay.

1           A     And that was also the information that he provided  
2 to the enforcement staff.

3           Q     So did you know whether Harry was correct that it  
4 was actually in the \$30 billion range?

5           A     I did not, no.

6           Q     Okay. Was this the first time you had read the  
7 Michael Ocrant article, "Madoff Tops Charts, Skeptics Ask  
8 How" from when Harry provided it to Meaghan Cheung?

9           A     I don't know. I may have read it earlier. I know  
10 that usually when I get a new matter one of the things I do  
11 is go in and try to look for relevant and background  
12 information. So it's quite possible that I read it before  
13 then.

14          Q     Did you ever read a Barron's article?

15          A     Yes, I did.

16          Q     Okay. And what was your impression of the two  
17 articles?

18          A     They raised very similar concerns that the  
19 Markopolos report read -- raised. One of them was  
20 front-running, one of them was the possibility of smoothing,  
21 I guess, returns or subsidizing returns through the brokerage  
22 business. They raised the secrecy issue. So they raised  
23 very similar issues.

24          Q     Did they also raise the issue of kind of the  
25 impossibility of the returns?

1 A Yes.

2 Q Okay. And so would that lend some credibility to  
3 Harry Markopolos's allegations in that these other  
4 publications had raised the same questions?

5 A Well, I guess in the sense that other people -- he  
6 was not alone in his thinking. So to the extent that  
7 multiple people have the same view, and maybe that does make  
8 that view more likely to be true.

9 Q But in terms of, you know, the returns itself, the  
10 time period of which Madoff had the consistent returns and  
11 kind of industry professionals understanding that that was  
12 extremely unlikely that anyone could achieve those kinds of  
13 returns using the strategy that Madoff said; wouldn't that  
14 fact that the Barron's article and the MarHedge article made  
15 the same points, wouldn't that add credibility to that part  
16 of Markopolos's claim?

17 A Yes. And the question was a question. You know,  
18 this is the question that we were asked to investigate.

19 Q Okay. Okay, let's go to the next document. Okay,  
20 mark the next document as Exhibit 18. This is an e-mail from  
21 you to Peter Lamore, 12/21/2005, 1:25 p.m.

22 And in it below you say to Peter Lamore on  
23 Wednesday, December 21, 2004, at 12:14 p.m., "The relative's  
24 firm that audits Madoff, it's not Berkow, Schechter & Company  
25 LLP by any chance? This company audits Greenwich Century LP,

1 the domestic fund that invests with Madoff's banks."

2 And then Peter responds, "Friedling & Horowitz."

3 And you respond, "Thanks."

4 Do you know -- what was your thinking here in terms  
5 of why you thought it might be this Berkow, Schechter &  
6 Company?

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

9 A Well, at the time we did not know much about  
10 Fairfield and I think it wasn't clear -- you know, one thing  
11 that wasn't clear to us was maybe Fairfield is conducting a  
12 fraud. At least my -- I may be wrong about it in terms of  
13 dates, but anyway, I think it was driven by sort of the  
14 question I had whether Fairfield may be falsifying numbers or  
15 something like that.

16 Q So did you ever look at Friedling & Horowitz?

17 A We did not.

18 Q But you say in here, "The relative's firm that  
19 audits Madoff," right?

20 A I think I was using the Markopolos allegation that  
21 it was brother-in-law.

22 Q Okay.

23 A But I do remember that Peter clarified to me that  
24 it was not involved in it or I believe that he clarified to  
25 me that it was not the relative's firm.

1 Q Okay. So you understood that there was no family  
2 relationship between this firm, the auditing firm -- the  
3 accounting firm and Madoff?

4 A Yes.

5 Q Do you know where Peter got that information from?

6 A I don't know.

7 Q Could it have been from Bernie Madoff?

8 A It could have been.

9 Q Okay. But if, in fact, a relative had been in the  
10 accounting firm that audits Madoff, would have been a red  
11 flag?

12 A Yes.

13 Q And so the reason you didn't look at Friehling and  
14 Horowitz is because you determined that there was no  
15 relative?

16 A I don't think we -- I don't remember discussing  
17 reaching out to the auditor. It was not discussed. In  
18 retrospect, it seems to make sense and I agree it would have  
19 been a reasonable thing to do. It was not suggested to me  
20 and it was -- I mean, ultimately, the question came to  
21 verifying the trades.

22 Q Okay. You didn't discuss generally the issue of  
23 auditor independence in the investigation?

24 A No.

25 Q Okay. Okay, we'll show you the next document. The

1 next document is Exhibit 19, an e-mail from Peter Lamore to  
2 you, 12/22/2005, 7:10 p.m.

3 And below it there's an e-mail from Peter to  
4 Meaghan and you, Thursday, December 22, 2005, 12:31 p.m. And  
5 this is a -- about a call with a man named Vija --

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

8 A Vijayvergiya.

9 Q Vijayvergiya, okay. Do you remember that call?

10 A Yes.

11 Q Okay. What was your impression of Vijayvergiya?

12 A He immediately admitted that he had spoken to  
13 Madoff before the interview, so I knew that it was --  
14 whatever answers we were getting were -- had been vetted by  
15 him. He -- I was told he was a risk analyst at Fairfield and  
16 he told us -- he was helpful in terms of explaining how  
17 Fairfield gets information from Madoff and what kind of  
18 information he gets.

19 He -- it was clear from how he phrased his answers  
20 that whatever he was telling us about how Madoff conducts the  
21 trading was speculation, that he did not seem to actually  
22 know what happens there.

23 Q Okay. Now, do you remember -- Peter references in  
24 this e-mail, "There are a few discrepancies between the  
25 Madoff exam and our recent communications with FFG." Do you

1 remember that Peter felt like there were discrepancies  
2 between what Vijayvergiya told you and what they were told in  
3 the Madoff exam?

4 A Yes. Vijayvergiya thought that the trading was  
5 done through Madoff firm's market-making desk, and that was  
6 not what Peter learned during the exam and that was not what  
7 we were told during the enforcement investigation.

8 Q Great. And so how did you react to that? Was that  
9 something suspicious?

10 A It was. At the same time Vijayvergiya did seem to  
11 be speculating on those issues.

12 Q So at the end of this in point one in Lamore's  
13 e-mail here, he says, "Either it is not Vijayvergiya's job to  
14 know this information, he isn't doing his job, or B. Madoff  
15 has mislead --" I assume he means misled -- "either him or  
16 us." Did you have any sense of which one it was?

17 A I did not have a view about Vijayvergiya's  
18 responsibility was. It did seem to me from how he answered  
19 the questions about Madoff's activity, how Madoff trades and  
20 so on, it did seem to me that he was speculating. He did not  
21 present his answers as something that Madoff told him. So my  
22 impression from the interview was that he knew sort of what  
23 account statement he gets, what trade confirmations he gets,  
24 he knows when, you know, the request for cash goes out and  
25 the cash comes back.

1           So he knew the information that flowed from -- that  
2 kind of information that flowed from Madoff to Fairfield, but  
3 I did not get a sense that he knew how Madoff was conducting  
4 his trading or that he was really told in any detail how that  
5 was going -- was conducted.

6           Q     Okay. And then Lamore says at the end, after point  
7 two on the second page of this e-mail, "I believe that we  
8 should find out more about the counterparties of these  
9 options transactions and the arrangements -- and the  
10 agreements arranged between Madoff and the counterparties."

11           So that was something that was somewhat of a focus  
12 of the investigation, to find out more about the  
13 counterparties?

14           A     Yes, yes.

15           Q     Okay. Okay, one more thing, I'm sorry, on this  
16 one. At the end he says, "There's no way us to know how much  
17 capital is allocated Madoff by hedge funds unless we go to  
18 Madoff and he's truthful this time or we go to everyone in  
19 the hedge funds. At this point, however, I don't know what  
20 documents were accurate during the examination. I'm not  
21 certain that we know of all the hedge funds that have  
22 allocated capital to Madoff."

23           Was there any discussion at this point of a  
24 subpoena given the fact that, you know, according to Lamore  
25 here you were really unable to know if anything Madoff was

1 telling you was accurate, whether the documents were  
2 accurate?

3 A Getting a formal order for this case was not  
4 discussed.

5 Q By anybody at any time?

6 A Not in my presence.

7 Q Okay. Any particular reason?

8 A I don't know why my supervisors chose not to pursue  
9 that. I know that the cases that I had worked on I didn't  
10 have to deal with the formal order issue because they were  
11 big cases where formal orders had been in place when I joined  
12 the teams. And the cases that I was working on  
13 simultaneously with this case, there was adequate cooperation  
14 and there was no need for a formal order.

15 I was aware, generally, from working at the office  
16 and from speaking to people around the office, that the  
17 process of getting formal orders had -- was becoming  
18 cumbersome and lengthy. And that I'd heard about long waits  
19 to get a formal order recommendation to get calendared, very  
20 detailed reviews or comments by other divisions on formal  
21 order recommendations that to enforcement staff seemed  
22 inappropriate for that particular recommendation, but -- or  
23 not coming at the right time, I guess, in the investigation.

24 So I was aware that the formal order process was  
25 becoming slow and cumbersome, but it was not discussed as a

1 possibility for this case.

2 Q Okay. And you had never gone through a formal  
3 order process prior to working on the Madoff case?

4 A That's correct.

5 Q Okay. But did you have a general understanding  
6 that there would be a benefit to the formal order process,  
7 i.e., having the ability to issue subpoenas?

8 A Yes.

9 Q Okay. And did you ever consider whether that might  
10 be helpful benefit in this type of case where it seems like  
11 you weren't getting truthful answers from Madoff and, you  
12 know, Lamore notes you don't know what documents were  
13 accurate?

14 A I -- I'm not sure if I thought about it at that  
15 time. Now, I do see that it would have been the right thing  
16 to -- or a better way to proceed, but I also do not know what  
17 was, at the time, sort of adequate -- sufficient -- deemed  
18 sufficient to go to the commission for a formal order -- with  
19 a formal order recommendation.

20 Q Okay. But did you understand that generally you  
21 don't need to get a formal order and get subpoena authority  
22 if the individual you're investigating is providing  
23 voluntarily all that you need and is kind of being forthright  
24 with you?

25 A Yes.

1 Q But in this case Madoff was not.

2 A Yes.

3 Q Okay. Okay, one other thing on this, if you look  
4 at the top of this document, Exhibit 19, Lamore says, "Thanks  
5 for putting the interview memo" -- "putting together the  
6 interview memo. You're doing all the work, you're a machine.  
7 After I compare your memo to my notes I'll be certain to  
8 destroy my notes." Did you ever feel like you were doing all  
9 the work on this investigation?

10 A Well, I was the staff attorney, so my -- I  
11 understood that was my role to do the detail work and get to  
12 go through the documents and to look at the documents and to  
13 tell my supervisors what I see and so --

14 Q Did you ever feel like --

15 A -- there was nobody else.

16 Q Did you ever feel like that others might have been  
17 better able to share some of the workload that you were doing  
18 on this case?

19 A Well, Peter was very helpful, and to the extent  
20 that I asked for his help he never shied away from it. But  
21 the help that -- I did not -- this was not a situation where  
22 there was an issue of volume of documents where you just  
23 needed an extra set of hands to go through things, it was  
24 more a situation where I needed guidance about what to do and  
25 what steps to pursue.

1 Q So what about Meaghan Cheung? You know we've  
2 looked through a lot of documents and a lot of e-mails --

3 A Right.

4 Q -- Meaghan Cheung's name appears on a lot of  
5 e-mails in either the, you know, sent to or copied. There  
6 aren't that many where she's actually saying much. Do you  
7 feel like you might have been better served by having her  
8 have more substantial input into this investigation?

9 A Well, at the time I was -- I had not worked with  
10 her until the fall of 2005, so I had no preconceived notions  
11 about what it would be like to work with her. But before I  
12 had -- the people I had worked with before were -- the more  
13 senior lawyers that I worked with before at the Commission  
14 were very helpful and provided good great guidance. And  
15 they -- they would ask questions about things I didn't think  
16 about and they would raise the issues that I couldn't think  
17 about or didn't think about and alternatives that I didn't  
18 consider.

19 Q Did you get that from Meaghan in this case?

20 A She answered questions that I posed to her. At the  
21 time I had no reason to doubt her answers, subsequently,  
22 after I -- in subsequent years I did become frustrated with  
23 sort of lack of involvement from her part. But I did not  
24 form that view or get that impression until later when I had  
25 had more opportunities to work with her.

1 Q Okay. Did you understand that others in the SEC  
2 felt like -- or were also frustrated by Meaghan's lack of  
3 involvement in matters?

4 A At the time, no, because I was new to her branch,  
5 not in terms of formal assignment but in terms of actually  
6 working with her. Subsequently, much later before her  
7 departure, I have expressed my own frustration and have heard  
8 others comment.

9 Q What was the frustration?

10 A I guess my frustration was that I did not get sort  
11 of value added from her being my supervisor. She -- if I  
12 sent anything to her for comment there wasn't really any  
13 detailed comment it was basically very quick and easy  
14 signoff, that's fine. And so I did not feel like I was  
15 learning much from her being my supervisor. She did know the  
16 Commission processes so she was very helpful in terms of, you  
17 know, who would be the right person in Washington to call  
18 and -- with this question or with that question, but in terms  
19 of daily activity I did not feel like I was getting much out  
20 of having her as a supervisor.

21 Q Did you find some of that same thing in connection  
22 with the Madoff investigation?

23 A At the time I did not think so because I was new to  
24 working with her, I did not -- it was a new type of matter to  
25 me too so I sort of had no context for the guidance that I

1 was getting.

2 Q But now that you've had the context, you've worked  
3 with other people, do you feel in retrospect that you got as  
4 much guidance from Meaghan in the Madoff investigation that  
5 you'd gotten from others working on other investigations  
6 throughout your whole tenure at the SEC?

7 A No, and I also -- having had more experience  
8 myself, I do question some of the choices that were made and  
9 I particularly -- it seems like the question of verifying the  
10 transactions with -- from independent sources, it was on the  
11 radar throughout but it seems like it could have been made  
12 more central and we could have just focused on that question  
13 as opposed to spending more time trying to figure out how  
14 Madoff portrayed his trading to others.

15 And the main question that, you know -- as you can  
16 imagine I have been thinking a lot about what happened, and  
17 the main call that I am frustrated about is the call not to  
18 pursue further this getting Madoff's consent for the  
19 counterparties to send trading records to us directly. And I  
20 do think that that was the wrong call and I wish it was a  
21 different call.

22 Q And you think if that call had been different you  
23 would have uncovered the Ponzi scheme?

24 A We may not have. He may have given -- he may not  
25 have given a consent, but certainly if he -- had he refused

1 it would have raised the suspicion level much higher.

2 Q Okay.

3 BY MR. FIELDER:

4 Q I just want to be clear, who in your mind or --  
5 made that call?

6 A Meaghan.

7 Q Meaghan.

8 BY MR. KOTZ:

9 Q Okay, why don't we go to the next document? Okay,  
10 mark the next document as Exhibit 20. This is an e-mail from  
11 you to Peter Lamore, 12/22/2005, 5:33 p.m.

12 If you look at this, it is an attachment which is a  
13 memo to the file from you dated December 22, 2005, and in it  
14 you reference on the first page of the memo, which is the  
15 second page of the e-mail -- exhibit, "Additionally, AV  
16 stated that on Monday, December 19th, he spoke by telephone  
17 with Bernard Madoff. According to AV he told Madoff he was  
18 about to speak with us and went over an outline that eh  
19 prepared in preparation for the interview.

20 "We asked whether Madoff provided any active input  
21 or proposed any changes to this outline but AV and McEfree,  
22 who was also on that call, insisted that the conversation was  
23 more general. AV and McEfree said that they discussed the  
24 recent examination by Madoff's firm by our own exam staff and  
25 generally were trying to determine the focus of the inquiry

1 was. McEfree said the conversation had not changed AV's  
2 understanding of the trading strategy that Madoff implements  
3 for FGG.

4 "I asked McEfree whether he also informed Madoff of  
5 our document request and McEfree said he did and he had  
6 forwarded our letters to Madoff."

7 And then if you look at the next page under general  
8 impression, "Although AV appeared generally willing to  
9 respond to our questions and did not appear to dishonest,  
10 many of his responses seemed highly scripted. Some of his  
11 responses also closely tracked the language in the documents  
12 FGG produced to us."

13 So you knew that Madoff had prepped Amit  
14 Vijayvergiya?

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

17 A Yes.

18 Q Okay. And did you find that of a concern?

19 A To some degree. It was consistent with what I  
20 understood from Peter, Madoff -- Madoff's personality to be,  
21 which was eccentric and controlling and insistent on  
22 controlling all flow of information personally.

23 I also got the impression that the Fairfield  
24 representatives and Madoff were very focused on the question  
25 of who is the investment advisor in this relationship. And

1 the scripted responses that I was thinking about was the way  
2 Vijayvergiya described the role of Fairfield as opposed to  
3 the role of Madoff. It was very much geared to track  
4 Fairfield's' marketing materials to basically say that they  
5 do make investment decisions even though ultimately the  
6 investment decision that they -- the only investment decision  
7 that they were able to point to was the decision to allocate  
8 the capital to Madoff.

9 Q Did you also understand that if Madoff was  
10 perpetrating a fraud he would want to make sure that whoever  
11 else he talked to would give the same answers as him?

12 A Yes.

13 Q Okay. And so is that out of more suspicion,  
14 perhaps, that there was something to Harry Markopolos's  
15 allegations, by the fact that he had prepped this individual  
16 before he talked to you?

17 A It was more that it was consistent with the  
18 personality that Peter described to us, which we knew was  
19 secretive and unwilling to share information, and also very  
20 adamant about the fact that he was just an executing broker  
21 and not a money manager. So, yes, it's suspicion but it  
22 was -- or it's a suspicious fact but it was part of sort of  
23 the set of facts that we were aware of.

24 Q Okay. And did Peter tell you that his primary, if  
25 not only, contact when he went on the exam was Bernie Madoff

1 himself?

2 A Yes, I knew that.

3 Q Did you know or were you aware that Lamore thought  
4 that was very odd that somebody who was, you know, a  
5 billionaire head of a big company would be spending hours  
6 every day talking with junior-level examiners in an  
7 examination?

8 A Yes. It -- he thought it was odd. He also did --  
9 it was consistent with the reputation that Madoff seemed to  
10 have based on press, which was, you know, running everything  
11 single-handedly and running the firm as a family business  
12 despite its size

13 Q Okay. Let's go to the next document. Okay, we'll  
14 mark the next document as Exhibit 21. This is an e-mail from  
15 Peter Lamore to you, 12/23/2005, 11:41 a.m.

16 And at the bottom of the e-mail string is -- you  
17 say in an e-mail to Peter Lamore, Thursday, December 22,  
18 2005, 6:37 p.m., "For your reading pleasure. He sounded very  
19 somber and concerned and it sounded like he was mostly  
20 concerned about your friend Bernie. I talked to Meaghan  
21 about this and while she found this annoying, she too agreed  
22 there's not much else we can do about this."

23 Do you remember what that was referring to,  
24 something in this memorandum?

25 (SEC Exhibit No. 21 was marked

1 for identification.)

2 A I'm sorry, can I read through this?

3 (The witness examined the document.)

4 Q Sure, sure. There was some concern, kind of some  
5 pushback about Madoff's reputation, do you remember that  
6 issue?

7 A I remember that McEfree -- well, what happened  
8 during the interview was, as we always do with witnesses, we  
9 requested that they not discuss the interview with others,  
10 but we also acknowledge, as we always do, that it's not  
11 something that we can demand.

12 And I think McEfree was reacting to that statement  
13 the next day when he called me and basically told me that he  
14 will call Madoff and basically I think I told him that, you  
15 know, we don't like that but that's his call but we had asked  
16 not to discuss the interview, but --

17 Q Right. And then Lamore says back in response to  
18 you, Friday, 12/23/2005, 7:59 a.m., "Bernie can be very  
19 intimidating." Do you know what he was referring to there?

20 A No. I assume he was referring to his interactions  
21 with Madoff during the exam. The interactions that I had  
22 with Madoff he was not intimidating, he was -- I had no  
23 reason to be intimidated by him.

24 Q But did Peter indicate that he felt intimidated by  
25 Madoff? Did he ever mention that Madoff would scream and

1 belittle a person to the point where he would feel pretty  
2 low?

3 A I don't remember Peter telling me that Madoff  
4 screamed at him.

5 Q Did Peter ever tell you that Madoff reacted  
6 strongly at times and a bit harshly in connection with the  
7 examination?

8 A I know Peter told us that Madoff was very adamant  
9 about being the sole point of contact for the exam staff and  
10 that he was not -- he was clearly displeased to -- or it was  
11 clear that he did not like having them there.

12 Q So did Peter give you the impression there was a  
13 lot of pushback from Madoff in the exam?

14 A I knew there was some pushback.

15 Q Okay. Peter ever mention to you that during the  
16 exam Madoff told Peter that Madoff was going to be the next  
17 chairman of the SEC?

18 A No, I don't think so.

19 Q Did Lamore ever tell you that Madoff told him that  
20 Chris Cox was going to be the chairman of the SEC several  
21 weeks before it was announced?

22 A I don't think so.

23 Q Okay. Did he ever -- Lamore ever tell you that  
24 Madoff told them that, you know, he has contacts at the  
25 highest levels of the SEC and in Congress?

1           A     I don't think so. I know in testimony Madoff sort  
2 of try to play up his prominence to some degree. He talked  
3 about, you know, being on panels of, I believe, NASD or  
4 something like that. It did not really matter much to me.

5           Q     Okay. Did Lamore ever tell you that when he first  
6 had conversations with the Washington folks who had worked on  
7 the exam of Madoff in Washington he was specifically told on  
8 the call that Madoff is a very powerful and influential  
9 figure?

10          A     No.

11          Q     Okay. And you respond here, "Well, I guess even if  
12 the fact that we are looking at Bernie gets out it's a big  
13 deal for his reputation, et cetera." Was there concerns  
14 about information getting out that you were looking at  
15 Bernie?

16          A     Not for his reputation, I was just trying -- I  
17 guess explaining why I thought McEfree may be concerned or --  
18 it was not a concern to us, it's an explanation why -- well  
19 it's -- frankly, it's an explanation why we ask witnesses not  
20 to talk about interviews because sometimes they misconstrue  
21 what we ask and people's reputations do get damaged  
22 unnecessarily. But it's not something that's -- that we  
23 think about much, we ultimately ask the questions that we  
24 need to ask.

25          Q     Okay. Do you get the impression that McEfree was

1 intimidated by Madoff?

2 A Yes.

3 Q Okay. Okay, let's go to the next document. Okay,  
4 I'll show you the next document, mark it as Exhibit 22. This  
5 is an e-mail from you to Meaghan Cheung, 12/27/2005, 4:40  
6 p.m.

7 And in this e-mail you say, "I have not received  
8 any notice if the MUI approval; thus, for now we do not have  
9 an inquiry number." How come it -- you got the information  
10 from Harry Markopolos in November of 2005, how come by the  
11 end of December of 2005 there still hadn't been a MUI opened?  
12 And MUI is M-U-I all caps.

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

15 A I know sometimes we are not as diligent as we  
16 should be in opening the MUI right away. I know that I did  
17 search and RSI for all the relevant names, so -- but I also  
18 know that sometimes once you fill out the MUI opening form  
19 there is a time lag in terms of getting approvals.

20 I believe it -- the opening recommendation goes  
21 through systems electronically to associate level and there  
22 is an automatic process to which ones they approve the MUI  
23 opening. There is a case number or there's a MUI number  
24 assigned. I'm not sure why in this particular case the lag  
25 was so long.

1 Q Do you know when the MUI was eventually opened?

2 I'm going to show you a document, we'll mark it as  
3 Exhibit 23. This is an e-mail from Personal Privacy to the NYRO  
4 tech support and you, Wednesday, January 4, 2006, 2:28 p.m.,  
5 and it says, "This confirms that the MUI for the Madoff  
6 investigation was opened on January 4, 2006."

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

9 A That's -- that sounds right.

10 Q Okay. If it really hadn't been opened and the  
11 complaint had come in to another part of the agency, right,  
12 they wouldn't know that you opened up the matter and so it  
13 wouldn't refer that complaint to you.

14 A That's right.

15 Q Okay. In other cases that you've worked on, have  
16 MUIs been opened right away?

17 A Generally, yes. It's always a decision point  
18 whether to open a MUI or not. Sometimes if the work you --  
19 for instance, when I was asked to look at something and it  
20 was so clear quickly that we did not open MUIs -- it was  
21 clear so quickly that we did not -- it wouldn't be something  
22 we pursued.

23 I -- now, with the benefit of more experience and  
24 sort of being more aware of the various information sources  
25 that we have with in the Commission, I do, myself, make a

1 practice and I also talk to my branch members to make sure  
2 that the related names get loaded up as soon as we become  
3 aware of them for that very reason, so that if anybody else  
4 is looking at that person we learn about it right away.

5 I have to say at the time, I was -- it was not an  
6 issue that was on my personal radar.

7 Q So is it fair to say that if you're not sure  
8 whether the complaint or the issue you're looking at is going  
9 to amount to anything there might be a delay in opening up  
10 the MUI.

11 A That's right.

12 Q And is that what happened here in that you weren't  
13 sure how much there was here and so the MUI was opened a few  
14 months later?

15 A It's possible. I do not remember why in this  
16 particular case the MUI was opened later.

17 Q Okay. All right, let's go to the next document.  
18 Actually, I'm sorry, let's -- yeah, let's go back to this one  
19 for a second, 22. We only focused on one aspect. Number 3  
20 you say in your e-mail to Meaghan with a copy to Peter Lamore  
21 on 12/27/2005, "Peter has been analyzing the Fairfield  
22 account statements and has found that, in fact, the number of  
23 S&P100 index options traded by Madoff purportedly over the  
24 counter, is in order of magnitude greater than the total  
25 exchange traded volume for these options."

1 the next document is Exhibit 26. This is an e-mail from  
2 Peter Lamore to Simona -- to you, 12/29/2005, 4:51 p.m.

3 At the bottom of this e-mail string you say to  
4 Meaghan and Peter, Thursday, December 29, 2005, 4:39 p.m.,  
5 "Bernie Madoff called me back to speak of the fax request.  
6 Surprisingly, to me he was very friendly and cooperative."  
7 Why did you -- why were you surprised that he was friendly  
8 and cooperative?

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

11 A Because of Peter's experiences that it was very  
12 hard to get anything out of him and because of the impression  
13 of him that Peter conveyed to me.

14 Q Okay. And then you say, "Ugh. I wish he'd just  
15 get a lawyer but he didn't make it sound as though he was  
16 planning to handle the whole thing himself. Bad idea for him  
17 and a lot more hassle for us." What did you mean by that?

18 A Well, I think in terms of document production, it's  
19 certainly easier when it's handled by a law firm because  
20 it's -- there's much less opportunity to misunderstanding  
21 about what you ask and when you ask "all documents concerning  
22 "x," non-lawyers tend to read that very narrowly and so it's  
23 just generally much easier if a document request is handled  
24 by a law firm.

25 Also, I knew that he hadn't been candid. Quite

1 frankly, I'd hoped that he would be advised to be more  
2 candid.

3 Q Right. And then you say at the bottom of the  
4 string, "He also mentioned that he know that we spoke to  
5 Fairfield and that they could also not say what this is all  
6 about." So this is further information that he is  
7 communicating with Fairfield about conversations with you  
8 all.

9 A Right.

10 Q Okay. And then Peter says, "Yes, he will handle  
11 EVERYTHING," all caps, "himself, which always seems strange  
12 to us." So, Peter noted to you that that was how the  
13 examination was conducted, with Bernie Madoff being the point  
14 person?

15 A Yes.

16 Q Did Peter or Ostrow or anyone else ever mention  
17 that they had never seen a situation before with such a large  
18 company where the head of the company was the point person on  
19 an examination?

20 A It's possible. I certainly knew that they thought  
21 that that was unusual.

22 Q What about Madoff not having a lawyer, was that  
23 very unusual? Such a big company --

24 A It was. It was and it certainly seemed eccentric  
25 to us.

1 Q Did you ever think about perhaps if you're running  
2 a fraud and you have a lawyer and you have to give  
3 information to the lawyer, the lawyer may have some  
4 responsibilities in terms of the fraud?

5 A I did not consider that possibility.

6 Q Okay. And then Madoff showed up at the testimony  
7 without a lawyer too.

8 A Right.

9 Q Had you ever seen that before?

10 A Well, Frank DiPascali appeared without a lawyer as  
11 well. I'm assuming you mean another context. I don't think  
12 so. I know there were some interviews in the Bear Stearns  
13 case where people did come in without lawyers.

14 Q When Madoff showed up at the testimony with out a  
15 lawyer, did you think that was suspicious that he didn't have  
16 a lawyer or did you think, "Wow, he must have nothing to  
17 hide, he doesn't even need a lawyer?"

18 A It didn't impress me either way.

19 Q Okay.

20 A I thought it was part of his, sort of personality,  
21 him being insistent on handling everything himself and part  
22 of his arrogance in part.

23 Q Okay. Next one. Okay, the next document we're  
24 going to show is dated 12/29/2005, from you to Peter Lamore,  
25 12:45 p.m., we're going to mark is as Exhibit 27.

1           This is an e-mail exchange between you and Peter  
2 where you say in the second paragraph at the bottom, "At that  
3 rate, if as is highly likely, we then want to take Bernie's  
4 testimony, I don't think we can expect to be done with this  
5 case for another two to three months even though I do not  
6 think it will require 100 percent of our time."

7           So did you have the sense at that time period, in  
8 December of 2009, that, you know, there wasn't going to be  
9 that much more, or, you know, what did you mean by didn't  
10 require 100 percent of your time?

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

13           A     I think I was really trying to give Peter a  
14 heads-up in terms of how involved this would be. So at that  
15 time I knew that we would be going for a while, that we  
16 would, you know, be getting more documents, we'd be taking  
17 testimony, so I wanted to give him a heads-up. I also, you  
18 know, I knew that he had other commitments so I wanted to  
19 make clear that, you know, it's not like I was -- would be  
20 drafting him 9 to 5 every day.

21           Q     Right. So what was your general feeling about this  
22 investigation? I mean you work on a lot of different  
23 investigations, you know, some investigations are kind of  
24 more exciting than others, you know, you're juggling  
25 different investigations, some investigations look like

1 you're finding something, some investigations look like  
2 you're going nowhere. What was your feeling about this one  
3 as you were going through the process, the Madoff  
4 investigation?

5 A I -- in the beginning I really didn't know what to  
6 think because I was, you know, I was coming out of two big  
7 cases where it was sort of given as a given that there was  
8 something there, so it was just a question of figuring out  
9 the details and getting to the bottom of it. But the  
10 question "is there something there" was not the question.  
11 And so in this one I did not have -- I just didn't have a  
12 view. I knew what -- that my assignment was to figure out if  
13 there's something there.

14 Q Okay. Did you ever feel like, you know, Madoff was  
15 a well-known guy, if you were able to uncover a Ponzi scheme  
16 it would be, you know, something that would be a big deal  
17 maybe for you or a big deal for the SEC?

18 A I don't think I thought then in those terms. I  
19 really did have a rather naive view of my role in -- and the  
20 Commission. I really thought that my job was to find the  
21 answer to the question. I mean, quite frankly, now that I'm  
22 much more jaded I would be much more excited to -- about the  
23 possibility of nailing somebody like that.

24 Q Did you find the investigation generally kind of  
25 frustrating to conduct?

1           A     It was frustrating that Madoff himself was evasive.  
2 I didn't have a strong feeling of frustration about this  
3 particular case. I sort of knew that we were looking at a  
4 serious allegation and so I had no sort of resentment or any  
5 kind of negative feeling about being on it.

6           Q     Did you ever feel that from anyone else, Doria or  
7 Meaghan or anybody else?

8           A     No. I do know that Meaghan's impression, at least  
9 by the time of Madoff's testimony was that there would be  
10 nothing there.

11          Q     Do you know how she came to that impression?

12          A     I don't.

13          Q     But do you think that she was kind of skeptical of  
14 Harry Markopolos from the beginning?

15          A     That's possible.

16          Q     Okay. And that may have colored her view of the  
17 entire investigation?

18          A     That is possible.

19          Q     Okay. Okay, next document, 1/17/2006, 10:10 a.m.,  
20 we're going to mark it as Exhibit 28, from Peter to you.

21                 The bottom of the e-mail string there's an e-mail  
22 from you to Peter Lamore, Friday, 1/13/2006, 5:07 p.m., where  
23 you say, "Bernie did now produce statements for the second  
24 FSL equity account and for the options account and  
25 sub-counts, the ones he withheld from you, options trading

1 agreement. So it looks like he's telling us now that he's,  
2 in fact, trading options.

3 The write-ups on the strategy and the list of  
4 customers look very similar to the ones he gave you. I need  
5 to take a closer look at them to know for sure if there are  
6 any discrepancies. What's annoying is that he clearly  
7 created special write-ups in response to our requests instead  
8 of producing existing documents. The write-ups are helpful  
9 but he should also be producing everything existing. Oh,  
10 well. We'll see if we need to pursue this issue."

11 First of all, does this make clear that at this  
12 point you confirmed that he was trading options and that he  
13 had lied to Lamore?

14 (SEC Exhibit No. 28 was marked  
15 for identification.)

16 A Yes.

17 Q And also you realized that he was creating  
18 documents especially for the request rather than giving you  
19 existing documents.

20 A Well, some of them. The request asked for, I think  
21 in part the documents sufficient to describe certain things  
22 and like to describe the strategy. And he produced account  
23 statements that appeared to be existing documents but he also  
24 produced, basically write-ups that were just like the  
25 write-ups that he gave to Peter.

1 Q So did you find that suspicious that he was  
2 producing special write-ups rather than existing documents?

3 A Not necessarily because it -- I've seen that done  
4 even when productions are handled by lawyers. Instead of  
5 documents sufficient to identify something they just produce  
6 a list or summary. And this was not handled by a lawyer.

7 Q Peter Lamore told us that the priority and the  
8 objective for looking in to Harry Markopolos's complaint  
9 should have been to determine whether his central allegation,  
10 that Madoff was running a Ponzi scheme, was true or not, but  
11 that he didn't believe that that was the focus, necessarily,  
12 in the investigation. Do you have any comment on that?

13 A I'm not -- I disagree with that. There were -- in  
14 retrospect and with the benefit of greater experience, I do  
15 think that if what you're investigating was primarily a Ponzi  
16 scheme there were more straightforward way to do it and not  
17 spend time on things that won't get you the answer. I did  
18 not know to think that at that time, but I do know that the  
19 question of verifying the transactions was a question that  
20 was on the table.

21 Q Okay. Okay, the next document we're going to mark  
22 as Exhibit 29, this is an e-mail from Peter to you,  
23 1/20/2006, 2:18 p.m.

24 If you look at the bottom of this e-mail exchange  
25 there's an e-mail from you to Peter, January 19, 2006, 3:53

1 p.m. "I'm having trouble figuring out how to tell from the  
2 produced account statements the balances of assets managed  
3 for each customer. Each statement includes an ending new  
4 balance and also the total values of the securities positions  
5 and the former is usually lower than the latter, even zero. If  
6 you can take a look at the statement and try to figure out  
7 what these numbers -- different numbers mean that would be  
8 very helpful.

9           Also, I was puzzled by the fact that the ending  
10 balances in the equities sub-accounts also equal the ending  
11 balances in the corresponding options sub-accounts. Do you  
12 know how that works?"

13           And then Lamore responds, "Unfortunately, after  
14 reviewing the accounts and speaking with my supervisor I  
15 don't have clean answers to your questions. However, I do  
16 believe your questions go back to the custody of assets  
17 issue. Where are the assets and how does BLM settle the  
18 trades?"

19           And then you respond to him saying, "Thank you.  
20 I'm glad I'm not the only one confused." And then Peter  
21 responds to you, "Ha, no problem. It's very confusing to me  
22 as well. I suggest that we ask Bernie to explain how the  
23 process works. Frank could possibly explain the trading but  
24 I'm not as sure about the back-office operation aspect."

25           Well, wasn't it the case that, you know, you and

1 Peter with the experience you have, you just were having a  
2 very difficult time understanding the issues you needed to  
3 understand to investigate this?

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

6 A That's true. I mean, I -- from my perspective I  
7 knew the sort of factual aspect that was not known to me was  
8 really the back-office part of a brokerage firm. I did not  
9 know -- I mean I don't even know now as much as I would like  
10 about how that works and I certainly knew much less then.  
11 And it -- I mean, ultimately, we did come to the question of  
12 verifying the trading.

13 Q So, do you feel that perhaps Peter Lamore, because  
14 he was also confused, had trouble understanding certain  
15 issues, relied on Bernie Madoff for information? Like he  
16 says, "It's very confusing to me, I suggest we ask Bernie to  
17 explain how the process works." And in fact, during the  
18 examination almost everything he found was based from what he  
19 heard from Bernie.

20 A That's true. I -- in fairness, when you're trying  
21 to understand how an operation works, I mean, at least the  
22 first person to talk to would be somebody in -- would be an  
23 insider. So it's not -- it makes sense, I guess, if you're  
24 trying to understand the brokerage or any firm's document, at  
25 least to start with asking the person from that firm.

1 Q Right, but he's talking here about custody of  
2 assets issue, right? Peter Lamore is emailing you about  
3 custody of assets, "I believe your questions go back to the  
4 custody of assets issues, where the assets held." I mean if  
5 you're doing a investigation of a Ponzi scheme and you're  
6 concerned about custody of assets you wouldn't go back to the  
7 person who alleged to perpetrate the scheme to ask question  
8 about it, right?

9 A Right. And I think that's exactly why we did  
10 ultimately try to go to others and, you know, --

11 Q But at the end of the day you were unsuccessful in  
12 going to those others.

13 A And I -- in my view that's -- when I look at this  
14 now, to me that's really where -- that's the decision that  
15 went wrong, you know, it was wrong.

16 Q Okay.

17 BY MR. FIELDER:

18 Q So the record's clear, I assume you're referring to  
19 efforts to verify the transactions, right?

20 A Right, not pursuing --

21 Q That was at least considered, but not --

22 A Well, not pursued.

23 Q Not pursued, fair enough. But slightly different  
24 issue, the custody of the assets, was there anything ever  
25 done to just verify where the money was actually held and

1 what the activity was in the custodial account?

2 A I believe we were told that everything was held at  
3 the Madoff firm. And I don't know what, if anything, the  
4 exam's staff did, but looking at it now it seems that  
5 anything they could have done with the records of the Madoff  
6 firm would not have given them the answer --

7 Q Well the actual money, even if it's -- even if he's  
8 his own custodian, has to be held at a financial institution,  
9 correct? I mean, I assume your impression wasn't that he  
10 kept billions of dollars in a safe?

11 A Right. I -- actually, I don't know the answer to  
12 that.

13 Q Okay.

14 BY MR. KOTZ:

15 Q Okay, let's go to the next one. Okay. All right,  
16 the next document is marked as Exhibit 30. This is an e-mail  
17 from you to Amy Lam, copying Meaghan Cheung, 1/23/2006, 6:17  
18 p.m. This looks like it's the narrative for converting the  
19 MUI into an investigation.

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

22 A Right.

23 Q In this narrative you say, "The complaint did not  
24 contain specific facts about the alleged Ponzi scheme and the  
25 complainant was neither a BLM insider nor an aggrieved

1 investor." Do you think it would have been more credible if  
2 the complaint had come from an investor?

3 A It would depend on the substance of the complaint.  
4 It's -- an investor would be more likely to have first-hand  
5 knowledge of what Madoff does or does not do or what  
6 representations he makes.

7 Q But you didn't believe that Markopolos's complaint  
8 contains specific facts about the alleged Ponzi scheme?

9 A I -- well, in the sense that it was an allegation  
10 that it was a Ponzi but there was no detail in terms of what  
11 exactly he does.

12 Q What specific facts would you have liked to have  
13 seen that weren't in Harry Markopolos's complaint?

14 A If -- I think what was -- what I was referring to  
15 mostly -- what I was referring to was that he did not have  
16 first-hand personal knowledge of the fraud that he was  
17 alleging.

18 Q But, I mean, you would agree that Markopolos's  
19 complaint contained a lot of detailed facts?

20 A That is true.

21 Q Okay. And you also say, "Nevertheless, because of  
22 the substantial amounts at issue, the staff, in the abundance  
23 of caution requested voluntary production of certain  
24 documents from BLM and two of its hedge fund customers."  
25 What did you mean by "in an abundance of caution?"

1           A     The direction that -- or what I was told by Doria,  
2 I think primarily Doria -- after we got the Markopolos report  
3 is that he's not an insider, he does not have first-hand  
4 knowledge, but because he's alleging something very large we  
5 should look at it. So I was referring to the fact that  
6 this -- because they alleged scheme was so large it -- I was  
7 instructed to grant it an investigation.

8           Q     But do you really need first-hand knowledge? Do  
9 you really need somebody to come forward and say, "Here's  
10 exactly how the Ponzi scheme is conducted?" I mean, if they  
11 provide that what do they need you for? And that's the whole  
12 matter. I mean, didn't Markopolos give you, you know,  
13 basically almost everything you could in terms of specifics  
14 except for, you know, what the investigators were supposed to  
15 do which is demonstrate it or prove it?

16          A     That may be true. I mean, I did know he was  
17 raising serious allegations and I was instructed to look at  
18 them. The issue of verifying the trading that Madoff was  
19 claiming to be performing was an issue that we were  
20 considering.

21          Q     Okay.

22               MS. BRUNE: I don't mean to make my stomach the  
23 star of our meeting. We've been together for three hours and  
24 I really would like to take a break and --

25               MR. KOTZ: Okay, could I just ask just a couple

1 more questions?

2 MS. BRUNE: Yeah, finish that one and --

3 MR. KOTZ: Let's finish this document and then  
4 we'll take a break.

5 MS. BRUNE: Yeah.

6 BY MR. KOTZ:

7 Q You said -- the last sentence here says,  
8 "Additionally, the staff is trying to ascertain whether the  
9 complainant's allegation that BLM is operating a Ponzi scheme  
10 has any factual basis." Wasn't that really the heart of what  
11 you were doing? I'm just wondering why that's kind of put  
12 last.

13 A Well, I mean, quite frankly I did not -- I don't  
14 think I invested much thought in the drafting of this  
15 write-up, it -- I mean, I did want to put everything that was  
16 on the agenda in there. At the same time it was an  
17 administrative, high-level summary, so I did not understand  
18 that this particular write-up sort of had any operational  
19 meeting in terms of decision-making or was what we would be  
20 doing on the investigation.

21 Those decisions were made in much more detailed  
22 meetings and discussions, so this was an administrative  
23 write-up that I did want to make accurate and include  
24 everything that was there or that was known to us at that  
25 time. But I certainly did not invest much effort in terms of

1 prioritizing issues or anything like that.

2 Q Okay. But you could see how one reading this  
3 document, Exhibit 30, makes it look like there was some  
4 skepticism of this matter?

5 A That's true.

6 Q Okay. Okay. All right, why don't we take a break?  
7 Let's go off the record.

8 (Whereupon, a luncheon recess was taken.)

9 A F T E R N O O N S E S S I O N

10 MR. KOTZ: Okay, we're resuming at 1:36 p.m. after  
11 a break for lunch.

12 BY MR. KOTZ:

13 Q I'm going to show you the next document. Okay,  
14 this we'll mark as Exhibit 31. And this is an e-mail from  
15 Peter Lamore to you, 1/25/2006, 7:10 p.m.

16 And here in this e-mail string there's a reference  
17 to commission rates. You, at the bottom of this e-mail  
18 string in an e-mail to Peter Lamore dated 1/25/2006, 2:24  
19 p.m., say, "When you have time could you check? We have  
20 information on commission rates that BLM charges other non-IA  
21 customers. Are the rates as uniform as in the IA business,  
22 same rate for everybody?"

23 Was there a point in time where you were looking at  
24 Madoff for overcharging?

25 (SEC Exhibit No. 31 was marked

1 for identification.)

2 A No, I think the reason I asked this particular  
3 question was, the question on our radar was is this an  
4 advisory business and so one indicator could have been that  
5 he's charging more than he would charge for just execution  
6 services. So for example, if he had customers who were  
7 getting one cent a share commission rate and these customers  
8 were getting four cents a share then we could then argue that  
9 the three cents are for the advisory services.

10 Q Uh-huh. And did you ever come to a conclusion on  
11 that?

12 A Well, Peter responded and I did not appreciate that  
13 when I asked the question, but he explained that because he's  
14 a market-maker that's not really an issue. He makes money on  
15 the spread between the broker and the --

16 Q Okay. But you weren't looking at Madoff for  
17 overcharging in the --

18 A No.

19 Q Okay. Going back to one thing we talked about  
20 earlier today about the MUI, is it often that the MUI kind of  
21 automatically goes into an investigation?

22 A Yes.

23 Q After a certain of number of days -- 60 days?

24 A Yes. There's an automatic process that it takes --  
25 after 60 days if you are -- there's an automatic reminder.

1 And if you do nothing it becomes an investigation. In this  
2 case it was converted -- it may have been converted earlier  
3 because we needed to take testimony and to get the court  
4 reporter it had to be an investigation rather than a MUI.

5 Q Okay. Okay, let me show you the next document.  
6 Okay, the next document we're going to mark as Exhibit 32.  
7 This is an e-mail from Peter Lamore to you, 1/27/2006, 3:43  
8 p.m.

9 Okay and in this e-mail string on the first page  
10 Peter Lamore says to you on Friday, January 27, 2006, at 3:31  
11 p.m., "When we were conducting the exam there was a day when  
12 Weintraub was in our office without Bernie. I think that she  
13 was dropping off some data or something. We seize the  
14 opportunity to ask her about the systems. After a couple of  
15 minutes an employee came into the office and said, "Liz, you  
16 are urgently needed." Thus, she left before we could get  
17 into too much detail about anything.

18 When I asked Bernie later why she was urgently  
19 needed he said something like, "Her lunch arrived." That was  
20 strange to William and I because it was around 3:00 p.m.  
21 William and I suspected that Bernie sent the employee into  
22 our office because he didn't want her speaking to us alone."

23 You mentioned previously, you know, kind of about  
24 Bernie's idiosyncrasies or, you know, kind of the way he was,  
25 but I mean doesn't this -- doesn't this go beyond that in

1 terms of, you know, him being so concerned about the  
2 examiners talking to anybody else but him? I mean isn't that  
3 suspicious beyond kind of just his control personality?

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

6 A It certainly was suspicious. I don't think I, at  
7 that time, thought that it went beyond him trying to be the  
8 sole point of contact to the exam staff.

9 Q All right, but, you know, given the allegations of  
10 fraud, wouldn't that be even more reason for him to limit the  
11 access of the examiners to any other people?

12 A Yes.

13 Q Okay. Okay, let me show you the next document.  
14 Okay, mark this as Exhibit 33. This is an e-mail from --  
15 it's actually unclear, it just says to you, 1/27/2006, 1:01  
16 p.m. I believe it may be Peter Lamore but you can see it  
17 doesn't say it on it. We'll mark it as Exhibit 33.

18 (SEC Exhibit No. 33 was marked  
19 for identification.)

20 A I'm pretty sure it's Peter's e-mail to me.

21 Q Right. Okay. If you go to the second page this is  
22 an e-mail from Peter to you, Friday, February -- I'm sorry,  
23 Friday, January 27, 2006, 10:38 a.m. "Some rambling thoughts  
24 regarding Madoff. I meant to ask Frank --" I assume that's  
25 Frank DiPascali?

1           A     Yes.

2           Q     "-- why the strategy is implemented only in Europe  
3 and during European trading hours and not New York time.  
4 What if there's breaking news having a huge impact on the  
5 market such as 9/11?" What did you think of that?

6           A     I think it was a good question and we ended up  
7 asking Madoff that question. I did think it was a good  
8 question.

9           Q     Do you remember what his answer was?

10          A     Madoff was questioned why he trades in Europe, he  
11 answered in testimony that he did not want to create the  
12 appearance that he was capitalizing on his market-making  
13 operations -- information that he was getting from the  
14 market-making operations, so he wanted to keep this trading  
15 separate. He also said that because his orders are so large  
16 he wanted to not have market impact from his orders and so  
17 he -- that's why he wanted to keep them separate from his  
18 regular firm orders.

19          Q     What about if there's breaking news having a huge  
20 impact on the market?

21          A     I guess that the possibility is that -- I'm sorry,  
22 I'm not sure -- I guess I didn't think I asked him what I  
23 thought about that question then or --

24          Q     No, no, no, you said that you followed-up with  
25 Bernie --

1 A Right.

2 Q -- on this question, so how did Bernie answer the  
3 question?

4 A We did -- oh, that second part we did not ask him.

5 Q Okay. Did -- were you suspicious of the fact that,  
6 you know, there's an allegation of a Ponzi scheme, so  
7 essentially an allegation that they weren't trading. There  
8 are ways to verify trading. It's easier to verify trading in  
9 the U.S. than in Europe, and yet when these allegations came  
10 forward Bernie kind of conveniently said he was trading in  
11 Europe.

12 A Yes.

13 Q Did that strike you as particularly suspicious?

14 A At the time I didn't know what to make of it. I  
15 did not know whether that was one of the things that many  
16 people do or don't. I sort of didn't have a view on that in  
17 terms of what that meant on the suspiciousness spectrum.

18 Q And so one of the things you were looking at from  
19 the beginning was this question of his returns being so  
20 consistent and, you know, relatively high over a long period  
21 of time. And one of the possibilities for achieving that  
22 return is through front-running through his market-making  
23 business and you -- the exam folks determined there was no  
24 front-running and Bernie said he doesn't want to, you know,  
25 make it look like he's using one for the other.

1           Did -- do you feel like at the end of the  
2 investigation you ever got an adequate explanation of how  
3 Madoff was able to achieve those returns?

4           A     His explanation was that he achieved these returns  
5 basically through his ability to time the market and to -- he  
6 claimed that he had access to a lot of information, he also  
7 claimed to have substantial experience, and he claimed that  
8 he made more right decisions than wrong decisions about when  
9 to be in the market and when to be out of the market and thus  
10 could capture the upside but not the downside.

11          Q     Did he ever talk about or did Lamore ever talk  
12 about Bernie's claim that it was a -- he had a gut feel?

13          A     Yes.

14          Q     He had a gut feel when to enter the market and exit  
15 the market.

16          A     I'm not sure he used that particular phrase with  
17 us, I know he used that phrase with Peter, but it -- right,  
18 with us he did not use that particular phrase. But the  
19 bottom-line was the same in the sense that it's his decision,  
20 it's his judgment.

21          Q     And did you have any sense of how good his timing  
22 actually was in terms of his gut feel? That it wasn't just  
23 he made more right calls than wrong calls, but over the time  
24 period, you know, he made very few, if any, wrong calls and  
25 always seemed to time the market exactly the right time, both

1 buying and selling?

2 A Well, I knew what the returns numbers -- the  
3 reported return numbers was. I did not have a view about how  
4 you -- unusual, to what extent that was unusual. I know that  
5 Peter thought it was unusual, so his -- we heard his  
6 explanation, ultimately, again, the question was are these  
7 trades for real?

8 Q Did you believe his explanation?

9 A I didn't know what to make of it. I understood it,  
10 but I -- I certainly did not believe that he was running a  
11 Ponzi. If -- had I had that sort of -- my gut feel that this  
12 was a Ponzi I certainly would have advocated more strongly to  
13 push for the verification of transactions. I did not have  
14 that reaction myself.

15 Q How come?

16 A I don't know. I -- looking back at it I, you know,  
17 it's hard to speculate what, sort of, my instincts would have  
18 been had I had more experience. For example, I know that had  
19 I had more experience I may have taken more steps or  
20 different steps.

21 Q You think that if you had more experience or maybe  
22 had more support you would have had a better sense of just  
23 how unusual Madoff's returns were, not just, you know, that  
24 he does a good job picking or he has a -- he's an experienced  
25 guy, but that, you know, what he was achieving wasn't able

1 really to be replicated by anybody.

2 A That's probably true. Certainly had I -- certainly  
3 had I had Ponzi -- had worked on Ponzi scheme cases I also  
4 probably would have been able to cut to the right steps.

5 Q Okay. One of the other points in here in this  
6 e-mail that Lamore sends to you, he says, "I'm still puzzled  
7 that Bernie's able to always find -- always able to find  
8 counterparties willing to trade options in the side that  
9 he -- size that he needs to for the strategy without freaking  
10 out the market. Talk about having difficulty finding  
11 liquidity, try calling a large broker-dealer in the U.S. with  
12 such a huge option order. I'm confident that you would  
13 move/scare the market. Maybe the counterparties are able to  
14 hedge themselves somehow but I don't see how."

15 Did you understand what the issue that Lamore was  
16 getting at here?

17 A I did understand the issue that he was raising.  
18 When I read it now, the -- well, I understand -- I understood  
19 what he was saying, I think now I have greater reaction to it  
20 in terms of what it means as a suspicious -- as a reason to  
21 be suspicious than I did then. I understood what he was  
22 saying. I did think that the only way to really dispel or  
23 answer that question would be to get the independent  
24 verification.

25 Q Right. So is it fair to say you never got to the

1 bottom of this point?

2 A Yes.

3 Q Okay. In your response to Peter, January 27, 2006,  
4 11:46 a.m., you say a few things, "On the momentum's -- on  
5 the Mentum Tools issue, if we had any real reason to suspect  
6 some kind of wrongdoing in Bernie's market-timing decisions,  
7 I would send a document request on the issue, but I'm not  
8 sure how much stress we want to put on him if all we suspect  
9 is disclosure problems."

10 A Right.

11 Q What did you mean by that?

12 A Well, I think -- in retrospect, that's certainly  
13 not the best way to describe the situation. At that time I  
14 think the view was that there's probably nothing there and  
15 that this would be primarily a registration and disclosure  
16 case.

17 Q Now at this point in time you hadn't made the  
18 efforts to talk to NASD and CBOE and --

19 A Not yes, yeah, right.

20 Q Right. So how, before you did that, did you come  
21 to that conclusion that it looked like it was going to be a  
22 disclosure issue?

23 A Well, I don't think there was a conclusion at that  
24 point.

25 Q Okay.

1           A     I mean this is very -- this is a very early stage  
2 when we are really -- did not have conclusions. I think at  
3 that time, as of the end of January, we did know that there  
4 would be a disclosure and a registration issue. I don't  
5 think at that time -- I guess this was not a time when there  
6 really were any conclusions.

7           Q     Okay. But this is a time when Markopolos brings  
8 the complaint, right? There are a number of red flags that  
9 were credible. You find out some information which in a  
10 couple cases validates Markopolos's claims.

11          A     Right.

12          Q     You find out that he was lying to the examiners  
13 about the options issue, for example. The secrecy. You  
14 hadn't gotten to a point where you talked to Bernie, so he  
15 hadn't allayed your concerns. You hadn't gotten to a point  
16 where you talked to NASD and CBOE and try to make those  
17 efforts, DTC, et cetera. And yet it seems, based on what you  
18 have so far, is you don't think there's much -- you know,  
19 I -- "if we had any real reason to suspect some kind of  
20 wrongdoing."

21                 It seems as though you don't think there's much  
22 chance of actual wrongdoing. And that's what I don't  
23 understand, how at that point in time, given the red flags,  
24 given that some of these red flags were validated, before you  
25 talk to Bernie even for him to explain it, how is it that you

1 didn't feel there was likely chance of wrongdoing?

2 A I don't remember why I wrote what I wrote, but I do  
3 know that we did not stop at this point and we kept going and  
4 we did take his testimony and we continued the investigation.  
5 So whatever -- it's possible that there was skepticism that I  
6 was perceiving about the allegations and it did seem that  
7 ultimately it was unlikely that it was a Ponzi, but we did  
8 continue.

9 Q Did you think some of that skepticism was, you  
10 know, from above you?

11 A Well, I do know that at least Meaghan did not think  
12 that this was likely to lead to an enforcement action or this  
13 was likely to lead to anything.

14 Q Through the entire investigation?

15 A Unfortunately, I can't time it very precisely. I  
16 know that was definitely her view by the time of Bernard  
17 Madoff's testimony.

18 Q But it may have been earlier?

19 A It may have been earlier.

20 Q Okay. So, you know, you're a junior person, you  
21 know, the other cases you worked on have been these big  
22 massive cases with a lot of people.

23 A Right.

24 Q This is kind of your first one that you're working  
25 on mostly on your own, right? You know, you worked at

1 Cravath but you were a junior associate at Cravath, it wasn't  
2 doing a lot of substantive stuff. So, I mean, do you really  
3 have any ability, other than to rely on your supervisors, to  
4 figure out whether this case is anything? I mean, wouldn't  
5 you be very much colored by what people above you say about  
6 being skeptical about this case?

7 A That's fair.

8 Q Okay. So it may be that the skepticism that you  
9 felt from the people that had more experience than you could  
10 have colored how you handled the case or at least how you  
11 felt about the case?

12 A That's -- I'm sure that's true. And certainly I  
13 was looking to them for guidance and for their view of where  
14 these things that we were finding, what they meant.

15 Q Right. And so while you, as a staff attorney, did  
16 the lion's share of the work on the case, you can't be held  
17 responsible for making decisions about going forward at your  
18 level of experience, right?

19 A I think that's right. I certainly, at that time,  
20 that I understood that every investigative step is the branch  
21 chief's decision. And now that I am a branch chief that is  
22 how I understand my job, which is I sort of -- I'm the person  
23 who staff attorneys go to to ask are we doing this or are we  
24 not doing that.

25 Q So Meaghan Cheung was skeptical of Harry Markopolos

1 to begin with, right?

2 A I think that's right.

3 Q And she was generally skeptical that this would  
4 amount to anything?

5 A Correct.

6 Q And that may have impacted you?

7 A Correct.

8 Q Okay.

9 BY MR. FIELDER:

10 Q I mean, to be honest, the e-mail -- I mean, you  
11 know, we can't trust that we have a complete e-mail record of  
12 everything that transpired at the time, but the e-mail record  
13 we have, it doesn't appear that Meaghan ever gave you or  
14 Peter any instructions or directives on investigative steps  
15 to take. I mean do you recall -- I mean you're informing her  
16 a lot of what you're doing --

17 A Right.

18 Q -- which in -- but do you recall whether any  
19 investigative steps or directions that you got from Meaghan  
20 on this case about "Here's what you need to do and now you  
21 need to follow up and do X?"

22 A I'm sure everything -- I guess I know that  
23 everything that was or was not done, there was -- was  
24 preceded by discussion with her, and it probably will not be  
25 reflected in the e-mail traffic because it was often by phone

1 or in person. I'm not sure that answers your question.

2 Q Yeah, I mean do -- in those conversations do you --  
3 I'm just saying I acknowledge that if we had a complete  
4 e-mail record it wouldn't necessarily be the full picture --

5 A Right.

6 Q -- because you're obviously having a lot of --  
7 hopefully you're having a lot of conversations about the case  
8 and brainstorming. But I would still expect that if she was  
9 adding value, to use a term that you used earlier in  
10 testimony, and actually suggesting things, having ideas on  
11 her own, there would be some indication in the e-mails and we  
12 haven't seen that. So, independent of that, do you have a  
13 recollection of, you know, one of the investigative steps you  
14 took being Meaghan's idea as opposed to you going to Meaghan  
15 and telling her what you were doing and what you planned on  
16 doing next and her saying, "Okay?"

17 A I can't -- I don't remember.

18 Q You don't remember her having -- okay.

19 A I just -- there must have been but I just don't  
20 remember. I just don't remember how the dynamic played out.

21 Q Well, do you have a sense -- I mean, you've been a  
22 branch chief for quite a while now so I'm sure you are --  
23 have an idea in your mind of how involved you should be in  
24 your investigations and how much direction you should give  
25 staff, particularly new or inexperienced staff. I mean,

1 relative to what you know now, do you think Meaghan was, you  
2 know, actively giving you guidance and instructions about  
3 each and every step to take or were you kind of left on your  
4 own to figure out with Peter what to do with this case?

5 A At the time, I did not sort of have a view that it  
6 was insufficient, now I do think that it wasn't sufficient  
7 involvement. And I guess insufficient -- I guess involvement  
8 is the best word.

9 Q Okay.

10 MR. FIELDER: I won't to ask another unrelated  
11 question --

12 MR. KOTZ: Go ahead.

13 MR. FIELDER: -- about this e-mail if you're ready  
14 to move on to the next document.

15 MR. KOTZ: Yeah, go ahead.

16 BY MR. FIELDER:

17 Q The one thing that I just have trouble  
18 understanding, myself, is on Madoff's explanation about his  
19 market-timing ability or gut feel or whatever the phrase is  
20 to explain his returns, I don't understand how that would  
21 explain the lack of volatility in those returns. Like if the  
22 market's up 20 percent in a year and you've got perfect  
23 market timing you're going to have returns of 30 to 35  
24 percent that year.

25 A Well, his explanation was that because he puts on

1 the options collar the upside is capped too by the call part  
2 of the collar.

3 Q Right, but in over a 15-year period the market is  
4 going to have such different returns. I mean, the collar is  
5 going to smooth the returns, but his returns were remarkably,  
6 you know, 15 percent a year, year in and year out, regardless  
7 of whether -- what the market was, whether the market was up  
8 25 percent or the market was down 5 percent. I mean was  
9 there something about his explanation that made that seem  
10 possible or reasonable? I mean, I may just not be getting  
11 it, but I don't understand.

12 A Well, what it sounded like to us was that the  
13 returns that were reported -- so basically had the -- if the  
14 trading were real, the returns would be supportable. And  
15 that was, I think, Peter's view and there was no reason to  
16 think otherwise.

17 Q Okay.

18 BY MR. KOTZ:

19 Q Okay, we'll go to the next document. Okay, the  
20 next document we're going to mark as Exhibit 34. It's an  
21 e-mail from you to Peter Lamore, 2/6/2006, 5:34 p.m.

22 And this is when this communications with Vance  
23 Anthony from Office of Economic Analysis -- what was the  
24 reputation, generally, of the Office of Economic Analysis at  
25 that time?

1 (SEC Exhibit No. 34 was marked  
2 for identification.)

3 A I actually did not know much about them. I know  
4 that they had weighed in on disgorgement analysis in  
5 market-timing cases. And I believe they were helpful on that  
6 issue but I was -- I did not work on the disgorgement  
7 calculation aspect in Bear Stearns case, so I did not have  
8 first experience -- first-hand experience with them. So I  
9 really had no view one way or the other and I wasn't aware of  
10 any reputation one way or the other.

11 Q Okay. So in this case you're attaching account  
12 statements for the four accounts of Fairfield Century Limited  
13 and you want to confirm if the trading reflected in these  
14 account statements generates the return that Fairfield  
15 Century reports to its investors.

16 Now, Peter Lamore responds, "This should be  
17 interesting." Do you have any idea what he was referring to  
18 there?

19 A I don't.

20 Q So what is it exactly that you were trying to get  
21 at from OEA with providing this information?

22 A I think -- well, this was definitely not my idea.  
23 I think we saw an e-mail where this was suggested and I don't  
24 remember from whom it was, but it was suggested by one of my  
25 supervisors, I just don't remember from the exhibits if it

1 was Meaghan or Doria.

2 I thought the plan was to -- or the hope was that  
3 they can verify the return calculations, or at least that's  
4 what this e-mail seems to be saying. I know that pretty soon  
5 it became apparent that this was not -- this would not be a  
6 fruitful path because, you know, ultimately, it -- the  
7 question was whether the trading was real as opposed to  
8 whether it matched with the return calculation.

9 Q Did you or anyone else in the enforcement team send  
10 Harry Markopolos's complaint to anyone in OEA?

11 A I don't think so.

12 Q Any reason why not?

13 A It wasn't discussed and I don't remember thinking  
14 about it at that time.

15 Q And then this was in anticipation of a phone call  
16 with folks --

17 A Right.

18 Q -- from OEA. What do you remember about the call?

19 A I remember we told them -- basically we did tell  
20 them in substance what Markopolos report was saying and the  
21 allegations that were made, and we told them what we knew at  
22 the time from Fairfield.

23 Q And so what, on the phone call, did you ask them to  
24 do?

25 A I think we probably asked them to see if they can

1 verify the return calculation, but I'm not 100 percent sure.

2 Q Okay. All right, why don't we show you the next  
3 document? Okay, the next document we're going to mark as  
4 Exhibit 35. It's an e-mail from you to Vance Anthony,  
5 Wednesday, April 12, 2006, 4:18 p.m., we're going to mark it  
6 as Exhibit 35.

7 So if you see the e-mail below is dated 2/6 --  
8 February 6, 2006, 4:21 p.m., from you to Vance Anthony  
9 attaching these statements. And then in April, several  
10 months later, you e-mail and say, "Van, Meaghan Cheung, Peter  
11 Lamore and I spoke to you and Bill Dale about this case in  
12 February, have you had a chance to take a closer look at it?  
13 Thank you and best regards."

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

16 A Right.

17 Q It's a bit of a lag there, no?

18 A Right.

19 Q Although you were nice about it, "Thank you and  
20 best regards." But, I mean, were you kind of saying, you  
21 know, "Where are we on this, we gave it to you in February?"

22 A Yes, that's right.

23 Q Okay, you just said it in a nice way?

24 A Right.

25 Q So there was some frustration that they hadn't

1 gotten back to you earlier, OEA?

2 A Yes, but, I mean, I don't think we pressed them  
3 either, but I don't know.

4 Q Okay. All right, let me show you the next  
5 document. Okay, the next document we're going to mark as  
6 Exhibit 36. This is an e-mail back and forth between you and  
7 Lamore. The top one is from you to Lamore, 4/28/2006, 3:09  
8 p.m.

9 So you say to Peter, Friday, April 28, 2006, 12:53,  
10 "OEA finally responded, are you available?" Peter says, "I  
11 returned from the field, I'm very interested to hear the  
12 OEA's findings." Then you say, "From talking to Vance  
13 Anthony, my impression is they have not done any analysis yet  
14 but only found us an expert in options trading, Stewart  
15 Mayhew." Peter says, "Okay, hilarious, I wonder where they  
16 had to go to find this option expert since it took them  
17 three-and-a-half months." And you respond, "I suspect that  
18 they had to go to the office next door."

19 So, I mean, were you upset at this point that they  
20 seemed not to take it seriously or give you what you need?  
21 You know, you come back several months later and they hadn't  
22 done anything.

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

25 A I don't think I -- I was, I guess, annoyed that

1 they did not do anything and that they were not responsive.

2 Unfortunately, that does happen in investigations.

3 Q With OEA particularly or in general?

4 A No, just interaction between offices, everybody has  
5 different priorities and they have their priorities. But I  
6 can't say that they thought that this particular inquiry was,  
7 you know, was likely to very fruitful, so I also did not  
8 press it.

9 Q Okay, so I mean, you waited a few months to get  
10 back to them to find out where they were --

11 A Yeah.

12 Q -- if you thought it was more fruitful you might  
13 have got back to them earlier?

14 A Right.

15 Q Okay. Of course, they still might have done  
16 anything.

17 A That's right.

18 Q Okay. All right, let's go to the next one. And so  
19 then there was a second call, is that right?

20 A Right.

21 Q Okay. And do you remember that second call? Was  
22 this guy, Stewart Mayhew, on the call?

23 A He must have been.

24 Q Okay. And what happened in that call? Did OEA  
25 give to you the impression in that call that they didn't feel

1 like they were asked to do anything?

2 A I don't think -- I think we tried to be polite  
3 about them having -- not having done anything yet, so I don't  
4 think we badgered them with the point that, "Where have you  
5 been for two months."

6 Q Here's a -- some notes of the call, I don't know  
7 how much they'll help. We're going to mark it as Exhibit 31.  
8 These are from your notes, 0015195306.

9 MS. BRUNE: Do you mean 37?

10 MR. KOTZ: I'm sorry.

11 MS. BRUNE: 37.

12 MR. KOTZ: Exhibit 37, thank you. So it seems that  
13 the call was with Vance Anthony, Bill Dale and Stewart  
14 Mayhew, Mayhew being the options expert. "Told them  
15 re: strategy. Their questions, European or America, options  
16 too?" Do you know what that refers to?

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

19 A They asked us -- I think they said to do any  
20 calculations on the options trades they would need to know  
21 whether these are European or American options. And I was  
22 confused which one is which, but basically one is that you  
23 can execute only at expiration date and the other one at any  
24 time up to the expiration date. That was their question.  
25 Because they said that to do any analysis they would need to

1 know what kind of options they took.

2 Q And you were able to answer that question at that  
3 time?

4 A We asked Madoff during testimony and he answered.

5 Q And then did you go back to OEA and give them the  
6 answer?

7 A I'm not sure. I think by then we did not thing  
8 that talking to OEA would lead to anything anyway.

9 Q Okay. Can you get anything out of the other notes  
10 you have here?

11 A Dates.

12 Q "Dates of execution correlate to any particular S&P  
13 trends, whether options are cash, settled or physically  
14 settled?"

15 A Physically settled, yes. These are questions that  
16 they asked. They wanted to find out whether the dates when  
17 he puts on the strategy, whether there was any correlation to  
18 the trends in the S&P index. And then they wanted to find  
19 out whether options are cash settled or physically settled.

20 Q Okay. All right, let me show you another document.  
21 We're going to mark this as Exhibit 38. This is an e-mail  
22 from Peter to you, 5/2/2006, 9:08 a.m.

23 Peter talks about this -- whether the options are  
24 European versus American style, and he also references  
25 options agreements for settlement terms. And you respond, "I

1 don't think we have the options agreement -- option  
2 agreements though, but I could be wrong, I'll check."

3 Do you know if you were ever able to get the option  
4 agreements?

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

7 A We didn't. Madoff said that he was -- he had  
8 electronic records of the trades and that he -- and he  
9 produced those to us. And he said he had electronic master  
10 agreement which seems consistent with what I knew about  
11 derivatives trading, that you have the master agreement and  
12 then get the confirmations.

13 Q So did he provide to you that master agreement?

14 A No, he did not.

15 Q How come you didn't get that and give that to OEA  
16 for them to do their analysis?

17 A I think with OEA we pretty soon did not think that  
18 they could help us with anything anyway, so we didn't pursue  
19 it with them.

20 Q Okay. Okay, go to the next e-mail. Okay, we're  
21 going to mark the next document as Exhibit 39. This is an  
22 e-mail from Bill Dale to you, copy Vance Anthony, Stewart  
23 Mayhew, 5/4/2006, 11:42 a.m.

24 And here in this you say, "Unfortunately, we do not  
25 have the actual options contracts and thus cannot determine

1 the settlement terms or the options type. Bernie Madoff has  
2 represented to us that he does not have any such contract.  
3 We will get back to you shortly with a list of dates on which  
4 Madoff executed the strategy in 2004 to 2005."

5 Do you know if you did get back to them?

6 (SEC Exhibit No. 39 was marked  
7 for identification.)

8 A Yes. Actually, now that I look at this, I think  
9 the question about whether there was a correlation between  
10 execution dates and trends in S&P may have been a question  
11 that they wanted to analyze themselves. Because I do  
12 remember that Peter put together a spreadsheet of a sample of  
13 trades or trading and we went that spreadsheet to OEA later.

14 Q What did you get back at the end from OEA?

15 A Nothing.

16 Q And did you ever have any further communications  
17 with Stewart Mayhew, who was this options expert?

18 A I don't think so.

19 Q Okay.

20 BY MR. FIELDER:

21 Q Did OEA ever give you a sense of whether or not  
22 they had an opinion about whether the type of returns Bernie  
23 was reporting was theoretically possible, there could be a  
24 way he was legitimately achieving those returns?

25 A They did not express a view.

1 Q They didn't express their view one way or the other  
2 on that subject?

3 A No.

4 Q Okay.

5 BY MR. KOTZ:

6 Q Okay, the next document we're going to mark as  
7 Exhibit 40, an e-mail from Peter to you, 5/8/2006, 11:11  
8 a.m., with an attachment. Mark that as Exhibit 40.

9 And in this short e-mail which attaches this --  
10 these spreadsheets, Lamore says, "I believe that we should  
11 ask Madoff for documentation regarding the yellow-highlighted  
12 options trades whenever those types of requests become  
13 appropriate. These trades seem too good to be true."

14 Did you share that view that Lamore had that the  
15 trades were too good to be true?

16 (SEC Exhibit No. 40 was marked  
17 for identification.)

18 A Let's see -- I certainly credited his opinion and I  
19 deferred to it on -- I have no -- sort of nothing in my  
20 knowledge base suggested that it's one way or the other.  
21 So -- but I completely accepted his estimate.

22 Q Now, Lamore, when he testified, he told us that as  
23 he continued to assist enforcement in the investigation of  
24 Madoff he became increasingly suspicious. And over time, as  
25 the investigation continued, he became more and more

1 suspicious. Is that -- was that reflected to you?

2 A I knew he remained convinced that Madoff lied to  
3 him. I did not -- he did not convey to me that he was  
4 getting more and more suspicious overall.

5 Q Okay.

6 BY MR. FIELDER:

7 Q What -- just one quick question. I understand why  
8 you didn't think it was fruitful or worthwhile to get the  
9 master options agreements or the options contracts for OEA's  
10 analysis, why you didn't think that was going to be fruitful, but  
11 independent of OEA, don't you think it would have been  
12 helpful for your own investigation to get those contracts?

13 A I do think that now. I mean, he produced certain  
14 documents in response to that request, and looking at it now,  
15 now I think that that response was inadequate. At the time  
16 we didn't know what to think.

17 Q What were those documents, I --

18 A They were essentially printouts of the trades, so  
19 they looked like trade tickets. They showed --

20 Q They purported to be electronic confirms of  
21 specific trades, right?

22 A Right.

23 Q But you never got the master -- like the master  
24 list or anything like that?

25 A Right, I didn't.

1 Q Did he -- I mean, did -- was it because it wasn't  
2 requested or because he had some excuse for not providing it?

3 A I -- it -- we definitely requested the contracts  
4 and he claimed to have produced everything he had.

5 Q Okay.

6 BY MR. KOTZ:

7 Q But do you remember a specific request about the  
8 options agreements --

9 A Yes.

10 Q -- as part of the overall request?

11 A Right. And I definitely know that there was a  
12 request for options agreements and that what he produced he  
13 claimed that that was all he has.

14 Q Okay.

15 BY MR. FIELDER:

16 Q So he, literally, claimed he didn't have copies of  
17 the master derivatives contracts that he was trading with  
18 these counterparties on?

19 A I think he said he has electronic versions and he  
20 did not produce them. So I actually do think that I  
21 probably -- I mean I overlooked that.

22 Q Was there any -- do you recall any discussion on  
23 whether to push him on that or --

24 A No, I don't think that was discussed.

25 Q Okay.

1 BY MR. KOTZ:

2 Q Okay, next document we're going to mark as Exhibit  
3 41, an e-mail from Peter to you, 5/10/2006, 11:20 a.m.

4 This is when you start talking to outside entities.  
5 So in an e-mail on May 10, 2006, 11:51 a.m., you send to  
6 Peter saying, "Meaghan suggested that you and I talk to Rob  
7 DeLeonardis about the best way to get the information we want  
8 from DTC and possibly the other financial institutions."

9 What was the information that you wanted from DTC  
10 and possibly the other financial institutions?

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

13 A Well, with DTC we wanted to find out what kind of  
14 records they have and whether those records can help us  
15 confirm the trading.

16 Q Okay. What about possibly the other financial  
17 institutions?

18 A I think the same question really.

19 Q And why Rob DeLeonardis?

20 A He heads the -- he supervises all the investigators  
21 in the enforcement part of the New York office, and so --  
22 actually, at that time I probably didn't even know why, I  
23 know Meaghan gave me his name. Now I understand that he does  
24 have industry contacts, I mean, actually, now I would  
25 probably go to Bob Sollazzo with that question, but she

1 suggested talking to him.

2 Q Now the SEC regulates DTC, right?

3 A Right.

4 Q And is it generally common in investigation to go  
5 to DTC to get records?

6 A I don't know.

7 Q Okay. Okay, why don't we go to the next one?

8 Okay, the next document we're going to mark as Exhibit 42, an  
9 e-mail from Elizabeth Barry to Stephen Johnson, 5/10/2006, at  
10 12:45 p.m.

11 Below is an e-mail from you to Rob DeLeonardis with  
12 a copy to Peter Lamore, "I understand you talked to Meaghan  
13 about our little problem with Madoff." What were you  
14 referring to exactly?

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

17 A Just basically the investigation that we were  
18 investigating.

19 Q And this is where Steve Johnson gets involved?

20 A That's what I understand this e-mail says.

21 Q Okay. And what was the particular expertise that  
22 Steve Johnson was supposed to provide?

23 A I was told that he had experience with options  
24 trading and that he understood the options trading.

25 Q Okay. Did you find that to be the case?

1           A     It's -- I certainly -- he seemed to be  
2 knowledgeable about options.

3           Q     Okay. Okay, the next document we're going to mark  
4 as Exhibit 43, an e-mail from Meaghan to you, 5/10/2006, 4:04  
5 p.m.

6                     Below is an e-mail from you to Meaghan, copy  
7 Lamore, Wednesday, May 10th. "Peter and I spent about an  
8 hour talking to Rob DeLeonardis and Stephen Johnson, also a  
9 former trader in our office. Rob thinks both Peter and Steve  
10 should attend Bernie's testimony. Rob suggested we talk to  
11 his contact at CBOE about the volume of Bernie's option  
12 trading. Peter will find out who examines DTC, hopefully  
13 he'll be able to get more information about what Dan had  
14 asked for. Rob will also talk to Joseph Cella, the head of  
15 market surveillance in DC."

16                    Do you know if that was done? Did Rob talk to  
17 Joseph Cella?

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

20           A     I did not remember that until I read this e-mail,  
21 but actually, it's -- the name sounds familiar so it may have  
22 happened. I'm not sure it led to anything but the name does  
23 sound familiar.

24           Q     Okay, I'm going to show you another document which  
25 are handwritten notes, I believe of your -- several pages

1 from SUHS-012138 through 012144 as Exhibit 44.

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

4 A Right.

5 Q You've seen these notes more recently?

6 A I saw them in December when I was preparing  
7 documents to produce documents to you. I don't think I  
8 looked at them in detail then.

9 Q Okay. Now Meaghan replies to your e-mail, "I think  
10 rescheduling the testimony makes sense, as does holding off  
11 on the Bank of New York and Barclays requests." What were  
12 the Bank of New York and Barclays requests?

13 A I think we were considering sending documents  
14 requests to Bank of America and Barclays.

15 Q For what purpose?

16 A I think to verify either the trading or the assets.  
17 I don't remember if they ever went out.

18 Q Okay. And we have no record that we saw that they  
19 went out.

20 A Right.

21 Q So, likely they didn't go out.

22 A Right.

23 Q Okay. All right, let me show you the kind of --

24 A I think we talked to Madoff about -- I think we  
25 were thinking of sending a request for records for -- by then

1 he had -- Madoff had produced to us a list of his accounts  
2 and I think we were thinking of sending requests -- I'm  
3 pretty sure Barclays and Bank of New York were two places  
4 where he claimed to have accounts. And so that's probably  
5 why we were thinking of sending these requests.

6 I think, at least as to Bank of New York, I  
7 remember in testimony he said that he -- that the account  
8 reflected not just the advisory business activity but  
9 everything for the Madoff firm. And so I think what appears  
10 to have happened is we did not think it would be feasible to  
11 verify the advisory business transactions through records  
12 that combined the whole firm's activities.

13 Q Okay. Did Lamore ever let you know of a previous  
14 request made to Barclays?

15 A I don't think so.

16 Q Okay. I'm going to show you a document. It was  
17 actually a request that was made in the examination to  
18 Barclays, and the response was, "There were no trades."

19 So we're going to mark this next document as  
20 Exhibit 45. It's a May 16th letter from Erin Ashley  
21 Mansfield of Barclays Capital to John Nee, Assistant Regional  
22 Director, Broker Dealer Inspection Program. We're going to  
23 mark it as Exhibit 45.

24 And so in this letter -- there was a request made  
25 previously for transaction activity during the period March

1 1, 2005 through March 31, 2005, and the response was "There  
2 was no relevant transaction activity occurred during that  
3 period. There were no other customer relationships  
4 identified at Barclays Capital Inc. for the other names  
5 provided in your inquiry letter."

6 So you were unaware that this request was made and  
7 that this response was provided?

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

10 A I did not know about it. I don't know what I -- I  
11 sort of know it would be helpful to know what specific  
12 accounts they were inquiring about, but I certainly did not  
13 know that they had another -- made a request on that -- this  
14 answer.

15 MR. KOTZ: Okay. Why don't we go off the record  
16 for a second?

17 (A discussion was held off the record.)

18 MR. KOTZ: We're back on the record.

19 BY MR. KOTZ:

20 Q All right, so let me show you now Exhibit 46, which  
21 is a letter -- it's an e-mail actually from John Nee to  
22 William Ostrow, 5/3/2005, 3:18 p.m., attaching a letter dated  
23 May 8 -- May 3, 2005 from John Nee to Personal Privacy

24 Personal Privacy Barclays Capital.

25 So this was in connection with the examination.

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

3 A Yes. Can I look at the answer?

4 (The witness examined the documents.)

5 A I know I haven't -- did not see these, this  
6 exchange, and I know that I wasn't told about it. I don't  
7 know where this request -- so without knowing what Madoff  
8 told them about the account at Barclays, about which they  
9 would seem to be inquiring, sort of it's -- I don't fully  
10 understand the context or the significance. But I do know  
11 that I wasn't told about it and didn't see it.

12 Q And this might have been something that you would  
13 have followed up on and tried to understand the context given  
14 that it seems as though there was a request made for account  
15 information regarding Bernie Madoff and the answer was,  
16 "There was none."

17 A That's right.

18 Q That's right?

19 A Yes.

20 Q Okay, let me show you the next document.

21 MR. WITHERSPOON: Can I take one second just to get  
22 my stuff a little bit back in order?

23 MR. KOTZ: Sure.

24 MR. WITHERSPOON: All right. One minute.

25 BY MR. KOTZ:

1 Q It references here that Rob thinks both Peter and  
2 Steve should attend Bernie's testimony because of their  
3 trading experience. And they did both attend the testimony,  
4 right?

5 A Right.

6 Q Was there any talk at all about William Ostrow,  
7 whether he could participate more in the investigation or  
8 that he wanted to attend the testimony?

9 A No. I understood from Peter, early on when we  
10 first learned about the exam, that Ostrow sort of had a  
11 particularly -- relationship with Madoff and I don't remember  
12 the details. I think I remember Peter telling me that Ostrow  
13 kind of -- and Madoff just -- were not getting along is  
14 probably the wrong phrase, they didn't have enough of a  
15 relationship to get along or not along, but they did not  
16 interact well. But I also -- it was -- he certainly never  
17 expressed an interest and Peter was our point of contact for  
18 this.

19 Q Did you ever talk to William Ostrow at all?

20 A I may have. It wasn't anything that sticks out in  
21 my mind.

22 Q Did you ever learn that Ostrow was particularly  
23 suspicious of Madoff and wanted to engage in all kinds of  
24 efforts as the exam was ending but wasn't allowed to?

25 A No, I did not know that.

1           Q     But there was some blow-up between Ostrow and  
2 Madoff? Was it one incident or was it series of things?

3           A     I don't think Peter even told me the details, it  
4 was just about more that they sort of did not interact well  
5 or did not get along.

6           Q     Other than the testimony, did you have a lot of  
7 conversations with Bernie Madoff?

8           A     Well, he was pro se so all contact with the firm  
9 was through him, so I called him about document requests and  
10 scheduling and things like that.

11          Q     Did you have any kind of longer substantive  
12 conversations with him?

13          A     After his testimony when there was -- when he first  
14 claimed that he said he produced all the accounts and then  
15 recanted immediately, there was exchange, and I think it  
16 consisted of phone calls and -- a combination of phone calls  
17 and letters, but basically what the point was to have him  
18 definitively represent the full list of the accounts.

19                So I think there was first a letter, and I may not  
20 be remembering whether it was by letter or by phone, but at  
21 first he gave an additional list of account and explained,  
22 you know, that some he claimed were inactive and others were  
23 trading in the same way as the hedge fund accounts. And then  
24 he said he didn't produce them previously because he thought  
25 we were always asking about the hedge fund business and these

1 were not hedge fund accounts.

2           And I think I told him, "Well, we think these  
3 accounts are covered by our request, but if you -- why don't  
4 you just produce the same documents for these accounts that  
5 you produced for the others?" And he said, "Okay," and he  
6 did. So that -- any other conversations were really more  
7 sort of logistics and scheduling. I mean, he -- whenever he  
8 was on the phone he was always trying to ask, "Well, what is  
9 this about? What is this about?" And, you know, I always  
10 gave the answer I always give which is "I can't tell you what  
11 it's about."

12           Q     Right. Did he ever suggest to you that you focus  
13 on front-running?

14           A     No. We got the impression -- when he was in  
15 testimony we got the impression that he thought that's what  
16 we were investigating and so he kept talking about it. So we  
17 thought he thought we were investigation front-running.

18           Q     Okay. Okay, I'll show you the next document. Mark  
19 this as Exhibit 47, an e-mail from Peter Lamore to you,  
20 5/12/2006, 9:15 a.m.

21                     This is in response to the last one that I showed  
22 you where you're recalling the conversation you had with Rob  
23 DeLeonardis and Stephen Johnson. And Peter says, "Hi Simona,  
24 I've spoken to Ellen Hersh in our office regarding DTC, she  
25 suggested that I speak to Sonam Varghese, a branch chief

1 familiar with DTC. I've left a message for Sonam to call me  
2 back."

3 Do you know if Lamore actually had that  
4 conversation with Sonam?

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

7 A I don't know. I have no reason to think otherwise.

8 Q Okay, because we've talked to Sonam and she didn't  
9 remember any conversation. Okay, why don't we -- show you  
10 the rest of the documents. Did Lamore ever come back and  
11 say, "Here's what Sonam said?"

12 A I don't think so. With DTC I remember sort of -- I  
13 think at the end we had a contact name and we spoke to that  
14 person I think.

15 Q Okay. The next document we're going to mark as  
16 Exhibit 48, 5/16/2006, 7:27 a.m., from Peter to you. We'll  
17 mark it as Exhibit 48.

18 Peter says, "Hi Simona, I spoke to our DTC contact  
19 person in BD providing our DTC questions, however, I didn't  
20 get any clear answers. The only piece of advise was to find  
21 out if MSIL, which I believe clears the IA business trades,  
22 participates in DTC. If you have a contact person in DTC I  
23 will call them to find out the answers to our questions.  
24 Also, we could ask Bernie to explain the processing of the IA  
25 business trades during testimony and then go to DTC after the

1 testimony."

2 What were the DTC questions exactly?

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

5 A I think these were basic questions about what kind  
6 of records they keep and can those records help verify the  
7 trading that Madoff was reporting to the hedge funds.

8 Q And somebody spoke to the DTC contact person in BD  
9 and they didn't get a clear answer on whether DTC can do just  
10 what you said?

11 A Are you referring to what's reported in this  
12 e-mail?

13 Q Yeah, I mean, I just don't understand who -- do you  
14 know who the DTC contact person in BD was? Was it Sonam?  
15 Maybe it was somebody else?

16 A I don't know who he's referring to. I think this  
17 was shortly before Madoff's testimony, so I think at the time  
18 I probably thought that it would be helpful to ask Madoff  
19 about how the firm keeps its accounts in DTC and then pursue  
20 further with DTC. But I don't know who he's referring to  
21 here.

22 Q And you don't know what information he exactly got  
23 that wasn't clear?

24 A No, I don't know. I do know that the calls with  
25 DTC were after Madoff's testimony, so I think at that time --

1 I think this e-mail is a few days before Madoff's testimony,  
2 so we probably decided to ask Madoff about, sort of, what  
3 accounts he has and what transactions go through them, in  
4 testimony and then pick up this line again.

5 Q Okay. Yeah, but it says, "If you have a contact  
6 person at DTC I will call them to find out the answers to our  
7 questions." Do you know if you had a contact person at DTC?

8 A I knew that ultimately I may not have had the name  
9 at that time, I know ultimately I did, and then we had a call  
10 with that person.

11 Q Is that Personal Privacy

12 A That's -- I think that's right. I mean, that name  
13 definitely is one of the people -- she's among the people we  
14 talked to between DTC, NASD, and CBOE. I don't -- it sounds  
15 right that it would be a DTC person.

16 Q And this call was after Madoff's testimony?

17 A Yes.

18 Q Okay. Why don't we -- okay, I'll show you the next  
19 document marked as Exhibit 49, e-mail from Peter to you,  
20 5/16/2006, 11:20 a.m.

21 Go to the bottom of the e-mail exchange there's an  
22 e-mail from you to Steve Johnson, Peter Lamore and Meaghan  
23 Cheung, Friday, May 12, 2006, 3:32 p.m. "Jordan called back  
24 to say he does not know anything about OTC options trading  
25 and suggested we talk to somebody at NASD. I left a message

1 for Personal Privacy at NASD, I'll let you know what happens."

2 Is that Jordan Materna?

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

5 A Yes, that's the person.

6 Q And that's somebody at CBOE?

7 A Yes.

8 Q So, what do you remember about that? He didn't  
9 know anything about OTC options trading?

10 A I think the -- obviously, anyway, if he was at CBOE  
11 I'm sure he knew about options trading generally. I think  
12 what I was referring to is that he couldn't help us with  
13 verifying over-the-counter transactions -- over-the-counter  
14 options transactions. But I am speculating because I -- I  
15 know there was that call but I don't remember much about it.

16 Q Do you know if anybody else was on that call with  
17 Jordan from CBOE?

18 A Well, from this e-mail it sounds like it was just  
19 me.

20 Q Do you remember specifically what you asked Jordan  
21 from CBOE?

22 A It -- I must have asked -- well, I must have told  
23 him that we were investigating and that we were trying to  
24 confirm whether certain options trades, over-the-counter  
25 option trades with overseas counterparties were real trades

1 and we were trying to confirm those trades.

2 Q And what did he say?

3 A I -- before seeing this e-mail I did remember that  
4 talking to CBOE did not lead anywhere and this e-mail  
5 confirms that. I do not remember what he said specifically  
6 or even generally. I just remember that that inquiry did not  
7 lead anywhere or did not -- fruitful.

8 Q Okay. So you think you might have said that there  
9 was nothing at CBOE that he could provide that would help  
10 you?

11 A Sounds right.

12 Q Do you know if you asked if there was any other  
13 options that he was aware of in terms of how to get the  
14 information?

15 A Well --

16 Q The NASD?

17 A -- from this e-mail it does sound like he suggested  
18 that we talk to NASD.

19 Q Did he tell you what information you could get from  
20 NASD?

21 A I don't if he did. I suspect -- and I would be  
22 completely speculating. No, I don't.

23 Q Okay. And then -- so you then respond, Monday, May  
24 15, 2006, "Susan Tibbs from NASD regulations will be  
25 available to talk to us tomorrow at 2:00, does that work for

1 you?" And then Peter says, "Do you know if Rob spoke to  
2 someone in Market Regulation?" Do you know if anyone spoke  
3 to anybody in Market Regulation?

4 A From the e-mail above it I see that I thought that  
5 he didn't.

6 Q Why do you say "how unhelpful they usually are I  
7 doubt it's worth the effort?"

8 A I think by then I had some frustrating interactions  
9 with them.

10 Q So you don't think anybody in Market Reg was spoken  
11 to?

12 A Well, from this e-mail I see that I did not --  
13 yeah, I don't think they were spoken to.

14 Q Now, Peter Lamore says in his response to you on  
15 Tuesday, May 16, 2006, 8:13 a.m., "I know it is irrelevant,  
16 but keep in mind, the more people we speak to the more likely  
17 it gets back to Bernie. He's very well-connected, especially  
18 at the NASD." Do you know what he was referring to there?

19 A I think he was basically referring to the fact that  
20 Madoff had -- let me see, this is before the testimony --  
21 Madoff definitely spoke about having served on committees and  
22 so on, during his testimony. I probably knew about that  
23 before the testimony as well because I'm sure I had looked  
24 him up in, sort of, public sources; but I didn't give it much  
25 thought because at that time we had already contacted

1 Fairfield Greenwich, Madoff knew that we were investigating  
2 him, so there was no concern about him finding out that we  
3 were investigating him.

4 Q Did Peter ever express concern that, you know,  
5 given how connected Bernie was if you all pushed too hard  
6 there might be some flak coming back?

7 A No.

8 Q Okay. And then Peter says at the top on 5/16/2006,  
9 11:20 a.m., "Okay, I may do some options digging myself." Do  
10 you know if there was anything that came out of that options  
11 digging?

12 A I don't think so.

13 Q Okay, go to the next one now.

14 BY MR. FIELDER:

15 Q Going back to the Jordan Materna issue, as you sit  
16 here today are you aware that CBOE does have paperwork  
17 regarding over-the-counter options trading in the U.S.?

18 A I don't know.

19 Q Okay. At the time you were going to Jordan Materna  
20 at CBOE, my understanding is that you were operating under  
21 the belief that his options trading occurred in Europe, is  
22 that correct?

23 A Right.

24 Q So you think that's what your question was to  
25 Jordan Materna?

1           A     It's possible. I mean, I'm sure when I phrased the  
2 question I included that part of it, "Can we verify  
3 transactions with European counterparties."

4           Q     I'm just trying -- and I don't want to, you know,  
5 put words in your mouth or anything, I'm just trying to --  
6 I'm confused by your e-mail --

7           A     Right.

8           Q     -- reporting your conversation with Jordan Materna  
9 because I think it's odd that anyone at CBOE wouldn't know  
10 that they had records of over-the-counter trades in the U.S.  
11 But I'm also assuming, given, you know, the information that  
12 you were operating on, that your question was about European  
13 over-the-counter trades.

14          A     That's probably right.

15          Q     That would make sense that someone at CBOE would  
16 tell you, "I can't help you with that." So do you think that  
17 it's possible that that was your question to CBOE and that  
18 was the response?

19          A     That's probably right. I mean, I think that's  
20 right.

21          Q     Okay.

22                 BY MR. KOTZ:

23          Q     Okay, I'll show you the next document, mark it as  
24 Exhibit 50. It's an e-mail from Peter to you, 5/16/2006,  
25 3:14 p.m. And at the bottom of the e-mail string is an

1 e-mail from you to Peter and Stephen Johnson with a copy to  
2 Meaghan Cheung, Tuesday, May 16, 2006, 3:06 p.m.

3 "Susan called back," I assume that refers to Susan  
4 from NASD, "they checked one of the dates Peter gave them and  
5 found no reports of S&P100 index option positions. The  
6 electronic search on the other dates will take about 24  
7 hours, they're will let us know what they find out. Susan  
8 said this is not necessarily a reporting violation, if the  
9 London affiliate is writing the contracts and holding the  
10 position then there's no violation. I don't think that is  
11 the case but we will definitely have to ask Bernie about  
12 that."

13 First, were you the only one on the call with  
14 Susan?

15 (SEC Exhibit No. 50 was marked  
16 for identification.)

17 A Since I was reporting to the others I'm assuming I  
18 was.

19 Q So what do you remember about that conversation?  
20 It seems as though you were checking a date and you found no  
21 reports of index options positions.

22 A Right.

23 Q So was that suspicious or confirming suspicions?

24 A I know I remember this -- I remember that there was  
25 a discussion of -- I remember there being a discussion of

1 reporting options reporting requirements. I know that it  
2 didn't go anywhere, but --

3 Q If you -- go ahead.

4 A -- I know that after these calls and his testimony  
5 the kind of bottom-line impression that I had and I -- and  
6 that I got from my supervisors too, at least from Meaghan, I  
7 don't -- I'm not sure to what level of detail we talked to  
8 Doria about this, but I know Meaghan was apprised -- was that  
9 the only way to confirm the options trades was by going to  
10 the foreign counterparties. What I don't remember is what  
11 the follow-up to this conversation was --

12 Q So you don't know if --

13 A -- this conversation itself.

14 Q You don't know if you got the electronic search on  
15 the other dates?

16 A I don't think we did but I don't remember.

17 Q But at least the dates that you checked found no  
18 reports of option positions. Wouldn't that indicate that  
19 there may be something to the allegation that he wasn't  
20 trading?

21 A It's possible. What I don't remember was  
22 whether -- what records Tibbs said they kept, so I -- what  
23 I -- the reason I'm having trouble with this is because I  
24 don't remember how that played with his claim that he was  
25 trading over-the-counter with European dealers. I don't

1 remember what she told me about what kind of records she was  
2 checking.

3 Q Okay, but to the extent you actually checked into  
4 whether Madoff was trading, you found he wasn't, right?

5 A Well, I don't know because I don't know what data,  
6 so -- what was the universe of her data, and she may have  
7 told me that but I just -- I don't know.

8 BY MR. FIELDER:

9 Q Do you recall learning from Ms. Tibbs or anyone  
10 else that NASD members have to report any options positions  
11 they hold in excess of 200 contracts, regardless of whether  
12 they're over-the-counter contracts, regardless of whether  
13 they're over-the-counter contracts with foreign  
14 counterparties? Do you recall learning that?

15 A Yes, that's --

16 Q Okay.

17 A I think that's -- that sounds right. That sounds  
18 like what she must have told me.

19 Q That's -- you think that's what Ms. Tibbs was  
20 telling you?

21 A Right.

22 Q And it -- your e-mail suggests that she told you,  
23 therefore if he holds options contracts he would be in  
24 violation of the NASD reporting rules since we checked and  
25 he's reported no options contracts.

1 A Right.

2 Q Right?

3 A Yes.

4 Q Unless -- her e-mail suggests and I just want to  
5 see if this is how the conversation went -- the options  
6 contracts are held in the name of the London affiliate,  
7 right? Which in that case it wouldn't be a reporting  
8 violation because the London affiliate isn't required to  
9 report those contracts to NASD, correct?

10 A That sounds right.

11 Q Does that sound consistent with your conversation  
12 with Ms. Tibbs?

13 A I think that's right, because I -- now that -- when  
14 you mentioned the reporting requirement I -- it does bring it  
15 back to me, she did mention that. Well, I remember being  
16 aware of it around this time. And from this e-mail it sounds  
17 like that's what she told me.

18 Q Okay. Do you recall from Mr. Madoff's testimony,  
19 and if it becomes helpful we can refer to specific testimony,  
20 but do you recall in Mr. Madoff's testimony him telling you  
21 that the options position were not held by the London  
22 affiliate but were held by his New York firm?

23 A I think that's right.

24 Q Okay. So after his testimony was there any effort  
25 to follow up with the information Ms. Tibbs had given to

1 determine whether or not he was, at a minimum, in violation  
2 of some NASD reporting requirement for his options?

3 A There was not.

4 Q Any discussion of doing that?

5 A No. I do think the focus became on -- after his  
6 testimony the focus was on one side on the registration issue  
7 and then the second to -- to the counterparties, and we did  
8 not follow up on this.

9 Q Okay.

10 BY MR. KOTZ:

11 Q Okay. Well, and then later you say, "Susan  
12 suggested that before talking to Bernie on Friday we talk to  
13 Gene DeMaio, an NASD VP who runs the AMEX surveillance. He  
14 said -- she said he's a former options trader, also has  
15 previously consulted SEC on options issues." Do you remember  
16 specifically why you -- she wanted you to talk to Gene  
17 DeMaio?

18 A I don't know why she gave me that particular name.

19 Q But did you talk to Gene DeMaio?

20 A I probably at least tried calling him.

21 Q Let me show you a document, we're going to mark it  
22 as Exhibit 51. An e-mail from Meaghan to you, 5/17/2006,  
23 3:22 p.m., and we're going to mark that as Exhibit 51.

24 And in this below you say to Meaghan on Wednesday,  
25 May 17th, "Do you have a minute for an update? Surprisingly,

1 it was productive. Subject: NASD Call Re: Madoff." And then  
2 Meaghan says, "Sure, give me a call at home," gives her phone  
3 number.

4 So was this the DeMaio call?

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

7 A Can I look at the previous one? Probably.

8 Q Do you remember why that call was productive?

9 A I'm not sure if that was that particular call. I  
10 know in talking with NASD I learned that NASD had  
11 investigated Madoff, but do not remember this call.

12 Q When you say "NASD had investigated Madoff" what do  
13 you mean?

14 A I guess examined or conduct examinations.

15 MR. FIELDER: They do annual exams --

16 THE WITNESS: Right.

17 MR. FIELDER: -- is that what you're referring to?

18 THE WITNESS: Right, is the -- I got the impression  
19 that they actually took a more targeted view and did focus on  
20 the allegations in the Barron's article.

21 BY MR. KOTZ:

22 Q Really?

23 A But I could -- I -- my impression is that -- or I  
24 think they looked at similar issues, but unfortunately I do  
25 not remember that call at all.

1 Q But this is somebody at the NASD told you this,  
2 right?

3 A I just don't remember.

4 Q And you -- but you do remember that what was told  
5 to you was that NASD looked at issues related to a possible  
6 Ponzi scheme on the part of Bernie Madoff?

7 A I don't know if it was Ponzi or the front-running.  
8 I just don't remember.

9 Q But did you feel at that time -- you say it was  
10 productive, so do you feel at that time that because NASD had  
11 looked at this and found nothing, I assume, that that was  
12 helpful for you to know.

13 A Unfortunately, I do not remember the substance of  
14 the call at all, so I don't know if it was because they told  
15 me about what they had done or it was background that was  
16 helpful. I just don't remember anything about it.

17 Q But, in general, do you remember at some point in  
18 time learning that the NASD had looked into Madoff in their  
19 exams and feeling some comfort that they had looked at some  
20 of these same issues you were looking at and didn't find  
21 anything?

22 A I think generally, yes, that was my impression. I  
23 just can't tie it specifically to this call.

24 Q Okay. And do you think generally that impression  
25 you got from somebody at NASD?

1 A Yes.

2 Q So you may have explained to the person on the  
3 phone from NASD what the allegations were that you were  
4 looking at and they said, "Oh, we did an exam of Madoff and  
5 we didn't find anything?"

6 A That sounds right but I do not remember the calls  
7 with NASD.

8 Q Okay. Do you remember anything otherwise that you  
9 got from Gene DeMaio on the call?

10 A No, I actually, until seeing his name in the  
11 e-mail, I didn't even remember that there was a contact.  
12 So --

13 Q Okay. So there was a call, it was -- talk about a  
14 all with DTC, there was a call with CBOE, there was a call or  
15 two calls with NASD, anything else that occurred prior to  
16 Madoff's testimony in that vein?

17 A I don't think so, but --

18 BY MR. FIELDER:

19 Q I want to let you know a little bit of what we've  
20 learned. I think at least from NASD about this issue. I'm  
21 very intrigued by the impression -- they clearly, they  
22 completely took away that they looked at these issues when  
23 they did an exam. So I'm going to -- I'm going to have to  
24 represent to you what I've learned from NASD in general.

25 NASD says that when they went in and did an exam,

1 in part based on the Barron's article, what they were told  
2 and determined was that Madoff was not running any money out  
3 of his market-maker account. He told them that he was  
4 running money on the side through the London affiliate.

5 So what's really troubling to me as I sit here and  
6 listen to what they were telling you is there's a disconnect  
7 between -- you knew that Madoff was telling you guys he was  
8 running money through his money market -- or his market-maker  
9 account, which would have been completely at odds at what  
10 NASD was told and had confirmed. They said they had gone and  
11 actually confirmed that he was not running any money except  
12 his market-maker activity. So that was not -- I mean,  
13 this -- in your recollection that was not communicated to you  
14 in that call with NASD?

15 A I want to clarify; he told us he was not trading  
16 these accounts through the market-making operation, that he  
17 was trading them separately. I'm not sure if that's --

18 Q He was trading them separately, but he told you he  
19 was clearing them through DTC the same DTC account.

20 A Yes.

21 Q Right. And that's what NASD says they went in and  
22 looked at and found that he was not trading any money through  
23 his market-making DTC account. Did he tell you that?

24 A I don't think so.

25 Q Okay, because this troubling because that -- I

1 mean, they told us today that that's why -- it's not that  
2 they concluded that, you know, he wasn't doing anything  
3 wrong, they just concluded that the member that they had  
4 jurisdiction over was not managing this money that the  
5 Barron's article was talking about. Unfortunately, it sounds  
6 like had they conveyed that to you you would have known that  
7 there's a disconnect there between what Bernie's telling you  
8 and what NASD had found.

9 A It sounds right. I mean, I -- unfortunately I do  
10 not remember the NASD contact so I --

11 Q Okay.

12 A -- can't -- other than what's in the e-mails,  
13 unfortunately, I can't tell you what they told me.

14 BY MR. KOTZ:

15 Q But you didn't ask or get copies of any NASD exam  
16 reports?

17 A No.

18 Q Okay. Okay, why don't we move on to the testimony?  
19 Okay, I'll show you the next document, mark it as Exhibit 52.  
20 E-mail from Doria to you, 5/19/2006, 8:17 a.m., and this  
21 attaches the Bernard Madoff testimony outline. And you  
22 prepared that outline?

23 (SEC Exhibit No. 52 was marked  
24 for identification.)

25 A Yes.

1 Q Did you get substantial edits or revisions to it?

2 A I don't think so.

3 Q Do you remember any revisions or edits to it?

4 A No. I'm -- in fairness, I know that I have -- did  
5 speak to Meaghan earlier and sort of went over with her what  
6 I was planning to talk to him about and sort of --

7 Q And you feel you got enough feedback and/or  
8 guidance on what questions to ask Madoff in his testimony?

9 A Well, I had talked to Meaghan about the overall  
10 plan for the testimony in fair detail. I also knew that she  
11 and Doria would be there in testimony, so it gave me some  
12 comfort in terms of, you know, they would be there sort of to  
13 judge if there was additional follow up necessary. You know,  
14 the -- of having other people there.

15 Q Right, but in terms of figuring out what to include  
16 and what not to include you didn't get much guidance?

17 A That's right.

18 Q And you say in here on Friday, May 19, 2006, 9:03  
19 a.m., "We have a few minutes during the next hour to talk  
20 about it, I have a couple of questions about the approach to  
21 his prior disclosures to the exam staff." Do you remember  
22 what that was about?

23 A I think I wanted to run by them how to handle --  
24 how to confront him with the fact that he lied. I mean, I  
25 sort of -- I think the bottom-line is I told them what I

1 thought of doing and they said okay.

2 Q What was that approach?

3 A Basically, do you remember telling Peter "x" and if  
4 he says, "Yes," then, you know, "Why did you tell that?"

5 Q Okay.

6 A Which is what happened during testimony.

7 Q Okay. All right, well go to the next document.

8 BY MR. FIELDER:

9 Q But were you asking about how -- I mean, was -- I  
10 don't want to read too much in between the lines, but you're  
11 asking basically how aggressive -- were you asking your  
12 supervisor how to be aggressive with that line of  
13 questioning?

14 A I think so. I just, you know, certainly it's an  
15 adversarial point so I wanted to make sure that they were  
16 okay with whatever I planned on doing.

17 Q Is there a reason you went in a -- and hopefully my  
18 recollection of the e-mail is correct, that you posed this  
19 question and not Meaghan, and in fact, didn't even include  
20 Meaghan on the e-mail.

21 A Well, I think Meaghan was not in yet.

22 Q Okay.

23 BY MR. KOTZ:

24 Q Okay, I'm going to show you the next document, mark  
25 it as Exhibit 53. It's an e-mail from Peter to you,

1 5/18/2006, 2:17 p.m.

2 And below there's an e-mail from Peter to you,  
3 Thursday, May 18, 2006, 10:26 a.m., "Some of my initial  
4 thought that I believe should be covered in Bernie's  
5 testimony." If you look at page 2 of 2 on this document,  
6 number 11 under audit it says, "Are you related to anyone  
7 associated with the firm that conducted your annual audits  
8 over the last ten years?" Do you see that one?

9 (SEC Exhibit No. 53 was marked  
10 for identification.)

11 A Yes.

12 Q Did you include that in your questions for Madoff?

13 A I don't think so.

14 Q How come?

15 A I don't remember.

16 Q What about number 14, "Exam staff told gut feel to  
17 implement strategy, DiPascali said momentum models," did you  
18 include that?

19 A Yes. In substance we asked him how he made the  
20 decisions about when to implement strategy and --

21 Q But what about the contradiction between what  
22 Madoff told the exam stuff he used to implement his strategy  
23 and what DiPascali said?

24 A Well at that time it didn't seem like a  
25 contradiction because -- I think I -- even from DiPascali's

1 testimony I understood he claimed that Madoff was looking at  
2 momentum models but ultimately the decision was really his  
3 judgment call as opposed to, sort of, computer models  
4 spitting out a yes or no answer. So I did not see that as a  
5 contradiction.

6 Q So you didn't ask specifically about what DiPascali  
7 said?

8 A Well, we asked him how he makes the decision when  
9 to implement the strategy and he gave an answer that seemed  
10 consistent with what others told us, which was he does look  
11 at data and at outputs of models but makes the decision based  
12 on his judgment.

13 Q Okay.

14 BY MR. FIELDER:

15 Q Well, Lamore is presumably, in seeing number 4,  
16 it's his believe or characterization that what Madoff had  
17 told the exam staff previously and told you up to that point  
18 was contradicted by DiPascali. Did you -- so I -- do I hear  
19 you say you just disagreed with Lamore that there had been a  
20 contradiction and so it wasn't worth asking him about it?

21 A On -- well, we did ask about it. We didn't present  
22 it as sort of confrontational point, as something that was  
23 something inconsistent, but we did explore the subject matter  
24 with him.

25 Q You explored what his explanation was for how he

1 made the decisions, right?

2 A Right.

3 Q And you're saying that, what he said in testimony,  
4 sounded consistent with what you -- the testimony that you  
5 had taken from DiPascali, right?

6 A Right, and also with sort of his statement it's gut  
7 feel.

8 Q Right. But I take it from Lamore's e-mail what  
9 Lamore was saying is what we learned in the exam was  
10 definitely contradicted by DiPascali's testimony.

11 A I think that's what he thought.

12 Q Okay. But did you agree with that characterization  
13 at the time?

14 A I don't think I agreed that it was a contradiction.  
15 I think there were other contradictions that were more stark  
16 and we explored. But certainly I agreed that we have to ask  
17 questions about it.

18 Q And so -- if -- and you -- happy to refer, I think  
19 it was an attachment to one of the exhibits, the actual  
20 outline --

21 A Yeah.

22 Q -- that you drew up. You did include a section on  
23 his contradictions or misstatements to the exams staff. This  
24 one didn't make --

25 A Right.

1 Q -- the outline. So, I'm distinguishing between  
2 your impression in Madoff's testimony that at the end of the  
3 testimony what he was saying in testimony was consistent with  
4 DiPascali's testimony, but what Lamore is saying in this  
5 e-mail --

6 A Right.

7 Q -- is that everything Madoff had told the SEC staff  
8 up to the date of that e-mail had been contradicted by  
9 DiPascali's testimony. You didn't include that subject as a  
10 discrepancy in your outline as you did with some of the other  
11 discrepancy that Lamore was pointing out and I just want to  
12 understand why you believed before the testimony you  
13 didn't -- or didn't think there was a discrepancy.

14 A My impression, and I could be getting the timeline  
15 confused now, I did not think that DiPascali told us that a  
16 computer model spits out the yes or no answer.

17 Q Okay.

18 A I am pretty sure that throughout the investigation  
19 the impression I had was that it is his individual judgment  
20 calls and that would be consistent with the gut feel --

21 Q Okay.

22 A -- which he said.

23 Q So the bottom line you didn't include it in your  
24 outline because you didn't agree with Lamore that what  
25 DiPascali said was contradictory with what Madoff had been

1 saying, is that fair?

2 A I think that's right.

3 BY MR. KOTZ:

4 Q Okay, showing you the next document, mark is as  
5 Exhibit 54, excerpts from the Bernie Madoff testimony,  
6 Friday, May 19, 2006.

7 This is several pages starting with page 76. And  
8 you say, "You mentioned the returns, that they're not high  
9 enough to justify setting up a hedge fund. They're also  
10 remarkably consistent. They're fairly -- they have low  
11 volatility and there are fairly few periods when they're  
12 down. I'm sure you're aware of people wondering how this  
13 could happen, what's your answer to that?"

14 Would you agree that's kind of a pretty central  
15 point in the investigation?

16 (SEC Exhibit No. 54 was marked  
17 for identification.)

18 A Yes.

19 Q Okay. So, can you take a minute and read Madoff's  
20 answer from page 76 to -- very top of 79?

21 (The witness examined the documents.)

22 A Okay.

23 Q Does he provide any explanation as to how he's able  
24 to achieve these markedly consistent, low-volatility returns  
25 with fairly few periods when they're down?

1           A     I don't think so, but he was a rambling witness and  
2     so it was -- of this particular excerpt, I mean, I agree that  
3     it's not a -- doesn't answer the question.

4           Q     Did anywhere in the testimony Madoff give any  
5     answer to how he's able to achieve these consistent returns  
6     with low volatility over such a long period of time?

7           A     I don't remember the whole testimony. I know the  
8     overall impression that I had was that he explained it by  
9     being out of the market for substantial periods of time,  
10    because I'm pretty sure his talk about sort of how it makes  
11    him different is that he is not in the market the whole time.

12          Q     What does that mean that he's not in the market the  
13    whole time?

14          A     That he's not -- that he does not keep the basket  
15    at all times, that there are many time periods when he's in  
16    cash.

17          Q     Okay, but how does he know when to buy and sell the  
18    stocks --

19          A     Right, and --

20          Q     -- such that he always buys low and sells high?

21          A     He claimed that it was his judgment and his  
22    market-timing ability and that he was looking at certain data  
23    about market variables, I guess, such as -- it may have been  
24    commodities. I know he mentioned -- specific variables that  
25    he was looking at and -- but he also talked about, you know,

1 being generally aware of what goes on in the market and the  
2 industry, talking to people and so on and so forth, and based  
3 on the totality of the information he had that he was making  
4 the decisions.

5 Q Do you find that to be a satisfactory or reasonable  
6 answer?

7 A I didn't know what to think. I mean it was an  
8 answer --

9 Q But, I mean, you were aware of the length -- period  
10 of time of consistent returns. You were aware that several  
11 sources did not believe it was possible to achieve those  
12 returns. Others couldn't replicate these returns. He wasn't  
13 front-running so he wasn't getting information from his  
14 market-making operation.

15 A Right.

16 Q How could he possibly do it? Based on what? What  
17 information that nobody else has that he was able to achieve  
18 returns over such a long period of time?

19 A He talked about the information that he claimed to  
20 be looking at.

21 Q Was that information that was something that was  
22 unavailable to other people? Was that some kind of special  
23 information?

24 A He didn't -- he did not claim that that was so. I  
25 think he claimed that the information -- the data that he

1 was -- the raw data from which he was starting was the data  
2 that was available to everybody. He claimed that the  
3 company, or his firm, had proprietary models that analyzed  
4 that data for correlations between different variables. But  
5 he also claimed that the big part of the picture is really  
6 him and his judgment.

7 Q Right. Did Lamore, anyone else who was in that  
8 testimony room, say anything like, "This doesn't make any  
9 sense? You know, he's not some magician, what is this  
10 special thing about him that he hasn't been able to  
11 articulate in any way that allows him to achieve returns that  
12 nobody else can?"

13 A Nobody said that. I mean, that was the question in  
14 the Markopolos report and I think that was the question.

15 Q But it wasn't answered.

16 A That was the question of the investigation.

17 Q I mean you had Bernie Madoff, asking him questions.  
18 You asked him, he gave you an answer that didn't make any  
19 sense --

20 A Right.

21 Q -- but you never got to the bottom of that, which  
22 was the central point of the Markopolos complaint.

23 A Well, the impression that we had from talking to  
24 him and DiPascali and Tucker was that his claim why the  
25 returns were so good was because of his expertise and his

1 superior judgment. And I did not know where that ran in  
2 terms of how successful other traders are or are not, but I  
3 guess it came down to a question of verification.

4 Q Right, but the central point of Markopolos  
5 complaint was the returns were impossible, right?

6 A Right.

7 Q One would think that in order to get to the bottom  
8 of that you would have to have some explanation as to how he  
9 was able to achieve the returns that you were investigating  
10 as to whether they were possible or not, but you really never  
11 did get an explanation, right?

12 A Well, we got the explanation that it's his  
13 judgment. Now, one might think -- or sitting here now  
14 it's -- we can say that it's not the credible explanation,  
15 but it's also not a particularly verifiable explanation. So,  
16 really, if you want to verify his truthfulness you need to  
17 verify whether the trading actually happens.

18 Q So you weren't able ever to verify the truthfulness  
19 of Madoff's explanations for his returns?

20 A That's correct.

21 Q Okay. Okay, why don't we go to the next one?

22 BY MR. FIELDER:

23 Q I have a couple of questions about this on page  
24 78 -- I want to ask you about your contemporaneous reaction  
25 to two statements that Madoff made in his testimony, they're

1 both on page 78.

2 One is at the -- close to the very top and it --  
3 the sentence begins, "If we had returns, 5 percent one  
4 month," you see that? It's the sixth line -- in the middle  
5 of the sixth line down?

6 A Uh-huh.

7 Q I may be mixing -- reading this wrong, which is one  
8 of the reasons I want your contemporaneous reaction, but  
9 it's -- I think it says, "If we had returns, 5 percent one  
10 months and had no down months, that would be unusual." I  
11 mean, isn't it a fact that what he was actually claiming to  
12 have was much more unusual than that, a lot more than 5  
13 percent.

14 A I thought he meant 5 percent a month.

15 Q Not a 5 percent annual return?

16 A Right.

17 Q Right. Okay.

18 A So he was trying to say that his return was not  
19 exorbitant.

20 Q What about the part about no down months?

21 A Well he did have a few, I mean, not many, but he  
22 did have some.

23 Q I think about four over more than a decade, is that  
24 right?

25 A Right.

1 Q And never more than -- never even a full percent  
2 down, am I right about that?

3 A That, I don't remember.

4 Q Would you -- but was your sense at the time that  
5 according to him it would not be unusual, those returns that  
6 he was supporting?

7 A Well, that's what he's saying here.

8 Q Okay. Looking at the bottom of the page he says,  
9 "It is absolutely not surprising -- that's all I can tell  
10 you. But any academic that looked at it would tell you  
11 that." If you recall the Markopolos complaint, there was  
12 quite a bit of it devoted to the thesis that even without  
13 reference to specific trade data you could run the Black  
14 Scholes Model, I may be mispronouncing it, but an academic  
15 model and just see that theoretically it wasn't possible to  
16 attain the returns that Markopolos -- that Madoff was  
17 claiming.

18 Essentially, he ran an academic model, so in that  
19 sense there was an academic model but it was one that did not  
20 confirm that the returns were even theoretically possible.  
21 So if you rejected Markopolos's analysis, was there any  
22 effort to go to any other type of academic? I mean, you  
23 know, it's sort of like he, you know, it seems to me like  
24 Madoff is kind of throwing down the gauntlet here, "Hey, you  
25 can go to any academic and they'll tell you that this is

1 very reasonable."

2 A We didn't, but also, I mean since he was reporting  
3 trades and not returns, it seems like -- it didn't seem like  
4 fruitful inquiry because really he's reporting trades. He's  
5 reporting trades that either are real or are not. And if  
6 they are real then -- let's put it that way, he's reporting  
7 trades, if they're -- the prices on the trades based on the  
8 sampling seem to be the market prices, so he's not making up  
9 the prices. So then really the question was the trades --  
10 are the trades real or not, not can you get that return  
11 from -- trade?

12 Q So the argument in Markopolos's complaint that it  
13 just wasn't theoretically possible, that was discounted as  
14 not a productive line of inquiry, is that correct?

15 A Right.

16 Q Was OEA ever asked to run the Black Scholes Model?  
17 Was there ever a thought that they were capable of doing  
18 that -- confirming that part of Markopolos's complaint?

19 A No and they certainly never said that they could.

20 Q Okay. Did any of your supervisors ever suggest --  
21 I know you testified earlier that OEA was not sent the  
22 Markopolos complaint -- did either of your supervisors  
23 suggest that might be a good idea to have him analyze the  
24 theoretical component of Markopolos's complaint?

25 A No.

1 Q Okay.

2 BY MR. KOTZ:

3 Q Okay, let's move on to the next one. This is  
4 another excerpt from the Madoff testimony: We're going to  
5 mark this as Exhibit 55. This is the Friday, May 19, 2006,  
6 testimony from pages 85 to 86.

7 And you see on the top of 85 you ask, "Who has the  
8 custody of the assets?" What was the reason for asking  
9 questions about custody?

10 (SEC Exhibit No. 55 was marked  
11 for identification.)

12 A Well, since this was a Ponzi scheme allegation then  
13 that's the question that I was told the investigation has to  
14 address, which is the custody of the assets?

15 Q Who told you that?

16 A Doria.

17 Q Okay. Did she help you come up with the questions  
18 specifically for this issue?

19 A Not specifically for the preparation -- in the  
20 preparation for the testimony, but I know she has raised that  
21 question earlier in the investigation and it was sort of on  
22 the radar, so --

23 Q But did you not have as good an understanding of  
24 what the issue was with the custody of assets, it was  
25 something that Doria asked you to put in?

1           A     I can't say that I understood how the operation  
2 works in terms of the flow of the cash. I asked the  
3 Fairfield people and I asked Madoff. Now, what I did not  
4 know is sort of where that fits in terms of industry  
5 practices, what they were telling us, was that standard  
6 practice or not standard practice as well.

7           Q     Did you ask Madoff where the accounts where he had?  
8 Where was the money?

9           A     I don't know if I did.

10          Q     What about where the bank statements where?

11          A     Do you mean for the firm?

12          Q     Yeah. I mean, he has all this money that he's  
13 trading, right?

14          A     Right.

15          Q     Where did he keep it?

16          A     My impression was that he kept it at the brokerage  
17 firm, but I don't have -- my impression was basically between  
18 when he sells and when he buys again it stayed within the  
19 brokerage firm.

20          Q     Okay, but did you ask him about that specifically?

21          A     I don't think so.

22                   BY MR. FIELDER:

23          Q     But the brokerage firm has to have an account,  
24 right? I mean, when customers want to invest with him they  
25 have to be able to wire money somewhere, right?

1 A Right.

2 Q When they want to redeem monies it has to be wired  
3 out of an account, right?

4 A Right.

5 Q And that account has to be at a financial  
6 institution, a bank account, right?

7 A I think that's right. I don't think I thought  
8 about it that --

9 Q I mean my -- my understanding could be wrong about  
10 custody and what the issue would have been in reference to a  
11 Ponzi scheme, but my understanding of custody vis-a-vis the  
12 IA world or the BD world is custodian is the one that's  
13 legally responsible for maintaining the assets and legally  
14 responsible for doing all the paperwork associated with --

15 A Right.

16 Q -- tracking the money and keeping records, correct?

17 A Right.

18 Q Okay. So if there had been an independent  
19 custodian you could have gone to that independent custodian  
20 and just asked for their paperwork about the money trail,  
21 right?

22 A Right.

23 Q But Madoff was saying, "I'm my own custodian."

24 A Right.

25 Q First off, was that a red flag to you? Was that

1 another --

2 A Not to me, because I didn't know how common or  
3 uncommon that was.

4 Q And Peter Lamore didn't comment on that being  
5 uncommon?

6 A Not in those terms. At the same time, it's sort  
7 of -- had there been an independent custodian it would have  
8 been an easy --

9 Q Right.

10 A -- resolution, so --

11 Q Okay. But that issue of custody is different, I  
12 mean that's the legal obligation based on reporting  
13 requirements, et cetera. That is different than the issue of  
14 custody as it relates to a Ponzi scheme investigation where  
15 you're wanting to literally trace the money. Where's the  
16 money coming from? Where's it going to?

17 For example, if he'd been placing trades with these  
18 counterparties in Europe, then wherever the bank account was  
19 the money would be being wired out to them, right?

20 A Right.

21 Q So, it looks like no one ever asked in his  
22 testimony, "Where do you maintain your bank account or  
23 accounts that handles this money?" Is that correct?

24 A I think that's right as to the testimony.

25 Q And no one ever asked to see bank statements --

1           A     Yes, that's right.

2           Q     Okay.  Because if it had been a domestic bank then  
3 you could have easily obtained the records from the domestic  
4 bank, right?

5           A     Right, with a subpoena, yes.

6           Q     Okay.

7           A     Well, actually --

8           Q     I think you're right, you probably would have had  
9 to have an RFPC subpoena, right?

10          A     Right.

11          Q     Or his -- I mean, producing his own records, right,  
12 which he presumably had?

13          A     Right.

14          Q     And that was never discussed with Doria --

15          A     Bank records, no, not at all.

16          Q     Bank records not discussed.  Because Peter Lamore  
17 had mentioned the custody issue earlier as -- I don't  
18 remember -- exhibit, but there was an e-mail where you said,  
19 "I think this all comes back to the issue of custody."

20          A     Right.

21          Q     But he never explained or discussed it being an  
22 issue of tracing the money?

23          A     No.  I know we asked Fairfield witnesses about  
24 how -- what happens when you need to wire money, they said  
25 they wired to -- they send a check to Madoff.  But the

1 possibility of going to a bank for banking records was never  
2 raised.

3 Q Okay. Now this is purely hypothetical and I  
4 appreciate that, but I think -- I mean, if he had been  
5 running trades then those bank statements would have  
6 presumably shown legitimate money coming in from investors  
7 and going out either to investors as redemptions or going out  
8 to the dealers who were -- he said he was placing the trades  
9 through in Europe, right?

10 A That's probably right.

11 Q Okay. And I honestly don't know what they actually  
12 show, but presumably since no trades were being done, in  
13 reality, they just showed money coming in from investors,  
14 occasionally money going out to investors and the rest of the  
15 money being spent on Madoff and his family.

16 A I can't answer that, I know --

17 Q If you had seen bank statements that showed that  
18 there was no money going to -- independent of what the  
19 details of the trades, if you'd just seen bank statements  
20 that showed there was no money going to counterparties in  
21 Europe or dealers in Europe for equity trades, wouldn't that  
22 have been a complete confirmation that he was running a Ponzi  
23 scheme?

24 A Probably. I mean, I have to say the issue of  
25 getting bank records was never raised, never suggested, so --

1 Q I'm just asking you if it had been and if the bank  
2 records had shown no monies going to counterparties for  
3 options trades or dealers for equity trades, in your opinion  
4 would that have been just absolute evidence that he must be  
5 running a Ponzi scheme? Or is there other -- was there  
6 another legitimate or innocent explanation for why that might  
7 be the case?

8 A Assuming that that would be for accounts for which  
9 he --

10 Q Assuming he's identified the right --

11 A That that was the right accounts, right.

12 Q -- accounts, right?

13 A I mean, of course.

14 Q Okay.

15 BY MR. KOTZ:

16 Q Okay. Let's go to the next one. Another excerpt  
17 from the transcript we're going to mark as Exhibit 56. This  
18 is the same, May 19, 2006 transcript of Bernie Madoff, pages  
19 87 through 89. This is where you asked Bernie Madoff about  
20 DTCC, okay?

21 (SEC Exhibit No. 56 was marked  
22 for identification.)

23 A Right.

24 Q And you ask on page 87, "Is there any segregation  
25 of that account into sub-accounts or some other segregation

1 where you separate the institutional trading transactions  
2 from other firm transactions?" He answers, "Yes."

3 A Right.

4 Q "The institutional amounts are separate from the  
5 firm's accounts."

6 A Right.

7 Q But I thought you said earlier that when you went  
8 to DTC there was no way to segregate it.

9 A I think we had conversations with DTC after his  
10 testimony and I know that the bottom-line was we did not  
11 think he could feasibly verify the trading from the records  
12 that they told us they had. But I know one issue was  
13 volume -- may have been volume. Actually, I do know that  
14 there was a conversation with DTC after this.

15 Q Do you know who that was with?

16 A It -- I remember it being a woman, and from the  
17 name you've mentioned to me it may have been Personal Privacy --

18 MS. BRUNE: Personal Privacy ?

19 THE WITNESS: Something like that.

20 MR. KOTZ: Personal Privacy ?

21 THE WITNESS: Personal Privacy . But I don't remember why we  
22 ultimately did not think that we could use DTC records to  
23 confirm the information in the account statements.

24 BY MR. KOTZ:

25 Q So following Madoff telling you in the testimony

1 that he had segregated accounts --

2 A Right.

3 Q -- institutional accounts separate from the firms  
4 accounts, you didn't verify this with DTC?

5 A I don't know. I don't know if we did. I mean, I  
6 knew that there was a -- to see after his testimony.

7 Q But did you seek any records from DTC after  
8 Madoff's testimony to verify this?

9 A No.

10 Q Were you aware that right after Madoff confessed on  
11 December 11th, the first -- one of the first things that the  
12 staff did, Aaron Armsen, who works for you, was to check DTC  
13 immediately for these type of accounts and didn't find  
14 anything?

15 A I didn't know.

16 Q Didn't find anything at all.

17 A I did not know.

18 Q So is there -- I mean, is there any explanation  
19 that you can remember as to why you wouldn't just go check  
20 with DTC and find the same thing that Aaron Armsen found,  
21 which was there were no accounts, thereby proving that he  
22 had -- was running a Ponzi scheme.

23 A No, I -- I don't know.

24 Q Sorry?

25 A I don't remember.

1 Q Do you remember any conversations about this  
2 particular point with others --

3 A About --

4 Q -- after the testimony? The DTC issues with Peter  
5 Lamore or anyone else?

6 A I know that the issue was discussed and it was  
7 discussed at length. And I know that -- I also remember  
8 looking back at his testimony multiple times after the  
9 testimony. So -- I have to say that I do not remember the  
10 conversations and I do not remember how we got to the point  
11 where we did not think to pursue DTC.

12 Q Do you remember if Lamore was involved in any of  
13 those conversations? Because he seemed to indicate to us  
14 that after the testimony he had little involvement with the  
15 investigation.

16 A That's not completely -- I don't think that's quite  
17 right. I mean, I certainly know that I continued to sort of  
18 include him in e-mails and --

19 Q Okay.

20 A -- invitations to phone calls and so on.

21 Q But do you know if he was ever involved in these  
22 discussions about DTC following Madoff's testimonies?

23 A I think so.

24 Q What about Steve Johnson, do you remember him being  
25 involved at all?

1           A     I probably -- I'm quite sure, at least for a few  
2 weeks or sort of for a while after the testimony, continued  
3 to include him on e-mails and everything. So --

4           Q     Do you know if Lamore or Johnson were on the call  
5 with DTC?

6           A     That's my recollection.

7           Q     Do you know that Peter Lamore told us -- actually,  
8 there's an e-mail to this effect -- after the Ponzi scheme  
9 came out and Bernie Madoff confessed that if he had just made  
10 one phone call he thinks he would have uncovered it? And in  
11 testimony suggested that that was a call to DTC.

12          A     I did not know that but okay.

13          Q     It just seems odd that he's saying that and yet was  
14 involved in communications with DTC but there was no follow  
15 up.

16          A     I wish I could give you more detail, but  
17 unfortunately, I do not remember the details and so I -- I  
18 understand that that's his recollection, but -- and my  
19 general impression is that both he and Stephen did remain  
20 involved on those issues, but since I don't remember the  
21 specific conversations to --

22          Q     Do you remember Lamore's views of Bernie Madoff's  
23 testimony? He characterized it to us as he was jumping up  
24 and down during Bernie Madoff's testimony, not --

25          A     Who, Peter?

1 Q Peter, not, you know, actually but that he just  
2 couldn't believe the things that were said in Bernie Madoff's  
3 testimony.

4 A Well, I know he thought he was kind of arrogant  
5 and, I guess, portraying himself as very important in  
6 comment, and I know that Peter was, and I think rightly so,  
7 very frustrated by having been lied by him. So I know he had  
8 that reaction.

9 Q Okay. All right, let me show you the next one.

10 BY MR. FIELDER:

11 Q Let me ask a couple more questions about the DTC  
12 phone call, because I don't doubt at all that it happened,  
13 I'm trying to sort of reconcile what they might have said  
14 that would have thrown you off. And it occurs to me that  
15 everything we've seen up to now seems to be the focus was  
16 confirming audit trail type data for the reported trades,  
17 confirming that a trade occurred and it's at a stated time  
18 and stated price, et cetera.

19 A Right.

20 Q Is that a fair --

21 A Right, right.

22 Q -- sort of what you guys were trying to confirm?

23 A Right.

24 Q It may be, and I don't know for sure, but it may be  
25 that DTC told you they couldn't give you that specific

1 information, but they could have told you whether or not  
2 trades were actually occurring at all. Is that possible that  
3 your question to them was do they have data on specific  
4 trades, audit trail type data?

5 A It's possible because I know that I was thinking in  
6 those terms.

7 Q Okay. But if you're investigating a Ponzi scheme  
8 there's no trades, right?

9 A That's right.

10 Q So you don't need that level of detail to determine  
11 whether it's a Ponzi scheme, you just need to know where  
12 any -- as an initial matter, whether any trades are  
13 occurring, right?

14 A That's right.

15 Q Do you think that wasn't what you asked DTC,  
16 whether they could confirm that any trades were occurring?

17 A I'm pretty sure I didn't ask it in those terms, but  
18 I -- since I, unfortunately, I don't remember what the  
19 conversation was, so I'm speculating about it based on sort  
20 of what I think my thinking was and what the discussions  
21 were. But I can't say.

22 Q Okay.

23 BY MR. KOTZ:

24 Q Okay, let's go to the next document. Okay, I'll  
25 mark the next document as Exhibit 57. This is another

1 excerpt from Madoff's testimony, February -- I mean, Friday,  
2 May 19, 2006, pages 103 to 105.

3 This was the questions that were asked about what  
4 Madoff had said previously to Peter Lamore. And you said,  
5 "Do you recall telling Lamore --"

6 (SEC Exhibit No. 57 was marked  
7 for identification.)

8 A Right.

9 Q And he said -- you said, "Do you recall telling  
10 Peter that as of January 1, 2004, you no longer incorporated  
11 options into the strategy for the institutional trading  
12 business?" And Madoff replies, "I said, "They're not part of  
13 the model, the options are not deemed to be part of the  
14 model." I did not say -- my recollection certainly is not  
15 that I said that the accounts don't use options anymore to  
16 trade."

17 A Right.

18 Q Peter disputed that, right?

19 A Yes, he did. I can't say I found this answer  
20 credible.

21 Q Okay. But you didn't --

22 A I did credit Peter's recollection and I did  
23 continue to think that Madoff was dishonest in that he was  
24 just basically trying to get out of being called a liar.

25 Q Okay. So, at the end of the day, you had

1 determined that Madoff had lied in the examination and then  
2 in the investigation as well?

3 A Right.

4 Q All right, let me show you the next document.

5 MS. BRUNE: If it's all right I'd like to take a  
6 break --

7 MR. KOTZ: Sure, sure. Go off the record.

8 (A brief break was taken.)

9 BY MR. KOTZ:

10 Q Okay, we're going to go to another topic here.  
11 I'll show you the next e-mail. We'll mark this as Exhibit  
12 58. This is an e-mail from Peter to you, 3/15/2006, 11:33  
13 a.m., okay?

14 This references an SEC administrative notice about  
15 SEC UK FSA, signed Landmark Regulatory Cooperation  
16 Arrangement. What is the FSA?

17 (SEC Exhibit No. 58 was marked  
18 for identification.)

19 A It's basically the UK equivalent of the SEC.

20 Q Okay. And Peter says, "Perhaps we could ask the  
21 FSA to share information regarding the activities of Madoff  
22 Securities International London, MSIL?"

23 A Right.

24 Q Now you respond, "Unfortunately, I doubt we can  
25 avoid going though our OIA no matter how many cooperation

1 agreements the SEC signs, and my experience with that office  
2 so far have been less than satisfying."

3 A Right.

4 Q What experiences did you have with OIA?

5 A I had early on -- when I joined there was a inquiry  
6 that they worked with Personal Privacy on where the exam -- there  
7 was an exam and then the investment advisor left New York.  
8 And what happened was, we learned that he left for Bermuda  
9 and we had questions about sort of -- we didn't have any -- I  
10 think we had a question about is there a way, sort of, to put  
11 him under alert with the Bermuda authorities or something  
12 like that, just so that they are aware that this is somebody  
13 we thought was suspicious. And I remember the -- sort of the  
14 response time was very slow and so on.

15 Also, I'm pretty sure I had some interactions with  
16 OIA on AIG because we were dealing with foreign companies and  
17 the auditors were foreign auditors. Right, so -- and also I  
18 sort of -- the reputation where I guess, sort of -- I guess  
19 the reputation of -- or the impression that they had that  
20 trying to get records from overseas going through OIA is  
21 always very lengthy and often unfruitful.

22 Q So it was more of an issue of timing?

23 A Timing -- timing, also how likely -- how long it  
24 will take, how likely you are to get anything helpful.

25 Q Okay. So at this time you determined not to go

1 through OIA, but to rely on FSA?

2 A No, because we can't go directly to FSA, that's  
3 still -- to go to the SEC's foreign counterpart we still have  
4 to go through the Office of International Affairs.

5 Q Okay. So you were just kind of tabling this issue  
6 at this time --

7 A Right.

8 Q -- in March of 2006?

9 A Right, right.

10 Q Okay. All right, let me show you the next  
11 document. Okay, the next document is June 19, 2006, we're  
12 going to mark it as Exhibit 59, an e-mail from you to Peter  
13 Lamore at 9:26 a.m.

14 And so at the bottom of this page there's an e-mail  
15 from you to Meaghan Cheung, Friday, June 16, 2006, 12:57 p.m.  
16 "We don't have to go through OIA and we are sending the  
17 request to domestic -- to subsidiary even if the account is  
18 with the foreign subsidiary, correct? Anything involving  
19 Swiss banks makes me a little paranoid."

20 (SEC Exhibit No. 59 was marked  
21 for identification.)

22 A Right.

23 Q And then Meaghan says, "No OIA for domestic subs,  
24 luckily enough for us."

25 A Right.

1 Q And you said, "Great, I will send a similar request  
2 to RBS Greenwich Capital, one of two domestic BD subsidiaries  
3 of RBS according to CRD. RBC GC writes options, the other  
4 domestic sub, RBS Securities Corp., does not. Let me know if  
5 you think it makes sense to send requests to both domestic  
6 subs." So what were you trying to obtain here?

7 A We were trying to -- RBS and UBS were, according to  
8 Madoff, counterparties of his options trade actions, so we  
9 were trying to go to the domestic subsidiaries to get records  
10 of those trades to confirm those trades. And they responded  
11 that because the accounts that we were interested in were  
12 with the foreign affiliates that are separate legal entities  
13 they can't help us and we have to go to those separate -- to  
14 those entities directly.

15 Q Okay. And then Lamore was working on a different  
16 exam at that time, do you remember that? See, there's a  
17 reference in his e-mail to you, June 19, 2006, 8:40 a.m.?

18 A Well, I understood that he had other assignments  
19 throughout the time, so he was certainly not working full  
20 time on this.

21 Q And then you say to him, "Thanks, I don't foresee  
22 there being much work on Madoff during the next couple of  
23 months, maybe just a day or two of looking at whatever data  
24 we get from RBS and UBS and that will probably be the first  
25 couple weeks of July." So pretty much all that was left on

1 this matter in terms of the investigative efforts was this  
2 request to RBS and UBS?

3 A I think so. I know that around this time the focus  
4 did become registration, but I think it's also possible that  
5 what I was talking about is work for him.

6 Q Okay.

7 A So whether -- how much his help I would need and I  
8 didn't expect to need any --

9 Q All right, we'll show you the next document. Okay,  
10 so we're going to mark this as Exhibit 60. This is an e-mail  
11 from Jill Slansky to Meaghan Cheung, 6/20/2006, 9:21 a.m.

12 So at the bottom of this e-mail string you say to  
13 Meaghan Cheung, June 20th at 10:11, "I suspect we may run  
14 into a problem with this request. The guy from UBS called me  
15 this morning to get Madoff's tax ID number, he asked if we  
16 believe Madoff has accounts at UBS. When I told him we  
17 believed so that the account may have been opened with a  
18 foreign affiliate he said they may -- they do not have access  
19 to that data from here and that we would have to approach the  
20 foreign affiliate directly.

21 Of course, I request, as usual, to find UBS --  
22 include foreign affiliates, but I did not want to get into a  
23 big discussion with him without getting a clear idea of what  
24 our ground rules are for this situation. Do you think this  
25 assignment warrants a consultation with OIA? Thanks."

1 (SEC Exhibit No. 60 was marked  
2 for identification.)

3 A Right.

4 Q When Meaghan asks about running into the same issue  
5 with I guess Law Enforcement different matter. And then Jill  
6 Slansky -- I guess Meaghan e-mails Jill Slansky. Do you know  
7 who Jill Slansky is?

8 A She's a staff attorney in our office, she is  
9 friendly with Meaghan.

10 Q Okay. So Slansky says, "I recall OIA, but it seems  
11 to me that if it's a UBS affiliate they are required to  
12 produce it. The burden should be on them to get the info,  
13 otherwise you're going to have to go through all the OIA crap  
14 and it will take you forever to get the documents."

15 Meaghan responds, "I hate OIA, they're probably the  
16 slowest part of our bureaucracy and that is saying a lot."  
17 Jill says, "Totally agree, that is why I think you should go  
18 back to UBS. I got a pretty decent contact in the legal  
19 department there."

20 A So, were Meaghan's views on OIA, did that affect  
21 your decision not to go to them but to take another route to  
22 try to get this information?

23 A Well, I mean, I knew that those were her views. I  
24 mean, I asked her whether we should go to -- through OIA and  
25 she said "no," so --

1 Q Okay. Did you ever go through OIA in the end?

2 A For this case?

3 Q Yeah.

4 A No.

5 Q Okay. Okay, the next document is a phone log we're  
6 going to mark as Exhibit 61, from I think your J drive.

7 (SEC Exhibit No. 61 was marked  
8 for identification.)

9 A Yes.

10 Q MNY07563, certain hedge fund trading practices,  
11 miscellaneous calls starting 1/12/06, notes.

12 MS. BRUNE: Do you have a spare --

13 MR. KOTZ: We do.

14 MS. BRUNE: All right, great.

15 BY MR. KOTZ:

16 Q Okay, so if you look on page 4 there's references  
17 to calls with UBS.

18 A Right.

19 Q From the information in this and your recollection,  
20 what happened in these calls? You sent a request to them,  
21 right? That was in writing or --

22 A Right, a written document.

23 Q And did you get a written document back?

24 A I know we got written responses from both of them.  
25 I think one of them produced records of an account that

1     seemed to have nothing to do with what we were looking at, it  
2     was a different account number as well.  I --

3           Q     So you talked to this guy Personal Privacy at UBS?

4           A     Right.  It sounds like he just bounced me off to  
5     the next person.

6           Q     Okay.

7           A     I don't think he was someone -- sort of my last  
8     stop.  I think that Personal Privacy may have been my last.

9           Q     He says he has some data on a Madoff DTC accounts,  
10    stock in, stock out, will provide that.  Did you ever get  
11    anything?

12          A     I think we got some production from UBS.  I know we  
13    got a production from, sort of, an account that seemed to be  
14    completely different from what we were looking for, like  
15    different account number and --

16          Q     Okay.

17          A     -- different transactions.  It seemed to be  
18    unrelated to the money-management business.  It seems likely  
19    it was UBS rather than RBS.

20          Q     But you didn't get anything from UBS that related  
21    to Madoff and the investment side?

22          A     That's right, nothing.

23          Q     And then you called RBS.

24          A     Right.

25          Q     They said they have no records for your request.

1 A Right.

2 Q And she'll send you a letter stating that Greenwich  
3 Capital has no such records.

4 A Right.

5 Q So was that a concern that you called -- contacted  
6 them and they didn't have records?

7 A Well, no, because they -- they were not -- they  
8 were speaking only for the domestic entity, so they were not  
9 purporting -- well, they were not purporting to respond on  
10 behalf of the --

11 Q Okay.

12 A -- entity.

13 Q And you tried to get information from the foreign  
14 entity?

15 A I did not. I asked Meaghan --

16 Q Okay, right.

17 A -- whether we should pursue the consent route and  
18 she said "no."

19 Q Right. So if you look at page 6 --

20 A Right.

21 Q -- called Personal Privacy, told him what we see from --  
22 is not the data we were looking for. He said he will find  
23 out to whom to speak about that and will call me back. Do  
24 you know if you ever got anything back from Personal Privacy on  
25 UBS?

1 A Which date are you talking about?

2 Q 7/13/06, the top one.

3 A Yes, he did. He sent me the draft consent letter.

4 Q Okay. And then David Meisels, he will send me a  
5 draft with their letter to Bernie asking for the permission  
6 to send us the documents from the Edinburgh branch.

7 A Well, actually, now that I'm -- now that I'm --  
8 both of them -- you know, I'm not sure because I know that I  
9 got the sample letter from one of them, I'm not real sure if  
10 I got it from both.

11 Q All right, but it seems that in talking to RBS  
12 there was a discussion about sending a letter to Bernie  
13 Madoff as a courtesy to get the information.

14 A To ask his permission --

15 Q Right.

16 A -- to get the records.

17 Q And just explain to me again why is it that you get  
18 his permission to get the records.

19 A As I understood then, sort of any regulatory  
20 hurdles that you have in getting foreign financial records,  
21 if you -- it's a very difficult route if you do it through a  
22 subpoena process, but it's a simpler and straightforward,  
23 more straightforward process if the customer gives consent.  
24 Because as I understood, the reason there are all these  
25 hurdles are the confidentiality obligations that the bank has

1 to the client. So if the client waives that confidentiality  
2 then there are no issues.

3 Q So you could have gotten it through a subpoena but  
4 it would be easier to get it through consent.

5 A Right.

6 Q Okay. And then if you look at the next page, page  
7 7, there's a reference 7/27/06, message for David Meisels of  
8 RBS, thank him for sending him draft of letter asking release  
9 of information. Told him we decided not to pursue the  
10 request at the moment and asked him not to send the letter to  
11 Madoff unless he hears from us again."

12 A Right.

13 Q So this is the time period when you went to Meaghan  
14 Cheung and asked if we should send the draft letter to Madoff  
15 asking for his consent and she said no.

16 A That's right.

17 Q She give you any reason as to why she said no?

18 A No, but from the timeframe I know that at that time  
19 the focus was registration and the direction I was getting  
20 from her, and also from Doria at that time, was basically  
21 that, you know, the goal at this point is to get him to  
22 register and then --

23 Q Okay. So was that because Doria and Meaghan didn't  
24 believe that he was running a Ponzi scheme?

25 A That's probably right. I mean, I'm sure that if

1 they did they wouldn't stop at that.

2 Q So you gave up the efforts to determine whether he  
3 was trading.

4 A Right.

5 Q And was that something that you disagreed with?

6 A At the time I didn't and I accepted this judgment.  
7 Now, I do strongly disagree with it. I -- so when I look  
8 back at what I knew and how things progressed, to me this is  
9 really the bad call that had it been made differently could  
10 have led to a different result.

11 Because I -- at the time, I did not really have the  
12 perspective about this request for a consent, sort of, where  
13 does it fall on the spectrum of things we request. Is it  
14 totally within things that we reasonably can and should  
15 request from a regulated entity? Is it something that's  
16 outrageous and complete opposition and so on? I just didn't  
17 have an opinion on that and I accepted the judgment or the  
18 decision. Now, I do see that it's sort of a very simple,  
19 straightforward thing to ask of a regulated entity to request  
20 a consent for the account statements.

21 Q And so either Bernie would have given the consent,  
22 you would have uncovered the Ponzi scheme that way --

23 A Right.

24 Q -- or he wouldn't have given the consent and then  
25 you would have had to go a formal order?

1 A Right.

2 Q Okay. Do you think that the reason that Meaghan  
3 and/or Doria suggested to you not to follow up with Bernie  
4 was because of his influence or position in the industry?  
5 They didn't want to bother him?

6 A I have no reason to think so.

7 Q So, we talked about the Markopolos complaint.

8 A Right.

9 Q One of the issues in the Markopolos complaint was  
10 the issues of the returns, right?

11 A Right.

12 Q We talked about that in terms of the testimony --

13 A Right.

14 Q -- and you said that the returns really weren't  
15 that relevant because at the end you were determining whether  
16 there was any trading.

17 A Right.

18 Q But then you didn't determine if there was any  
19 trading.

20 A That's right.

21 Q So, at the end of the day, you didn't really  
22 investigate whether Madoff was running a Ponzi scheme?

23 A Okay.

24 Q Is that right?

25 A I -- you know, looking back at it I can see how

1 you'd want to make the judgment. I mean, at the time I  
2 thought we were, and the question of verifying the trading  
3 was on the table, it was just there was a decision not to  
4 pursue that step further and it was a wrong decision.

5 Q Okay. Do you know whether Meaghan consulted with  
6 Doria or how this decision was made to not go forward with  
7 trying to get Bernie to consent?

8 A I don't know.

9 Q Okay. Or was it conveyed to you just by Meaghan or  
10 Meaghan and Doria?

11 A Just Meaghan.

12 Q Okay. All right, why don't we show the next  
13 document. Okay, I'm going to show you the next document,  
14 we'll mark it as Exhibit 62. An e-mail from you to Meaghan,  
15 Peter Lamore, and Stephen Johnson, 6/7/2006, 7:12 p.m.

16 This e-mail references "Madoff produced the  
17 attached explanation for the trades that Peter had pointed  
18 out during his review of the account statement. In all, the  
19 list included 86 accounts with total value as of 4/30/06 of  
20 approximately \$336.5 million.

21 Also, because the -- Madoff stated during the  
22 testimony, the newly discovered accounts -- pursuant to the  
23 same strategy. I was thinking and telling him in our view,  
24 documents concerning these accounts are responsive to our  
25 earlier document request."

1           What was your reaction to Madoff coming up with  
2 this -- these newly disclosed accounts, 86 accounts with a  
3 total value of \$336.5 million?

4                                (SEC Exhibit No. 62 was marked  
5                                for identification.)

6           A     Well, it certainly bothered me, and it -- I did  
7 think he was -- had not been truthful in examination and in  
8 the testimony. So it bothered me.

9           Q     Okay. Okay, let's go to the next document. Okay,  
10 the next document we're going to mark as Exhibit 63. It's an  
11 e-mail from you to Meaghan, copy to Lamore and Johnson, June  
12 8, 2006, 3:45 p.m.

13                    You say, "I called Bernie to tell him in the -- our  
14 view the accounts he produced on Monday were covered by our  
15 previous document requests." His response was, "Only five of  
16 those 86 accounts are, in fact, traded pursuant to the same  
17 strategy." This seems to be correct, the options trading  
18 data shows allocations of options positions to only five of  
19 the newly disclosed accounts."

20                    But didn't he -- in the testimony, didn't he lead  
21 you to believe that all 86 accounts utilized that same  
22 strategy?

23                                (SEC Exhibit No. 63 was marked  
24                                for identification.)

25           A     I think in the testimony she asked -- Doria asked

1 him more broadly, "Are you --" I guess she said, "trading  
2 money or managing money for anybody else?" So I think the  
3 request from the testimony was broader than that.

4 Q You say in this e-mail 6/7/2006, on the front page  
5 on Monday, "Madoff produced the attached explanation for the  
6 trades that Madoff trades pursuant to the split strike  
7 conversion strategy.

8 A Right.

9 Q In all, the list includes 86 accounts, see it's on  
10 the top of that?

11 A That's right.

12 Q -- he changing his story again?

13 A That's true. I -- right, he -- right, in testimony  
14 Doria first asked him sort of broadly, "Do you trade money  
15 for anybody?" And he said, "Yes." And I think after the  
16 break he also said that these accounts are traded by the same  
17 strategy. And you are right, that here he's -- he does say  
18 that only five of those were traded and the others were  
19 inactive.

20 Q So his story seems to be shifting.

21 A Right.

22 Q And then you say at the bottom here, "His other  
23 comments during this conversation, including a reference to  
24 his long history of cooperating with the Commission and his  
25 having been very forthright with us so far. But in fairness,

1 he was also quite friendly and polite."

2 A Right.

3 Q So he said on the phone that he thought he was  
4 being forthright with you?

5 A Well, he said that every time if he talked to me,  
6 he was telling me how he had -- he had always cooperated. I  
7 sort of just -- it didn't mean much to me, I mean, it sort  
8 of -- he was --

9 Q Right, did you ever say it back --

10 A I knew that he was, you know, trying to basically  
11 to portray himself -- I don't -- it sort of didn't matter  
12 much.

13 Q But you never said back to him, "Actually, you lied  
14 to the exam folks, you lied to us, you lied in the  
15 testimony?"

16 A I did not say that to him.

17 Q Okay. Okay, Let's go to the next one. Okay, I'll  
18 show you the next document, mark it as Exhibit 64. This is  
19 an e-mail from you to Meaghan, 6/26/2006, 11:55 a.m.

20 This is a reference below to an e-mail from you to  
21 Meaghan and Lamore and Johnson, Monday, June 26, 2006, 12:49  
22 p.m., where you say, "On Friday, I receive from Madoff  
23 documents concerning the mysterious other accounts that came  
24 up during Bernie's testimony." And then Meaghan says, "He  
25 has a Clintonion definition of discretionary."

1           And you responds, "Or of anything. Even if he can  
2 say that he did not disclose the five accounts because  
3 they're not discretionary, what about the other passive  
4 accounts? They're still part of this firm's business,  
5 they're not part of market-making or proprietary trading  
6 operations so it still is not clear to me on what grounds he  
7 did not disclose with them when we had that there is anything  
8 else exchange of letters."

9           So it's clear at this point that he was simply not  
10 being responsive and not disclosing information that you  
11 asked for.

12                                 (SEC Exhibit No. 64 was marked  
13                                 for identification.)

14           A     Right.

15           Q     Did you ever get to the point where you were kind  
16 of angry that you felt like he was jerking you around during  
17 this investigation?

18           A     I knew he was -- I knew he wasn't truthful and I  
19 knew he was not giving us full information. I try not to get  
20 angry.

21           Q     Okay. Was there any discussion at this point about  
22 going for a formal order, getting a subpoena, given that, you  
23 know, he just was not disclosing the information and the  
24 documents that you were requesting voluntarily?

25           A     It was never suggested or discussed.

1 Q Okay. Okay, next document we're going to mark as  
2 Exhibit 65. This is an e-mail from Meaghan to you,  
3 6/28/2006, 8:46 a.m.

4 At the bottom is an e-mail from Meaghan to Pauline  
5 Calande --

6 (SEC Exhibit No. 65 was marked  
7 for identification.)

8 A Calande, yeah.

9 Q -- Calande, with a cc to Mark Schoenfeld, Tuesday,  
10 June 27, 2006, 6:20 p.m. This is about a tip -- do you know  
11 what Meaghan is seeking from Pauline in this point about  
12 whether Madoff has an obligation to register even without the  
13 new HF registration rule?

14 A I think -- if I'm getting the timing right, I think  
15 that maybe when the rule about -- that would have led to  
16 registration of hedge fund advisors was struck down, but I  
17 could be wrong.

18 But I think the rule she is referring to is the  
19 rule that would have eliminated certain exemptions that hedge  
20 fund advisors -- hedge fund managers were relying on to avoid  
21 registration.

22 Q So you're trying to determine whether legally  
23 Madoff had to register?

24 A Right.

25 Q Was Lamore involved at this point?

1           A     On the registration question I don't think he was  
2 involved.

3           Q     Did you know that in the context of the examination  
4 that Lamore and Ostrow did these same issues came up and  
5 there was an effort on Lamore and Ostrow's part to try to  
6 convince their supervisors to try to get Madoff to register?

7           A     I didn't know that. I know they sort of -- it's  
8 part of their report that they thought this was an advisory  
9 business and Madoff adamantly demanded it isn't an advisory  
10 business. But I did not know that they raised the  
11 registration issue to their supervisors.

12          Q     Okay.

13                   BY MR. FIELDER:

14          Q     So, you know, I just want to make sure I understand  
15 what you said. So it's your understanding that they  
16 concluded at the end of the exam that Madoff was running an  
17 unregistered advisor business and they didn't even refer it  
18 to enforcement?

19          A     They did not refer it. I mean they described the  
20 business in their report as -- I think they may have even  
21 used the work advisory or IA business, but they did not refer  
22 that to enforcement.

23          Q     What do you think of that as you sit here today  
24 with the experience you have today? Do you find that  
25 unusual?

1 A Yes.

2 BY MR. KOTZ:

3 Q What did you think of their report that was issued  
4 of the New York exam of Madoff?

5 A I thought it was -- I was surprised that they  
6 were -- it seemed like what they were looking was the IA  
7 business, yet it seems like the only deficiency that  
8 ultimately came out was fairly insignificant trading issues.

9 Q So, based on the conversations you had with Peter  
10 Lamore of his description of the exam, was that different  
11 than the exam report read?

12 A I don't think so. I mean, I -- I guess the  
13 report -- I guess what didn't -- the discrepancy I was  
14 thinking about was more between the deficiency letter and the  
15 focus of the exam. Because my impression was that the focus  
16 of the exam was the hedge fund business, but the deficiency  
17 letters seemed to be about something completely different and  
18 relatively minor. And everything that was on the IA front  
19 really didn't go anywhere and wasn't even referred to us.

20 Q So, given Lamore's description of what happened in  
21 the exam you were surprised that the IA side didn't -- wasn't  
22 discussed more or there wasn't any finding with respect to  
23 the IA side in the exam report?

24 A When I first got the exam report in November I sort  
25 of didn't have a view on this, and by the time when, you

1 know, I guess the deficiency letter ultimately -- I don't  
2 know what criteria they used to determine what to put on the  
3 deficiency letter and what not. They did not refer that part  
4 to us, we really learned of the exam only because we got the  
5 Markopolos report. But at the time when we were looking at  
6 the registration issue, I didn't go back to revisit that  
7 because, you know, at this point it was our call whether to  
8 press that with him, so we just made our own judgment.

9 Q Was Lamore aware that the focus of the  
10 investigation shifted kind of from the Ponzi scheme to  
11 getting him to register -- Madoff to register?

12 A I'm sure at some point I must have communicated to  
13 him that, you know, now the direction is basically to get him  
14 to register and that's it.

15 Q All right. Okay, on to the next one. One more  
16 thing on this, Meaghan says, "Why would you expect  
17 cooperation from our colleagues?"

18 A Right.

19 Q Who was she referring to there?

20 A -- this is Calande -- I think she had a pretty  
21 negative view about how responsive, sort of, our other  
22 offices or divisions --

23 Q Anybody in particular in this case?

24 A -- could be.

25 Q IM?

1 A Oh, right, IM.

2 Q So there were negative perceptions about OEA, OIA,  
3 Market Reg and IM

4 A Well, with IM, I have to say I had a very difficult  
5 time getting a response from them, myself, on this matter and  
6 also a matter that I had earlier, which, you know, the  
7 commission overcharge case. So their answers ultimately were  
8 helpful and correct, but getting the answers was very  
9 difficult and took many phone call and e-mails.

10 Q But I mean, generally, do you find in enforcement  
11 that there's kind of lacking in support from OEA, OIA, Market  
12 Reg and IM? And all four are referenced as, you know, the  
13 negative context. I don't know who's left. I'm glad our  
14 office is not listed there. CORPFIN maybe.

15 A Well, I think it is true that getting responses  
16 often is -- takes time because other offices and divisions  
17 have their priorities and the enforcement priorities are not  
18 always their priorities. So, you know -- so certainly there  
19 is a lot of -- not a lot, but people do make casual remarks  
20 about, you know, "Oh, you know, I have to get a response and  
21 then not calling me for weeks." So, it's part of our work.

22 Q Did Meaghan make that more than others?

23 A I don't think so.

24 Q Okay. Well go to the next one. All right, let me  
25 show you the next document, we're going to mark it as Exhibit

1 66. This is an e-mail from Peter to you, 7/24/2006, 7:19  
2 a.m.

3 This is -- bottom there's an e-mail from you to  
4 Meaghan, Friday, July 21, 2006, 1:37 p.m., "Well, Bernie is  
5 one step ahead of us. He just called me to say he and his  
6 counsel do not agree with our interpretation of the rule, do  
7 not believe the accounts are advisory accounts." What did  
8 you mean by "he was one step ahead of us?"

9 (SEC Exhibit No. 66 was marked  
10 for identification.)

11 A I think I meant that we -- we were planning to  
12 basically contact him and say, you've got -- have to  
13 register, and he kind of preempted that by calling saying he  
14 doesn't have to.

15 Q How did he know that?

16 A I think around the same -- well, for one thing, I  
17 think our questioning during testimony made it clear that we  
18 did thing these were discretionary accounts. And also, I  
19 think around the same time we had discussions with Fairfield  
20 Greenwich and -- about them mischaracterizing the accounts in  
21 their marketing materials about -- as non-discretionary  
22 accounts where Madoff is merely an executing broker. And so  
23 I always assumed that whatever we told Fairfield would get to  
24 Madoff. So he had reasons to think that we would make that  
25 claim.

1 Q When you did Madoff's testimony, it was clear that  
2 you were looking at the returns, right, and the possibility  
3 that he wasn't trading, or just the returns?

4 A I think that's right.

5 Q Okay, both. So when Madoff is being investigated  
6 and has testimony for conducting a Ponzi scheme he doesn't  
7 bring a lawyer. And then when there is an issue of  
8 interpretation of a rule about whether he should register,  
9 suddenly he has a lawyer. Do you find that odd?

10 A I did, but I found his behavior generally odd. It  
11 was, again, consistent with him wanting to do everything  
12 single-handedly.

13 Q All right, but now he wasn't wanting to do --

14 A Right.

15 Q -- everything single-handedly.

16 A Right, but even on this issue he made very clear  
17 that he was bringing them in solely for the registration  
18 point, not more broadly to represent him in this -- in his  
19 interactions with us.

20 Q Okay.

21 A And, you know, it was a legal issue.

22 Q Okay. Okay, from about July 2004 -- July 24, 2006  
23 until about January 2007 there are no e-mails about this  
24 matter.

25 A Right.

1 Q You were out on maternity leave.

2 A Yes.

3 Q So was anybody handling this matter while you were  
4 gone?

5 A Well, on August 7th there was a call with Becker  
6 and -- August 7th I was already out but I -- on the call.  
7 And there was a call with Becker, Madoff, a whole bunch of  
8 people from IM, including Doug Shite, and Meaghan and Doria,  
9 and it was all about the registration issue. And he, you  
10 know, they fought hard that he should register and we fought  
11 that.

12 Q Wait, who fought hard?

13 A Becker, Brandon Becker from Wilmer Hale. And a  
14 couple of days after that call Meaghan emailed me saying that  
15 she heard from Becker and that Madoff will register. In the  
16 weeks leading up to that call, you know, the instruction that  
17 I understood was registration was the goal at that point and  
18 so once I got that e-mail I kind of assumed we were done.

19 Q So it was just kind of wrapping it up?

20 A Right.

21 Q And then you were out on maternity leave so you  
22 waited to wrap it up until after you came back?

23 A Right.

24 Q Okay. So there was no active work that you're  
25 aware of on the case while you were on maternity leave?

1           A     That's right.

2           Q     Okay.  Okay, let me show you the next document.

3     Okay, mark the next document as Exhibit 67.  This is an  
4     e-mail from Meaghan to you, 1/9/2007, 1:09 p.m.

5                     Now, this has to do with something to do with  
6     Norman Levy, who is a complaint.  Do you remember that?

7                                     (SEC Exhibit No. 67 was marked  
8                                     for identification.)

9           A     I did not remember that, but when the story broke  
10    Andy Calamari asked me to track it down and I found records  
11    of it and then I -- I do recollect that what happened was  
12    when I came back there was a pile of unopened mail in my  
13    office and one of -- I that pile there was an interoffice  
14    mail from OIEA, which was of those blue referral sheets that  
15    they use to forward investor complaints.

16                     And attached to that was an anonymous letter  
17    that -- I don't remember the exact wording but it said  
18    something like Madoff is running billions of dollars for  
19    Norman F. Levy to evade taxes or something along those lines.  
20    And I asked Meaghan what should we do about this because I --  
21    when I saw the name Levy I checked the account list that we  
22    had for Madoff and I didn't see that name among the accounts  
23    that he gave us.  So she told me to call Becker and find out  
24    if Madoff manages money for this person.

25                     And so I did, and Becker called me back and said,

1 "No, he's not managing money for Norman Levy." And then you  
2 see her response.

3 Q So nothing else was done?

4 A That's right.

5 Q And did you find it odd that the only thing that  
6 was done on a complaint was to go to the subject's lawyer and  
7 ask him if it was true, and when the subject's lawyer said no  
8 that it was just closed? A Yes, but I also, in fairness,  
9 have to say the letter was anonymous and did not just -- on  
10 its face it would not have been credible.

11 Q Okay.

12 BY MR. FIELDER:

13 Q On the -- well, what about it other than anonymity  
14 made it not credible?

15 A Well, primarily anonymity, and I'm pretty sure I  
16 looked up Norman F. Levy kind of on the internet, I didn't  
17 find anything that jumped out at me.

18 Q Okay.

19 A So it's, I guess, more that it didn't have any  
20 signs of credibility.

21 Q Okay.

22 BY MR. KOTZ:

23 Q But wasn't Becker only representing Madoff on the  
24 registration issue? Why didn't you go to Bernie Madoff  
25 directly then? Wasn't that made very clear?

1           A     Yes. I didn't think about it at that time, that's  
2 a fair point. I certainly would have -- I can see why she  
3 would have preferred to go to counsel rather than to him  
4 directly and I did not think about it at that time.

5           Q     Okay. Okay, I'll show you the next document, mark  
6 it as Exhibit 68. It's an e-mail from Stephen Johnson to  
7 you, 11/7 -- 1/17/2007, 10:33 a.m.

8                     At the bottom you say, "I'm preparing this case for  
9 closing because we now -- FOIA requests, we're suppose to  
10 preserve and ship to storage all records of the  
11 investigation." What was the FOIA request?

12                                     (SEC Exhibit No. 68 was marked  
13                                     for identification.)

14           A     When we close a case we are required to ask the  
15 FOIA office if they have any outstanding requests for  
16 production of records, and if they do we are required to  
17 preserve everything so that, I guess, they can adequately  
18 respond.

19                     So I assume that's what happened in this case, I  
20 mean, that's the reason that I -- we have the records because  
21 had there been no FOIA request we're supposed to basically  
22 just destroy the records. So -- but there was an outstanding  
23 FOIA request so I packed everything up and kept it.

24           Q     Do you know what the request was?

25           A     No.

1 Q So how is the decision made to close the Madoff  
2 investigation?

3 A Well, I asked -- I mean, I got that direction from  
4 my supervisors. I -- Meaghan and/or Doria both, they -- I  
5 mean, I understood that after registration we're done, so --  
6 and that meant we're done. So I understood that that's what  
7 you're supposed to do, when you're done you close the  
8 investigation.

9 Q At the time that the decision was made to close the  
10 investigation, did you have a view as to whether Madoff was  
11 running a Ponzi scheme?

12 A I did not think he was.

13 Q You did not think he was, but did you think that  
14 you had confirmed that in the investigation?

15 A I knew what we did and what we didn't do, so I knew  
16 that we ultimately did not get the confirmations with -- from  
17 the counterparties. I relied on the judgment of my  
18 supervisors that we were done.

19 Q Okay. All right, let me show you the next  
20 document. Okay, this is Exhibit -- marked as Exhibit 69.  
21 This is an e-mail from Meaghan to you, 6/29/2007, 4:08 p.m.,  
22 with an attachment.

23 This is an e-mail forwarded from Harry Markopolos  
24 to Meaghan, Friday, June 29, 2007. "Hello Meaghan, attached  
25 are some very troubling documents that show the Madoff fraud

1 scheme is getting even more brazen." And then it says, "4,  
2 when Madoff finally does blow up it's going to be spectacular  
3 and lead to massive selling by hedge fund, fund to funds as  
4 they face investor redemptions." Do you remember getting  
5 this e-mail?

6 (SEC Exhibit No. 69 was marked  
7 for identification.)

8 A I don't, but I'm sure I did. I mean, I don't  
9 remember it.

10 Q Was this information that Harry Markopolos provided  
11 in June of 2007 ever reviewed?

12 A I'm sure I reviewed it.

13 Q And what was the determination made as to why not  
14 to follow up on any of these issues?

15 A Well, if I understand correctly, Wickford seems to  
16 be a feeder to Fairfield, so -- and we knew that Fairfield  
17 was fund to funds, so that was not new information.

18 Q But Madoff couldn't possibly be managing the  
19 billions in this strategy unlevered, much less levered.

20 A I thought -- okay.

21 Q So what did you conclude about Harry Markopolos's  
22 new claims in this June 29, 2007 e-mail about Madoff's  
23 operations? I mean, the matter had not been closed at that  
24 point, right? The investigation had not been officially  
25 closed?

1           A     Right. Well, I should clarify that there often is  
2     and there was in this case, a substantial lag between when  
3     the decision to close and when the actual closing happens.

4           Q     How come?

5           A     Because it's not a high-priority task and people  
6     know that they're supposed to do it but it also requires  
7     organizing a lot of paper and it's unpleasant and not  
8     high-priority task, so there is often substantial lag. So  
9     the decision to close was made much earlier than the closing  
10    happened.

11          Q     Okay.

12          A     It -- pretty much when I came back in January I  
13    understood that we were done and it would be closed without  
14    further steps.

15          Q     So at this point there wasn't much review of Harry  
16    Markopolos's claims because you'd already decided to close  
17    the case?

18          A     That's true, but -- I may be missing something now,  
19    but I just did not see my -- it does not seem like new  
20    information because it -- the information he seems to be  
21    providing is he's telling us that there is a feeder fund to  
22    Fairfield, which that -- which is consistent with what we  
23    knew about Fairfield.

24          Q     Number four is a little eerie, thought, isn't it?

25          A     Yes.

1           Q     Can you explain why throughout the whole  
2 investigation where there were, you know, difficulties in  
3 certain areas, difficulty understanding various aspects of  
4 Madoff's operation, or about investigative matters, you know,  
5 people involved who didn't have experience in doing Ponzi  
6 schemes, throughout that entire time period how come nobody  
7 brought in Harry Markopolos, who obviously had some knowledge  
8 about these matters, to discuss it or ask any questions?

9           A     I don't know.

10          Q     Okay, let me show you the next document. We'll  
11 mark this as Exhibit 70. This is an e-mail from you to  
12 Meaghan Cheung, 10/24/2007, 4:09 p.m.

13                     In the bottom of this page you say to Meaghan on  
14 Wednesday, October 24, 2007, "I have to say I'm a bit  
15 concerned that this may be another fishing expedition ala  
16 Madoff and that's why I would like to confirm with the tipper  
17 the reasons for his concern."

18                                     (SEC Exhibit No. 70 was marked  
19                                     for identification.)

20          A     Right.

21          Q     What did you mean by that, "a fishing expedition  
22 ala Madoff?"

23          A     Well, I think I meant that it didn't go anywhere in  
24 terms of bringing enforcement action for fraud. And the  
25 parallel that I saw between the tip about Goldman and

1 Markopolos report was that it was from a person who --  
2 without inside information and a person -- well, in the  
3 Goldman case it was a person reporting only rumors, in  
4 Markopolos reported -- information as well.

5 Q What happened in the Goldman case? Did you take  
6 that case in the end?

7 A I asked not to do that case. Or -- I was assigned  
8 to it for a short time, I asked not to be on it. It was  
9 opened, it continued, it was inactive, and it stalled as  
10 was --

11 Q Okay. Now, Meaghan responds, "I, too, have no  
12 interest in another Madoff. I think that's why -- Mark want  
13 to address this on the exam level first. Doria's take is  
14 they almost certainly did something wrong but we never find  
15 it." Was that the impression in the Madoff matter as well?  
16 That you almost --

17 A No, I think Doria -- Doria had worked on Goldman  
18 matters and she had a very negative, I guess, view or -- I  
19 don't want to overstate it. I mean, she had worked on other  
20 matters where Goldman did engage in wrongdoing and where it  
21 was hard to -- I understand it was hard to find it. So I  
22 think that's what this is referring to.

23 Q So at the end of the Madoff investigation, would  
24 you say that, you know, you, Meaghan and Doria believed that  
25 Madoff had done something wrong but you weren't able to find

1 it or that the allegations just didn't pan out?

2 A I don't think -- I know I did not think that he was  
3 involved in a Ponzi scheme. I had no reason to think that it  
4 was what they thought, otherwise they would have --

5 Q Did you or Doria or Meaghan at any point think that  
6 he might not have been running a Ponzi scheme but he might  
7 have been using some kind of other type of information,  
8 inside information, or improper means of obtaining  
9 information in order to get the returns that he was getting?

10 A Well, we didn't not focus on that question.

11 Q Okay. Okay, let's go to the next one. Okay, the  
12 next document we're going to mark as Exhibit 71. This is an  
13 e-mail from Meaghan to you, 11/20/2007, 4:53 p.m.

14 The bottom of this e-mail chain you say to Meaghan,  
15 Tuesday, November 20, 2007, 4:27 p.m., "Do you think it makes  
16 more sense for us to ask Andy's permission NOT," all caps,  
17 "to send a termination letter to Bernie given Bernie's  
18 capacity finessing the reality? I'm a bit concerned about  
19 giving him anything in writing." What was that all about?

20 (SEC Exhibit No. 71 was marked  
21 for identification.)

22 A Well, Madoff had been splitting hairs over language  
23 and not -- was not -- we knew he was not truthful, and so  
24 I -- my thought was, you know, will he sort of make a big  
25 deal about getting a termination letter and basically use it

1 as a seal of approval or, you know, just make more of it than  
2 it is, which basically is we're not recommending enforcement  
3 action against you at this time. You know, so use it as a,  
4 like, claim that he got almost like an audit opinion or  
5 something like that.

6 Q So what did you end up doing? Did you end up  
7 sending him a termination?

8 A I think we did. Yes, we did.

9 Q And did he -- do you know if he tried to make more  
10 of it than he did?

11 A I don't think so. I know he -- Becker called me --  
12 I sent it to Becker and he called me to say that Madoff was  
13 asking -- after Madoff got the letter, Madoff called Becker  
14 and sort of pressed him a lot about what that means. And  
15 what Becker told him what Becker thought it means, Madoff  
16 insisted that Becker confirm that with the SEC, so Becker  
17 called me. And, you know, I confirmed what, you know, what  
18 it says, which is we're not recommending an enforcement  
19 action, and that was the end of it.

20 Q Seems like there was quite a bit of time spent  
21 worrying about Bernie Madoff's reaction to things.

22 A I don't think so, we were just aware that he was  
23 eccentric and was sort of -- and had strong reactions to, you  
24 know, the request to register. And so we, I mean, we  
25 discussed it but I can't say we worried about it.

1 Q Okay. All right, let me show you the next  
2 document.

3 BY MR. FIELDER:

4 Q Real quick, I'm just confused on the -- about the  
5 enforcement manual coming out, did this termination letter go  
6 out after the enforcement manual and the guidance for sending  
7 termination letters came out or was it before?

8 A The termination letter came out before the  
9 enforcement manual. I think the shift in policy in terms of  
10 being more liberal with termination letters predated  
11 enforcement manual.

12 I remember when I first joined the Commission and  
13 looked up that issue or was told about that issue, I knew  
14 that was a presumption towards not sending termination  
15 letters. By the time -- when I dealt with this on -- for  
16 this case there was a presumption that you have to send  
17 termination letters.

18 Q Okay. In NYRO? I mean, not to argue, I just was  
19 never aware of that shift when -- in my time -- the  
20 enforcement manual --

21 A It was division. It was division.

22 Q Okay.

23 MR. KOTZ: Okay.

24 MR. FIELDER: Enforcement -- required.

25 MS. BRUNE: I'm still waiting for my letter.

1 MR. FIELDER: So this wasn't unusual to send  
2 Madoff -- in your opinion, to send Madoff a termination  
3 letter at this point in time?

4 THE WITNESS: Right.

5 BY MR. KOTZ:

6 Q Okay, mark the next document as Exhibit 72. This  
7 is an e-mail from you to Meaghan Cheung, 11/20/2007, 5:48  
8 p.m.

9 And you can see this attaches investigation closing  
10 narrative, and in the closing -- in the investigation closing  
11 narrative you write, "-- request for preliminary inquiry into  
12 these allegations, the staff learned that during a recent  
13 examination of BLM by NYRO's broker dealer examination staff,  
14 Bernard Madoff, the sole owner of BLM, misrepresented to the  
15 examination staff both the nature of the trading conducted in  
16 the hedge fund accounts and also the number of such accounts  
17 at BLM."

18 And Meaghan says, "I would say that Bernie did not  
19 fully disclose to the exam staff rather than misrepresented  
20 to the exam staff." Now, what was the truth? Wasn't the  
21 truth that he misrepresented to the exam staff, lied to the  
22 exam staff?

23 (SEC Exhibit No. 72 was marked  
24 for identification.)

25 A I think that's right. I think at the time I took

1 it really as a drafting point. I guess you could describe  
2 not disclosing the options trading as not disclosing as  
3 opposed to misrepresenting. The bottom line is sort of the  
4 same.

5 Q You think it's the same to say misrepresented and  
6 did not disclose? That's the same substantive point?

7 A No, that's fair. I probably would prefer to go  
8 with misrepresented because he did affirmatively state that  
9 he did not trade options, so --

10 Q So how come you changed it to "did not fully  
11 disclose?"

12 A I took her comment, I didn't think -- give it much  
13 thought. I mean, I really -- I understood that the narrative  
14 that you write up for the closing purpose, which is this, was  
15 required sort of administratively. I never understood it was  
16 part of the substantive review, is the case proceeding or  
17 not. That decision always in my experience is made much  
18 earlier in detailed discussions with the branch chief and the  
19 assistant. And so, you know, it was a high-level summary so  
20 while I agree that misrepresented would have been a better  
21 word, it was not part of the decision-making on the question  
22 of whether the case should be closed.

23 Q Now, when you prepare, administratively, this kind  
24 of document, does this go through some process of approval?

25 A Yes.

1           Q     Okay. Isn't it true that it might not have been  
2 approved to be closed if you had written "misrepresented to  
3 the examination staff," which is what actually occurred, but  
4 in order to close this kind of matter you couldn't say  
5 misrepresentation because the response would be from the  
6 superiors would be, "Then don't close it?"

7           A     I don't know. I know the review that I was aware  
8 of was up to assistant level, possibly associate level, just  
9 because I know that associates generally know what you are --  
10 what is active, what's inactive, what you're pursuing, what  
11 you're not pursuing. So -- and that review and that  
12 decision-making is done through meetings.

13                   My experience with these closing narratives has  
14 been that you submit them, you send them through  
15 administrative channels to headquarters and there is a really  
16 long time lag and they end up bounced. And actually, I have  
17 to clarify that my -- that's my experience, collective, up to  
18 the present too. But my experience is that they stay on the  
19 review for months and months and when they are -- they're  
20 usually rejected but they're rejected usually for  
21 administrative reasons. I have never seen this  
22 recommendation rejected for substantive reasons.

23           Q     But you think it would be more likely to be  
24 rejected if it said that "Bernie Madoff misrepresented to the  
25 exam staff" than if it said "did not fully disclose?"

1           A     I don't know. I don't know what the review these  
2 documents go through.

3           Q     Do you think part of the thinking here on Meaghan's  
4 part was it would look bad if you had a closing report that  
5 indicated that Bernie Madoff had misrepresented things and  
6 that you're still closing the case, while it would look  
7 better if you only said he did not disclose to the exam staff  
8 information?

9           A     That's possible, I don't know.

10           BY MR. FIELDER:

11           Q     Well, before it comes to DC, I'm assuming Calamari  
12 has to approve the memo, am I correct?

13           A     I'm actually not sure.

14           Q     Okay.

15           A     I know it's entered into the system at the  
16 assistant's -- after the assistant's approval and I don't  
17 really know how it travels after that. I don't see it until  
18 it's been months later.

19           Q     And your experience up to date, have you ever sent  
20 up a closing memo as a staff attorney or a branch chief that  
21 either Doria or Calamari sent back for substantive reasons,  
22 said either to revise it or to continue the investigation?

23           A     No.

24           Q     Okay. Do you think Meaghan disagreed with your  
25 view and Peter Lamore's view that Madoff had made

1 misrepresentations during the exam and during the  
2 investigation?

3 A I don't think so, I think she understood that he  
4 did make misrepresentations.

5 Q So can you posit another reason, other than the one  
6 that we've asked you about here today, why she would want  
7 that change made?

8 A No, I can't. Complete speculation, I think she may  
9 have been misremembering facts and she may have thought that  
10 it was only a matter of not showing all the accounts as  
11 opposed to affirmatively stating something that was not true.  
12 And, you know, I -- in retrospect, I should have realized  
13 that, at that point I didn't.

14 Q Okay.

15 BY MR. KOTZ:

16 Q Okay, next document we're going to mark as Exhibit  
17 73. This is the closing report, SEC Division of Enforcement  
18 Case Closing Recommendation. This is the final closing  
19 report for the Madoff investigation, correct?

20 (SEC Exhibit No. 73 was marked  
21 for identification.)

22 A Right.

23 Q Now, where does it say on this the date that the  
24 matter was officially closed?

25 A Let me see. It doesn't, this looks like the data

1 entry form. This looks like a printout that's generated  
2 after the write-up is sent to the case management specialist,  
3 and that person enters it into the system and generates as a  
4 printout. And usually there's another page that -- that's on  
5 top of what's the first page of Exhibit 73, with -- that  
6 includes all the -- everything that's on this page under  
7 "Representation" and also has signature block. And I  
8 think --

9 Q Have you ever seen that document?

10 A This particular one?

11 Q No, the page that you say is missing.

12 A Well -- I'm sure I did because what usually -- or  
13 what is a uniform practice, is you send the word document to  
14 the case management specialist and she enters in to the  
15 system and she prints out something that looks like this and  
16 has a signature block on top or on a separate page, that has  
17 phase 4, the staff attorney's, branch chief's and assistant's  
18 signatures. And usually the staff attorney gets that print  
19 out and you get all the signatures, we get it back to the  
20 case management specialist and then that disappears into the  
21 review process and comes back much later.

22 Q Okay. It says run on 11/21/2007, and the document  
23 before, where you attach the narrative and make the change,  
24 was 11/20/2007.

25 A Right.

1 Q So does that mean that the case was officially  
2 closed on or about 11/21/2007?

3 A No, I don't think so. I think that means that the  
4 printout with the closing narrative were generated on the  
5 21st, which would mean to me that if I got the signatures in  
6 the next couple of days it probably got submitted for review  
7 sometime towards the end of November. And then it was closed  
8 later when it was returned, after it was submitted to  
9 headquarters.

10 Q Sometime in December 2007?

11 A I think it was January.

12 Q 2008?

13 A 2008.

14 Q Okay. Of all the people who were involved -- had  
15 any involvement in the Madoff investigation, did anyone  
16 disagree with the decision or express any reservations about  
17 the decision to close the Madoff investigation?

18 A No.

19 Q Okay. Okay, I'm going to show you a document and  
20 just ask you if you've ever seen it. I'm going to mark this  
21 as Exhibit 74. It's an e-mail from Enforcement Senior Counsel to Enforcement Staff Attorney  
22 Enforcement Staff Attorney, Monday, November 21, 2005, 4:01 p.m., and it  
23 references a complaint made Saturday, October 1, 2005, about  
24 Madoff. Have you ever seen this document and complaint  
25 before?

1 (SEC Exhibit No. 74 was marked  
2 for identification.)

3 A No, I did not see this.

4 Q Okay. I'll show you another document, mark as  
5 Exhibit 75. This is an e-mail from [REDACTED] to  
6 Mavis Kelly, Wednesday, May 21, 2003, 5:47 p.m., with  
7 attachments. And I'll ask you if you've ever seen this  
8 document, Exhibit 75?

9 (SEC Exhibit No. 75 was marked  
10 for identification.)

11 A No, I did not see this.

12 Q Okay. How did you learn in December of 2008 that  
13 Madoff had confessed to a Ponzi scheme?

14 A I was away, I was on vacation, and I had my  
15 Blackberry with me and I saw the press release, SEC press  
16 release on this as an e-mail, internal e-mail.

17 Q So what was your reaction?

18 A I was horrified. I was, obviously, shocked and  
19 dismayed.

20 Q But were you surprised that he was running a Ponzi  
21 scheme? I mean, you --

22 A Yes, I was.

23 Q Even though you were investigating him for a Ponzi  
24 scheme? So, I mean, on some level, as compared to everybody  
25 else, you at least had some inkling, right?

1           A     Well, we had the allegation so I guess -- I was  
2 shocked that the allegation turned out to be so true and that  
3 the scope was so much vaster than what we had thought.

4           Q     Do you have any reflections of that time about the  
5 investigation other than what you've shared with us already?

6           A     Well, I've reflected on it a lot. I -- when I --  
7 you know, I also had looked at, you know, I was preparing to  
8 produce these documents to you so I had looked at my records  
9 and, you know, I was very, I guess, upset about the fact that  
10 we didn't pursue confirming the trading further because I do  
11 see, in retrospect, that it's -- there are other things one  
12 can think of now, knowing the answer, but the point that was  
13 kind of there as a question and I am very upset that we  
14 didn't take that step.

15          Q     Did you ever have a conversation with Meaghan  
16 Cheung or Doria about it?

17          A     No, I did not talk to them about the matter since  
18 December.

19          Q     Did you talk to anybody else substantively, other  
20 than counsel obviously, you know, any SEC people about the  
21 substance of what occurred in the investigation?

22          A     When -- the day after the story broke Andy emailed  
23 me asking to call him.

24          Q     Calamari?

25          A     Andy Calamari. So I had a conversation with him by

1 phone and I sort of told him, briefly, what I remembered of  
2 the investigation. He called me or he emailed asking to call  
3 again the following weekend, so I know I had a conversation  
4 with him then. The week -- the next full week I was asked to  
5 help run some NRSI searches for the purpose of that  
6 investigation and -- the new investigation, and forward  
7 documents to people within SEC. I think I had -- I had  
8 spoken to Andy at that time and, you know, he -- because he  
9 knew that I was very, you know, troubled and upset.

10 And Peter stopped by, I think once in the early  
11 weeks and he -- the conversation was along the lines of "Can  
12 you believe this happened? Can you believe this happened, we  
13 were so close?" Peter said something like, "I wish I could  
14 punch his lights out."

15 And I -- when the document requests -- when  
16 documents were being collected I remember talking to Steve  
17 Johnson telling him that, you know, I initially thought that  
18 I had to -- or I believe the request required that we  
19 identify people who might have responsive records and so I  
20 told him that I would identify him as somebody who might, and  
21 he told me that he -- that he requests through his own  
22 supervisory channels and so that he would be complying on his  
23 own.

24 I'm very -- I, myself, soon realized that I should  
25 not be talking substantively and very soon I received that

1 direction from Andy too.

2 Q Did you have any conversations with anyone other  
3 than counsel about the OIG investigation?

4 A Your investigation?

5 Q Yes.

6 A I told Personal Privacy, who's my supervisor, that I  
7 was asked to be here. I -- so, but it was really about the  
8 fact of the interview.

9 Q But nothing substantive in terms of, you know, what  
10 to say or what not to say?

11 A No. I talked to my husband, obviously, that I  
12 would be --

13 Q Okay, yeah. Yeah, let me show you this one. Mark  
14 this as Exhibit 76. This is an e-mail 3/20/2009, from you to  
15 Andrew Calamari.

(SEC Exhibit No. 76 was marked  
for identification.)

16  
17  
18 A Yes.

19 Q Andrew says to you, "Am I correct that during the  
20 Madoff investigation in '06 the staff did not visit the BD  
21 premises?" "Not enforcement staff, our exam staff did, Peter  
22 Lamore and William Ostrow," that's your response.

23 A Right.

24 Q But you were talking about them visiting the  
25 premises in connection with the exam not in connection with

1 the enforcement investigation, right?

2 A That's right.

3 Q So nobody visited the premises in connection with  
4 the enforcement investigation?

5 A That's right.

6 Q Was there any discussion about having Lamore or  
7 Ostrow or anyone else from enforcement go in and actually  
8 visit Madoff's offices?

9 A No.

10 MR. KOTZ: Do you have anything else Dave?

11 MR. FIELDER: Just two quick questions.

12 BY MR. FIELDER:

13 Q One thing you made very clear today, which has been  
14 very helpful, is that at some point -- I think it's been  
15 clear so first off -- if I mistake in predicating this  
16 question --

17 A Sure.

18 Q -- please correct me -- but that the focus of the  
19 investigation became solely on whether or not he should be  
20 registered as an investment advisor, really to the exclusion  
21 of any other issues --

22 A Right.

23 Q -- and that the goal of the investigation became  
24 solely to get him to and make a case that he had to register.  
25 Can you help give us a sense of the timing, either dates if

1 you can or sort of stage of investigation when that occurred,  
2 when that really became the sole focus of the investigation?

3 A I think it was -- it was definitely between his  
4 testimony and August, early August -- or earlier than in  
5 August, I think that was true towards the middle of July.

6 Q Okay.

7 A June and July we definitely were focused on the  
8 registration issue but we were also still looking at the  
9 other issues.

10 Q So in your assessment, what you believe you were  
11 doing up until -- at least until his testimony, you were  
12 investigating the Ponzi scheme allegations, is that correct?

13 A Right.

14 Q Okay. You're obviously a lot more experienced  
15 today than you were back then, that's -- so I don't mean --  
16 context at all, but sitting here today, in your opinion what  
17 would be the big-picture steps that you would take to  
18 investigate a Ponzi scheme?

19 A Well, I think initially, and this is what I now do  
20 whenever I have a new type of case, I -- the first thing I do  
21 is I go to the people who have done this type of case and ask  
22 exactly the question, "What evidence do you need to gather."  
23 And I, to date, still have not done a Ponzi scheme case so I  
24 still do not know the definitive answer to that, but I do  
25 think we certainly should have asked him to basically direct