

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-509
OIG-509)

WITNESS: Witness No. 59

PAGES: 1 through 272

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Thursday, June 4, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 10:40 a.m.

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3 On behalf of the Securities and Exchange Commission:

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1 P R O C E E D I N G S

2 MR. KOTZ: We are on the record at 10:40 a.m. on
3 June 4, 2009, the United States Securities and Exchange
4 Commission. I am going to swear you in, if that's all right.
5 Could you please raise your right hand?

6 Whereupon,

7 MEAGHAN CHEUNG

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

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

12 THE WITNESS: Sure. My name is Meaghan, M-e-a-g-h-
13 a-n, Shevlin, S-h-e-v-l-i-n, Cheung, C-h-e-u-n-g.

14 MR. KOTZ: Ms. Cheung, my name is David Kotz. I'm
15 the Inspector General of the United States Securities and
16 Exchange Commission. And I have with me my colleagues from
17 the Office of the Inspector General: David Witherspoon,
18 David Fielder, Chris Wilson, and Heidi Steiber. And I
19 understand you have representing you Richard Weinberg and
20 Eric Ruben, from the firm of Morvillo, Abramovitz, Grand,
21 Iason, Anello & Bohrer, P.C.

22 MR. WEINBERG: Morvillo Abramowitz is fine.

23 MR. KOTZ: Don't tell that to Grand.

24 MR. WEINBERG: He understands. You just Morvillo,
25 though, Abramowitz will not -- won't understand.

1 Q Okay. Well, we'll --

2 A -- because I think -- I think it varies. Some
3 investigations are so very obvious that there's not a lot of
4 debate or discussion. I don't -- and I think sometimes the
5 way a referral comes in impacts the way a -- an investigation
6 is focused. I think that in case -- I don't think that any
7 of these things are decisions made by one person alone at
8 all, and I think that that's reviewed over the course of an
9 investigation as it progresses by everybody involved.

10 Q Okay. By around the time of, say, November 2005,

11  Personal Privacy

12 at that time had you worked on any cases involving Ponzi
13 schemes prior to the Bernard Madoff case?

14 A The reason I'm having trouble with the answer is
15 that I think that some fair number of the boiler-room-type
16 places could arguably be called Ponzi schemes. So I guess
17 it's really --

18 Q Were you investigating a Ponzi scheme in those
19 cases?

20 A I don't know that I ever called it a Ponzi scheme,
21 but I think that a lot of my boiler room cases involved
22 paying back earlier investors with proceeds from later
23 investments. I don't think -- I don't know that we ever
24 called them Ponzi schemes.

25 Q What was your role in those boiler room cases?

1 A I was a staff attorney. We had a boiler room case
2 in -- in my branch, but I think that came later. I was a
3 staff attorney on some number of boiler room cases.

4 Q Okay. Do you know how many there were?

5 A Well, the biggest one had five separate private
6 placement offerings within it, and then there were two or
7 three others. There were two others that I remember pretty
8 clearly because they had very similar names. So I can think
9 of those three at least offhand.

10 Q Before you began working on the Bernard Madoff
11 investigation, had you ever heard of Bernard Madoff of Madoff
12 Securities?

13 A Embarrassingly, no, I had not.

14 Q Okay. I'm going to start showing you documents.

15 (SEC Exhibit No. 2 was marked
16 for identification.)

17 BY MR. KOTZ:

18 Q Okay. Mark this as Exhibit 2. This is an e-mail
19 from Doria Bachenheimer to Andrew Calamari, 11-3-2005, 6:10
20 p.m. If you see in this e-mail string, it starts on the
21 second page, there's an e-mail from John Dugan dated Tuesday,
22 October 25th, 2005, 4:26 p.m. to Walter Ricciardi and David
23 Bergers, and it references an informant coming in, talking
24 about Bernard L. Madoff. And then the document is in the end
25 forwarded on from the Boston office to the New York office,

1 and Andrew Calamari says to Doria Bachenheimer on Thursday,
2 November 3rd, 2005, 4:55 p.m., "What do you think, this is a
3 case for Simona?"

4 Doria Bachenheimer says -- responds, "Looks good.
5 Should I tell her and Meaghan?"

6 Andrew Calamari says, "Sure, they should open a
7 MUI."

8 Do you know who made the decision to assign the
9 Bernard Madoff matter to Simona and you, I guess?

10 A Looking at this document, it seems clear that it
11 was Andy Calamari. I don't know whether there were other
12 conversations not on this e-mail.

13 Q Okay. But did you -- do you remember if you
14 participated in the decision to assign the case to Simona?

15 A I remember getting the referral, and I don't have a
16 clear recollection whether I got the referral and someone
17 said does this good for Simona and or I said can we have
18 Simona. But it -- the referral and Simona were linked very
19 closely in time, in my memory.

20 Q Do you know if there was any particular reason why
21 Simona was given this case?

22 A Do I know for a fact or -- or can I guess based on
23 what I know of Simona? I think that Simona is a terrific
24 lawyer, and I think that Simona had worked on complicated
25 cases. She had worked on the Bear Stearns case, and I think

1 she had a good understanding of complicated financial
2 products. I -- I believe that what's she would be -- would
3 have been assigned.

4 Q Okay. Do you know if at the time she was
5 available, that she had just finished another matter and she
6 was kind of looking for a case?

7 A I know that because Simona was a very good lawyer
8 and very well thought of, that she came up -- she came up
9 when a case seemed promising in our group. I don't remember
10 whether she -- whether something had just dropped up at that
11 point and she had extra time. I don't remember that.

12 Q But was the Madoff investigation a case that seemed
13 promising that Simona was trying to vie for?

14 A No, Simona wasn't vying. Simona, as far as I know
15 and this e-mail seems to consistent with, Simona wasn't
16 asking for a specific case. She may have had time on her
17 hands. I know that when she -- I know that when Simona did
18 have time on her hands, she would say, "I have availability
19 to take on another case."

20 Q Do you know if at the time that Simona was asked to
21 work on the Madoff investigation, she had any experience
22 coming down Ponzi scheme cases?

23 A I do not know.

24 Q Would there be any concern giving a case involving
25 a Ponzi scheme to someone who had not had any experience

1 doing Ponzi scheme cases?

2 A We didn't have -- the way the -- the way the
3 enforcement division -- certainly, the way the New York
4 office's enforcement section was set up at that time was that
5 we didn't have people who specialized in particular areas.
6 And as I understood, that came as a reaction to 15 years
7 before or so when there had been, you know, a broker-dealer
8 branch, a branch that specialized in broker-dealer fraud, a
9 branch that specialized in particular areas of fraud. And
10 my -- my understanding well before this case was that that
11 hadn't worked out or a decision has been made that it made
12 more sense to have people be generalists.

13 And so there were not -- there were not people who
14 specialized in particular areas and thus were assigned to
15 those areas. I think the idea is that you catch yourself up
16 as quickly as possible on any given area because there are so
17 many areas where a fraud can -- can -- can arise. You know,
18 it can come out of accounting for something that no one has
19 ever heard of, so you have to sort of catch up and learn
20 that. And that was the -- that was the way things worked at
21 that time.

22 Q So it wouldn't be unusual at that time in the New
23 York Office in the enforcement division for a staff attorney
24 to be assigned a case even though she had never worked on
25 that particular type of case before?

1 A I think that's true, and I think that also it's not
2 clear when a case comes in exactly what is going to pan --
3 what -- what that case is going to be. You don't know from
4 an initial referral, well, this is absolutely one type of
5 fraud or any fraud at all. And then if you look -- if you
6 focus only on that type of fraud, you may miss sort of the
7 forest for the trees or -- I mean, you may not notice all the
8 other potential violations that are there.

9 Q All right. Show you the next document.

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

12 BY MR. KOTZ:

13 Q Okay. This document we're going to mark as
14 Exhibit 3, and that's an e-mail from Doria Bachenheimer to
15 you and Simona, 11-3-2005, 6:07 p.m. You'll see this is kind
16 of a continuation of the previous e-mail. And Doria says,
17 "Here's a new case for Simona. Do you want to come by and
18 we'll call John Dugan to see what he can tell us?"

19 And you respond on Thursday, November 3rd, 2005,
20 5:07 p.m., "Sure. Now?"

21 And Doria responds, "Yes."

22 Do you remember having conversations with John
23 Dugan or anyone in the Boston office about this matter?

24 A I have a very clear memory of a conversation I had
25 with David Bergers in the Boston office.

1 Q Okay.

2 A I don't remember if I had a conversation with John
3 Dugan. I -- or Dugan, I'm sorry. I -- it's -- it's entirely
4 possible. I just don't remember.

5 Q Okay. Do you remember at all reading John Dugan's
6 e-mail which is on the second page of Exhibit 3 which kind of
7 had a very short description of what the informant was
8 providing?

9 A This looks familiar to me.

10 Q Do you remember if you had any kind of initial
11 reaction to the allegations?

12 A I don't remember.

13 (SEC Exhibit No. 4 was marked
14 for identification.)

15 BY MR. KOTZ:

16 Q Okay. Next document we're going to mark was
17 Exhibit 4. This is an e-mail from you to Doria Bachenheimer
18 and Simona Suh, 11-4-2005, 12:53 p.m. This is kind of --
19 again a continuation of the previous one. "Sure. Now?"
20 Doria says, "Yes."

21 And then you respond on 11-4-2005, 12:53 p.m., "The
22 whistleblower just called me. His peer report he will send
23 us and is willing to speak by phone and meet in person with
24 follow-up questions. I'll circulate his report when I get
25 it."

1 Do you remember speaking to the whistleblower?

2 A I remember speaking to the man, to Harry Markopolos
3 who is the person referenced in Mr. Dugan's first e-mail.

4 Q Okay. Do you remember this instance or do you
5 remember in general speaking to Harry?

6 A I remember speaking to him a number of times. I
7 remember him calling me very soon after the new case was
8 referred to me.

9 Q Okay. How many times did you speak to Harry
10 Markopolos?

11 A I don't know. Certainly, more than two or three
12 times, I just don't -- I don't remember the number.

13 Q Was it less than ten do you think?

14 A I would think so. I'm not sure.

15 Q Do you remember anything about the initial
16 conversation? You said he called you shortly after you got
17 the referral. It seems logical that that would be referenced
18 here in Exhibit 4. Do you remember kind of your initial
19 impressions of the phone conversation you had with Harry
20 Markopolos?

21 A It's hard, because a lot of things are colored in
22 hindsight, you know, by everything that's happened after
23 December. So I'm trying to -- I'm trying to remember exactly
24 how I felt at that time. I remember thinking that after I
25 spoke to him that he wasn't technically a whistleblower

1 because it wasn't inside information so that was, I think, a
2 distinction that I'm sure I made, because I think -- I think
3 that, you know, when you hear "whistleblower" or "informant,"
4 there's an assumption that it's somebody who's inside an
5 operation and has -- and has nonpublic information to give
6 you. And I remember realizing that he was not.

7 I remember being concerned, and I can't swear if
8 this was the first conversation or soon after. I remember
9 being concerned that he wanted me to tell him things about
10 our investigation as we're investigating that I couldn't, you
11 know, that he wanted to be -- he wanted to be informed of
12 what investigative steps we were taking and things like that
13 and that I remember being uncomfortable with that because
14 it's not the kind of thing you can talk about to a member of
15 the public even if he's trying to help you.

16 Q Do you remember if you thought that Harry
17 Markopolos was knowledgeable, a smart guy?

18 A He certainly seemed to know what he was talking
19 about -- about some of the trading. I -- I don't know that I
20 was in a position to fully judge his overall intelligence
21 based on the conversations that I had. I don't know. I'm
22 sorry.

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

25 BY MR. KOTZ:

1 Q Why don't I show you the next document? The next
2 document we're going to mark as Exhibit 5. This is an e-mail
3 from you to Simona, 11-4-2005, 12:08 p.m. with an attachment.
4 And it forwards an e-mail from Harry Markopolos to you,
5 Friday, November 4th, 2005, 11:59 a.m.

6 Do you recognize the attachment here, "The World's
7 Largest Hedge Fund is Fraud," October 25th, 2005 presentation
8 to the SEC?

9 A I believe that I have seen a couple of iterations
10 of Mr. Markopolos' statement. I don't -- I can't tell you
11 now for sure that this was the first one I saw or -- but I
12 saw this. I saw some versions of this.

13 Q Do you remember at all what your initial reactions
14 to Markopolos' presentation were?

15 A I think there were probably a number of reactions,
16 the one being that this was definitely something we had to
17 look at. Another being a little bit concerned that there
18 were -- there were some suggestions that made me nervous, the
19 idea of, you know, involving reporters, the idea of calling
20 people and saying talk to me without your lawyer present,
21 like those sort of things which are recommendations that he
22 makes in one of these documents. I remember thinking it was
23 complicated. I definitely thought it was something we needed
24 to look at.

25 Q Did you have a particular understanding of kind of

1 the essence of Markopolos' statements or his presentation at
2 that time? You were talking before about sometimes a
3 referral, it's clear what the focus is, sometimes it's not.
4 Was this a case where you understood there was a particular
5 focus from this referral?

6 A This was a case where I thought that there were a
7 lot of possible places that the investigation could go,
8 disclosure issues, front-running, possible Ponzi scheme or
9 other type of fraud. I actually thought when I read it that
10 one of the other things that maybe we should be looking at
11 would be leakage of information because he had a market
12 making business. I was not at the time that -- I was not
13 familiar with the term "split-strike conversion strategy."
14 That's actually something I Googled to figure out what it
15 meant. That was my initial reaction.

16 Q Okay. Was there one particular aspect that you
17 felt was kind of the primary focus? I mean, if you look at
18 Markopolos' document, if you look on page 1, he says, "There
19 are two possible scenarios that involve fraud by Madoff
20 Securities. Scenario No. 1, unlikely." And then he talks
21 about front-running there. And then on the next page, he
22 says, "Scenario No. 2, highly likely. Madoff Securities is
23 the world's largest Ponzi scheme."

24 Did you also get the sense from Markopolos'
25 complaint or presentation that the primary issue that he was

1 bringing to your attention was an allegation that Madoff
2 Securities was a Ponzi scheme?

3 A I don't know if -- I don't know if that's what I
4 thought was primary. I thought that was a real concern, but
5 I thought the disclosure issues were also a real concern.
6 And I think also -- I think also the front-running issue
7 seemed like a real concern. I mean, I think -- I think there
8 was a lot in this for us to investigate.

9 (SEC Exhibit No. 6 was marked
10 for identification.)

11 BY MR. KOTZ:

12 Q I'm going to mark this as Exhibit 6. This is an
13 e-mail from Simona Suh to you, 11-4-2005, 2:18 p.m. If you
14 see, there are a couple things in this e-mail string.
15 There's an e-mail from Simona to you Friday, November 4th,
16 2005, 2:16 p.m. where she cites some prior statements from
17 Harry Markopolos including a statement, "If Iraqi cities go
18 up in flames, so do Bush's reelection hopes." And then, "If
19 oil prices keep rising, so do Kerry's chances of winning."

20 A Okay.

21 Q Do you know why Simona was citing these statements
22 from Harry Markopolos?

23 A I think she was -- I can't speak for Simona, but
24 one thing that Simona did that she was very thorough about
25 would be checking people on the Internet in Lexis and Nexis

1 and other Internet sources to find if they were cited or
2 quoted in articles, things like that, in terms of background.

3 Q Okay. So she sent this, these quotes to you. Did
4 you have any reaction to these particular quotes that would
5 relate to Harry Markopolos?

6 A Looking at -- looking at my reaction -- looking at
7 my response in the e-mail to her, reminds me that I'm not
8 sure I made clear to you when I talked about Mr. Markopolos
9 and our first call with him or my first series of calls with
10 him, that I was nervous that he was also speaking to the
11 press or that he would speaking to the press or that he
12 talked about reporters. And that made me nervous because the
13 very -- one of the very last things that I would want to
14 happen would be the beginnings of an investigation end up in
15 the newspaper before we had even gotten anywhere on it.
16 That's something I was very sensitive to because it had
17 happened in the past.

18 Q What would be the -- why would you be concerned
19 about that?

20 A One of the things that had happened that was
21 happening in this time frame and a little bit before, there
22 had been some number of instances that the staff were aware
23 of and some that I experienced where short sellers or people
24 who would use the news of an investigation to depress a stock
25 price and that was -- was something that people were

1 conscious of. I had gotten -- I had gotten a referral about
2 accounting fraud that turned out to have come through short
3 sellers. We had -- somebody had -- there had been an
4 investigation, a very short investigation into cookie jar
5 accounting at a company, and luckily, we closed it very
6 quickly because the next -- very soon afterwards there was an
7 article in the press about it. So that was certainly
8 something that I was -- I was thinking about and was worried
9 about.

10 Q And you respond to Simona in this e-mail on Friday,
11 November 4, 2005, 2:17 p.m., "I have some qualms about a
12 self-identified independent fraud analyst, but who knows?"

13 What did you mean by that?

14 A I meant that I was concerned that -- that he might
15 have an agenda, that -- that identifying himself as a fraud
16 analyst, although he also appeared to have worked at at least
17 one investment advisory firm and one investment firm, I was
18 concerned what his personal motivations might be, and I
19 thought that was something -- that was just a reaction that I
20 had at the time.

21 Q Well, what kind of agenda could he have?

22 A Well, other than the things that I talked about, if
23 he's a competitor -- if he's a competitor to an investment
24 advisor and information about that investment advisor being
25 investigated by the SEC leaks, that could help him. You can

1 trade -- you can trade on other people's bad news or the
2 existence of investigations. That had been happening -- that
3 had appeared to be happening a lot in that time frame. Then
4 there's also just talking to people in the press and talking
5 about, you know, questions that you've been asked or things
6 that you've gleaned from a conversation with a regulator or
7 an investigator in some way.

8 Q Did that have any impact on kind of your assessment
9 of Harry Markopolos' credibility, these qualms?

10 A Everything factored -- everything factors into your
11 overall sense of a person, but I actually think that in a lot
12 of ways because of our concerns, I think we looked awfully
13 hard and awfully close. And I think we were -- I was
14 certainly conscious of making sure or trying to make sure
15 that we didn't miss something that would come out in The Wall
16 Street Journal.

17 Q Okay. And then Simona Suh says, "We might want to
18 talk to Mike Garrity in Boston about the past work Markopolos
19 submitted to the SEC's Boston office" in an e-mail 11-4-2005,
20 2:18 p.m.

21 Do you know if you ever spoke to Mike Garrity?

22 A What I can -- I know -- I know I spoke to David
23 Bergers because that -- that conversation is just a clear
24 memory that I have. I don't remember if I spoke to Mike
25 Garrity either also -- not in -- certainly not instead of but

1 document requests. But figuring out what we would ask for in
2 the document requests were part of trying to figure out was -
3 - was this a Ponzi scheme, was there money there, were there
4 disclosure issues, what possible -- what possible problems
5 were there. And that was all part of how we framed requests,
6 how we planned to take testimony, what questions we asked in
7 testimony.

8 Q But -- I'm not getting at kind of what you did
9 throughout the course of the investigation. I'm trying to
10 understand at the beginning of the investigation in the
11 planning stage, was there someone who said here's how you
12 investigate a Ponzi scheme, here are the steps you take, here
13 are the steps we're going to take.

14 A I don't think anybody ever said to me here's how
15 you investigate a Ponzi scheme and here is what you should do
16 here. I think that the concern that it was a Ponzi scheme
17 was one of the -- was one of the things that framed all --
18 that framed the -- who -- what we talked to, what we did, you
19 know, what documents we asked for. I think that, you know, I
20 remembered saying at some point, well, had -- asking about
21 what the examiners had seen in terms of money being there.

22 Q Do you believe that at the time that you conducted
23 the Madoff enforcement investigation you had an understanding
24 yourself of what steps should be taken in investigating a
25 Ponzi scheme?

1 A That's so hard to answer in hindsight because I
2 thought at the time that we were taking -- I thought at the
3 time we were taking the right steps. I think, you know, the
4 results of what has happened since December makes it clear
5 that things were missed and I didn't believe at the time that
6 we didn't do it the right way. So I'm having a hard time
7 answering that question.

8 Q All right. So you understood at the time that you
9 were taking the right steps in the Madoff investigation to --
10 as to that particular issue, to see if Madoff was actually
11 operating a Ponzi scheme?

12 A I thought so.

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

15 BY MR. KOTZ:

16 Q Okay. The next document we're going to mark as
17 Exhibit 10. It's an e-mail from Doria Bachenheimer to Andrew
18 Calamari, you and Simona Suh Friday, November 4th, 2005,
19 10:33 a.m. And Doria just sends it to you three as an FYI,
20 an e-mail from Robert Sollazzo to Doria Bachenheimer with a
21 copy to John Nee, Thursday, November 3rd, 2005, 5:38 p.m.
22 And this is -- they forwarded that same e-mail from John
23 Dugan, and Sollazzo says, "These are basically some of the
24 same issues we investigated, and I recognized at least one of
25 the hedge funds, Fairfield Sentry. Some of these comments

1 are not new. I remember looking into similar allegations
2 back in the 90s in Madoff. John Nee supervised the exam.
3 He's not in on Friday, but I can get you a copy of the
4 report. You should definitely speak to John Nee and the exam
5 team before you move forward."

6 Now, you referenced a couple of times the
7 examination. And so you were conducting an investigation of
8 allegations made by Harry Markopolos relating to Bernard
9 Madoff, and you understood that there was an exam that was
10 conducted of Bernard Madoff. So how did that factor into
11 kind of your sense of the investigation, knowing that there
12 was just an exam?

13 A Absolutely that gave me -- it gave me -- it gave us
14 a starting point, but it also gave me some degree of belief
15 that this was not an out-and-out fraud where there was
16 absolutely no substance to the entity or the trading because
17 there had been, you know, several -- one that was recent and
18 one before that exams into pretty much the same conduct. Oh,
19 excuse me. I'm sorry. Into pretty much the same
20 allegations. So I definitely took a degree of comfort from
21 the fact that there had been an exams -- an exam recently.

22 Q Would you say in some ways that may have kind of
23 colored your initial reaction to the complaint? You get
24 allegations of a complaint, but you understand from the
25 examiners that they had already looked at some of these

1 issues.

2 A Absolutely. There's always a resource concern, and
3 there's always a duplication issue. And there's always a
4 fear or not a fear. There's always an issue about -- about
5 wasting scarce -- about using scarce resources in an area that
6 have already deployed. And so it was my belief that there
7 was a comfort that could be -- that could be -- that we
8 start -- that we didn't start at ground zero. Excuse me. We
9 didn't start at square one. That was a really bad word
10 choice. I'm sorry. We didn't start at square one with the
11 referral.

12 Q Got you. Now, Sollazzo says, "I remember looking
13 into similar allegations back in the 90s at Madoff."

14 Do you know what allegations he was talking about?

15 A I believe and I can't be completely certain as to
16 when I heard it or how was that the concerns about Mr.
17 Madoff's or Madoff Investment Securities' returns were things
18 that had been looked in exams, I think, before and after the
19 Barron's article. So --

20 Q Exams by the SEC?

21 A By the SEC, yes.

22 Q Okay.

23 A I don't know where -- I know that the -- the -- the
24 most proximate exam was based out of New York. I don't know
25 if there were any out of -- I did not know at the time

1 whether there were any out of D.C., also.

2 Q And were you aware at the time of an investigation
3 that occurred in 1992 relating to entities that then related
4 to Madoff?

5 A I do not believe that I -- that I learned about
6 that until this past year.

7 Q So Sollazzo never kind of clarified to you or to --
8 as far as you know, what he was talking about in terms of
9 these allegations back in the 90s that he looked at?

10 A My -- my recollection is that it involved -- that
11 there was a -- that front-running was something that was
12 looked at, but that that was not the only thing that was
13 looked at. But I don't have a clearer memory than that.

14 Q Okay. Before I get to this document, we talked to
15 Doria Bachenheimer, and she had a similar sense, at least
16 from what I understand, of kind of having some comfort from
17 the exam and, you know, kind of perhaps even thinking there
18 can't be much here to the complaint that Markopolos provided
19 because the exam team had just done an exam. Did you get
20 that impression from her as well?

21 A I got that impression from the exam team, I think
22 from her, certainly from me. I think we all -- I think we
23 all took a real degree of comfort in how could something --
24 how could an exam team be on the premises because, I mean, an
25 exam is really different -- my understanding of exams is

1 they're really different from enforcement investigations
2 because the examiners are actually there. They're watching
3 how something goes. They are sort of -- they have the
4 ability to sort of walk over and say I'd like to see that
5 document or I want to look at that. And that kind of -- my -
6 - my understanding of how exams had actual -- being on the
7 premises. Like, an enforcement exam -- an enforcement
8 investigation, you'd never go to the premises of a place. So
9 having an exam team in the offices for, you know, a period of
10 time investigating things that were raised with the knowledge
11 that there had been that article in Barron's with all of
12 that, yeah, I did. I think I did. I think other people did
13 take comfort from that.

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

16 BY MR. KOTZ:

17 Q Okay. I'm going to show you another document.
18 Mark it as Exhibit 11. This is an e-mail from Doria to you
19 and Simona Suh, 11-4-05, 9:43 a.m. And it attaches a copy of
20 the examination report dated September 2005. Do you remember
21 if you read the exam report at the time?

22 A I believe that I did.

23 Q Did you have any impressions of the exam report?

24 A I'd like to look at -- I'd like to look at it again
25 to refresh my recollection.

1 Q Please.

2 MR. WEINBERG: You should look at it.

3 (Witness examines the document.)

4 THE WITNESS: This does -- it does refresh my
5 recollection, because I remember -- I do now remember the
6 fact that the exam team had tested the strategy and had
7 looked at -- had tested Mr. Madoff's purported strategy and
8 had -- had looked at customer account documents and
9 particular trades. I remember -- I do remember thinking that
10 I -- that this -- this seemed like an investigation -- or
11 that -- excuse me -- that the exam had covered a lot of the
12 issues that were raised in Mr. Markopolos' submission to us.

13 BY MR. KOTZ:

14 Q Okay. Do you remember if you understood what the
15 focus of the examination was that was conducted of Madoff?

16 A I believe that the focus of the investigation --
17 excuse me -- of the exam actually was to look at the issues
18 that had been raised in the recent press about Mr. Madoff,
19 the Barron's article and another article and see -- and look
20 at the suspicious -- to look at the suspicions that were
21 raised in those articles.

22 Q Okay.

23 A Specifically front-running and consistency of
24 returns.

25 Q Okay.

1 A And, I mean, there's more than that but -- but I
2 definitely believed that the exams were -- I don't know if
3 they were triggered by, but that they -- that the shape of
4 the exam was colored by those -- well, the things that were
5 raised in those articles.

6 Q Did you have an understanding that at least even
7 partially the OC exam looked at the issue of a potential
8 Ponzi scheme?

9 A Well, yeah, because, I mean, if you're -- if you --
10 they talk about the -- the money that's invested by
11 particular investors, so I read this report as confirming
12 that the money was there. And I had a belief that you
13 couldn't have a Ponzi scheme if the money were there.

14 Q Did you ever have any conversations with Lamore or
15 others about, you know, what the focus was of the
16 examination?

17 A I talked to Peter a lot. Simona and I talked to
18 Peter a lot. Peter also participated in meetings certainly
19 with Doria, possibly with Andy, but I can't be completely
20 sure on that. What I can't remember now is whether I was at
21 a meeting with Bob Sollazzo or John Nee or somebody senior to
22 Peter. I think that there were. I can't remember it. It
23 may be that because I read the report and the e-mails from
24 Bob that that's what I'm remembering.

25 Q Did you ever get the impression from Peter Lamore

1 or otherwise from anyone who worked on the OC exam that the
2 examiners felt there were a lot of unanswered questions about
3 Madoff's operations at the end of the exam?

4 A No, I don't think so.

5 Q Were you ever made aware by Peter Lamore or
6 otherwise, anyone working on the OC exam, that the examiners,
7 Peter Lamore and William Ostrow, wanted to take further
8 actions, further steps in the examination that they weren't
9 allowed to take?

10 A No, I don't -- I don't -- I don't believe so.
11 That -- that sounds to me like news.

12 Q So is it fair to say that you didn't have an
13 impression with respect to the OC exam that there was still a
14 lot of questions and concerns. You understood that the exam
15 looked at certain issues, some of the same issues that were
16 in Markopolos' complaint, and found there was nothing
17 improper.

18 A Well, you can't say nothing improper because they
19 had certain --

20 Q Right.

21 A They had certain technical violations. But yes, my
22 overall -- my overall impression was that the most scary of
23 the potential things that could be wrong at Madoff Investment
24 Securities couldn't have been wrong if an exam team had been
25 there and checked all the things that it appeared from the

1 report were checked.

2 Q And would you say that the Ponzi scheme would be
3 the most scary thing?

4 A Yes, absolutely.

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

7 BY MR. KOTZ:

8 Q Okay. Let's go to the next document. Mark this as
9 Exhibit 12. This is an e-mail from William Ostrow to Peter
10 Lamore, 11-14-2005, 10:36 a.m. Below it is an e-mail from
11 Peter Lamore to you and Simona with a copy to Ostrow, 11-14-
12 2005, 9:29 a.m. And, in fact, Lamore in here states, "In
13 general, the informant raises some valid questions, but I
14 believe most of his allegations can be refused based upon the
15 examination that we conducted this year."

16 Did you read this to include the allegations of a
17 Ponzi scheme given that that was a pretty important of
18 Markopolos' complaint?

19 A Absolutely, and -- and that's the first e-mail from
20 Peter. And then when you look at the -- the forward or the
21 response from -- from William Ostrow, this statement that the
22 trades were done in Europe was another refutation of one --
23 well, I believed it to be another refutation of one of Mr.
24 Markopolos' main points which was that there wasn't
25 sufficient options.

1 BY MR. KOTZ:

2 Q And that's an e-mail from Doria Bachenheimer to
3 you, 12-15-2005, 12:23 p.m. So there's Exhibit 17 and
4 Exhibit 18. So in the first e-mail in Exhibit 17, it looks
5 like there's a meeting set up. Simona e-mails you, copy to
6 Peter Lamore Thursday, December 15h, 2005, 10:25, "Subject,
7 do you have time to talk about Madoff? Thanks. 11:00."
8 Seems like you work out a time.

9 And then the next e-mail, Exhibit 18, which is
10 shortly after thereafter, you send an e-mail to Doria
11 Bachenheimer saying, "Do you have a few minutes to talk about
12 Madoff? It may actually be something of concern since Madoff
13 failed to produce a whole set of accounts to the examiners.
14 In those accounts, he's using the options strategy that he
15 told our examiners he was no longer using. He seems to have
16 failed to disclose to the examiners several billion dollars'
17 worth of option accounts."

18 Does this refresh your recollection about that
19 options issue at all?

20 A A little bit. I still don't -- I think that this -
21 - what it seems to be refreshing is that this is what kind of
22 came out of -- that this came out of Simona's initial e-mail
23 to Peter about a discrepancy and then she and Peter met and
24 then they met with me. And then I thought it was significant
25 enough that we should be bringing it to Doria right away.

1 That's what I remember.

2 Q Okay. And do you remember what was decided about
3 this issue or?

4 A I -- I remember we went back to Mr. Madoff for
5 documents again. I believe at that point because we were
6 disturbed about not -- that things not being produced to the
7 exam staff, that I believe that Doria was on the call to
8 impress on him the importance of what we were -- how serious
9 this was to us. That's as much as I -- that's as much as
10 this refreshes.

11 Q But do you remember if the issue was ever resolved?
12 You said the issue was serious, you impressed upon him how
13 serious it was, was it ever resolved by the end of the
14 investigation?

15 A Yeah. But well, what I believe is that he produced
16 the -- he produced to us the accounts then with an
17 explanation. I -- I -- maybe it was an explanation that he
18 didn't think that's what the examiners had been asking for.
19 That's the sense I have that it -- that he was playing, that
20 it was a semantics. He would -- that it was a semantics
21 issue, that it seemed like -- that's the best of my
22 recollection right now.

23 Q And at the end of the day, you believed Bernie
24 Madoff's explanation or you --

25 A And that he -- that he produced the missing

1 accounts.

2 Q Okay. But I'm asking about the fact that -- in
3 those accounts using the options strategy, they told our
4 examiners he was no longer using. Did you ever get a
5 resolution to why Bernie Madoff previously said he wasn't
6 using the options strategy and you found documents showing
7 that he was?

8 A I don't remember -- I don't remember clearly what
9 the answer was. I remember that there was an answer, and I
10 think that it was an answer that he -- he was saying that the
11 examiners asked it in a way that was different from the way
12 that we had asked it.

13 Q And you found that answer satisfactory?

14 A I think we did.

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

17 BY MR. KOTZ:

18 Q Okay. The next document we're going to mark as
19 Exhibit 19. This is an e-mail from you to Harry Markopolos,
20 12-19-2005, 1:07 p.m. In this e-mail below, Markopolos has
21 an e-mail to you, December 16th, 2005, 6:20 p.m. where he
22 provides you a variety of information. He says he had a
23 40-minute telephone conversation with Michael Ocrant who
24 wrote a story for MAR/Hedge published in May of 2001 entitled
25 "Madoff Tops the Charts, Skeptics Ask How."

1 Did you review -- had you reviewed that article
2 previously or did you review it only because Harry pointed it
3 out?

4 A I believe that we reviewed it -- I think we -- I
5 believe that we reviewed it early because I believe it's
6 referenced in both the exam report and in -- and in Mr.
7 Markopolos' first substantive submission to us.

8 Q Did you find that significant at all that there was
9 someone who wrote an article that seemed to provide the same
10 viewpoint that Markopolos did?

11 A I think that that -- that the Ocrant article and
12 the Barron's article both raised concerns that were similar
13 to Mr. Markopolos' concerns.

14 Q Okay. But then the question is: Did that add
15 credibility to Markopolos' complaint? I know that they
16 raised the same concern. My question to you was: You have
17 Markopolos coming in, he raises concerns. Then you have two
18 other people independently also raising that same concern.
19 Would that add to the credibility of the concerns or would it
20 have no effect?

21 A That's kind of hard to answer because they actually
22 predate -- you know, they're 2001 articles, so, you know, one
23 way of looking at it could be that they said it and then
24 Mr. Markopolos got some of his information from them and --
25 and rewrote it. I know that -- so I think it probably just

1 was another thing that I looked at again when I got it.

2 Q For you at the time, did that serve to add to
3 Markopolos' credibility that there were these articles out
4 there that said the same thing or not?

5 A I don't think it impacted my assessment of his
6 credibility.

7 Q Okay. Now, in No. 4 down here, he says, "I've also
8 compiled several pages of contact information that might be
9 useful to the SEC's investigation. I'll try to think of the
10 quickest way for the SEC to determine if Bernie is a fraud or
11 not. I believe that I have to come up with some methods that
12 make sense. I'll try to get that to you next week."

13 Do you know if he got that to you?

14 A I don't remember.

15 Q Could that have been something that would be
16 helpful to have, methods to --

17 A Sure.

18 Q -- quickest way to determine if Bernie is a fraud?

19 A Sure.

20 Q Do you know if you asked him, if you ever followed
21 up with him to see if you got it?

22 A I -- I think that we did get it. I mean, I think
23 that he provided us a lot of information. I don't remember
24 the specific -- I don't remember this specific one. I'm
25 sorry.

1 Q What about on No. 5, at the last sentence, it says,
2 "I've got a several-inch thick file folder on Madoff that I
3 would be happy to let you copy if the SEC has any interest."

4 Did you get that?

5 A I don't know what documents were in that folder,
6 and I don't know what he gave us. I don't --

7 Q But did you get a several-inch thick file folder on
8 Madoff? Simona testified she never saw one. Did you get it?

9 A I don't know. I don't remember. I really don't
10 remember.

11 MR. WEINBERG: You don't remember. That's fine.

12 BY MR. KOTZ:

13 Q Okay. Previously, you said that you never -- you
14 followed up with Markopolos everything he wanted to give you.

15 A If he offered information, I would take it. I
16 don't know that I ran him down and said wait a minute, is
17 there more stuff.

18 Q I'm not talking running him down. He has an e-
19 mail, "I've got a several-inch thick file folder on Madoff
20 that I would be happy to let you copy if the SEC has any
21 interest."

22 Did you go back and say I'd like to take it?

23 A I don't know.

24 Q Okay. Simona testified that she never saw it.

25 Does that give you an indication of whether you -- would you

1 have gotten it and not given it to Simona?

2 A I would not have.

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

5 BY MR. KOTZ:

6 Q Okay. Show you the next document is Exhibit 20.

7 This is an e-mail from you to Simona Suh, Peter Lamore
8 Wednesday, December 21, 2005, 12:52 p.m. Do you recall Harry
9 Markopolos providing you a copy of this MAR/Hedge article?

10 A I remember reading the article. I don't -- I don't
11 know that the first time I read it was -- was when it came
12 from Mr. Markopolos. I'm just not sure. I see that he -- I
13 see that he attached it to the e-mail. I just don't know
14 whether this was the first time I saw it or not.

15 Q And I think we may have covered this, but he
16 states, "Michael Ocrant has agreed to meet with you to
17 discuss what he calls the most intriguing story of his
18 career."

19 You didn't meet with him because of the issue with
20 the press; is that right?

21 A Yes.

22 Q Okay. Do you remember if you discussed the
23 MAR/Hedge article at all with Simona?

24 A I think that the -- I think that because I
25 forwarded it to -- to Peter and Simona, I think that we did

1 get to Andy somehow, whether it was a glitch in the system or
2 something. And so it was resubmitted because she said she
3 resubmitted it.

4 Q So now looking at this, was there a delay in
5 opening the MUI officially?

6 A It looks like there was.

7 Q Now, let me ask you: If another complaint had come
8 in about Madoff, say from an investor complaining about
9 Madoff, right, and that complaint came into a different
10 office, they were trying to figure out what to do about the
11 complaint. If a MUI hadn't been opened but you had started
12 the investigation, would that office be able to know whether
13 to send that complaint to you by looking through NRSI?

14 A I don't -- I'm not sure of the answer to that
15 because I think we were also transitioning to that new system
16 at that point but maybe not. I'm not sure, technologically.

17 Q Okay. So would it have been helpful to you to have
18 gotten -- seeing a copy of another complaint about Bernie
19 Madoff from an investor while you were undergoing your Madoff
20 investigation?

21 A Yes.

22 Q Now, in the Tuesday, December 27th, 2005 e-mail,
23 3:45 p.m. from you to Andrew Calamari --

24 A Uh-huh, oh, okay.

25 Q -- you say, "Andy, Simona has sent you a MUI

1 opening request on Madoff Securities a few weeks. This is
2 the prime broker for hedge funds who executes his own trading
3 strategies for the funds without considering himself to be an
4 adviser. Boston received the referral, but we got the case
5 because our examiners had recently done a cause exam with
6 Madoff and were familiar with his organization. Recently, we
7 discovered that Madoff had not given our accountant examiners
8 documents they'd received. He produced only equity accounts.
9 He did not provide accounts in which he traded options."

10 I guess my question is: In describing the case, I
11 guess to explain what you wanted the MUI opened for, you
12 don't mention anything about an allegation of a Ponzi scheme.

13 A The original referral had come through Mr.
14 Calamari, and I was reminding him about it. And then there
15 was a narrative in -- there'd be a narrative in the -- in the
16 MUI system in much more detail. So this was really just to
17 sort of to toggle his memory -- tickle his memory. I'm
18 sorry.

19 Q So at this point in time, you were still looking
20 into the issue of a Ponzi scheme?

21 A Sure. If you look at -- if you look at the
22 narrative that came -- that went into the system along with
23 this, it did discuss that, yes.

24 Q Okay.

25 BY MR. FIELDER:

1 Q On timing, is that -- it's our understanding from
2 your reference in this e-mail to a few weeks and Simona's
3 testimony that the request may have initially been made in
4 mid December. So independent of any administrative glitch in
5 the system between when the request was made, it looks like
6 that maybe about six weeks lapsed between the time that you
7 guys really began working on this and the request was made to
8 open a MUI. Is that -- is that standard practice to wait
9 that long?

10 A Well, I don't -- I'm not sure about the timing,
11 that it was that long because when I say a few weeks, I could
12 have meant three weeks or four. I don't remember.

13 Q I'm representing to you Simona said she thought it
14 was in mid December.

15 A Okay.

16 Q That was her recollection. So she may be wrong.
17 You're right. But if that was correct, would that six-week
18 delay be standard practice?

19 A I don't think that it would be unreasonable. I
20 don't think that would be out of the realm because we would
21 start to look at something before we would formally open a
22 MUI. I -- I'm just not sure on the timing here.

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

25 BY MR. KOTZ:

1 Q Okay. Let me show you the next document and mark
2 it Exhibit 29. This is an e-mail from Simona to Peter
3 Lamore, 12-28-2005, 10:27 a.m. And you'll see Peter Lamore
4 sends an e-mail to Simona Suh, Wednesday, December 28th,
5 2005, 10:10 a.m. "On a side note, if Bernie calls me
6 regarding the request list, I don't intend to speak to him
7 about it. I'll refer to you."

8 And then Simona responds, "I agree. At this point,
9 we should deal with -- he should deal with enforcement,
10 especially since technically, you could be a witness to his
11 laying, whatever we end up making of it at the end."

12 You testified earlier that you weren't aware of at
13 any point in time there being a concern about Madoff lying?

14 A No, no, I don't think that's what I said.

15 MR. WEINBERG: I don't think she testified to that.

16 BY MR. KOTZ:

17 Q Okay. So you were aware that Simona felt that
18 Madoff had lied?

19 A I'm not -- I'm not saying that, either. I think
20 that -- I think that the concern, as I understood I then, was
21 if he had lied to the examiners, if it turned out that he had
22 lied to the examiners.

23 Q She says, "Especially since technically, you could
24 be a witness to his lying, whatever we end making of it at
25 the end."

1 Do you view that as a potential lying, not that she
2 had made a determination that he had lied?

3 A Well, I don't -- I didn't write the e-mail, and I'm
4 not sure what she was thinking when she was reading [sic] it.
5 I'm telling you that my memory of it was that there was a
6 concern about whether or not he had been forthright with the
7 examiners. Whether that becomes technically lying for which
8 we need a witness and refer a criminal perjury thing is -- is
9 different, and I don't know what she was saying here. I -- I
10 will -- I testified, and I will say I know that there was a
11 concern about whether he had been completely forthcoming with
12 the examiners, absolutely. It's the question of whether it
13 was lying, playing with words, semantics, whether it was
14 something that could ever be presented as lying. I don't
15 know that that was something definitive at that point.

16 Q In your mind but do you know if it was definitive
17 in Simona's mind and Peter Lamore's mind?

18 A No, I don't. I -- I did not believe -- I did not
19 believe it to be.

20 Q Did you have a lot of interaction with Simona on
21 the Madoff case?

22 A Yes.

23 Q Do you feel you're a hands-on branch chief, that
24 you have a lot of involvement with the staff attorneys?

25 A I try to be as involved -- I tried to be as

1 involved as -- as I needed to be or as I could be. I thought
2 that Simona was very capable of doing things without being
3 micromanaged, and I was definitely conscious of not needing
4 to micromanage her and not wanting to make her feel
5 micromanaged. I thought she was -- I think she is a terrific
6 lawyer.

7 Q Do you feel you gave Simona sufficient guidance in
8 connection with the Madoff investigation?

9 A I thought so. I think so.

10 Q Do you think that Simona felt like she was given
11 sufficient guidance in connection with the Madoff
12 investigation by you?

13 A I believe so. She never expressed anything
14 different to me.

15 MR. WEINBERG: The place for coffee, is that open?

16 MR. WILSON: It's open till 2:30.

17 MR. FIELDER: There's a Dunkin' Donuts open till
18 2:30. Of course, the vending -- I will tell you if you want
19 coffee, I would recommend going to Dunkin' Donuts, not
20 getting it here.

21 MR. WEINBERG: I'd like to get some.

22 MR. KOTZ: Okay. Why don't we go off the record?

23 (A brief recess was taken.)

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

1 BY MR. KOTZ:

2 Q Okay. Let me show you the next document. We'll
3 mark it as Exhibit 30.

4 Okay. This is an e-mail from you to Simona Suh,
5 Peter Lamore, 12-28-2005, 7:41 p.m. And in this e-mail
6 string, there's an e-mail from Peter Lamore kind of the
7 middle of the page to Simona Suh, Wednesday, December 28th,
8 2005, 9:42 a.m. "Hey, Simona, I'm not certain how to phrase
9 it, but I suggest we ask Bernie directly about the money and
10 securities issue. That is, are the securities and money held
11 at BLM or Citco? You need to know the answer to this
12 question to alleviate our major concern."

13 Do you know what the major concern was that was
14 being referred to?

15 A Well, I think that is the concern about whether or
16 not it was a Ponzi scheme, you know, so that we could see
17 where the securities and money -- I think that was something
18 that would factor into the securities -- where the securities
19 were held and who had custody. But that's not a -- that's
20 not a specific recollection. That's an assumption from what
21 I'm reading here.

22 Q Okay. Do you remember what was done to try to
23 answer or alleviate that major concern?

24 A I think that's what Simona -- what Simona's next
25 e-mail adding a request a sufficient -- for documents

1 sufficient to identify the custody of the assets.

2 Q And so did you know that if you got information
3 responsive that alleviated that major concern?

4 A I don't remember now.

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

7 BY MR. KOTZ:

8 Q Okay. I'll show you the next document marked
9 Exhibit 31. This is an e-mail from you to Doria
10 Bachenheimer, Simona Suh, 12-28-2005, 12:03 p.m. This
11 references -- at the bottom Doria is saying to you and
12 Simona, Wednesday, December 28th, 2005, 10:46 a.m., "Are you
13 available to brief me in Madoff today or tomorrow?"

14 And then you worked out a time and a day. Do you
15 remember having briefings with Doria Bachenheimer on the
16 Madoff investigation?

17 A Yes.

18 Q Were they frequent briefings?

19 A I can't remember how frequent. I remember that we
20 did as a practice keep Doria updated on -- on cases. I don't
21 think -- I don't believe we had weekly meetings. I think we
22 certainly briefed her more than once a month, so it's
23 probably somewhere in between.

24 Q Do you feel it was sufficient, the number of
25 briefings, the frequency of the briefings?

1 they go back to Harry Markopolos about?

2 A I don't think so.

3 MR. KOTZ: Okay.

4 BY MR. FIELDER:

5 Q You couldn't get the information about where the
6 clients wired their money from the clients themselves?

7 A I think -- I don't have it in front of me, but I
8 thought -- I think that that would be -- that would have been
9 something that was covered by the Fairfield document request.

10 Q Did you think they gave you the wiring instructions
11 that Madoff had given them?

12 A I -- I'm not sure, but I think so.

13 Q I mean, this is a real critical issue in a Ponzi
14 scheme case, the custody of assets, where are the actual --
15 and not the -- not the, you know, '34 Act, who's got legal
16 custody and who's responsible for the statements but where
17 the money is. Some money's got to be in the accounts, right,
18 particularly if clients are wiring money in and wiring money
19 out. So Mr. Lamore's e-mail including, you know, the
20 reference to wiring instructions seems to suggest that's what
21 he was talking about, also. And I'm puzzled by why either
22 clients weren't asked where they wired the money or where
23 they were instructed to wire the money to or if Fairfield
24 was. And you may be right. I don't recall. Then the
25 question is: Did anyone ever go to that financial

1 institution to determine what the activity was?

2 A Well, I do think that Fairfield was asked. I do
3 not know -- I do not know whether the financial institutional
4 -- and I don't know whether there was a financial institution
5 or it could go straight into the broker-dealer.

6 Q You think the broker-dealer could be set up with
7 the Federal Reserve so that money could be wired directly to
8 it and out of it?

9 A No, I don't. I'm not sure. I'm not sure how money
10 got to the broker-dealer. I don't remember at this point
11 what I knew then.

12 Q I mean, was it an issue that you -- that your team
13 even thought about?

14 A Well, we definitely thought about how -- we
15 definitely thought about asking Fairfield where the money
16 went. I can't remember the -- I just can't remember
17 specifically how we did it at this point.

18 BY MR. KOTZ:

19 Q Did you think about following up beyond Fairfield
20 with some financial institution to see if there was money
21 there?

22 A I don't know. I thought that the money was at the
23 broker-dealer.

24 Q The broker-dealer was like a bank?

25 A No. That the broker-dealer was -- was holding the

1 money that it was using to purchase -- to purchase
2 securities.

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

5 BY MR. KOTZ:

6 Q Okay. Show you the next document, Exhibit 36, an
7 e-mail from Simona to Amy Lam with a copy to you, 1-23-2006,
8 6:17 p.m.

9 Do you recall first of all that there was an
10 affirmative decision to convert the MUI into an investigation
11 rather than kind of just letting time lapse?

12 A I think so.

13 Q Any reason why particularly?

14 A I'm not sure if -- I don't remember anymore. It's
15 been a long time, whether you could get -- whether you could
16 have a court reporter in a -- take testimony in a MUI. I
17 don't remember.

18 Q But in the other cases that you worked on, was it
19 simply that the MUI just kind of automatically rolled into an
20 investigation or, in your experience, was there a specific
21 request generally made to convert a MUI into an
22 investigation?

23 A I think that -- that MUIs became investigations
24 after a certain time period -- and I don't remember anymore
25 whether it was 60 or 90 days -- unless one acted to turn it

1 into an investigation sooner. I believe that we acted to
2 turn Madoff into an investigation sooner than would otherwise
3 be when time elapsed. I don't remember now what the reason
4 was.

5 Q If you see in this write-up that Simona has, she
6 copies on. She says, "The complaint did not contain specific
7 facts about the alleged Ponzi scheme."

8 Do you know what she means by didn't contain
9 specific facts? I mean, there were 29 red flags in the
10 complaint.

11 A Ponzi schemes, a lot of times are uncovered by an
12 investor who's trying to get money back and can't. I think
13 that could be what she's referring to there, that it -- that
14 it wasn't I put my money in here, I was promised these things
15 and I have not gotten it. It was more here is somebody who
16 is not inside the -- who's not inside the entity but who is
17 giving us reasons to look at it that are not sort of
18 factually dispositive but are raising issues.

19 Q So what would be the specific facts that Harry
20 Markopolos' complaint didn't contain?

21 A Some -- I don't have -- I don't have the -- I'm
22 trying to do this from memory without the complaint.
23 Something showing that money was being paid out to old
24 investors with new money.

25 Q Then it says, "Nevertheless, because the

1 substantial amounts at issue, the staff in the abundance of
2 caution requested voluntary production of certain documents
3 from BLM and two of its hedge fund customers."

4 Do you know what that refers to, "in the abundance
5 of caution"?

6 A That we wanted to be really careful not to just
7 write off a complaint. You know, it did raise -- it did
8 raise issues of concern. It didn't prove any of the issues
9 but it -- it made us concerned enough that we wanted to
10 investigate further.

11 Q Would you expect a complaint like that to prove the
12 issues? Isn't that what enforcement's job is?

13 A And that's what we were trying to do by opening
14 this investigation.

15 Q Right. But you say, "The complaint did not
16 contain" --

17 MR. WEINBERG: She doesn't say that.

18 BY MR. KOTZ:

19 Q Simona says, "The complaint did not contain
20 specific facts, but the alleged Ponzi scheme -- nevertheless,
21 because of the substantial amounts at issue and the abundance
22 of caution, staff requested voluntary production" seeming to
23 indicate that it didn't seem like the complaint necessarily
24 had a lot of merit but in the abundance of caution, documents
25 were requested.

1 What I guess I don't understand is --

2 MR. WEINBERG: That's your interpretation of it.

3 MR. KOTZ: Okay. Well, she can give me if it's a
4 different one.

5 MR. WEINBERG: But it's not hers. She didn't write
6 the e-mail.

7 MR. KOTZ: Okay. But she agreed with it. She said
8 before she agreed with it.

9 BY MR. KOTZ:

10 Q I guess what I'm trying to understand is what more
11 possibly could Markopolos have provided that wouldn't be
12 referred to in this way?

13 A I don't think this is making a judgment about -- I
14 don't think this is making a judgment that there wasn't
15 anything there. I think what this is saying is we're -- we
16 don't have enough to -- there's not enough to here to file a
17 complaint on, but we're -- it's also more -- more than we
18 feel comfortable saying it's been settled by an exam or it's
19 already been looked at by an exam team and thus we are not
20 going to follow through on investigating the complaint. And
21 I think that's a very -- I don't think a lot of -- I don't
22 think a lot of complaints become open investigations, and I
23 think what Simona is saying is -- and I didn't write it, but
24 I read it -- read it then and I think now is that although
25 we're not sure what this will turn into, it's too -- there's

1 too much there not to open something and look.

2 Q But it does talk about voluntary production of
3 certain documents. Was there any discussion at all of
4 getting a formal order so you could get subpoena authority in
5 connection with the Madoff investigation?

6 A I think there was. I think in every investigation
7 there's a discussion about whether we need a formal order,
8 but at this point in time, I think there were sort of two
9 important answers here. And the first is that because Madoff
10 Investment Securities was a registered broker-dealer, any
11 written request from the enforcement staff or from anyone at
12 the SEC has the same force of law as a subpoena. You know,
13 registered -- registered entities have to respond to written
14 document requests and produce them. So a subpoena wouldn't
15 be any stronger with Mr. Madoff than an enforcement document
16 request is.

17 I think the second is to get a formal order at that
18 point in time with the Commission as it was constituted at
19 that point, the threshold question was what have you asked
20 for that you haven't gotten. And that's something that
21 you'll see on the short form, formal order memo for insider
22 trading. In particular, it means what document have you
23 asked that you have -- what is the staff's need for a formal
24 order here?

25 Q Okay.

1 A I would hope that if it were contrary to -- I would
2 hope that if it were really troubling, I would remember it.
3 I would hope.

4 Q Okay. You think that if OEA had provided an
5 analysis to Simona, that she wouldn't have made you aware of
6 it?

7 A No, I don't think so.

8 Q Do you remember any discussion about seeking
9 documents from DTC?

10 A I don't remember.

11 Q Do you know --

12 A I do know what DTC is.

13 Q Right. But do you know whether DTC -- documents
14 from DTC would be helpful in the context of conducting an
15 investigation of a Ponzi scheme?

16 A I think if there were not another way of verifying
17 that trades were made, DTC would be a way of verifying
18 whether or not trades were made.

19 Q Did you ever have conversations with Simona or
20 Doria or anyone else on the Madoff investigation about going
21 to DTC?

22 A I don't know. I don't remember.

23 Q Do you know if anyone in the Madoff investment
24 enforcement team ever went to DTC?

25 A I don't know.

1 Q What about CBOE? You know what CBOE is?

2 A I do know what CBOE is.

3 Q Would going to CBOE be something that would be
4 helpful in investigating a Ponzi scheme?

5 A It would depend on the type of scheme that was
6 alleged and where the options.

7 Q How about the one in Bernie Madoff?

8 A If we saw that trades were not being made on CBOE
9 but we believed them to being made in Europe, then CBOE would
10 not have been helpful.

11 Q So in connection with the Madoff investigation of
12 the allegations of a Ponzi scheme, CBOE would not have been
13 helpful. Is that what you're saying?

14 A I'm saying that that wouldn't have disproven --
15 that would have disproven the belief that -- that the options
16 were being traded in Europe.

17 Q Right. Okay. But I'm talking generally. Do you
18 think it would have been a good idea for the enforcement
19 folks combined with Lamore in the Madoff investigation to go
20 to CBOE in connection with the investigation?

21 MR. WEINBERG: You're asking does she believe that
22 now?

23 MR. KOTZ: Yeah.

24 THE WITNESS: In retrospect, I think the more
25 information would be the better. I'm sorry. Look, I --

1 MR. KOTZ: Either it's relevant or it's not.

2 THE WITNESS: Well, if I had gone to --

3 MR. WEINBERG: He's asking you about your point of
4 view right now.

5 THE WITNESS: Okay.

6 MR. WEINBERG: Do you think it would have been
7 relevant to go to CBOE?

8 THE WITNESS: It wouldn't have -- it wouldn't have
9 disproven the European issue so -- so I'm not sure. That was
10 my answer.

11 BY MR. KOTZ:

12 Q Do you know if there was an effort made by Simona
13 and Peter and the investigative enforcement team in the
14 Madoff investigation to go to CBOE?

15 A I don't know.

16 Q What about the NASD, would it be -- would there be
17 any benefit in connection with the Madoff investigation of a
18 Ponzi scheme to go to the NASD?

19 A Maybe, to see whether there had been any NASD
20 complaints.

21 Q Okay. Anything else? What about obtaining
22 documentation from options counterparties at NASD?

23 A Except that -- except that -- except that that
24 wouldn't disproven the Europe issue, but it would have shown
25 that -- it would have that -- it would have helped show that

1 there weren't -- that there were none in the U.S., but it
2 wouldn't have disproven the Europe issue.

3 Q So knowing what you know about the Madoff
4 investigation of allegations of a Ponzi scheme, do you think
5 it would have been helpful for the enforcement staff to go to
6 the NASD?

7 A Yeah, maybe.

8 Q Do you know if the enforcement team in the Madoff
9 investigation ever went to the NASD?

10 A I don't know.

11 BY MR. FIELDER:

12 Q Do you know if NASD would have had -- even if he
13 was -- even if he was trading options only in Europe, do you
14 know if NASD would have had any kind of records or reports
15 indicating that he held options contracts?

16 A I don't think they would, but I don't know that
17 for sure.

18 Q Okay.

19 MR. WEINBERG: I need to take a bathroom break
20 sometime soon.

21 MR. KOTZ: Okay.

22 MR. WEINBERG: Is this a good time or?

23 MR. KOTZ: Can we go a little more because we're
24 getting to kind of soon I think the end of a particular area.

25 MR. WEINBERG: Sure.

1 BY MR. KOTZ:

2 Q Do you think you would have been informed of
3 efforts to go to CBOE, NASD or -- and/or DTC?

4 A I think I would have reviewed any document requests
5 that went to anybody. I don't know whether a check of
6 NASD's -- the NASD's central, the CRD, a CRD check I don't
7 think I would have been informed of unless there were --

8 Q And you don't remember any document requests,
9 reviewing any document requests to the NASD, CBOE, or DTC?

10 A I do not.

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

13 BY MR. KOTZ:

14 Q Okay. I'm going to show you another document.
15 This is an e-mail. I'm going to mark it as Exhibit 43 from
16 Peter Lamore to Simona Suh, 5-16-2006, 3:14 p.m. If you see
17 at the bottom of the document, there's an e-mail from Simona
18 Sun to Stephen Johnson, Peter Lamore with a copy to you,
19 Tuesday, May 16th, 2006, 3:06 p.m. It says, "Susan called
20 back. They checked one of the dates Peter gave them and
21 found no reports of S&P 100 index option positions.
22 Electronic search in the other days will take about 24 hours.
23 They will let us know what they find out."

24 Do you have any recollection of this where Simona
25 and/or Peter went to the NASD and gave them certain dates and

1 the NASD found no reports of index option positions?

2 A The only thing that refreshes -- that it refreshes
3 in my mind was involving Stephen Johnson who was an
4 enforcement examiner who had also been a trader and I think
5 was involved in connections with -- he still had good
6 connections with getting documents from the NASD. So I -- we
7 obviously did. I did not remember this independently.

8 Q Okay. But you don't remember any situation where
9 you went to NASD, checked dates and they came back with no
10 reports of options positions?

11 A You know, I don't remember it now. I don't -- I
12 don't remember it.

13 Q Would that be something kind of suspicious in
14 connection with a Ponzi scheme investigation?

15 A It ruled out one place where options could be
16 traded, but it doesn't -- it doesn't show that they weren't
17 -- it doesn't show so that they weren't being traded in
18 Europe which I think is what we believed -- where we believed
19 the options were, including -- I mean, and even in these e-
20 mails, you see this part about if the London affiliate is
21 writing the contracts, it's not an NASD issue is how I read
22 it now. So I think this --

23 Q So it would or it wouldn't have been suspicious?

24 A I don't know.

25 Q Do you know -- it says -- you mentioned the London

1 affiliate. Do you know if there was ever effort to go to the
2 London affiliate to verify matters with the London affiliate?

3 A I think there was, but I don't -- I think there
4 was, but I don't remember clearly. I'm sorry.

5 BY MR. FIELDER:

6 Q If you had learned that the London affiliate was
7 not involved in this options trading, would this information
8 from Susan Tibbs have been important?

9 A If we had learned that there -- absolutely, if we
10 had learned that -- that options were not being traded in
11 Europe and then we had confirmed -- and we had previously
12 confirmed that they weren't being traded on the NASD, that
13 would absolutely have been suspicious.

14 Q Well, the issue is slightly different. I want to
15 make sure I don't want to -- I mean, a inarticulate question
16 confuse you. The issue, as I understand it, is that if he's
17 trading options not through -- not with the London affiliate
18 being the legal entity that holds the option contracts but
19 his U.S. entity being the entity that holds the option
20 contracts, that he's required to file a report with NASD
21 recording those option positions even if the counterparties
22 are in Europe. Is that your understanding?

23 A I'm not sure anymore. My memory of the securities
24 laws had faded in a year at home -- in a year at home. I
25 think that I believed -- I think that I believed -- I think

1 still now that if Mr. Madoff were trading options through his
2 London -- from his London affiliate with European banks it
3 would not have to be required -- it would not have to be
4 reported to the NASD.

5 Q Correct. Through the London affiliate, right?

6 A Right.

7 Q If you had learned that he wasn't doing that
8 through the London affiliate and claimed to be doing it or,
9 you know, through his U.S. entity but that the NASD had no
10 record of him holding those contracts, would that have been a
11 concern?

12 A I think so.

13 Q Okay. Well, I mean, would that have indicated that
14 he might not have any options contracts even with European
15 counterparties?

16 A Well, it could have indicated that he -- it could
17 indicate that he didn't have the options contracts or that he
18 was not complying with NASD rules which would have been his
19 own problem and would have been a separate SEC issue.

20 Q Is that something you would have followed up on
21 that?

22 A I think so.

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

25 BY MR. KOTZ:

1 Q Okay. Let me show you another document. I'm going
2 to mark this as Exhibit 44. This is a letter dated May 16th,
3 2005 from Erin Ashley Mansfield, director of compliance of
4 Barclay's Capital to John Nee, assistant regional director,
5 SEC. First of all, have you ever seen this document before?

6 A I do not remember seeing this document.

7 Q Were you aware that in the OC examination, the OC
8 examiners went to Barclay's Capital and asked about records
9 of trading and the response was -- for a particular period of
10 time, March 1, 2005 through March 31, 2005 based on
11 information they got from Bernie Madoff and found according
12 to Barclay's, there was no relevant transaction activity
13 during the period of time?

14 A I don't remember knowing that.

15 Q If you had been aware of that fact, would that have
16 been cause for concern, cause for suspicion in the context of
17 doing an investigation of a Ponzi scheme?

18 A I think so, although depending what -- what
19 happened. There's a sentence in this that says, "It should
20 noted that a prime brokerage and trading relationship with
21 the Madoff affiliate exists with our U.K. affiliate."

22 I think I probably would have wanted to know
23 whether the trades were happening through the Madoff
24 affiliate in London and the Barclay's affiliate entity in
25 London.

1 Q Right. So, I mean, it wouldn't have been evidence
2 that Madoff was running a Ponzi scheme, but it certainly
3 would have been enough information that it'd cause some
4 suspicion that would lead appropriate follow-up, would you
5 say?

6 A I think so.

7 (A brief recess was taken.)

8 BY MR. KOTZ:

9 Q So at the end of the day, you don't recall whether,
10 in fact, the enforcement staff in the Madoff investigation
11 got any documents or records from NASD, CBOE or DTC?

12 A I'm sorry. I don't remember.

13 Q Would it concern you at all if you learned that
14 they didn't in the end get any documents from those three
15 entities in the context of doing a Ponzi scheme
16 investigation?

17 A DTC probably not and CBOE, I think because --
18 because of the belief that the options were in Europe
19 probably not. The NASD after that e-mail exchange, I would
20 have -- I would have thought there would be some sort of
21 something from the NASD after I saw that e-mail exchange.

22 Q Okay. How many people did -- were there testimony
23 taken of in the Madoff investigation?

24 A I believe we took the testimony of Jeffrey Tucker
25 from Fairfield, although that may have been an interview. I

1 think it was testimony. I remember it being in a testimony
2 room, Frank DiPascali and Mr. Madoff.

3 Q Was there any suggestion at any point in time to
4 take additional people?

5 A I think there may have -- I don't know. I think
6 that, you know, we probably tossed out a couple of ideas
7 about who to talk to. I don't remember specific people, and
8 I don't remember what we decided.

9 Q Was there any point in time where somebody was not
10 comfortable with only taking those three or wanted to take
11 others and was it --

12 A That's not something I remember.

13 Q And you sat in on all three testimonies?

14 A Yeah, I think so. I have an absolutely clear
15 recollection of Mr. Madoff and of Mr. Tucker and I -- yeah,
16 and Mr. DiPascali, too.

17 Q Now, did you -- were you like the lead questioner
18 in these testimonies or was that Simona?

19 A No, I wasn't. It was Simona. Simona, and what I
20 tried to do was to wait till she finished the -- tried to
21 wait till she got to the end of a section and then would ask
22 follow-up questions. We also -- Mr. Lamore also asked some
23 questions in some of the testimonies.

24 Q Okay. I'm going to show you another document.
25 Were you involved in the preparation for Madoff's testimony?

1 A Yes.

2 Q Okay. So did you review an outline or what was your
3 role?

4 A Well, I remember we talked about -- I remember
5 Simona and I talked about what we wanted to ask. I believe
6 she -- I would be very surprised if she didn't -- I believe
7 she showed me an outline ahead of time that I looked at. I
8 think I saw one.

9 Q Do you know if Lamore was involved at all in prep
10 for Madoff's testimony?

11 A I believe that he was. I believe that he and
12 Simona were working on it.

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

15 BY MR. KOTZ:

16 Q Okay. I'm going to show you another document.
17 We're going to mark it as Exhibit 45. This is an e-mail from
18 Peter Lamore to Simona Suh, 5-18-2006, 2:17 p.m. You see
19 below in this document Peter Lamore has an e-mail to Simona
20 Suh, Thursday, May 18th, 2006, 10:26 a.m., "Some of my
21 initial thoughts that I believe should be covered in Bernie's
22 testimony."

23 Then if you see on the next page, he says under
24 audit, "Are you related to anyone associated with the firm
25 that conducted your annual audits over the last ten years?"

1 A Yes.

2 Q Were you aware that Peter Lamore had suggested that
3 question but Simona Suh chose not to put it in her outline
4 and not ask it?

5 A No, I didn't know that. I don't think -- I have no
6 memory of that.

7 Q Do you know if there were any questions to Madoff
8 in the testimony about the audit issue, the auditor?

9 A I don't -- I don't remember. You know, but I think
10 Peter was -- Peter was -- asked, I think, some questions. I
11 thought he asked some questions at the testimony. I don't
12 know if he asked that question.

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

15 BY MR. KOTZ:

16 Q Now, let me show you some excerpts of the
17 testimony. Okay. I'm going to mark this document as Exhibit
18 46. Testimony of Bernie Madoff --

19 MR. WEINBERG: 36?

20 MR. KOTZ: 46.

21 BY MR. KOTZ:

22 Q -- Friday, May 19th, 2006. This is pages 76
23 through 79 of the testimony. And in this, there's a question
24 by Simona about the returns. "You mentioned the returns,
25 that they're not high enough to justify setting up a hedge

1 fund. They're also remarkably consistent. They're fairly --
2 they have low volatility. There are fairly few periods when
3 they're down. I'm sure you're aware of people wondering how
4 this can happen. What's your answer to that?"

5 And then Bernie Madoff gives an answer that goes
6 until the very top of page 79. If you could read that
7 answer, please.

8 (Witness examines the document.)

9 THE WITNESS: Okay.

10 MR. WEINBERG: One second. I'm sorry.

11 THE WITNESS: I'm sorry.

12 MR. WEINBERG: To the top of page 79?

13 MR. KOTZ: Yes, like one word on 79.

14 BY MR. KOTZ:

15 Q Let me ask you: Do you think that Bernie Madoff's
16 answer in his testimony in the Madoff investigation to the
17 question of -- about his remarkably consistent returns was a
18 satisfactory answer?

19 A I did.

20 Q Okay. So you felt like he answered the question
21 that was asked?

22 A I did.

23 Q Okay. And could you kind of tell me what his
24 answer was here?

25 A Well, as I -- as I read it and as I think I

1 under -- to me, it sounded like by not -- by not reaching for
2 astronomically high returns, he was reducing -- part of it,
3 he was reducing his risk of -- of any particularly low down
4 months and also that the variations in inter-day trading were
5 things that he was able to take advantage of in his market --
6 in his time when he put things on.

7 Q Did you understand that during the time period
8 where Bernie Madoff was achieving these consistent returns
9 the market was down during some of that time period
10 significantly, the overall stock market?

11 A In some months or some days.

12 Q Or years?

13 A An overall down market in the S&P 500 prior to 2001
14 or 2002.

15 Q So you understood that the time period you were
16 looking at for Bernie Madoff was from 2001?

17 A No, I'm not. I'm trying to think, and I'm trying
18 to remember -- and I'm trying to remember what I understood
19 at the time. Part of what I took his point to be was that it
20 was possible to beat the market which is something that was
21 happening -- that some funds were quite good at and some
22 funds were not as good at it, that there were definitely
23 funds that were able to have consistent -- be up when the
24 market was down.

25 Q Were you aware of any other funds that were able to

1 achieve the consistent returns through up and down markets
2 that Bernie Madoff was over that time period?

3 A I don't know. I know that over -- over each sort
4 of year to year in the later years, there were a lot of funds
5 that did better.

6 Q But I'm talking over the entire time period that
7 Bernie Madoff was achieving his returns. Were you aware of
8 any other funds that were achieving such consistent returns
9 like Madoff?

10 A I don't know, although I do remember -- I do
11 remember that one of the points in Mr. Markopolos' submission
12 was -- was that the S&P 500 was a whole had higher annualized
13 returns than Mr. Madoff's fund.

14 Q Okay. But again, I'm talking about the consistency
15 of the returns. Were you aware of any other fund that was
16 able to achieve as consistent returns over up and down
17 markets over the time period that Bernie Madoff was?

18 A No.

19 Q Okay. Do you do any investing in the stock market
20 yourself?

21 A I don't own any individual stocks.

22 Q Do you own any funds?

23 A I was going to say because I -- my husband can't
24 own any individual stocks. The SEC limited the in and out of
25 funds. I think we just sort of put money into S&P 500 funds,

1 pretty much. We're very passive investors who just put the
2 money in funds and leave them there.

3 Q But if you were to be aware of a fund over a very
4 long time period of many years that always achieved
5 consistent returns, maybe not tremendously high but no matter
6 what the market was, down, up, crashing, not crashing,
7 wouldn't that have been something pretty amazing?

8 A Wasn't this the first year that Warren Buffet's
9 fund ran at a loss in the last however many years that Warren
10 Buffet's investments ran at a loss? I mean, I think that --
11 I think that there -- I think -- I think that the fact that
12 he was doing well wasn't in and of itself impossible to
13 believe, at least for me. And in retrospect, that is clearly
14 wrong.

15 Q Now, you said when you said that you found Bernie
16 Madoff's answer in the testimony satisfactory because he
17 wasn't achieving the -- the highest returns, he was
18 sacrificing the highest returns. But did Madoff explain in
19 the testimony or otherwise -- taking aside the issue of
20 achieving the highest returns -- how he was able to do it?
21 How was he able to be so consistent? Does he explain that in
22 this testimony in the Madoff investigation?

23 A I mean, as I read it, he's saying that it -- the
24 difference between inter-day fluctuations and the end-of-the-
25 day price is different from sort of if you compared what the

1 market was over the course of a month, you'd miss the inter-
2 day trading.

3 Q Did you ever give any thought that if it was kind
4 of so simple like this other people would have done it? Do
5 you remember that in the articles and in Markopolos'
6 complaint, he talked about the fact that others couldn't
7 replicate Bernie Madoff's strategy and returns?

8 A I do remember that the articles talked about that
9 and that Mr. Markopolos talked about it.

10 Q Did you ever think about that issue that the way
11 Bernie Madoff explained it didn't seem to be that complicated
12 and in that case, why was it that other people couldn't --
13 you know, everybody couldn't get consistent returns over
14 years and years and years in down and up markets?

15 A At the time, I found Mr. Madoff's testimony to be
16 credible. In retrospect, it's clearly not. We thought about
17 consistency. We also thought about the fact that the returns
18 weren't high. I'm sorry. That's really the best I can --

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

21 BY MR. KOTZ:

22 Q All right. Let me show you the next document.
23 Okay. I'm going to show you the next document and mark it as
24 Exhibit 47. This is another excerpt from Bernie Madoff's
25 testimony, Friday, May 19th, 2006, and these are pages 85

1 through 86. And in these two pages, there are questions
2 about the custody of the assets. See, there's a question,
3 "Who has the custody of assets?"

4 "We do."

5 "What is the process for when customers want to
6 either add assets?"

7 "I'm the only one that can do that," he says.

8 "Who specifically processes the cash?"

9 "Frank DiPascali."

10 Were there any questions in the testimony about
11 where his accounts were?

12 A I don't know.

13 Q Was there any concern or questions about the lack
14 of verification given that Madoff is saying that he has the
15 custody of the assets?

16 A I don't -- I don't know. I see that he is saying
17 that things could be wired from his firm.

18 Q But, I mean, we don't see it in the transcript so,
19 was there --

20 A If it --

21 Q -- I mean, is there anything else was asked that
22 you recall about where his accounts were to follow up on that
23 issue?

24 MR. WEINBERG: Wait a second. You're asking her
25 from her memory of this deposition a couple years ago that

1 you have the actual transcript?

2 BY MR. KOTZ:

3 Q Or otherwise, whether in the testimony. It wasn't a
4 deposition, I guess. Testimony or otherwise, were there any
5 efforts to follow up on where the accounts were?

6 A If it's not in the transcript, we certainly didn't
7 ask it. What I see in the transcript is -- is a question
8 about the wires being processed out of his firm. I don't
9 remember anything more than that.

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

12 BY MR. KOTZ:

13 Q Okay. All right. Let me show you the next
14 document. Let me show you the next document and mark it as
15 Exhibit 48. This is another excerpt from Bernie Madoff's
16 testimony, Friday, May 19th, 2006. This is pages 87, 88 and
17 89. And you see in here the middle of page 87 around line
18 12, "Do any other transactions besides institutional trading
19 go through this account?"

20 "No."

21 "The Account Depository Trust Clearing Corporation,
22 what is the function of this account?"

23 "That's the general clearance account for the firm
24 that handles all the settlements and transactions for the
25 firm. So this account handles the clearings of all, all for

1 the firm."

2 And then the question is on the bottom of page 87,
3 line 22, Bernie Madoff's testimony, "Is there any segregation
4 of that account in sub-accounts or some other segregation
5 where you separate the institutional trading transactions
6 from other firm transactions?"

7 And Bernie Madoff answers in his testimony given on
8 May 19th, 2006, "Yes, the institutional accounts are separate
9 from the firm's accounts."

10 So given that, that Bernie Madoff seems to
11 acknowledge that there are DTC accounts and institutional
12 accounts that are separate from the broker-dealer side, now
13 looking at this, do you think that if you found out that the
14 enforcement staff never got any records from DTC that would
15 have been a mistake in the context of a Ponzi scheme
16 investigation?

17 A Well, I think -- I think it depends. I think it
18 depends whether -- and I cannot tell you whether we did this
19 because I don't remember -- whether we asked any of the
20 examiners whether they had seen the records of this DTC
21 account. If -- if the examiners had been -- had seen records
22 of the DTC account, then I don't think -- I don't think it
23 would have been a mistake not to request them again, and I
24 don't know the answer to that.

25 Q Let me ask you.

1 A Okay.

2 Q Assuming that as of May 19th, 2006, after Bernie
3 Madoff answered this question, the examiners, the
4 investigators, no one on the -- in the SEC who worked on the
5 examination or investigation of Bernie Madoff had any -- had
6 seen any records from DTC, would it have been appropriate to
7 close the investigation of a Ponzi scheme against Bernie
8 Madoff without going to DTC and getting records?

9 A I think we should have done that.

10 Q Are you aware that after Bernie Madoff confessed to
11 running a Ponzi scheme in December of 2008, New York Staff Attorney

12 Personal Privacy
13 went into Bernie Madoff's and immediately requested DTC
14 records. There was no DTC records.

15 MR. WEINBERG: I'm sorry. When was this? I --

16 MR. KOTZ: December 2008.

17 BY MR. KOTZ:

18 Q And in, you know, a very, very short time period,
19 confirmed what Madoff had said which was that he had run a
20 Ponzi scheme.

21 A I was not aware of that.

22 Q But given that, do you acknowledge that had the
23 enforcement staff, subsequent to Bernie Madoff's testimony on
24 May 19th where he talks about DTC, gone to DTC and requested
25 records, found what New York Staff Attorney found in December of 2008,

1 they would have uncovered the Ponzi scheme?

2 A That clearly seems to be -- that clearly seems to
3 be true.

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

6 BY MR. KOTZ:

7 Q Okay. Let me show you the next document. Okay.
8 I'm going to show you Exhibit 49 which is another excerpt
9 from Bernie Madoff's testimony, Friday, May 19th, 2006, and
10 these are pages 103 to 105. If you see on page 103 of Bernie
11 Madoff's testimony, line 9, there's a question, "Do you
12 recall telling Peter that as of January 1, 2004 you no longer
13 incorporated options into the strategy for the institutional
14 trading."

15 Bernie Madoff gives an answer, "I said they're not
16 part of the model. The options were not deemed to be part of
17 the model. I did not say -- my recollection certainly is not
18 that I said that the accounts don't use options anymore to
19 trade. I said the options -- that the options were taken out
20 of the model and they're not part of the model any longer."

21 Did you find that to be a satisfactory answer from
22 Bernie Madoff?

23 A Well, I think, you know, we followed up with more
24 questions so --

25 Q Okay. But looking at the whole --

1 believe so but the account may have been open with a foreign
2 affiliate, he said they do not have access to that data from
3 here and we would have to approach the foreign affiliate
4 directly." And then she says, "Do you think this is
5 something that warrants a consultation with OIA? Thanks."

6 You respond to Jill Slansky that you've run into
7 this issue with ImClone or ImClone --

8 A ImClone.

9 Q ImClone, thanks. And then Jill Slansky responds to
10 you, June 20th, 2006, 10:20 a.m., "Not this exact issue, no.
11 I would call OIA. It seems to me if it's a UBS affiliate,
12 they're required to produce it."

13 And then you respond to Jill Slansky, Tuesday, June
14 20th, 2006, 10:21 a.m., "I hate OIA. They are probably the
15 slowest part of our bureaucracy and that is saying a lot."

16 And Jill Slansky responds to you on June 20th,
17 2006, 10:22 a.m., "Totally agree. That is why I think you
18 should go back to UBS."

19 Does this refresh your recollection about
20 discussions about going to OIA?

21 A It doesn't surprise me. OIA, I had a -- I found
22 that OIA was very, very slow and that if we could find ways
23 to -- if we could find ways to get documents without
24 involving OIA, we were better off.

25 Q Okay.

1 A That's absolutely true.

2 Q Okay. And you don't know if you did find better
3 ways in the end other than going through OIA?

4 A Each e-mail you're giving me is refreshing things
5 that I didn't remember, so I'm not -- so I don't remember.

6 Q Is it fair to say that overall in the conduct of
7 the enforcement investigation, you had some frustrations in
8 terms of getting support from other offices? You go to OEA -
9 - you first -- Doria goes to OC and says, you know, can you
10 give us somebody in addition to Peter. And he says Peter's
11 the best we've got. Then you go to OEA, and several months
12 go by. You have to remind them that they hadn't provided
13 anything. You never get any analysis from them. You're
14 thinking about going to OIA, but then you realize they're so
15 slow, it's probably not worth it. I mean, was there some
16 frustration from the enforcement side in terms of support in
17 this Madoff investigation?

18 A Not solely Madoff. It was -- it was -- yes, we
19 absolutely --

20 Q I'm only interested in Madoff.

21 A I'm sorry. Yes, it was overall a feeling that it -
22 - that it was difficult to get help from other --

23 Q And that was something that was seen in the Madoff
24 investigation?

25 A You saw it yourself with the -- with how long it

1 took OEA to respond to a request, so yes.

2 (SEC Exhibit No. 53 was marked
3 for identification.)

4 BY MR. KOTZ:

5 Q The next document I'm going to show you we're going
6 to mark as Exhibit 53. This is a telephone log of Simona
7 Suh. It says on the top, "MNY-07563, certain hedge fund
8 trading practices, miscellaneous calls starting 1-12-06
9 notes."

10 And in looking through this document, I hope it
11 might refresh your recollections about some communications
12 that Simona had. If you look at page 4, there's an entry on
13 page 4 under 6-22-06, "Message for Personal Privacy of UBS.
14 Asked to call back re potential issues with a document
15 request not yet due. And 6-22-06, call from Personal Privacy.
16 Said we should deal with Personal Privacy. Personal Privacy
17 knows that there is someone at UBS in Stamford such as ours.
18 He'll find out who that person is. 6-26-06, call for Personal Privacy
19 Personal Privacy at UBS to reach out to people in Stamford. Has some
20 data on a Madoff DTC account. Will provide that.

21 6-27-06, call with Personal Privacy from Greenwich
22 Capital RBS and Meaghan Cheung. Said they have no records
23 for our request. She will find out what can be done to get
24 those records. And 6-29-06, call from this person at RBS GC.
25 They're not comfortable coordinating production on behalf of

1 the Zurich branch. 6-30-06, message for [Personal Privacy] of
2 RBS. Asked to call back about our document request.

3 6-30-06, his colleague David Meisels will call me.
4 7-5-06, normal procedure for obtaining records from U.K.
5 branch. They ask customer for consent, then the overseas
6 provides documents directly to the requesting agency. I will
7 e-mail him our request and get back to him whether we want to
8 use this procedure."

9 Then if you look on page 6, "7-13-06, [Personal Privacy]
10 from UBS, told him what we received from Stamford is not the
11 data we were looking for. David Meisels of RBS, 7-13-06, he
12 will send me draft of their letter to Bernie asking for the
13 permission to send us the documents from the Edinburgh
14 branch. I told him at that point we might call Bernie as a
15 courtesy to let him know we'll be getting the request. 7-14-
16 06, [Personal Privacy] of UBS." And it says, "SKS, inform [Personal Privacy] of
17 these circumstances. SEC usually takes the position that
18 foreign and domestic affiliates under their common control,
19 but for the purpose of this request, we can leave things
20 where they are for now. No need to take any further steps."

21 And finally, if you look on page 7, "7-27-06,
22 message for David Meisels of RBS thank him for sending us
23 draft of letter to Madoff, ask him for release of
24 information. Told him we decided not to pursue the request
25 at the moment and asked him not to send the letter to Madoff

1 unless he hears from us again."

2 My first question for you is: Do you understand or
3 do you recall what Simona was trying to achieve, what -- what
4 was she trying to do with all these calls to RBS and UBS?

5 A I believe it was to get options. I believe it was
6 to get options counterparty information.

7 Q Okay.

8 A I remember -- I remember trying to
9 because she had been at the SEC before.

Personal Privacy

10 Q And do you remember a suggestion made that you
11 would try to seek these records but that you would call
12 Bernie Madoff as a courtesy to ask for his permission to get
13 the records first? Do you recall making -- that suggestion
14 being made?

15 A I don't remember that.

16 Q Do you remember a decision that was made not to
17 pursue that request, a decision that was made by you?

18 A By me alone, I don't think I would have made -- I
19 don't know. I don't know.

20 Q Do you think that if you had proceeded with that
21 request and sought consent from Bernie Madoff for those
22 records, if he had given the consent and you'd gotten the
23 records, you would have uncovered the Ponzi scheme?

24 A I don't know.

25 Q Now, if Bernie Madoff had not consented to have the

1 counterparties release the information, would you at that
2 point have gone to the Commission and got a formal order?

3 A I think so. I think so. I'm a little confused,
4 though, about there being no information. Is there at least
5 one of --

6 Q Do you know of any documents that were in the end
7 received --

8 MR. WEINBERG: Hold on. I think she wasn't
9 finished.

10 MR. KOTZ: I'm sorry.

11 THE WITNESS: I just need to look at this more
12 clearly.

13 MR. KOTZ: Please.

14 THE WITNESS: Because I don't remember some of
15 this.

16 (Witness examines the document.)

17 Okay. I'm not sure what on page 6 of this
18 document, the phone call from Personal Privacy from UBS, I'm not
19 sure what data we got from Stamford where Simona says it's
20 not the data we're looking for from the Zurich branch.

21 BY MR. KOTZ:

22 Q Okay. Now, if you had followed up and sought
23 Madoff's consent for the counterparties to send trading
24 records to you, either with his consent or with a subpoena
25 pursuant to a formal order if he didn't give consent, there

1 would have been no trading records, correct?

2 A That's what I have come to believe from news
3 reports now.

4 Q Okay. So if you had done that and there had been
5 no trading records, wouldn't you have uncovered the Ponzi
6 scheme?

7 A I think we would have.

8 Q Now, just to be fair to you, if you had made this
9 decision not to pursue getting Madoff's consent for the
10 counterparties to send trading records to you, would you have
11 made that decision without checking with Doria?

12 A I don't think so.

13 Q And is it possible that Simona wouldn't know that
14 you had checked with Doria to make that decision? If she had
15 heard it from you, she might have thought it only came from
16 you?

17 A Well, I don't know. I think that's possible, but I
18 also think that -- I also think that it's not -- that it
19 would have -- I would have -- if Simona had wanted to do it,
20 I would never have said not to if she really wanted to. I
21 think we all -- we talked about -- we talked about resources,
22 and we talked about things jointly. I don't think I made
23 decisions without input from other people, and I don't think
24 I made big picture decisions without involving other people.

25 Q You think it's possible there might have been some

1 miscommunication where Simona didn't kind of present to you
2 that she wanted to do it and, you know, in a clear enough way
3 and so perhaps that was why there could be some
4 misunderstanding as to her position on this issue?

5 A That's entirely -- that's possible. I -- I, as I
6 am sitting here right now, do not remember being -- I don't
7 believe that I unilaterally said stop it, we're done, that's
8 enough. Things were much more collaborative than that. I
9 actually don't remember -- I remembered that we had taken
10 some steps to try to get counterparty information. I didn't
11 remember what had happened with it.

12 Q All right. You don't remember -- you, as you sit
13 here today, don't believe you said stop, that's enough, we're
14 done. But is it possible that you did say we -- we choose
15 not to pursue the request to get Madoff consent for the
16 counterparties to send trading records in connection with
17 UBS?

18 A I think it's possible. That's what Simona has
19 written here. I don't remember saying -- I don't remember
20 saying that, and I would believe it was part of a bigger
21 discussion than me just saying don't do it.

22 Q Okay. Let's go to the next issue.

23 A Can I just say something about how I --

24 Q Please.

25 A Simona and I -- Simona and I and Doria talked --

1 talked through a lot of decisions, and I don't think that
2 there was ever a point when any one of us would have really
3 pushed the other to agree to something that that she didn't
4 want. And I don't think I would have just shut something
5 down that Simona wanted to do.

6 Q Looking at it now, clearly that was a mistake not
7 to push further on the issue of getting the counterparties to
8 send trading records to you?

9 A Look, when I try to go to sleep at night, I think
10 about the things I wish we had done differently, very, very
11 much. I think -- I think in a lot of ways this is just
12 tragic and upsetting, and I wish very much we had made
13 different decisions at certain points. I don't know whether
14 some of them were reasonable at the time or not reasonable.
15 I don't know whether some of them were reasonable at the time
16 or not reasonable.

17 Q Well, I mean, is it somewhat difficult to see that,
18 you know, you were so close. You were on to the issue. You
19 were going along a path where requests were made, and then
20 the last part of that was to get Madoff's consent for the
21 counterparties to send the trading records and the whole
22 thing would have unraveled.

23 MR. WEINBERG: You're asking whether looking back
24 on it now it's --

25 MR. KOTZ: Yeah, I mean, you know, it's not just a

1 question of we didn't see it, we didn't see the issue, we
2 didn't take Markopolos' complaint seriously. It's not only a
3 matter of that. It's a matter of you were going in the right
4 direction. You sought the information. There was a
5 roadblock. There was a decision made not to pursue it. If
6 that decision had been different, the Ponzi scheme would have
7 been uncovered.

8 THE WITNESS: Everything we did -- every decision
9 we made on every investigation in some way came back to
10 resources and how the -- expending resources, how far before
11 it became unreasonable to keep going. And that's a judgment
12 call. It's one that was influenced by how few resources we
13 had at that time. In retrospect, I'm looking at this now
14 wishing we had spent more -- we had kept going. At the time,
15 we were trying to balance so many things, and so little
16 staffing. I don't -- I don't know how it happened that we
17 got -- that we didn't go -- we didn't keep going there. And
18 now when we look at it in hindsight, God, of course, I wish
19 we had uncovered this. I wish desperately that we had
20 uncovered this.

21 (SEC Exhibit No. 54 was marked
22 for identification.)

23 BY MR. KOTZ:

24 Q Okay. Let me show you another document. Mark it
25 as Exhibit 54. E-mail from Simona to you, Peter Lamore,

1 Stephen Johnson, 6-7-2006, 7:12 p.m. In this document, it's
2 an e-mail from Simona to you and others, 6-7-2006. It says,
3 "On Monday, Madoff produced the attached explanation for the
4 trades that Peter had pointed out during his review of the
5 account statements as well as the attached list of previously
6 undisclosed accounts that Madoff trades pursuant to the
7 split-strike conversion strategy. In all, the list includes
8 86 accounts with total value as of 4-30-06 of approximately
9 336.5 million."

10 Do you remember a point in time finding out that
11 there were 86 accounts with a total value of \$336.5 million
12 that were undisclosed by Madoff?

13 A I remember finding out that Mr. Madoff had some
14 accounts for individual investors, not institutional
15 investors and that he had not given them to -- that he had
16 not given them to the exam staff and then I think -- I think
17 to us, also, and that we followed up with him about that.
18 And then we got them.

19 Q All right. But then the fact that there seems to
20 be several occasions where you find things out that Madoff
21 didn't say before, weren't there some serious questions about
22 Madoff's credibility, both in the examination and the
23 investigation?

24 A There are disputes about interpretations of
25 document requests in just about every investigation, in -- in

1 investigations that with, you know, remarkably reputable law
2 firms where different requests one from the U.S. Attorneys
3 Office and one from the SEC that are mirror images get
4 different productions based on the law firm involvement. I
5 wish it were so unusual that it immediately set off a red
6 flag that it means that this is -- this is -- everything else
7 is going to be untrue.

8 Q But wasn't it -- wasn't it worse with Madoff than
9 in the regular case?

10 A I did not think it was worse at the time, and it
11 happened -- it happened more than you would have liked it to
12 happen.

13 Q And you would agree that the issue of Madoff's
14 honesty was relevant in terms of the investigation of him
15 running a Ponzi scheme, right?

16 A Yes.

17 (SEC Exhibit No. 55 was marked
18 for identification.)

19 BY MR. KOTZ:

20 Q Okay. Let me show you the next document. Okay.
21 Next document we're going to mark as Exhibit 55. This is an
22 e-mail from Simona Suh to you, copy to Peter Lamore, Stephen
23 Johnson, Thursday, June 8th, 2006, 3:45 p.m. This is
24 following up on the previous e-mail where Simona says, "I
25 called Bernie to tell him in our view the accounts produced

1 on Monday where covered by our previous document request
2 because we understood them to be traded pursuant to the same
3 strategy as the institutional accounts. His response was
4 only five of those 86 accounts are, in fact, traded pursuant
5 to the same strategy."

6 Now, didn't Madoff lead you to believe in the
7 testimony that all 86 had utilized this split-strike
8 conversion strategy and now he's saying only five did?

9 A I don't know. I see that Simona is saying that it
10 seems to be correct.

11 Q Right. But is it the same thing as what he said in
12 the testimony?

13 A In -- I don't know. I don't know that I saw the
14 testimony about those -- about -- was that in the previous
15 exhibit?

16 Q If you look at the previous exhibit, it says, "In
17 all -- on Monday, Madoff produced the" -- it wasn't in the
18 testimony. "On Monday, Madoff produced the attached
19 explanation for the trades that Peter had pointed out during
20 his review of the account statements as well as the attached
21 list of previously undisclosed accounts that Madoff trades
22 pursuant to the split-strike conversion strategy."

23 So on Monday he said that they were undisclosed
24 accounts that the he trades pursuant to his split-strike
25 conversation strategy, and then several days later when he

1 was called about, he says only five of the 86 accounts were,
2 in fact, traded pursuant to the split-strike conversion
3 strategy. Well, now, if you see on this same document, the
4 e-mail on June 8th, 2006, under 2, it says, "I told Bernie
5 that for the other 81 accounts the testimony did create the
6 impression that they were traded pursuant to the same
7 strategy."

8 This is another case of Bernie Madoff saying one
9 thing and then you finding out it wasn't true, right?

10 A It has turned out that none of it was true.

11 Q All right. But this is -- what you found --

12 A Yeah, no. I'm --

13 Q -- out at the time that it wasn't true, right?

14 This is another case of Bernie Madoff saying something and
15 then you finding out in the Madoff investigation that it
16 wasn't true, right?

17 A My impression of it at the -- my impression of it
18 at the time was that this -- that he was playing games --
19 that he was playing with -- with semantics and with
20 responses.

21 Q You'll notice that at the end she says, "His other
22 comments during this conversation, including a reference to
23 his long history of cooperating with the Commission and his
24 having been very forthright with us so far."

25 A I do notice that.

1 Q I mean, wasn't that a joke, Bernie Madoff having
2 been forthright with you?

3 A In retrospect --

4 MR. WEINBERG: She interpreted at the time as a
5 joke, is that what you're --

6 BY MR. KOTZ:

7 Q I mean, didn't you -- I mean, even Simona seems to
8 be -- she says, "But in fairness, he was quite friendly and
9 polite."

10 I mean, doesn't Simona seem to indicate -- weren't
11 you aware at the time that he hadn't been forthright?

12 A We were definitely having -- we were definitely
13 aware that -- that he was -- that we had to push for
14 responses and that he was playing semantics games, we felt.
15 That was what we felt at the time.

16 Q Okay. Well, I think Peter and Simona felt that it
17 was much more than that, that he lied on numerous occasions,
18 both in the exam and in the investigation. But did you not
19 feel that way?

20 A I found him to be difficult. I -- I did not have
21 the impression that Simona felt that he was actively lying so
22 much as playing games and being deliberately difficult.

23 Q What about Peter, did you have the impression that
24 Peter felt that Bernie Madoff was actively lying, not just
25 playing games?

1 A That's really hard because I also -- I talked to
2 Peter -- we talked to Peter about -- Peter did not have --
3 Peter did not convey to me an overall negative impression of
4 Bernie Madoff in the time that he spent -- in the time that
5 he spent doing the exam and then after the exam, you know.
6 So in some ways, I think I had -- I had the perception that
7 Peter kind of found him annoying sometimes but also sort of
8 funny sometimes in the way that he was very controlling.
9 That was my -- that was my sense of Peter's take on Bernie
10 Madoff.

11 Q Okay. A certain point in time in the Madoff
12 investigation, there was a focus on getting Madoff to
13 register as an investment adviser; is that right?

14 A Yes.

15 Q What was the reason that that became the focus of
16 the investigation?

17 A Because it seemed obvious to us that he needed to
18 register as an investment adviser, that what he was providing
19 was investment advisory services, that he had -- he had
20 discretion, he had more -- he had more clients. He had over
21 whatever the requisite number of clients was and that he was
22 not just a broker executing trades according to an agreed
23 upon strategy but actually had discretion.

24 Q And was that focus made after it was determined
25 that the other issues that you were looking at had been

1 resolved?

2 A Well, I think pretty early on it seemed clear that
3 -- that at a -- that at a minimum there were disclosure and
4 registration problems, that the Fairfield Greenwich
5 disclosures about Mr. Madoff were not good and that Mr.
6 Madoff and his -- and/or his firm almost certainly needed to
7 register as an investment adviser because of the services
8 provided. I don't know that that was -- I'm not sure exactly
9 the point at which that happened. I think that -- I think
10 that it was clear early on that was at a minimum something
11 that we needed.

12 Q Do you know who among the team, Doria, you, Simona,
13 Peter, kind of changed the focus somewhat to whether Bernie
14 Madoff should register as an investment adviser? Who made
15 that decision?

16 A I think that was probably collaborative as a result
17 of all the information that we all had encountered.

18 Q Would you say that overall conducting the Madoff
19 investigation was frustrating?

20 MR. WEINBERG: Again, looking back on it now?

21 BY MR. KOTZ:

22 Q Yeah, well, at the time.

23 A At the time, it was -- it was a difficult
24 investigation, and now in retrospect, it was -- I'm
25 incredibly frustrated by --

1 Q But I'm focused on at the time.

2 A Yes, at the time it was a difficult investigation.

3 Q So, I mean, is it fair to say that you were
4 involved in a very frustrating investigation, you had a lot
5 of other things going on, it was a complicated matter dealing
6 with a difficult subject and the issue of registering comes
7 up and focusing on the registration, getting Bernie Madoff to
8 register, would be a way to close the investigation?

9 A No, I don't think -- I don't think it would be a
10 way to close the investigation. I think it would be -- I
11 think it was a good result. I thought it would -- I think
12 it's also a way to expose him to more -- to exams from the
13 other set of examiners.

14 Q More exams?

15 A But -- at the time that seemed like a beneficial
16 result. I think -- I think it seemed very obvious that he
17 needed at a minimum to register.

18 BY MR. FIELDER:

19 Q And I agree with that. I mean, you yourself
20 reference it pretty early on and, you know, it was obvious
21 that he was running or claimed to be running what would
22 amount to hedge funds, right? And I think the e-mails
23 certainly by late December, January, I think that a lot of
24 them seem -- would indicate that. But I got to tell you,
25 looking at the e-mails from that point forward, it appears

1 THE WITNESS: I can -- I can at least say that
2 coming through -- it coming through -- it coming through
3 Brandon Becker gave it more weight in my mind and coming
4 through a reputable counsel gave it more weight in my mind.
5 And Mr. Madoff involving reputable counsel actually gave me
6 some more comfort about answers.

7 BY MR. KOTZ:

8 Q But don't you think Brandon Becker would have just
9 gone to Bernie Madoff and asked him and taken his word for
10 it? I mean, Brandon Becker certainly isn't responsible to go
11 beyond talking to his client. That's something the SEC
12 should do.

13 A At the time, I took more comfort from the fact that
14 there was a lawyer involved. I -- I'm not disputing anything
15 you guys are saying about wishing we had done things
16 differently.

17 Q Okay. I don't think there was anything about
18 wishing, but okay. Let me --

19 MR. WEINBERG: What did you just mutter?

20 MR. KOTZ: I said I don't think we saying about
21 wishing. I mean, I don't think we were saying that. I think
22 we weren't talking about wishing. I mean, I think everybody
23 realizes that we all wish and you wish that things were done
24 better. We're not talking about wishing. We were talking
25 about looking back, were there mistakes made, not about

1 wishing that you had done better but that there were mistakes
2 in the way things were done.

3 BY MR. KOTZ:

4 Q So looking back, taking Bernie Madoff's word in
5 this case and in the other case was a mistake.

6 A In retrospect, it was clearly a mistake.

7 Q Go ahead. Do you want to add?

8 A No. I think it's one of the -- one of the things
9 that you think of -- that I think about in investigating
10 things -- one of the things I think about now is -- is what I
11 would have different and I know that we're talking about
12 that. And so what I was trying to tell you was maybe there
13 -- maybe that the idea that this -- that by this point he was
14 represented by counsel, I found that more comforting.

15 Q Okay. Who made the decision in the end to close
16 the Madoff investigation?

17 A To write the closing memo and close the case on the
18 books or to decide that we were done investigating?

19 Q The substantive decision to decide to -- that you
20 were done investigating, who made that decision?

21 A I think that was a joint decision that certainly
22 went up through Doria, probably went up through Andy
23 Calamari, but I'm not -- I'm not completely sure on that.

24 Q But at the end of the day as a branch chief, that
25 was not your call to make that final decision, right?

1 A As a branch chief, I couldn't authorize
2 photocopying.

3 Q Okay. So that's a "no"?

4 A That's a no.

5 Q Okay. So, I mean, as far as the people that you
6 were involved with and that you knew were aware of the
7 investigation, the Madoff investigation, it would be your
8 understanding that either Doria Bachenheimer ultimately made
9 the decision to close the investigation or someone higher?

10 A I think it -- I think it was -- it was a
11 collaborative. Everybody agreed, but yes, it had to be
12 approved at least at the ARD and probably the associate
13 level.

14 Q But, I mean, Doria would have been the highest one
15 who had some significant understanding of the case? I mean,
16 you know, Andy Calamari may not have known much about the
17 matter, right?

18 A I don't know. I think that -- I think that we --
19 we tried to keep -- I think we tried to keep him updated, but
20 no, he wouldn't have had the sort of hands-on, day-to-day
21 involvement.

22 Q So of the individuals who had the hands-on, day-to-
23 day substantive involvement, Doria would have been the
24 highest person who was ultimately responsible for the
25 decision to close the Madoff investigation, right?

1 A I don't know whether Doria -- I think that Doria
2 probably would have discussed it with Andy, but I wasn't
3 privy to all of her discussions to -- a lot of her
4 discussions with Andy, so I'm not sure.

5 Q But you know that Andy didn't have firsthand
6 knowledge of the specifics of the Madoff case, right?

7 A I know that we -- we kept the associates briefed
8 on -- on -- we kept him briefed on the status of cases in our
9 branch. Ultimately -- but I don't know how much he and Doria
10 communicated about the decision to be done.

11 Q Did Andy Calamari ever communicate with you about
12 the Madoff investigation?

13 A Certainly, I got the referral from -- I got the
14 referral through Andy. We got the referral through Andy. I
15 believe we had communications -- I believe we had
16 communications about the significant cases in our branches
17 with Andy, and I think Madoff would have been one of them.

18 Q But you never had a substantive conversation with
19 Andy about the Madoff investigation, did you, that you can
20 recall?

21 A I don't know that. I don't -- I'm not --

22 Q Okay.

23 A I mean, this case -- I would think he would know
24 that -- where we were on this. I think that there were -- I
25 think that there were quarterly reports and things that he

1 would know about.

2 Q Are you aware that after Madoff confessed in
3 December of 2008, Andy Calamari began working on the Madoff
4 investigation post-December 2008 and worked on it for a while
5 till he found out in an e-mail that he had previously known
6 about or worked on, had some involvement with the
7 investigation you conducted?

8 A I didn't know anything about that. I have not --
9 no, I haven't talked about the substance of the case with --

10 Q So according to Andy, he didn't even remember that
11 he had worked on the Madoff case at all.

12 A I don't know what Andy remembered or didn't
13 remember. I know it was in his org code, and he generally
14 knew what was going on in his org code. But he had a lot of
15 -- he has a lot of cases.

16 Q Right. But in terms of substantive involvement,
17 Doria Bachenheimer would have had a lot more substantive
18 involvement than Andy Calamari?

19 A Yes, an ARD has more involvement than an associate,
20 yes.

21 Q Okay. And Doria Bachenheimer, do you feel she was
22 briefed sufficiently on the facts and circumstances of the
23 Madoff investigation to make a learned decision on whether to
24 close it?

25 A Yes, I do.

1 Q Do you know if Andy was given that information?

2 A I don't know.

3 Q Okay. After all the documents we've shown you
4 today and the discussions we've had, looking back, do you
5 feel that in the enforcement investigation of Bernie Madoff
6 whether there were sufficient investigatory steps taken to
7 uncover the Ponzi scheme?

8 A I think that in light of what has happened, there
9 is nothing that could have come out today that would have
10 been enough. I mean, we didn't find it. That's ultimately
11 the answer. We didn't find it. I see places now that I
12 wish -- I wish we had done differently.

13 Q Right. But do you believe now looking at the
14 documents, seeing those places that there were sufficient
15 investigatory steps taken in the Madoff investigation as to
16 the issue of determining whether Madoff was running a Ponzi
17 scheme?

18 A I don't think there's any way -- there's no way
19 that anything that I saw today -- we didn't find it, so
20 therefore, there were not sufficient steps taken.

21 Q Okay. But beyond the --

22 MR. WEINBERG: Isn't that your question? I thought
23 she --

24 MR. KOTZ: Not really.

25 BY MR. KOTZ:

1 Q But beyond the question of we didn't find it so by
2 definition there wasn't sufficient steps, I'm talking about
3 specific steps. We've gone through various steps. You've
4 talked about various investigative steps that were taken and
5 not taken in connection with the Madoff investigation to
6 determine if there was a Ponzi scheme. What I'm asking you
7 is based on your understanding now today of the different
8 investigative steps that were taken and not taken. In your
9 view, were they -- were there sufficient investigative steps
10 taken in the Madoff investigation to determine whether Madoff
11 was running a Ponzi scheme?

12 A At the time, I thought it was a good investigation.
13 At this point, I see where there were flaws and there are
14 things that I would like to have done differently. And I see
15 specific ones that came out today that I -- if I could go
16 back in time would do differently. I --

17 Q But don't you believe that if you're doing an
18 investigation of someone running a Ponzi scheme, there has to
19 be at some point in that investigation going to some
20 independent third party to confirm trading? Isn't that a
21 basic matter that should be done in a Ponzi scheme
22 investigation?

23 A I took at the time a lot of comfort in the fact
24 that there had been an exam team in there, I thought,
25 actually seeing trading occur because one of the issues that

1 they looked at was front-running and to see whether there was
2 front-running, you had to see whether trading had actually
3 occurred. I -- I think that in retrospect we should have
4 gone to third -- to more third party -- to third parties. At
5 the time that we did the investigation, I thought it was
6 reasonable to rely on the fact that there had been an exam
7 team in place to put aside the idea that trading wasn't
8 happening. I -- I put too much -- I think -- I think that I
9 was sure -- I put comfort too early on in the idea that there
10 was trading and that it was less likely to be a Ponzi scheme
11 because there had been an exam, that it was to be another
12 problem, another type of problems.

13 Q Okay. But looking back now, do you believe that
14 one can do a satisfactory investigation of whether someone is
15 running a Ponzi scheme without going to any independent
16 source to verify that trading has occurred?

17 A No.

18 (SEC Exhibit No. 62 was marked
19 for identification.)

20 BY MR. KOTZ:

21 Q Okay. I'll show you the next document. Okay.
22 Next document we're going to mark as Exhibit 62. This is an
23 e-mail from you to Simona Suh, 6-29-2007, 4:08 p.m. This
24 forwards an e-mail from Harry Markopolos to you with a copy
25 to Ed Manion, Friday, June 29th, 2007, 4:57. He says,

1 "Meaghan, attached are some very troubling documents that
2 show the Madoff fraud scheme is getting even more brazen."
3 Then he says, "When Madoff finally does blow up, it's going
4 to be spectacular and lead to massive selling by hedge fund
5 to funds as they face investor redemptions."

6 Do you know if you ever reviewed these documents
7 that Harry Markopolos provided in June of 2007?

8 A I think I looked at them.

9 Q But wasn't it this point in time the focus of the
10 investigation removed from this issue?

11 A I don't --

12 Q Or wasn't this investigation essentially closed
13 without the formalities by June of 2007?

14 A No. We were -- we were still -- I think the calls
15 with Brandon Becker are into the end of July.

16 Q But this aspect of the investigation, I'm talking
17 about in terms of the Ponzi scheme. And actually --

18 MR. WEINBERG: I'm sorry. The call -- the calls
19 with Mr. Becker were in 2000 and --

20 MR. KOTZ: '6.

21 THE WITNESS: Oh, I'm sorry. Okay. I'm sorry.

22 MR. KOTZ: This is June 2007.

23 MR. WEINBERG: You're focused on the wrong --

24 THE WITNESS: I'm sorry. I -- I sort of missed --
25 I was on the wrong page.

1 MR. KOTZ: Thank you very much for that.

2 BY MR. KOTZ:

3 Q In terms of -- in the time period of June of 2007,
4 wasn't this Madoff investigation for all intents and purposes
5 closed without the formalities?

6 A I think that's true.

7 Q So given that, do you think there was significant
8 analysis of what Harry Markopolos provided at this point?

9 A I don't know.

10 Q Now, looking back, when Harry Markopolos says,
11 "When Madoff finally does blow up, it's going to be
12 spectacular and lead to massive selling by hedge fund to
13 funds as they face investor redemptions," do you see now that
14 Harry Markopolos was actually correct about pretty much
15 everything he said?

16 MR. WEINBERG: Everything he said in the --

17 MR. KOTZ: In the complaint.

18 MR. WEINBERG: -- initial complaint?

19 MR. KOTZ: Yeah, as well as this statement, "When
20 Madoff finally does blow up, it's going to be spectacular."

21 THE WITNESS: I think he was correct that it was a
22 Ponzi scheme, I think he was correct that it -- it had an
23 enormous impact and it was spectacular.

24 (SEC Exhibit No. 63 was marked
25 for identification.)

1 BY MR. KOTZ:

2 Q Okay. I'm going to show you another document.

3 Okay. The next document we're going to mark as Exhibit 63
4 from Simona Suh to you, 10-24-2007, 4:09 p.m. In this e-mail
5 string, there's an e-mail at the bottom of the page from
6 Simona to you, Wednesday, October 24th, 2007, "I have to say
7 I'm a bit concerned this may be another fishing expedition, a
8 la Madoff. And that's why I would like to confirm with the
9 tipper the reasons for his concern."

10 And then you respond, "I too have no interest in
11 another Madoff. I think that's why Andy and Mark want to
12 address it at the exam level first. Doria's take is they
13 almost certainly did something wrong, but we may never find
14 it."

15 What did you mean by "I have no interest in another
16 Madoff"?

17 A That -- at this time, we believed that we had
18 investigated -- we had spent a long time investigating the
19 Madoff and not found anything of significance. And that's --
20 we -- and it had taken up an extraordinary amount of staff
21 resources and not found anything, and that's what I mean --
22 meant. I think Simona and I both meant about spending a lot
23 of time investigating something and not finding anything.

24 Q Now, you say in here in your e-mail, Wednesday,
25 October 24th, 2007, 4:54 p.m. to Simona, "Doria's take is

1 they almost certainly did something wrong but we may never
2 find it."

3 It's unclear what she's -- Doria -- you were
4 referring Doria to, but my question for you is: Was that a
5 sense in some measure in the Madoff investigation that there
6 was something wrong but you may never find it?

7 A Oh, no, this -- this sentence is about a tipper
8 that we had gotten with respect to Goldman and Bear Stearns.

9 Q Right.

10 A And -- and I think I had talked about it with Doria
11 because Doria --

12 Q But it's in the context of talking about Madoff as
13 well. I understand that. My question is: Was there some
14 sense in the Madoff investigation as well that there was
15 something he probably did wrong but we just couldn't find it?

16 A You know, I'm not sure, and that's -- and that's a
17 hard question to answer in retrospect. I think that's one of
18 the things that -- one of the reasons that registration felt
19 really important to us because making -- keep opening him to
20 extra regulatory scrutiny, you know, in case there was
21 something that we just weren't able to find.

22 Q But I guess what I'm trying to get at is at the end
23 of the investigation, did you believe that essentially the
24 allegations were not true or did you believe there's probably
25 something he's doing wrong but we just can't find it?

1 Q -- use it for some other purpose given that he
2 wasn't exactly forthright?

3 A I don't remember this issue.

4 MR. WEINBERG: That's not quite what the e-mail
5 says, but okay.

6 BY MR. KOTZ:

7 Q "Capacity for finessing the reality."

8 A I don't remember being asked the question. I --

9 Q I view that as lying, but there's lot of different
10 ways to say it as we've found today.

11 (SEC Exhibit No. 65 was marked
12 for identification.)

13 BY MR. KOTZ:

14 Q Okay. Why don't we go to the next one? Okay. The
15 next document we're going to show you is Exhibit 65. It's an
16 e-mail from Simona Suh to you, 11-20-2007, 5:48. p.m., and it
17 attaches, if you see, a two-page investigation closing
18 narrative. It looks like this is the narrative to close the
19 investigation. In the narrative that Simona drafted, she
20 says, "Second, in the course of a preliminary inquiry into
21 these allegations, the staff learned that during a recent
22 examination of BLM by NERO's broker-dealer examination staff,
23 Bernard Madoff, the sole owner of BLM, misrepresented to the
24 examination staff both the nature of the trading conducted in
25 the hedge fund accounts and also the number of such accounts

1 at BLM."

2 And you e-mail her on Tuesday, November 20th, 2007,
3 5:35 p.m., "I would say that Bernie did not fully disclose to
4 the exam staff rather than misrepresented to the exam staff."

5 Can you tell me which one do you believe was more
6 accurate, to say that he misrepresented to the exam staff or
7 that he did not fully disclose?

8 A I believed at the time that did not fully disclose
9 was more accurate.

10 Q Did you know that at the time Simona believed
11 misrepresented was more accurate?

12 A What I thought this was, I thought that -- well, as
13 best as I recall, I think it was a wording choice, and I
14 think that what happened was she used the opening narrative
15 where it says "reasons opened," it looks like a cut-and-paste
16 from the opening narrative when we opened the MUI. And I
17 thought from January 4th through the rest of the
18 investigation, the facts as they came out to me, it seemed
19 more accurate to say did not fully disclose because he
20 disclosed them to us after we asked more questions.

21 Q Right. But it's did not fully disclose to the
22 examination staff, right, not the investigative staff?

23 A And I thought it was -- I thought that the more
24 significant issue was the not -- was the not disclosing the
25 existence of the accounts as opposed to affirmatively

1 misrepresenting something. That was my take. It was a
2 wording change. It -- it's --

3 Q But do you think there was a substantive
4 disagreement between you and then, say, Peter and Simona
5 about this issue at that time?

6 A No, I don't think so. I think that if Simona
7 disagreed, she would have said I don't want to change it. I
8 mean, because I didn't say you must change. I said, "I would
9 say." And I think if she disagreed with that, she would have
10 said so.

11 (SEC Exhibits Nos. 66 and 67 were
12 marked for identification.)

13 BY MR. KOTZ:

14 Q Okay. I'm going to show you two documents and ask
15 you if you've ever seen them. First of all, we're going to
16 mark as Exhibit 66. This is an e-mail from Enforcement Senior Counsel to
17 Enforcement Staff Attorney, Monday, November 21, 2005, 4:01 p.m. And
18 the second one is an e-mail from [REDACTED] dated
19 Wednesday, May 21, 2003 to Mavis Kelly with several
20 attachments. Mark it as Exhibit 67. These are two
21 complaints about Bernie Madoff, one in the Exhibit 66 is
22 dated Saturday, October 1, 2005 10:10 a.m., and the other one
23 in Exhibit 67 is dated May 21, 2003.

24 And my question to you is: Have you seen either of
25 these two complaints?

1 A I don't think so, no.

2 Q Do you think when conducting the Madoff
3 investigation it would have been helpful for you to have seen
4 these complaints?

5 A Yeah, absolutely.

6 Q What was your reaction when you heard in December
7 2008 that Madoff had confessed to a Ponzi scheme?

8 A Shock and -- and just dismay and shock.

9 Q Even though you had investigated him for a Ponzi
10 scheme, so on some level it was -- it shouldn't have been as
11 shocking to you as, say, somebody who wasn't aware of the
12 allegations, right?

13 A No, actually, I disagree. I was more shocked
14 because I had investigated. I mean, I think I was more
15 shocked, but I can't compare myself to somebody else. But I
16 think was more shocked because I had investigated it.

17 Q Have you spoken to anyone like Doria or Simona or
18 Peter Lamore or anyone else who worked on Madoff-related
19 matters at the SEC since December 2008?

20 A I have not spoken to Doria or Peter Lamore. I have
21 not spoken to Simona about Madoff or spoken to her, though
22 she has sent me one or two e-mails that were specific where
23 documents not involving Madoff were in -- for the -- my
24 branch because she took over that branch. So the day that --
25 the day that Madoff was arrested, I got an e-mail from Israel

1 Friedman asking me if I could call him about a case, an old
2 case of mine. And he asked me whether there was any
3 testimony or any records or where it would be. Andy Calamari
4 called me to give me a heads-up that the Wall Street Journal
5 had my name and would be calling me. He called me again
6 after that horrible Post thing. And we did not speak
7 substantively about any of it.

8 Q You said that before you started the Madoff
9 investigation, you hadn't heard of Bernie Madoff?

10 A No.

11 Q But at some point during the course of the
12 investigation, did you learn that Bernie Madoff was kind of a
13 well-known, influential figure in the securities world?

14 A You know, I looked at articles about him. It was
15 -- that was clear from the Barron's article. I did get
16 background on him in that way, yeah.

17 Q And were you aware that he was president of the
18 NASDAQ or in some high-level position?

19 A I think so.

20 Q Do you think that part of the reason why it seems
21 as though throughout the exams and investigations of Bernie
22 Madoff that there was more willingness to take Bernie
23 Madoff's word for it than perhaps should have been was
24 because of the fact that Bernie Madoff was a well-known,
25 influential person in the securities industry?

1 A I don't think there was ever a conscious desire to
2 make something go away or to ignore an allegation about
3 Bernie Madoff. Do I think that there's an inherent bias
4 towards sort of people who are seen as reputable members of
5 society, there may be an inherent bias in that way. I think
6 that we did not forego investigative steps because of who he
7 was, and I don't think we were easier on him. I have
8 personally interviewed, requested documents, gotten tolling
9 agreements, pushed from people who I view as -- as sort of
10 more powerful than Bernie Madoff without, I think, pulling a
11 punch.

12 Q And you don't believe that because it was Bernie
13 Madoff that it was just inconceivable that he could be
14 running a Ponzi scheme and that affected the investigation?

15 A Not on a -- not deliberately or consciously.

16 Q So you believe that you at -- significantly looked
17 at the issue and considered the issue of whether Bernie
18 Madoff was running a Ponzi scheme even though he was Bernie
19 Madoff?

20 A Yes.

21 Q Okay. I think we're done. I just want to ask
22 you -- I appreciate that you haven't had any substantive
23 conversations with anyone about the investigation that you
24 conducted and I would ask to preserve the integrity of our
25 investigation that you not discuss this testimony with