

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

 **COPY**

WITNESS: Number 1
PAGES: 1 through 195
PLACE: Securities and Exchange Commission
100 F Street, N.W.
Washington, D.C. 20549
DATE: Thursday, February 5, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 9:42 a.m.

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2

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4

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16

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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 9:42 on February
3 5, 2009. The United States Securities and Exchange
4 Commission Office of Inspector General. I'm going to swear
5 you in if that's okay.

6 MS. KACHROO: I thought we weren't doing this under
7 oath.

8 MR. KOTZ: But as I indicated, I think it would be
9 better because, you know, all the other witnesses are going
10 to be under oath.

11 MS. KACHROO: Oh, they are.

12 MR. KOTZ: That way there won't be the issue, you
13 know, oh, why wasn't he put under oath.

14 MS. KACHROO: Yeah.

15 MR. KOTZ: Okay?

16 MS. KACHROO: Do you have a problem with it, or --

17 MR. KOTZ: Please raise your right hand.

18 Whereupon,

19 HARRY MARKOPOLOS

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

22 EXAMINATION

23 BY MR. KOTZ:

24 Q Can you state and spell your full name for the
25 record?

1 with the SEC prior to May 2000?

2 A Yes. I would have because Ed Manion, financial
3 analyst, with 25 years of industry experience, he was a
4 trader at the Boston company, portfolio manager at Fidelity
5 with Peter Lynch. He and Peter Lynch are very close friends.
6 They both went to Boston College undergraduate. Mr. Manion
7 served under me at the Boston Security Analyst Society.

8 Q Oh, you had worked with him?

9 A Yes.

10 Q Oh, okay.

11 A He was on my education committee and he was
12 co-chair of my ethics sub-committee and we would have
13 frequent and continual talks about industry ethics or lack
14 thereof.

15 Q And this is prior to May 2000?

16 A Yes, and he would ask me questions about the
17 current state of fraud in the investment industry
18 specifically relating to New York and Boston. For New York,
19 he would ask questions about the sell-side firms and in
20 Boston, he would ask questions about the buy-side firms. He
21 realized that as a derivative portfolio manager, I had the
22 mathematical background to understand and take apart the
23 frauds that were taking place on Wall Street and also on the
24 buy side in the mutual fund industry in Boston.

25 So, we had a continual dialogue.

1 Q Okay. For how long a period of time, generally, do
2 you think, prior to May of 2008, you had that dialogue with
3 Manion?

4 A My memory is going to be so fuzzy. So I'm going to
5 try to give you a time range and not any specific dates.

6 Q Okay. That's fine.

7 A I got my CFA Charter in 1996. I think I went on a
8 committee with the Boston Security Analyst Society in 1997 or
9 1998. So it would probably be in the '98 to '99 time range
10 where I first met Mr. Manion.

11 Q Okay.

12 A I may have met him prior to that. He may have come
13 in on an inspection visit. I'm not sure when he did.

14 Q Okay. Anybody else that you had a lot of contact
15 with from the SEC prior to bringing in your initial complaint
16 in May 2000?

17 A Mr. Madoff was my first case submission to the SEC.
18

19 Q Okay. Okay. So let's talk about that then. So
20 you submit an eight-page document to the SEC Boston regional
21 office's director of enforcement. Okay. And then what
22 happened?

23 A We had a meeting.

24 Q So who was in this meeting?

25 A It was the Boston regional office's director of

1 enforcement.

2 Q That's Ward.

3 A Grant Ward.

4 Q Right.

5 A Myself and Mr. Manion.

6 Q Okay. Had you talked to Mr. Manion before to kind
7 of let him know this was coming since you had some
8 relationship with him?

9 A Yes, I did. He told me it sounded very serious and
10 I needed to prepare my report, make sure it was a good
11 report, make sure it was understandable, make sure it was
12 well written, and come in with it as soon as possible.

13 Q Okay. So you had that meeting. You, Ed Manion,
14 Grant Ward. Was it Jim Adelman also? Was he in that?

15 A He was. He came in, shook my hand, told me, "I
16 heard a lot about you. I would be attending this meeting. I
17 apologize. I've given my notice to the SEC. I am leaving to
18 go into private practice and I just wanted to shake your hand
19 and say thank you for coming in today."

20 It was just a meet and greet. He never participated in
21 the actual meeting.

22 Q So the meeting was just you, Manion and Ward?

23 A Yes.

24 Q Okay and did you provide documents to them in that
25 meeting?

1 understand financial instruments. Didn't even have a basic
2 understanding of finance.

3 Q Okay. And so when you say you explained the fraud,
4 what were you saying was happening with Madoff? At that
5 point, what was your theory in terms of what Madoff was
6 doing?

7 A I just want to go to my Exhibit 2.

8 Q Sure, please. Feel free to use your documents.

9 A Under, "Objective" on page 1, point 3 -- I'll start
10 with point 2.

11 "The returns are real but they are coming from some
12 process other than the one being advertised, in which case an
13 investigation is in order."

14 Here I'm referring to front-running.

15 Q Right.

16 A I had two fraud theories regarding Mr. Madoff.
17 Fraud theory number 2 was the front-running and fraud theory
18 number 1 -- the entire fund is nothing more than a Ponzi
19 scheme. And at that point, all I knew was that
20 mathematically the returns that Mr. Madoff was reporting to
21 earn for investors were unachievable using the strategy that
22 he stated in his marketing literature. And I had to develop
23 two fraud hypothesis and those were the only two explanations
24 that I saw for it.

25 Front running, in which case the returns were real

1 but they were generated from an illegal activity, and the
2 other hypothesis was that it was a Ponzi scheme, in which
3 case there was no underlying investment activity, product or
4 service being provided to investors.

5 Q Right. So as of May of 2000 you had already
6 informed the SEC that you believed that Mr. Madoff may have
7 been engaging in a Ponzi scheme?

8 A Correct, but I had -- at that point, I had no
9 evidence to distinguish which was the higher or lower
10 probability fraud scenario.

11 Q Right.

12 A Only that there was fraud occurring. I couldn't
13 make any intelligent decision whether it was a Ponzi or
14 whether it was front-running. I just knew something illegal
15 was going on there.

16 Q Right. Okay. And you brought it to the SEC so
17 they would investigate it and determine which of those
18 theories was correct?

19 A That is true.

20 Q Okay. Now, you stated in the document that you
21 provided to them, "There's no way the SEC would uncover this
22 on their own. I have almost 13 years in the business. I've
23 traded similar type of strategies." What did you mean,
24 exactly? Why did you say at that point that you didn't think
25 the SEC could uncover that on its own?

1 A Because I had seen SEC examination team in the
2 past.

3 Q Okay.

4 A My firm was an equity derivatives firm managing
5 many billions of dollars. I'd seen the teams come in and I
6 saw how they were constituted and it was young, green people
7 who lacked industry expertise with no background in financial
8 mathematics and they didn't understand complex derivative
9 instruments. They typically were only lawyers.

10 Q Right.

11 A Once in a while you'd see an accountant. There
12 usually was a CPA on the team, but that didn't help with the
13 capital market mathematics. You really needed a good basis.
14 If you didn't understand calculus or linear algebra, every
15 firm in Boston would fool you all the time. You had no
16 ability to catch them whatsoever.

17 Q So because you were aware of some of the
18 shortcomings of the SEC, is it fair to say you went out of
19 your way to provide more information to them to help them
20 find evidence about Mr. Madoff's activities?

21 A Yes. I came in knowing what to expect as far as
22 the level of education and training of the SEC staff and
23 therefore, I didn't come in with any calculus. I didn't use
24 any interval calculus, no differential calculus, no linear
25 algebra. I came in with barebones English explanations. I

1 tried to make it as simple as possible to understand for the
2 SEC staff.

3 **Q** Okay and so did you suggest any particular actions
4 that the SEC should have taken to follow up on the
5 information that you provided them at that point? In these
6 documents it talks about checking the math.

7 **A** Yes. Exhibit 1 exposed, page 2. I did a
8 mathematical modeling called a regression analyst.

9 **Q** Okay.

10 **A** Using -- I'm really bad at the math now. It's
11 been, like, four years and five months since I've left the
12 industry and there's two different types of regressions. I
13 used whatever the simplest one is. I can't remember the
14 specific type of terminology.

15 **Q** Okay. That's all right.

16 **A** But Mr. Madoff's returns were reportedly coming
17 from the OEX, Standard and Poor's 100 stock index.

18 **Q** Right.

19 **A** I did a correlation, but he was comparing himself
20 with the Standard and Poor's 500 stock index, so that my math
21 would foot to his math because I wanted to see if I could
22 catch him on a basic math error.

23 **Q** Right.

24 **A** I ran the same regression. I basically input Mr.
25 Madoff's monthly return screen for the years in question in

1 Exhibit 1 in one column. To the column next to that for the
2 exact same month, I took the Standard & Poor's 500 stock
3 indexes returns for that month and then I ran the regression
4 analysis and I proved that the correlation reported in Part D
5 of Exhibit 1 was, in fact, 6 percent correlation to the
6 index. And here --

7 MS. KACHROO: The last page.

8 THE WITNESS: Oh and so that part D math, the 6
9 percent correlation to the S&P 500 data .06, that's a 6
10 percent correlation or a 6 percent similarity to the S&P 500.
11 However, given the options of the derivative strategy
12 surrounding Mr. Madoff's long stock portfolio of 30 to 35
13 stocks, I was looking and was prepared to accept a
14 correlation coefficient between 30 percent similarity and 60
15 percent similarity figuring it should hover around 50 percent
16 similarity and a 6 percent similarity was outside the bounds
17 of rationality.

18 BY MR. KOTZ:

19 Q Okay. All right. So when you say Exhibit 1, I
20 just want to make sure the record is clear. You're talking
21 about the document Mark-0012 which is part of our Exhibit 3.

22 A Is that right?

23 MS. KACHROO: 0012?

24 MR. KOTZ: Right.

25 THE WITNESS: Yes. I want to point out one thing

1 here --

2 BY MR. KOTZ:

3 Q Yeah.

4 A -- Mr. Kotz. It says at the bottom, "Part B,
5 manager B, assets under management, \$350 million." And
6 underneath that it says, "Brohill Asset Management, LLC."

7 Q Yeah.

8 A Brohill Asset Management has contacted the Wall
9 Street Journal in regards to the article published about the
10 Madoff investigation on December 18, 2008, complaining about
11 the exhibit posted on the Wall Street Journal's website
12 saying that no, Brohill Asset Management did not have \$350
13 million with Mr. Madoff; it was only \$1 million.

14 Q Okay.

15 A And I believe that this is a material misstatement
16 of fact on this document. And I know that the SEC has
17 taken --

18 Q Where is that?

19 A -- action in the past against people who have
20 misstated assets under management.

21 Q Okay.

22 A This is an activity known as puffing where you're
23 pretending to be larger in size than you really are.

24 Q Right. Okay. All right. Yeah. Thank you. So
25 what did you expect at that point that the Boston office

1 would do with the information that you provided? I mean, you
2 went beyond just giving them a tip. You did all the math for
3 them. So what would you have expected them to do at that
4 point?

5 A Start an investigation.

6 Q And what kind -- any idea of what kind of steps
7 they would take in that investigation, typically?

8 A Yes. Yes. Specifically, you would make a
9 determination that the allegations were credible and
10 believable.

11 Q Right.

12 A And if they were, you'd send an inspection team in
13 the next business day or the next day that a team was
14 available. If they were already out on assignment and
15 couldn't be back quickly enough, you would just wait until
16 that team came back into the office and then send them out
17 into the field once again. If you thought the information
18 was very, very credible and very, very specific -- oftentimes
19 the SEC will send not only an examination team in but they'll
20 send in a team of enforcement attorneys --

21 Q Right.

22 A -- if they think it's really a good lead.

23 Q Right. Okay. And then in your view, based on the
24 information you provided, would you have considered that a
25 good lead such that they should send in the enforcement

1 attorneys as well?

2 A Yes. They should have sent in two teams, the
3 enforcement team and an examination team, so they could work
4 in conjunction since this was such a large -- this, at the
5 time, would have been considered the largest hedge fund in
6 the world, but it was also the most secretive hedge fund in
7 the world.

8 Q Right.

9 A So something of this size would have been
10 astounding to the SEC. This would have been a huge case in
11 2000 for the SEC.

12 Q And so, but what in fact did happen?

13 A I don't know.

14 Q Okay.

15 A I'm not privy to that. I walked out of the meeting
16 feeling very dejected.

17 Q And you were dejected because you felt Mr. Ward
18 didn't understand what you were talking about?

19 A That's correct. I didn't think he had a clue.

20 Q Okay and was there any other impression you got
21 from either Ward or Manion in that meeting about whether they
22 seemed interested in the case or did they say anything to
23 you?

24 A Mr. Manion thought the case was a great one. He
25 understood the math and he was expecting his agency to follow

1 up immediately. He thought that he had a big case brewing
2 and he thought it was going to be a coup for the SEC, and he
3 walked out equally dejected. He felt that the director of
4 enforcement for the New England region was totally clueless,
5 didn't know how he got his job and made some -- he didn't
6 have any confidence in this man's ability whatsoever.

7 Q And this, Manion told you after the meeting or --

8 A We had a debriefing, he and I.

9 Q Okay.

10 A And during the debriefing he said, "Harry, I don't
11 know. I don't think he got it. I don't think he understood
12 a single word that you said past your name."

13 Q How long was the meeting? Do you remember? Was it
14 several hours or --

15 A I can't recall. It was so long ago. I'm sorry.

16 Q Okay. That's fine. That was a long time ago. So
17 did you hear anything at all back from that meeting from the
18 Boston office?

19 A Through official channels, never got a letter. I
20 never got an official phone call. Unofficially, Mr. Manion
21 and I were in constant communication over this issue. He
22 thought it was a clear and present danger to the U.S. capital
23 markets.

24 Q Right.

25 A He thought that the largest hedge fund in the world

1 was secretive, underneath the radar, not registered. He
2 thought these were damning facts and he was really concerned
3 and he told me I needed to keep investigating. He told me he
4 was going to be pressing for answers within his agency, but I
5 really -- all I got back was unofficial communication from
6 Mr. Manion.

7 Q Did Manion tell you why they weren't going to go
8 forward? Did he talk to you about discussions he had
9 internally about what to do?

10 A Yes, he did. He said that this case -- he said
11 that the SEC's Boston office, their jurisdiction extended
12 south only to Greenwich, Connecticut and once you crossed the
13 New York state line, you were in the New York regional
14 offices turf, and so that this case would need to be
15 transmitted to the New York regional office for action.
16 Boston could not send its inspection teams down there and it
17 could not send its enforcement teams down there. I was told
18 that the New York and Boston regional offices get along as
19 well as the Yankees and Red Sox do.

20 Q Right. And so Manion indicated to you that they
21 just didn't want to send something to New York? Is that kind
22 of what he said?

23 A No. No, he said that, "We'll have to forward this
24 to New York for action. We can't go down there."

25 Q Okay.

1 A "That's not our turf. New York doesn't let us come
2 down to New York and do cases."

3 Q Okay. Did Manion indicate at any point at that
4 time why they didn't just send it to New York?

5 A It was up to the director of enforcement at the
6 time. I don't know what he did. It was his call.

7 Q Okay.

8 A Mr. Manion -- I don't know. You'll have to ask
9 your staff.

10 Q Okay. Okay. Okay. And so then in October 2001,
11 you went back to the SEC and made a second submission, right?

12 A I can't remember if I went back into the building
13 or if it was just a resubmission with a few extra pages.

14 Q Okay and that was because Manion told you to
15 resubmit it?

16 A He did. He said that he felt that the case had
17 dropped through the cracks and that the SEC was not pursuing
18 a Madoff investigation, and he felt that it was warranted
19 even more so now because the team that I had tracking him had
20 put his assets under management in the 12 to \$20 billion
21 range. One of the team members, Frank Casey, had been over
22 to Europe and that's where he met Mr. Michael Ocrant.

23 Q Right.

24 A They met in a limousine in Barcelona, Spain, I
25 believe.

1 Q Oh yeah?

2 A And Mr. Casey said to Mr. Ocrant, "I bet you can't
3 name the largest hedge fund in the world because it's so
4 secretive." And Mr. Ocrant said, "You're on. I'll take that
5 bet." And then Mr. Casey revealed that it was Bernard Madoff
6 and the two of them compared notes in that limousine and the
7 totaled up assets and it was over 12 billion dollars.

8 So we figured the two of them couldn't know
9 everything and at that point, Mr. Ocrant was recruited into
10 the team by Mr. Casey who has a military background in
11 intelligence. He's a U.S. Army Airborne infantry officer,
12 former, and he had been an intelligence officer or served in
13 an intelligence officer's position in a line unit staff, a
14 command staff. And at that point, we realized this case was
15 a lot bigger than we previously had thought in May of 2000.

16 Q Okay.

17 A And Mr. Ocrant thought it was so serious. And at
18 that point he was an investigative reporter for institutional
19 investors, MAR Hedge, a leading -- at that time it was a
20 leading hedge fund industry news publication, a very
21 expensive publication that probably no one in the SEC ever
22 subscribed to because you don't have a budget for it, I
23 suspect, and you didn't have a mandate to regulate hedge
24 funds at the time.

25 Q Right.

1 A And he started his investigation when he got back
2 into the United States. Mr. Ocrant met with Mr. Madoff in
3 April of 2000.

4 Q Right.

5 A And in May 1, 2000, he published a very damning
6 expose of Mr. Madoff that the SEC apparently never read. A
7 week later Barrons, on May 7, 2000, published their expose.
8 Mr. Ocrant told me that he felt that it was -- that Erin
9 Arvedlund had plagiarized his article without doing research,
10 like she said she did, and it was a copycat article.

11 Q Why do you say that the SEC apparently hadn't read
12 Ocrant's article?

13 A Because my understanding of the SEC is that it does
14 not get a publication budget, that most of your staff don't
15 even read the Wall Street Journal because you'd have to pay
16 for the subscription on your own, and apparently a Barrons
17 subscription is rather expensive as well because all these
18 publications are coming out with exposes with red flags and
19 the SEC is continuing to ignore them.

20 Q Right.

21 A And it's the largest hedge fund in the world.

22 Q Right.

23 A So how obvious can it be before you bought it?

24 Q So even after you visited the SEC, spoke to them in
25 May 2000 and they essentially rebuffed you, you continued to

1 follow up and learn more about the Madoff case?

2 A Yes. We felt that it was such a serious matter to
3 the industry that the hedge fund industry -- it would be a
4 major blow to the hedge fund industry and to investor
5 confidence when this game finally did come to light as all
6 quantity schemes eventually do.

7 Q Right. And then in that period, in between the
8 first submission and the second submission, with this article
9 that was published which gave -- raised concerns about
10 Madoff --

11 MS. STEIBER: Are you sure the article was in 2001?

12 THE WITNESS: I'm sorry, it's 2001. I'm sorry.
13 I'm very tired and I only had, like, two hours of sleep last
14 night. Thank you for that.

15 MS. STEIBER: Oh, sure.

16 MR. KOTZ: We're talking about the period May 2000
17 to October 2001, right?

18 MS. STEIBER: Right. After the second
19 submission -- he had said the articles came out.

20 THE WITNESS: Let's see. No.

21 MR. KOTZ: He's saying they came out in May 2001.

22 THE WITNESS: No, the second submission -- let's
23 take a look at the chart here. Let's go here. So Mike
24 Ocrant and Frank Casey meet in a cab in Barcelona.

25 MR. KOTZ: Right.

1 THE WITNESS: In April of 2001, he starts to -- he
2 meets Mr. Madoff, but he started his investigation when he
3 gets back. May 1st, Michael Ocrant goes to the press or MAR
4 Hedge with an article entitled "Don't Ask, Don't Tell" -- I'm
5 sorry. That would be the Barrons article. I'm sorry.
6 Michael Ocrant publishes an article called "Madoff Tops
7 Charts: Skeptics Ask How." A week later Barrons publishes
8 "Don't Ask, Don't Tell. Bernie Madoff is so secretive he
9 even asked investors to keep mum." These are two articles
10 published within a week of each other and the SEC never
11 notices.

12 BY MR. KOTZ:

13 Q Right. Okay. All right. So Manion calls you and
14 asks you to resubmit it. Did he indicate to you why he
15 thought anything would be different? Was there any reason
16 that he gave as to why they might take it more seriously in
17 October 2001 than they did in May 2000?

18 A Yes. In May -- once those articles hit in May, my
19 team was convinced that Bernie Madoff would be shut down
20 within days, that an SEC investigation team would be in there
21 and shut him down.

22 Q Right.

23 A Those two articles were so damning --

24 Q Right.

25 A -- that there was no way he was going to survive

1 this.

2 Q Right.

3 A We were prepared for a dramatic fall in the capital
4 market when the news was revealed, that there would be forced
5 selling in Europe and abroad --

6 Q Right.

7 A -- Europe and in the United States as a result of
8 this. It would be a huge catastrophe for the financial
9 markets worldwide. And when nothing happened, I think -- and
10 can I speculate here?

11 Q Sure.

12 A I'm going to speculate that Mr. Manion was
13 convinced New York was doing something at this time on the
14 basis of these two articles that -- both came out of the New
15 York press and the financial industry -- the SEC, for
16 certain, had to be inside there tearing his operation apart.

17 Q Right.

18 A And when nothing happened, after a few months, he
19 felt that that couldn't be the case because he knew how the
20 SEC operated. And he contacted me, in the September/October
21 timeframe of 2001, to resubmit and I did and I added a few
22 pages.

23 Q Okay. And so Manion was surprised that even after
24 these articles came out nothing happened?

25 A Shocked would probably be even a better word.

1 Q Do you know if he indicated to you that he showed
2 anybody the articles in the office or said, "Look at this.
3 Harry came by months ago. Now we have these articles." Any
4 indication of what happened, you know, in the inner workings
5 there?

6 A No.

7 Q So, you come back --

8 A He might have, but I just don't recall. I'm
9 getting old. I've got Alzheimer's and amnesia. I'm tired.
10 I don't know.

11 Q For the record, that's a joke.

12 A For the record, I have a very weird sense of humor.
13 He understands it though.

14 Q Well, we'll talk to Manion on this and we've spoke
15 to --

16 MS. KACHROO: I thought you did speak to him.

17 MR. KOTZ: Not yet. We actually spoke with Ocrant
18 though. We went up to see him --

19 MS. KACHROO: Oh, okay.

20 MR. KOTZ: -- and talked to him in his office.

21 BY MR. KOTZ:

22 Q In October 2001, you said you provided more
23 documents. I want to just bring your attention to what we're
24 going to mark as Exhibit 4, which is Mark-0023, 0024 and
25 0025, and ask you if those are the documents that you

1 submitted in October 2001 in addition to the previous
2 submission which you resubmitted.

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

5 THE WITNESS: Are you going to go by my Bates
6 Stamps?

7 BY MR. KOTZ:

8 Q Yeah.

9 A Mark -- Mark-15 to Mark --

10 Q Okay.

11 A -- probably to Mark-25?

12 Q Yeah, why don't we put the whole thing in there?

13 MS. KACHROO: Okay.

14 BY MR. KOTZ:

15 Q Okay. So we're going to mark these documents --

16 A Oh no, Mark-27. It goes Mark-15 to Mark-27. I
17 believe that this is my submission here.

18 Q Okay. So we're going to put in Mark 15 to Mark 27
19 as Exhibit 4. And so what was the additional documentation
20 that you provided?

21 A I had a -- in Mark-23 I put in a flowchart of how I
22 thought his operation was running --

23 Q Okay.

24 A -- based on information collected by Mr. Ocrant,
25 Mr. Casey and Mr. Chelo and myself.

1 Q Okay. And what else was additional that you
2 provided several other pages?

3 A There was a two-page fax transmittal, dated March
4 29, 2001 timed 3:57 p.m., and I was negligent in I never
5 wrote down where I got it from. And it said at the top, "Re:
6 Madoff Investment process explained." It was a two-page
7 explanation of Mr. Madoff's reported investment strategy.

8 Q Okay. And then in addition, if you look at
9 Mark-0025, you also said that you would be willing to provide
10 them detailed questions for their audit team and, in fact,
11 agree to accompany the team under certain conditions.

12 A I did. I knew that many government agencies use
13 outside consultants to assist them when expertise from the
14 outside is required to further an investigation and save the
15 government time and money.

16 Q Okay.

17 A And it can be a cost effective means to quickly
18 solving cases. I felt if I went in under the command and
19 control of the SEC with an inspection team, that in a half
20 hour I could crack Madoff open like an egg.

21 Q And you also said you can provide them with simple
22 mathematical formulas that value short term pre-options that
23 result when the party had access to order flow and that you
24 can prove that long term strategies that support the profit
25 from these really short term options will not meet the return

1 supposedly generated?

2 A That is correct.

3 Q And so, but you don't believe that you had a
4 meeting with them. You provided this information at that
5 time, right?

6 A Yes. If there was a meeting, I just can't recall
7 it.

8 Q Okay.

9 A This was right after 9/11 and people were very
10 frightened in America at that point, and this may have been a
11 contributing factor to why that investigation did not move
12 forward. The SEC staff was basically forced out of their
13 building.

14 Q Right.

15 A Their building was structurally unsound.

16 Q Right.

17 A They were right near Ground Zero. Staff was
18 probably traumatized and I believe they were working out of
19 their homes on laptops because you had no office space to go
20 to.

21 Q Right. So did you receive any response to this
22 submission you made in October 2001?

23 A No. No response whatsoever other than from Mr.
24 Manion saying I don't think they're doing anything.

25 Q Okay. Did Manion say at that time, again, why they

1 weren't doing anything?

2 A No. He was just speculating that they don't
3 understand it, that the staff doesn't have the experience.

4 Q Okay. Did Manion, at all, ever speculate to you
5 that because Mr. Madoff was so well known, that perhaps they
6 were nervous about bringing a case?

7 A Yes.

8 Q When was that?

9 A I couldn't tell you.

10 Q What did he say generally?

11 A He's a powerful man. A big man. Has his own
12 broker-dealer. Has a lot of the percentage of volume that
13 trades daily on the stock exchanges and, you know, that --
14 the SEC typically does not do the big cases against the most
15 powerful people on Wall Street. They typically get three
16 passes.

17 Q Right. Okay. But you think that was around the
18 time that you were providing these complaints in the
19 2000-2001 range that you had this conversation with Manion?

20 A There were so many conversations I can't tell you
21 what years they took place, but it was more along a line of
22 continuing frustration between Mr. Manion and myself about
23 the Agency's refusal to regulate.

24 Q Okay. And Manion indicated to you that it wasn't
25 just the Madoff case, that he was frustrated in general with

1 the SEC's office?

2 A Yes, that it seemed like they were actively
3 avoiding cases and enforcement opportunities.

4 Q And those were the cases against the folks of a
5 higher stature?

6 A Yes, and confirmation -- several of the SEC staff
7 are my former students. I would teach them post-graduate
8 courses in derivative securities and they were students of
9 mine in the Chartered Financial Analyst program. And so they
10 would tell me what they thought of their agency, and they
11 were not nice things because these people were among the most
12 highly qualified staff. They all went on to earn their
13 certified -- I'm sorry -- their chartered financial analyst
14 designation, which is considered the highest you can go on
15 Wall Street. It's considered better than a Ph.D.

16 Q So, what did they say specifically?

17 A Lame.

18 Q Did Manion ever mention any specific entity that --
19 like Madoff who was of high stature that the SEC had not gone
20 after?

21 A Yes.

22 Q Who was that?

23 A All the major investment banks.

24 Q Okay.

25 A I'd also say that I had a personal friend who was a

1 former branch chief in the Boston regional office.

2

3

4

5

6 Q Okay.

7 A And he told me about how bad he thought the
8 Division of Enforcement was, that they would never take on a
9 big case and that the big firms got special treatment and kid
10 gloves treatment because the SEC was afraid of political
11 repercussions if they try to enforce big cases.

12 Q Okay.

13 A And he said they wouldn't even do medium sized
14 cases, they'd only do small ones.

15 Q And so when these things were said -- let's go back
16 to Manion for a second. Was Manion talking about Boston
17 specifically or was he talking about the SEC overall or --

18 A Overall. He would say that the top two regional
19 offices were New York and Boston and that they had more
20 financial expertise than the rest of the regional offices and
21 certainly a hell of a lot more than Washington. He thought
22 that the Washington people were not financially astute.

23 Q Okay.

24 A He said the best and the brightest the SEC had were
25 in New York and Boston and he said that wasn't saying much.

1 Q And then he mentioned both New York and Boston as
2 places where the SEC wouldn't bring the big cases?

3 A That's where they would not bring the big cases.

4 Q Okay. So following up, after you never heard
5 anything back you continued to look into Madoff, right?

6 A Yes. The investigation continued and I have to
7 apologize. I left the industry at the end of August 2004 and
8 I did not -- when I left, I did not keep or ask for an e-mail
9 archive. And if I had, then the stack of documents that are
10 currently -- that you currently have would be three times
11 higher because I assure you there was a continuing stream of
12 e-mails from late 1999 through the third quarter of 2005 and
13 evidence that was gathered that went into the October and
14 November and December 2005 SEC submission. And you would
15 have the evidence that we collected that went into those --
16 built those reports but I don't have the email trail of the
17 evidence any longer. I apologize for that.

18 MS. KACHROO: David, is there a room where we can
19 go briefly?

20 MR. KOTZ: Sure, you want to take a break?

21 MS. KACHROO: Yeah.

22 (A brief recess was taken.)

23 BY MR. KOTZ:

24 Q Back on the record. Okay. Before we went off the
25 record, you were talking about the fact that there were some

1 e-mails that you don't have anymore, and it's referenced on
2 the chart which is Exhibit 2. Do you know, were there
3 particular people that you sent e-mails to around that time
4 that perhaps would have those e-mails? You know, in other
5 words, not necessarily from you, but whoever you communicated
6 with that maybe we'd be able to find? I mean, we could go to
7 Internet providers, et cetera. Do you have any sense of
8 that?

9 A Yes. It would be Neil Chelo.

10 Q Okay.

11 A Frank Casey and myself for sure.

12 Q Okay.

13 A And others as well but I don't know who they may be
14 from the industry.

15 Q And these were e-mails between the three of you
16 talking about your investigation of Madoff?

17 A Yes. It was internal team communication.

18 Q And then there came a time in June 2002 when you
19 went to Europe; is that right?

20 A Correct.

21 Q And what would happen there?

22 A This -- who has Attachment 3?

23 MS. KACHROO: I have it.

24 THE WITNESS: Can we go through it?

25 MS. KACHROO: I don't know. I think I put this in

1 your documents.

2 THE WITNESS: Attachment 3.

3 MR. KOTZ: Okay. Why don't we --

4 MS. KACHROO: This, actually, is not in the
5 documents that we provided to Congress. This is only being
6 provided to you.

7 THE WITNESS: Okay. Do you have it?

8 MS. STEIBER: Are you talking about 0028 or are you
9 talking about --

10 MS. KACHROO: It's actually --

11 MS. STEIBER: What number are you starting with?

12 MS. KACHROO: It's number -- oh boy. Wait. I can
13 tell you where it might be.

14 MS. STEIBER: I have your numbering.

15 MS. KACHROO: Yeah. One second. It would be
16 technically -- I don't think this one got Bates numbered --
17 0070. So it technically would have been 0071 but it's
18 missing.

19 THE WITNESS: Okay.

20 MS. KACHROO: From everybody's --

21 THE WITNESS: Okay.

22 MS. STEIBER: Okay. 0071. Is that what you said?

23 THE WITNESS: Yeah, but it's not in that one.

24 MS. KACHROO: It's not in that one.

25 BY MR. KOTZ:

1 Q Why don't you explain.

2 A If you go to Mark-31 through Mark-37 --

3 MR. MICHAELS: Wait a minute. I don't have a copy
4 of this, right? Do I?

5 THE WITNESS: No.

6 MS. KACHROO: No, it's not -- I took it out.

7 THE WITNESS: This is the special document that
8 only the SEC gets to see.

9 BY MR. KOTZ:

10 Q Okay.

11 A From -- Mark-31 to Mark-37 builds the basis for
12 this document. This is my itinerary with Access
13 International Advisors, Ltd. through Europe, through England,
14 France, Switzerland where I met a number of private client
15 banks, Madoff feeder funds and hedge fund, fund to funds.
16 And who I was with -- and let me explain who these people
17 were. These people were noblemen, European royalty.

18

19

20

21 Q Okay.

22 A And these are the people I met with. And not all
23 of them had Mr. Madoff. This Attachment 3 is a list of
24 fourteen of those private client banks, fund of funds, or
25 Madoff feeder funds --

1 A That is correct. There are two of them that have
2 come public, Mr. Kotz, and that would be numbers 3 on the
3 list of -- under Geneva, Switzerland, Dexia Asset Management,
4 which I believe to be owned by Dexia, which is a bank that
5 was rescued, I believe, by the Dutch and Belgium governments
6 this past fall to keep it from becoming insolvent.

7 Q Right.

8 A And the Fix Family Office has also admitted to the
9 Madoff losses. Under the Paris and Paris suburbs list,
10 number 6, Odo Asset Management, I believe that to be the same
11 Odo Management that was referenced in the Bloomberg article
12 in January where they had a 35 million -- I don't know if it
13 was euros or dollars, I can't recall -- case in Liechtenstein
14 trying to recover some lost Madoff funds that I believe to be
15 off shore.

16 Q Okay.

17 A Everybody else is lying low in the reeds and not
18 admitting Madoff exposure, and I felt we needed to withhold
19 that from Congress so that you could forward that list to the
20 French and Swiss authorities so that they could go in there
21 because that list was current as of June of 2002. Those
22 people may not still be invested in Madoff.

23 Q Right.

24 A They may have pulled their funds.

25 Q Right.

1 A But those, as of June 2002, I believe them to be
2 invested with Madoff and to be feeder funds of his or
3 sub-feeder funds.

4 BY MS. STEIBER:

5 Q So to clarify, the ones that are now public and
6 don't need to be informed are number 3, did you say, of the
7 Geneva, Switzerland list, which is Dexia Asset Management?

8 A Correct.

9 Q And then under the Paris list, number 6. Are those
10 the only ones that are public?

11 A No.

12 Q Or did you have an additional one?

13 A No. I want to say that under the Geneva,
14 Switzerland list, it is going to be the Fix Family Office,
15 which is number 5. Dexia Asset Management was number 3. I
16 don't know that Odo Asset Management, which is number 6 on
17 the Paris and Paris suburb list, I don't know that they went
18 public in France. I know they went public in Liechtenstein.
19 I believe them to perhaps -- they may have larger assets
20 under management than what was revealed in the Liechtenstein
21 case.

22 BY MR. KOTZ:

23 Q Okay.

24 A And I think the proper procedure, given my
25 background and training, is that U.S. embassies have lego

legal attaches

1 ~~atts., legal attach,s~~ --

2 Q Right.

3 A -- to interface with host nation law enforcement
4 and that they would probably want to receive this list from
5 the SEC.

6 Q Okay. All right. Well, we appreciate you
7 providing it to us. So tell me a little bit more about your
8 trip to Europe. What was the purpose of the trip and, you
9 know, not to go into specific detail, but just generally what
10 happened and what you found.

11 A The purpose of my trip was to market a derivatives
12 hedge fund product I developed called Rampart Options
13 Statistical Arbitrage.

14 Q Okay.

15 A And it was a short volatility strategy involving
16 short call spreads, short put spreads that were near dated,
17 near month -- and that is current month -- deep out of the
18 money call spreads, deep out of the money put spreads, to
19 generate income of anywhere from three-quarter of a percent
20 to a percent and a half each month, and it was designed with
21 some risk controls in place that hopefully would allow you
22 not to lose more than 50 percent of your assets in any one
23 month less the option premium received.

24 Q Okay. And so what did you find when you went to
25 Europe?

1 A That the list of 14 private client banks and fund
2 of funds and feeder funds on that list in Attachment 3 had
3 Madoff -- that they bragged about their Madoff exposure, that
4 Mr. Madoff was their best manager. And I was pitched to them
5 by Personal Privacy, the managing partner at Access
6 International, as, just like Bernie Madoff, only higher
7 returns with higher risk.

8 Q Okay. And so as you were learning more information
9 about Madoff, did, at that point -- you know, you talked
10 previously about how you weren't sure. You had two theories,
11 front-running and Ponzi scheme. Did over time you come to
12 the conclusion that it was more likely to have been a Ponzi
13 scheme?

14 A At this point in time, as a result of this trip, I
15 was hearing information from these 14 managers that had
16 Madoff, that they all told me the same thing, that Madoff was
17 closed to new investors, he was not taking new money in, but
18 that each of those 14 had a very special relationship and
19 that Madoff would take their money and their money only.

20 Q Right.

21 A And when you hear the same thing once, you take it
22 at face value. When you hear it twice, you become
23 suspicious. After you have heard it 14 times, you become
24 deeply suspicious.

25 Q Okay.

1 A And that fit with the Ponzi theory and it increased
2 the probability that it was a Ponzi many fold. Let me
3 explain.

4 Q **Yeah.**

5 A If you are a Ponzi, you have a ferocious appetite
6 for new cash because you have to pay off old investors.

7 Q **Right.**

8 A So you need ever increasing amounts of new money
9 and new victims to come into your fund. And that was fitting
10 with the Ponzi scenario. And you also have to have a series
11 of lies. And it was clearly a lie that Mr. Madoff was
12 telling people that he was closed publicly, but in private,
13 was telling these 14 asset managers that they had special
14 access when, in fact, there was nothing special about their
15 access. He would take new money from anybody.

16 Q **And also that information that you got did not mesh
17 with the front-running theory.**

18 A It did not. If it was front-running, you would
19 want to limit the amount of assets under management because
20 if you have too much money chasing too few investment
21 opportunities to front-run, then your returns would go down
22 from the front-running scheme --

23 Q **Right.**

24 A -- and your risk of detection would go way up. And
25 so front-running was making less and less sense as a broad

1 hypothesis. So I started to discount that one rather
2 dramatically and increasing the probabilities that it was a
3 Ponzi scheme. And it was this trip that solidified that in
4 my mind and in my team's mind.

5 Although one of the team members thought that it
6 had to be front-running, it couldn't be a Ponzi, and that was
7 Frank Casey, where Mr. Chelo and I have more of a
8 mathematical background and we were fixated on the Ponzi
9 aspects. So we had a -- we were a little bit split on a team
10 on this issue. Two of us were clearly in the Ponzi camp and
11 that was the two of us with mathematical backgrounds. The
12 marketing person, Frank Casey, thought it was more of a
13 front-running.

14 BY MS. STEIBER:

15 Q **Why?**

16 A He didn't have the math background to understand
17 that if you place too much money into a front-running scheme,
18 the returns have to go down because you have a bigger pool of
19 assets that you have to start generating returns for and your
20 front-running has to become more and more egregious, which
21 increases the likelihood that it would become spotted by
22 broker-dealer customers of Madoff securities and that they
23 would complain to the SEC.

24 BY MR. KOTZ:

25 Q **Right. Plus, I mean, isn't it fair to say that,**

1 you know, the Ponzi scheme was kind of a more incredible
2 thing, that this would be a Ponzi scheme, and that, you know,
3 your normal reaction would be it might be something like
4 front-running rather than an entire Ponzi scheme?

5 A When I heard these people speak -- and I had to be
6 very careful when I was in Europe meeting these people that
7 had Madoff. These funds that were invested in Madoff, they
8 would, like, wink and -- it was almost like a wink and a nod.
9 "Well, of course, we don't believe he really is using
10 split-strike conversion." A few of them said that. "We
11 think he has access to order flow," which to me I thought was
12 code word for an illegal activity known as front-running.

13 Q Right.

14 A And that is how they justified it. They thought
15 the recurrence were real, but they were generated through an
16 illegal activity known as front-running.

17 Q Now those individuals and companies that you spoke
18 to, did they do any due diligence themselves?

19 A They all say they do due diligence and they all met
20 with me. A lot of the due diligence in Europe is below the
21 caliber that takes place in the United States. The level of
22 sophistication and financial education is a lot lower there.

23 Q Right.

24 A So they were using things like a handwriting
25 analysis called graphology, which is discredited in the

1 United States, where the person -- the manager that they are
2 considering hiring submits a handwriting sample.

3 And I see the looks on your faces. I am going to
4 describe that because it is not admitted. I don't think this
5 is admissible. Yeah. Even my own legal team is looking at
6 me with looks of disbelief, but in Europe, they hired
7 graphologists who make a good living analyzing handwriting to
8 pick out who the fraudsters. And if you read the Wall Street
9 Journal earlier this week, Personal Privacy, one of the
10 partners at Access International, admitted that they never
11 had Mr. Madoff submit his handwriting sample because he was
12 beyond reproach.

13 **Q Right.**

14 A And of course, they would have caught him. I think
15 the inference was, of course they would have caught him if he
16 had submitted a handwriting sample.

17 **Q Right. So the handwriting samples -- but they**
18 **didn't even ask him for a handwriting sample.**

19 A That is correct.

20 **Q Okay. And was it your sense, also, that there may**
21 **have been some of these individuals or entities that had some**
22 **suspicion that there potentially was something illegal going**
23 **on and maybe didn't want to get too much information, were**
24 **just happy with the returns?**

25 A It seemed like if you were willing to accept that

1 Mr. Madoff was front-running his order flow, well, then he
2 clearly was a crook; he was violating American securities
3 laws. And they seemed to take great comfort for that because
4 everybody knows you can make higher returns if you cheat and
5 steal --

6 Q Right.

7 A -- it has a higher profit margin associated with
8 it --

9 Q Right.

10 A -- than if you are engaged in a legitimate
11 investment activity.

12 Q Right.

13 A And so they seemed to take comfort and really
14 seemed to be hoping that he was front-running because then
15 the returns were real and they were the beneficiary.

16 Q Right. Gotcha. Okay. And so -- and after that,
17 the information you got in Europe and -- which seemed to
18 indicate to you it was more likely to be a Ponzi scheme, then
19 you went back to the SEC; is that right? Tell me about the
20 origins of the October 2005 complaint.

21 A And that is where I wish I had the e-mails.

22 Q Right. Okay. To the best of your recollection.

23 A And I would like to see those e-mails, too, if you
24 can get them.

25 Q Okay. Well, we will make an effort certainly.

1 A And Rampart Investment Management in Boston, their
2 servers --

3 Q Okay.

4 A -- tended to be a very, very high speed.

5 Q Okay.

6 A The slowest server went to e-mail, but they had
7 more servers than people and they continually rotated in new
8 servers --

9 Q Okay.

10 A -- where the highest speed servers and computers
11 went into the portfolio management training area.

12 Q Okay.

13 A So I am hopeful that you can obtain them.

14 Q Okay. But so what led you to then make your third
15 complaint now to the SEC?

16 A I can't recall because I don't have the trail of
17 documents.

18 Q Okay.

19 A But there was something key that did happen in June
20 of 2005. Frank Casey, and I believe he was in Europe doing
21 some kind of a marketing trip -- and I substituted in the
22 letters A, B, C, D, E, F, G, H for the name of an
23 individual -- and he had a meeting where it was clear that
24 Mr. Madoff was trying to borrow funds from French and other
25 European banks. And that was the first warning sign -- and

1 this is what we were looking for -- that he was running short
2 of cash to keep the operation going.

3 Q Right.

4 A And we took that as a clear warning sign that he
5 was in trouble and in danger of folding, but we had no inside
6 information to that. We were trying to solve it from the
7 outside using publicly available information and questions
8 being asked by my team members. So this was just a dinner
9 conversation --

10 Q Right.

11 A -- that took place, I believe, in Europe by
12 Mr. Casey. And I wish I had more information. I just
13 happened to save it -- save this information. And then as
14 the e-mails started to pick up in October of 2005 -- and I
15 have a document that I -- dated October 25, 2005, and that is
16 the document I used to meet with SEC Boston branch chief,
17 Mike Garrity.

18 Q Right. Okay. And so if you remember, did you send
19 in documents initially into the SEC or did you call them?

20 A I don't remember.

21 Q Okay. But you do know that you -- on October 25th,
22 there was a meeting you had with the SEC, right?

23 A I believe it was October 25th. I dated this as a
24 presentation, October 25, 2005, presentation to the SEC. I
25 am going with Mark-51 and -- where does that one end. I

1 believe it ends at Mark-70.

2 Q Okay. And we are going to mark, as Exhibit 7, the
3 document that says on the top, "The World's Largest Hedge
4 Fund is a Fraud, October 25, 2005, Presentation to the SEC."
5 And it is Bates stamped Mark-0051 to Mark-0070.

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

8 MS. STEIBER: Right. So that Attachment 3 is a
9 part of that.

10 MR. KOTZ: Okay. Okay.

11 THE WITNESS: Yeah. I don't know that it was a
12 part of that one. It was part of, I believe, the November 7,
13 2005, submission. I can't recall if it was in the --

14 BY MR. KOTZ:

15 Q Okay.

16 A -- October 25th presentation. It may have been. I
17 just don't know.

18 Q But this Attachment 3, which we marked as
19 Exhibit 6, was provided to the SEC in 2005.

20 A Yes.

21 Q Okay. All right. So "October 25, 2005, made a
22 presentation to the SEC," that was in person?

23 A Yes, it was.

24 Q Okay. And do you remember who you met with at that
25 point?

1 A It was SEC Boston branch chief Mike Garrity.

2 Q Okay.

3 A I believe he has since been promoted to assistant
4 regional administrator and he had other people in the room
5 and I can't recall their names.

6 Q Okay. Was Ed Manion in there?

7 A No.

8 Q Okay. Did you still have interactions with Ed
9 Manion at that point?

10 A Yes. He was the one that arranged this meeting.

11 Q Okay.

12 A He thought it was critically important that the
13 SEC -- because at this time, Mr. Madoff had gotten in new
14 victims and the fraud scheme was getting ever and ever larger
15 and he wanted to make sure his agency took Madoff down.

16 Q Okay. And so you provided more information in 2005
17 than you provided earlier and is that because you learned
18 more over the time based on your own investigation?

19 A Yes. The team had learned a lot. We had kept
20 busy. I suspect it was a similar level of activity and
21 intensity throughout the entire period of time. It is just
22 that the e-mails are missing.

23 Q Right. And then part of the information you
24 provided to the SEC in October 2005 was a list of 28 red
25 flags relating to Bernard Madoff, right?

1 A That is correct.

2 Q And so what, if you can recall, happened at the
3 meeting? What was the reaction?

4 A Mike Garrity took it very seriously; he thought it
5 was very credible. He thought I was very specific. He had a
6 whiteboard.

7 Q Okay.

8 A Anything he did not understand he had me go up to
9 the whiteboard until he understood the concept. So I was
10 drawing a lot of charts and walking him through the
11 mathematics and giving him picture diagrams of the moving
12 parts of this purported split-strike conversion strategy.

13 Q Right.

14 A And he never let me leave the whiteboard until he
15 understood everything. And he kept me there for a few hours.

16 Q Okay.

17 A He was thorough. He asked unbelievably great
18 questions. He is a skilled investigator. He and I discussed
19 the fraud theories. He said, "Well, you have two fraud
20 theories. What if his returns are real? Is there any
21 explanation for that?"

22 I mean, I thought for a bit and I said, "Yes. The
23 only way these returns are real is Bernard Madoff is an alien
24 from outer space that has perfect foreknowledge of what the
25 capital markets are about to do." And Mr. Garrity, to his

1 credit, took me very seriously and we had a discussion about
2 that and Mr. Garrity pointed out that if this is true and
3 Mr. Madoff is an alien, this would be very destabilizing to
4 the U.S. capital markets.

5 Q Okay.

6 A Because investors would not like to be trading
7 against aliens.

8 Q Right.

9 A It is not a level playing field. And he took it
10 seriously because the size of this hedge fund was beyond
11 belief. And so we were trying to think outside of the box,
12 as a good investigator would, and he was a very good
13 investigator, and he promised me that he would investigate
14 quickly and get back to me quickly with -- he took it very
15 seriously and he was true to his word.

16 Q Okay. But for the record, the discussion about the
17 aliens was in jest, right?

18 A It was half in jest.

19 Q Okay. Okay. Okay. So you were feeling
20 encouraged, is it fair to say, after that meeting you had in
21 October of 2005, that finally somebody at the SEC was
22 listening.

23 A Yes. I was highly encouraged. I felt good. I
24 knew Mr. Garrity understood it. I knew he saw the threat and
25 he saw the size and the complexity.

1 Q Okay.

2 A He understood the math, he understood the complaint
3 that I had submitted and he was promising action, and then he
4 followed up and was true to his word.

5 Q Okay. And so what did Garrity tell you he was
6 going to do?

7 A He was going to investigate quickly from his
8 office --

9 Q Right.

10 A -- and get back to me and he did. It may have
11 taken him a week or so to get back to me. There are some
12 e-mails there, thank goodness. And he said, "I've discovered
13 some irregularities that are disturbing. I cannot" -- "but I
14 am not at liberty to share them with you, but we take them
15 seriously. I need to get you" -- "I need to get this case
16 submission to New York. I need New York to act on it because
17 we cannot."

18 Q Right.

19 A And he gave me -- came back with contacts, of two
20 contacts at the SEC's New York regional office. I went to
21 Megan Cheung, who I thought was the highest ranking.

22 Q Who was the other contact? Do you remember?

23 A Doria Backenhiemer.

24 Q Okay. And so Megan was the higher level.

25 A Right. She was the branch chief.

1 Q She was the branch chief.

2 A And I knew branch chiefs were --

3 Q Higher.

4 A -- higher.

5 Q All right. So Garrity said he was going to send it
6 to the New York office and he gave you the name of the person
7 that he was sending it to, the names of the people he was
8 sending it to in the New York office, right?

9 A Yes.

10 Q Okay. And he indicated that he would follow up
11 with the New York office as well?

12 A He did.

13 Q And did he indicate to you that he would stress to
14 the New York office that he felt like it was an important,
15 credible case?

16 A Yes.

17 Q And did he indicate to you that he would also let
18 the New York office know that he felt you were credible?

19 A Yes. He vouched for my credentials with the New
20 York office and --

21 Q Now at that time -- is it also the case at that
22 time that you had mentioned that there were a couple other
23 people who could vouch for your credentials, higher level
24 people, Bresnan and Walter Ricciardi?

25 A Yes.

1 Q Okay. And how would they be able to vouch for you,
2 do you remember?

3 MR. MICHAEL: I think we are treading into an --

4 MR. KOTZ: Okay.

5 MR. MICHAEL: -- area that is covered by a
6 confidential case.

7 BY MR. KOTZ:

8 Q Okay. But without talking about the specific case,
9 are you able to say that you had dealings with these two
10 individuals, Bresnan and Ricciardi?

11 A Yes, I did.

12 Q Okay. And so you identified them as individuals
13 who could vouch that you were a credible person coming
14 forward.

15 A Yes.

16 Q Okay. Okay. All right. And so -- and then
17 Garrity, he did send it to the New York office; is that
18 right?

19 A Yes, he did.

20 Q And so what happened then?

21 A When he -- I do not believe he -- at least he told
22 me he did not reveal my identity to the New York office, per
23 my request.

24 Q Right.

25 A He just let them know there was a Boston

1 whistleblower.

2 Q Right.

3 A And that I was to call one of these two
4 individuals, Doria Backenhiemer or Meaghan Cheung, identify
5 myself as the Boston whistleblower, which I did. I told them
6 my name. I told Meaghan Cheung my name and she was to be the
7 only person in the New York regional office to have -- know
8 who I was, along with the team leader leading the team into
9 Mr. Madoff's operation. Those are the only two people that
10 were to know my identity.

11 Q Okay. And so do you recall your first conversation
12 with Meaghan Cheung? According to our documents, it occurred
13 on November 4th. I think if you look at Mark-0049 --

14 MS. STEIBER: I will get it.

15 THE WITNESS: Yes.

16 MR. KOTZ: Okay. I am reading Mark-0049. Okay.
17 And so why don't we mark that into evidence as Exhibit 8.
18 It's Mark-0049. It is an e-mail string, November 4, 2005,
19 from Garrity saying, "Glad you connect. Thanks again.
20 Mike." And then from Harry to Mike Garrity indicating that
21 he spoke with Meaghan Cheung and revealed his identity to
22 her.

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

25 BY MR. KOTZ:

1 Q Do you remember anything specific about that
2 conversation you had with Meaghan Cheung?

3 A Yes.

4 Q Okay. What do you remember?

5 A She did not seem to understand the report as it was
6 written.

7 Q Okay. And did she ask you questions to try to
8 understand it?

9 A No. That was what was shocking. Mike Garrity took
10 it seriously, asked lots of good questions, would not let me
11 leave the whiteboard until he understood every point, and she
12 was the hundred and eighty degree opposite, never asked a
13 question, intelligent or otherwise, told me that she had
14 received my report, had looked at it, and basically it was
15 her baby now and we don't -- I had the impression that they
16 don't deal with people like me.

17 BY MS. STEIBER:

18 Q Did she say anything at the meeting that gave you
19 that impression, anything specific that you remember?

20 A It was not a meeting. It was a telephone call.
21 She said that -- I need some time here. I need to go through
22 some documents here.

23 BY MR. KOTZ:

24 Q Sure. Take your time.

25 A Because I don't want to say a conversation took

1 place in November if they might have taken place in December.

2 Q Okay.

3 A Or later in November or -- I mean, I can't --

4 Q Okay. I mean, we can just -- you know, in
5 general, in the conversations you had with Ms. Cheung --
6 forget about the specific date -- what do you recall her
7 saying specifically about the case or about what she was
8 going to do?

9 A She was never volunteering any information to me.

10 Q Okay.

11 A It was me asking questions of her, "Do you
12 understand my report?"

13 Q Yes.

14 A Me saying things like, "Really? Do you understand
15 derivatives?" And she goes, "Well, I did the Adelpia case."
16 And I probably would have commented, "Well, that was only
17 like, if I recall it correctly, a three or three-and-a-half
18 million dollar accounting fraud case from the Rigus family,
19 Adelpia Communications."

20 Q Right.

21 A And I said, "Well, that was just an accounting
22 fraud. That is much easier to understand than a complex
23 derivatives fraud, and it is a much smaller case. This case
24 is several times the size of the Adelpia case." And she
25 seemed offended by that saying that if she didn't understand

1 derivatives, that you had an office of economic analysts in
2 Washington staffed with Ph.D.'s who understood derivatives.
3 And I would have responded, "Yes, but they are only Ph.D.'s.
4 They have never traded derivatives."

5 **Q Right.**

6 A "They are academics only." And the formulas used
7 that the academics know for derivatives are not the ones
8 actually used by industry participants. They are totally two
9 different sets of formulas. The math is different and the
10 understanding level is different and that I was someone that
11 could take these instruments apart backwards and forwards and
12 do it in my sleep, whereas the Office of Economic Analysis
13 would not have those caliber of people.

14 **Q So is it fair to say that you asked if you could**
15 **provide assistance to her and she rebuffed you?**

16 A She did rebuff me and she would never follow up.
17 It was always me contacting her, me giving her new
18 information and me having unsatisfactory exchanges with her,
19 either verbally or by e-mail.

20 **Q When you say unsatisfactory, what do you mean**
21 **specifically?**

22 A If you were a trained investigator and you have a
23 whistleblower come in, you pump them for information. You
24 walk them through the case submission from every direction.
25 You ask lots of detailed questions. You ask lots of leading,

1 open-ended questions. You want to pick that person's brain
2 because that person has great knowledge and can save the
3 government thousands of man hours. And she never followed up
4 and she showed a clear lack of training.

5 Q Did she kind of give you the impression that she
6 wanted to get you off the phone?

7 A Yes.

8 Q Okay. Okay. Did she ever indicate to you anything
9 about the fact that in her office, Ponzi scheme cases were
10 not favored?

11 A She never said anything like that.

12 Q Okay. And did there also come a time when you
13 suggested to her that she contract -- contact Mike Ocrant and
14 talk to him?

15 A Yes. Yes.

16 Q Okay. And what was her response to that, do you
17 remember?

18 A No.

19 Q But, to your knowledge, did she ever contact Mike
20 Ocrant?

21 A I have spoken to Mike Ocrant and he said, "I am
22 prepared to take her call." And I didn't feel that she was
23 going to call him. So I urged him to call her and he did
24 not. He said, "I will take her call, but she has to call
25 me."