

# **Exhibit 13**



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# Transcript of Luc Estenne (Rule 45)

**Date:** November 15, 2022

**Case:** Picard -v- Square One Fund, Ltd, et al.

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## Transcript of Luc Estenne (Rule 45)

1 (1 to 4)

November 15, 2022

<p>1 UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK 2 -----X 3 SECURITIES INVESTOR PROTECTION : CORPORATION, : 4 Plaintiff-Applicant, : v. : Adv. Pro No: 5 BERNARD L. MADOFF INVESTMENT : 08-01789 SECURITIES LLC, : SIPA Liquidation 6 Defendant. : 7 -----X 8 IN RE: : BERNARD L. MADOFF, : 9 Debtor. : 10 -----X 11 IRVING H. PICARD, Trustee for the: Liquidation of Bernard L. Madoff : Investment Securities LLC and the: Chapter 7 Estate of : 12 Bernard L. Madoff, : Plaintiff, : v. : 13 SQUARE ONE FUND LTD., : Defendant. : 14 -----X 15 16 CONFIDENTIAL 17 DEPOSITION OF LUC ESTENNE 18 TUESDAY, NOVEMBER 15, 2022 19 9:30 A.M. 20 21 22 23 Job No.: 467918 24 Pages 1 - 298 25 Reported by: Adrienne Mignano, RPR</p>	<p>1 A P P E A R A N C E S 2 3 ON BEHALF OF APPLICANT - IRVING H. PICARD: 4 MARCO MOLINA, ESQUIRE 5 VICTORIA STORK, ESQUIRE 6 MATTHEW FEIL, ESQUIRE 7 ANDREW SERRAO, ESQUIRE 8 BAKERHOSTETTLER LLP 9 45 ROCKEFELLER PLAZA 10 NEW YORK, NY 10111 11 212.847.2823 12 13 ON BEHALF OF THE DEFENDANT SQUARE ONE 14 FUND: 15 BRIAN FISCHER, ESQUIRE 16 RICHARD LEVIN, ESQUIRE 17 DAVID CLARK, ESQUIRE 18 JENNER &amp; BLOCK 19 1155 Avenue of the Americas 20 New York, New York 10036 21 212.891.1699 22 23 ALSO PRESENT: 24 Enrique Casas - Videographer 25 Harold Rodriguez - In-Person Technician</p>
<p>1 Rule 45 Deposition of LUC ESTENNE, held at: 2 3 BakerHostetler, LLP 4 45 Rockefeller Plaza 5 New York, New York 10011-0100 6 7 8 9 Pursuant to Notice, before Adrienne M. 10 Mignano, a Notary Public and Registered Professional 11 Reporter in and for the State of New York. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 C O N T E N T S 2 EXAMINATION OF LUC ESTENNE PAGE 3 By Mr. Molina 7 4 E X H I B I T S 5 (Attached to the transcript) 6 TRUSTEE DEPOSITION EXHIBITS PAGE 7 Exhibit 44 Amended Notice of Deposition of 11 Luc Estenne 8 Exhibit 45 Order Modifying the June 6, 2011 2 Litigation Protective Order 9 Exhibit 46 Document titled "2014 Hedge Fund 2 Awards" 10 Exhibit 47 Excerpt of book titled Managing 75 Hedge Fund Risk 11 Exhibit 48 Excerpt of book titled Managing 87 Hedge Fund Risk, 2nd edition 12 Exhibit 49 Handwritten notes dated 3-4-98 131 13 Exhibit 50 Document titled "Potential 136 Manager Meeting Report, Bernard L. Madoff Investment Securities," plus attachment 14 Exhibit 51 Summary Confidential Memorandum 63 of Square One Fund 15 Exhibit 52 Document titled "Existing 170 Manager Meeting Report, Madoff Securities, Square One Fund Ltd." 16 Exhibit 53 Fax from Luc Estenne to Frank 178 DiPascali dated 12-13-99 17 Exhibit 54 Letter from Luc Estenne dated 186 February 11, 2000 18 Exhibit 55 Document Bates stamped 195 FADSA10005930 through 5934 19 Exhibit 56 Document Bates stamped 212 FADSA10005930 through 5934 20 Exhibit 57 Due Diligence Questionnaire 228 21 Exhibit 58 E-mail from Luc Estenne, dated 232 March 24, 2003 22 Exhibit 59 E-mail from Theo Nijssen, dated 36 May 9, 2003 23 Exhibit 60 E-mail from Catherine Lemaitre 247 24 Exhibit 61 E-mail sent by Jérôme Müller to 69 Melissa Massetta 25</p>

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2 (5 to 8)

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<p>5</p> <p>1 E X H I B I T S</p> <p>2 (Attached to the transcript)</p> <p>3 TRUSTEE DEPOSITION EXHIBITS PAGE</p> <p>4 Exhibit 62 Document titled "Investment 271</p> <p>5 Manager Information, Bernard</p> <p>6 L. Madoff Investment Securities"</p> <p>7 Exhibit 63 E-mail exchange between Peter 290</p> <p>8 Fletcher and Luc Estenne</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>7</p> <p>1 THE VIDEOGRAPHER: The court reporter</p> <p>2 today is Adrienne Mignano, representing Planet</p> <p>3 Depos.</p> <p>4 Would the reporter please swear in</p> <p>5 the witness.</p> <p>6 Whereupon,</p> <p>7 LUC ESTENNE,</p> <p>8 being first duly sworn or affirmed to testify to</p> <p>9 the truth, the whole truth, and nothing but the</p> <p>10 truth, was examined and testified as follows:</p> <p>11 EXAMINATION BY COUNSEL FOR THE PLAINTIFF -</p> <p>12 IRVING H. PICARD, TRUSTEE</p> <p>13 BY MR. MOLINA:</p> <p>14 Q Good morning, Mr. Estenne, how are</p> <p>15 you?</p> <p>16 A I'm well. How are you?</p> <p>17 Q Good. My name is Marco Molina. I'm</p> <p>18 going to be taking your deposition today. I'm a</p> <p>19 partner at BakerHostetler. I represent the</p> <p>20 Trustee. And before I begin, I do want to thank</p> <p>21 you for taking the time to fly out here to New</p> <p>22 York City, for taking some time today and</p> <p>23 tomorrow to speak with us. I understand it</p> <p>24 might be inconvenient for you to be here, but we</p> <p>25 appreciate that you're here and answering our</p>
<p>6</p> <p>1 THE VIDEOGRAPHER: Here begins</p> <p>2 Media 1 in the videotaped deposition of Luc</p> <p>3 Estenne in the matter of Picard versus Square</p> <p>4 One Fund Ltd., et al., in the United States</p> <p>5 District Court, Southern District of New York,</p> <p>6 Case Number 10-04330.</p> <p>7 Today's date is November 15th, 2022.</p> <p>8 The time on the video monitor is 9:33 a.m. The</p> <p>9 videographer today is Enrique Casas,</p> <p>10 representing Planet Depos. This video</p> <p>11 deposition is taking place at 45 Rockefeller</p> <p>12 Plaza, New York, New York 10111.</p> <p>13 Would counsel please voice identify</p> <p>14 themselves and state whom they represent.</p> <p>15 MR. MOLINA: Marco Molina,</p> <p>16 representing the trustee Irving H. Picard.</p> <p>17 MS. STORK: Victoria Stork, for the</p> <p>18 Trustee.</p> <p>19 MR. FEIL: Matthew Feil, for the</p> <p>20 Trustee.</p> <p>21 MR. SERRAO: And Andrew Serrao, for</p> <p>22 the Trustee.</p> <p>23 MR. FISCHER: Brian Fischer, Jenner &amp;</p> <p>24 Block LLP, for Square One, et al. I'm joined by</p> <p>25 my colleagues Rich Levin and David Clark.</p>	<p>8</p> <p>1 questions. Thank you.</p> <p>2 I'm going to be asking you a series</p> <p>3 of questions today. If you don't understand the</p> <p>4 question at any time, just let me know and I'll</p> <p>5 be happy to repeat or rephrase the question. If</p> <p>6 you realize that you gave me an answer earlier</p> <p>7 that was inaccurate or incomplete, just let me</p> <p>8 know and you'll have an opportunity, obviously,</p> <p>9 to correct or finish your answer.</p> <p>10 If I ask you a question and you</p> <p>11 answer it, I'm going to assume that you heard it</p> <p>12 and that you understood it and that you gave me</p> <p>13 the best of your recollection. And I understand</p> <p>14 that a great deal of time has passed since we --</p> <p>15 since some of the matters that we're going to be</p> <p>16 discussing today. So, again, I'm just going to</p> <p>17 be asking you to give me your best recollection.</p> <p>18 As you can see, your testimony is</p> <p>19 being transcribed, and the reporter, she cannot</p> <p>20 hear head nods or hand gestures so I'm going to</p> <p>21 ask that if you answer my question, you do so</p> <p>22 audibly, such as, for example, with a yes or a</p> <p>23 no.</p> <p>24 And you may hear from time to time</p> <p>25 your attorney make an objection on the record.</p>

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<p>9</p> <p>1 If -- after the objection is noted, you can</p> <p>2 proceed to answer the question unless, of</p> <p>3 course, the objection relates to disclosure of</p> <p>4 privileged information.</p> <p>5 If you need a break at any time, just</p> <p>6 let me know. I only ask that you answer the</p> <p>7 question before you go ahead and take a break.</p> <p>8 Mr. Estenne, your first language is</p> <p>9 French, correct?</p> <p>10 <b>A Correct.</b></p> <p>11 Q Are you able to read and understand</p> <p>12 English?</p> <p>13 <b>A Yes.</b></p> <p>14 Q Do you understand that you are now</p> <p>15 under oath?</p> <p>16 <b>A Yes.</b></p> <p>17 Q Do you understand that the testimony</p> <p>18 you're about to give has the same force and</p> <p>19 effect as though you are testifying in a</p> <p>20 courtroom?</p> <p>21 <b>A Yes.</b></p> <p>22 Q Are you suffering from any medical</p> <p>23 condition, mental or physical, that would</p> <p>24 prevent you from testifying fully, truthfully</p> <p>25 and accurately today?</p>	<p>11</p> <p>1 court?</p> <p>2 <b>A No.</b></p> <p>3 Q Have you ever given testimony in an</p> <p>4 arbitration or mediation?</p> <p>5 <b>A No.</b></p> <p>6 Q Have you ever been asked to provide</p> <p>7 testimony to a government entity?</p> <p>8 <b>A No.</b></p> <p>9 MR. MOLINA: Ms. Court Reporter, I'm</p> <p>10 going to be handing you what will be marked as</p> <p>11 Trustee Exhibit number 44.</p> <p>12 (Trustee Exhibit 44 marked for</p> <p>13 identification and attached to the transcript.)</p> <p>14 Q Mr. Estenne, I'm handing you what has</p> <p>15 already been marked as Trustee Exhibit 44. I'm</p> <p>16 going to represent to you that this is a copy of</p> <p>17 the Notice of Deposition the Trustee first</p> <p>18 served on your counsel on November 24th, 2021.</p> <p>19 And then subsequently amended on November 7th,</p> <p>20 2022.</p> <p>21 Are you familiar with that document?</p> <p>22 <b>A No.</b></p> <p>23 Q Do you understand that through this</p> <p>24 document -- this is the document that noticed</p> <p>25 the deposition that we're having today?</p>
<p>10</p> <p>1 <b>A Not that I know.</b></p> <p>2 Q Are you taking any medications or</p> <p>3 substances that would prevent you from</p> <p>4 testifying fully, truthfully and accurately</p> <p>5 today?</p> <p>6 <b>A No.</b></p> <p>7 Q Is there anything else that we should</p> <p>8 be aware of that would prevent you from</p> <p>9 testifying fully, truthfully and accurately</p> <p>10 today?</p> <p>11 MR. FISCHER: Object to form. You</p> <p>12 can answer.</p> <p>13 <b>A The -- as you mentioned, my native</b></p> <p>14 <b>language is French, not English. So although I</b></p> <p>15 <b>consider myself rather fluent, from time to time</b></p> <p>16 <b>I'm not able to find exactly the right word in</b></p> <p>17 <b>English, and I may have, accordingly, to from</b></p> <p>18 <b>time to time hesitate or correct myself.</b></p> <p>19 Q Mr. Estenne, please state your full</p> <p>20 name.</p> <p>21 <b>A Luc Estenne, and my middle names are</b></p> <p>22 <b>Denis Isidore Fernand.</b></p> <p>23 Q Have you ever been deposed before?</p> <p>24 <b>A No.</b></p> <p>25 Q Have you ever given testimony in a</p>	<p>12</p> <p>1 <b>A I understand that.</b></p> <p>2 Q Okay, thank you. Mr. Estenne, I'm</p> <p>3 going to be now handing you what has already</p> <p>4 been marked as Trustee Exhibit number 45.</p> <p>5 (Trustee Exhibit 45 marked for</p> <p>6 identification and attached to the transcript.)</p> <p>7 Q This is a copy of the Litigation</p> <p>8 Protective -- Protection Order and Undertaking</p> <p>9 entered on June 6, 2011, which governs, among</p> <p>10 other things, the confidentiality of the</p> <p>11 testimony you are giving today.</p> <p>12 Are you familiar with this document?</p> <p>13 <b>A No.</b></p> <p>14 MR. FISCHER: Did you say</p> <p>15 undertaking?</p> <p>16 MS. STORK: It's all three of them</p> <p>17 together.</p> <p>18 MR. FISCHER: Oh, I see. You gave us</p> <p>19 one copy of -- I think we have different pieces</p> <p>20 of the same document. I have an Order</p> <p>21 Modifying -- I just want to make sure I'm on the</p> <p>22 same page as Marco.</p> <p>23 MR. LEVIN: We're missing the cover</p> <p>24 page. Oh, these are -- there's three separate</p> <p>25 documents.</p>

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<p>13</p> <p>1 MS. STORK: It's the three documents 2 together, the LPO, the Order Amending the LPO 3 and the Consent and Undertaking to be Bound. 4 MR. FISCHER: Okay. Thanks for 5 clarifying. Sorry about that, Marco. You can 6 continue. 7 Q I'm going to be reading into the 8 record, Mr. Estenne, text from this order just 9 so that you understand some of the 10 confidentiality protections and provisions 11 related to this order, which governs this 12 deposition, okay. 13 So I'm reading this verbatim from 14 this order. "Confidential material shall not be 15 given, shown, made available or communicated in 16 any way to any person or entity other than the 17 following: A witness at any deposition in the 18 Actions or Rule 2004 examination, and such 19 witness's counsel, providing that before 20 providing any confidential material to any 21 witness or counsel pursuant to this 22 subparagraph, the party intending to disclose 23 the confidential material shall make a good 24 faith effort to provide notice of its intent to 25 use the confidential material to the producing</p>	<p>15</p> <p>1 Sorry about that, but we have to read 2 this into the record. Do you understand -- do 3 you have any questions about what I just read? 4 <b>A No questions.</b> 5 Q If you ever have any questions today, 6 your counsel will let us know and we'll be happy 7 to give any explanation. 8 Mr. Estenne, now that that's behind 9 us, what did you do to prepare for this 10 deposition? 11 <b>A I did nothing to prepare for today's 12 deposition. I prepared for tomorrow's 13 deposition under 30(b)(6) as a corporate 14 representative.</b> 15 Q You didn't read the Complaint before 16 attending today's deposition? 17 <b>A I didn't.</b> 18 Q Did you review any e-mails prior to 19 attending this deposition? 20 <b>A Again, I didn't specifically prepare 21 for today's deposition. I prepared for 22 tomorrow's deposition.</b> 23 Q Okay. Did you speak with anybody 24 about this deposition before attending? 25 <b>A Obviously, yes.</b></p>
<p>14</p> <p>1 party and any party to whom the confidential 2 material relates at least four business days 3 prior to the deposition, and in all instances 4 shall provide such notice at least two business 5 days prior to the deposition; such notice shall 6 include the name of the deponent to whom the 7 Noticing Party intends to disclose the 8 confidential material, the date and time of the 9 deposition, and the Bates range for all 10 confidential material to be disclosed; if the 11 producing party objects to the disclosure of the 12 confidential material, the producing party must 13 notify the Noticing Party in writing prior to 14 the deposition and simultaneously request an 15 informal conference with the Court, and the 16 Noticing Party shall not be permitted to 17 disclose the confidential material to any 18 witness absent a court order or consent of the 19 producing party; and all witnesses and their 20 counsel shall be provided with a copy of this 21 Order, and shall thereafter be bound by this 22 Order. Counsel taking the deposition or Rule 23 2004 examination shall designate all portions of 24 the transcript relating to the confidential 25 material as confidential."</p>	<p>16</p> <p>1 Q With whom did you speak? 2 <b>A With my counsels.</b> 3 Q Other than your counsel, did you 4 speak with anyone else about this deposition 5 prior to attending? 6 <b>A Yes, I did.</b> 7 Q With whom? 8 <b>A With my partner, with people I 9 informed that I was going to be here for the 10 week in New York.</b> 11 Q When you say your partner, do you 12 mean -- 13 <b>A My girlfriend.</b> 14 Q And then you said "with people I 15 informed that I was going to be here." Who are 16 those people? 17 <b>A People at Partners Advisers, I told 18 them that I would be here in New York.</b> 19 Q And who are those people? 20 <b>A These people are my partner -- my 21 business partner, Hugues Janssens van der 22 Maelen, I told him that I would be in New York. 23 I didn't specifically tell him why. Timothée 24 Henry, who is the chief operating officer of the 25 firm, I told him that I would be here in New</b></p>

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5 (17 to 20)

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<p>17</p> <p>1 <b>York to depose. These are the two people I told</b> 2 <b>that I would be here in New York.</b></p> <p>3 Q Did you speak with Olivier Magnin?</p> <p>4 <b>A No.</b></p> <p>5 Q Did you speak with Jérôme Müller?</p> <p>6 <b>A No.</b></p> <p>7 Q Did you speak with Luc DeBlue?</p> <p>8 <b>A No.</b></p> <p>9 Q Christophe Khaw?</p> <p>10 <b>A No.</b></p> <p>11 Q Albert Collette?</p> <p>12 <b>A No.</b></p> <p>13 Q Peter Fletcher?</p> <p>14 <b>A No.</b></p> <p>15 Q And, by the way, these questions I'm 16 asking, when I say "did you speak," I'm asking 17 did you speak prior to this deposition about 18 this deposition, just to be clear.</p> <p>19 Catherine Lemaitre?</p> <p>20 <b>A Catherine who?</b></p> <p>21 Q Catherine Lemaitre. I'm sure I'm 22 mispronouncing her name.</p> <p>23 <b>A Lemaitre, no.</b></p> <p>24 Q Did you speak with anyone related to 25 Square One Fund?</p>	<p>19</p> <p>1 <b>A I prepared with my lawyers and</b> 2 <b>counsels.</b></p> <p>3 Q Did you review documents --</p> <p>4 MR. FISCHER: Object to form.</p> <p>5 Q -- prior to this deposition?</p> <p>6 MR. FISCHER: I'm sorry. Object to</p> <p>7 form. Asked and answered. You may answer.</p> <p>8 <b>A Yes, I did.</b></p> <p>9 Q What documents did you review?</p> <p>10 <b>A Documents which were on file in order</b> 11 <b>to refresh my memory for tomorrow's deposition.</b></p> <p>12 Q What file?</p> <p>13 <b>A Documents which has been transmitted</b> 14 <b>from Square One Fund to my attorneys and, I</b> 15 <b>believe, to you as well.</b></p> <p>16 Q So you're referring to publicly filed 17 documents in this litigation?</p> <p>18 <b>A That's correct.</b></p> <p>19 Q Such as pleadings? Yes?</p> <p>20 <b>A What is pleadings?</b></p> <p>21 Q Like pleadings, for example?</p> <p>22 <b>A I'm trying to understand what</b> 23 <b>pleadings means but ...</b></p> <p>24 Q Like briefs that were filed in this 25 case.</p>
<p>18</p> <p>1 <b>A No.</b></p> <p>2 Q Any investor of Square One Fund?</p> <p>3 <b>A No.</b></p> <p>4 Q Any legal counsel other than your 5 U.S. counsels here today?</p> <p>6 <b>A No.</b></p> <p>7 Q Other than the people that you've 8 identified, is there anyone else that you spoke 9 to about this deposition before coming here?</p> <p>10 <b>A No.</b></p> <p>11 Q And your testimony is you did not 12 review any documents to prepare yourself for 13 this deposition?</p> <p>14 MR. FISCHER: Object to form. Asked 15 and answered. You can answer.</p> <p>16 THE WITNESS: I beg your pardon?</p> <p>17 MR. FISCHER: I said you may answer.</p> <p>18 <b>A Again, as mentioned, I prepared for</b> 19 <b>tomorrow's deposition. I didn't specifically</b> 20 <b>prepare for today's deposition.</b></p> <p>21 Q My question is specifically did you 22 review documents in preparation for this 23 deposition?</p> <p>24 MR. FISCHER: Object to form. Asked 25 and answered. You may answer.</p>	<p>20</p> <p>1 <b>A It was mostly -- you call them</b> 2 <b>evidence or things like the private offering</b> 3 <b>memorandum of Square One Fund or some audit</b> 4 <b>reports or documents of this nature.</b></p> <p>5 Q So these are documents related to 6 Square One Fund's operation?</p> <p>7 <b>A That's correct.</b></p> <p>8 Q Did you review Partners Advisers 9 documents prior to coming to this deposition?</p> <p>10 <b>A No.</b></p> <p>11 Q Did you review any transcripts of 12 previous depositions taken in this case?</p> <p>13 <b>A No.</b></p> <p>14 Q Did you bring any documents with you 15 today?</p> <p>16 <b>A No.</b></p> <p>17 Q Did you bring any documents with you 18 to New York from Switzerland?</p> <p>19 <b>A No.</b></p> <p>20 Q Mr. Estenne, why don't you give us 21 your educational history, starting with any 22 university you may have attended.</p> <p>23 <b>A I've attended the Université</b> 24 <b>catholique de Louvain-la-Neuve in Belgium, near</b> 25 <b>Brussels, where I got a five-year degree called</b></p>

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<p>21</p> <p>1 commercial engineer degree, which is the</p> <p>2 equivalent of -- I would say in the U.S. you</p> <p>3 would qualify it as an MBA being a combination</p> <p>4 of business education and science. And I</p> <p>5 graduated in 1990.</p> <p>6 Q When you say "science," what kind of</p> <p>7 science courses were you taking?</p> <p>8 A Physics, chemistry.</p> <p>9 Q You said that's the equivalent of an</p> <p>10 MBA?</p> <p>11 A That's correct.</p> <p>12 Q And when you say "MBA," you mean a</p> <p>13 master's in business administration?</p> <p>14 A That's correct.</p> <p>15 Q Do you have any other educational</p> <p>16 degrees?</p> <p>17 A No.</p> <p>18 Q You said that was a five-year degree?</p> <p>19 A That's correct.</p> <p>20 Q When did you graduate with that</p> <p>21 degree?</p> <p>22 A I just mentioned it, in 1990.</p> <p>23 Q And, I'm sorry, what country is that</p> <p>24 university in?</p> <p>25 A That was in Belgium, in Brussels,</p>	<p>23</p> <p>1 sure that the problems which were there in terms</p> <p>2 of trade settlements were solved.</p> <p>3 Q When you say "custodian," why don't</p> <p>4 you explain on the record what a custodian is.</p> <p>5 MR. FISCHER: Object to form. You</p> <p>6 can answer.</p> <p>7 A Well, in finance, when it comes to</p> <p>8 banking, a custodian is someone who holds assets</p> <p>9 on his book.</p> <p>10 Q For whom?</p> <p>11 A For itself or on behalf of clients.</p> <p>12 Q And you said your role at JP Morgan</p> <p>13 in Brussels was to oversee the custodian.</p> <p>14 A Some of the work of the sub</p> <p>15 custodian.</p> <p>16 Q Was the custodian internal to JP</p> <p>17 Morgan?</p> <p>18 A No. The sub custodians were third</p> <p>19 parties to which JP Morgan was, to a certain</p> <p>20 extent, delegating custody or sub custody.</p> <p>21 Q So JP Morgan was the custodian and it</p> <p>22 was sub custodizing --</p> <p>23 A Assets in Italy, in Spain, in France.</p> <p>24 MR. FISCHER: Just make sure that</p> <p>25 Marco finishes his question before you start</p>
<p>22</p> <p>1 Europe.</p> <p>2 Q And what did you do after graduating</p> <p>3 from this university?</p> <p>4 MR. FISCHER: Object to form. You</p> <p>5 can answer.</p> <p>6 A I -- professionally, my first job was</p> <p>7 at JP Morgan, Brussels, within the global</p> <p>8 technology and operation section of the bank.</p> <p>9 Q What were the years that you worked</p> <p>10 at JP Morgan Brussels?</p> <p>11 A '91 to '94.</p> <p>12 Q You said "within the global</p> <p>13 technology and operations section of the bank."</p> <p>14 What does that mean?</p> <p>15 A Well, the section of the bank was</p> <p>16 called GTO, global technology and operations, so</p> <p>17 it's all the support function to -- meaning, you</p> <p>18 know, back office, systems, operations.</p> <p>19 Q So walk me through the</p> <p>20 responsibilities that you had when you were at</p> <p>21 JP Morgan, Brussels.</p> <p>22 A I was working in the global custodian</p> <p>23 department of the bank, JP Morgan in Brussels,</p> <p>24 and my role there was to oversee the work of a</p> <p>25 number of southern European custodian and make</p>	<p>24</p> <p>1 answering it, Luc.</p> <p>2 Q When you say "oversee," can you just</p> <p>3 help me understand what you were doing on a</p> <p>4 day-to-day basis.</p> <p>5 MR. FISCHER: Object to form. You</p> <p>6 can answer.</p> <p>7 A On a day-to-day basis, I was sitting</p> <p>8 in front of a computer going through a list of</p> <p>9 failed trades and trying to understand, you</p> <p>10 know, what was the missing information or the</p> <p>11 mismatch between the information between the</p> <p>12 buyer and the seller of these securities and</p> <p>13 making sure that the difference were solved so</p> <p>14 that the trades could settle.</p> <p>15 Q When you say "field trades" --</p> <p>16 A I'm sorry?</p> <p>17 Q You said field --</p> <p>18 A Failed, F-A-I-L-E-D.</p> <p>19 Q Oh, failed trades.</p> <p>20 A Failed trades.</p> <p>21 Q And what's a failed trade?</p> <p>22 A A failed trade is a trade where --</p> <p>23 which doesn't settle because there's a</p> <p>24 discrepancy between the information provided by</p> <p>25 the buyer and the seller regarding the elements</p>

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## Transcript of Luc Estenne (Rule 45)

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<p>25</p> <p>1 of the trade.</p> <p>2 Q Can you give me an example of a</p> <p>3 discrepancy.</p> <p>4 A I'm -- actor A is buying from actor B</p> <p>5 and providing information that on that date he</p> <p>6 has purchased 500 stocks from actor B, and actor</p> <p>7 B says that it was indeed 500 stocks. Actor A</p> <p>8 says that the price was 101. Actor B says that</p> <p>9 the price was 100. So there is a discrepancy in</p> <p>10 price. We need to solve that. It could be a</p> <p>11 discrepancy in date. It could be a discrepancy</p> <p>12 in quantity.</p> <p>13 Q And in that example you just gave --</p> <p>14 A Or a discrepancy of the name of the</p> <p>15 count- -- or the identity of the counterparty.</p> <p>16 Q And in that example you gave just a</p> <p>17 second ago, how would you resolve that</p> <p>18 discrepancy or how would you try to resolve that</p> <p>19 discrepancy?</p> <p>20 A I was mostly asking the sub custodian</p> <p>21 employees to verify, inquire about this</p> <p>22 discrepancy and either confirm that the</p> <p>23 information provided was correct or correct the</p> <p>24 information. That's what I was mostly doing.</p> <p>25 It is a long time ago so I don't know exactly</p>	<p>27</p> <p>1 A I worked -- after that I was</p> <p>2 transferred to the back office of the treasury</p> <p>3 department of the bank.</p> <p>4 Q And where was that treasury</p> <p>5 department located?</p> <p>6 A In Brussels.</p> <p>7 Q And what did you do at the back</p> <p>8 office of the treasury department?</p> <p>9 A I made sure that the trades in</p> <p>10 Belgian treasury bonds, which happened in the</p> <p>11 front office, were properly accounted for in the</p> <p>12 back office and in the books of the bank.</p> <p>13 Q And how would you do that?</p> <p>14 A It was mostly kind of clerical work</p> <p>15 where I was in front of a computer, again making</p> <p>16 sure that things were done properly and</p> <p>17 according to procedures.</p> <p>18 Q Did you have to learn how to do that</p> <p>19 on the job? Was there training?</p> <p>20 A Yes.</p> <p>21 Q So prior to working with this</p> <p>22 treasury department, you had no prior experience</p> <p>23 with treasury bills?</p> <p>24 A That's correct.</p> <p>25 Q How long did you work at the treasury</p>
<p>26</p> <p>1 the details.</p> <p>2 Q I understand. Did you personally</p> <p>3 verify the trades as well?</p> <p>4 A No.</p> <p>5 Q You would ask the sub custodian to</p> <p>6 verify for you?</p> <p>7 A Correct.</p> <p>8 Q What was your title at JP Morgan,</p> <p>9 Brussels?</p> <p>10 A I don't remember.</p> <p>11 Q How big was your team that you worked</p> <p>12 in?</p> <p>13 MR. FISCHER: Object to form. You</p> <p>14 can answer.</p> <p>15 A I think I was -- I'm not sure. To</p> <p>16 the best of my recollection, maybe ten maximum,</p> <p>17 I would say. But I'm not sure.</p> <p>18 Q And I assume you were based in</p> <p>19 Brussels during that time?</p> <p>20 A That's correct.</p> <p>21 Q Did you work anywhere else at JP</p> <p>22 Morgan in Brussels --</p> <p>23 MR. MOLINA: Sorry, let me rephrase.</p> <p>24 Q Did you work anywhere else at JP</p> <p>25 Morgan?</p>	<p>28</p> <p>1 department?</p> <p>2 A I don't remember exactly.</p> <p>3 Q A year?</p> <p>4 A That would be my guess.</p> <p>5 Q And this is a separate -- the</p> <p>6 treasury department was separate from the global</p> <p>7 technology and operation group?</p> <p>8 A No. All the support function</p> <p>9 belonged to the global technology and operation</p> <p>10 group, but it was a different department within</p> <p>11 the global technology and operation group.</p> <p>12 Q Why do they call it the -- why was it</p> <p>13 called the global technol- -- what does the</p> <p>14 words "global technology," what is that in</p> <p>15 reference to?</p> <p>16 MR. FISCHER: Object to form. You</p> <p>17 can answer, if you can.</p> <p>18 A I don't know.</p> <p>19 Q Other than the treasury work and the</p> <p>20 sub custody oversight work, what else did you do</p> <p>21 at JP Morgan?</p> <p>22 A I was sent to New York for a</p> <p>23 three-month training program.</p> <p>24 Q What were you training for?</p> <p>25 A The purpose of the training was to</p>

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<p>29</p> <p>1 <b>provide people working in the GTO -- in GTO</b></p> <p>2 <b>general education about finance.</b></p> <p>3 Q Was this in the beginning of your</p> <p>4 tenure at JP Morgan?</p> <p>5 <b>A Of my tenure or ten years, you said?</b></p> <p>6 Q I'm sorry. Is this in the beginning</p> <p>7 of your employment at JP Morgan?</p> <p>8 <b>A No, it was in the middle of my</b></p> <p>9 <b>employment, roughly in the middle. Well, not</b></p> <p>10 <b>early, not at the end. It was, so, in the</b></p> <p>11 <b>middle.</b></p> <p>12 Q And you said you were here for three</p> <p>13 months?</p> <p>14 <b>A That's correct.</b></p> <p>15 Q And you worked at JP Morgan's offices</p> <p>16 in Manhattan?</p> <p>17 <b>A That's correct. Actually, I didn't</b></p> <p>18 <b>work. I was in training so this was education.</b></p> <p>19 <b>It was not work, per se.</b></p> <p>20 Q You say you learned -- wait a second.</p> <p>21 You said you had "general education about</p> <p>22 finance." Can you expand on that?</p> <p>23 <b>A The nature of different -- financial</b></p> <p>24 <b>instruments, general working of the banking</b></p> <p>25 <b>system and general elements of macroeconomics,</b></p>	<p>31</p> <p>1 MR. FISCHER: He just explained it to</p> <p>2 you for the last half hour. Sorry.</p> <p>3 MR. MOLINA: Touché.</p> <p>4 MR. FISCHER: Anyway, it's not my job</p> <p>5 to testify. Go ahead, Mr. Estenne.</p> <p>6 <b>A Yeah, it was very administrative. It</b></p> <p>7 <b>was minute. There were little decision</b></p> <p>8 <b>involved. So it was very administrative. It</b></p> <p>9 <b>was very repetitive.</b></p> <p>10 Q So where did you go after leaving JP</p> <p>11 Morgan in 1994?</p> <p>12 <b>A I joined Bank Brussels Lambert.</b></p> <p>13 Q In Brussels?</p> <p>14 <b>A Initially in Brussels and then I was</b></p> <p>15 <b>transferred to their New York office, not far</b></p> <p>16 <b>away from here.</b></p> <p>17 Q So let's start with Brussels. What</p> <p>18 did you do at Bank Brussels Lambert in Brussels?</p> <p>19 <b>A Well, I was hired by the bank to be</b></p> <p>20 <b>transferred -- the plan was to be transferred to</b></p> <p>21 <b>New York as soon as possible. But because of</b></p> <p>22 <b>work permit -- the paperwork took a while. And</b></p> <p>23 <b>so during the transition period between, you</b></p> <p>24 <b>know, being hired and being transferred to New</b></p> <p>25 <b>York, I was in the -- I was sitting in the</b></p>
<p>30</p> <p>1 <b>things like that.</b></p> <p>2 Q And so you would just train for</p> <p>3 approximately eight hours each day?</p> <p>4 <b>A That's correct.</b></p> <p>5 Q Five days a week?</p> <p>6 <b>A That's correct.</b></p> <p>7 Q You said -- so you said you worked at</p> <p>8 JP Morgan until 1994, yes?</p> <p>9 <b>A Yes.</b></p> <p>10 Q Why did you leave JP Morgan in 1994?</p> <p>11 <b>A Mostly because I was interested in</b></p> <p>12 <b>moving from operations and back office functions</b></p> <p>13 <b>to front office functions.</b></p> <p>14 Q Can you just explain on the record</p> <p>15 what a back office function is.</p> <p>16 <b>A Back office functions support and</b></p> <p>17 <b>account for securities operations of a bank or</b></p> <p>18 <b>an entity. That's what a back office is. The</b></p> <p>19 <b>front office is where the actual trading or</b></p> <p>20 <b>operation on securities happens.</b></p> <p>21 Q Why did you want to move to front</p> <p>22 office work?</p> <p>23 <b>A I found back office work boring and</b></p> <p>24 <b>not interesting.</b></p> <p>25 Q What was boring about it?</p>	<p>32</p> <p>1 <b>trading room of the head office in Brussels, and</b></p> <p>2 <b>I got an education being transferred from one</b></p> <p>3 <b>trading desk to another during a few months.</b></p> <p>4 Q And what would you do at these</p> <p>5 trading desks?</p> <p>6 MR. FISCHER: Object to form. You</p> <p>7 may answer.</p> <p>8 <b>A I was mostly learning what the</b></p> <p>9 <b>different trading desks were about.</b></p> <p>10 Q What kind of trading were you</p> <p>11 learning about?</p> <p>12 <b>A Mostly fixed income.</b></p> <p>13 Q Can you just explain what fixed</p> <p>14 income trading is?</p> <p>15 <b>A Fixed income trading is the handling</b></p> <p>16 <b>of transaction of debt instruments which are</b></p> <p>17 <b>known to pay an interest rate, referred to as an</b></p> <p>18 <b>income which is fixed, hence, the fixed income</b></p> <p>19 <b>name.</b></p> <p>20 Q And how long did you do that for?</p> <p>21 <b>A As I said, a few months before being</b></p> <p>22 <b>transferred to New York.</b></p> <p>23 Q Okay. And did you have a job title?</p> <p>24 <b>A Yes.</b></p> <p>25 Q What was it?</p>

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<p>33</p> <p>1 <b>A I don't remember.</b></p> <p>2 Q You went to New York and stayed there</p> <p>3 for -- at Bank Brussels Lambert in New York for</p> <p>4 how long?</p> <p>5 <b>A Around two years.</b></p> <p>6 Q So until about 1996?</p> <p>7 <b>A That's correct.</b></p> <p>8 Q And what did you do at Bank Brussels</p> <p>9 Lambert in New York?</p> <p>10 <b>A I was trained as a trader in treasury</b></p> <p>11 <b>bonds and treasury bills.</b></p> <p>12 Q And for whom were you trading?</p> <p>13 <b>A I was trading some market making</b></p> <p>14 <b>operation on behalf of the bank.</b></p> <p>15 Q Can you just walk me through a</p> <p>16 day-to-day at that job.</p> <p>17 MR. FISCHER: Object to form. You</p> <p>18 may answer.</p> <p>19 <b>A In general terms, arrive early, sit</b></p> <p>20 <b>in on the trading desk, you know, learn about</b></p> <p>21 <b>the news flow, talk to different traders, see</b></p> <p>22 <b>how the markets were -- were moving, did some</b></p> <p>23 <b>trades or answered some quotes for external</b></p> <p>24 <b>clients, counterparties of the bank, Executing</b></p> <p>25 <b>some transaction.</b></p>	<p>35</p> <p>1 Q Working at JP Morgan?</p> <p>2 <b>A No.</b></p> <p>3 Q How did you have that experience?</p> <p>4 <b>A My father was invested in a number of</b></p> <p>5 <b>hedge funds which were located in New York, and</b></p> <p>6 <b>outside of my trading hours I was visiting these</b></p> <p>7 <b>hedge funds in order to learn more about their</b></p> <p>8 <b>investment strategy.</b></p> <p>9 Q Do you remember what hedge funds you</p> <p>10 were studying at that time?</p> <p>11 <b>A No.</b></p> <p>12 Q You said your father was invested in</p> <p>13 a number of hedge funds?</p> <p>14 <b>A That's correct.</b></p> <p>15 Q And what's your father's name?</p> <p>16 <b>A Fernand Estenne.</b></p> <p>17 Q And at that time -- in the '90s was</p> <p>18 he in New York?</p> <p>19 <b>A No, he wasn't.</b></p> <p>20 Q When you said he was invested, do you</p> <p>21 mean his personal assets were invested in New</p> <p>22 York hedge funds?</p> <p>23 <b>A That's correct.</b></p> <p>24 Q You said outside of your training</p> <p>25 hours.</p>
<p>34</p> <p>1 Q And why did you leave the bank in</p> <p>2 1996?</p> <p>3 <b>A I had some entrepreneurial</b></p> <p>4 <b>aspirations.</b></p> <p>5 Q What do you mean by that?</p> <p>6 <b>A I wanted to set up my own business</b></p> <p>7 <b>and be my own boss.</b></p> <p>8 Q What kind of business were you trying</p> <p>9 to start?</p> <p>10 <b>A I was interested in hedge funds, and</b></p> <p>11 <b>I -- my aim was to start to learn more about</b></p> <p>12 <b>hedge fund investing and start an advisory</b></p> <p>13 <b>business about hedge fund investments.</b></p> <p>14 Q Did you have any prior experience</p> <p>15 with hedge funds?</p> <p>16 <b>A Very little.</b></p> <p>17 Q So why did you want to work with</p> <p>18 hedge funds?</p> <p>19 <b>A Because the experience I had in it</b></p> <p>20 <b>was interesting and I wanted to pursue it.</b></p> <p>21 Q Remind me where you had that</p> <p>22 experience before 1996.</p> <p>23 <b>A I had this experience in New York.</b></p> <p>24 Q Working at Bank Brussels Lambert?</p> <p>25 <b>A No.</b></p>	<p>36</p> <p>1 <b>A Trading, trading.</b></p> <p>2 Q Trading hours.</p> <p>3 <b>A Sorry.</b></p> <p>4 Q So you wanted to start a business</p> <p>5 that worked with hedge funds in 1996, yes?</p> <p>6 <b>A That's correct.</b></p> <p>7 Q And so what did you do specifically</p> <p>8 in 1996 after leaving Bank Brussels Lambert?</p> <p>9 MR. FISCHER: Object to form. You</p> <p>10 may answer.</p> <p>11 <b>A Well, the next step was for me to</b></p> <p>12 <b>relocate -- after a brief transition in</b></p> <p>13 <b>Brussels, to relocate to Geneva and set up</b></p> <p>14 <b>Partners Advisers. That was, I think, '98. And</b></p> <p>15 <b>I arrived in Geneva, I believe, in late '97.</b></p> <p>16 <b>I met with Peter Fletcher, who was</b></p> <p>17 <b>the general manager of Parly Company. Parly</b></p> <p>18 <b>Company was an important family of his in</b></p> <p>19 <b>Geneva. And he proposed that we work together.</b></p> <p>20 Q Okay. Let's start with -- you're</p> <p>21 Belgian by nationality, correct?</p> <p>22 <b>A I'm originally Belgian and I also</b></p> <p>23 <b>acquired Swiss nationality so I have both</b></p> <p>24 <b>nationalities.</b></p> <p>25 Q So I guess the question is why did</p>

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<p>37</p> <p>1 you want to relocate to Geneva?</p> <p>2 <b>A Because Brussels is not a financial</b></p> <p>3 <b>center. Geneva was.</b></p> <p>4 Q And you said you got there in late</p> <p>5 1997, yes?</p> <p>6 <b>A That's my recollection.</b></p> <p>7 Q So what did you do between leaving</p> <p>8 Bank Brussels Lambert in 1996 and arriving in</p> <p>9 Geneva in late 1997?</p> <p>10 <b>A So during the year I mostly worked on</b></p> <p>11 <b>learning more about my family's investments,</b></p> <p>12 <b>attending some hedge fund conference, learning</b></p> <p>13 <b>more about the subject, trying to build up my</b></p> <p>14 <b>network.</b></p> <p>15 Q This is in New York City?</p> <p>16 <b>A No.</b></p> <p>17 Q Where was this?</p> <p>18 <b>A It was in Europe, in -- mostly, and</b></p> <p>19 <b>also in Bermuda where some conferences were</b></p> <p>20 <b>held.</b></p> <p>21 Q Did you meet Peter Fletcher during</p> <p>22 that time?</p> <p>23 <b>A That's correct.</b></p> <p>24 Q Who is Peter Fletcher again?</p> <p>25 <b>A Peter Fletcher was the general</b></p>	<p>39</p> <p>1 <b>A That's a good question. I don't</b></p> <p>2 <b>think there's one commonly accepted definition.</b></p> <p>3 Q What's your definition?</p> <p>4 MR. FISCHER: Object to form. You</p> <p>5 may answer.</p> <p>6 <b>A I would say it's a fund which</b></p> <p>7 <b>actively manages assets, most of the time with a</b></p> <p>8 <b>fee structure which was -- is comprised of a</b></p> <p>9 <b>management fee and an incentive fee and, most of</b></p> <p>10 <b>the time, with the ability of going both long</b></p> <p>11 <b>and short in the market, or in the instruments</b></p> <p>12 <b>utilized by the hedge fund.</b></p> <p>13 Q Just going back a few minutes, when</p> <p>14 you said that you would visit with hedge funds</p> <p>15 in New York after your trading hours, in what</p> <p>16 capacity were you visiting with these hedge</p> <p>17 funds?</p> <p>18 MR. FISCHER: Object to form. Asked</p> <p>19 and answered. You may answer.</p> <p>20 <b>A As the son of one of their investors</b></p> <p>21 <b>or as the son of one of their potential</b></p> <p>22 <b>investors.</b></p> <p>23 Q So did you start working officially</p> <p>24 for Parly Company in 1997?</p> <p>25 MR. FISCHER: Object to form. You</p>
<p>38</p> <p>1 <b>manager of Parly, P-A-R-L-Y, Company S.A., which</b></p> <p>2 <b>was a family office based in Geneva.</b></p> <p>3 Q And you said that he proposed to you</p> <p>4 that you work together?</p> <p>5 <b>A That's correct.</b></p> <p>6 Q He offered you a job at Parly?</p> <p>7 <b>A To a certain extent, yes.</b></p> <p>8 Q And what was that -- what did that</p> <p>9 job concern?</p> <p>10 <b>A Well, the function of Parly Company</b></p> <p>11 <b>was to manage assets of what -- the Italian</b></p> <p>12 <b>family. Among these assets were a number of</b></p> <p>13 <b>hedge fund investments. Peter Fletcher was the</b></p> <p>14 <b>general manager of the entire office, and I was</b></p> <p>15 <b>part of working for Partners Advisers. I was</b></p> <p>16 <b>hired to -- for a while to help them, you know,</b></p> <p>17 <b>review some investments -- monitor investments</b></p> <p>18 <b>in hedge funds.</b></p> <p>19 Q Do you remember what hedge fund</p> <p>20 investments Parly Company had?</p> <p>21 <b>A Not specifically.</b></p> <p>22 Q Just for the record, what is a hedge</p> <p>23 fund?</p> <p>24 MR. FISCHER: Object to form. You</p> <p>25 may answer.</p>	<p>40</p> <p>1 may answer.</p> <p>2 <b>A No. I never worked for Parly</b></p> <p>3 <b>Company. I worked for Partners Advisers, and</b></p> <p>4 <b>for a while Partners Advisers was hired by Parly</b></p> <p>5 <b>Company.</b></p> <p>6 Q Why didn't you just work with</p> <p>7 Mr. Fletcher at Parly?</p> <p>8 <b>A Because I mention-- as mentioned</b></p> <p>9 <b>earlier, my wish was to be an entrepreneur and</b></p> <p>10 <b>set up my own business. And I wanted to be free</b></p> <p>11 <b>to potentially in the future, you know, grow a</b></p> <p>12 <b>business and advise and work for other clients.</b></p> <p>13 Q So when did you start Partners</p> <p>14 Advisers again?</p> <p>15 <b>A I believe it was in '98.</b></p> <p>16 Q And what was the -- when you started</p> <p>17 it in 1998, what was the purpose of Partners</p> <p>18 Advisers?</p> <p>19 MR. FISCHER: Object to form. You</p> <p>20 may answer.</p> <p>21 <b>A At that time the purpose of Partners</b></p> <p>22 <b>Advisers was to do some -- advise potential</b></p> <p>23 <b>clients on future return on investments.</b></p> <p>24 Q And one of your clients was Parly</p> <p>25 Company?</p>

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## Transcript of Luc Estenne (Rule 45)

11 (41 to 44)

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<p>41</p> <p>1 <b>A Briefly, yes.</b></p> <p>2 Q For how long?</p> <p>3 <b>A Around a year, I believe.</b></p> <p>4 Q Other than Parly Company, what other</p> <p>5 clients did you have when you started Partners</p> <p>6 Advisers?</p> <p>7 <b>A I think it was the only one.</b></p> <p>8 Q Who worked at Partners Advisers?</p> <p>9 <b>A I was the only employee at the</b></p> <p>10 <b>beginning.</b></p> <p>11 Q So you had Partners Advisers for --</p> <p>12 as a client for a year, correct?</p> <p>13 <b>A Roughly, yes.</b></p> <p>14 Q And then why don't you walk me</p> <p>15 through what other clients you had in the first</p> <p>16 couple years of Partners Advisers.</p> <p>17 <b>A I'm not exactly sure about the timing</b></p> <p>18 <b>and the sequence, but one of the client in --</b></p> <p>19 <b>starting from late 2000 was the ART Fund, which</b></p> <p>20 <b>was a Luxembourg fund which I set up. It was a</b></p> <p>21 <b>fund of fund. So that was -- and, you know,</b></p> <p>22 <b>Partners Advisers was advising this fund</b></p> <p>23 <b>structure -- fund of funds structure.</b></p> <p>24 <b>I -- Partners Advisers also had a</b></p> <p>25 <b>joint venture with another firm called Signet,</b></p>	<p>43</p> <p>1 <b>management company in Geneva, and they also had</b></p> <p>2 <b>a shared interest in investing in hedge funds</b></p> <p>3 <b>and -- yeah, that's ...</b></p> <p>4 Q And when did you create the ART Fund?</p> <p>5 <b>A I believe the ART Fund was created in</b></p> <p>6 <b>late 2000 and launched in early 2001.</b></p> <p>7 Q You said that Partners Advisers had a</p> <p>8 joint venture with Signet?</p> <p>9 <b>A That's correct.</b></p> <p>10 Q What was the joint venture about?</p> <p>11 <b>A The joint venture was about</b></p> <p>12 <b>advising -- it was about advising Credit Bank</b></p> <p>13 <b>Luxembourg about their fund of hedge fund</b></p> <p>14 <b>investments.</b></p> <p>15 Q And how did you become affiliated</p> <p>16 with Signet?</p> <p>17 MR. FISCHER: Object to form. You</p> <p>18 may answer.</p> <p>19 <b>A I didn't become affiliated with</b></p> <p>20 <b>Signet.</b></p> <p>21 Q How did that joint venture come</p> <p>22 about?</p> <p>23 <b>A Bob Marquardt, who had an interest in</b></p> <p>24 <b>hedge funds and was advising some clients about</b></p> <p>25 <b>hedge fund investments, had a relationship with</b></p>
<p>42</p> <p>1 <b>the name of -- and we advised Credit Bank</b></p> <p>2 <b>Luxembourg about one of their fund of hedge</b></p> <p>3 <b>funds. That's it.</b></p> <p>4 Q Okay. So, first of all, what is a</p> <p>5 fund of fund?</p> <p>6 <b>A A fund of fund is a fund which</b></p> <p>7 <b>invests in other funds.</b></p> <p>8 Q So the ART Fund invested in other</p> <p>9 funds?</p> <p>10 <b>A That's correct.</b></p> <p>11 Q What funds did the ART Fund invest</p> <p>12 in?</p> <p>13 <b>A In -- ART Fund was investing in hedge</b></p> <p>14 <b>funds. It was a fund of hedge funds.</b></p> <p>15 Q And you said you created it?</p> <p>16 <b>A That's correct.</b></p> <p>17 Q Did anyone else help you create it?</p> <p>18 MR. FISCHER: Object to form. You</p> <p>19 may answer.</p> <p>20 <b>A Obviously, yes.</b></p> <p>21 Q Who?</p> <p>22 <b>A Service providers. Trend Trust. I</b></p> <p>23 <b>think that's mostly it.</b></p> <p>24 Q Who is Trend Trust?</p> <p>25 <b>A Trend Trust was a small investment</b></p>	<p>44</p> <p>1 <b>Credit Bank Luxembourg. We met. He was</b></p> <p>2 <b>interested in having Credit Bank Luxembourg as a</b></p> <p>3 <b>client, but Credit Bank Luxembourg didn't want</b></p> <p>4 <b>to give a mandate to a one-person company. And</b></p> <p>5 <b>so he asked me if I wanted to basically partner</b></p> <p>6 <b>with him so that we would together advise Credit</b></p> <p>7 <b>Bank Luxembourg.</b></p> <p>8 Q And you were advising Credit Bank</p> <p>9 Luxembourg on hedge fund investments?</p> <p>10 <b>A That's correct.</b></p> <p>11 Q Were these hedge funds located in New</p> <p>12 York?</p> <p>13 <b>A Some of them, yes.</b></p> <p>14 Q And when you were helping Parly</p> <p>15 Company -- not helping them. Let me start</p> <p>16 again. When you were working with Parly</p> <p>17 Company, it was regarding hedge fund investments</p> <p>18 as well?</p> <p>19 <b>A That's correct.</b></p> <p>20 Q And were these hedge funds located in</p> <p>21 New York?</p> <p>22 <b>A Partially, yes.</b></p> <p>23 Q What's Club B?</p> <p>24 <b>A Club B is an informal -- or started</b></p> <p>25 <b>as an informal club of family offices.</b></p>

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## Transcript of Luc Estenne (Rule 45)

12 (45 to 48)

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<p>45</p> <p>1 Q And just for the record, what's a</p> <p>2 family office?</p> <p>3 A A family office is an investment firm</p> <p>4 dedicated to the management of assets of one</p> <p>5 family group or potentially several family</p> <p>6 groups.</p> <p>7 Q Who started Club b?</p> <p>8 A Club b was started by Peter Fletcher.</p> <p>9 Q Were you a member of Club b?</p> <p>10 A There was no real membership, but did</p> <p>11 I attend some Club b meetings? Yes.</p> <p>12 Q So Club b just -- was it just an</p> <p>13 informal gathering of investment managers?</p> <p>14 A No.</p> <p>15 MR. FISCHER: Object to form. You</p> <p>16 can answer.</p> <p>17 Q So in what capacity were you</p> <p>18 attending Club b meetings?</p> <p>19 A As an investor -- as a representative</p> <p>20 of my family who was an investor in hedge funds.</p> <p>21 Q So your family had a family office?</p> <p>22 MR. FISCHER: Object to form.</p> <p>23 A Initially, no.</p> <p>24 Q Did it have a family office at some</p> <p>25 point?</p>	<p>47</p> <p>1 A His assets, you said?</p> <p>2 Q Yeah, your father's assets.</p> <p>3 A No.</p> <p>4 Q How many members are there --</p> <p>5 MR. MOLINA: Let me rephrase that.</p> <p>6 Q How big is Club b?</p> <p>7 MR. FISCHER: Object to form. You</p> <p>8 can answer.</p> <p>9 A Club b has been around for a long</p> <p>10 time, I guess so that the number has changed</p> <p>11 over time, and I don't know the number.</p> <p>12 Q How often does the club meet?</p> <p>13 MR. FISCHER: Object to form. You</p> <p>14 may answer.</p> <p>15 A Again, it depends when.</p> <p>16 Q About once a month?</p> <p>17 MR. FISCHER: Object to form. You</p> <p>18 may answer.</p> <p>19 A When? Over what time period?</p> <p>20 Q Let's start with the -- well, first</p> <p>21 of all, do you know roughly when it was created?</p> <p>22 MR. FISCHER: Object to form. You</p> <p>23 may answer.</p> <p>24 A I think it had a name before it had</p> <p>25 any substance. So I don't know when exactly it</p>
<p>46</p> <p>1 MR. FISCHER: Object to form.</p> <p>2 A After the passing of my father in</p> <p>3 2005, I became in charge of the management of</p> <p>4 the assets of the family. And Partners Advisers</p> <p>5 had some formal mandate and it has some formal</p> <p>6 mandate regarding the management of the assets.</p> <p>7 So, in substance, Partners Advisers, to a</p> <p>8 certain extent, became a family office.</p> <p>9 Q Prior to 2005, who managed your</p> <p>10 family's assets?</p> <p>11 A My father.</p> <p>12 Q Just by himself?</p> <p>13 A I was involved in the same field as</p> <p>14 he was, so we were exchanging information and</p> <p>15 investment ideas and information.</p> <p>16 Q Did he invest his assets in the ART</p> <p>17 Fund?</p> <p>18 A I'm not sure. Maybe briefly, but I'm</p> <p>19 not sure.</p> <p>20 Q Did he invest in -- with Parly</p> <p>21 Company?</p> <p>22 A No. Parly Company was not -- Parly</p> <p>23 Company was managing assets of one family group.</p> <p>24 Q Let me rephrase that. Did Parly</p> <p>25 Company help manage his assets?</p>	<p>48</p> <p>1 was created. Again, it started as, you know, a</p> <p>2 few family office members of a few family</p> <p>3 groups, you know, having dinner around the table</p> <p>4 and exchanging investment ideas. So it was very</p> <p>5 informal.</p> <p>6 Q In the 1990s?</p> <p>7 A The late '90s, maybe early 2000s.</p> <p>8 Q And you were involved in the</p> <p>9 beginning?</p> <p>10 MR. FISCHER: Object to form. You</p> <p>11 may answer.</p> <p>12 A Yes.</p> <p>13 Q In those first couple years of</p> <p>14 Club b, how often did you attend these</p> <p>15 gatherings?</p> <p>16 A A few times a year.</p> <p>17 Q Do you still attend Club b events?</p> <p>18 A Yes, I do.</p> <p>19 Q And is it still just mostly dinners</p> <p>20 and informal gatherings?</p> <p>21 A It has evolved around the -- mostly</p> <p>22 one annual, big conference.</p> <p>23 Q In Geneva?</p> <p>24 A No. In Europe, different cities.</p> <p>25 Q Mr. Estenne, what is the brand of</p>

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<p>49</p> <p>1 Partners Advisers?</p> <p>2 MR. FISCHER: Object to the form.</p> <p>3 You may answer.</p> <p>4 <b>A I don't understand your question.</b></p> <p>5 Q If someone asked you to explain what</p> <p>6 makes Partners Advisers different from another</p> <p>7 investment firm, what would you say?</p> <p>8 MR. FISCHER: Object to form. You</p> <p>9 may answer.</p> <p>10 <b>A At what time period?</b></p> <p>11 Q Now.</p> <p>12 MR. FISCHER: Same objection. You</p> <p>13 may answer.</p> <p>14 <b>A I'm not sure how to answer this</b></p> <p>15 <b>question.</b></p> <p>16 Q Do you market your firm to potential</p> <p>17 investors?</p> <p>18 <b>A Accidentally.</b></p> <p>19 Q What do you tell them?</p> <p>20 MR. FISCHER: Object to form. You</p> <p>21 may answer.</p> <p>22 <b>A That we have been investing in hedge</b></p> <p>23 <b>funds for a long time and that it's one of the</b></p> <p>24 <b>expertise we have today.</b></p> <p>25 Q What kind of clients does Partners</p>	<p>51</p> <p>1 <b>A That's correct.</b></p> <p>2 Q And Partners Advisers, how does it</p> <p>3 make money?</p> <p>4 <b>A It gets a management fee on the</b></p> <p>5 <b>assets managed.</b></p> <p>6 Q Is it the same fee for all of the</p> <p>7 assets?</p> <p>8 MR. FISCHER: Object to form. You</p> <p>9 may answer.</p> <p>10 <b>A No, it differs.</b></p> <p>11 Q Is there a range that you can tell us</p> <p>12 on the record?</p> <p>13 MR. FISCHER: Object to form. You</p> <p>14 may answer.</p> <p>15 <b>A 30 basis points to around 75 basis</b></p> <p>16 <b>points.</b></p> <p>17 Q Has Partners Advisers won any awards?</p> <p>18 <b>A Not that I'm aware of.</b></p> <p>19 Q Wasn't it voted the most trusted</p> <p>20 investment management company of the year in</p> <p>21 Switzerland in 2014?</p> <p>22 MR. FISCHER: Object to form. Asked</p> <p>23 and answered. You may answer.</p> <p>24 <b>A I don't remember that.</b></p> <p>25 Q You don't remember that award?</p>
<p>50</p> <p>1 Advisers have?</p> <p>2 MR. FISCHER: Object to form. You</p> <p>3 may answer.</p> <p>4 <b>A We have a few clients, some family</b></p> <p>5 <b>groups including my family, some -- one fund of</b></p> <p>6 <b>funds. That's it.</b></p> <p>7 Q How many assets under management does</p> <p>8 Partners Advisers manage?</p> <p>9 MR. FISCHER: Object to form. You</p> <p>10 may answer.</p> <p>11 <b>A Around 500 million today, U.S.</b></p> <p>12 <b>dollars or euros. It's roughly the same anyway.</b></p> <p>13 Q And if you could just explain to me</p> <p>14 in the 20 or so -- 25 or so years that Partners</p> <p>15 Advisers has been in existence, could you just</p> <p>16 briefly describe to me the progression of the</p> <p>17 assets under management that it's had.</p> <p>18 MR. FISCHER: Object to form. You</p> <p>19 may answer.</p> <p>20 <b>A We started at zero. We peaked at</b></p> <p>21 <b>1.7 billion in 2008. It went down to a few</b></p> <p>22 <b>hundreds of millions and went back up to</b></p> <p>23 <b>500 million today.</b></p> <p>24 Q I assume it went down in part because</p> <p>25 of the financial crisis?</p>	<p>52</p> <p>1 <b>A No.</b></p> <p>2 MR. FISCHER: Same objection. You</p> <p>3 may answer.</p> <p>4 <b>A I don't remember that award. I don't</b></p> <p>5 <b>remember it, no.</b></p> <p>6 Q Why don't we show you what we have as</p> <p>7 tab 3.</p> <p>8 MS. STORK: This will be marked as</p> <p>9 trustee Exhibit 46.</p> <p>10 (Trustee Exhibit 46 marked for</p> <p>11 identification and attached to the transcript.)</p> <p>12 Q Mr. Estenne, I'm showing you what has</p> <p>13 now been marked as Trustee Exhibit number 46.</p> <p>14 Do you recognize this document?</p> <p>15 <b>A No.</b></p> <p>16 Q Do you see that it's titled the "2014</p> <p>17 Hedge Fund Awards"?</p> <p>18 <b>A That's correct.</b></p> <p>19 Q If you turn to --</p> <p>20 MR. FISCHER: Marco, it's a pretty</p> <p>21 substantial document. Just allow him at least</p> <p>22 to thumb through it before you start peppering</p> <p>23 him with questions.</p> <p>24 MR. MOLINA: I only have one</p> <p>25 question.</p>

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<p>53</p> <p>1 MR. FISCHER: I understand but, 2 again, it's a long document. Just let him at 3 least get acquainted with it before you start 4 asking him questions, and I will hold you to the 5 one-question limit. So make it a good one. 6 (Witness reviewing document.) 7 Q Mr. Estenne, have you had sufficient 8 time to -- 9 A <b>No.</b> 10 (Witness reviewing document.) 11 Q Right on that page that you're on, do 12 you see on the top it says -- this is the page 13 ending in Bates number 627867? 14 A <b>Yes.</b> 15 Q It says at the top, "The 2014 16 International Hedge Fund Awards," and it says -- 17 A <b>Yeah, I -- are you referring to this</b> 18 <b>(indicating)?</b> 19 Q Yes. 20 A <b>That's what it says on all the pages.</b> 21 Q Yeah. And then it says, "And the 22 winners are ..." Yes? 23 A <b>Yes, that's what it says here, yes.</b> 24 Q Do you see that it lists different 25 countries in bold? Yes?</p>	<p>55</p> <p>1 located in Switzerland, yes? 2 MR. FISCHER: Object to form. You 3 may answer. 4 A <b>Which company?</b> 5 Q Partners Advisers SA is located in 6 Switzerland, yes? 7 A <b>That's correct, Partners Advisers is,</b> 8 <b>yes.</b> 9 Q So you didn't remember -- you don't 10 remember today -- sitting here today, you don't 11 remember your company receiving this award? 12 A <b>No --</b> 13 MR. FISCHER: Object to form. 14 A <b>-- I don't remember. I'm impressed</b> 15 <b>by the list -- the length of the list. So it</b> 16 <b>seems that everybody was receiving an award.</b> 17 <b>Really. I mean, how many pages do we have? 1,</b> 18 <b>2, 3, 4, 5, 6, 7, 8, 9, in small character,</b> 19 <b>double column. How many do we have for</b> 20 <b>Switzerland, if I may ask? 1, 2, 3, 4, 5, 6, 7,</b> 21 <b>8, 9, 10, 11, 12, 13 ...</b> 22 <b>I count between 40 and 50 names for</b> 23 <b>Switzerland. So I don't remember.</b> 24 Q Partners Advisers has a website, yes? 25 A <b>That's correct.</b></p>
<p>54</p> <p>1 A <b>That's correct.</b> 2 Q And then underneath each of these 3 countries, there's names of entities? 4 A <b>It's not very readable, but yes.</b> 5 Q Yeah, it's not the best text. 6 If you flip through with me to 7 page -- the page ending in the bottom right 8 corner with 627870, you'll see that on the 9 column on the left there is a Switzerland 10 section? Yes? 11 A <b>Which page is that, sorry?</b> 12 Q It's the one on the bottom right that 13 ends with 627870. 14 A <b>870 -- yes.</b> 15 Q Do you see on the column on the left 16 there is a "Switzerland" -- the word 17 "Switzerland" is in bold? 18 A <b>Yes.</b> 19 Q There's a bunch of names underneath. 20 And do you see that in the third column one of 21 those names is "Partners Advisers SA"? 22 A <b>Indeed.</b> 23 Q That's your company? 24 A <b>I would think so.</b> 25 Q Your company, just for the record, is</p>	<p>56</p> <p>1 Q Have you ever read what's on that 2 website? 3 A <b>Yes.</b> 4 Q Do you know that website says that 5 Partners Advisers gives investors "access to 6 superior investment opportunities"? 7 A <b>I would trust you on that. It's a</b> 8 <b>long time. I haven't read the website.</b> 9 Q How about this, I'll just read you 10 statements and you tell me if you believe that 11 that applies to your company. 12 A <b>Okay.</b> 13 Q So let me start again. "Giving 14 investors access to superior investment 15 opportunities." Does that apply to Partners 16 Advisers? 17 MR. FISCHER: Object to form. We're 18 talking present tense, Marco? 19 A <b>Today?</b> 20 Q Yes. 21 A <b>That's certainly the aim of the</b> 22 <b>company.</b> 23 Q Has it changed? Did you -- was there 24 a time that you weren't giving access to clients 25 to superior investment opportunities?</p>



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<p>57</p> <p>1 <b>A I'm aiming at giving clients today</b></p> <p>2 <b>access to superior investment returns.</b></p> <p>3 Q And my question is, was there a time</p> <p>4 before today that you were not aiming at giving</p> <p>5 clients access to superior investment</p> <p>6 opportunities?</p> <p>7 <b>A That has always been my aim.</b></p> <p>8 Q "Has a deep network of investors,</p> <p>9 investment managers and financial</p> <p>10 professionals." Does that apply to your company</p> <p>11 today?</p> <p>12 <b>A Sorry, that's not a sentence. It's a</b></p> <p>13 <b>list of words. I don't understand your</b></p> <p>14 <b>question.</b></p> <p>15 Q Does Partners Advisers today have a</p> <p>16 "deep network of investors, investment managers</p> <p>17 and financial professionals"?</p> <p>18 <b>A Can you please qualify "deep"?</b></p> <p>19 Q Just telling you what it says. Do</p> <p>20 you think that applies to your company today?</p> <p>21 MR. FISCHER: Object to form. You</p> <p>22 may answer.</p> <p>23 <b>A That's what the website, according to</b></p> <p>24 <b>what you're telling me, says. And the website</b></p> <p>25 <b>is a marketing document.</b></p>	<p>59</p> <p>1 sold to its clients?</p> <p>2 MR. FISCHER: Object to form. You</p> <p>3 can answer.</p> <p>4 <b>A We never sold, per se, our network to</b></p> <p>5 <b>our clients.</b></p> <p>6 Q Before -- starting in the beginning</p> <p>7 of Partners Advisers, what were you selling to</p> <p>8 clients?</p> <p>9 MR. FISCHER: Object to form. You</p> <p>10 may answer.</p> <p>11 <b>A I was -- Partners Advisers was</b></p> <p>12 <b>providing investment advisory service in the</b></p> <p>13 <b>field of hedge funds to its clients.</b></p> <p>14 Q You told me earlier that you spent</p> <p>15 months in New York City trying to expand your</p> <p>16 network and also in Europe, yes?</p> <p>17 MR. FISCHER: Object to form. You</p> <p>18 can answer.</p> <p>19 <b>A I spent a lot of time researching the</b></p> <p>20 <b>hedge fund market.</b></p> <p>21 Q And when you created Partners</p> <p>22 Advisers, you relied on your network of contacts</p> <p>23 in the investment industry to do the work at</p> <p>24 Partners Advisers, yes?</p> <p>25 MR. FISCHER: Object to form. You</p>
<p>58</p> <p>1 Q Do you believe it's inaccurate?</p> <p>2 MR. FISCHER: It's "inaccurate" or</p> <p>3 "an accurate"?</p> <p>4 Q It's inaccurate.</p> <p>5 MR. FISCHER: Object to form. You</p> <p>6 can answer.</p> <p>7 <b>A I would say it's my -- I will say,</b></p> <p>8 <b>yeah, it's my belief.</b></p> <p>9 Q You believe that your company's</p> <p>10 network is one of its main assets, yes?</p> <p>11 MR. FISCHER: Object to form. You</p> <p>12 may answer.</p> <p>13 <b>A I have not said that.</b></p> <p>14 Q I'm sorry?</p> <p>15 <b>A I have not said that. That's not</b></p> <p>16 <b>what I said.</b></p> <p>17 Q Would you agree that your company's</p> <p>18 network is one of its main assets?</p> <p>19 MR. FISCHER: Object to form. You</p> <p>20 may answer.</p> <p>21 <b>A I think it's one of its assets.</b></p> <p>22 Q And that's today?</p> <p>23 <b>A That's today.</b></p> <p>24 Q Was there a time before that you --</p> <p>25 that the company did not have a network that it</p>	<p>60</p> <p>1 may answer.</p> <p>2 <b>A Partially, yes.</b></p> <p>3 Q "Partners Advisers has an enhanced</p> <p>4 investment process and infrastructure." Do you</p> <p>5 agree with that statement?</p> <p>6 <b>A This is what I -- what the -- I agree</b></p> <p>7 <b>that this is what the website says.</b></p> <p>8 Q Is it your testimony that the website</p> <p>9 says things that are not necessarily true about</p> <p>10 your company?</p> <p>11 MR. FISCHER: Object to form. You</p> <p>12 may answer.</p> <p>13 <b>A No.</b></p> <p>14 Q If it's on your company's website,</p> <p>15 can I assume that it's true today?</p> <p>16 MR. FISCHER: Object to form. You</p> <p>17 may answer.</p> <p>18 <b>A I believe that when you -- it's</b></p> <p>19 <b>certainly true, but it can be described with a</b></p> <p>20 <b>favorable light or with a marketing element to</b></p> <p>21 <b>it.</b></p> <p>22 Q So it can be exaggerated?</p> <p>23 MR. FISCHER: Object to form. You</p> <p>24 may answer.</p> <p>25 <b>A I would say it could be certainly</b></p>

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<p>61</p> <p>1 <b>described in commercial terms -- in favorable</b>  2 <b>commercial terms.</b>  3 Q Does Partners Advisers combine, as  4 part of its investment process, "sourcing  5 capability, thorough due diligence and robust  6 risk management"?  7 MR. FISCHER: Object to form. You  8 may answer.  9 <b>A That's my belief today.</b>  10 Q Has it always had thorough due  11 diligence?  12 MR. FISCHER: Object to form. You  13 may answer.  14 <b>A I don't believe so.</b>  15 Q Why don't you believe so?  16 <b>A Because Partners Advisers' investment</b>  17 <b>process has evolved over time and improved over</b>  18 <b>time according to experience and industry</b>  19 <b>practice.</b>  20 Q Relative to the industry practice at  21 the time, has -- did Partners Advisers have  22 thorough due diligence in 1998?  23 MR. FISCHER: Object to form. You  24 may answer.  25 <b>A It's a global industry. Partners</b></p>	<p>63</p> <p>1 employee. I'm asking you if you conduct due  2 diligence on behalf of Partners Advisers.  3 MR. FISCHER: Object to form. You  4 may answer.  5 <b>A How can I conduct due diligence on</b>  6 <b>behalf of Partners Advisers if I'm not an</b>  7 <b>employee of Partners Advisers?</b>  8 Q Do you do any diligence work at  9 Partners Advisers?  10 <b>A In what capacity?</b>  11 MR. FISCHER: Object to form. You  12 may answer.  13 Q Do you do any diligence work at  14 Partners Advisers?  15 MR. FISCHER: Same objection.  16 <b>A No.</b>  17 Q When you created the company in 1998,  18 you said that you were the only employee, yes?  19 <b>A That's correct.</b>  20 Q When was your first employee hired?  21 MR. FISCHER: Object to form. You  22 may answer.  23 <b>A In the following years, but I don't</b>  24 <b>have precise recollection.</b>  25 Q So the diligence work that was</p>
<p>62</p> <p>1 <b>Advisers was a small company. I believe that</b>  2 <b>larger companies had certainly, you know, a more</b>  3 <b>thorough investment process than we had because</b>  4 <b>they had more means than we had.</b>  5 Q How many employees does Partners  6 Advisers have today?  7 <b>A Six, I believe.</b>  8 Q How many of them conduct due  9 diligence?  10 <b>A Three.</b>  11 Q Does that include you?  12 <b>A I'm not an employee of Partners</b>  13 <b>Advisers.</b>  14 Q Who are the three employees that  15 conduct due diligence today?  16 <b>A Olivier Magnin, Hubert Pawlak, and</b>  17 <b>Daniel -- sorry, his name escapes me -- Daniel</b>  18 <b>Bouvier, I believe.</b>  19 Q Do you conduct due diligence on  20 behalf of Partners Advisers today?  21 MR. FISCHER: Object to form. You  22 may answer.  23 <b>A I'm not an employee of Partners</b>  24 <b>Advisers SA today.</b>  25 Q I'm not asking you if you're an</p>	<p>64</p> <p>1 occurring in -- that Partners Advisers was doing  2 on behalf of its clients in 1998, it was done by  3 you?  4 MR. FISCHER: Object to form. You  5 may answer.  6 <b>A Yes.</b>  7 Q Did anyone else do any diligence work  8 on behalf of Partners Advisers' clients in 1998?  9 <b>A I was the only employee of the firm</b>  10 <b>so the answer is no.</b>  11 Q Did it outsource diligence to third  12 parties?  13 <b>A Not in a structured way. In an</b>  14 <b>unstructured way, Partners Advisers was sharing</b>  15 <b>office -- a number of its resources and research</b>  16 <b>with the Parly Company. And, accordingly, in</b>  17 <b>the course of my research -- investment research</b>  18 <b>work, I was in contact with the employees of</b>  19 <b>Partners -- of Parly Company and, accordingly,</b>  20 <b>also exchanging information with them and using</b>  21 <b>their research.</b>  22 Q For what period were you sharing this  23 office space with Parly Company?  24 <b>A From the start of Partners Advisers</b>  25 <b>until Partners Advisers relocated to separated</b></p>

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<p>65</p> <p>1 office, and that was, I believe, around 2004.</p> <p>2 I'm not sure, but I would say 2004.</p> <p>3 Q And how many people worked at Parly</p> <p>4 Advisors -- well, Parly Company, roughly?</p> <p>5 A I'm not sure, but it evolved over</p> <p>6 time. On the investment side, I would say three</p> <p>7 to four, maximum.</p> <p>8 Q And so in 1998 when there was just</p> <p>9 you at Partners Advisers, you would from time to</p> <p>10 time rely on Parly Company for diligence advice,</p> <p>11 yes?</p> <p>12 A We were collaborating, we were</p> <p>13 sharing office, we were sharing information and</p> <p>14 research, yes.</p> <p>15 Q About potential investments?</p> <p>16 A About current or potential</p> <p>17 investments.</p> <p>18 Q Did you have access to their</p> <p>19 databases?</p> <p>20 A At some times, yes.</p> <p>21 Q So you could go on the computer and</p> <p>22 download or access diligence reports that Parly</p> <p>23 Company may have created?</p> <p>24 MR. FISCHER: Object to form. You</p> <p>25 may answer.</p>	<p>67</p> <p>1 A Okay.</p> <p>2 Q "Hedge fund research."</p> <p>3 A Yes.</p> <p>4 Q And just what -- if you could just</p> <p>5 expand, what does hedge fund research mean to</p> <p>6 you?</p> <p>7 A Trying to understand -- well, you</p> <p>8 know, in the hedge fund industry, try to</p> <p>9 identify good hedge funds and have access to</p> <p>10 them.</p> <p>11 Q The next one I'm going to read now.</p> <p>12 "Management of portfolios of hedge funds."</p> <p>13 A Yes.</p> <p>14 Q That's a specialty that you think</p> <p>15 applies to you?</p> <p>16 A That's correct.</p> <p>17 Q What about "Business development in</p> <p>18 the field of fund of funds"?</p> <p>19 A To a certain extent, yes.</p> <p>20 Q What do you mean, to a certain</p> <p>21 extent?</p> <p>22 A I don't think that's my stronger</p> <p>23 skill or asset.</p> <p>24 Q What is your stronger skill or asset?</p> <p>25 MR. FISCHER: Object to form. You</p>
<p>66</p> <p>1 A Yes.</p> <p>2 Q Could they -- did they have access to</p> <p>3 your database too?</p> <p>4 A Well, we didn't really have a</p> <p>5 database, but I would say, yeah, they had access</p> <p>6 to some of my files and I had access to some of</p> <p>7 their files, yes.</p> <p>8 Q Mr. Estenne, what's -- how about</p> <p>9 let's do it this way. You have a LinkedIn page,</p> <p>10 yes?</p> <p>11 A That's correct.</p> <p>12 Q And you know your LinkedIn page lists</p> <p>13 what you call specialties that you believe you</p> <p>14 have, yes?</p> <p>15 MR. FISCHER: Object to form. You</p> <p>16 may answer.</p> <p>17 A I haven't looked at my LinkedIn page</p> <p>18 for a long time. I'm not a frequent user of</p> <p>19 LinkedIn, but I would guess so.</p> <p>20 Q So what I'm going to do is similar to</p> <p>21 what I was doing with the website, but this time</p> <p>22 it's specific to you. I'm going to be listing</p> <p>23 specialties listed on your LinkedIn page, and</p> <p>24 you just tell me if you still agree that they</p> <p>25 are specialties that you have.</p>	<p>68</p> <p>1 may answer.</p> <p>2 A I think it's running hedge fund</p> <p>3 portfolios -- assembling hedge fund portfolios.</p> <p>4 Q For fund of funds or family offices?</p> <p>5 A It doesn't change. Yes.</p> <p>6 Q And then the last one I'm going to</p> <p>7 read here, "General management of a hedge fund</p> <p>8 research and advisory company."</p> <p>9 A That's what I have done for -- that</p> <p>10 describes what I have done for a long time, yes.</p> <p>11 Q Do you have any other specialties</p> <p>12 other than the ones that I have just listed?</p> <p>13 MR. FISCHER: Object to form. You</p> <p>14 may answer.</p> <p>15 A I'm not sure I'm the best person to</p> <p>16 judge, but I certainly have, you know, other</p> <p>17 skills. But within the context of my tenure at</p> <p>18 Partners Advisers SA, I think these are the</p> <p>19 relevant ones.</p> <p>20 Q So I'm going to list now some topics,</p> <p>21 and I'm going to ask you if you consider</p> <p>22 yourself an expert in these topics, okay?</p> <p>23 A Can you -- I don't understand the</p> <p>24 question.</p> <p>25 Q So I'm going to list some topics and</p>

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<p>69</p> <p>1 I'm going to ask you if you hold yourself out to</p> <p>2 be an expert in that topic.</p> <p>3 <b>A Could you please define "expert."</b></p> <p>4 Q Someone with superior knowledge and</p> <p>5 experience in that topic.</p> <p>6 <b>A Superior to whom?</b></p> <p>7 Q To the average person in that</p> <p>8 industry. Or let's talk about -- to the</p> <p>9 average -- just to the average person.</p> <p>10 <b>A The average -- what's the average?</b></p> <p>11 Q Let me put it differently. You speak</p> <p>12 at conferences, yes?</p> <p>13 <b>A No.</b></p> <p>14 Q You've never spoken at a conference?</p> <p>15 <b>A I'm not speaking at a conference.</b></p> <p>16 Q Have you ever presented -- have you</p> <p>17 ever appeared as a panelist in an industry</p> <p>18 conference?</p> <p>19 <b>A Yes.</b></p> <p>20 Q Okay. And when you -- and you've</p> <p>21 written a book chapter with respect to risk</p> <p>22 management in the family office, yes?</p> <p>23 <b>A That's correct.</b></p> <p>24 Q And you've given press interviews</p> <p>25 before, yes?</p>	<p>71</p> <p>1 <b>A I beg your pardon?</b></p> <p>2 Q Do you have any experience in</p> <p>3 conducting operational due diligence?</p> <p>4 <b>A Yes.</b></p> <p>5 Q And specifically qualitative</p> <p>6 operations due diligence?</p> <p>7 <b>A To a certain extent, yes. To a</b></p> <p>8 <b>certain extent, yes.</b></p> <p>9 Q And what do you think that consists</p> <p>10 of?</p> <p>11 MR. FISCHER: Object to form. You</p> <p>12 may answer.</p> <p>13 <b>A This is something which Partners</b></p> <p>14 <b>Advisers has started to do within the evolution</b></p> <p>15 <b>of its investment process and investment</b></p> <p>16 <b>requirements and the evolution of its due</b></p> <p>17 <b>diligence process. Initially -- you know,</b></p> <p>18 <b>Partners Advisers has been around for 20 years</b></p> <p>19 <b>so things have evolved. I would say that</b></p> <p>20 <b>initially there was -- and for a while, there</b></p> <p>21 <b>was no operational due diligence, per se.</b></p> <p>22 <b>There were a few questions related to</b></p> <p>23 <b>operation, which were combined to a few</b></p> <p>24 <b>questions related -- or topics related to</b></p> <p>25 <b>strategy topics, but there was no operation due</b></p>
<p>70</p> <p>1 <b>A Before, yes.</b></p> <p>2 Q So you -- in those capacities, you</p> <p>3 hold yourself out as an expert in a certain</p> <p>4 field, yes?</p> <p>5 MR. FISCHER: Object to form. You</p> <p>6 may answer.</p> <p>7 <b>A Things evolve over time. Everything</b></p> <p>8 <b>you mentioned is a long time ago.</b></p> <p>9 Q My question is -- I'm not asking if</p> <p>10 it's evolved. My question is, when you did</p> <p>11 those things, whether it was write the book</p> <p>12 chapter, give a press interview or speak at an</p> <p>13 industry conference, you didn't do so as an</p> <p>14 average person. You did so as somebody with a</p> <p>15 specific level of expertise, yes?</p> <p>16 MR. FISCHER: Objection. You may</p> <p>17 answer.</p> <p>18 <b>A It's not for me to judge. I had a</b></p> <p>19 <b>certain knowledge, that's for sure, or a certain</b></p> <p>20 <b>level of information. It's difficult for me to</b></p> <p>21 <b>define my- -- you know, to refer to myself as an</b></p> <p>22 <b>expert, especially compared to whom, but I was</b></p> <p>23 <b>indeed invited to speak at some conference.</b></p> <p>24 Q Are you experienced in operations due</p> <p>25 diligence?</p>	<p>72</p> <p>1 <b>diligence, per se. That's at the beginning.</b></p> <p>2 <b>Over the life of Partners Advisers,</b></p> <p>3 <b>things have evolved and progressed, and today</b></p> <p>4 <b>Partners Advisers has a person dedicated to</b></p> <p>5 <b>performing operation due diligence. His name is</b></p> <p>6 <b>Daniel Bouvier, as I mentioned to you earlier.</b></p> <p>7 Q When did Partners Advisers start</p> <p>8 conducting operational due diligence?</p> <p>9 MR. FISCHER: Object to form. You</p> <p>10 may answer.</p> <p>11 <b>A I don't remember exactly what was the</b></p> <p>12 <b>date. I think we gradually reinforced the</b></p> <p>13 <b>analysis of operational aspects of the hedge</b></p> <p>14 <b>funds we were reviewing to the point that at one</b></p> <p>15 <b>point, one specific analyst was hired and at the</b></p> <p>16 <b>title of operational due diligence analyst. I</b></p> <p>17 <b>would say that's when operational due diligence</b></p> <p>18 <b>was -- really was formalized.</b></p> <p>19 MR. FISCHER: Marco, we've been going</p> <p>20 for over an hour and a half.</p> <p>21 MR. MOLINA: Yeah, no, I think -- we</p> <p>22 can take a break right now. I was going to</p> <p>23 suggest we take a break soon anyway.</p> <p>24 THE VIDEOGRAPHER: We are going off</p> <p>25 the record. The time is 11:07 a.m.</p>

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<p style="text-align: right;">73</p> <p>1 (A recess was taken.)</p> <p>2 THE VIDEOGRAPHER: We are back on the</p> <p>3 record. The time is 11:26 a.m.</p> <p>4 BY MR. MOLINA:</p> <p>5 Q Mr. Estenne, we talked earlier that</p> <p>6 you had written a book chapter. Yes?</p> <p>7 A Yes.</p> <p>8 Q The book chapter is called "Risk</p> <p>9 Management Issues for the Family Office," yes?</p> <p>10 A Yes.</p> <p>11 Q And it's for a book that's called</p> <p>12 Managing Hedge Fund Risk, yes?</p> <p>13 A Yes.</p> <p>14 Q And you first authored this chapter</p> <p>15 in the year 2000, yes?</p> <p>16 A I don't remember when I authored this</p> <p>17 chapter.</p> <p>18 Q How did that opportunity come about?</p> <p>19 A I don't really remember. I don't</p> <p>20 precisely remember. But I believe I was -- I</p> <p>21 was trying to promote Partners Advisers. And</p> <p>22 within the context of business development, I</p> <p>23 was speaking at conferences and also trying to</p> <p>24 get some exposure and find ways to -- for the</p> <p>25 firm to gain credibility. And, obviously,</p>	<p style="text-align: right;">75</p> <p>1 A I wrote it alone, but I used a number</p> <p>2 of sources of information and rely on other</p> <p>3 research which I had access to.</p> <p>4 Q And just -- I don't think you stated</p> <p>5 it yet, but did you seek out this opportunity?</p> <p>6 A That's my recollection, yes.</p> <p>7 Q And just for the record, this chapter</p> <p>8 was updated in 2005, yes?</p> <p>9 A It's possible, yes.</p> <p>10 Q Have you written any other chapters</p> <p>11 in any other book?</p> <p>12 A No.</p> <p>13 Q Why don't we turn to this -- the</p> <p>14 original version of this chapter.</p> <p>15 MS. STORK: This is Trustee</p> <p>16 Exhibit 47.</p> <p>17 (Trustee Exhibit 47 marked for</p> <p>18 identification and attached to the transcript.)</p> <p>19 Q Mr. Estenne, I'm going to hand to you</p> <p>20 what's been marked Trustee Exhibit number 47.</p> <p>21 Do you recognize this document?</p> <p>22 A Yes.</p> <p>23 Q What is this document?</p> <p>24 A This is the book you men- -- it's an</p> <p>25 extract, I guess, of the book you mentioned.</p>
<p style="text-align: right;">74</p> <p>1 writing a chapter of -- in a book is something</p> <p>2 which increases, to an extent -- I didn't</p> <p>3 measure before it happened -- strangely, the</p> <p>4 credibility you can have. And, you know, it</p> <p>5 seems that when you write something in a book,</p> <p>6 people certainly believe that you know what</p> <p>7 you're talking about.</p> <p>8 Q Do you think it's strange that if you</p> <p>9 write a book chapter --</p> <p>10 MR. MOLINA: Let me rephrase that.</p> <p>11 Q Do you think it's strange that people</p> <p>12 believe that you know what you're talking about</p> <p>13 when you write a book chapter? You used the</p> <p>14 word "strangely." I just want to understand</p> <p>15 what that meant.</p> <p>16 A I mean surprising to me.</p> <p>17 Q Why is it surprising to you?</p> <p>18 A Because, again, my perception was</p> <p>19 that, you know, there was a disconnect between</p> <p>20 my personal assessment of my knowledge and</p> <p>21 expertise or so-called expertise or knowledge, I</p> <p>22 would say, and the one some people had after I</p> <p>23 had written this chapter.</p> <p>24 Q Did someone help you write this book</p> <p>25 chapter?</p>	<p style="text-align: right;">76</p> <p>1 Q So on the cover page we see the title</p> <p>2 Managing Hedge Fund Risk, yes?</p> <p>3 MR. FISCHER: Just remember, Luc, you</p> <p>4 should take your time to reacquaint yourself</p> <p>5 with this document before you start answering</p> <p>6 questions.</p> <p>7 Q I'm just asking you --</p> <p>8 MR. MOLINA: And I would appreciate</p> <p>9 if you would just wait until he answers the</p> <p>10 question. The front --</p> <p>11 MR. FISCHER: No, that's not how</p> <p>12 we're going to do this. He is going to read</p> <p>13 documents before he starts answering questions</p> <p>14 about them.</p> <p>15 MR. MOLINA: My question is what's on</p> <p>16 the front of the document. I'll give him time</p> <p>17 to read the rest of the document, Brian. I'm</p> <p>18 just asking him what's on the cover page of the</p> <p>19 document. He doesn't need to flip to other</p> <p>20 pages to answer that question.</p> <p>21 Q But I will give you time to read when</p> <p>22 I ask you a question about the contents.</p> <p>23 Let me just ask you again, on the</p> <p>24 cover does it say Managing Hedge Fund Risk?</p> <p>25 A It does.</p>

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<p>77</p> <p>1 Q Okay. And, as you mentioned earlier,</p> <p>2 Mr. Estenne, this is an excerpt of the chapter</p> <p>3 that you authored, yes?</p> <p>4 A Yes.</p> <p>5 Q And if you'd -- going back to the</p> <p>6 front of the document, if you just flip to the</p> <p>7 next page, what's -- with the Bates number 15799</p> <p>8 at the bottom right. Do you see that this</p> <p>9 document -- this book, sorry -- was published in</p> <p>10 the year 2000?</p> <p>11 A Yes.</p> <p>12 Q So now if you can flip to the page</p> <p>13 with the numbers 615801 in the bottom right.</p> <p>14 A Yes.</p> <p>15 Q Okay. So this -- the title of this</p> <p>16 document, this page, at the top it says, "Risk</p> <p>17 Management Issues for the Family Office," by Luc</p> <p>18 Estenne, yes?</p> <p>19 A Yes.</p> <p>20 Q Okay. And you recognize this as the</p> <p>21 chapter that you wrote, yes?</p> <p>22 A Yes.</p> <p>23 Q In the beginning on this page, again,</p> <p>24 the one that you're on right now, there's a</p> <p>25 header titled, "The Investment Preferences and</p>	<p>79</p> <p>1 wrote here is to protect the downside, yes?</p> <p>2 A That's correct.</p> <p>3 Q What does "protect the downside" mean</p> <p>4 to you? What did you mean when you wrote it</p> <p>5 here?</p> <p>6 MR. FISCHER: Object to form. You</p> <p>7 may answer.</p> <p>8 A I believe you can read what's under</p> <p>9 the title to understand what I meant. I can do</p> <p>10 it for you if you like. "Equity markets'</p> <p>11 performance over the last decade has certainly</p> <p>12 twisted investors' return expectations and their</p> <p>13 perception of financial risks. Financial</p> <p>14 markets do not always move up; bear markets,</p> <p>15 corrections and crashes do happen. The fear of</p> <p>16 these disasters and the search for a remedy are</p> <p>17 central to the family office investment</p> <p>18 behavior. In this context, hedge fund</p> <p>19 allocation is motivated by the capacity of some</p> <p>20 strategies to absorb financial markets' shocks</p> <p>21 and to provide substantial downside protection,"</p> <p>22 i.e., reduce the loss.</p> <p>23 Q And on the fourth objective that you</p> <p>24 have on this page, titled, "Maximize</p> <p>25 risk-adjusted returns," do you see that you</p>
<p>78</p> <p>1 Objectives of the Family Office," yes?</p> <p>2 A Yes.</p> <p>3 Q And you can flip through if you need</p> <p>4 to reacquaint yourself, but you'll see that on</p> <p>5 the next page you start identifying four</p> <p>6 objectives. Yes?</p> <p>7 A Yes.</p> <p>8 Q So why did you write a book chapter</p> <p>9 about family offices in particular?</p> <p>10 MR. FISCHER: Object to form. Asked</p> <p>11 and answered. You may answer.</p> <p>12 A Because I had started Partners</p> <p>13 Advisers by looking at investments of my family</p> <p>14 and that Partners Advisers was also sharing</p> <p>15 office with Partners Advisers, which was a</p> <p>16 family office, and, accordingly, I felt that I</p> <p>17 had some knowledge about the sensitivities or</p> <p>18 consideration of family offices when it came to</p> <p>19 hedge funds.</p> <p>20 Q Right. And that knowledge led you to</p> <p>21 believe that one of the objectives of a family</p> <p>22 office is to avoid large losses, yes?</p> <p>23 A I think it's true to any investor.</p> <p>24 Nobody wants to invest money to lose money.</p> <p>25 Q Right. And another objective you</p>	<p>80</p> <p>1 have -- within that, you have a bullet that says</p> <p>2 that "The realization of this objective will be</p> <p>3 conditioned by its capacity to allocate assets</p> <p>4 within a structure that secures a commonality of</p> <p>5 interest between the manager and their</p> <p>6 investors." Do you see that?</p> <p>7 A Yes.</p> <p>8 Q What do you mean by "commonality of</p> <p>9 interest"?</p> <p>10 MR. FISCHER: Object to form. You</p> <p>11 may answer.</p> <p>12 A Avoid conflict of interests, align</p> <p>13 interests.</p> <p>14 Q And could you give me an example of a</p> <p>15 structure that secures a commonality of interest</p> <p>16 between the manager and its investors.</p> <p>17 A If a manager is invested in the</p> <p>18 investment-related strategy in which his</p> <p>19 investors are invested as well, it is -- which</p> <p>20 is today something common, it is a market</p> <p>21 standard to assume that there is an magnitude of</p> <p>22 interest, obviously, because the interest of the</p> <p>23 investors and the interest of the managers are</p> <p>24 aligned through a common investment in the same</p> <p>25 strategy.</p>

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<p>81</p> <p>1 Q And Partners Advisers follows this</p> <p>2 principle with its investors, yes?</p> <p>3 <b>A What do you -- I don't understand</b></p> <p>4 <b>your question.</b></p> <p>5 Q Does Partners Advisers invest with</p> <p>6 its investors to establish this commonality of</p> <p>7 interest between them?</p> <p>8 MR. FISCHER: Object to form. You</p> <p>9 may answer.</p> <p>10 <b>A No.</b></p> <p>11 Q Do you personally invest in the</p> <p>12 portfolio that you offer the clients of Partners</p> <p>13 Advisers?</p> <p>14 <b>A Not necessarily.</b></p> <p>15 Q Have you ever invested in the</p> <p>16 portfolio that you offer to clients or customers</p> <p>17 of Partners Advisers?</p> <p>18 <b>A I believe that it was the case in</b></p> <p>19 <b>some instances, but not always.</b></p> <p>20 Q Well, speak specifically with the ART</p> <p>21 Fund. You invested some of your personal assets</p> <p>22 in the investment portfolio offered by the ART</p> <p>23 Fund, yes?</p> <p>24 <b>A The ART Fund offered different</b></p> <p>25 <b>portfolios. I believe that I was at some time</b></p>	<p>83</p> <p>1 <b>have to guess.</b></p> <p>2 Q More than one?</p> <p>3 <b>A More than one.</b></p> <p>4 Q And you were invested in at least one</p> <p>5 of them?</p> <p>6 MR. FISCHER: Object to form. You</p> <p>7 may answer.</p> <p>8 <b>A I don't recall that I have been</b></p> <p>9 <b>invested from day one -- that I was invested day</b></p> <p>10 <b>one in ART. I had no financial means to be</b></p> <p>11 <b>invested at that time.</b></p> <p>12 Q Let's turn to the next page in your</p> <p>13 book chapter.</p> <p>14 <b>A 03?</b></p> <p>15 Q It's the one that ends in 803 --</p> <p>16 <b>A Yes.</b></p> <p>17 Q -- at the bottom right.</p> <p>18 So here you -- there is a section</p> <p>19 titled "Risk Quantification in the Context of</p> <p>20 Hedge Fund Allocation," yes?</p> <p>21 <b>A Yes.</b></p> <p>22 Q And then there is a table -- table 1</p> <p>23 on this page that has, I guess, three categories</p> <p>24 of financial risks, yes?</p> <p>25 <b>A Yes.</b></p>
<p>82</p> <p>1 <b>invested in some of them or one of them, but I</b></p> <p>2 <b>don't have a precise recollection. But as a</b></p> <p>3 <b>general answer, I would say that my answer would</b></p> <p>4 <b>be that I have been at some time invested in at</b></p> <p>5 <b>least, I believe, one compartment or one</b></p> <p>6 <b>portfolio managed by ART, among others.</b></p> <p>7 Q How many portfolios does ART Fund</p> <p>8 manage?</p> <p>9 <b>A Today?</b></p> <p>10 Q Yes.</p> <p>11 <b>A Today we have one portfolio -- it's</b></p> <p>12 <b>one compartment, technically, which is a sub</b></p> <p>13 <b>fund. And there is one called Arch, there is</b></p> <p>14 <b>one called Opportunity, there is one called</b></p> <p>15 <b>Relative Value and there is one called</b></p> <p>16 <b>Diversified Selection. So today there are four.</b></p> <p>17 Q And when you created the ART Fund, I</p> <p>18 believe you said earlier that you created it in</p> <p>19 2000, yes?</p> <p>20 <b>A It was created in, I think -- yeah,</b></p> <p>21 <b>created in 2000, launched in 2001. That's my</b></p> <p>22 <b>recollection.</b></p> <p>23 Q So when it was launched in 2001, how</p> <p>24 many portfolios did it offer?</p> <p>25 <b>A I believe -- I'm not sure. I would</b></p>	<p>84</p> <p>1 Q There's a credit risk, a market risk,</p> <p>2 and an operational risk category, yes?</p> <p>3 <b>A That's correct.</b></p> <p>4 Q What's credit risk?</p> <p>5 <b>A Credit risk is related to the risk</b></p> <p>6 <b>you face when you have someone who -- you face a</b></p> <p>7 <b>situation where you are owed some money.</b></p> <p>8 Q And what's market risk?</p> <p>9 <b>A Market risk is the risk you face when</b></p> <p>10 <b>you are exposed to the price change or the value</b></p> <p>11 <b>change of some financial instruments which are</b></p> <p>12 <b>traded or exchanged in a financial market.</b></p> <p>13 Q And what's operational risk?</p> <p>14 <b>A Operational risks are risks related</b></p> <p>15 <b>to the processing of financial operations and --</b></p> <p>16 <b>yes, that's what I would say.</b></p> <p>17 Q Okay. So let me ask you, why --</p> <p>18 is -- how do you assess credit risk?</p> <p>19 MR. FISCHER: Object to form. You</p> <p>20 may answer.</p> <p>21 <b>A It's a very broad question. Can you</b></p> <p>22 <b>be more specific because I have difficulties to</b></p> <p>23 <b>answer this.</b></p> <p>24 Q Have you ever assessed the credit</p> <p>25 risk of any investment, you personally?</p>

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<p>85</p> <p>1 <b>A Can you define "assess"?</b></p> <p>2 Q Have you ever analyzed the credit</p> <p>3 risk of any investment?</p> <p>4 <b>A I would say yes, yes.</b></p> <p>5 Q And why -- why do -- why have you</p> <p>6 analyzed the credit risk? Why is it important?</p> <p>7 MR. FISCHER: Object to form. You</p> <p>8 may answer.</p> <p>9 <b>A Well, when you make any investment,</b></p> <p>10 <b>you try to -- any type of investment, it's good</b></p> <p>11 <b>to have an idea of what you're doing, meaning</b></p> <p>12 <b>having at least a rough idea of -- or a partial</b></p> <p>13 <b>understanding -- because it's always partial,</b></p> <p>14 <b>unfortunately -- but a partial understanding of</b></p> <p>15 <b>the risk you are taking so that you can try,</b></p> <p>16 <b>although it's not always going to be perfect,</b></p> <p>17 <b>but at least try to put in relation the</b></p> <p>18 <b>assessment of the risk you have related to these</b></p> <p>19 <b>investments and your assessment of the reward</b></p> <p>20 <b>you can get from this investment, and,</b></p> <p>21 <b>accordingly, try to evaluate what the</b></p> <p>22 <b>risk/reward because the theory goes, and,</b></p> <p>23 <b>obviously, it makes rather common sense, that</b></p> <p>24 <b>the higher the risk you take, the higher the</b></p> <p>25 <b>reward you want to get.</b></p>	<p>87</p> <p>1 Hold on to that. We'll come back to</p> <p>2 this particular page.</p> <p>3 THE WITNESS: Okay.</p> <p>4 MR. MOLINA: I'm going to --</p> <p>5 MS. STORK: This is marked as Trustee</p> <p>6 Exhibit 48.</p> <p>7 (Trustee Exhibit 48 marked for</p> <p>8 identification and attached to the transcript.)</p> <p>9 Q I'm going to show you what has</p> <p>10 already been marked as Trustee Exhibit 48.</p> <p>11 <b>A Thank you.</b></p> <p>12 Q And let me ask you, do you recognize</p> <p>13 this document?</p> <p>14 MR. FISCHER: Same instruction as I</p> <p>15 have given you before, Luc. Just make sure you</p> <p>16 acquaint yourself with the document before you</p> <p>17 start firing off answers.</p> <p>18 <b>A I certainly recognize the front cover</b></p> <p>19 <b>of the document.</b></p> <p>20 (Witness reviewing document.)</p> <p>21 Yes.</p> <p>22 Q So what is this document?</p> <p>23 <b>A This document is the second edition</b></p> <p>24 <b>of the book entitled Managing Hedge Fund Risk in</b></p> <p>25 <b>which I've written -- or I wrote a chapter.</b></p>
<p>86</p> <p>1 Q Right. So there is a direct</p> <p>2 correlation between risk and reward, yes?</p> <p>3 <b>A It's not a correlation, but, you</b></p> <p>4 <b>know, it makes sense, as a rational economic</b></p> <p>5 <b>actor, that if you take higher risk, you want to</b></p> <p>6 <b>get higher rewards.</b></p> <p>7 Q And in this chapter, with respect to</p> <p>8 what you're writing here, you're trying to lower</p> <p>9 or mitigate these risks, yes?</p> <p>10 MR. FISCHER: Object to form. You</p> <p>11 may answer.</p> <p>12 <b>A Not necessarily to mitigate them but</b></p> <p>13 <b>at least to understand them in order to decide</b></p> <p>14 <b>which risk seems acceptable and which risks do</b></p> <p>15 <b>not seem acceptable. You always have to take</b></p> <p>16 <b>risk. There is always -- as an investor, you</b></p> <p>17 <b>always act in the context of imperfect</b></p> <p>18 <b>information, and it's good to understand, you</b></p> <p>19 <b>know, not only what information you have and</b></p> <p>20 <b>what risk you take, but also what information</b></p> <p>21 <b>you're missing and what risk you take because</b></p> <p>22 <b>you're missing this information.</b></p> <p>23 MR. MOLINA: You know what might be</p> <p>24 useful here. Tori, if you can give me the --</p> <p>25 what I think we have as tab 7.</p>	<p>88</p> <p>1 Q You wrote this chapter, yes?</p> <p>2 <b>A That's correct.</b></p> <p>3 Q And on page -- on the third page, the</p> <p>4 one with the numbers 619486 in the bottom</p> <p>5 right --</p> <p>6 <b>A Yes, I see the page.</b></p> <p>7 Q -- do you see that it was published</p> <p>8 in 2005?</p> <p>9 <b>A Yes.</b></p> <p>10 Q So related to this risk discussion we</p> <p>11 were just having, I'm going to take you to the</p> <p>12 page with the number 619496.</p> <p>13 <b>A Yes.</b></p> <p>14 Q And specifically in the section in</p> <p>15 bold titled "Practical Issues Related to Risk</p> <p>16 Qualification." Do you see that?</p> <p>17 <b>A Yes.</b></p> <p>18 Q And you'll see that on this page in</p> <p>19 this section you wrote about how Partners</p> <p>20 Advisers identifies risk and then gives them a</p> <p>21 score on a scale from 1 to 5. Do you see that?</p> <p>22 MR. FISCHER: Object to form. You</p> <p>23 may answer.</p> <p>24 <b>A That's what is written, yes. "Each</b></p> <p>25 <b>risk is reviewed and analyzed during the due</b></p>



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<p style="text-align: right;">89</p> <p>1 diligence process and given a score on a scale</p> <p>2 from 1 to 5."</p> <p>3 Q So how do you -- how does Partners</p> <p>4 Advisers compute this score?</p> <p>5 MR. FISCHER: Object to form. You</p> <p>6 may answer.</p> <p>7 A The score is not computed. It's a</p> <p>8 qualitative judgment.</p> <p>9 Q And how is that judgment made?</p> <p>10 A It's made based on the information</p> <p>11 gathered during the due diligence process.</p> <p>12 Q What does a score of 1 mean?</p> <p>13 MR. FISCHER: Object to form. You</p> <p>14 may answer.</p> <p>15 A It means that the subjective risk --</p> <p>16 that the risk is subjectively perceived to be</p> <p>17 low.</p> <p>18 Q And what does a score of 5 mean?</p> <p>19 A That the risk is high.</p> <p>20 Q And who at Partners Advisers -- well,</p> <p>21 let me ask. Does Partners Advisers still score</p> <p>22 risks on a scale from 1 to 5?</p> <p>23 A That's something which I guess we've</p> <p>24 done in the past. Today the scoring is used</p> <p>25 only for the operational due diligence portion.</p>	<p style="text-align: right;">91</p> <p>1 A The idea is to have a mapping of the</p> <p>2 different risks which are present in the</p> <p>3 strategy.</p> <p>4 Q For what purpose?</p> <p>5 A For the purpose of formalizing or</p> <p>6 understanding of the risks which are included in</p> <p>7 investing in the strategy.</p> <p>8 Q And what does Partners Advisers do</p> <p>9 with the scores?</p> <p>10 MR. FISCHER: Object to form. You</p> <p>11 may answer.</p> <p>12 A We simply review, or the score</p> <p>13 evolved over time. So what we were doing is</p> <p>14 that we were reviewing the risks which are</p> <p>15 listed below. According to our understanding of</p> <p>16 the risk, we were giving a score for each risk,</p> <p>17 which are reflective of how important the risk</p> <p>18 was, according to our understanding. And so it</p> <p>19 created a kind of map and a picture of what are</p> <p>20 the risks and we were trying to continue to</p> <p>21 review and update this risk mapping over the</p> <p>22 time of our investment.</p> <p>23 Q Does Partners Advisers do this for</p> <p>24 all of its investments?</p> <p>25 MR. FISCHER: Object to form. You</p>
<p style="text-align: right;">90</p> <p>1 Q And is there a -- what's your</p> <p>2 understanding as to what's an acceptable score</p> <p>3 for an investment?</p> <p>4 MR. FISCHER: Object to form. You</p> <p>5 may answer.</p> <p>6 A Sorry, can you repeat the question?</p> <p>7 I just want to make sure that I answer properly.</p> <p>8 Q My question is what is an acceptable</p> <p>9 score for an investment?</p> <p>10 MR. FISCHER: Same objection.</p> <p>11 A Can you be more precise about what</p> <p>12 you mean?</p> <p>13 Q So just to break this down, you wrote</p> <p>14 here that Partners Advisers reviews and analyzes</p> <p>15 each risk during the due diligence process, yes?</p> <p>16 That's what you wrote here?</p> <p>17 A Yes.</p> <p>18 Q And you said that as part of this</p> <p>19 review and analysis, Partners Advisers scores</p> <p>20 each risk on a scale from 1 to 5, yes?</p> <p>21 A Yes.</p> <p>22 Q And then what does it do after it</p> <p>23 scores each risk on a scale from 1 to 5?</p> <p>24 MR. FISCHER: Object to form. You</p> <p>25 may answer.</p>	<p style="text-align: right;">92</p> <p>1 may answer.</p> <p>2 A I believe that -- I'm not sure that</p> <p>3 we still do it on a consistent basis.</p> <p>4 Q If you turn the page, which I think</p> <p>5 you just did, the one ending in 9497 --</p> <p>6 A Yes.</p> <p>7 Q -- on the bottom right.</p> <p>8 You have here a list of risks, yes?</p> <p>9 A Yes.</p> <p>10 Q And just so I understand the scoring</p> <p>11 methodology, let's just take one of these risks</p> <p>12 and you can tell me how you understand these</p> <p>13 risks are assessed, okay.</p> <p>14 So let's start with "Leverage risk."</p> <p>15 Do you see that on that page?</p> <p>16 A Yes.</p> <p>17 Q So, first, let me ask you, what's</p> <p>18 leverage risk?</p> <p>19 A The leverage risk is the risk related</p> <p>20 to the amount of leverage involved in the</p> <p>21 strategy.</p> <p>22 Q And so what kind of an -- what would</p> <p>23 lead Partners Advisers to give it a score of 1?</p> <p>24 MR. FISCHER: Object to form. You</p> <p>25 may answer.</p>

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<p>93</p> <p>1 <b>A I don't know how the scoring</b>  2 <b>mechanism is used in detail.</b>  3 Q You personally were not involved in  4 scoring -- in this scoring methodology?  5 <b>A It has been a long time since I have</b>  6 <b>been involved in the scoring.</b>  7 Q But you were at one point involved in  8 scoring risks in this manner?  9 <b>A I would think so, but a long time</b>  10 <b>ago, yeah.</b>  11 Q So sitting here today, you don't know  12 how these risks would be scored?  13 <b>A I would know generally what were the</b>  14 <b>principles, but I would not know in detail.</b>  15 Q So you said earlier that a score of 1  16 means low risk?  17 <b>A Low. 5 --</b>  18 Q And a score of 5 is high risk?  19 <b>A That's correct.</b>  20 Q So if the -- using -- looking again  21 at leverage risk if the hedge fund is using a  22 significant amount of leverage, what would you  23 understand -- would that be a low risk?  24 MR. FISCHER: Object to form.  25 <b>A What I can tell you is that if no</b></p>	<p>95</p> <p>1 <b>obviously reduced because of the number of</b>  2 <b>counterparties involved.</b>  3 Q And, conversely, if the fund invests  4 with only one manager, then it's --  5 <b>A It's not one manager. It's the</b>  6 <b>manager investing -- you know, trading with the</b>  7 <b>different counterparties.</b>  8 Q What is transparency risk?  9 MR. FISCHER: Object to form. You  10 may answer.  11 <b>A Transparency risk -- let me check</b>  12 <b>what's described here to make sure that ...</b>  13 Q I think it's on the next page.  14 <b>A 498?</b>  15 Q Yes.  16 <b>A It is the risk related to the lack of</b>  17 <b>transparency an investor would get in -- when it</b>  18 <b>comes to the strategy of a fund.</b>  19 Q And why do you have it in this  20 particular chapter? Why did you think it was  21 a -- why did you include it here?  22 <b>A Because it's one of the risks which</b>  23 <b>one investor could potentially face while</b>  24 <b>investing in an actively managed strategy.</b>  25 Q And how do you assess that risk?</p>
<p>94</p> <p>1 <b>leverage is used, it would be a 1. If, let's</b>  2 <b>say, particularly a leverage of 100 were to be</b>  3 <b>used, it would be a score of 5.</b>  4 MR. FISCHER: Just a reminder, Luc.  5 Let Marco ask his questions before you start  6 answering them, and let me have an opportunity  7 to make an objection if I need to make one.  8 So I'm going to object to the form of  9 that last question.  10 Q What's counterparty risk?  11 <b>A It is the risk related to the</b>  12 <b>counterparty not fulfilling its obligations.</b>  13 Q And how do you assess that risk?  14 MR. FISCHER: Object to form. You  15 may answer.  16 <b>A If you face an organization which is</b>  17 <b>of large size, reputable, has been around for a</b>  18 <b>long time, regulated, these criterias would help</b>  19 <b>you assess that the counterparty risk is lower</b>  20 <b>than if you face a counterparty which has the</b>  21 <b>opposite characteristics.</b>  22 <b>The other element is also related to</b>  23 <b>the -- if you have a fund which trades with a</b>  24 <b>diversified and large number of counterparties,</b>  25 <b>your risk related to these counterparties is</b></p>	<p>96</p> <p>1 MR. FISCHER: Object to form. You  2 may answer.  3 <b>A You can -- well, I believe that, you</b>  4 <b>know, as mentioned earlier, any investment is an</b>  5 <b>investment which is made under incomplete</b>  6 <b>information. So there is always a risk related</b>  7 <b>to the fact that, as an investor into a fund,</b>  8 <b>you don't know everything. I guess that if you</b>  9 <b>knew everything and if, in addition, you</b>  10 <b>understood everything, you wouldn't need the</b>  11 <b>manager to do the -- to implement the investment</b>  12 <b>strategy. You would be able to do it yourself.</b>  13 <b>So, by definition, there's always a</b>  14 <b>certain lack of transparency, and it's a</b>  15 <b>subjective assessment of your understanding of</b>  16 <b>the strategy and your understanding of how much</b>  17 <b>information is disclosed to you.</b>  18 Q From an investor's perspective, is it  19 better to have more transparency?  20 MR. FISCHER: Object to form. You  21 may answer.  22 <b>A It's a question of risk/reward.</b>  23 <b>Everything being equal, yes. But you can have</b>  24 <b>in some instances -- in some instances you can</b>  25 <b>have an illustration where, you know, a fund</b></p>

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<p style="text-align: right;">97</p> <p>1 which provides higher transparency ends up 2 offering a poorer risk/reward investment 3 characteristic. So which means that -- yeah. 4 There are a multitude of factors that need to be 5 reviewed and subjectively weighted. 6 And I would say that the -- to a 7 certain extent, the art or the -- or the 8 difficulty of our job as investors into hedge 9 funds is to piece these different elements, 10 which -- and which are positives and negatives, 11 to a certain extent, into an investment 12 strategy, try to weight them in the best way 13 possible, knowing that you will always have 14 negatives. That's the difficulty we face. 15 Q You see how above there it has -- you 16 write "NAV calculation"? Do you see that? 17 A Yes. 18 Q Why do you include that here? 19 MR. FISCHER: Object to form. You 20 may answer. 21 A Because there are instances where 22 it's -- the administrator gets the NAV from the 23 manager and some instances where the 24 administrator gets the NAV from independent 25 sources. And when it relates to financial</p>	<p style="text-align: right;">99</p> <p>1 Q What do you mean by "influence the 2 net asset value of his funds"? 3 A I mean misrepresent the net asset 4 value of his fund. 5 Q Is it fair to say that the more 6 checks and balances on the manager, the lower 7 the likelihood that the manager will conduct 8 some sort of fraud on that investment? 9 A That's correct. 10 Q Let's go back to the -- let's go back 11 to the first version of the -- first edition of 12 your book chapter, which I think is marked as 13 tab number 47 -- or Exhibit number 47, I 14 believe. And yeah, we -- right in that page, 15 that's where we left off, on the page that ends 16 in 803, right? 17 A Yes. 18 Q If you turn the page, the one in -- 19 the Bates number 804 on the bottom right, there 20 is a section titled "The limitations." Do you 21 see that? 22 A Yes. 23 Q So I'm just going to read this and 24 you tell me if you still agree with it, okay? 25 A Okay.</p>
<p style="text-align: right;">98</p> <p>1 instruments, which are difficult to price, 2 thinly traded, illiquid or over-the-counter -- 3 traded over-the-counter, obviously it becomes 4 very subjective, yeah. The pricing element 5 becomes very subjective. 6 Q From a risk perspective, which is the 7 purpose of this chapter, does it matter if the 8 investment is -- if the NAV is calculated by the 9 manager or if it's done by an administrator? 10 A I believe that, everything being 11 equal, it is better if you have a separation of 12 function and if indeed the administrator 13 establishes the NAV. 14 Q Why? 15 A Because you have more independent 16 reviews and checks and balances. 17 Q And just help me understand. Why is 18 it good to have checks and balances on the 19 manager? 20 A Because I would guess that -- because 21 the more you separate the function, the lower 22 you have a chance -- you give a chance -- if 23 functions are separated, it's -- it gets very 24 difficult for an investment manager to influence 25 the net asset value of his funds.</p>	<p style="text-align: right;">100</p> <p>1 Q You write, "It is reassuring to 2 measure what we fear most and human nature is 3 such that the quantification and measure of risk 4 too often translate into an improper sense of 5 comfort and control." That's what you wrote? 6 A That's what I wrote and I agree with. 7 Q So I'm going to -- you tell me if 8 this is a fair representation of what you're 9 driving at here. Is it that you're saying that 10 this risk quantification, this scoring risk is 11 not sufficient to fully assess an investment? 12 Is that fair to say? 13 MR. FISCHER: Object to form. You 14 can answer. 15 A What I mean is that, yeah, 16 quantification can -- I mean exactly what is 17 written, that "quantification and measure of 18 risk too often translate into an improper sense 19 of comfort and control." 20 Q So why did you -- why do you believe 21 that? 22 A As I continue to develop, because 23 beyond the very large number of systems and 24 operation issues that it would need to be solved 25 and summarized into a single VAR number to</p>

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<p>101</p> <p>1 quantify the risk of actually investing, I</p> <p>2 strongly believe that the value of such an</p> <p>3 exercise would be very limited.</p> <p>4 Q Right.</p> <p>5 A So what I mean is that a single</p> <p>6 number cannot summarize and reflect and give a</p> <p>7 good reflection of all the nature and behavior</p> <p>8 of characteristics, I would say, of the risks</p> <p>9 involved in the strategy.</p> <p>10 Q And why is that not sufficient?</p> <p>11 A Why is it not sufficient?</p> <p>12 Q So you just said that "a single</p> <p>13 number cannot summarize and reflect and give a</p> <p>14 good reflection of all of the nature and</p> <p>15 behavior of the risks involved in the strategy."</p> <p>16 So I'm asking why is that the case?</p> <p>17 A In the same way that I don't believe</p> <p>18 that we can summarize the discussion we have</p> <p>19 today in one sentence. Things are more</p> <p>20 complicated, need to be more described, more</p> <p>21 analyzed, and, in the same way, it would be, I</p> <p>22 would say, an oversimplification.</p> <p>23 Q And if you turn to page so now we're</p> <p>24 at the page with the number 805 in the bottom</p> <p>25 right --</p>	<p>103</p> <p>1 you need judgment to be able to do that. That's</p> <p>2 what I mean.</p> <p>3 Q All right. And here you talk about</p> <p>4 that there is a -- then you go into -- in this</p> <p>5 section you go into operational risks, yes?</p> <p>6 A Yes, I talk about "Some operational</p> <p>7 risks - service providers and structure."</p> <p>8 Q Right. And with respect to the -- on</p> <p>9 the section here that says "Offshore hedge fund</p> <p>10 service providers" -- do you see that on the</p> <p>11 page?</p> <p>12 A Yes.</p> <p>13 Q Okay. Again, same thing. I'm just</p> <p>14 going to read. Then you just tell me if you</p> <p>15 still agree with it. "Hedge fund investors rely</p> <p>16 on the quality and responsibility of</p> <p>17 administrators and auditors to ensure control of</p> <p>18 assets, independent NAV calculation and accuracy</p> <p>19 of financial statements." Yes?</p> <p>20 A Yes.</p> <p>21 Q What does an administrator do?</p> <p>22 A The role of -- you mean a fund -- a</p> <p>23 fund administrator runs the operation -- the</p> <p>24 accounting operation of a fund, obviously,</p> <p>25 mostly.</p>
<p>102</p> <p>1 A Uh-huh.</p> <p>2 Q -- at the very top this goes to what</p> <p>3 you're saying under the header "Practical Issues</p> <p>4 Related to Risk Quantification," right? I'm</p> <p>5 just going to read this into the record and you</p> <p>6 tell me if you still agree with it. It says,</p> <p>7 "Forced to recognize the practical and</p> <p>8 theoretical limits and difficulties of risk</p> <p>9 quantification, the family office hedge fund</p> <p>10 allocator must rely on prudence, prevention and</p> <p>11 judgment." Yes? That's what you wrote?</p> <p>12 A That's what's written, yes.</p> <p>13 Q Do you still agree with that</p> <p>14 assessment?</p> <p>15 A Yes.</p> <p>16 Q And what do you mean when you wrote</p> <p>17 "prudence, prevention and judgment?" Can you</p> <p>18 expand on that?</p> <p>19 MR. FISCHER: Object to form. You</p> <p>20 may answer.</p> <p>21 A It means that you need to recognize</p> <p>22 what you know and what you don't know. It means</p> <p>23 that you need to recognize that the different</p> <p>24 elements in risk which we discussed needed to</p> <p>25 be -- need to be summarized and weighted and so</p>	<p>104</p> <p>1 Q And what does an auditor do?</p> <p>2 A I think that -- my understanding is</p> <p>3 that an auditor reviews the account and verifies</p> <p>4 the account of a fund.</p> <p>5 Q And what did you mean by "to ensure</p> <p>6 control of assets"?</p> <p>7 A Where?</p> <p>8 MR. FISCHER: Object to form. You</p> <p>9 may answer.</p> <p>10 Q On that same sentence, right after</p> <p>11 "auditors."</p> <p>12 MR. FISCHER: Same objection. You</p> <p>13 may answer.</p> <p>14 A I don't see that. Can you point it</p> <p>15 to me?</p> <p>16 Q Oh, yeah. So I'll -- it's right</p> <p>17 after -- so it says, "Hedge fund" -- you wrote,</p> <p>18 "Hedge fund investors rely on the quality and</p> <p>19 responsibility of administrators and auditors to</p> <p>20 ensure control of assets."</p> <p>21 A "Independent net asset value</p> <p>22 calculation and accuracy of financial</p> <p>23 statements."</p> <p>24 Q And my question is what do you mean</p> <p>25 by "to ensure control of assets"?</p>

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<p>105</p> <p>1 MR. FISCHER: Object to form. You</p> <p>2 may answer.</p> <p>3 <b>A It means that to ensure that assets</b></p> <p>4 <b>are not misplaced or misused.</b></p> <p>5 Q And how does an auditor ensure</p> <p>6 control of assets specifically?</p> <p>7 MR. FISCHER: Object to form. You</p> <p>8 may answer.</p> <p>9 <b>A My understanding is that the account</b></p> <p>10 <b>of a fund reflects where assets -- well,</b></p> <p>11 <b>reflects and describes what assets are where and</b></p> <p>12 <b>how they are priced. And then, accordingly,</b></p> <p>13 <b>when an auditor reviews the account of a fund,</b></p> <p>14 <b>he ensures that the accounts give a correct</b></p> <p>15 <b>reflection of-- you know, these assets are</b></p> <p>16 <b>present in the quantity and where -- how they</b></p> <p>17 <b>are priced.</b></p> <p>18 Q When you say "accounts," do you mean</p> <p>19 bank accounts?</p> <p>20 <b>A No, how they are accounted for, yes,</b></p> <p>21 <b>meaning where they are located, yeah. How they</b></p> <p>22 <b>are accounted for. So, basically, if, on the</b></p> <p>23 <b>balance sheet of a fund it says that the fund</b></p> <p>24 <b>owns, you know -- I don't know, 1 million of</b></p> <p>25 <b>treasury bonds, you know, it is the job of the</b></p>	<p>107</p> <p>1 say, "Unfortunately, all too often the basic</p> <p>2 structure is not in place in the offshore</p> <p>3 industry." Do you see that?</p> <p>4 <b>A Yes.</b></p> <p>5 Q What did you mean by that?</p> <p>6 <b>A That in many case, or in some case,</b></p> <p>7 <b>the controls were to loose and that indeed these</b></p> <p>8 <b>conditions were not met.</b></p> <p>9 Q These conditions -- by "these</p> <p>10 conditions," you mean the --</p> <p>11 <b>A "Control of assets, independent net</b></p> <p>12 <b>asset value calculation and accuracy of</b></p> <p>13 <b>financial statements."</b></p> <p>14 Q You write in the -- in the next</p> <p>15 paragraph you write, "Administrators, who should</p> <p>16 have the role of global custodian, do not always</p> <p>17 have control of assets." Yes?</p> <p>18 MR. FISCHER: Object to form. You</p> <p>19 can answer.</p> <p>20 Q That's what you wrote?</p> <p>21 <b>A That's indeed what's in the document,</b></p> <p>22 <b>yes.</b></p> <p>23 Q What do you mean by "global</p> <p>24 custodian"?</p> <p>25 MR. FISCHER: Object to form. You</p>
<p>106</p> <p>1 <b>auditor to certify these accounts and</b></p> <p>2 <b>accordingly make sure that this account record</b></p> <p>3 <b>is correct.</b></p> <p>4 Q So if the -- I'm just going to --</p> <p>5 tell me if this is correct. So if the fund is</p> <p>6 representing that it holds a million or</p> <p>7 1,000 U.S. treasury bonds, like you just said,</p> <p>8 then the auditor would look to verify that there</p> <p>9 is some sort of paper trail that reflects that</p> <p>10 indeed there were 1,000 treasury bonds held by</p> <p>11 the fund?</p> <p>12 <b>A I'm not -- something like that. I'm</b></p> <p>13 <b>not -- I don't know what -- how the auditor</b></p> <p>14 <b>conduct their job, but their job is to basically</b></p> <p>15 <b>assess the way the accounting is -- of the funds</b></p> <p>16 <b>is done and basically certify that the</b></p> <p>17 <b>procedures used to establish the account of the</b></p> <p>18 <b>funds, that these procedures are up to market</b></p> <p>19 <b>standard, reliable and, accordingly, that these</b></p> <p>20 <b>accounts can be trusted.</b></p> <p>21 Q And then in that same sentence you</p> <p>22 talk about "independent NAV calculation," and we</p> <p>23 just discussed that a few minutes ago. And then</p> <p>24 you talk about "accuracy of financial</p> <p>25 statements." But then in the next sentence you</p>	<p>108</p> <p>1 can answer.</p> <p>2 <b>A By global cust- -- I mean that they</b></p> <p>3 <b>are -- they have the responsibility of having</b></p> <p>4 <b>the custody of assets.</b></p> <p>5 Q And why do you write that</p> <p>6 administrators "should have the role of global</p> <p>7 custodian"?</p> <p>8 MR. FISCHER: Object to form. You</p> <p>9 may answer.</p> <p>10 <b>A Because that's market -- that was --</b></p> <p>11 <b>my understanding of what was market practice at</b></p> <p>12 <b>the time.</b></p> <p>13 Q Is this similar to what we spoke</p> <p>14 about a few minutes ago where having this -- is</p> <p>15 this one of the checks and balances we were</p> <p>16 discussing a few minutes ago, Mr. Estenne?</p> <p>17 <b>A No, it is different.</b></p> <p>18 Q How is it different?</p> <p>19 <b>A I believe that what we discussed a</b></p> <p>20 <b>minute ago was related to net asset value</b></p> <p>21 <b>calculation, which is different from custodian</b></p> <p>22 <b>of assets.</b></p> <p>23 Q I guess my question is if the</p> <p>24 administrator controls the assets, is that a</p> <p>25 check and balance on the manager?</p>

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<p>109</p> <p>1 <b>A It is a partial check and balance on</b>  2 <b>the manager. It's not an absolute check and</b>  3 <b>balance on the manager.</b>  4 Q And it would at least mitigate the  5 risk that the manager would be conducting some  6 sort of fraud, yes?  7 MR. FISCHER: Object to form. You  8 may answer.  9 <b>A It doesn't mitigate the risk. I</b>  10 <b>believe that, you know, there is a structure</b>  11 <b>which is in place or not in place, and, you</b>  12 <b>know, that's one thing. And then -- but it's</b>  13 <b>independent from you, the behavior of the</b>  14 <b>manager.</b>  15 Q So why is it the practice to have  16 administrators controlling the assets?  17 MR. FISCHER: Object to form. You  18 may answer.  19 <b>A What I mean here is that, obviously,</b>  20 <b>you know, if there is -- it's better to have a</b>  21 <b>separation of functions because it's likely the</b>  22 <b>more separation of functions you have, the more</b>  23 <b>difficult it would be to have a fraudulent</b>  24 <b>activity.</b>  25 Q If we can go now to the -- let's go</p>	<p>111</p> <p>1 <b>strategy deployed is influenced by factors such</b>  2 <b>as asset types, asset size, funding cost,"</b>  3 <b>et cetera, yes.</b>  4 Q So if you turn the page, in that same  5 section you have a paragraph that says, "The key  6 factor, however, is the human one. There is no  7 hedge fund without managers. At the end of the  8 process the investment decision is a judgment  9 and a vote of confidence on the ethics, skills  10 and competitive advantages of a manager."  11 Do you see that?  12 <b>A Yes.</b>  13 Q What do you mean by that -- those  14 sentences?  15 MR. FISCHER: Object to form. You  16 may answer.  17 <b>A It means that at the end of the day,</b>  18 <b>when you basically invest in the fund, you --</b>  19 <b>it's equivalent to having a vote of confidence</b>  20 <b>on the manager and on his level of ethics, skill</b>  21 <b>and competitive advantage.</b>  22 Q And how do you -- what are some of  23 the methods that you have undertaken to acquire  24 that confidence in managers that -- with whom  25 you invest?</p>
<p>110</p> <p>1 to the page with the Bates number 807 at the  2 bottom right. Do you see towards the bottom you  3 have a section titled "Portfolio Level Risk  4 Management"?  5 <b>A Yes.</b>  6 Q And you start talking about -- in  7 this section you generally discuss the -- how to  8 choose investments for your investment  9 portfolio; is that fair to say?  10 MR. FISCHER: Object to form. You  11 may answer.  12 <b>A I describe -- I don't believe that I</b>  13 <b>describe what you mentioned.</b>  14 Q I think I might have taken you to the  15 wrong page. That's my fault. One second. Ah,  16 okay. Sorry. Go back to the page 806 in the  17 bottom right. So here you -- towards the bottom  18 you talk about "The analysis of the performance  19 engine." Do you see that?  20 <b>A Yes, that's the title indeed.</b>  21 Q And below that you talk about certain  22 internal factors? Those are your words, yes?  23 <b>A You mean here (indicating)?</b>  24 Q Yes.  25 <b>A Yes. It says that "The investment</b></p>	<p>112</p> <p>1 MR. FISCHER: Object to form. You  2 may answer.  3 <b>A You -- I believe that you look at the</b>  4 <b>manager and when I mean the manager, I mean the</b>  5 <b>manager -- the investment manager, which is</b>  6 <b>usually an organization. And you -- yeah, and</b>  7 <b>if you can meet the people, because it's -- I</b>  8 <b>mean, this is what should be done in theory.</b>  9 <b>But obviously, in practice, things are much more</b>  10 <b>complicated, things are imperfect effect, as I</b>  11 <b>mentioned, and things are limited. And you have</b>  12 <b>to act according to these limitations.</b>  13 <b>But if -- here, for instance, if you</b>  14 <b>can obviously meet the manager, it's better</b>  15 <b>because then you have kind of a feel for the</b>  16 <b>person. If you can't, either you meet his</b>  17 <b>representative, you can have also a kind of</b>  18 <b>subjective assessment of the quality of the</b>  19 <b>organization, of the risk related to the</b>  20 <b>organization, things like that.</b>  21 Q So walk me through a normal diligence  22 visit when you visit the managers.  23 MR. FISCHER: Object to form. You  24 may answer.  25 <b>A When? As I mentioned --</b></p>

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<p>113</p> <p>1 Q At the time of this book chapter.</p> <p>2 You mentioned here that the key factor is a</p> <p>3 human one. You just explained that it helps to</p> <p>4 meet the manager. And I just want to</p> <p>5 understand, when you meet the manager, what</p> <p>6 happens in these meetings?</p> <p>7 MR. FISCHER: Object to form. You</p> <p>8 may answer.</p> <p>9 A Again, my -- my activity in -- as a</p> <p>10 member of Partners Advisers evolved over time.</p> <p>11 The way Partners Advisers conducted due</p> <p>12 diligence and the requirement related to due</p> <p>13 diligence evolved over time. I have no precise</p> <p>14 recollection about what exactly was done when.</p> <p>15 I can more easily speak to you about what was</p> <p>16 done -- what is done today when it comes to -- I</p> <p>17 guess that's a chapter of 2000. That's over 20</p> <p>18 years ago. I'm not sure.</p> <p>19 But, in general terms, I would be</p> <p>20 able to explain it to you. You know, you</p> <p>21 basically sit with a fund representative,</p> <p>22 usually the manager -- the manager</p> <p>23 representative, and you try to understand the</p> <p>24 different parameters related to the investment</p> <p>25 strategy. Same regarding the operation. And</p>	<p>115</p> <p>1 strategy can be very complex. In other cases</p> <p>2 they are at a competitive advantage, which the</p> <p>3 manager doesn't want to disclose or information</p> <p>4 which is sensitive. And so, by definition, you</p> <p>5 always end up having a limited understanding and</p> <p>6 a limited picture of what the investment</p> <p>7 strategy is.</p> <p>8 As mentioned again, you don't get the</p> <p>9 perfect information and you don't get perfect</p> <p>10 understanding. It's always incomplete.</p> <p>11 Q Let's go back to what you wrote here.</p> <p>12 So let me just finish reading the rest of that</p> <p>13 paragraph. You continue in this paragraph, "In</p> <p>14 addition, the hedge fund investor has to</p> <p>15 recognize that it is unrealistic to expect to</p> <p>16 control 100 percent of the hedge fund portfolio</p> <p>17 activity. The best transparency level usually</p> <p>18 available takes the form of monthly or quarterly</p> <p>19 portfolio snapshots. Accordingly, the element</p> <p>20 of ethics and 'trust' vis-à-vis the hedge fund</p> <p>21 manager is paramount." Yes? That's what you</p> <p>22 wrote?</p> <p>23 A That's what I wrote.</p> <p>24 Q So, again, we talked -- this chapter</p> <p>25 was written in -- or published in 2000.</p>
<p>114</p> <p>1 also, you know, have a feel for the level of</p> <p>2 professionalism, the level of recognition this</p> <p>3 manager can have, and you feel -- and you can</p> <p>4 assess if there is a coherence between you, the</p> <p>5 judgment you have on what you see and what has</p> <p>6 been initially reported to you or the sense you</p> <p>7 had before. Because when you start, to an</p> <p>8 extent, an investment process, you make the</p> <p>9 hypothesis that this could be a good investment,</p> <p>10 and then you check if indeed it is the case.</p> <p>11 That's how it works.</p> <p>12 Q And how do you check that?</p> <p>13 MR. FISCHER: Object to form. You</p> <p>14 may answer.</p> <p>15 A You mostly rely on the discussion you</p> <p>16 can have, if you can have the discussions, or</p> <p>17 other parameters if you cannot have a lot of</p> <p>18 discussions.</p> <p>19 Q So when you're meeting with the</p> <p>20 manager, you ask questions about what the</p> <p>21 manager does or how the manager operates, yes?</p> <p>22 MR. FISCHER: Object to form. You</p> <p>23 may answer.</p> <p>24 A Generally, the manager, his team,</p> <p>25 yes, but in certain cases the investment</p>	<p>116</p> <p>1 A Correct.</p> <p>2 Q And you explain in 2000 that it is</p> <p>3 paramount to have this element of ethics</p> <p>4 vis-à-vis the hedge fund manager, yes?</p> <p>5 MR. FISCHER: Object to form. You</p> <p>6 may answer.</p> <p>7 A I indeed wrote that the element of</p> <p>8 ethics and 'trust' vis-à-vis the hedge fund</p> <p>9 manager is paramount," yes.</p> <p>10 Q And what I want to understand is,</p> <p>11 during the time that you wrote this, how did you</p> <p>12 obtain that level of trust with the hedge fund</p> <p>13 managers?</p> <p>14 MR. FISCHER: Object to form. You</p> <p>15 may answer.</p> <p>16 A It's a judgment call. It's a --</p> <p>17 Q Based on what?</p> <p>18 MR. FISCHER: Object to form. You</p> <p>19 may answer.</p> <p>20 A Based on the information which is</p> <p>21 available to you.</p> <p>22 Q What information in particular?</p> <p>23 MR. FISCHER: Object to form. You</p> <p>24 may answer.</p> <p>25 A All of the information.</p>

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<p>117</p> <p>1 Q You told -- we've gone through this</p> <p>2 book chapter. We've gone through the different</p> <p>3 risks.</p> <p>4 A Yes.</p> <p>5 Q Then we went through the limitations</p> <p>6 on those risks, the idea that even if you</p> <p>7 quantify the risks and assess them, it's still</p> <p>8 not enough, yes? And then now you get to this</p> <p>9 part of the chapter, and you say the key factor</p> <p>10 is the human factor. And my question is how do</p> <p>11 you assess the human factor at the time of this</p> <p>12 writing?</p> <p>13 A I think --</p> <p>14 MR. FISCHER: Object to form. Hold</p> <p>15 on, Luc. Object to form. You may answer.</p> <p>16 A I believe it's very difficult. It is</p> <p>17 very subjective. It's -- again, it's -- it's</p> <p>18 based on all the information you have, and then</p> <p>19 you have a human feel for the person at the end</p> <p>20 of the day.</p> <p>21 Q And I guess what I'm trying --</p> <p>22 A And that's what trust is. What</p> <p>23 governs trust is something which is very</p> <p>24 difficult to put a finger on. What makes you</p> <p>25 trust people or not, it's something very</p>	<p>119</p> <p>1 have that trust, do you just assume that -- is</p> <p>2 that trust -- does it not change for the rest of</p> <p>3 the investment?</p> <p>4 MR. FISCHER: Object to form. You</p> <p>5 may answer.</p> <p>6 A I would think to say it depends on,</p> <p>7 you know, potentially, what would be the -- if</p> <p>8 certain elements change, then you can maybe --</p> <p>9 you know, of the global picture you have of the</p> <p>10 different elements you've gathered, if you feel</p> <p>11 that -- you know, if indeed some elements have</p> <p>12 changed, you can review, reassess, yes. That's</p> <p>13 a possibility.</p> <p>14 Q So you have to keep assessing the</p> <p>15 information to see whether that trust still</p> <p>16 exists, yes?</p> <p>17 MR. FISCHER: Object to form. You</p> <p>18 may answer.</p> <p>19 A No. I believe that -- you know, the</p> <p>20 trust you can have can be influenced by the</p> <p>21 elements -- the collection of the elements you</p> <p>22 have at your disposal.</p> <p>23 Q Right. I guess what I'm saying</p> <p>24 specifically is after the investment is made, do</p> <p>25 you keep monitoring the manager?</p>
<p>118</p> <p>1 difficult.</p> <p>2 Q Meeting them helps, yes?</p> <p>3 A Not necessarily. It could be</p> <p>4 detrimental. It could be the opposite.</p> <p>5 Q I guess what I'm saying is meeting a</p> <p>6 manager helps you identify whether or not you</p> <p>7 have that trust, yes?</p> <p>8 MR. FISCHER: Object to form. You</p> <p>9 may answer.</p> <p>10 A It could be one element.</p> <p>11 Q What are other elements?</p> <p>12 MR. FISCHER: Object to form. You</p> <p>13 may answer.</p> <p>14 A As I mentioned earlier, all the --</p> <p>15 everything boils down to, at the end of the day,</p> <p>16 you know, you trust or you don't trust. And</p> <p>17 it's a subjective call based on all the</p> <p>18 information you've gathered.</p> <p>19 Q And that's to place the investment,</p> <p>20 right?</p> <p>21 MR. FISCHER: Object to form. You</p> <p>22 may answer.</p> <p>23 A Yes.</p> <p>24 Q So my next question is, once you</p> <p>25 place the investment, once you feel that you</p>	<p>120</p> <p>1 MR. FISCHER: Object to form. You</p> <p>2 may answer.</p> <p>3 A Most of the time, yes, to a certain</p> <p>4 extent.</p> <p>5 Q Isn't the --</p> <p>6 A Depending on your level of</p> <p>7 confidence. For instance, when it comes to the</p> <p>8 frequency at which currently Partners Advisers</p> <p>9 today -- I'll mention today -- Partners Advisers</p> <p>10 review some element of its return investments.</p> <p>11 You know, obviously the more comfortable we are,</p> <p>12 the less we review and the less often we review.</p> <p>13 Q So your testimony today is that your</p> <p>14 process differs between different investments?</p> <p>15 MR. FISCHER: Object to form.</p> <p>16 A Yes.</p> <p>17 MR. FISCHER: Process for -- I'm</p> <p>18 sorry. Process?</p> <p>19 A Yeah, process. Can you define</p> <p>20 "process"?</p> <p>21 Q I'm asking you.</p> <p>22 A I'm saying that we -- we adapt to the</p> <p>23 level of comfort we have, that's right, yes.</p> <p>24 Q Have you heard of the phrase "trust</p> <p>25 but verify" before?</p>



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<p>121</p> <p>1 <b>A Yes.</b></p> <p>2 Q What have you heard it in relation</p> <p>3 to?</p> <p>4 <b>A To business practice in general or</b></p> <p>5 <b>human relationship in general.</b></p> <p>6 Q It's also used in the investment</p> <p>7 management industry with respect to due</p> <p>8 diligence, yes?</p> <p>9 MR. FISCHER: Object to form. You</p> <p>10 may answer.</p> <p>11 <b>A I'm not aware of that.</b></p> <p>12 Q So just because you trust an</p> <p>13 investment doesn't mean that you stop looking at</p> <p>14 that investment, correct?</p> <p>15 MR. FISCHER: Object to form. You</p> <p>16 may answer.</p> <p>17 <b>A The question is, you know, what can</b></p> <p>18 <b>you verify.</b></p> <p>19 Q Let me ask you -- let me state it</p> <p>20 this way. If you learned something troubling</p> <p>21 about an investment that you currently have, do</p> <p>22 you look into that concern?</p> <p>23 MR. FISCHER: Object to form. You</p> <p>24 may answer.</p> <p>25 <b>A It depends what is -- what you</b></p>	<p>123</p> <p>1 <b>investment is such that, you know, I cannot act</b></p> <p>2 <b>on whatever additional information I will get,</b></p> <p>3 <b>or if I'm convinced that I cannot get any</b></p> <p>4 <b>additional information, then whatever action I</b></p> <p>5 <b>can do would be useless because either the</b></p> <p>6 <b>action would not lead to me being able to be in</b></p> <p>7 <b>a better position to assess the situation or me</b></p> <p>8 <b>being in a position to act on the situation. In</b></p> <p>9 <b>this case, there is no point doing anything.</b></p> <p>10 Q You could shut down the investment,</p> <p>11 couldn't you?</p> <p>12 MR. FISCHER: Object to form. You</p> <p>13 may answer.</p> <p>14 <b>A It depends what investment we talk</b></p> <p>15 <b>about. If we talk about a fund where there is a</b></p> <p>16 <b>long lockup, there is nothing you can do. It</b></p> <p>17 <b>depends on the liquidity, in this case, of the</b></p> <p>18 <b>fund, yes.</b></p> <p>19 Q And you're saying -- you said earlier</p> <p>20 if there is -- let me look exactly. You said,</p> <p>21 "If I cannot act on whatever additional</p> <p>22 information I get or if I'm convinced that I</p> <p>23 cannot get any additional information," then you</p> <p>24 do nothing. But is the obverse true, that if</p> <p>25 you could act or if you could get additional</p>
<p>122</p> <p>1 <b>consider troubling. Maybe I don't consider it</b></p> <p>2 <b>troubling. Maybe -- you know, I read every day</b></p> <p>3 <b>things in the newspaper which I don't believe.</b></p> <p>4 Q I'm asking, if you consider it to be</p> <p>5 troubling, what do you do?</p> <p>6 MR. FISCHER: Object to form. You</p> <p>7 can answer.</p> <p>8 <b>A It depends what I can do.</b></p> <p>9 Q Sometimes you do nothing?</p> <p>10 <b>A Sometimes I do nothing.</b></p> <p>11 Q So if you have an investment with a</p> <p>12 manager and you believe that something about</p> <p>13 that investment is troubling to you, sometimes</p> <p>14 you do nothing?</p> <p>15 MR. FISCHER: Object to form. You</p> <p>16 may answer.</p> <p>17 <b>A That's correct.</b></p> <p>18 Q What do you do other times?</p> <p>19 MR. FISCHER: Object to form. You</p> <p>20 may answer.</p> <p>21 <b>A I -- what do you mean, what do I do</b></p> <p>22 <b>other times?</b></p> <p>23 Q You said sometimes you do nothing.</p> <p>24 <b>A If I'm invested in a fund and where,</b></p> <p>25 <b>for instance, you know, the liquidity of this</b></p>	<p>124</p> <p>1 information, you would try to get that</p> <p>2 information?</p> <p>3 MR. FISCHER: Object to form. You</p> <p>4 may answer.</p> <p>5 <b>A It depends.</b></p> <p>6 Q On what?</p> <p>7 MR. FISCHER: Object to form.</p> <p>8 <b>A On the circumstances.</b></p> <p>9 Q What circumstances?</p> <p>10 MR. FISCHER: Object to form. You</p> <p>11 may answer.</p> <p>12 <b>A Depends from -- I mean, all the</b></p> <p>13 <b>circumstances.</b></p> <p>14 Q So if you learn of something that you</p> <p>15 consider to be troubling about an investment and</p> <p>16 you have the ability to identify information</p> <p>17 related to that concern --</p> <p>18 <b>A We are having a theoretical</b></p> <p>19 <b>discussion here. Everything we do is practical.</b></p> <p>20 <b>It's based on exactly very specific and</b></p> <p>21 <b>idiosyncratic situations. So it's impossible to</b></p> <p>22 <b>characterize about what should be done. As I</b></p> <p>23 <b>told you, what we are doing here -- what I have</b></p> <p>24 <b>done here is described what is, in theory,</b></p> <p>25 <b>something which I believe should be the</b></p>

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<p>125</p> <p>1 parameters.</p> <p>2 But in practice, every case isn't</p> <p>3 perfect and everything is dependent on the set</p> <p>4 of information you have, and everything is</p> <p>5 idiosyncratic. And so having a theoretical</p> <p>6 discussion is, to my sense, something which</p> <p>7 doesn't make sense to me. You need to look in</p> <p>8 practice to what's the concrete set of</p> <p>9 information you face and circumstances you face.</p> <p>10 MR. MOLINA: A couple more questions</p> <p>11 and I think we should probably -- I think -- is</p> <p>12 lunch here?</p> <p>13 MS. STOCK: Yes.</p> <p>14 Q So at the end of this chapter you</p> <p>15 talk about -- on the bottom of the page with the</p> <p>16 numbers 808 on the right-hand corner --</p> <p>17 A Yes.</p> <p>18 Q -- at the very bottom you talk about</p> <p>19 "Concentration and diversification rules"?</p> <p>20 A Yes.</p> <p>21 Q And then you talk about how there</p> <p>22 is -- there are three categories. There is the</p> <p>23 farm team, the intermediate, and the senior. Do</p> <p>24 you see that?</p> <p>25 A Yes.</p>	<p>127</p> <p>1 what's described here.</p> <p>2 Q And then you talk about how if it's a</p> <p>3 farm team investment, you would recommend a</p> <p>4 maximum allocation of 2 percent; is that fair?</p> <p>5 A That's indeed what is written there.</p> <p>6 Q And then for intermediate, 4 percent,</p> <p>7 yes?</p> <p>8 A That's indeed what's written there.</p> <p>9 Q And for senior investments,</p> <p>10 8 percent?</p> <p>11 A That's indeed what's written there.</p> <p>12 Q Why is diversification important?</p> <p>13 MR. FISCHER: Object to form. You</p> <p>14 may answer.</p> <p>15 MR. MOLINA: Let me restate that.</p> <p>16 Q Is diversification important to you?</p> <p>17 MR. FISCHER: Object to form. You</p> <p>18 may answer.</p> <p>19 A I don't understand your question.</p> <p>20 Q Here you're talking about the</p> <p>21 diversification rules. That's what you say up</p> <p>22 in the header, yes?</p> <p>23 A It says "diversification," yes.</p> <p>24 Q And then you say, "The maximum</p> <p>25 allocation to one single hedge fund should be</p>
<p>126</p> <p>1 Q What is the farm team?</p> <p>2 A Well, this relates to the description</p> <p>3 in this paragraph. It's related to, I would</p> <p>4 say, test position.</p> <p>5 Q And here --</p> <p>6 A Basically, if you start -- the</p> <p>7 more -- it means that you -- basically, you size</p> <p>8 your investment according to, again, the general</p> <p>9 level of comfort you have with the manager.</p> <p>10 Q And my question is what is a -- if an</p> <p>11 investment is a farm team investment, what does</p> <p>12 that mean?</p> <p>13 A It means it's a recent investment.</p> <p>14 Q A recent investment?</p> <p>15 A Or an investment where we feel that</p> <p>16 the level of comfort is low.</p> <p>17 Q Okay. And what's an intermediate</p> <p>18 investment?</p> <p>19 A It's the same at an intermediate</p> <p>20 level.</p> <p>21 Q And then the senior investment is --</p> <p>22 A The same at the senior level.</p> <p>23 Q And there is no other category of</p> <p>24 investment here? It's only those three?</p> <p>25 A That's correct. In this case that's</p>	<p>128</p> <p>1 defined according to the category the fund</p> <p>2 belongs to vis-à-vis the total wealth of the</p> <p>3 investor or family, and the risk</p> <p>4 tolerance/investment objective." Yes?</p> <p>5 A Yes.</p> <p>6 Q So my question is, why?</p> <p>7 MR. FISCHER: Object to form. You</p> <p>8 may answer.</p> <p>9 A Where is it?</p> <p>10 Q It's right under the header.</p> <p>11 A Here?</p> <p>12 Q No. Under the header that says</p> <p>13 "Concentration and diversification rules."</p> <p>14 A I believe that it would make sense --</p> <p>15 in the context of portfolio management, it makes</p> <p>16 sense to diversify mostly for two reason. In</p> <p>17 order to gain exposure to different type of</p> <p>18 risks or in order to limit the size of one</p> <p>19 particular risk.</p> <p>20 Q Right. Because if you turn to the</p> <p>21 next page, in your concluding statement, you</p> <p>22 write, "Accordingly, the maximum allocation to a</p> <p>23 single hedge fund is given by the answer to one</p> <p>24 simple question: 'How much are we ready to lose</p> <p>25 should our maximum allocation suffer a</p>

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<p>129</p> <p>1 100 percent blowup?" Right?</p> <p>2 <b>A That's indeed what I say -- I wrote</b></p> <p>3 <b>in the case of portfolio construction, yes.</b></p> <p>4 Q By the way, just quickly, what is a</p> <p>5 blowup?</p> <p>6 <b>A A total loss.</b></p> <p>7 Q Caused by what? Does it matter what</p> <p>8 caused the total loss?</p> <p>9 MR. FISCHER: Object to form. You</p> <p>10 may answer.</p> <p>11 <b>A I don't think it matters if you've</b></p> <p>12 <b>lost -- you've lost it.</b></p> <p>13 MR. MOLINA: Okay. I think for now</p> <p>14 it's probably a good time to take a lunch break.</p> <p>15 THE VIDEOGRAPHER: We are going off</p> <p>16 the record. The time is 12:53 p.m.</p> <p>17 (A luncheon recess was taken.)</p> <p>18 THE VIDEOGRAPHER: We are going back</p> <p>19 on the record. The time is 1:45 p.m.</p> <p>20 BY MR. MOLINA:</p> <p>21 Q Mr. Estenne, when did you first learn</p> <p>22 of Bernard L. Madoff Investment Securities?</p> <p>23 <b>A I'm not sure.</b></p> <p>24 Q Would it have been when you were in</p> <p>25 JP Morgan?</p>	<p>131</p> <p>1 tab 11.</p> <p>2 MS. STORK: Sure. Exhibit 49.</p> <p>3 (Trustee Exhibit 49 marked for</p> <p>4 identification and attached to the transcript.)</p> <p>5 Q Mr. Estenne, I'm handing you what has</p> <p>6 been marked as Trustee Exhibit number 49. I'll</p> <p>7 give you a minute to look it over.</p> <p>8 (Witness reviewing document.)</p> <p>9 <b>A Okay.</b></p> <p>10 Q What is this document, Mr. Estenne?</p> <p>11 <b>A I don't know.</b></p> <p>12 Q Do you see at the top there is a</p> <p>13 date? I think it says March 4, 1998.</p> <p>14 <b>A I see that.</b></p> <p>15 Q Did you take these notes on this</p> <p>16 document?</p> <p>17 <b>A No.</b></p> <p>18 Q No. Do you know who did?</p> <p>19 <b>A No.</b></p> <p>20 Q Do you see at the bottom right-hand</p> <p>21 corner there is a Bates number starting with an</p> <p>22 SQO on the bottom right-hand corner? SQO?</p> <p>23 <b>A Here (indicating)?</b></p> <p>24 Q Yes.</p> <p>25 <b>A Yes. I see SQO, yes.</b></p>
<p>130</p> <p>1 <b>A No.</b></p> <p>2 Q Would it have been when you were at</p> <p>3 Bank Brussels Lambert in New York?</p> <p>4 <b>A No. I think it was post JP Morgan, I</b></p> <p>5 <b>would think it's post JP Morgan, but I don't</b></p> <p>6 <b>know exactly when it was.</b></p> <p>7 Q And, by the way, I'm going to be</p> <p>8 referring to that firm as BLMIS, just to make it</p> <p>9 easier.</p> <p>10 <b>A Okay.</b></p> <p>11 Q When did you first meet anyone at</p> <p>12 BLMIS?</p> <p>13 MR. FISCHER: Object to form. You</p> <p>14 may answer.</p> <p>15 <b>A I believe I met -- if my recollection</b></p> <p>16 <b>is correct, I believe I met -- for the first</b></p> <p>17 <b>time, it was around '99, maybe '98, '99.</b></p> <p>18 Q What do you remember about the</p> <p>19 circumstances of that meeting?</p> <p>20 <b>A What I remember is that I was</b></p> <p>21 <b>introduced to Frank DiPascali by Philippe</b></p> <p>22 <b>Hostettler.</b></p> <p>23 Q Was that in New York City?</p> <p>24 <b>A That was indeed in New York City.</b></p> <p>25 MR. MOLINA: Let me -- let's pull out</p>	<p>132</p> <p>1 Q Do you have any -- if I told you this</p> <p>2 is a document that Square One produced to us,</p> <p>3 would that help refresh your recollection as to</p> <p>4 what this could be?</p> <p>5 <b>A This is the first time I see this</b></p> <p>6 <b>document. I have no recollection of ever seeing</b></p> <p>7 <b>this document before.</b></p> <p>8 Q Is that your handwriting?</p> <p>9 <b>A No, it's not my handwriting.</b></p> <p>10 Q Do you recognize the handwriting from</p> <p>11 being -- belonging to anyone that you know?</p> <p>12 <b>A No.</b></p> <p>13 Q Is it possible that it's Philippe</p> <p>14 Hostettler's handwriting?</p> <p>15 MR. FISCHER: Object to form. You</p> <p>16 may answer.</p> <p>17 <b>A I don't know.</b></p> <p>18 Q Just to be clear, in this time in</p> <p>19 1998, you had -- you were at Partners Advisers,</p> <p>20 yes?</p> <p>21 MR. FISCHER: Object to form. You</p> <p>22 may answer.</p> <p>23 <b>A 3-4-98? I -- it was around the time</b></p> <p>24 <b>I was at Partners Advisers, but I'm not sure</b></p> <p>25 <b>that in early April '98 Partners Advisers had</b></p>

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<p>133</p> <p>1 already been set up. It was around that time, 2 but I don't remember precisely. 3 Q Let's set this aside for one second. 4 Why don't we -- well, when did you 5 create Square One Fund? 6 A I believe -- I think that it -- I 7 think it's in one of the -- I'm sure it's in 8 documents you have. I don't have a precise 9 recollection of the date. I believe it was in 10 '98 or early '99, one of the two, yeah. You 11 have the information. 12 Q December 1998, does that seem right? 13 A Yes. 14 Q And why did you create Square One 15 Fund? 16 A I created Square One Fund because my 17 father was invested in some BLMIS 18 manager-advised funds that through my 19 connections with Philippe Hostettler and Parly 20 Company I could have access to BLMIS and set up 21 a fund with a cheaper fee structure which would 22 benefit my family, and that also the BLMIS 23 managed strategies were in demand and that I 24 could make some money providing access to the 25 strategy to some investors.</p>	<p>135</p> <p>1 A I don't know. That's what I've said. 2 Q And how was he -- what were the 3 circumstances that led your father to invest in 4 Fairfield Sentry? 5 A I don't know. 6 MR. FISCHER: Object to form. You 7 may answer. 8 Q How long -- or when did his 9 investment in Fairfield begin? 10 A I don't know. 11 Q Would it have been in the 1990s? 12 MR. FISCHER: Object to form. You 13 may answer. 14 A I don't know. 15 Q So what did you know about those 16 investments? 17 A I know that at the time of the setup 18 of Square One Fund, as mentioned, my father was 19 invested in other funds which had managed 20 accounts with BLMIS and that he was interested 21 in the possibility of being able to invest in 22 Square One, which was offering the same access 23 at a lower fee. 24 Q How did Square One get access to 25 BLMIS?</p>
<p>134</p> <p>1 Q Okay. So you mentioned your father 2 was invested. In which funds -- 3 MR. MOLINA: Let me rephrase that. 4 Q In which BLMIS investments was your 5 father invested? 6 MR. FISCHER: Object to form. You 7 may answer. 8 A Can you repeat the question? 9 Q You said, "My father was invested in 10 some BLMIS manager advisements." 11 A No, that's not what I said. I said 12 that my father was invested in some fund which 13 were advised or managed which had account 14 managed by BLMIS. 15 Q My question is, which funds? 16 A I believe it was Fairfield. 17 Q Fairfield Sentry? 18 A That's correct. That's my 19 recollection. 20 Q Any other funds? 21 A Not that I remember. 22 Q Not Kingate Global? 23 A Maybe, but I'm not sure. 24 Q But your recollection is there was 25 more than one?</p>	<p>136</p> <p>1 A As mentioned, I was introduced by 2 Philippe Hostettler. 3 Q You said that was in 1999? 4 A I don't remember the dates, but, 5 again, I think you should have the pieces -- the 6 information -- I believe this -- it's in a 7 document somewhere. 8 Q But just -- I guess so I understand 9 the sequence, was that introduction to 10 Mr. DiPascali before you created Square One? 11 A Correct. 12 Q So you were introduced to Mr. -- 13 A It's thanks to this introduction that 14 I was able to have access to BLMIS and, 15 accordingly, that I was able subsequently to 16 create Square One. 17 Q Let me show you tab 12. And then 18 we'll get back to the creation of Square One, 19 but I just want to get the sequence right. 20 MS. STORK: This is Trustee 21 Exhibit 50. 22 (Trustee Exhibit 50 marked for 23 identification and attached to the transcript.) 24 Q All right, Mr. Estenne, I'm going to 25 show you what's been marked as Trustee</p>

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<p>137</p> <p>1 Exhibit 50, 5-0. And I'm only going to be 2 asking you about the first page. I understand 3 there's an attachment that appears to be a 4 memorandum about Kingate Global Fund, but I just 5 want to ask you about the first page. So let me 6 know when you're ready. 7 <b>A Yes.</b> 8 Q Okay. So, first of all, do you 9 recognize this document? 10 <b>A Yes.</b> 11 Q What is this document? 12 <b>A It's a potential manager meeting</b> 13 <b>report.</b> 14 Q Did you write this document? 15 <b>A I'm not sure.</b> 16 Q You're not sure if you wrote the 17 document? 18 <b>A That's correct.</b> 19 Q Do you see at the top it says, 20 "Bernard L. Madoff Investment Securities," and 21 underneath that it says, "Meeting with Frank 22 DiPascali in the manager's NYC office on 23 February 8th, 1999"? 24 <b>A That's correct.</b> 25 Q And then the sentence immediately</p>	<p>139</p> <p>1 <b>exactly it was transformed into Square One Fund.</b> 2 Q But you created -- but in its 3 original form it was called Isis, and you 4 created Isis to invest in BLMIS, yes? 5 <b>A That's correct.</b> 6 Q And it was -- according to your 7 recollection, it was -- this -- you created Isis 8 after meeting DiPascali? 9 MR. FISCHER: Object to form. You 10 may answer. 11 <b>A That's my recollection, but here it</b> 12 <b>says that apparently maybe not. Maybe it was</b> 13 <b>just before.</b> 14 Q Yeah. 15 <b>A So I may be confused in terms of the</b> 16 <b>time sequence. That's why I'm telling you I'm</b> 17 <b>not exactly sure about the time sequence.</b> 18 Q That's fine. I'm just trying to make 19 sure. 20 <b>A But since you have the date of the</b> 21 <b>investment -- of the meeting, you have the date</b> 22 <b>at which time Isis was created, I believe, and</b> 23 <b>you have the time at which Isis was transformed</b> 24 <b>into Square One. So I guess that you have the</b> 25 <b>answers to these questions.</b></p>
<p>138</p> <p>1 below that says, "The purpose of the meeting was 2 for Luc Estenne to be introduced by Philippe 3 Hostettler to Frank DiPascali and also to get an 4 update on the organization and strategy 5 implemented in the Isis Worldwide Limited Fund." 6 <b>A Yes.</b> 7 Q And just for the record, Isis 8 Worldwide Limited Fund became Square One, yes? 9 <b>A That's correct.</b> 10 Q And so help me understand. I just 11 want to understand the sequencing. So this -- 12 according to this document, you were introduced 13 on February 8th, 1999. Am I reading that right? 14 <b>A Yes.</b> 15 Q But you created Square One in 16 December 1998, yes? 17 MR. FISCHER: Object to form. You 18 may answer. 19 <b>A I don't get the time sequence -- I</b> 20 <b>don't remember exactly the time sequence or</b> 21 <b>precisely the time sequence. Again, I first</b> 22 <b>created Isis Worldwide, which was transformed</b> 23 <b>subsequently to Square One Fund. I don't know,</b> 24 <b>but I'm sure it's in documents, on what date</b> 25 <b>exactly Isis was created and then what date</b></p>	<p>140</p> <p>1 Q Correct. So let me ask you -- 2 MR. MOLINA: Can we go off the record 3 for a second? 4 THE VIDEOGRAPHER: We are going off 5 the record. The time is 2:01 p.m. 6 (A recess was taken.) 7 THE VIDEOGRAPHER: We're going back 8 on the record. The time is 2:02 p.m. 9 BY MR. MOLINA: 10 Q So let's back up. Who is Philippe 11 Hostettler? 12 <b>A Philippe Hostettler was an investment</b> 13 <b>professional at Parly Company.</b> 14 Q So you met him when you started doing 15 work for Parly Company? 16 <b>A That's correct.</b> 17 Q And he had access to Mr. DiPascali? 18 MR. FISCHER: Object to form. You 19 may answer. 20 <b>A He had access -- yeah, he was able to</b> 21 <b>contact Mr. DiPascali.</b> 22 Q Do you remember why? 23 MR. FISCHER: Object to form. You 24 may answer. 25 <b>A Yes.</b></p>

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<p>141</p> <p>1 Q Can you tell me what you remember 2 about how he was able to gain access to BLMIS? 3 <b>A Because one of his former employer --</b> 4 <b>I mean of Philippe Hostettler -- had an account</b> 5 <b>opened with BLMIS.</b> 6 Q Which former employer? 7 <b>A I believe it was a small Swiss bank.</b> 8 Q Do you know the name? 9 <b>A No. I don't remember the name. It</b> 10 <b>was a long time ago.</b> 11 Q And so did Parly Company invest in 12 BLMIS at that time? 13 <b>A I don't know.</b> 14 Q Did Mr. Hostettler personally know 15 Mr. DiPascali prior to the introduction that 16 we're referencing here? 17 <b>A What do you mean by "personally</b> 18 <b>know"?</b> 19 Q Had he met Mr. DiPascali before he 20 introduced you to him? 21 <b>A That's my understanding.</b> 22 Q And so tell me the circumstances that 23 led to this introduction with Mr. DiPascali. 24 <b>A I don't remember precisely, but I</b> 25 <b>remember -- but, in general terms, what I</b> </p>	<p>143</p> <p>1 report. It says here -- it says under the 2 "Organization" header -- it says that there was 3 a split strike conversion strategy and that it 4 was allocated to about USD 4 billion, USD 5 300 million being proprietary capital, and that 6 six people worked full time on the strategy. Do 7 you see that? 8 <b>A Yes.</b> 9 Q What is a split strike conversion 10 strategy? 11 <b>A It's an investment strategy which I</b> 12 <b>think is described in the annex of the report.</b> 13 Q What do you remember -- sitting here 14 today, what do you remember about the split 15 strike conversion strategy? 16 MR. FISCHER: Object to form. You 17 may answer. 18 <b>A It's difficult for me to precisely</b> 19 <b>answer what I remember today or what I remember</b> 20 <b>at that time. Obviously, I can tell you what I</b> 21 <b>know today of what the split strike conversion</b> 22 <b>strategy is. I'm not sure I can precisely tell</b> 23 <b>you what I understood at that time.</b> 24 Q The description in Section II of this 25 report, have you read it yet? </p>
<p>142</p> <p>1 <b>remember is that we -- we had the trip planned</b> 2 <b>in New York to visit a number of hedge fund</b> 3 <b>managers that, as I told you, I was interested</b> 4 <b>in setting up Square One or if I had already set</b> 5 <b>up Square One or its predecessor Isis, I was</b> 6 <b>interested in, obviously, meeting people at</b> 7 <b>BLMIS. And, accordingly, Philippe Hostettler</b> 8 <b>organized the introduction and the meeting.</b> 9 Q What was your impression at that time 10 of BLMIS? 11 <b>A It was an important organization. It</b> 12 <b>was pretty impressive.</b> 13 Q Did your father tell you anything 14 about what he thought of BLMIS? 15 <b>A No, he didn't.</b> 16 Q And so what do you remember 17 specifically about the meeting that you had with 18 Mr. DiPascali? 19 <b>A Not much, but I guess that's</b> 20 <b>information -- I guess that, you know, based on</b> 21 <b>this report, the information is there. But, you</b> 22 <b>know, if I didn't have this report in front of</b> 23 <b>me, it would be difficult for me to remember</b> 24 <b>anything.</b> 25 Q So let's go through parts of this </p>	<p>144</p> <p>1 It would be on the first page -- on 2 the first page, Roman numeral II. 3 <b>A Oh, in this report.</b> 4 Q Yes. 5 <b>A "Strategy," number II, yes. "The</b> 6 <b>purchase of a put and the sell of a call on the</b> 7 <b>S&amp;P 100 index are done monthly, one month</b> 8 <b>foreward. The position is rolled over every</b> 9 <b>month. The basket the manager creates to mimic</b> 10 <b>the S&amp;P 100 index is usually made of 40 to 50</b> 11 <b>stocks weighted in the same way the index is.</b> 12 <b>"The worst market scenario for the</b> 13 <b>strategy would be a slowly drifting market. The</b> 14 <b>manager likes the market to evolve for a while</b> 15 <b>between the call and put strike levels instead</b> 16 <b>of directly hitting the put level.</b> 17 <b>"The strategy provides liquidity to</b> 18 <b>the manager's market-making activity and is</b> 19 <b>extremely profitable: The manager makes between</b> 20 <b>2.5 to 4 percent of assets per year in bid-offer</b> 21 <b>spreads on the strategy.</b> 22 <b>"The manager has agreed to accept</b> 23 <b>between 2.5 to 3 million per month of new money</b> 24 <b>in the managed account. DiPascali confirmed</b> 25 <b>that they are not ready to close the strategy to</b> </p>

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<p>145</p> <p>1 <b>new capital."</b></p> <p>2 Q Now that you've read that, does that</p> <p>3 seem like a fair description of your</p> <p>4 understanding of the split strike conversion</p> <p>5 strategy as of this date?</p> <p>6 <b>A I would say yes.</b></p> <p>7 MR. FISCHER: Object to form. You</p> <p>8 may answer.</p> <p>9 Q Earlier in -- under Section I it says</p> <p>10 that the strategy "is allocated to about USD</p> <p>11 4 billion." Do you see that?</p> <p>12 <b>A Yes.</b></p> <p>13 Q What does that sentence mean to you?</p> <p>14 <b>A It means what it means, that roughly</b></p> <p>15 <b>4 billion of assets are allocated to the</b></p> <p>16 <b>strategy.</b></p> <p>17 Q So that --</p> <p>18 <b>A I don't know what discussion we can</b></p> <p>19 <b>have about --</b></p> <p>20 Q Finish your sentence.</p> <p>21 <b>A No.</b></p> <p>22 Q So just so we're clear, your</p> <p>23 understanding, at least at this time as you're</p> <p>24 reading this report and refreshing your</p> <p>25 recollection, was that BLMIS was managing around</p>	<p>147</p> <p>1 <b>A Yes.</b></p> <p>2 Q And then at the bottom there is a</p> <p>3 "Conclusion," and it says, "The strategy has</p> <p>4 proven to be very stable and profitable. The</p> <p>5 level of risk is low and transparency is</p> <p>6 increased thanks to our managed account. The</p> <p>7 only dark cloud is the potential credit risk we</p> <p>8 could face as the assets are deposited at</p> <p>9 Madoff. I consequently recommend a limited</p> <p>10 investment in this strategy: Maximum</p> <p>11 2.5 percent of the portfolio." Do you see that?</p> <p>12 <b>A I see that.</b></p> <p>13 Q So let's break this down. What does</p> <p>14 it mean to you, the second -- the third</p> <p>15 sentence, the one that reads, "The only dark</p> <p>16 cloud is the potential credit risk we could face</p> <p>17 as the assets are deposited at Madoff?"</p> <p>18 Could you -- what's your</p> <p>19 understanding of that sentence?</p> <p>20 <b>A What it says. Nothing else.</b></p> <p>21 Q What do you mean by "dark cloud," for</p> <p>22 instance?</p> <p>23 <b>A I would say negative.</b></p> <p>24 Q Okay.</p> <p>25 <b>A Negative element.</b></p>
<p>146</p> <p>1 \$4 billion under this strategy, yes?</p> <p>2 MR. FISCHER: Object to form. You</p> <p>3 may answer.</p> <p>4 <b>A That's what's written there, yes.</b></p> <p>5 Q Let me ask you, about -- well, going</p> <p>6 back to number II, the Section II, under</p> <p>7 "Strategy," the one that you just read, it says</p> <p>8 here -- you read that "The basket the manager</p> <p>9 creates to mimic the S&amp;P 100 index is usually</p> <p>10 made of 40 to 50 stocks weighted in the same way</p> <p>11 the index is."</p> <p>12 So it was your understanding that</p> <p>13 BLMIS was -- attempted to mimic the S&amp;P 100</p> <p>14 index, correct?</p> <p>15 MR. FISCHER: Object to form. You</p> <p>16 can answer.</p> <p>17 <b>A That's -- I understand that the</b></p> <p>18 <b>basket created was there in order to indeed</b></p> <p>19 <b>mimic the S&amp;P 100 index.</b></p> <p>20 Q And you see that in Section III there</p> <p>21 is a "Performance" section?</p> <p>22 <b>A Yes.</b></p> <p>23 Q And it shows the performance that</p> <p>24 BLMIS purported to have between 1994 and 1998,</p> <p>25 yes?</p>	<p>148</p> <p>1 Q And why is it a negative element that</p> <p>2 the assets are deposited at Madoff?</p> <p>3 MR. FISCHER: Object to form. You</p> <p>4 may answer.</p> <p>5 <b>A Because although Madoff was a very</b></p> <p>6 <b>important institution, Madoff was not a</b></p> <p>7 <b>super-sized institution like JP Morgan or, you</b></p> <p>8 <b>know, one of the top ten banks. So there was a</b></p> <p>9 <b>credit risk.</b></p> <p>10 Q Madoff isn't -- BLMIS wasn't a bank,</p> <p>11 right?</p> <p>12 <b>A BLMIS was not a bank. BLMIS was, I</b></p> <p>13 <b>believe, a broker-dealer, I believe.</b></p> <p>14 Q But you understood or -- at this time</p> <p>15 that the assets that he was investing were</p> <p>16 deposited at BLMIS?</p> <p>17 <b>A It says, "the assets are deposited at</b></p> <p>18 <b>Madoff," "Madoff" meaning BLMIS, yes.</b></p> <p>19 Q So did you understand it to mean that</p> <p>20 he had them in a bank account? What did you</p> <p>21 understand about the assets that he was invested</p> <p>22 in?</p> <p>23 <b>A I understood that --</b></p> <p>24 MR. FISCHER: Object to form. You</p> <p>25 may answer.</p>

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<p>149</p> <p>1 <b>A I believe that -- according to this</b>  2 <b>report, what I understood was that the assets</b>  3 <b>were deposited at BLMIS.</b>  4 Q Well, help me understand. If BLMIS  5 is a broker-dealer --  6 <b>A Yes.</b>  7 Q -- where would a broker-dealer keep  8 the assets?  9 <b>A Why? Your question is why?</b>  10 Q No. Where? You're saying your  11 understanding was that "the assets are deposited  12 at Madoff." I'm just trying to understand what  13 that means. Where are they physically located?  14 <b>A Well, they are not physically</b>  15 <b>located. These are dematerialized assets, and</b>  16 <b>you don't have any paper.</b>  17 Q I don't think I follow you.  18 <b>A You said, "Where are they physically</b>  19 <b>located?" I'm saying to you -- my understanding</b>  20 <b>is that these were not physical assets. These</b>  21 <b>were not gold bars. These were securities. And</b>  22 <b>I believe that the securities were traded at</b>  23 <b>that time already electronically and that there</b>  24 <b>were no paper moved around from, according to</b>  25 <b>the trades on the securities.</b></p>	<p>151</p> <p>1 understand from your testimony earlier today  2 that the ART Fund was not created until late  3 2000, correct?  4 <b>A That's correct.</b>  5 Q And this report is dated in 1999. So  6 we know this isn't about the ART Fund, right?  7 <b>A That's correct.</b>  8 Q So what other funds could this be  9 referring to?  10 <b>A I'm not sure it refers to a fund. It</b>  11 <b>says it refers to a portfolio here.</b>  12 Q So what portfolio?  13 <b>A Again, I'm not sure.</b>  14 Q When you created -- and, again, I  15 know it was initially created as Isis, but I'm  16 going to call it Square One. Is that okay?  17 <b>A Okay.</b>  18 Q Just so we're going to know what  19 we're talking about. When you created Square  20 One -- and I know there is some confusion here  21 about when the meeting was with DiPascali,  22 whether it was before or after. Let's put that  23 to the side. Other than that potential meeting  24 that happened before, potentially, what other  25 diligence did you conduct into BLMIS before</p>
<p>150</p> <p>1 Q Okay. And then you say at the end of  2 this paragraph that you "recommend a limited  3 investment in this strategy: "Maximum  4 2.5 percent of the portfolio."  5 <b>A Yes.</b>  6 Q To whom are you recommending this?  7 MR. FISCHER: Object to form. You  8 may answer.  9 <b>A I don't remember.</b>  10 Q What portfolio are you referring to  11 here?  12 MR. FISCHER: Object to form. You  13 may answer.  14 <b>A I don't remember.</b>  15 Q At this point there's no -- Partners  16 Advisers does not have a fund that it's  17 managing, correct?  18 <b>A Nope. That's correct.</b>  19 Q So could this be the portfolio for  20 Square One?  21 MR. FISCHER: Object to form. You  22 may answer.  23 <b>A No.</b>  24 Q So I'm just trying to understand.  25 This sentence references a portfolio. We</p>	<p>152</p> <p>1 opening -- sorry, before creating Square One?  2 <b>A Before creating Square One, I --</b>  3 <b>well, the due diligence I conducted on -- was a</b>  4 <b>meet- -- I think I met with some marketing</b>  5 <b>representative of other B fund, which had</b>  6 <b>accounts at BLMIS which were active in Geneva at</b>  7 <b>the time, in order to get more information. I</b>  8 <b>also reviewed the different offering memorandum</b>  9 <b>of these funds. That's my recollection, but I</b>  10 <b>guess there is more to that, but that's a guess.</b>  11 <b>I'm not sure.</b>  12 Q What funds were you referring to just  13 now?  14 <b>A Kingate and Fairfield Sentry.</b>  15 Q Do you remember the representatives  16 with whom you met?  17 <b>A No.</b>  18 Q How about the name Ceretti? Does  19 that ring a bell?  20 <b>A No.</b>  21 Q How about the name Grosso?  22 <b>A No.</b>  23 Q This would have been in 1998?  24 MR. FISCHER: Object to form.  25 <b>A I don't remember.</b></p>



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<p>153</p> <p>1 Q But it was before you created Square One?</p> <p>2 One?</p> <p>3 A <b>That's my recollection.</b></p> <p>4 Q Did you take -- did you conduct any</p> <p>5 quantitative due diligence on BLMIS's strategy</p> <p>6 before creating Square One?</p> <p>7 A <b>I certainly looked at the track</b></p> <p>8 <b>record which was available to me. That was part</b></p> <p>9 <b>of things which were done.</b></p> <p>10 Q Did you try to reverse engineer the</p> <p>11 strategy based on the information that you</p> <p>12 reviewed?</p> <p>13 A <b>That was not something which I</b></p> <p>14 <b>usually did, and I've almost never done that. I</b></p> <p>15 <b>think I've never done that. I think it's</b></p> <p>16 <b>impossible to reverse engineer an investment</b></p> <p>17 <b>strategy.</b></p> <p>18 Q What do you remember about the</p> <p>19 conversations that you had with the</p> <p>20 representatives with whom you met at Fairfield</p> <p>21 and Kingate?</p> <p>22 A <b>Nothing.</b></p> <p>23 Q You don't have any recollection of</p> <p>24 those discussions?</p> <p>25 MR. FISCHER: Object to form.</p>	<p>155</p> <p>1 worked at BLMIS before creating Square One?</p> <p>2 A <b>I knew some of them, certainly Frank</b></p> <p>3 <b>DiPascali and Bernie Madoff.</b></p> <p>4 Q Did you review any diligence reports</p> <p>5 that third parties may have made regarding</p> <p>6 BLMIS?</p> <p>7 A <b>I don't remember.</b></p> <p>8 Q By the way, these questions I'm</p> <p>9 asking are before creating Square One, just to</p> <p>10 be clear.</p> <p>11 A <b>I don't know.</b></p> <p>12 Q Did you review any risk reports on</p> <p>13 BLMIS?</p> <p>14 A <b>Potentially, but I don't remember</b></p> <p>15 <b>exactly what I did and didn't have, in terms of</b></p> <p>16 <b>the type of information.</b></p> <p>17 Q But when you created Square One, you</p> <p>18 were sure that you would invest Square One's</p> <p>19 assets in BLMIS, yes?</p> <p>20 A <b>The purpose of Square One was to have</b></p> <p>21 <b>an account opened at BLMIS, yes.</b></p> <p>22 Q Did you conduct any reference checks</p> <p>23 on BLMIS before you created Square One?</p> <p>24 A <b>I don't remember.</b></p> <p>25 Q Did you talk to BLMIS's auditors</p>
<p>154</p> <p>1 A <b>I don't have any precise recollection</b></p> <p>2 <b>of this discussion.</b></p> <p>3 Q Did they give you documents to</p> <p>4 review?</p> <p>5 A <b>I'm not sure.</b></p> <p>6 Q Did you request any documents from</p> <p>7 BLMIS prior to creating Square One?</p> <p>8 A <b>Some documents were provided to me</b></p> <p>9 <b>within the scope of the opening of the accounts,</b></p> <p>10 <b>yes. Those where mostly account opening</b></p> <p>11 <b>documents, things like that.</b></p> <p>12 Q Did you review any audited financials</p> <p>13 of BLMIS before creating Square One?</p> <p>14 A <b>No.</b></p> <p>15 Q Did you get a --</p> <p>16 A <b>These were not -- I believe. And</b></p> <p>17 <b>it's not customary to have access to an audited</b></p> <p>18 <b>financial statement of management.</b></p> <p>19 Q Did you ask for an account of how</p> <p>20 many assets under management BLMIS had before</p> <p>21 creating Square One?</p> <p>22 A <b>I guess I had this information, yes.</b></p> <p>23 <b>It's part of the -- the usual information which,</b></p> <p>24 <b>I guess, was provided. I would guess so.</b></p> <p>25 Q Did you get a list of the people that</p>	<p>156</p> <p>1 before you created Square One?</p> <p>2 A <b>I didn't, but, again, it was not -- I</b></p> <p>3 <b>didn't -- I believe it was not customary to talk</b></p> <p>4 <b>to auditors of an investment manager.</b></p> <p>5 Q Were you aware that -- who the</p> <p>6 auditor for BLMIS was before you created Square</p> <p>7 One?</p> <p>8 A <b>No, I wasn't.</b></p> <p>9 Q Did you conduct any diligence on any</p> <p>10 of the vendors that BLMIS used before you</p> <p>11 created Square One?</p> <p>12 A <b>No, I didn't.</b></p> <p>13 Q Did you speak with any other</p> <p>14 investors, other than the representatives at</p> <p>15 Fairfield, Kingate and your father, regarding</p> <p>16 BLMIS before you created Square One?</p> <p>17 A <b>It seems likely.</b></p> <p>18 Q Do you remember anyone in particular?</p> <p>19 A <b>No.</b></p> <p>20 Q When you created Square One, who were</p> <p>21 Square One's investors at that time?</p> <p>22 A <b>Square One -- Isis was initially</b></p> <p>23 <b>funded by my father's investments.</b></p> <p>24 Q So when you created Square One, the</p> <p>25 only investor at that time was your father?</p>

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<p>157</p> <p>1 A Can you specify "at that time"?</p> <p>2 Q Let's say at the time of this report</p> <p>3 that you're looking at in February of 1999.</p> <p>4 A What I remember is that when --</p> <p>5 during the time Square One was called Isis and</p> <p>6 before it became Square One, the only investor</p> <p>7 was my father. That's my recollection.</p> <p>8 Q How much did he invest in Square One?</p> <p>9 A I think around a few millions.</p> <p>10 Q Was he investing as an individual or</p> <p>11 through --</p> <p>12 A I think through an investment entity.</p> <p>13 Q Do you remember the name of the</p> <p>14 entity?</p> <p>15 A I don't remember the name of the</p> <p>16 entity.</p> <p>17 Q Did you personally invest in Square</p> <p>18 One?</p> <p>19 A Not that I remember.</p> <p>20 Q Did anyone else in your family invest</p> <p>21 in Square One?</p> <p>22 A No.</p> <p>23 Q So this report shows you met with</p> <p>24 Mr. DiPascali. Was he your primary contact at</p> <p>25 BLMIS?</p>	<p>159</p> <p>1 Q Was it in Mr. DiPascali's office?</p> <p>2 A I don't remember.</p> <p>3 Q How often did you meet with</p> <p>4 Mr. DiPascali since you've -- after meeting him?</p> <p>5 A I'm not sure.</p> <p>6 Q Would it have been once a year?</p> <p>7 A A few times, but I'm not sure. I</p> <p>8 guess more at the beginning of the relationship,</p> <p>9 maybe during the first two years, and much less</p> <p>10 afterwards.</p> <p>11 Q When you met in this occurrence,</p> <p>12 there was a meeting report.</p> <p>13 A That's correct.</p> <p>14 Q Was it your practice, that when you</p> <p>15 met with a manager, to memorialize the meeting</p> <p>16 with a report?</p> <p>17 A Yes. That's something which was</p> <p>18 initiated -- common at Parly and which I tended</p> <p>19 to do as well.</p> <p>20 Q So the contents of this report would</p> <p>21 be the summary of what was discussed at that</p> <p>22 meeting?</p> <p>23 A That's my understanding.</p> <p>24 Q And if you had a meeting with BLMIS,</p> <p>25 there would be a report that would follow that</p>
<p>158</p> <p>1 A Yes. Him, and another contact was a</p> <p>2 girl called Jodi, I believe.</p> <p>3 Q Did you meet Jodi -- I believe her</p> <p>4 last name is Crupi. Did you meet Ms. Jodi Crupi</p> <p>5 at this meeting in February of 1999?</p> <p>6 A No.</p> <p>7 Q Did you meet anyone else other than</p> <p>8 Mr. DiPascali in that meeting?</p> <p>9 A No.</p> <p>10 Q Did you ask to meet with anyone else</p> <p>11 when you were there?</p> <p>12 A No.</p> <p>13 Q You didn't want to meet with</p> <p>14 Mr. Madoff when you were there?</p> <p>15 A It didn't seem -- I believe it was</p> <p>16 not something which was offered to me or -- no.</p> <p>17 Q Did you get a tour of the offices</p> <p>18 when you went to BLMIS in February of 1999?</p> <p>19 A I don't remember.</p> <p>20 Q But you went -- the meeting was at</p> <p>21 the Lipstick Building on 3rd Avenue?</p> <p>22 A That's correct.</p> <p>23 Q Do you remember what floor in the</p> <p>24 Lipstick Building?</p> <p>25 A No.</p>	<p>160</p> <p>1 meeting, yes?</p> <p>2 MR. FISCHER: Object to form. You</p> <p>3 may answer.</p> <p>4 A I would think so.</p> <p>5 Q And at this time in February of 1999,</p> <p>6 are you the only Square One employee?</p> <p>7 A I never was an employee of Square</p> <p>8 One.</p> <p>9 Q Are you the only person that's doing</p> <p>10 work on behalf of Square One?</p> <p>11 A Square One had no employees.</p> <p>12 Q So at this time you were acting just</p> <p>13 only as a director of Square One?</p> <p>14 A Yes.</p> <p>15 Q Did you have any other roles at this</p> <p>16 time on behalf of Square One?</p> <p>17 A Besides being a director, no.</p> <p>18 MR. FISCHER: Luc, just give yourself</p> <p>19 some slack on the microphone. I don't want you</p> <p>20 to rip your tie.</p> <p>21 MR. MOLINA: Yeah, maybe we can go</p> <p>22 off the record.</p> <p>23 MR. FISCHER: No, I think he's good</p> <p>24 now.</p> <p>25 MR. MOLINA: I don't want it to --</p>

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<p>161</p> <p>1 never mind.</p> <p>2 Q Did you have regularly scheduled</p> <p>3 calls set up with BLMIS?</p> <p>4 A No.</p> <p>5 Q And if you did have a call with</p> <p>6 BLMIS, would you have memorialized that in some</p> <p>7 way?</p> <p>8 MR. FISCHER: Object to form. You</p> <p>9 may answer.</p> <p>10 A Not necessarily.</p> <p>11 Q It wasn't your practice to write</p> <p>12 reports after calls with managers?</p> <p>13 MR. FISCHER: Object to form. You</p> <p>14 may answer.</p> <p>15 A Certainly after meetings.</p> <p>16 Q Did you hire --</p> <p>17 MR. MOLINA: Let me restart.</p> <p>18 Q Did Square One hire anyone in New</p> <p>19 York City to monitor BLMIS?</p> <p>20 A No.</p> <p>21 Q Do you -- other than the room where</p> <p>22 you were sitting with Mr. DiPascali, do you</p> <p>23 remember visiting any other parts of BLMIS</p> <p>24 during this meeting?</p> <p>25 MR. FISCHER: Object to form. You</p>	<p>163</p> <p>1 Exhibit 51.</p> <p>2 (Trustee Exhibit 51 marked for</p> <p>3 identification and attached to the transcript.)</p> <p>4 Q This is going to be -- Mr. Estenne,</p> <p>5 I'm handing you what has been marked as Trustee</p> <p>6 Exhibit number 51.</p> <p>7 A (Witness reviewing document.)</p> <p>8 Q Do you recognize this document?</p> <p>9 A Yes.</p> <p>10 Q What is it?</p> <p>11 A The Summary Confidential Memorandum</p> <p>12 of Square One Fund.</p> <p>13 Q If you turn to the second page of</p> <p>14 this document, do you see that it's dated</p> <p>15 June 1, 1999? Yes?</p> <p>16 A I see that.</p> <p>17 Q Did you draft this document?</p> <p>18 A No.</p> <p>19 Q Who drafted this document?</p> <p>20 A Lowenstein Sandler PC.</p> <p>21 Q And what was Lowenstein Sandler PC?</p> <p>22 A As stated, it's the U.S. counsel.</p> <p>23 Q So this was -- at that time this was</p> <p>24 the U.S. counsel of Square One Fund? Yes?</p> <p>25 A That's correct.</p>
<p>162</p> <p>1 may answer.</p> <p>2 A I don't remember.</p> <p>3 Q Did you ask to see any documents when</p> <p>4 you were meeting Mr. DiPascali?</p> <p>5 A I don't remember.</p> <p>6 Q Bank statements?</p> <p>7 A I don't remember.</p> <p>8 Q How many people did Mr. DiPascali say</p> <p>9 were working at the investment advisory business</p> <p>10 at BLMIS?</p> <p>11 A I think it is written in the report.</p> <p>12 Q So six people?</p> <p>13 A "Six people work full time on the</p> <p>14 strategy."</p> <p>15 Q Do you remember who those six people</p> <p>16 were?</p> <p>17 A No.</p> <p>18 Q Would you have asked to get names so</p> <p>19 you could do background checks?</p> <p>20 MR. FISCHER: Object to form. You</p> <p>21 may answer.</p> <p>22 A No.</p> <p>23 MR. MOLINA: Let's go to -- if you'd</p> <p>24 give me tab 13.</p> <p>25 MS. STORK: This is Trustee</p>	<p>164</p> <p>1 Q Did you --</p> <p>2 A Or -- sorry. Or it could have been</p> <p>3 partially also Harney Westwood &amp; Riegels, or a</p> <p>4 combination of the two.</p> <p>5 Q Okay. You -- as director of Square</p> <p>6 One Fund, you would have reviewed this document,</p> <p>7 yes?</p> <p>8 MR. FISCHER: Object to form. You</p> <p>9 may answer.</p> <p>10 A Yes. I would have, yeah. My review,</p> <p>11 yeah.</p> <p>12 Q Now, if you look to the second to</p> <p>13 last page, which has the Bates number ending in</p> <p>14 1634 --</p> <p>15 A Yes.</p> <p>16 Q -- do you see at the top it says,</p> <p>17 "Exhibit A, Split Strike Strategy"?</p> <p>18 A Yes.</p> <p>19 Q If you look the next two pages,</p> <p>20 there's -- on this page and the last page,</p> <p>21 there's a description of this split strike</p> <p>22 strategy, yes?</p> <p>23 A That's correct.</p> <p>24 Q Did you draft this Exhibit A?</p> <p>25 A No.</p>

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<p>1 Q Who did?</p> <p>2 A <b>My lawyers. I mean -- "my lawyers,"</b></p> <p>3 <b>I mean the two lawyers that I referred to -- one</b></p> <p>4 <b>of the two lawyers I referred to.</b></p> <p>5 Q Were those lawyers that --</p> <p>6 A <b>They drafted the documents, i.e., the</b></p> <p>7 <b>two that I mentioned. Let me -- Lowenstein or</b></p> <p>8 <b>Harney.</b></p> <p>9 Q Where did this information about the</p> <p>10 split strike strategy come from?</p> <p>11 A <b>I believe it comes from another BLMIS</b></p> <p>12 <b>feeder fund.</b></p> <p>13 Q Which one?</p> <p>14 A <b>I'm not sure. I would guess</b></p> <p>15 <b>Fairfield Sentry or Kingate.</b></p> <p>16 Q So let's go through this Exhibit A.</p> <p>17 Do you see at the very top it says, "Bernard L.</p> <p>18 Madoff Investment Securities offers investors</p> <p>19 access through different funds to a</p> <p>20 non-traditional investment strategy which is</p> <p>21 often described as a split-strike conversion?"</p> <p>22 Yes?</p> <p>23 A <b>Yes.</b></p> <p>24 Q And then it goes on to have a short</p> <p>25 description of what the strategy entails, right?</p>	<p>165</p> <p>1 does it match what you understood from your</p> <p>2 meeting with Mr. DiPascali earlier that year in</p> <p>3 February?</p> <p>4 MR. FISCHER: Object to form. You</p> <p>5 may answer.</p> <p>6 A <b>Again, I don't remember what was said</b></p> <p>7 <b>specifically in the meeting. My understanding</b></p> <p>8 is that if I look at this and this (indicating),</p> <p>9 in general terms, there is no contradiction.</p> <p>10 Q And then it's --</p> <p>11 MR. FISCHER: Just for the record,</p> <p>12 when the witness said "this and this," he's</p> <p>13 referring to the current exhibit and the prior</p> <p>14 exhibit. Right?</p> <p>15 THE WITNESS: The Exhibit A here and</p> <p>16 this report.</p> <p>17 MR. FISCHER: Number 50.</p> <p>18 THE WITNESS: Yes.</p> <p>19 Q It says -- in the middle of that page</p> <p>20 on Exhibit A, it says, "A properly executed</p> <p>21 strategy along these lines will limit losses if</p> <p>22 the price of the stocks decline." Yes?</p> <p>23 A <b>That's what it says, yes.</b></p> <p>24 Q What do you -- what is your</p> <p>25 understanding of that sentence?</p>
<p>166</p> <p>1 And it says -- on Romanette (i), it says there</p> <p>2 was a purchasing of equity shares, yes?</p> <p>3 A <b>Uh-huh.</b></p> <p>4 Q And then there was a selling of</p> <p>5 out-of-money call options and then also a buying</p> <p>6 of out-of-money put options, yes?</p> <p>7 MR. FISCHER: Object to form. You</p> <p>8 may answer.</p> <p>9 A <b>That's what's written there, yes.</b></p> <p>10 Q And then the last Romanette talks</p> <p>11 about how there would -- the strategy would</p> <p>12 remain in cash or USTB when the manager believes</p> <p>13 the market is due to weaken, yes?</p> <p>14 A <b>That's what's written.</b></p> <p>15 Q What's USTB?</p> <p>16 A <b>U.S. Treasury Bills.</b></p> <p>17 Q So this is the description that</p> <p>18 Square One's investors received when they got</p> <p>19 the offering memorandum, yes?</p> <p>20 A <b>That's correct.</b></p> <p>21 Q Do you have any reason to believe</p> <p>22 that what was in here was --</p> <p>23 MR. MOLINA: Let me ask it</p> <p>24 differently.</p> <p>25 Q The description in this Exhibit A,</p>	<p>167</p> <p>1 does it match what you understood from your</p> <p>2 meeting with Mr. DiPascali earlier that year in</p> <p>3 February?</p> <p>4 MR. FISCHER: Object to form. You</p> <p>5 may answer.</p> <p>6 A <b>Again, I don't remember what was said</b></p> <p>7 <b>specifically in the meeting. My understanding</b></p> <p>8 is that if I look at this and this (indicating),</p> <p>9 in general terms, there is no contradiction.</p> <p>10 Q And then it's --</p> <p>11 MR. FISCHER: Just for the record,</p> <p>12 when the witness said "this and this," he's</p> <p>13 referring to the current exhibit and the prior</p> <p>14 exhibit. Right?</p> <p>15 THE WITNESS: The Exhibit A here and</p> <p>16 this report.</p> <p>17 MR. FISCHER: Number 50.</p> <p>18 THE WITNESS: Yes.</p> <p>19 Q It says -- in the middle of that page</p> <p>20 on Exhibit A, it says, "A properly executed</p> <p>21 strategy along these lines will limit losses if</p> <p>22 the price of the stocks decline." Yes?</p> <p>23 A <b>That's what it says, yes.</b></p> <p>24 Q What do you -- what is your</p> <p>25 understanding of that sentence?</p> <p>168</p> <p>1 A <b>Nothing different than what it says.</b></p> <p>2 Q Okay. So if the stocks that the</p> <p>3 strategy is invested in decline, the strategy</p> <p>4 was designed to limit the losses, yes?</p> <p>5 A <b>That was my under- -- that's what is</b></p> <p>6 <b>stated there, and that was my understanding.</b></p> <p>7 Q Okay. And then it talks about --</p> <p>8 later on in this first page, it talks about the</p> <p>9 options that would be purchased to hedge the</p> <p>10 strategy. Do you see that? It's in Romanettes</p> <p>11 i, ii and iii in the middle of the page?</p> <p>12 A <b>Yes.</b></p> <p>13 Q So your understanding -- tell me if</p> <p>14 this is what you understand. The strategy, as</p> <p>15 described, was that BLMIS would purchase these</p> <p>16 options to --</p> <p>17 MR. MOLINA: Well, let me state it</p> <p>18 differently.</p> <p>19 Q What did you understand about the</p> <p>20 caller that is identified in this first page of</p> <p>21 Exhibit A?</p> <p>22 MR. FISCHER: Object to form.</p> <p>23 A <b>Nothing else or nothing more than</b></p> <p>24 <b>what is stated in number ii and iii.</b></p> <p>25 Q Okay. If you turn to the next page.</p>

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<p>169</p> <p>1 <b>A And below, yeah.</b></p> <p>2 Q Okay. If you turn to the next page,</p> <p>3 you see there's more description of this</p> <p>4 strategy and there is a paragraph that starts</p> <p>5 with, "This attractive level of downside</p> <p>6 protection, though, has its counterpart in the</p> <p>7 fact that the upside potential is limited to an</p> <p>8 S&amp;P 100 index," and then it has some numbers.</p> <p>9 What's your understanding of that</p> <p>10 limitation that's referenced there?</p> <p>11 <b>A It's what is stated, "the strike</b></p> <p>12 <b>price of the calls sold."</b></p> <p>13 Q So just to be clear, now that you've</p> <p>14 read this, you don't have -- what's in this</p> <p>15 Exhibit A is what you understood the strategy to</p> <p>16 be when you created Square One?</p> <p>17 <b>A That's correct.</b></p> <p>18 MR. LEVIN: Can I take a one-minute</p> <p>19 break to confer with Mr. Fischer? We can step</p> <p>20 outside and we'll be right back in.</p> <p>21 MR. MOLINA: We can take a one-minute</p> <p>22 break.</p> <p>23 THE VIDEOGRAPHER: We're going off</p> <p>24 the record. The time is 2:40 p.m.</p> <p>25 (A recess was taken.)</p>	<p>171</p> <p>1 this report?</p> <p>2 MR. FISCHER: Object to form. You</p> <p>3 can answer.</p> <p>4 <b>A It could have been Philippe</b></p> <p>5 <b>Hostettler.</b></p> <p>6 Q He worked for Square One?</p> <p>7 <b>A No.</b></p> <p>8 Q So why could it have been him?</p> <p>9 <b>A Nothing in this report states that</b></p> <p>10 <b>the person who wrote the report worked for</b></p> <p>11 <b>Square One.</b></p> <p>12 Q At the top it says, "Square One Fund</p> <p>13 Limited."</p> <p>14 <b>A Yes. So what?</b></p> <p>15 Q So you think Mr. Hostettler could</p> <p>16 have written this report for Square One Fund</p> <p>17 Limited?</p> <p>18 <b>A It's a possibility.</b></p> <p>19 Q Okay. Do you remember being in this</p> <p>20 meeting?</p> <p>21 <b>A No. But I would guess that probably</b></p> <p>22 <b>I was, but I don't remember being there.</b></p> <p>23 Q So you don't remember anything about</p> <p>24 the circumstances of this meeting?</p> <p>25 <b>A No.</b></p>
<p>170</p> <p>1 THE VIDEOGRAPHER: We are going back</p> <p>2 on the record. The time is 2:46 p.m.</p> <p>3 MS. STORK: Trustee Exhibit 52.</p> <p>4 (Trustee Exhibit 52 marked for</p> <p>5 identification and attached to the transcript.)</p> <p>6 Q Mr. Estenne, I'm handing you what has</p> <p>7 been marked as Trustee Exhibit number 52.</p> <p>8 <b>A (Witness reviewing document.)</b></p> <p>9 Q Do you recognize this document,</p> <p>10 Mr. Estenne?</p> <p>11 <b>A Yes.</b></p> <p>12 Q What is it?</p> <p>13 <b>A It's an Existing Manager Meeting</b></p> <p>14 <b>Report.</b></p> <p>15 Q It's another -- it's memorializing</p> <p>16 another meeting with Mr. DiPascali in New York</p> <p>17 on September 28, 1999, yes?</p> <p>18 <b>A Yes, that's what's written on the</b></p> <p>19 <b>document.</b></p> <p>20 Q And this report was made for Square</p> <p>21 One Fund, yes?</p> <p>22 <b>A Yes, indeed.</b></p> <p>23 Q And did you write this report?</p> <p>24 <b>A I don't know.</b></p> <p>25 Q If not you, who could have written</p>	<p>172</p> <p>1 Q Do you see that it says at the top</p> <p>2 under the "Organization" section that "Madoff</p> <p>3 manages around 200 accounts, with \$20 million on</p> <p>4 average, but some accounts are multi-hundreds of</p> <p>5 millions or more in size," and that the "Total</p> <p>6 A.U.M. is estimated to be between 8 and</p> <p>7 10 billion dollars according to some sources"?</p> <p>8 Yes?</p> <p>9 <b>A That's what is written there.</b></p> <p>10 Q What's AUM?</p> <p>11 <b>A Assets under management.</b></p> <p>12 Q So this report is stating that BLMIS</p> <p>13 has between \$8 and \$10 billion of assets under</p> <p>14 management, yes?</p> <p>15 MR. FISCHER: Object to form. You</p> <p>16 can answer.</p> <p>17 <b>A No, that's not what it said.</b></p> <p>18 Q What does it say then?</p> <p>19 <b>A "The total AUM is estimated" by some</b></p> <p>20 <b>sources.</b></p> <p>21 Q Do you remember what sources this</p> <p>22 document is referring to?</p> <p>23 <b>A I don't remember.</b></p> <p>24 Q And your testimony is that you don't</p> <p>25 remember whether or not you attended this</p>

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<p>173</p> <p>1 meeting?</p> <p>2 <b>A That's correct.</b></p> <p>3 Q And this document, now reading it,</p> <p>4 doesn't refresh your recollection?</p> <p>5 <b>A No.</b></p> <p>6 Q What would refresh your recollection?</p> <p>7 MR. FISCHER: Object to form. You</p> <p>8 can answer.</p> <p>9 <b>A What would refresh my recollection?</b></p> <p>10 Q What would allow us to help you</p> <p>11 remember if you attended this meeting?</p> <p>12 <b>A I don't know. You know, that's '99.</b></p> <p>13 <b>We're in 2022. That's over 23 years ago.</b></p> <p>14 Q Was it -- what did you understand</p> <p>15 about --</p> <p>16 MR. MOLINA: Let me restart.</p> <p>17 Q Was it your recollection that Madoff</p> <p>18 purported to trade all of the assets under</p> <p>19 management under the same strategy at the same</p> <p>20 time?</p> <p>21 <b>A I don't understand your question.</b></p> <p>22 Q So let's say that he has \$10 billion</p> <p>23 of assets under management. Was it your</p> <p>24 understanding at the time that when BLMIS</p> <p>25 executed its split strike conversion strategy,</p>	<p>175</p> <p>1 <b>written.</b></p> <p>2 Q So what was your understanding of how</p> <p>3 BLMIS purported to trade the assets in the</p> <p>4 different managed accounts?</p> <p>5 <b>A My understanding was that the assets</b></p> <p>6 <b>were -- I believe that my understanding, because</b></p> <p>7 <b>it's a long time ago, so I believe that -- I</b></p> <p>8 <b>believe today that my understanding at the time</b></p> <p>9 <b>was that it was -- that the assets were</b></p> <p>10 <b>principally or generally managed in the same</b></p> <p>11 <b>way, not meaning that they were all -- my</b></p> <p>12 <b>understanding was not that they were or weren't</b></p> <p>13 <b>all exactly traded to the same time. I don't</b></p> <p>14 <b>know about that.</b></p> <p>15 Q You don't know?</p> <p>16 <b>A I don't know. I know that the</b></p> <p>17 <b>strategy was principally and in general terms</b></p> <p>18 <b>the same for different managed accounts, but I</b></p> <p>19 <b>don't know exactly, you know, how it was</b></p> <p>20 <b>executed.</b></p> <p>21 Q Would you have asked Mr. DiPascali</p> <p>22 how -- about that particular part of the</p> <p>23 strategy?</p> <p>24 <b>A No.</b></p> <p>25 MR. FISCHER: Object to form. You</p>
<p>174</p> <p>1 that it purported to be investing all</p> <p>2 \$10 billion of assets at the same time?</p> <p>3 MR. FISCHER: Object to form. You</p> <p>4 can answer, Luc.</p> <p>5 <b>A I had no information about that.</b></p> <p>6 Q You never asked?</p> <p>7 MR. FISCHER: Object to form. You</p> <p>8 can answer.</p> <p>9 <b>A I don't remember what I asked at the</b></p> <p>10 <b>time. I can have my memory refreshed by what's</b></p> <p>11 <b>in these different reports, in terms of what</b></p> <p>12 <b>information was reported at that time.</b></p> <p>13 Q Did he ever -- did Mr. DiPascali ever</p> <p>14 tell you about -- let me just -- let's just go</p> <p>15 through this document. If you go look at</p> <p>16 number II, where it says "Strategy/Portfolio,"</p> <p>17 and it says, "Frank waits the market to</p> <p>18 stabilize to exit some option spreads." Do you</p> <p>19 see that?</p> <p>20 <b>A Yes.</b></p> <p>21 Q What does that mean to you?</p> <p>22 <b>A It means nothing else than what is</b></p> <p>23 <b>said, that it is waiting for "the market to</b></p> <p>24 <b>stabilize to exit some option spreads." I'm not</b></p> <p>25 <b>sure what you expect me to say besides what's</b></p>	<p>176</p> <p>1 can answer.</p> <p>2 <b>A Not that I remember.</b></p> <p>3 Q You don't remember, but you could</p> <p>4 have asked?</p> <p>5 <b>A Maybe. I don't remember what I've</b></p> <p>6 <b>asked.</b></p> <p>7 Q So you're telling me that this could</p> <p>8 also be -- this report could be from</p> <p>9 Mr. Hostettler?</p> <p>10 MR. FISCHER: Object to form. Asked</p> <p>11 and answered.</p> <p>12 <b>A I'm telling you that I don't remember</b></p> <p>13 <b>having written this report and that I'm not sure</b></p> <p>14 <b>that I have written this report. And then you</b></p> <p>15 <b>asked me who else could have written this</b></p> <p>16 <b>report, and I told you it could have been</b></p> <p>17 <b>Philippe Hostettler.</b></p> <p>18 Q So did Mr. Hostettler -- so your</p> <p>19 recollection is that Mr. Hostettler would share</p> <p>20 with you summaries of his meetings with BLMIS?</p> <p>21 MR. FISCHER: Object to form. You</p> <p>22 can answer.</p> <p>23 <b>A I don't have a recollection of that.</b></p> <p>24 Q So then why do you think this could</p> <p>25 be Mr. Hostettler, then?</p>

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<p>177</p> <p>1 A You asked me, who else could it be.</p> <p>2 I guessed that it could be potentially Philippe</p> <p>3 Hostettler. Philippe Hostettler was another</p> <p>4 investment professional who was writing these</p> <p>5 type of meeting reports within the office of</p> <p>6 Parly Company, which was shared by Partners</p> <p>7 Advisers.</p> <p>8 Q So you're saying this could have been</p> <p>9 a Parly Company report that was shared with</p> <p>10 Square One Fund?</p> <p>11 MR. FISCHER: Object to form. You</p> <p>12 can answer.</p> <p>13 A No. Again, I -- you're linking this</p> <p>14 report to the fact that it's specific -- I mean</p> <p>15 that it's -- this report could have been --</p> <p>16 yeah, I don't know how to express myself, but</p> <p>17 this report -- again, as mentioned, this report</p> <p>18 could have -- I have no recollection of having</p> <p>19 written this report. You asked me who else</p> <p>20 could have written this report. I told you it</p> <p>21 was Philippe Hostettler. You asked me why.</p> <p>22 I'm telling you that he wrote this</p> <p>23 type of report, as I did, and he -- and we</p> <p>24 shared office. So it's a possibility that he</p> <p>25 wrote the report. But there is no certainty and</p>	<p>179</p> <p>1 a Frank DiPascali.</p> <p>2 Q It is dated December 13, 1999?</p> <p>3 A That's what is written on it, yes.</p> <p>4 Q And you sent it from your office in</p> <p>5 Geneva, yes?</p> <p>6 A That's more like -- that is most</p> <p>7 likely, yes.</p> <p>8 Q You see that the -- this -- the top</p> <p>9 of this fax starts with "Following our</p> <p>10 conversation of today, I am pleased to confirm</p> <p>11 to you that:" Do you see that?</p> <p>12 A I see that.</p> <p>13 Q So this correspondence, this written</p> <p>14 correspondence, follows a conversation that you</p> <p>15 had with Mr. DiPascali that same day?</p> <p>16 A That's what I would infer from what's</p> <p>17 stated above and what you just read.</p> <p>18 Q What do you remember about that</p> <p>19 conversation?</p> <p>20 A I don't remember that conversation.</p> <p>21 Q Would it have been in person?</p> <p>22 MR. FISCHER: Object to form.</p> <p>23 A What do you mean by "in person"?</p> <p>24 Q You mentioned a conversation in this</p> <p>25 fax. I'm just trying to understand. Was this</p>
<p>178</p> <p>1 I don't know. I'm guessing.</p> <p>2 Q You're saying it's possible that</p> <p>3 Mr. Hostettler would have put "Square One Fund</p> <p>4 Limited" on a BLMIS report?</p> <p>5 MR. FISCHER: Object to form. Asked</p> <p>6 and answered. You can answer.</p> <p>7 A What do you mean by "a BLMIS report"?</p> <p>8 Is it a Square One Fund, is it a BLMIS, is it</p> <p>9 something else? It's a report which is called</p> <p>10 "Existing Manager Meeting Report," which means</p> <p>11 that it's about Madoff Securities and Square One</p> <p>12 Fund. I'm not sure that this is a report that</p> <p>13 is internal to Square One.</p> <p>14 MR. MOLINA: Let's look at tab 15.</p> <p>15 MS. STORK: This is Trustee</p> <p>16 Exhibit 53.</p> <p>17 (Trustee Exhibit 53 marked for</p> <p>18 identification and attached to the transcript.)</p> <p>19 Q Mr. Estenne, I have just handed you</p> <p>20 what has been marked as Trustee Exhibit</p> <p>21 Number 53. Mr. Estenne, do you recognize this</p> <p>22 document?</p> <p>23 A Yes.</p> <p>24 Q What is this document?</p> <p>25 A It is a fax, which was sent by me to</p>	<p>180</p> <p>1 conversation in person?</p> <p>2 A By "in person," meaning the two</p> <p>3 persons physically -- I don't think so.</p> <p>4 Q So, likely, a telephone conversation?</p> <p>5 A That's more likely, yes.</p> <p>6 Q And it says -- in the first line item</p> <p>7 it says, "Square One Fund has been used as a</p> <p>8 vehicle for family and friends' money. There</p> <p>9 are currently four large investors and three</p> <p>10 small investors, who I all know." Do you see</p> <p>11 that?</p> <p>12 A I see that.</p> <p>13 Q So, earlier, you told me that your</p> <p>14 father was a -- one of the initial investors. I</p> <p>15 assume he is one of these investors that you're</p> <p>16 referencing here?</p> <p>17 A That's my belief.</p> <p>18 Q Would he have been one of the four</p> <p>19 large investors?</p> <p>20 A That would be my belief, but I'm not</p> <p>21 sure.</p> <p>22 Q Who were the other investors at this</p> <p>23 time?</p> <p>24 A I don't remember on top of my head,</p> <p>25 but I think there are documents which should</p>

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<p>181</p> <p>1 <b>be -- we should use -- could use to find out.</b></p> <p>2 Q But they all would have been either</p> <p>3 family or friends of yours, right?</p> <p>4 <b>A Family or friends of mine, yes, that</b></p> <p>5 <b>is what it says. But family -- "family and</b></p> <p>6 <b>friends fund" is a term used in the industry,</b></p> <p>7 <b>which refers to funds which are invested by some</b></p> <p>8 <b>family members and some friends or relationship,</b></p> <p>9 <b>broadly defined. The meaning of "friends and</b></p> <p>10 <b>family fund" meaning small funds not largely</b></p> <p>11 <b>marketed or distributed. It is something like</b></p> <p>12 <b>more the -- like a club fund, if you like --</b></p> <p>13 Q Okay.</p> <p>14 <b>A -- I would describe it.</b></p> <p>15 Q All of these investors, as you wrote</p> <p>16 here, you personally knew all of these investors</p> <p>17 at this time, right?</p> <p>18 <b>A That's what I write there. That's</b></p> <p>19 <b>what I wrote there.</b></p> <p>20 Q And you see on number -- the</p> <p>21 number 4, it says -- you write, "I didn't know</p> <p>22 Bernard didn't want to see the name of the</p> <p>23 company in the Private Offering Memorandum.</p> <p>24 I've never been told so and regret any</p> <p>25 inconvenience it might have create. I'm ready</p>	<p>183</p> <p>1 Q So Mr. Madoff called you personally?</p> <p>2 <b>A That's correct.</b></p> <p>3 Q Prior to this conversation, had you</p> <p>4 ever spoken to Mr. Madoff?</p> <p>5 <b>A I don't remember.</b></p> <p>6 Q Had you met Mr. Madoff before</p> <p>7 December of 1999?</p> <p>8 <b>A I don't remember.</b></p> <p>9 Q Were you surprised to see that he was</p> <p>10 calling you?</p> <p>11 <b>A Yes.</b></p> <p>12 Q And you said that this -- that he was</p> <p>13 pissed off. How did you know that he was pissed</p> <p>14 off?</p> <p>15 <b>A He was angry --</b></p> <p>16 Q How do you know that?</p> <p>17 <b>A -- and the tone of his voice was the</b></p> <p>18 <b>tone of a -- the voice tone of an angry man.</b></p> <p>19 Q And you said that he told you this</p> <p>20 had -- that you -- your -- Square One disclosing</p> <p>21 his name or his company's name had caused</p> <p>22 problems for him. What -- could you expand on</p> <p>23 what he told you?</p> <p>24 <b>A My understanding or my recollection</b></p> <p>25 <b>is that the capacity in his investment strategy</b></p>
<p>182</p> <p>1 to correct what you want." Do you see that?</p> <p>2 <b>A I see that.</b></p> <p>3 Q Your reference to "Bernard" is to</p> <p>4 Mr. Madoff, yes?</p> <p>5 <b>A That's correct.</b></p> <p>6 Q So what's happening here?</p> <p>7 MR. FISCHER: Object to form.</p> <p>8 You may answer.</p> <p>9 <b>A Can you be more specific in your</b></p> <p>10 <b>question?</b></p> <p>11 Q Why did you write this on number 4?</p> <p>12 What happened before this fax that prompted you</p> <p>13 to write this paragraph?</p> <p>14 MR. FISCHER: Object to form.</p> <p>15 You may answer.</p> <p>16 <b>A My recollection is that -- I am not</b></p> <p>17 <b>sure when, but I remember that I received a call</b></p> <p>18 <b>from Bernie Madoff after the formation of Square</b></p> <p>19 <b>One at the time when Square One Fund's document</b></p> <p>20 <b>mentioned his name or the name of his company</b></p> <p>21 <b>specifically, that he was pissed off about the</b></p> <p>22 <b>fact that his name was mentioned, that he told</b></p> <p>23 <b>me that this was creating some problem for him,</b></p> <p>24 <b>and that he -- and, accordingly, he asked me to</b></p> <p>25 <b>remove the name from the documents.</b></p>	<p>184</p> <p>1 <b>was limited. He was limiting the assets. Some</b></p> <p>2 <b>other BLMIS feeder funds could invest in</b></p> <p>3 <b>strategy. While at the same time, because of</b></p> <p>4 <b>the favor and the introduction and the past</b></p> <p>5 <b>relationship between Philippe Hostettler and</b></p> <p>6 <b>Frank DiPascali, he was doing me a favor by</b></p> <p>7 <b>allocating some capacity and strategy to Square</b></p> <p>8 <b>One.</b></p> <p>9 <b>And that obviously -- apparently, my</b></p> <p>10 <b>understanding was that -- my understanding and</b></p> <p>11 <b>my -- you know, my comprehension with -- my</b></p> <p>12 <b>understanding was that it was embarrassing for</b></p> <p>13 <b>him to -- for other people to -- for other</b></p> <p>14 <b>competing funds to learn that Square One had</b></p> <p>15 <b>received some capacity while the other funds had</b></p> <p>16 <b>not. That was creating some problem in terms of</b></p> <p>17 <b>the competition between the funds, and so that's</b></p> <p>18 <b>what it was explained.</b></p> <p>19 Q So his --</p> <p>20 <b>A Am I clear, or do you want me to</b></p> <p>21 <b>rephrase or...</b></p> <p>22 Q Let me just --</p> <p>23 MR. FISCHER: You were clear.</p> <p>24 Q Let me just read what you wrote --</p> <p>25 what you said.</p>



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<p>185</p> <p>1 Had you ever had some manager call</p> <p>2 and tell you to remove his name or his company's</p> <p>3 name from an Offering Memorandum, other than</p> <p>4 this occurrence?</p> <p>5 MR. FISCHER: Object to form.</p> <p>6 <b>A This is the only fund I ever had.</b></p> <p>7 Q Have -- are you aware of any other</p> <p>8 instance where a fund manager called a -- an</p> <p>9 investor and said, Do not disclose that you're</p> <p>10 investing with me?</p> <p>11 MR. FISCHER: Object to form.</p> <p>12 <b>A I don't think that this is what I was</b></p> <p>13 <b>asked.</b></p> <p>14 Q You were asked not to disclose on the</p> <p>15 offering materials that Square One was invested</p> <p>16 in BLMIS, correct?</p> <p>17 <b>A That's correct.</b></p> <p>18 Q Had that ever happened? Had --</p> <p>19 <b>A Again --</b></p> <p>20 Q Do you know of any other instance</p> <p>21 where that had happened?</p> <p>22 MR. FISCHER: Object to form.</p> <p>23 You can answer.</p> <p>24 <b>A Again, it is -- the Square One Fund</b></p> <p>25 <b>was the only single manager fund I ever created.</b></p>	<p>187</p> <p>1 <b>A It appears to be a -- I guess a</b></p> <p>2 <b>letter which I sent to Bernie Madoff.</b></p> <p>3 Q The letter is dated February 11,</p> <p>4 2000, yes?</p> <p>5 <b>A Yes. That is the date, yes.</b></p> <p>6 Q And you write in this letter, "My</p> <p>7 father and myself have enjoyed having the</p> <p>8 opportunity to meet you on February 1st. I</p> <p>9 would like to thank you for having taken the</p> <p>10 time to discuss our problem and for having</p> <p>11 accepted to accommodate our investment need for</p> <p>12 another \$10 million in the managed account we</p> <p>13 have with you." Do you see that?</p> <p>14 <b>A I see that.</b></p> <p>15 Q When you reference -- you reference</p> <p>16 here to "our problem." What is -- what are you</p> <p>17 referring to there?</p> <p>18 MR. FISCHER: Object to form.</p> <p>19 You can answer.</p> <p>20 <b>A I have no recollection of what the</b></p> <p>21 <b>problem was, but reading the rest of the</b></p> <p>22 <b>document, I would infer that the problems</b></p> <p>23 <b>were -- was related to the name in the document.</b></p> <p>24 Q So you were -- after having received</p> <p>25 that call two months earlier, in December of</p>
<p>186</p> <p>1 Q Has -- for the ART Fund, for</p> <p>2 instance, has -- the ART Fund is a fund of funds</p> <p>3 that invests with different managers, yes?</p> <p>4 <b>A The ART Fund is a fund of funds which</b></p> <p>5 <b>invests in funds managed by different managers.</b></p> <p>6 Q Have any of those managers ever asked</p> <p>7 the ART Fund not to disclose that it is</p> <p>8 investing with them?</p> <p>9 <b>A No.</b></p> <p>10 MR. FISCHER: Object to form.</p> <p>11 You can answer.</p> <p>12 <b>A No.</b></p> <p>13 Q Okay.</p> <p>14 <b>A But I think it is a very different</b></p> <p>15 <b>setup.</b></p> <p>16 MR. MOLINA: Can we go to tab 16.</p> <p>17 MS. STORK: Uh-huh. This is Trustee</p> <p>18 Exhibit 54.</p> <p>19 (Trustee Exhibit 54 marked for</p> <p>20 identification and attached to the transcript.)</p> <p>21 Q Mr. Estenne, I'm handing you what has</p> <p>22 been marked as Trustee Exhibit 54. Do you</p> <p>23 recognize the document?</p> <p>24 <b>A I recognize this document.</b></p> <p>25 Q What is it?</p>	<p>188</p> <p>1 1999, where, using your words, "He was pissed</p> <p>2 off," you --</p> <p>3 <b>A Yes.</b></p> <p>4 Q -- you thought it was important to</p> <p>5 meet and speak with Mr. Madoff to discuss that</p> <p>6 issue, yes?</p> <p>7 <b>A Yeah. I wanted to -- the -- I was</b></p> <p>8 <b>embarrassed that he was pissed off, and I wanted</b></p> <p>9 <b>to iron out the things between, yeah, him and I,</b></p> <p>10 <b>yes.</b></p> <p>11 Q So this meeting was to iron out the</p> <p>12 issue that he had raised with you?</p> <p>13 MR. FISCHER: Object to form.</p> <p>14 <b>A I guess that this -- my understanding</b></p> <p>15 <b>is that -- or my recollection is it was, yeah,</b></p> <p>16 <b>at least one, one of the purposes of the</b></p> <p>17 <b>meeting.</b></p> <p>18 Q And in that first sentence, in</p> <p>19 this -- where it says, "My father and myself</p> <p>20 have enjoyed having the opportunity to meet you</p> <p>21 on February 1st." Does that mean that you first</p> <p>22 met Mr. Madoff on February 1st of 2000?</p> <p>23 <b>A No. It means that I met him on</b></p> <p>24 <b>February 1, 2000.</b></p> <p>25 Q Prior to this meeting, do you recall</p>

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<p>189</p> <p>1 having met with him?</p> <p>2 <b>A I don't remember having met with him,</b></p> <p>3 <b>no.</b></p> <p>4 Q So this could be the first time you</p> <p>5 met with him?</p> <p>6 <b>A It could be.</b></p> <p>7 Q Sorry. Later in the letter you say</p> <p>8 that you have the following commitment, you will</p> <p>9 change the offering document of Square One Fund</p> <p>10 Ltd. so that your name -- so that Mr. Madoff's</p> <p>11 name and the name of his company are removed,</p> <p>12 yes?</p> <p>13 <b>A That's what it says.</b></p> <p>14 Q And then you said, once that's done,</p> <p>15 you will send a copy of the document for his</p> <p>16 information, yes?</p> <p>17 <b>A That's what's written, yes.</b></p> <p>18 Q And by "the document," you're</p> <p>19 referring to the Offering Memorandum?</p> <p>20 <b>A That's correct.</b></p> <p>21 Q Then you said, "Supplementary</p> <p>22 allocation will be kept confidential and</p> <p>23 exclusively allocated to family and friends who</p> <p>24 already are investors in the fund," yes?</p> <p>25 <b>A That's correct.</b></p>	<p>191</p> <p>1 <b>"competition" or what they perceived as being</b></p> <p>2 <b>competition, and they complained to Bernie, to</b></p> <p>3 <b>Bernie Madoff. And, accordingly, Bernie</b></p> <p>4 <b>Madoff -- my understanding is that he called me</b></p> <p>5 <b>and asked me to remove -- first of all, remove</b></p> <p>6 <b>the -- his name and, second, also, you know,</b></p> <p>7 <b>limit the marketing so that competing funds</b></p> <p>8 <b>wouldn't feel threatened. That's my</b></p> <p>9 <b>understanding of what it was.</b></p> <p>10 Q You said earlier -- I'm going to read</p> <p>11 it. You said that, So, again, he called me. He</p> <p>12 told me, you put my name and the name of the</p> <p>13 firm in the firm memorandum. I never</p> <p>14 specifically allowed you to do so.</p> <p>15 Is it typical, Mr. Estenne, for the</p> <p>16 managers with whom you're invested to -- do you</p> <p>17 seek their permission to put their name on a</p> <p>18 prospectus or an offering material?</p> <p>19 MR. FISCHER: Objection to form.</p> <p>20 You may answer.</p> <p>21 <b>A I think I have answered this question</b></p> <p>22 <b>already.</b></p> <p>23 Q I have not asked you this question.</p> <p>24 I am asking, is it typical for you to seek</p> <p>25 permission? When you invest with a manager, is</p>
<p>190</p> <p>1 Q So what are you promising here? What</p> <p>2 are you communicating to Mr. Madoff?</p> <p>3 <b>A So, again, he called me. He told me,</b></p> <p>4 <b>You know, you put my name and the name of my</b></p> <p>5 <b>firm in the Offering Memorandum. I never</b></p> <p>6 <b>specifically allow you to do so. This puts me</b></p> <p>7 <b>in a difficult situation because, now, other</b></p> <p>8 <b>funds are complaining that I have given you some</b></p> <p>9 <b>allocation while I have limited their</b></p> <p>10 <b>allocation, and it creates problem and tension</b></p> <p>11 <b>between me and the other BLMIS feeder funds.</b></p> <p>12 <b>Accordingly, I would like you to remove this so</b></p> <p>13 <b>that there is no, basically, reason for them to</b></p> <p>14 <b>complain.</b></p> <p>15 <b>And also to, basically, limit what he</b></p> <p>16 <b>perceived to be, you know, the marketing of the</b></p> <p>17 <b>fund or -- you know, so that -- so my</b></p> <p>18 <b>understanding was that, in the way this was</b></p> <p>19 <b>created -- I mean, I think the situation</b></p> <p>20 <b>happened because, I believe, that some people in</b></p> <p>21 <b>Geneva who were marketing other Bernie Madoff</b></p> <p>22 <b>managed funds had been aware of the fact that</b></p> <p>23 <b>Square One existed, that Square One had been</b></p> <p>24 <b>allocated a capacity into BLMIS.</b></p> <p>25 <b>And they didn't want to see a</b></p>	<p>192</p> <p>1 it -- do you ask for the manager's permission to</p> <p>2 put their name on an Offering Memorandum?</p> <p>3 MR. FISCHER: Objection to form.</p> <p>4 You may answer.</p> <p>5 <b>A I have never put the name of any</b></p> <p>6 <b>manager in an Offering Memorandum except the one</b></p> <p>7 <b>of Bernie Madoff.</b></p> <p>8 Q So when -- if we look at our fund --</p> <p>9 our fund's investor materials, you wouldn't put</p> <p>10 the names of the managers --</p> <p>11 <b>A You asked me about the Offering</b></p> <p>12 <b>Memorandum. I told you about the Offering</b></p> <p>13 <b>Memorandum.</b></p> <p>14 Q I'm asking you generally. When --</p> <p>15 <b>A Generally? Okay.</b></p> <p>16 Q Yes, generally.</p> <p>17 When you, on behalf of the ART Fund,</p> <p>18 on behalf of the other funds that Partners</p> <p>19 Advisers manages, put an investment on your</p> <p>20 portfolio, do you seek permission from that</p> <p>21 manager to --</p> <p>22 <b>A Again, it is a different situation.</b></p> <p>23 <b>When I --</b></p> <p>24 Q Could I finish my question?</p> <p>25 <b>A Okay. Sure. Okay.</b></p>

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<p>193</p> <p>1 Q Thank you.</p> <p>2 When you and the -- on behalf of the</p> <p>3 ART Fund allocate investments into a manager, do</p> <p>4 you seek that manager's permission before you</p> <p>5 disclose that manager on an investor material</p> <p>6 for the ART Fund?</p> <p>7 A No, I don't.</p> <p>8 Q Okay.</p> <p>9 MR. MOLINA: Go to tab 18.</p> <p>10 A But if I may continue and clarify,</p> <p>11 again, the context is very different. You know,</p> <p>12 I am -- when we -- when it comes to the ART</p> <p>13 Fund, or any fund-of-funds situation, but</p> <p>14 specifically to the ART Fund, I -- Partners</p> <p>15 Advisers would be the investment manager of the</p> <p>16 ART Fund and all the subsequent funds will</p> <p>17 appear as investments in the ART Fund.</p> <p>18 Basically, funds managed by an investment</p> <p>19 manager or an investment advisor. So there</p> <p>20 would be a different layer.</p> <p>21 Again, when it comes -- and when it</p> <p>22 relates to Square One, it is a different</p> <p>23 situation and a different context because Square</p> <p>24 Asset Management appears as the investment</p> <p>25 manager of Square One Fund, and BLMIS is</p>	<p>195</p> <p>1 Q I'm going to show you what's been</p> <p>2 marked as Exhibit -- Trustee Exhibit Number 55.</p> <p>3 (Trustee Exhibit 55 marked for</p> <p>4 identification and attached to the transcript.)</p> <p>5 Q Mr. Estenne, do you recognize this</p> <p>6 document?</p> <p>7 A I recognize this document.</p> <p>8 Q What is this document?</p> <p>9 A This is a quantitative report issued</p> <p>10 by Partners Advisers, as stated by -- in --</p> <p>11 because of the logo -- on the track record of</p> <p>12 Square One Fund or comparable investment</p> <p>13 strategies and it was compared to the S&amp;P 500.</p> <p>14 Q That comparison goes back to, I</p> <p>15 guess, 1989 through October of 1999, yes?</p> <p>16 A January '90 to October '99, yes.</p> <p>17 Q So approximately ten years?</p> <p>18 A That's correct.</p> <p>19 Q What's the point of this comparison?</p> <p>20 A These were, you know, typical</p> <p>21 quantitative reports, which were, you know,</p> <p>22 generated on the push of a button by the system</p> <p>23 we have at Partners Advisers for, you know, any</p> <p>24 investment or potential investment that Partners</p> <p>25 Advisers wanted to invest in. I believe that,</p>
<p>194</p> <p>1 initially referred as the investment advisor.</p> <p>2 And so you have an investment manager, you have</p> <p>3 an investment advisor, and you have the fund.</p> <p>4 That's the structure of the relationship between</p> <p>5 the three entities.</p> <p>6 When it comes to ART, you have the</p> <p>7 fund, ART. You have the investment manager,</p> <p>8 which, in that case, was Partners Advisers. And</p> <p>9 the underlying hedge funds were investments.</p> <p>10 There were not investment managers of the ART</p> <p>11 Fund, nor were there investment advisors of the</p> <p>12 ART Fund, so it is a different setup.</p> <p>13 Q I understand your distinction. My</p> <p>14 question is, square One Fund invested</p> <p>15 exclusively under BLMIS's investment strategy,</p> <p>16 correct?</p> <p>17 A Correct.</p> <p>18 Q Wouldn't it be important to -- for</p> <p>19 Square One's investors to know that all of their</p> <p>20 assets would be invested with Madoff at BLMIS?</p> <p>21 MR. FISCHER: Object to form.</p> <p>22 You can answer.</p> <p>23 A I never said that they weren't or</p> <p>24 were. I said that I was asked for the name to</p> <p>25 be removed.</p>	<p>196</p> <p>1 subsequently, these type of reports were sent</p> <p>2 regularly to shareholders of Square One Fund.</p> <p>3 Q So Partners Advisers creates this</p> <p>4 document and Square One Fund sends it to its</p> <p>5 investors?</p> <p>6 A That's correct.</p> <p>7 Q Why is Partners Advisers involved in</p> <p>8 Square One's communications with its investors?</p> <p>9 A Because I was the director of Square</p> <p>10 One Fund and Square Asset Management. Square</p> <p>11 One Fund and Square Asset Management had no</p> <p>12 office, nor did they have any employee, as a</p> <p>13 director of these two entities, I was spending</p> <p>14 most of my time within Partners Advisers'</p> <p>15 office -- working time, I mean -- and that,</p> <p>16 accordingly, I was also, for convenience</p> <p>17 purpose, using, you know, the tools and</p> <p>18 resources of Partners Advisers in order to</p> <p>19 conduct personal business or business related to</p> <p>20 Square One Fund.</p> <p>21 Q And you generated this report?</p> <p>22 A I do not know if I generated this</p> <p>23 report.</p> <p>24 Q Did you ask someone to generate this</p> <p>25 report?</p>

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<p>197</p> <p>1 A I have no recollection of who --</p> <p>2 Q And --</p> <p>3 A -- generated the report.</p> <p>4 Q In -- as of October 1999, who else</p> <p>5 worked with you at Partners Advisers?</p> <p>6 A My understanding is that -- my</p> <p>7 recollection is that I was the only one, at the</p> <p>8 time.</p> <p>9 Q So if Partners Advisers was</p> <p>10 generating this report, it would have been you?</p> <p>11 MR. FISCHER: Object to form.</p> <p>12 You can answer.</p> <p>13 A If I -- yeah. There were other --</p> <p>14 again, this is, like, the other reports we</p> <p>15 mentioned. You know, there were other people</p> <p>16 sharing office with Partners Advisers, sharing</p> <p>17 the same information and the same -- I mean the</p> <p>18 same software.</p> <p>19 Q Do you see in the -- on that first</p> <p>20 page -- oh, and by the way, let me ask you, why</p> <p>21 compare it to the S&amp;P 500?</p> <p>22 A Because it is a common reference</p> <p>23 index.</p> <p>24 Q Why not the S&amp;P 100?</p> <p>25 A Because the S&amp;P 500 is more commonly</p>	<p>199</p> <p>1 occurs -- i.e., January '90 to October '99 --</p> <p>2 the fund was up or displayed a positive</p> <p>3 performance 97 percent of the time, and the</p> <p>4 index displayed a positive performance</p> <p>5 68 percent of the time.</p> <p>6 Q So you have been in the investment</p> <p>7 industry roughly 30 years. Is that fair to say?</p> <p>8 A 27. 27, yeah. A bit less, yeah.</p> <p>9 Q Have you ever seen -- other than</p> <p>10 BLMIS, have you ever seen another manager have</p> <p>11 this percentage of positive return -- months</p> <p>12 with positive returns over this period of time?</p> <p>13 MR. FISCHER: Object to form.</p> <p>14 You can answer.</p> <p>15 A I've seen managers with, yeah, I</p> <p>16 would say comparable returns in terms of their</p> <p>17 consistency, yes.</p> <p>18 Q You have seen managers post positive</p> <p>19 returns on 97 percent of the months over a</p> <p>20 ten-year period of time?</p> <p>21 A I cannot say specifically 97 and</p> <p>22 specifically 10, but the order of magnitude</p> <p>23 wouldn't be that different.</p> <p>24 Q Can you name one?</p> <p>25 A Mediagan Fund. Another one would be</p>
<p>198</p> <p>1 used.</p> <p>2 Q Why is it more commonly used?</p> <p>3 MR. FISCHER: Object to form.</p> <p>4 You can answer.</p> <p>5 A Why? Because it is a more well-known</p> <p>6 index. If you open the page of any newspaper,</p> <p>7 you -- you know, the reference is often the</p> <p>8 S&amp;P 500, not the S&amp;P 100.</p> <p>9 Q Do you see on that first page it</p> <p>10 says -- there has a -- there is a table titled</p> <p>11 "Consistency Analysis" on the left-hand side?</p> <p>12 A Yes.</p> <p>13 Q On that first line, it says,</p> <p>14 "Percentage up months." Do you see that?</p> <p>15 A I see that.</p> <p>16 Q What does "Percentage up months" mean</p> <p>17 to you?</p> <p>18 A The percentage of the month where</p> <p>19 performance was positive.</p> <p>20 Q You see that it says "Fund,</p> <p>21 97 percent" and "Index, 68 percent," yes?</p> <p>22 A That's correct.</p> <p>23 Q What does that mean to you?</p> <p>24 A It means that during the course of</p> <p>25 the period under -- during which the analysis</p>	<p>200</p> <p>1 the issue of valance.</p> <p>2 Q If you look at the next page -- well,</p> <p>3 sorry. Let me go back.</p> <p>4 On that first page, where it says the</p> <p>5 "Correlation Analysis," what is a correlation</p> <p>6 analysis?</p> <p>7 A It is the analysis -- it is the</p> <p>8 quantitative -- it is the quantitative numbers</p> <p>9 which tend to summarize the level of -- to what</p> <p>10 extent two similar distribution behave in the</p> <p>11 same way or display the same characteristics.</p> <p>12 Q So there is a number. It was a</p> <p>13 figure of 0.23, and that is to the work --</p> <p>14 A Yes.</p> <p>15 Q Correlation?</p> <p>16 A Yes.</p> <p>17 Q What does that mean to you?</p> <p>18 A It means that the correlation is low</p> <p>19 between the fund and the index.</p> <p>20 Q Why do you say that?</p> <p>21 A Because it is a low number.</p> <p>22 Q What is the range that a</p> <p>23 correlation --</p> <p>24 A 0, 1.</p> <p>25 Q 0 to 1?</p>

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<p>201</p> <p>1 <b>A That's correct.</b></p> <p>2 Q So if it is closer to 0, there is</p> <p>3 less correlation?</p> <p>4 <b>A That's correct.</b></p> <p>5 Q And if it is closer to 1, there is</p> <p>6 more correlation?</p> <p>7 <b>A That's correct.</b></p> <p>8 Q Now, if you can, turn the page for me</p> <p>9 to the next page. Do you see on the bottom</p> <p>10 right of this page there is a "Risk/Return</p> <p>11 Profiles" graphic?</p> <p>12 <b>A Yes.</b></p> <p>13 Q Do you see that it is charting the</p> <p>14 risk/return profiles of different indices and</p> <p>15 also, I guess, BLMIS.</p> <p>16 <b>A No.</b></p> <p>17 Q Well, it says "Square One Fund," but</p> <p>18 as -- I think you said earlier that this, this</p> <p>19 analysis, or when it -- when the word "fund"</p> <p>20 or -- is referenced in this analysis, it is</p> <p>21 combining -- it is looking at the performance of</p> <p>22 BLMIS generally. Is that fair to say?</p> <p>23 <b>A That's fair to say.</b></p> <p>24 Q Okay. So when there -- when you see</p> <p>25 this chart here, the big, red circle on the top</p>	<p>203</p> <p>1 well.</p> <p>2 Now, let's look at the risk profile.</p> <p>3 Would you agree with me that BLMIS had the</p> <p>4 lowest risk profile of all these indices?</p> <p>5 <b>A I agree that the volatility or the</b></p> <p>6 <b>standard deviation, which is about the same, was</b></p> <p>7 <b>the lowest for BLMIS for the dip point than for</b></p> <p>8 <b>the other indices, yes.</b></p> <p>9 Q Are you aware of any other investment</p> <p>10 that had a similar risk/return profile over a</p> <p>11 ten-year window, as BLMIS did in this graphic?</p> <p>12 MR. FISCHER: Object to form.</p> <p>13 You can answer.</p> <p>14 <b>A Again, my recollection and my</b></p> <p>15 <b>understanding today is that there were some.</b></p> <p>16 <b>They were few, but there were some, including</b></p> <p>17 <b>the two I mentioned.</b></p> <p>18 Q That would be over a ten-year window</p> <p>19 that would give you high returns and a low risk</p> <p>20 profile?</p> <p>21 MR. FISCHER: Object to form. Asked</p> <p>22 and answered.</p> <p>23 You can answer.</p> <p>24 <b>A They would give similar return to</b></p> <p>25 <b>these two indices and the low standard</b></p>
<p>202</p> <p>1 left of this chart -- on the bottom, it says</p> <p>2 "Square One Fund Ltd.," but you understand that</p> <p>3 to be BLMIS, generally?</p> <p>4 <b>A That's correct.</b></p> <p>5 Q Okay. And then the other points in</p> <p>6 this graphic are from different indices, yes?</p> <p>7 <b>A That's correct.</b></p> <p>8 Q So this profile chart shows that</p> <p>9 BLMIS had, over this ten-year window, the</p> <p>10 highest or one of the highest return profiles,</p> <p>11 yes?</p> <p>12 MR. FISCHER: Object to form.</p> <p>13 You can answer.</p> <p>14 <b>A The return profile was similar to two</b></p> <p>15 <b>indices.</b></p> <p>16 Q Those two indices are the -- I guess</p> <p>17 it's difficult to tell with --</p> <p>18 <b>A Yeah.</b></p> <p>19 Q -- with the coloring.</p> <p>20 <b>A I would guess it is the S&amp;P 500 and</b></p> <p>21 <b>the MSCI Europe. Do you agree with me? These</b></p> <p>22 <b>two?</b></p> <p>23 Q That is about as good as I --</p> <p>24 <b>A Okay. Yeah.</b></p> <p>25 Q That is -- that would be my guess as</p>	<p>204</p> <p>1 <b>deviation, yes.</b></p> <p>2 Q If you turn the page, there is a</p> <p>3 "Linear Correlation Analysis" graphic. Do you</p> <p>4 see that?</p> <p>5 <b>A Yes.</b></p> <p>6 Q And on the left part of this graphic,</p> <p>7 there is a -- there is various metrics. What is</p> <p>8 an R-Squared? What is that?</p> <p>9 <b>A You're testing my statistics here. I</b></p> <p>10 <b>believe it is a measure of dispersion around the</b></p> <p>11 <b>group regression line. I'm not sure what it is.</b></p> <p>12 <b>I would think it is that, but I'm not sure.</b></p> <p>13 Q This, this graphic, this scatter plot</p> <p>14 diagram on the -- on -- that's in this linear</p> <p>15 correlation analysis. Do you see it?</p> <p>16 <b>A Yes.</b></p> <p>17 Q What does that graphic mean to you?</p> <p>18 <b>A Well, for each -- each data point</b></p> <p>19 <b>represents, basically, you know, a combination</b></p> <p>20 <b>of these two numbers, i.e., the return of the</b></p> <p>21 <b>fund on any given month and the return of the</b></p> <p>22 <b>index on any given month.</b></p> <p>23 Q Right.</p> <p>24 Let me just quickly go to the page --</p> <p>25 or two -- sorry -- the second-to-last page that</p>

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<p>205</p> <p>1 has the returns analysis. It is the one ending 2 with 5933 in the bottom right-hand corner. 3 <b>A Yeah.</b> 4 Q This is what -- this chart tracks the 5 reported performance of BLMIS and the S&amp;P 500 6 over this ten-year window, yes? 7 <b>A Yes.</b> 8 Q Okay. So if we look, for instance, 9 at -- let's look at August of 1998. Do you see 10 that on that month the fund -- again, BLMIS 11 reported a performance of 0.28 percent for that 12 month? 13 <b>A Yes.</b> 14 Q And then the index, in this case the 15 S&amp;P 500, reported a loss of 14.58 percent. Is 16 that your read of this? 17 <b>A Yes.</b> 18 Q And we know it is a loss because it 19 is in red and it has the -- 20 <b>A Minus.</b> 21 Q -- the minus symbol? 22 <b>A Yes.</b> 23 Q So we talked earlier about the S&amp;C -- 24 the SSC strategy, or what I call "the SSC 25 strategy," which is the split-strike conversion</p>	<p>207</p> <p>1 <b>mimic the behavior of the S&amp;P 100, there were</b> 2 <b>also an option structure around it, which was</b> 3 <b>designed to limit and protect the negative</b> 4 <b>performance of the basket. And so it is a</b> 5 <b>possibility that if the investment strategy was,</b> 6 <b>indeed, invested in this split-strike conversion</b> 7 <b>strategy and not in treasury bills or treasury</b> 8 <b>bonds that it was protracted because of the</b> 9 <b>option structure.</b> 10 Q In 1998, or just generally, if you 11 invested your money in treasury bills, what 12 return would you expect to have over the course 13 of a year on that investment? 14 MR. FISCHER: Object to form. 15 You can answer. 16 <b>A I don't remember.</b> 17 Q You talked about how when you worked 18 at -- in your prior experience, you oversaw 19 investments in treasury bills. You have been 20 working in this industry for 30 years. If 21 someone asks you, What rate of return should I 22 expect generally from U.S. treasury bills, what 23 would you say? 24 MR. FISCHER: Object to form. 25 You can answer.</p>
<p>206</p> <p>1 strategy. And we talked about how there was -- 2 the strategy was supposed to mimic the market. 3 So my question is -- 4 <b>A No, the strategy -- well, okay.</b> 5 Q My question to you simply is, how do 6 you reconcile that when the market was down 7 almost 14.5 percent in this particular month 8 Madoff reported a positive return of 9 0.28 percent? 10 MR. FISCHER: Object to form. 11 You can answer. 12 <b>A I'm not sure about the details of</b> 13 <b>these specific months. I don't know the details</b> 14 <b>of these specific months. But there are two</b> 15 <b>elements which I understand could explain this</b> 16 <b>difference. The first one is that the</b> 17 <b>split-strike conversion strategy was not always</b> 18 <b>on. BLMIS had discretion about when he was</b> 19 <b>putting the strategy on and when he was in</b> 20 <b>T-bills. So one possibility was that the BLMIS</b> 21 <b>invested strategy was totally proportionally</b> 22 <b>invested in T-bills during that month. That's</b> 23 <b>my explanation.</b> 24 The other explanation is that, 25 although it was one basket created in order to</p>	<p>208</p> <p>1 <b>A I don't remember -- what the rate</b> 2 <b>was.</b> 3 Q Would you expect it to be a large 4 return? 5 MR. FISCHER: Object to form. 6 You can answer. 7 <b>A What is a large return? I don't</b> 8 <b>remember what it was. Period. I don't</b> 9 <b>remember.</b> 10 Q If you're -- 11 <b>A But we can look at tables. I'm sure</b> 12 <b>they -- they are exist -- they exist.</b> 13 Q Would you expect it to be 12 percent 14 a year? 15 MR. FISCHER: Object to form. 16 You may answer. 17 <b>A No.</b> 18 Q No? Would you expect it to be 19 6 percent a year? 20 MR. FISCHER: Object to form. 21 You may answer. 22 <b>A Again, I don't know what the number</b> 23 <b>was. I don't remember what the prevailing</b> 24 <b>interest rate was on the treasury bonds and</b> 25 <b>treasury bills at that time. But what I can</b></p>

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<p>209</p> <p>1 tell you is that I'm surprised that you don't</p> <p>2 point out the fact that, although the index was</p> <p>3 up 6 percent, in the next month, the strategy</p> <p>4 was only up 1 percent, and that, over the course</p> <p>5 of '98, the strategy underperformed the S&amp;P by</p> <p>6 almost half. I think that's worth noting as</p> <p>7 well.</p> <p>8 Q So there was just -- this mark --</p> <p>9 this strategy as reported here, as you just</p> <p>10 astutely pointed out, didn't really correlate to</p> <p>11 what the S&amp;P 500 was doing, correct?</p> <p>12 MR. FISCHER: Object to form.</p> <p>13 You may answer.</p> <p>14 A The correlation number was 0.33.</p> <p>15 Q Right. So if the market goes up by</p> <p>16 6 percent, that doesn't necessarily mean that</p> <p>17 BLMIS would go up by 6 percent, right?</p> <p>18 MR. FISCHER: Object to form.</p> <p>19 You may answer.</p> <p>20 A That is my understanding.</p> <p>21 MR. MOLINA: If you could just let me</p> <p>22 finish my question before you make your</p> <p>23 objection, that would be great.</p> <p>24 MR. FISCHER: I am.</p> <p>25 MR. MOLINA: No, you're timing it --</p>	<p>211</p> <p>1 Q The question is, Mr. Estenne, did you</p> <p>2 ever -- do you remember any investor ever giving</p> <p>3 you feedback on any of these quantitative</p> <p>4 reports that you would send to them?</p> <p>5 A No.</p> <p>6 Q Did anyone ever ask you what your</p> <p>7 thoughts were on these reports?</p> <p>8 A No.</p> <p>9 Q Did you ever meet with investors and</p> <p>10 walk them through this report?</p> <p>11 MR. FISCHER: Object to form.</p> <p>12 You can answer.</p> <p>13 A I don't remember.</p> <p>14 Q Did you have anyone other -- let me</p> <p>15 ask it differently.</p> <p>16 Did anyone at Partners Advisers ever</p> <p>17 talk to you about these quantitative reports?</p> <p>18 MR. FISCHER: Object to form.</p> <p>19 You can answer.</p> <p>20 A Not that I remember.</p> <p>21 Q So you said earlier you generated</p> <p>22 these with the press of a button.</p> <p>23 A That's correct.</p> <p>24 Q Could you expand on that? What was</p> <p>25 the software that you were using?</p>
<p>210</p> <p>1 just watch it. I -- you've done it before.</p> <p>2 I -- just a friendly reminder.</p> <p>3 MR. FISCHER: I disagree.</p> <p>4 BY MR. MOLINA:</p> <p>5 Q Okay, now, let's do -- well, let me</p> <p>6 ask you, did anyone ever -- when you sent this</p> <p>7 to the Square One investors, did they ever --</p> <p>8 did anyone ever comment about this document?</p> <p>9 A I'm not sure that this particular</p> <p>10 report was or wasn't sent to investors in Square</p> <p>11 One.</p> <p>12 Q You said earlier that your</p> <p>13 understanding of this document was that Partners</p> <p>14 Advisers would generate it, and Square One would</p> <p>15 send it to investors. I can try to find the</p> <p>16 specific --</p> <p>17 A Yeah, not the specific reports,</p> <p>18 but --</p> <p>19 Q Okay.</p> <p>20 A -- you know, subsequent reports, yes.</p> <p>21 MR. FISCHER: Can you just let him</p> <p>22 finish his answer. You said "Okay" as he was</p> <p>23 answering. All right?</p> <p>24 Q So then the question is --</p> <p>25 MR. FISCHER: Yes? Marco, yes?</p>	<p>212</p> <p>1 A It was a software which has been</p> <p>2 developed internally. It was basically Excel</p> <p>3 with some macros.</p> <p>4 Q Okay. And did you -- let me ask it</p> <p>5 differently.</p> <p>6 Who would input this data into that</p> <p>7 software?</p> <p>8 MR. FISCHER: Object to form.</p> <p>9 You can answer.</p> <p>10 A Someone working either for Parly</p> <p>11 Company or Partners Advisers.</p> <p>12 MR. MOLINA: Can I get tab 19,</p> <p>13 please.</p> <p>14 MS. STORK: Uh-huh. This is Trustee</p> <p>15 Exhibit 56.</p> <p>16 MR. MOLINA: Yeah.</p> <p>17 (Trustee Exhibit 56 marked for</p> <p>18 identification and attached to the transcript.)</p> <p>19 Q Mr. Estenne, I have just handed you</p> <p>20 what is -- what has been marked as Trustee</p> <p>21 Exhibit Number 56. Do you recognize this</p> <p>22 document?</p> <p>23 A I see it is a document -- it is a fax</p> <p>24 which was issued by myself on the Partners</p> <p>25 Advisers stationery to the attention of Frank</p>

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<p style="text-align: right;">213</p> <p><b>1 DiPascali.</b></p> <p>2 Q In the -- in this fax, you marked --</p> <p>3 there is -- at the top, there is different boxes</p> <p>4 that you can mark, and you marked the box</p> <p>5 "urgent." Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Do you remember why you marked this</p> <p>8 "urgent"?</p> <p>9 A No.</p> <p>10 Q It says in here, "Dear Mr. DiPascali,</p> <p>11 thank you for your prompt fax dated July 2nd in</p> <p>12 which you give me an update on the June-end NAV</p> <p>13 of our account with you." Is this referring to</p> <p>14 the Square One account?</p> <p>15 A That's correct.</p> <p>16 Q Then you say, "I hope you understand</p> <p>17 my recent faxes were intended to straighten out</p> <p>18 some teething problems regarding our</p> <p>19 communication and your reporting. In no way did</p> <p>20 I intend to unduly trouble you. It is just that</p> <p>21 I have certain reporting constraints imposed on</p> <p>22 me by the fund's shareholders. I hope you</p> <p>23 understand."</p> <p>24 What were you referring to here?</p> <p>25 A I'm referring to -- I guess it is an</p>	<p style="text-align: right;">215</p> <p>1 see that?</p> <p>2 A Yes.</p> <p>3 Q What do you understand is happening</p> <p>4 here?</p> <p>5 A Well, I was often comparing the</p> <p>6 performance of Square One Fund to the</p> <p>7 performance of other BLMIS managed funds, and</p> <p>8 there was a difference there, which I was</p> <p>9 surprised about. And I wanted to make sure that</p> <p>10 there was no mistakes or misunderstanding.</p> <p>11 Q Why would it come as a surprise to</p> <p>12 you that Square One's NAV for the month of June</p> <p>13 differs from similar products managed by BLMIS?</p> <p>14 A The surprise was not about the fact</p> <p>15 that the performance was not the same. The</p> <p>16 surprise was about the fact that the performance</p> <p>17 was dissimilar by such an order of magnitude.</p> <p>18 Q And why would that be surprising?</p> <p>19 A Because if they -- my understanding</p> <p>20 was that the investment strategy implemented by</p> <p>21 BLMIS was similar and that, accordingly, my</p> <p>22 expectation was that the returns generated by</p> <p>23 the strategy could be different, but not</p> <p>24 dissimilar by such a large extent.</p> <p>25 Q And that's why you asked him in the</p>
<p style="text-align: right;">214</p> <p><b>1 introduction to what's below.</b></p> <p>2 Q Well, let me ask you specifically,</p> <p>3 what were these "teething problems" regarding</p> <p>4 your communication and your reporting?</p> <p>5 A I don't remember specifically.</p> <p>6 Q Then it says that this is -- that you</p> <p>7 have certain reporting constraints imposed on</p> <p>8 you by the fund's shareholders. What reporting</p> <p>9 constraints are you referring to?</p> <p>10 A Well, the fund was expected to issue</p> <p>11 a monthly net asset value to investors. I</p> <p>12 guess that is -- I would guess that is a -- that</p> <p>13 is the constraints I'm referring to.</p> <p>14 Q All right. And then you say that --</p> <p>15 you're comparing -- you're saying that, The</p> <p>16 value that you give me in your fax is</p> <p>17 USD 2,000- -- 2,206,622 compared with a total</p> <p>18 value of USD 2,116,628 at the end of May. And</p> <p>19 then you write that this represents a return for</p> <p>20 the month of June of 3.97 percent. Do you see</p> <p>21 that?</p> <p>22 A Yes.</p> <p>23 Q But then you say, "This comes as a</p> <p>24 surprise to me as similar products you manage</p> <p>25 returned around 1.50 percent for June." Do you</p>	<p style="text-align: right;">216</p> <p>1 last paragraph, "Could you please confirm to me</p> <p>2 that both numbers are correct and that,</p> <p>3 consequently, the 3.97 percent return is also</p> <p>4 correct?"</p> <p>5 A That's correct, because, you know, I</p> <p>6 had to make sure that the asset value produced</p> <p>7 by Square One Fund, as the director of Square</p> <p>8 One Fund, was correct. And so I wanted to make</p> <p>9 sure that there was no error or</p> <p>10 misunderstanding.</p> <p>11 Q Did he ever respond to your fax?</p> <p>12 A I don't remember. If I had to guess,</p> <p>13 I would think so, but I don't remember.</p> <p>14 Q Do you remember if -- do -- did you</p> <p>15 ever -- now that you have had a chance to read</p> <p>16 this fax, do you recall what the reason was for</p> <p>17 this discrepancy?</p> <p>18 A I don't remember what the difference</p> <p>19 was, no.</p> <p>20 Q What -- I mean, obviously, we</p> <p>21 understand now. The whole world knows that --</p> <p>22 what Mr. Madoff was doing, but at that time,</p> <p>23 what are the possibilities?</p> <p>24 MR. FISCHER: Object to form.</p> <p>25 You may answer.</p>



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<p>217</p> <p>1 A I can guess -- well, I'm not sure 2 that I can put myself back to, you know, the 3 exact situation of that time. And by the way, I 4 don't know what the date was here. I guess it 5 was around July of -- I'm not sure what year. 6 But this being said, you know, I can 7 guess if you ask me to guess, you know. It 8 was -- I mean, the total value, which is stated 9 here, is 2 million. So it is a very small 10 number. My guess would be that it was -- 11 that was -- that happened, you know, very early 12 on because, like I said, this number refers to 13 the total value of the account. 14 And, you know, one explanation I 15 could have today about the discrepancy was that, 16 you know, the amount was so small compared to 17 the amount managed by other BLMIS feeder funds 18 that by trading such small amounts compared to 19 much larger amounts, there was some, you know, 20 trading friction, which could explain the 21 difference. That would be my guess today as for 22 the explanation. 23 Q I think we should probably just take 24 a -- well, let me ask you two more -- three more 25 questions, then we can go on a break.</p>	<p>219</p> <p>1 A I was invested in funds. When I say 2 "I," I mean Partners Advisers was managing 3 portfolios of hedge funds. Many of these hedge 4 funds or their -- many of these hedge funds or 5 their administrator were, indeed, reporting 6 performance through fax. But, you know, not -- 7 early 2000, you know, these didn't exist. That 8 was a long, long time ago. I used to have, you 9 know, brown hair. 10 Q Did e-mail exist? 11 A Barely. 12 MR. MOLINA: All right. I think we 13 can take a break. What's the time? 14 THE VIDEOGRAPHER: Okay. We are 15 going off the record. The time is 3:52 p.m. 16 (A recess was taken.) 17 THE VIDEOGRAPHER: Okay. We're back 18 on the record. The time is 4:12 p.m. 19 BY MR. MOLINA: 20 Q Mr. Estenne, we talked earlier about 21 the ART Fund. You know that the ART Fund 22 included Square One Fund in its investment 23 portfolio for some time, correct? 24 A Correct. 25 Q So the ART Fund -- I believe you said</p>
<p>218</p> <p>1 Mr. Madoff and BLMIS sent trade 2 statements by facsimile to you, Square One, 3 correct? 4 A Trade statements. What was the other 5 word? 6 Q The performance documents that -- 7 that BLMIS sent Square One, how were they sent? 8 A By fax. 9 Q And that was the case from 1998 10 through 2008, yes? 11 A That's my recollection, yes. 12 Q Did you ever ask BLMIS to send those 13 documents electronically? 14 A No. 15 Q Why not? 16 A It didn't make any difference to me. 17 And after a while, the fax I had was 18 transferred, I guess, into an electronic 19 document. I believe that, after a while, that's 20 what we had internally. 21 Q Was it the practice -- let's say in 22 2008, how did managers typically send 23 performance trade statements to investors? 24 MR. FISCHER: Object to form. 25 You can answer.</p>	<p>220</p> <p>1 it was launched officially in early 2001, yes? 2 A Correct. 3 Q And I'm sure you know that by -- that 4 Square One was in its investment portfolio from 5 the time of its creation to sometime in late 6 2002, yes? 7 A That sounds about right, yes. 8 Q Okay. What do you remember about the 9 circumstances that led the ART Fund to divest 10 from Square One in 2002? 11 A My recollection is the following, 12 in -- I believe that in Q3 2002 the Bristol 13 Fund, which was included in some -- at least in 14 some of the ART portfolios, displayed a 15 significant loss in its performance. And it 16 appeared that the manager of the Bristol Fund 17 had some fraudulent activity. This obviously 18 came as a big shock to myself, but also to the 19 investment team of Partners Advisers at the 20 time. 21 And, accordingly, Partners Advisers 22 decided to review the investment parameters 23 under which it was operating the ART Fund and 24 made a number of changes to ART Fund 25 investments. Among these -- these changes</p>

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<p style="text-align: right;">221</p> <p>1 was -- and the different redemption which  2 happened -- was the redemption of Square One.  3 Q And you mentioned -- so you -- with  4 Bristol, you mentioned that there was some  5 fraudulent activity. Do you remember what that  6 activity was?  7 A My understanding was -- well, my  8 recollection is -- or was, and still is, that  9 the manager had incurred a loss in the portfolio  10 managed by Bristol and that they mismarked the  11 book.  12 Q Is it your understanding that the  13 manager was able to mismark the books because  14 were insufficient checks and balances on the NAV  15 calculation process for that fund?  16 A That's correct.  17 Q And you said that when that happened,  18 ART Fund reviewed its investments and its  19 process and decided to divest from Square One  20 Fund in the -- after the third quarter of 2002,  21 yes?  22 A That's correct.  23 Q Because it had -- did ART Fund have  24 similar concerns that there were not sufficient  25 checks and balances on the NAV calculation for</p>	<p style="text-align: right;">223</p> <p>1 custodial function. And also that books were  2 not price -- independently priced, yes.  3 Q You -- I'm sorry. You said "fat" --  4 and I -- I am --  5 A Fat tail.  6 Q Can you spell that.  7 A F-A-T, whole new word, T-A-I-L.  8 Q Fat tail.  9 A Meaning if you have a bell curve  10 distribution --  11 Q Uh-huh.  12 A -- usually, at the end of the  13 distribution, on the positive -- on the positive  14 side or on the negative side, you have a very  15 minimal probability of an extreme behavior. A  16 "fat tail" means that especially on the left  17 side, which is the losing side, instead of  18 having a normal distribution, you have something  19 bigger than a normal distribution, higher, which  20 means you have a higher probability of a  21 disaster loss.  22 Q And so it was Partners Advisers'  23 opinion in -- at this time that Square One Fund  24 had a fat tail?  25 A No. It was Partner Advisers' opinion</p>
<p style="text-align: right;">222</p> <p>1 Square One Fund?  2 A It was decided by Partners Advisers  3 that Partners Advisers would refrain from  4 investing in funds where the -- there was a  5 significant what's called fat tail, meaning that  6 there was a possibility of a very significant  7 loss due to either, you know, leverage or the  8 behavior of the instrument included in the  9 strategy. That would be one.  10 It was also decided that -- because  11 that was the case with Bristol, Bristol used to  12 manage leverage strategies, meaning that the  13 risk of a big loss could happen. And, also, a  14 complex instrument called mortgage-backed  15 securities, which could have a small probability  16 of a sudden catastrophe clause. So we exited  17 this type of strategies. Most -- it was mostly  18 fixed-income-related strategies.  19 The other element and the other  20 lesson learned regarding the way Partners  21 Advisers decided to manage ART Fund was that we  22 decided to redeem from funds where we felt that  23 there was the -- enough separation of functions  24 on duty for lag between investment management  25 function, the brokerage function and the</p>	<p style="text-align: right;">224</p> <p>1 that there was no separate -- no separation of  2 duty -- well, it was -- no -- that the  3 separation -- the non-separation of duty within  4 Square One between BLMIS acting as a broker,  5 investment advisor and custodian was -- the  6 separation of these duties were not enough and  7 that they became -- the lack of separation of  8 duty was -- it became not acceptable to Partners  9 Advisers' new investment guidelines. That's one  10 element.  11 The other element which was important  12 to us at that time when it came to the decision  13 of redeeming, specifically, the investment from  14 ART into Square One was related to the fact that  15 Partners Advisers was presenting itself to its  16 investors in -- and as a non-conflicted and  17 neutral assessor of the pros and cons of the  18 different funds. And, obviously, the fact that  19 there was a related party to Square One and  20 making some money because ART was invested in  21 Square One wasn't consistent with this  22 positioning. And we felt that because we were  23 conflicted, this conflict needed to be,  24 basically, suppressed.  25 Q And just so I understand, when you</p>

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<p>225</p> <p>1 talked earlier about the concerns about the lack 2 of separation of duties -- 3 <b>A Yes.</b> 4 Q -- with respect to Square One Fund, 5 the reason why that was concerning is because it 6 could lead to a blowup in the investment, 7 correct? 8 MR. FISCHER: Object to form. 9 You may answer. 10 <b>A The lack of separation of duty was an</b> 11 <b>element which could potentially facilitate a</b> 12 <b>fraud or a cooking of the books --</b> 13 Q Uh-huh. 14 <b>A -- or the performance of the</b> 15 <b>investment strategy. It was not in itself an</b> 16 <b>element of fraud.</b> 17 Q Well, you end -- it ended up being a 18 really wise move by Partners Advisers, 19 obviously, with -- we know what happened years 20 later. 21 MR. FISCHER: Object to form. 22 Q Did -- were there any other concerns 23 that Partners Advisers had when it made its 24 decision to divest from Square One? 25 <b>A Not that I remember. These were, in</b> </p>	<p>227</p> <p>1 said, similarly, that he didn't feel comfortable 2 with BLMIS from a diligence perspective. Did 3 he -- has he told that to you -- did he tell 4 that to you in the early 2000s? 5 MR. FISCHER: Object to form. 6 You may answer. 7 <b>A I don't remember what he has told or</b> 8 <b>hasn't told me. My recollection is that, you</b> 9 <b>know, he was not very good at, you know, due --</b> 10 <b>due diligencing hedge fund managers in general,</b> 11 <b>and so --</b> 12 Q That he was not very good? 13 <b>A He was not very good.</b> 14 Q But he got this one right, though, 15 right? 16 MR. FISCHER: Object to form. 17 Q Let me ask you, after Partners 18 Advisers -- and let me back up. 19 Did Partners Advisers recommend the 20 divestment of Square -- did -- sorry. Let me 21 try that again. 22 The ART Fund's divestment from Square 23 One, it was based upon a recommendation from 24 Partners Advisers, correct? 25 <b>A No. It was the -- no. The</b> </p>
<p>226</p> <p>1 <b>my recollection, the two key elements.</b> 2 Q So you know we have spoken to former 3 colleagues of yours. So we spoke to Mr. Jérôme 4 Müller, and he -- and you're aware that we spoke 5 to him earlier this year, yes? 6 <b>A Yes.</b> 7 Q And he testified that -- and I'm 8 paraphrasing, of course -- that he never felt 9 comfortable with BLMIS from a diligence 10 perspective. Do you remember him telling you 11 that when you worked with him in the early 12 2000s? 13 MR. FISCHER: Object to form. You 14 can answer. 15 <b>A That's a very vague statement. I</b> 16 <b>don't remember that he was never comfortable.</b> 17 <b>No, I don't remember that.</b> 18 Q Do you remember any discussions you 19 had with Mr. Müller about BLMIS in the early 20 2000s. 21 <b>A Well, my recollection that -- was</b> 22 <b>that, you know, he wasn't comfortable because of</b> 23 <b>the separation of functions.</b> 24 Q We also spoke to Peter Fletcher, who 25 you referenced a couple times today. And he </p>	<p>228</p> <p>1 <b>redemption of ART from its investment in Square</b> 2 <b>One was based not on the recommendation, but on</b> 3 <b>instruction from Partners Advisers to the</b> 4 <b>administrator of ART Fund.</b> 5 Q Okay. So Partners Advisers 6 instructed the ART Fund to divest from Square 7 One, and the ART Fund did so soon thereafter? 8 <b>A That's my recollection.</b> 9 Q After that divestment, did Partners 10 Advisers ever consider investing the ART Fund in 11 a Madoff product? 12 <b>A No.</b> 13 MR. MOLINA: Let me -- could you give 14 me tab 8. 15 MS. STORK: This will be Trustee 16 Exhibit 57. 17 (Trustee Exhibit 57 marked for 18 identification and attached to the transcript.) 19 Q All right, Mr. Estenne, I'm handing 20 you what has been referenced as Trustee Exhibit 21 Number 57. It is a long document. I'm going to 22 ask you one question about it, so I'll let you 23 get familiarized with the document. 24 <b>A It is, indeed, a long document.</b> 25 Q It is a long document. </p>

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<p style="text-align: right;">229</p> <p>1 (Witness reviewing document.)</p> <p>2 Q Do you recognize this document?</p> <p>3 MR. FISCHER: Have you had a chance</p> <p>4 to reacquaint yourself with the document, Luc?</p> <p>5 THE WITNESS: It's a long document,</p> <p>6 but --</p> <p>7 MR. FISCHER: Marco, I recognize that</p> <p>8 this came out of our production, and maybe</p> <p>9 somebody on my team knows this better than I do,</p> <p>10 but I just take note of the fact that midway</p> <p>11 through the document the pagination resets and</p> <p>12 it looks like the document itself sort of merges</p> <p>13 into something else, so like --</p> <p>14 MR. MOLINA: Uh-huh.</p> <p>15 MR. FISCHER: -- at 18144, it is</p> <p>16 page 19, and then at 18145, it is page 3, and</p> <p>17 then page 3 again, then page 3 again -- or</p> <p>18 page -- no, that was page 4. Then page --</p> <p>19 anyway, I don't know if you guys have done</p> <p>20 detective work and figured out if this is a</p> <p>21 Frankenstein document or if this is one</p> <p>22 document.</p> <p>23 MR. MOLINA: It -- this was -- the</p> <p>24 way it is printed is the way it was presented --</p> <p>25 MR. FISCHER: Okay.</p>	<p style="text-align: right;">231</p> <p>1 Partners Advisers or the ART Fund, and Partners</p> <p>2 Advisers or the ART Fund would then answer the</p> <p>3 prompts in the questionnaire, correct?</p> <p>4 <b>A That's correct.</b></p> <p>5 Q Okay. If I can direct you to -- and</p> <p>6 I just have one question on this whole document.</p> <p>7 It is the Bates -- it is a page with a Bates</p> <p>8 number ending in 18156. And then, specifically,</p> <p>9 I'm asking you to look at what's number 9, and</p> <p>10 I'm just going to read it into the record.</p> <p>11 It says, "Is the fund invested in</p> <p>12 Madoff? If so, please provide percentage per</p> <p>13 fund." And the response is, "No. The fund is</p> <p>14 not and never will be invested in Madoff." Do</p> <p>15 you see that?</p> <p>16 <b>A I see that.</b></p> <p>17 Q Do you -- were you involved in the</p> <p>18 drafting of this response?</p> <p>19 <b>A I don't remember.</b></p> <p>20 Q Is that an accurate statement that --</p> <p>21 what was written at that time, in 2004?</p> <p>22 <b>A It is.</b></p> <p>23 Q Okay. So let's turn to --</p> <p>24 MR. MOLINA: Could you give me tab --</p> <p>25 the --</p>
<p style="text-align: right;">230</p> <p>1 MR. MOLINA: -- produced to us. We</p> <p>2 have not, obviously, altered it, or --</p> <p>3 MR. FISCHER: No, I wasn't suggesting</p> <p>4 that.</p> <p>5 MR. MOLINA: Yeah, no, no. I know</p> <p>6 you're -- I know you're not. I'm not suggesting</p> <p>7 you were saying that. I am just saying this is</p> <p>8 the way it came to us, so we --</p> <p>9 MR. FISCHER: Okay.</p> <p>10 MR. MOLINA: -- we don't have any</p> <p>11 explanation for the pagination --</p> <p>12 MR. FISCHER: Okay.</p> <p>13 MR. MOLINA: -- inconsistencies.</p> <p>14 Q So, Mr. Estenne, do you recognize</p> <p>15 this document?</p> <p>16 <b>A I -- yeah, it seems to be a Fund of</b></p> <p>17 <b>Hedge Fund Due Diligence Questionnaire, which</b></p> <p>18 <b>has been filled in by Partners Advisers or</b></p> <p>19 <b>ART -- on behalf of ART for Lloyd's Bank.</b></p> <p>20 Q Right. All right, so this is a -- so</p> <p>21 due diligence questionnaires are fairly common</p> <p>22 in your industry, correct?</p> <p>23 <b>A Correct.</b></p> <p>24 Q So in -- as you were saying, the --</p> <p>25 Lloyd's would send this questionnaire to</p>	<p style="text-align: right;">232</p> <p>1 MS. STORK: Yep.</p> <p>2 MR. MOLINA: Yeah, I think it is</p> <p>3 tab 26.</p> <p>4 MS. STORK: Uh-huh. This is</p> <p>5 Exhibit 58. Here's the attachment.</p> <p>6 (Trustee Exhibit 58 marked for</p> <p>7 identification and attached to the transcript.)</p> <p>8 Q Before I -- before we go to this</p> <p>9 document, I forgot to ask you -- well, we'll get</p> <p>10 to that. Let me hand you, now, what's been</p> <p>11 marked as Trustee Exhibit Number 58.</p> <p>12 <b>A (Witness reviewing document.)</b></p> <p>13 Q Do you recognize this document,</p> <p>14 Mr. Estenne?</p> <p>15 <b>A It is a printout of an e-mail. Yes.</b></p> <p>16 Q Okay. And this e-mail is from you,</p> <p>17 yes?</p> <p>18 <b>A That's what is written, yes.</b></p> <p>19 Q And it is to someone named Carlo</p> <p>20 Luigi Grabau, yes?</p> <p>21 <b>A That's correct.</b></p> <p>22 Q Who is Mr. Grabau?</p> <p>23 <b>A My recollection is that Carlo Luigi</b></p> <p>24 <b>Grabau, at that time, was a -- an employee of</b></p> <p>25 <b>ALENA in Belgium.</b></p>

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<p>233</p> <p>1 Q And what is ALENA?</p> <p>2 A <b>ALENA was a multi-family office.</b></p> <p>3 Q And ALENA invested in the ART Fund?</p> <p>4 A <b>I don't remember if they did.</b></p> <p>5 Q And the subject line here is</p> <p>6 "Madoff," yes?</p> <p>7 A <b>That's, indeed, what's written.</b></p> <p>8 Q Oh, I should have -- also state,</p> <p>9 because it's important, the date here is</p> <p>10 March 14, 2003, yes?</p> <p>11 A <b>That's correct.</b></p> <p>12 Q So this is roughly just a few months</p> <p>13 after the ART Fund divested from Square One,</p> <p>14 yes?</p> <p>15 A <b>That's correct.</b></p> <p>16 Q And you're attaching to this e-mail</p> <p>17 two articles, correct?</p> <p>18 A <b>That's correct.</b></p> <p>19 Q The first is a MARHedge article</p> <p>20 titled "Madoff tops charts; skeptics ask how,"</p> <p>21 yes?</p> <p>22 A <b>That's correct.</b></p> <p>23 Q That was from May 2001?</p> <p>24 A <b>That's correct.</b></p> <p>25 Q Then the second article is from</p>	<p>235</p> <p>1 You can answer.</p> <p>2 A <b>It certainly -- yeah, it -- yeah, I</b></p> <p>3 <b>think it raises some questions, yes.</b></p> <p>4 Q And you don't remember the context</p> <p>5 behind this particular correspondence with</p> <p>6 Mr. Grabau?</p> <p>7 A <b>Not specifically. I can guess, but I</b></p> <p>8 <b>don't remember.</b></p> <p>9 Q What do you remember?</p> <p>10 A <b>I don't remember, but I can -- I</b></p> <p>11 <b>could guess. So I don't remember the context,</b></p> <p>12 <b>but I could guess or speculate what the context</b></p> <p>13 <b>would have been.</b></p> <p>14 Q What would the context have been?</p> <p>15 MR. FISCHER: Object to form.</p> <p>16 A <b>The context -- my speculation is</b></p> <p>17 <b>that, I guess, we discussed Madoff and that I</b></p> <p>18 <b>told him about some -- he asked me if -- I would</b></p> <p>19 <b>guess that, you know, he -- we -- the subject of</b></p> <p>20 <b>Madoff came and the subject of articles came and</b></p> <p>21 <b>that the subject of these articles came and that</b></p> <p>22 <b>I sent him this information.</b></p> <p>23 MR. MOLINA: Can I get tab 37.</p> <p>24 MS. STORK: Trustee Exhibit 59.</p> <p>25 MR. MOLINA: Yeah.</p>
<p>234</p> <p>1 Barron's and it is titled "Don't Ask, Don't</p> <p>2 Tell; Bernie Madoff is so secretive, he even</p> <p>3 asks investors to keep mum." Do you see that?</p> <p>4 A <b>I see that.</b></p> <p>5 Q While there is no date on here, if I</p> <p>6 told you this was published also in May 2001,</p> <p>7 would that seem right to you?</p> <p>8 A <b>I have no clue.</b></p> <p>9 Q I guess my question is, what prompted</p> <p>10 you to send Mr. Grabau these two articles on</p> <p>11 March 14, 2003?</p> <p>12 A <b>I don't remember.</b></p> <p>13 Q Is it typical for you to -- was it</p> <p>14 typical for you to send these articles to</p> <p>15 people?</p> <p>16 MR. FISCHER: Object to form.</p> <p>17 You can answer.</p> <p>18 A <b>No.</b></p> <p>19 Q You've obviously read these articles</p> <p>20 before, yes?</p> <p>21 A <b>Yes.</b></p> <p>22 Q So you understand that they raise</p> <p>23 concerns, suspicions that the market had about</p> <p>24 Madoff in the early 2000s, correct?</p> <p>25 MR. FISCHER: Object to form.</p>	<p>236</p> <p>1 (Trustee Exhibit 59 marked for</p> <p>2 identification and attached to the transcript.)</p> <p>3 Q Mr. Estenne, I'm handing you what has</p> <p>4 been marked as Trustee Exhibit Number 59. Do</p> <p>5 you recognize this document?</p> <p>6 A <b>Yes.</b></p> <p>7 Q What is this document?</p> <p>8 A <b>This document is a printout of e-mail</b></p> <p>9 <b>exchanges between myself and Theo Nijssen.</b></p> <p>10 Q Who is Theo Nijssen?</p> <p>11 A <b>He is an employee of MeesPierson.</b></p> <p>12 Q And what is MeesPierson?</p> <p>13 A <b>MeesPierson was a bank and a fund</b></p> <p>14 <b>servicing company.</b></p> <p>15 Q Did MeesPierson place investments in</p> <p>16 the ART Fund?</p> <p>17 A <b>Not that I remember.</b></p> <p>18 Q Did MeesPierson place investments in</p> <p>19 Square One?</p> <p>20 A <b>Not that I remember.</b></p> <p>21 Q So you see this e-mail chain is dated</p> <p>22 May 2003.</p> <p>23 A <b>That's correct.</b></p> <p>24 Q And in the bottom e-mail, you say,</p> <p>25 "Dear Theo, Please find here" --</p>

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<p>237</p> <p>1 <b>A I don't know if it is May 2003 or if</b>  2 <b>it is September 2003. It could be either/or.</b>  3 Q From 2003.  4 <b>A I know it says May 9, 2003, sir.</b>  5 <b>Yes, indeed.</b>  6 Q Okay. In the bottom e-mail, you  7 write to Mr. Nijssen and you say, "Dear Theo,  8 Please find here the questions for Madoff." Do  9 you see that?  10 <b>A I see that.</b>  11 Q So what's the context here?  12 <b>A My recollection was that Theo Nijssen</b>  13 <b>was traveling to New York, was planning to meet</b>  14 <b>with Madoff, and asked me, you know, what</b>  15 <b>questions should be asked.</b>  16 Q So Mr. Nijssen had a meeting with  17 BLMIS in New York City and had asked for you  18 to --  19 <b>A That's what I infer. That was --</b>  20 <b>that's my conclusion when I read the -- and my</b>  21 <b>understanding when I read the document. I don't</b>  22 <b>have precise recollection about the facts, but</b>  23 <b>reading the documents, that is what I would</b>  24 <b>speculate, yes.</b>  25 Q Okay. And you see -- let's just go</p>	<p>239</p> <p>1 conversion strategy on behalf of BLMIS?  2 MR. FISCHER: Object to form.  3 You can answer.  4 <b>A No. I had no doubt.</b>  5 Q You had no doubt that what?  6 <b>A I had no doubt that Madoff was</b>  7 <b>exclusively implementing split-strike</b>  8 <b>convergence strategy.</b>  9 Q So then why did you suggest that he  10 ask this question to Mr. Madoff?  11 MR. FISCHER: Objection to form.  12 You can answer, if you can.  13 <b>A He had doubts. And he asked me, If</b>  14 <b>you had doubts, what would be the question you</b>  15 <b>would ask?</b>  16 Q Then you say in the next question,  17 "Professional money manager specialized in index  18 and volatility training do not understand how  19 you can produce such a regular and smooth  20 performance." Do you see that?  21 <b>A I see that.</b>  22 Q What were you trying to communicate  23 there?  24 MR. FISCHER: Object to form.  25 <b>A Nothing more than what's written.</b></p>
<p>238</p> <p>1 through these questions that you wrote. The  2 first one you wrote is, "Could you confirm to me  3 that the strategy you implement is exclusively a  4 split-strike conversion strategy." Do you see  5 that?  6 <b>A Yes.</b>  7 Q Do you remember why you suggested  8 that he ask that question to Mr. Madoff?  9 <b>A I guess that -- no, I don't remember</b>  10 <b>specifically. No.</b>  11 Q What do you remember generally?  12 MR. FISCHER: Object to form.  13 You can answer.  14 <b>A I don't remember much. Again, I can</b>  15 <b>infer from the reading of this document that I</b>  16 <b>was giving him some question to ask to Madoff,</b>  17 <b>which would be interesting in order to explain</b>  18 <b>the investment strategy of Madoff to him and to</b>  19 <b>understand, you know, some of the weakness of</b>  20 <b>the strategy. Specifically, I refer to the</b>  21 <b>structure of depositories.</b>  22 Q I'm asking specifically that first  23 question, is it fair to say that there was --  24 that you had some doubt as to whether he was  25 exclusively implementing a split-strike</p>	<p>240</p> <p>1 Q Who were the professional money  2 managers that you were referring to here?  3 MR. FISCHER: Object to form.  4 You can answer.  5 <b>A No specific professional money</b>  6 <b>managers. That's my understanding of the</b>  7 <b>situation, including what's also included in</b>  8 <b>these articles.</b>  9 Q So you were drawing this inference  10 from the Barron's article and the MARHedge  11 article that we just looked at?  12 MR. FISCHER: Object to form.  13 You can answer.  14 <b>A Maybe. I don't remember.</b>  15 Q Then you write, "Could you explain to  16 me what are your competitive advantages which  17 would explain this regularity?" Do you see  18 that?  19 <b>A I see that.</b>  20 Q Again, same question, what were you  21 trying to communicate here?  22 MR. FISCHER: Object to form.  23 You can answer.  24 <b>A Nothing more than what's written</b>  25 <b>there.</b></p>

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<p>241</p> <p>1 Q How did you, in real time, 2 Mr. Estenne -- I'm asking you, obviously, not 3 now, sitting here today, but at the time, how 4 did you explain how Madoff could regularly 5 produce such consistent returns? 6 <b>A My understanding at the time was that 7 he had a competitive advantage because of his 8 market making activity and that his asset 9 management activity and his market making 10 activity were mutually beneficial.</b> 11 Q Could you help me understand how 12 that -- how having a market making business 13 could give you a competitive advantage in this 14 investment advisory business that he was 15 running? 16 <b>A Well, he -- in his investment 17 advisory business he was running, he had to 18 decide when to be exposed to the market and when 19 not to be exposed to the market. And being one 20 of the largest market maker on the NASDAQ was a 21 very good competitive advantage to understand, 22 you know, what were the dynamics of the markets, 23 who was selling, who was buying, what were the 24 market flows, what were the volumes.</b> 25 <b>And my understanding was that -- or</b></p>	<p>243</p> <p>1 <b>A Well, because front-running is 2 illegal.</b> 3 Q Right. In other words, if he was, in 4 fact, using information, nonpublic information, 5 from his market making business to execute 6 trades on behalf of his investment advisory 7 business, that would be front-running? 8 MR. FISCHER: Object to form. 9 You can answer. 10 <b>A Not specifically. Not under that 11 circumstances.</b> 12 Q So could you help me explain what 13 front-running is? 14 MR. FISCHER: Object to form. 15 You can answer. 16 <b>A Well, my understanding of 17 front-running is placing some order in front of 18 some of your clients order in order to 19 anticipate the moves -- the expected moves of 20 your clients' order to your advantage.</b> 21 Q So when you wrote this question at 22 the time -- again, not sitting here today. We 23 know what -- now, what he was doing. But at the 24 time, there was some suspicion -- let me ask 25 you -- yeah. At the time, you suspected that he</p>
<p>242</p> <p>1 <b>my guess or certainly, at least, understanding 2 or supposition was that he was using part of 3 this information in order to better time the 4 positioning of his investment strategy.</b> 5 Q Is it fair to say that you believed 6 at the time that Mr. Madoff would see trades 7 that were about to be executed in his market 8 making business and would take that information 9 and use it to trade on behalf of his IA clients? 10 Is that what you're referring to? 11 <b>A Something like that.</b> 12 MR. FISCHER: Object to form. 13 <b>A Something of that nature, yeah.</b> 14 Q And then, in fact, the next question 15 you have here is -- you write, "How can you 16 assure us that there is a Chinese wall between 17 your asset management and market making 18 activities?" So that's what you were just 19 referring to? 20 <b>A Yes.</b> 21 Q And why would you want an assurance 22 that there was a Chinese wall between those 23 businesses? 24 MR. FISCHER: Object to form. 25 You can answer.</p>	<p>244</p> <p>1 could be front-running? 2 MR. FISCHER: Object to form. 3 You can answer. 4 <b>A No.</b> 5 Q Then why did you ask this question? 6 MR. FISCHER: Object to form. 7 You can answer. 8 <b>A Because we believed that it was 9 important and proper procedure that we do 10 separation between the two -- the market making 11 activity and the asset management activity in 12 order to avoid front-running. It doesn't mean 13 that was -- it does not mean that I was 14 suspicious that there was front-running.</b> 15 Q Did you ever ask anyone at BLMIS if 16 BLMIS was front-running? 17 <b>A No.</b> 18 Q So you couldn't rule out that they 19 weren't front-running? 20 MR. FISCHER: Object to form. 21 You can answer. 22 <b>A Obviously not. Nobody can rule out 23 anything.</b> 24 Q Then you write, "What is the 25 structure of depositories used, i.e., do you use</p>

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<p>245</p> <p>1 any sub-custodian, and who ultimately holds the</p> <p>2 assets that are deposited with you?" Same</p> <p>3 question, what is -- what are you trying to</p> <p>4 communicate here?</p> <p>5 MR. FISCHER: Object to form.</p> <p>6 You can answer.</p> <p>7 <b>A Nothing different than what's asked</b></p> <p>8 <b>in the question.</b></p> <p>9 Q Did you know the answer to that</p> <p>10 question?</p> <p>11 <b>A I had my answer to that question.</b></p> <p>12 <b>Yes.</b></p> <p>13 Q Well, what did you think the answer</p> <p>14 to that question was, at the time again?</p> <p>15 <b>A At the time, my understanding was</b></p> <p>16 <b>that, you know, Madoff was the depository of the</b></p> <p>17 <b>assets and acting as a sub-custodian of Square</b></p> <p>18 <b>One Fund.</b></p> <p>19 Q And then you -- last question here,</p> <p>20 you ask, "What is the best answer you could give</p> <p>21 to someone who is uncomfortable about the</p> <p>22 non-segregation of functions between the</p> <p>23 manager, the market maker, the administrator and</p> <p>24 the depository," yes?</p> <p>25 <b>A Yes.</b></p>	<p>247</p> <p>1 tab 38.</p> <p>2 MS. STORK: This is Trustee</p> <p>3 Exhibit 60.</p> <p>4 (Trustee Exhibit 60 marked for</p> <p>5 identification and attached to the transcript.)</p> <p>6 Q Mr. Estenne, I have just handed you</p> <p>7 what has been marked as Trustee Exhibit</p> <p>8 Number 60.</p> <p>9 <b>A Yes.</b></p> <p>10 Q Do you recognize this document,</p> <p>11 Mr. Estenne?</p> <p>12 <b>A Yes. I remember this, this e-mail.</b></p> <p>13 Q What is this, this document?</p> <p>14 <b>A It is a printout of an e-mail</b></p> <p>15 <b>exchange I had with Catherine Lemaitre.</b></p> <p>16 Q And who is Ms. Lemaitre?</p> <p>17 <b>A I believe she was an investment</b></p> <p>18 <b>professional at PAM Investments Co.</b></p> <p>19 Q Is she also a personal acquaintance</p> <p>20 of yours?</p> <p>21 <b>A Yes.</b></p> <p>22 Q How do you know her outside of her</p> <p>23 involvement with PAM Investments?</p> <p>24 <b>A Our parents were friends. We knew</b></p> <p>25 <b>each other since childhood.</b></p>
<p>246</p> <p>1 Q What are you trying to communicate</p> <p>2 with that question?</p> <p>3 <b>A Again, nothing different than what's</b></p> <p>4 <b>written. As you know, Partners Advisers -- had</b></p> <p>5 <b>decided to redeem from its investment in Square</b></p> <p>6 <b>One Fund through ART because of the lack of</b></p> <p>7 <b>segregation of these different functions. And,</b></p> <p>8 <b>accordingly, if -- it was a point which I was</b></p> <p>9 <b>interested to discuss with the manager. The</b></p> <p>10 <b>investment advisor, actually, not the investment</b></p> <p>11 <b>manager.</b></p> <p>12 Q So did -- do you know if Mr. Nijssen</p> <p>13 ended up having that meeting with Mr. Madoff?</p> <p>14 <b>A I don't remember.</b></p> <p>15 Q Do you remember any subsequent</p> <p>16 discussions you had with Mr. Nijssen about</p> <p>17 BLMIS?</p> <p>18 <b>A No, I don't remember.</b></p> <p>19 Q Other than Mr. Nijssen, at this time,</p> <p>20 in 2003, who else did you share similar</p> <p>21 questions about BLMIS?</p> <p>22 <b>A I do not remember specifically to</b></p> <p>23 <b>whom -- with whom I shared this --</b></p> <p>24 Q You said that --</p> <p>25 MR. MOLINA: Well, why don't we go to</p>	<p>248</p> <p>1 Q And in this exchange -- this is</p> <p>2 originally written the -- this exchange was</p> <p>3 originally written in French, correct?</p> <p>4 <b>A That's correct.</b></p> <p>5 Q And we have -- in this document I</p> <p>6 handed you, we also have an English language</p> <p>7 translation of this exchange, correct?</p> <p>8 <b>A Indeed.</b></p> <p>9 Q So I -- what I'm going to do,</p> <p>10 Mr. Estenne, is I'm going to ask you questions,</p> <p>11 but I don't speak French. So I will be asking</p> <p>12 you from the English language document.</p> <p>13 <b>A That's fine.</b></p> <p>14 Q Is that okay?</p> <p>15 <b>A Sure.</b></p> <p>16 Q At the bottom of this exchange, there</p> <p>17 is an e-mail from Ms. Lemaitre to you dated</p> <p>18 October 14, 2008, yes?</p> <p>19 <b>A Yes.</b></p> <p>20 Q And in this document -- in this</p> <p>21 e-mail, she writes, "Hello, Luc. I have been</p> <p>22 thinking about what you told me about Madoff,</p> <p>23 and I would like to talk about it to our</p> <p>24 investment analysis manager. Can you tell me</p> <p>25 again what you think are the main risks. I</p>



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<p>249</p> <p>1 understand that there is a problem of 2 transparency given that he has the brokerage 3 business with the asset management business, but 4 why is it a risk? What is the worst-case 5 scenario? Thank you for your help." 6 Do you see that? 7 <b>A I see that.</b> 8 Q Okay. So she is referring to some 9 prior conversation that the two of you had had 10 about Madoff, correct? 11 <b>A That's what I understand from the</b> 12 <b>e-mail, yes.</b> 13 Q Yeah, so can you give me the context? 14 What was that prior conversation? 15 <b>A I don't remember.</b> 16 Q Did you speak with her on a regular 17 basis in -- at this time? 18 <b>A Can you qualify "on a regular basis"?</b> 19 Q Once a month. 20 <b>A No.</b> 21 Q I'm sorry? 22 <b>A No.</b> 23 Q No? How often did you speak with her 24 at this time? 25 <b>A Occasionally.</b></p>	<p>251</p> <p>1 risks. The first one, again, you reference 2 investment professionals. Who in particular are 3 you referencing here? 4 <b>A I don't remember. Someone.</b> 5 Q Are you reference -- are you talking 6 about yourself? 7 <b>A No.</b> 8 Q You're not one of these investment 9 professionals? 10 <b>A No.</b> 11 Q So you understood how, with such a 12 simple strategy, such a stable track record 13 could be generated? 14 <b>A I have some level of understanding.</b> 15 <b>As I mentioned prior to you -- as I mentioned</b> 16 <b>prior to you during the day, you never</b> 17 <b>understand 100 percent of the strategy. If you</b> 18 <b>understand 100 percent, usually, it means that</b> 19 <b>you can replicate it and do it yourself, and you</b> 20 <b>don't need the investment manager or the fund</b> 21 <b>manager. You can do it yourself. So there</b> 22 <b>is -- we always were investing in the context of</b> 23 <b>imperfect information.</b> 24 <b>Also, I think I explained to you</b> 25 <b>previously during the day that every investment</b></p>
<p>250</p> <p>1 Q What do you remember about -- do you 2 remember any prior conversation you had with 3 Ms. Lemaitre about Madoff? 4 <b>A No.</b> 5 Q So she asked you this, and then you 6 respond that same day. And then you write, "The 7 main risks are as follows:" I'm just going to 8 read them into the record. "Investment 9 professionals do not understand how, with such a 10 simple strategy, such a stable track record can 11 be generated. No separation between asset 12 management, brokerage, custodian in 13 administration functions. Asset size unknown, 14 but in theory sufficient to significantly 15 influence the equity derivatives market. 16 Potential risk of front-running?" 17 <b>A Question mark.</b> 18 Q Question mark. 19 "No access to management teams or 20 on-site due diligence capacity to fully 21 understand the strategy. Please do not send 22 this e-mail in its written form." Signed by 23 you, yes? 24 <b>A That's correct.</b> 25 Q Okay. So let's go through these</p>	<p>252</p> <p>1 <b>is imperfect, which includes positive and</b> 2 <b>negatives. These, I was asked about the</b> 3 <b>negatives. I was not asked about the positives.</b> 4 <b>There was a very long list of positive elements</b> 5 <b>regarding Madoff, his strategy, the size of his</b> 6 <b>infrastructure, his reputation, the length of</b> 7 <b>his track record, the number of audits he had</b> 8 <b>been subject to, including by very significant</b> 9 <b>firms much larger than Partners Advisers,</b> 10 <b>including, after the fact, we learned that the</b> 11 <b>SEC has also audited him.</b> 12 <b>You know, he was running an operation</b> 13 <b>over 120 people. It was -- he was highly</b> 14 <b>regarded. He was president of the NASDAQ, or</b> 15 <b>former president of the NASDAQ. He was running</b> 16 <b>a regulated entity. All these were positives.</b> 17 <b>I was asked by Catherine Lemaitre in</b> 18 <b>this context, and I was also asked, according to</b> 19 <b>my understanding, by Theo Nijssen to highlight</b> 20 <b>what were the negatives. And some of the</b> 21 <b>negatives were negatives which had question</b> 22 <b>marks which existed.</b> 23 Q Well, why is it a negative, the first 24 bullet? Why is it a negative that Mr. Madoff 25 reported a stable track record using a simple</p>

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<p>253</p> <p>1 strategy? Why did you include that in this 2 e-mail?</p> <p>3 MR. FISCHER: Object to form. 4 You can answer.</p> <p>5 <b>A What it outlines is that we had an 6 imperfect or incomplete understanding of the 7 investment strategy.</b></p> <p>8 Q Then you write in the second bullet 9 the "No separation between asset management, 10 brokerage, custodian, and administration 11 functions." Is that concern or risk similar to 12 the one that the ART Fund identified years 13 earlier?</p> <p>14 <b>A That's correct.</b></p> <p>15 Q And then you have number 3, the asset 16 size is unknown, but in theory sufficient to 17 significantly influence the equity derivatives 18 market. What are you -- what are you 19 communicating there?</p> <p>20 <b>A I wasn't sure. But, again, that was 21 an element which I believe was discussed in -- 22 publically in these different press articles, 23 and so I was just referring to that.</b></p> <p>24 Q What -- why would the asset size -- 25 what's the correlation between asset size and</p>	<p>255</p> <p>1 Q I believe it was Number 52.</p> <p>2 <b>A The total AUM is estimated to be 3 between 8 and 10 billion according to some 4 sources. So that's what's written in the 5 report. My recollection is that Madoff or BLMIS 6 was reluctant to specifically and precisely 7 disclose these assets under management.</b></p> <p>8 Q You know how many assets Square One 9 had in its managed account, correct?</p> <p>10 MR. FISCHER: Object to form. 11 You can answer.</p> <p>12 <b>A Yes, I knew.</b></p> <p>13 Q And you also said earlier that you 14 had an understanding of Fairfield Sentry's 15 investment in BLMIS, correct?</p> <p>16 <b>A Some understanding.</b></p> <p>17 Q Also, you said earlier that you had 18 also reviewed Kingate Global's investment in 19 BLMIS, correct?</p> <p>20 <b>A No.</b></p> <p>21 Q No? You didn't -- you never reviewed 22 Kingate Global's -- you never -- you -- let me 23 take that back.</p> <p>24 Did you -- were you aware that 25 Kingate Global was a Madoff feeder fund?</p>
<p>254</p> <p>1 the equity derivatives market? Help me 2 understand.</p> <p>3 <b>A The question is, you know, if you 4 have a big asset size, you have to take weak 5 position. If you have to take weak position, is 6 the market in which you act large enough or 7 liquid enough to absorb these large trades.</b></p> <p>8 Q And how could -- how would you verify 9 that?</p> <p>10 <b>A It was very difficult to verify 11 because we didn't have a clear understanding of 12 what was the asset size of the assets managed by 13 Madoff.</b></p> <p>14 Q Do you remember earlier today we 15 looked through some Square One reports about 16 Madoff, one of which talked about the asset size 17 being potentially between 8 and \$10 billion? Do 18 you remember that?</p> <p>19 <b>A Yes, but that was --</b></p> <p>20 MR. FISCHER: Object to form. 21 You can answer.</p> <p>22 <b>A I remember. And I think I pointed to 23 you. We can go back to this -- can you show me 24 the document again. I think I specifically 25 pointed to you that --</b></p>	<p>256</p> <p>1 <b>A Yes.</b></p> <p>2 Q And were you aware that it had 3 billions of dollars of assets under management?</p> <p>4 <b>A Yes. Some assets under management, 5 yes.</b></p> <p>6 Q You also were aware that Fairfield 7 Sentry had billions of dollars of assets under 8 management?</p> <p>9 <b>A Yes.</b></p> <p>10 Q The -- you have here the "Potential 11 risk of front-running" with a question mark. 12 What were you -- what were you referring to here 13 in particular?</p> <p>14 MR. FISCHER: Object to form. 15 You can answer.</p> <p>16 <b>A Nothing different than what the 17 previous question was related to, the fact that, 18 you know, when you run a market making business 19 and you also run an asset management activity 20 under the same umbrella, if there is no 21 appropriate Chinese wall, there is a potential 22 risk of front-running.</b></p> <p>23 Q And then lastly, again, the "No 24 access to management teams or on-site due 25 diligence capacity to fully understand the</p>

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<p>257</p> <p>1 strategy." Could you explain what you meant 2 here?</p> <p>3 MR. FISCHER: Object to form. 4 You can answer.</p> <p>5 <b>A Nothing more than what is written</b> 6 <b>there.</b></p> <p>7 Q Just to -- on this point, you 8 mentioned earlier today that you had -- you -- 9 how many times do you think that you visited 10 BLMIS's offices?</p> <p>11 <b>A I don't have a precise recollection.</b> 12 <b>My guesstimate would be a few times. Maybe -- I</b> 13 <b>would say less than ten times, certainly.</b></p> <p>14 Q And, again, we discussed earlier that 15 when you had a meeting with a manager like 16 Mr. -- you know, like Mr. Madoff or 17 Mr. DiPascali, you would memorialize that with 18 some sort of report, correct?</p> <p>19 MR. FISCHER: Object to form.</p> <p>20 <b>A That's usually what was done.</b></p> <p>21 Q So if I represent to you that we only 22 have two such reports, is it fair to discern 23 that you met with BLMIS in person about two 24 times?</p> <p>25 MR. FISCHER: Object to form.</p>	<p>259</p> <p>1 <b>One Fund who knew BLMIS as a strategy and wanted</b> 2 <b>to get exposure to that investment advisor,</b> 3 <b>these risks were acceptable and that the</b> 4 <b>positive and the negatives were acceptable.</b></p> <p>5 <b>My position was also that -- in a</b> 6 <b>different context, which was the context of</b> 7 <b>Partners Advisers, where I had fiduciary</b> 8 <b>responsibility and freedom to choose which</b> 9 <b>manager I could allocate money to after what</b> 10 <b>happened with Bristol. My decision and the</b> 11 <b>decision of the team was that certain conditions</b> 12 <b>were not met, first, to comfortably recommend</b> 13 <b>Square One within the context of ART and I would</b> 14 <b>report for who we were advising. It's very</b> 15 <b>different to take some level of risk with your</b> 16 <b>own money, and it is to -- than to advise</b> 17 <b>someone to invest in the fund.</b></p> <p>18 Q Okay. You said a lot there. Let's 19 break it down.</p> <p>20 You said Bernie Madoff and his team 21 were not ready to disclose many details, and so 22 it was a "take it or leave it" type of 23 investment proposal." At one point did Bernie 24 Madoff or his team refuse to disclose details to 25 you or Square One about its operations?</p>
<p>258</p> <p>1 <b>A It's a possibility, but I would be</b> 2 <b>surprised that it would be only that -- only</b> 3 <b>this, not more.</b></p> <p>4 Q Did you try to set up other meetings 5 with BLMIS?</p> <p>6 <b>A I was never refused a meeting.</b></p> <p>7 Q So when you're writing to 8 Ms. Lemaitre here about "no access to management 9 teams or on-site due diligence capacity," why 10 did you write that there was no access to 11 management teams or on-site due diligence 12 capacity if, as you just said, you were never 13 refused access to BLMIS?</p> <p>14 MR. FISCHER: Object to form. 15 You can answer.</p> <p>16 <b>A The -- I was -- the amount of</b> 17 <b>information available was limited, and Bernie</b> 18 <b>Madoff and his team were not ready to disclose</b> 19 <b>many details. And so it was a "take it or leave</b> 20 <b>it" type of investment proposal where limited</b> 21 <b>due diligence could be done. And I myself</b> 22 <b>identified what were the positives and what were</b> 23 <b>the negatives.</b></p> <p>24 <b>My understanding was that, for my</b> 25 <b>family, as well as for the investors into Square</b></p>	<p>260</p> <p>1 MR. FISCHER: Object to form.</p> <p>2 <b>A It was not possible -- well, I -- my</b> 3 <b>understanding was that it was not possible to</b> 4 <b>ask many questions about the strategy. My</b> 5 <b>understanding was that, also, we were only given</b> 6 <b>the possibility to meet with Frank DiPascali.</b> 7 <b>"We," I mean people from Square One and myself</b> 8 <b>were only given the possibility to meet with</b> 9 <b>Frank DiPascali or occasionally with Bernie</b> 10 <b>Madoff but with no other member of the</b> 11 <b>investment team.</b></p> <p>12 <b>So -- but, you know, this was not</b> 13 <b>unfamiliar. You know, when I was invested -- or</b> 14 <b>if you're invested in a large firm, usually you</b> 15 <b>are not given the opportunity to meet with many</b> 16 <b>people and the level of transparency you get is</b> 17 <b>limited. So it is only with hindsight, knowing</b> 18 <b>what happened, that what we see appears to be</b> 19 <b>shocking. But at that time, it did not appear</b> 20 <b>to be shocking to me. It was not shocking to</b> 21 <b>me.</b></p> <p>22 Q But, again, you said here that 23 Mr. Madoff and his team were not ready to 24 disclose many details, and I just want to 25 understand. What is the basis for that</p>

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<p>261</p> <p>1 testimony?</p> <p>2 MR. FISCHER: Object to form. Asked</p> <p>3 and answered.</p> <p>4 Q Well, let me ask it differently,</p> <p>5 then.</p> <p>6 Did you ever ask Mr. Madoff or his</p> <p>7 team a question that they refused to answer?</p> <p>8 <b>A The setup of the meetings were such</b></p> <p>9 <b>that only -- the questions were answered</b></p> <p>10 <b>generally, but not really in details. And,</b></p> <p>11 <b>also, the kind of implicit relationship and</b></p> <p>12 <b>positioning was that, you know, we were given</b></p> <p>13 <b>a -- to an extent, a favor to be investors into</b></p> <p>14 <b>the strategy, which makes it difficult to</b></p> <p>15 <b>inquire further about the details of the</b></p> <p>16 <b>strategy.</b></p> <p>17 Q Did you ever ask for specific</p> <p>18 information and --</p> <p>19 MR. MOLINA: Let me retract that.</p> <p>20 Q You just said that the answers were</p> <p>21 general. Did you ever ask for clarification</p> <p>22 from BLMIS?</p> <p>23 MR. FISCHER: Object to form.</p> <p>24 You can answer.</p> <p>25 <b>A Not that I remember, but generally in</b></p>	<p>263</p> <p>1 He testified, "My position was also</p> <p>2 that in a different context, which was the</p> <p>3 context of Partners Advisers, where I had" --</p> <p>4 and I think the --</p> <p>5 Q On here, the word "finished," I think</p> <p>6 you said "fiduciary."</p> <p>7 <b>A Fiduciary.</b></p> <p>8 Q Okay. Where you had a fiduciary</p> <p>9 responsibility. So didn't Square One have a</p> <p>10 fiduciary responsibility to its investors?</p> <p>11 MR. FISCHER: Object to form.</p> <p>12 You can answer.</p> <p>13 <b>A I think, yes -- we all -- any</b></p> <p>14 <b>investment manager or fund or actuary has a</b></p> <p>15 <b>fiduciary responsibility, but a different one.</b></p> <p>16 Q How is it different?</p> <p>17 <b>A It is -- well, you -- fiduciary</b></p> <p>18 <b>responsibility, when it comes to, you know,</b></p> <p>19 <b>selecting out of the entire universe of funds</b></p> <p>20 <b>the ones which you feel the most comfortable</b></p> <p>21 <b>with is one fiduciary responsibility and one</b></p> <p>22 <b>positioning. And that was the positioning</b></p> <p>23 <b>Parters Advisers had.</b></p> <p>24 <b>Square One Fund had the fiduciary</b></p> <p>25 <b>responsibility of making sure that the</b></p>
<p>262</p> <p>1 <b>my mind is -- yeah, I -- you know, it was a</b></p> <p>2 <b>split-strike conversion strategy, but, for</b></p> <p>3 <b>instance, we were never given details, and it</b></p> <p>4 <b>was -- I was never able to get details about,</b></p> <p>5 <b>you know, what were the criterias that BLMIS</b></p> <p>6 <b>used in order to decide to implement the</b></p> <p>7 <b>split-strike conversion strategy or to be</b></p> <p>8 <b>invested in T-bills.</b></p> <p>9 Q Did you ever ask for that</p> <p>10 information?</p> <p>11 <b>A I asked for that information. I</b></p> <p>12 <b>would -- I guess today that I would have asked</b></p> <p>13 <b>for this information and that I was answered in</b></p> <p>14 <b>general terms, but not in specific terms.</b></p> <p>15 Q And when did you ask for that</p> <p>16 information?</p> <p>17 <b>A I guess -- I would guess that I asked</b></p> <p>18 <b>for this information during the meetings I had.</b></p> <p>19 Q With BLMIS?</p> <p>20 <b>A That's correct.</b></p> <p>21 Q When you said here that -- and by the</p> <p>22 way, there is a --</p> <p>23 MR. MOLINA: Ms. Court Reporter,</p> <p>24 there is, I think, a typographical error, but I</p> <p>25 will have Mr. Estenne clarify.</p>	<p>264</p> <p>1 <b>operations of Square One were, basically, run</b></p> <p>2 <b>properly and -- but we didn't have the</b></p> <p>3 <b>responsibility of selecting BLMIS and</b></p> <p>4 <b>recommending BLMIS to our investors.</b></p> <p>5 <b>Investors who decided to invest in</b></p> <p>6 <b>Square One were people who knew that Square One</b></p> <p>7 <b>was managed by BLMIS, were seeking to invest in</b></p> <p>8 <b>the strategy, were aware of the positives and</b></p> <p>9 <b>the negatives of the strategy, and were ready to</b></p> <p>10 <b>take the risks related to these positives and</b></p> <p>11 <b>these negatives, which is very -- the situation</b></p> <p>12 <b>is very different from the investors of, for</b></p> <p>13 <b>instance, ART after we decided to redeem from</b></p> <p>14 <b>Square One, which were trusting Partners</b></p> <p>15 <b>Advisers to make the best selection possible and</b></p> <p>16 <b>mitigate as much risk as possible.</b></p> <p>17 <b>So, again, it is different. And, for</b></p> <p>18 <b>instance, the risk you can take by -- in the</b></p> <p>19 <b>same way that the risk you can take by -- if</b></p> <p>20 <b>you -- by managing -- when you invest or manage</b></p> <p>21 <b>your own money and the risk you can take when</b></p> <p>22 <b>you advise people in the way they should invest</b></p> <p>23 <b>their money is very different.</b></p> <p>24 Q So you just said that the Square One</p> <p>25 investors were willing to accept these risks</p>

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<p>265</p> <p>1 that -- similar to the ones you were</p> <p>2 communicating to Ms. Lemaitre. How do you know</p> <p>3 that?</p> <p>4 MR. FISCHER: Object to form.</p> <p>5 <b>A I -- my understanding is that all the</b></p> <p>6 <b>investors in Square One knew about the fact that</b></p> <p>7 <b>Square One's investment advisor was Bernie</b></p> <p>8 <b>Madoff. And my understanding is that, you know,</b></p> <p>9 <b>I had been -- I was very generally clear about,</b></p> <p>10 <b>you know, communicating the positives and the</b></p> <p>11 <b>negatives of this investment strategy to the</b></p> <p>12 <b>investors of Square One.</b></p> <p>13 Q When you say your understanding, are</p> <p>14 you saying that you communicated these risks,</p> <p>15 the ones that you were communicating to</p> <p>16 Ms. Lemaitre, you communicated those same risks</p> <p>17 to all of Square One's investors?</p> <p>18 <b>A My understanding in -- is that, in</b></p> <p>19 <b>most case, yes, these -- you know, these risks</b></p> <p>20 <b>were discussed with the manager -- with the</b></p> <p>21 <b>investors.</b></p> <p>22 Q How were they discussed?</p> <p>23 <b>A How? What do you mean, "how"?</b></p> <p>24 <b>Verbally, you know, through meetings or our</b></p> <p>25 <b>telephone conversations.</b></p>	<p>267</p> <p>1 right now. Ten minutes? We've been going for</p> <p>2 over an hour.</p> <p>3 MR. FEIL: I think that's fair. He</p> <p>4 just wants to finish this line of questioning.</p> <p>5 MR. MOLINA: I --</p> <p>6 MR. FISCHER: Whoa. Whoa. Whoa.</p> <p>7 Hey. Hey.</p> <p>8 MR. MOLINA: All right.</p> <p>9 MR. FISCHER: It is -- we're in hour</p> <p>10 six.</p> <p>11 MR. MOLINA: Brian.</p> <p>12 MR. FISCHER: I'm asking for a break.</p> <p>13 MR. FEIL: Brian --</p> <p>14 MR. MOLINA: We've given you a break.</p> <p>15 MR. FEIL: He needs to finish a line</p> <p>16 of questioning.</p> <p>17 MR. MOLINA: Let me just finish my</p> <p>18 line of questioning. I'm allowed and -- to</p> <p>19 finish my line of questioning.</p> <p>20 MR. FISCHER: We're taking a break.</p> <p>21 MR. MOLINA: You --</p> <p>22 MR. FISCHER: This is ridiculous.</p> <p>23 MR. MOLINA: You can leave.</p> <p>24 MR. FISCHER: No, we are taking a</p> <p>25 break. Can we go off the record, please?</p>
<p>266</p> <p>1 Q Is there any document that you're</p> <p>2 aware of that memorializes these communications?</p> <p>3 <b>A No, but what you can see through the</b></p> <p>4 <b>way I communicate is that, you know --</b></p> <p>5 Q Uh-huh.</p> <p>6 <b>A -- you know, generally, I was not shy</b></p> <p>7 <b>of, you know, underlining what were my perceived</b></p> <p>8 <b>weaknesses of the investment case, but also the</b></p> <p>9 <b>positives.</b></p> <p>10 Q Well, I see that with Ms. Lemaitre</p> <p>11 and with Mr. Nijssen. And correct me if I'm</p> <p>12 wrong, neither of these individuals nor the</p> <p>13 institutions that they were affiliated with</p> <p>14 invested in Square One Fund, correct?</p> <p>15 <b>A That's correct.</b></p> <p>16 Q Okay. Let's see what -- let's see</p> <p>17 how you did communicate to those who invested in</p> <p>18 Square One Fund.</p> <p>19 MR. FISCHER: Marco, before we do</p> <p>20 that, could we please take a break before you</p> <p>21 move on?</p> <p>22 MR. MOLINA: I'd like to ask -- can</p> <p>23 you give me ten more minutes, and then we can</p> <p>24 take a break?</p> <p>25 MR. FISCHER: I'm asking for a break</p>	<p>268</p> <p>1 MR. MOLINA: We're not going off the</p> <p>2 record.</p> <p>3 Could I get tab 40?</p> <p>4 MR. FISCHER: I've never heard of</p> <p>5 anything like that before.</p> <p>6 MR. MOLINA: You've never heard of</p> <p>7 someone needing to finish their line of</p> <p>8 questioning?</p> <p>9 MR. FISCHER: You said to him at the</p> <p>10 start -- and we can go back to your monologue at</p> <p>11 the beginning -- if we want a break, ask for it,</p> <p>12 provided we answer the question that is pending.</p> <p>13 There is no question pending. Are you going</p> <p>14 back on what you said at the beginning?</p> <p>15 MR. MOLINA: I said that he could.</p> <p>16 You are asking for the break.</p> <p>17 MR. FISCHER: Luc, would you like to</p> <p>18 take a break?</p> <p>19 THE WITNESS: I'm asking for a break.</p> <p>20 MR. FEIL: Brian, it's very customary</p> <p>21 to allow an attorney to finish the line of</p> <p>22 questioning before you ask for a break. We have</p> <p>23 barely been going over an hour.</p> <p>24 MR. FISCHER: No, no. He said a</p> <p>25 question, not a line of questioning.</p>

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<p>269</p> <p>1 MR. MOLINA: We're going to go on the</p> <p>2 break.</p> <p>3 MR. FISCHER: Thank you.</p> <p>4 MR. MOLINA: But before we go on the</p> <p>5 break, I'd like to say for the record, Brian,</p> <p>6 you have to be professional. Don't snap at my</p> <p>7 colleagues. Don't raise your voice. There is</p> <p>8 no reason to act like you're five years old. I</p> <p>9 assume you're older.</p> <p>10 We can go off the record.</p> <p>11 THE VIDEOGRAPHER: We're going off</p> <p>12 the record. The time is 5:15 p.m.</p> <p>13 (A recess was taken.)</p> <p>14 THE VIDEOGRAPHER: Okay. We are back</p> <p>15 on the record. The time is 5:26 p.m.</p> <p>16 MR. MOLINA: Okay. Can I get tabs 40</p> <p>17 and 41, please.</p> <p>18 MS. STORK: Exhibit tab 40 is</p> <p>19 Trustee Exhibit 61.</p> <p>20 MR. MOLINA: Okay.</p> <p>21 (Trustee Exhibit 61 marked for</p> <p>22 identification and attached to the transcript.)</p> <p>23 Q Mr. Estenne, I'm handing you what has</p> <p>24 already been marked as Trustee Exhibit</p> <p>25 Number 61. Mr. Estenne, do you recognize this</p>	<p>271</p> <p>1 (Trustee Exhibit 62 marked for</p> <p>2 identification and attached to the transcript.)</p> <p>3 Q Let me know when you're ready,</p> <p>4 Mr. Estenne.</p> <p>5 A I'm ready.</p> <p>6 Q Okay. Do you recognize this document</p> <p>7 that I handed you?</p> <p>8 A Again, I recognize what's written on</p> <p>9 it, yes.</p> <p>10 Q Okay. You see that it is a document</p> <p>11 titled "Investment Manager Information, Bernard</p> <p>12 L. Madoff Investment Securities"?</p> <p>13 A That's correct.</p> <p>14 Q See at the top right it has the</p> <p>15 Partners Advisers letterhead -- or logo, I mean,</p> <p>16 yes?</p> <p>17 A Yes, correct.</p> <p>18 Q Okay. And do you know who wrote this</p> <p>19 document?</p> <p>20 A No.</p> <p>21 Q So we interviewed, as you know -- or</p> <p>22 we deposed Mr. Müller --</p> <p>23 A Yes.</p> <p>24 Q -- about this correspondence</p> <p>25 attaching the document you have in front of you.</p>
<p>270</p> <p>1 document?</p> <p>2 A I recognize that it is an e-mail sent</p> <p>3 by Jérôme Müller to Melissa Massetta from Morgan</p> <p>4 Stanley. Yes.</p> <p>5 Q And this e-mail was sent on June 27,</p> <p>6 2003?</p> <p>7 A That's correct.</p> <p>8 Q And similar to the last document we</p> <p>9 saw, there's -- the original e-mail was in</p> <p>10 French, but this document I handed you also</p> <p>11 includes an English language translation, yes?</p> <p>12 A That's correct.</p> <p>13 Q Okay. And you see that the subject</p> <p>14 line is "Square One" and that there is an</p> <p>15 attachment titled "Square One Due Diligence."</p> <p>16 Yes?</p> <p>17 A Yes.</p> <p>18 Q I'm going to, now, introduce to you</p> <p>19 the attachment.</p> <p>20 MS. STORK: This is Trustee</p> <p>21 Exhibit 62.</p> <p>22 Q All right, Mr. Estenne, I'm now</p> <p>23 handing you what has been marked as Trustee</p> <p>24 Exhibit Number 62.</p> <p>25</p>	<p>272</p> <p>1 A Uh-huh.</p> <p>2 Q And he testified that his</p> <p>3 recollection was that you instructed him to send</p> <p>4 this, this document, to the recipients in the</p> <p>5 e-mail. Is that your recollection?</p> <p>6 A I have no recollection, but it is a</p> <p>7 possibility.</p> <p>8 Q And just by the way, real quick, the</p> <p>9 e-mail, the transmittal e-mail, it was to</p> <p>10 someone named Melissa Massetta at Morgan</p> <p>11 Stanley.</p> <p>12 A That's correct.</p> <p>13 Q Do you know who -- who is</p> <p>14 Ms. Massetta?</p> <p>15 A My recollection is that she was a</p> <p>16 personal assistant to a number of private</p> <p>17 bankers within Morgan Stanley.</p> <p>18 Q And Morgan Stanley was one of Square</p> <p>19 One's institutional investors in 2003, correct?</p> <p>20 A I'm not sure if "institutional" is</p> <p>21 the right word. Morgan -- I mean, some private</p> <p>22 bankers of Morgan Stanley were invested in</p> <p>23 Square One Fund on behalf of their clients.</p> <p>24 Q Right. So this correspondence --</p> <p>25 A Or possibly at the request of their</p>

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<p>273</p> <p>1 <b>clients. I do not know that.</b></p> <p>2 Q So this correspondence, again,</p> <p>3 attaches this document. Let's go through parts</p> <p>4 of it.</p> <p>5 If you look at the page with the</p> <p>6 number 4729 in the bottom right --</p> <p>7 <b>A Yes.</b></p> <p>8 Q -- there is a Section 4 titled</p> <p>9 "Performance," yes?</p> <p>10 <b>A Yes.</b></p> <p>11 Q And it's tracking the performance of</p> <p>12 Fairfield Sentry. And at the bottom, there is a</p> <p>13 note that says, "This is the kind of fund that</p> <p>14 should be in every fund of funds. The</p> <p>15 performance is steady, regular whatever the</p> <p>16 market conditions might be. The fund has</p> <p>17 outperformed the S&amp;P 500 since January 1990 by</p> <p>18 limiting its volatility to one-fifth the</p> <p>19 volatility of the market, and its worse drawdown</p> <p>20 was not even 1 percent."</p> <p>21 Do you see that?</p> <p>22 <b>A I see it.</b></p> <p>23 Q And then if you look to the final</p> <p>24 page in this report, which is -- has the number</p> <p>25 4732 in the bottom right-hand corner, there is a</p>	<p>275</p> <p>1 <b>A But you will also see on page 8 that</b></p> <p>2 <b>I -- the report -- because I'm not sure who</b></p> <p>3 <b>wrote the report, but that the report</b></p> <p>4 <b>highlighted some -- the same negative points</b></p> <p>5 <b>that we discussed earlier during my deposition:</b></p> <p>6 <b>Lack of a definite net asset value, potential</b></p> <p>7 <b>conflict of interest as Madoff is a broker,</b></p> <p>8 <b>investment advisor, and a custodian.</b></p> <p>9 Q Yes. There is nothing in here about</p> <p>10 a potential risk of front-running, right?</p> <p>11 <b>A No.</b></p> <p>12 Q There is nothing in here about</p> <p>13 concerns that Mr. Madoff was consistently</p> <p>14 achieving positive returns with using such a</p> <p>15 simplistic strategy, correct?</p> <p>16 <b>A No.</b></p> <p>17 Q There is nothing in here about the</p> <p>18 asset size being potentially too large for the</p> <p>19 derivatives market, correct?</p> <p>20 <b>A Well, I remind you that this report</b></p> <p>21 <b>was sent on June 27, 2003, while the questions</b></p> <p>22 <b>and the weaknesses you referred to were</b></p> <p>23 <b>exchanged with Catherine Lemaitre in December</b></p> <p>24 <b>2008.</b></p> <p>25 Q Okay. Well, let's look at the</p>
<p>274</p> <p>1 "Conclusion - Recommendation" section. Do you</p> <p>2 see that?</p> <p>3 <b>A I don't think that's the last page</b></p> <p>4 <b>of -- the final page of the report.</b></p> <p>5 Q I'm sorry. On page 5 of the report</p> <p>6 that has the 4732.</p> <p>7 <b>A Okay, but this is not the last page</b></p> <p>8 <b>of the report.</b></p> <p>9 Q Okay. So on page 5 of this report --</p> <p>10 <b>A Yes.</b></p> <p>11 Q -- it says, "Madoff has shown that</p> <p>12 his method has been working perfectly well over</p> <p>13 the last ten years. The strategy is almost</p> <p>14 risk-free investing. The only risk being the</p> <p>15 bankruptcy risk of the component or a sharp</p> <p>16 deviation between the basket of stocks he holds</p> <p>17 and the S&amp;P 500 Index." Do you see that?</p> <p>18 <b>A I see that.</b></p> <p>19 Q What does the term "almost risk-free</p> <p>20 investing" mean to you?</p> <p>21 <b>A It means that according to the -- it</b></p> <p>22 <b>means that there was a very little risk</b></p> <p>23 <b>associated to the strategy, but -- that's what</b></p> <p>24 <b>it means.</b></p> <p>25 Q Now --</p>	<p>276</p> <p>1 ones -- let's look at the concerns that you</p> <p>2 included in your exchange with Mr. Nijssen,</p> <p>3 which was in May 2003, which is roughly around</p> <p>4 the same time.</p> <p>5 <b>A These were questions.</b></p> <p>6 Q Right. So did you --</p> <p>7 MR. FISCHER: Well, wait. Object to</p> <p>8 form. Around the same time as what? I'm sorry.</p> <p>9 I'm confused.</p> <p>10 MR. MOLINA: It's okay. Mr. Estenne</p> <p>11 just said that -- I was referring to the</p> <p>12 concerns in the Lemaitre exchange, which -- and</p> <p>13 he said that that happened five years later, so</p> <p>14 I said, well, let's look at the ones from the</p> <p>15 Nijssen exchange, which happened roughly at the</p> <p>16 same time as this report.</p> <p>17 MR. FISCHER: Well, I object to the</p> <p>18 way that you are construing this report. I</p> <p>19 think you see a date on the report that is</p> <p>20 different from what you're trying to slot into</p> <p>21 the question.</p> <p>22 MR. FEIL: So --</p> <p>23 MR. FISCHER: You're talking about a</p> <p>24 transmittal e-mail of a report. So there is two</p> <p>25 different potential dates there.</p>

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<p>277</p> <p>1 MR. MOLINA: You can object to form.</p> <p>2 MR. FISCHER: I do object to the</p> <p>3 form.</p> <p>4 MR. MOLINA: Great.</p> <p>5 <b>A And the report here states June 20,</b></p> <p>6 <b>2000.</b></p> <p>7 <b>BY MR. MOLINA:</b></p> <p>8 Q Right, but your -- or Partners</p> <p>9 Advisers is sending it to Ms. Massetta in June</p> <p>10 2003, correct?</p> <p>11 <b>A That's my understanding.</b></p> <p>12 Q Yeah. Earlier, Mr. Estenne, you were</p> <p>13 telling me that you -- it was your</p> <p>14 understanding -- I think that was how you</p> <p>15 phrased it -- that you shared concerns that you</p> <p>16 or others had about BLMIS with Square One's</p> <p>17 investors. And I -- again, I see the exchange</p> <p>18 with Ms. Lemaitre and the exchange with</p> <p>19 Mr. Nijssen. I have seen the ART Fund</p> <p>20 disclosures. And what I haven't seen is where</p> <p>21 you're communicating that full list of concerns</p> <p>22 to Square One's investors.</p> <p>23 <b>A As I mentioned earlier, my</b></p> <p>24 <b>recollection is that these were communicated</b></p> <p>25 <b>verbally.</b></p>	<p>279</p> <p>1 this fund, of Square One Fund, yes? At all</p> <p>2 times, you were -- you were the director of the</p> <p>3 fund?</p> <p>4 <b>A Yes, correct.</b></p> <p>5 Q And you -- it's been your testimony</p> <p>6 all day that you or your -- Partners Advisers,</p> <p>7 your firm, performed various oversight over the</p> <p>8 investment and would communicate to investors</p> <p>9 through certain reports, yes?</p> <p>10 MR. FISCHER: Object.</p> <p>11 <b>A No. My --</b></p> <p>12 MR. FISCHER: Object to form.</p> <p>13 You may answer.</p> <p>14 <b>A My firm, Partners Advisers, performed</b></p> <p>15 <b>some level of oversight while it was invested</b></p> <p>16 <b>through ART Fund.</b></p> <p>17 Q I just showed you a June 2003</p> <p>18 correspondence attaching a Partners Advisers --</p> <p>19 <b>A Report of 2000.</b></p> <p>20 Q -- report.</p> <p>21 Let's look at this report. If you</p> <p>22 look at page 4729, do you see that the Fairfield</p> <p>23 Sentry returns go beyond 2000?</p> <p>24 <b>A Yes.</b></p> <p>25 Q So the first part of this report</p>
<p>278</p> <p>1 Q So how would it work? Walk me</p> <p>2 through. You would pick up the phone and go one</p> <p>3 by one through each Square One investor?</p> <p>4 MR. LEVIN: Object to form.</p> <p>5 You can answer.</p> <p>6 <b>A No, that's not how it goes. First of</b></p> <p>7 <b>all, there were few investors. They were not</b></p> <p>8 <b>always the same. I was in contact from time to</b></p> <p>9 <b>time with each of them. And my recollection --</b></p> <p>10 <b>or my belief that was no data was systematically</b></p> <p>11 <b>doing that with that. It is my recollection</b></p> <p>12 <b>that, you know, within the course of</b></p> <p>13 <b>conversation, you know, these topics were</b></p> <p>14 <b>discussed.</b></p> <p>15 Q And always verbally?</p> <p>16 <b>A That's -- apparently, because I don't</b></p> <p>17 <b>see any written material which states the</b></p> <p>18 <b>opposite or which confirms that, besides the</b></p> <p>19 <b>report you have just shown me.</b></p> <p>20 Q Did these investors ever tell you,</p> <p>21 Hey, Luc, go ask Bernie?</p> <p>22 <b>A No.</b></p> <p>23 Q Did any investor say --</p> <p>24 <b>A Why would they say that?</b></p> <p>25 Q You're the -- you're the director of</p>	<p>280</p> <p>1 wasn't drafted in 2000, was it?</p> <p>2 <b>A I don't know. Maybe just the</b></p> <p>3 <b>performance table was the only thing which was</b></p> <p>4 <b>potentially updated. I don't know.</b></p> <p>5 Q I guess, going back to what I was</p> <p>6 asking a few minutes ago, Mr. Estenne, you said</p> <p>7 that you -- to your understanding, you had</p> <p>8 verbal communications with Square One's</p> <p>9 investors where you disclosed potential risks</p> <p>10 regarding BLMIS. My question to you is, what</p> <p>11 was their response to you?</p> <p>12 <b>A They were okay with the risk.</b></p> <p>13 Q Did they say, I am okay with the</p> <p>14 risk? I mean, how did you -- give me the</p> <p>15 understanding -- give me the basis for that</p> <p>16 testimony.</p> <p>17 MR. LEVIN: Objection. Form.</p> <p>18 You may answer.</p> <p>19 <b>A I told them that these were -- I --</b></p> <p>20 <b>my recollection is that I informed them about</b></p> <p>21 <b>the positives and the negatives I was seeing in</b></p> <p>22 <b>the investment case into Square One. I told</b></p> <p>23 <b>them that my father had an investment into</b></p> <p>24 <b>Square One, that I had exposure to Square One as</b></p> <p>25 <b>well. Simply because my -- the management fee</b></p>



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<p style="text-align: right;">281</p> <p>1 payable from Square One Fund to Square Asset 2 Management were usually paid only few times a 3 year, one, twice. 4 But, accordingly, I had an interested 5 investment also into BLMIS investment strategy 6 through the investment management fee, which was 7 at risk during -- until it was paid. And they 8 were free to decide to invest or not to invest. 9 And I told them that, you know, these are the 10 positives, these are the negatives. I'm 11 invested, my father is invested. And they were 12 comfortable about staying invested. 13 Q Okay. All right. Let's break that 14 down a little bit. 15 So, first of all, who are these 16 investors that you're talking to? Do you 17 remember any names? 18 A Well, you can go through the list of 19 the -- the shareholder registry, and you will 20 have the names. 21 Q I have names of institutions. And as 22 you said earlier, those institutions are 23 intermediaries because they are private bank 24 customers in some instances. So my question is, 25 who are these people that you're talking to</p>	<p style="text-align: right;">283</p> <p>1 Q And you said earlier that your father 2 was invested. Now, you told me your -- 3 A That's correct. 4 Q Let me ask the question. 5 So your father -- you told me earlier 6 your father passed in 2005; is that right? 7 A That's correct. 8 Q Was he invested in Square One until 9 the time of his passing? 10 A Yes. 11 Q Through which entity did he invest in 12 Square One? 13 A Through Bank Brussels Lambert. 14 Q How much money did he have invested 15 in Square One? 16 A It varied over time. I know that it 17 started by funding, as I mentioned earlier, 18 Isis, which became Square One, with few 19 millions, and his investment evolved over time. 20 I do not have an exact recollection of how. He 21 stayed invested until the end. 22 Q What was his net worth when he 23 passed? 24 A That's confidential. 25 Q I'm asking you -- this is -- your</p>
<p style="text-align: right;">282</p> <p>1 verbally? 2 A I mean, for instance, Andre Stern was 3 one of them. There were others. I believe that 4 I talked people at Credit Bank Luxembourg. I 5 talked to people at Morgan Stanley, people who 6 were the -- who were part of the -- who were the 7 private bankers, including one whose name was 8 Damiano Paterno. I have talked to others. 9 Q So you have given me Andre Stern, 10 Damiano Paterno. Who else? Give me other 11 names. 12 A Patrick Vander Eecken was part of the 13 Kredietbank Luxembourg investment team for a 14 while. I talked to him. 15 Q So all these individuals, if I spoke 16 to them and said -- and asked them, Hey, did Luc 17 ever call and talk to you in person about the 18 risk affiliated with BLMIS, they would all say 19 yes? 20 A Ask them. This is -- my recollection 21 is that within the course of our interaction, 22 you know, the pros and cons of the investments 23 were discussed. 24 Q And you -- 25 A That's what I'm telling you.</p>	<p style="text-align: right;">284</p> <p>1 attorneys, I'm sure -- and as I explained to you 2 earlier, if there is testimony that is 3 confidential, we will designate it as such and 4 it will be protected by the confidentiality 5 order that I read earlier, and I'm happy to 6 reread it again. 7 So my question is, how -- what was 8 his net worth when he passed? 9 MR. LEVIN: Perhaps Mr. Estenne would 10 be more comfortable answering the question if it 11 were phrased in terms of the relative size of 12 his Square One investment to his overall net 13 worth. 14 MR. MOLINA: That's fine. That -- I 15 am not -- that is all I am trying to understand. 16 A Few percent. 17 Q I'm sorry? 18 A Few percent. 19 Q Few percent? Three percent, roughly? 20 A I would say between zero and five. 21 Q Zero and five. 22 And you said -- I think earlier you 23 were saying that you felt that you were 24 indirectly invested because of your exposure 25 vis-a-vis the management fees that Square Asset</p>

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<p style="text-align: right;">285</p> <p>1 Management received from Square One. Did I get 2 that right? 3 MR. LEVIN: Object to form. 4 You may answer. 5 <b>A For instance -- yeah, so the</b> 6 <b>management fee Square One Fund owed to Square</b> 7 <b>Asset Management was paid once or twice a year.</b> 8 <b>Between that time, the fund accrued in its</b> 9 <b>accounting the management fee, which it owed to</b> 10 <b>the asset manager of Square Asset Management,</b> 11 <b>and these monies were invested, and they</b> 12 <b>continued to be invested in the managed account</b> 13 <b>of -- at BLMIS.</b> 14 Q But just to be very clear, you 15 personally did not invest in Square One Fund, 16 correct? 17 <b>A That's correct, but my father was</b> 18 <b>until his passing, and I was -- and I -- because</b> 19 <b>of what I just explained to you, I was -- one</b> 20 <b>can say that I was invested. I had exposure to</b> 21 <b>BLMIS strategy.</b> 22 <b>I can, for instance, tell you that,</b> 23 <b>according to an e-mail which I believe was sent</b> 24 <b>through Timothée Henry to me just a few days</b> 25 <b>after the fraud was uncovered or made public, I</b></p>	<p style="text-align: right;">287</p> <p>1 thousand dollars each year? 2 <b>A Yeah.</b> 3 Q When you're -- after -- what happened 4 to the shares that your father held after he 5 passed? Did those shares get redeemed? 6 <b>A Yes.</b> 7 Q And I assume you inherited some of 8 that estate after he passed? 9 <b>A Yes.</b> 10 Q Yeah. At any point during the life 11 of the Square One Fund investment in BLMIS, did 12 you consider closing the BLMIS account? 13 MR. LEVIN: Objection. Form. 14 I withdraw the objection. 15 <b>A No.</b> 16 Q Did you ever confront anyone at BLMIS 17 with any of these concerns that you were 18 communicating either orally or in writing to 19 people? 20 <b>A My understanding was that it was a</b> 21 <b>"take it or leave it" situation.</b> 22 Q Based on what? 23 <b>A Again, based on earlier conversation</b> 24 <b>I had with people at BLMIS.</b> 25 Q The two or three times that you spoke</p>
<p style="text-align: right;">286</p> <p>1 <b>was communicated by Timothée Henry that Square</b> 2 <b>One Fund had a total of four -- over 400,000</b> 3 <b>U.S. dollar of accrued management fee payable</b> 4 <b>from Square One Fund to Square Asset Management</b> 5 <b>invested into Madoff, so that was an exposure.</b> 6 Q And so you never received those 7 \$400,000? 8 <b>A I never -- Square One Asset</b> 9 <b>Management never received and, accordingly, I</b> 10 <b>never received them.</b> 11 Q How much -- how many fees -- or 12 what's the total amount of fees that Square 13 Asset Management did receive for its role in 14 managing Square One Fund? 15 <b>A Well, as you know, the management fee</b> 16 <b>charged by Square One Fund was 1.25 percent of</b> 17 <b>the net asset value of Square One Fund. It is</b> 18 <b>my recollection that throughout the life of the</b> 19 <b>fund the average net asset value was around</b> 20 <b>20 million. So if you account -- so it is one</b> 21 <b>and a half -- well, 1.25 percent of roughly</b> 22 <b>20 million. That was the annual fee, which was</b> 23 <b>paid by Square One Fund to Square Asset</b> 24 <b>Management.</b> 25 Q So, roughly, a couple hundred</p>	<p style="text-align: right;">288</p> <p>1 to them? 2 <b>A Correct.</b> 3 Q So you never verbally told them the 4 concerns that you were memorializing in these 5 other conversations? 6 <b>A No.</b> 7 MR. LEVIN: Objection. Form. 8 <b>A Not that I remember.</b> 9 <b>I remember also because I think it is</b> 10 <b>important for you to know that no investor in</b> 11 <b>Square One Fund -- I mean, we were all shocked</b> 12 <b>when the fraud was discovered. I was shocked,</b> 13 <b>and my investors into Square One Fund were</b> 14 <b>shocked as well. None of them have proceeded to</b> 15 <b>go after me or after Square One or after Square</b> 16 <b>Asset Management.</b> 17 Q In other words, they never commenced 18 legal proceedings against Square One Fund? 19 <b>A That's correct.</b> 20 Q Or you personally as the director? 21 <b>A That's correct.</b> 22 Q Did you ever have to settle -- did 23 you ever have to pay back some of these 24 investments to third parties? 25 <b>A No.</b></p>

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<p>289</p> <p>1 Q No investor asked for his or her</p> <p>2 money back?</p> <p>3 A No.</p> <p>4 Q And you interpret that as that they</p> <p>5 were not -- they were surprised that Madoff was</p> <p>6 a fraud and didn't hold it against Square One?</p> <p>7 A That's correct.</p> <p>8 Q Let me show you --</p> <p>9 A How would you otherwise -- yeah,</p> <p>10 that's my understanding.</p> <p>11 Q Let me show you...</p> <p>12 MR. MOLINA: Hold on. I am looking</p> <p>13 for this document. I don't know where it is in</p> <p>14 the...</p> <p>15 MS. STORK: Give me a second.</p> <p>16 MR. MOLINA: Give me one second.</p> <p>17 Can we just go off the record for one</p> <p>18 minute --</p> <p>19 MS. STORK: I -- we --</p> <p>20 THE VIDEOGRAPHER: Stand by.</p> <p>21 MR. MOLINA: -- while we -- so I can</p> <p>22 confer with my team.</p> <p>23 THE VIDEOGRAPHER: We're going off</p> <p>24 the record. The time is 5:54 p.m.</p> <p>25 (A recess was taken.)</p>	<p>291</p> <p>1 e-mail to you saying, "Always knew this is a</p> <p>2 fraud, is only taken 15 years," yes?</p> <p>3 A Yes.</p> <p>4 Q And you wrote, "Yes, patience is a</p> <p>5 virtue."</p> <p>6 A Yes.</p> <p>7 Q What was the context behind your</p> <p>8 response?</p> <p>9 A You know, Peter Fletcher had, in the</p> <p>10 past, expressed concerns about BLMIS investment</p> <p>11 strategy, and he was telling me that he was</p> <p>12 always -- he always knew that he was a fraud,</p> <p>13 and I -- as in -- I -- and that was my answer.</p> <p>14 I -- Peter Fletcher had -- you know,</p> <p>15 in my opinion, Peter Fletcher was a poor</p> <p>16 investment professional when it came to fraud</p> <p>17 detection, and his past track record was not</p> <p>18 convincing, to say the least. And so although</p> <p>19 he is -- he was -- he had told me that he wasn't</p> <p>20 convinced about the strategy. You know, I don't</p> <p>21 remember that he explicitly said, you know, I</p> <p>22 believe it is a fraud, but, you know, I just</p> <p>23 answer, you know, something which means, yeah,</p> <p>24 okay. What else could I -- could have I</p> <p>25 answered? You know...</p>
<p>290</p> <p>1 THE VIDEOGRAPHER: We're going back</p> <p>2 on the record. The time is 5:54 p.m.</p> <p>3 BY MR. MOLINA:</p> <p>4 Q Mr. Estenne, I'm handing you what has</p> <p>5 already been marked as Trustee Exhibit</p> <p>6 Number 63.</p> <p>7 MS. STORK: Oh, of course.</p> <p>8 (Trustee Exhibit 53 marked for</p> <p>9 identification and attached to the transcript.)</p> <p>10 Q Mr. Estenne, do you recognize this</p> <p>11 document?</p> <p>12 A According to what this is written</p> <p>13 there, it is an e-mail exchange between Peter</p> <p>14 Fletcher and myself.</p> <p>15 Q And this exchange happened on</p> <p>16 December -- between December 11th and</p> <p>17 December 12th of 2008?</p> <p>18 A I think it happened on December 12th.</p> <p>19 Q Yeah, no, you're correct,</p> <p>20 December 12th.</p> <p>21 So the bottom e-mail is a -- an</p> <p>22 e-mail that went to Mr. Fletcher concerning the</p> <p>23 fact that Mr. Madoff had been arrested, yes?</p> <p>24 A Yes.</p> <p>25 Q And then Mr. Fletcher forwarded that</p>	<p>292</p> <p>1 Q When you say that --</p> <p>2 A He was -- just to be specific because</p> <p>3 I think, you know -- there was a fund -- an</p> <p>4 Austrian fund manager called Michel Berger who</p> <p>5 was running a fund called Manhattan, which</p> <p>6 supposedly implemented a short-selling strategy</p> <p>7 on the U.S. stock market in the early 2000s.</p> <p>8 And some people were questioning how a short</p> <p>9 seller could not lose money in a raging bull</p> <p>10 market in the early 2000s, late '90s. And Peter</p> <p>11 Fletcher was invested on -- Parly Company was</p> <p>12 invested under the supervision of Peter Fletcher</p> <p>13 in this Manhattan fund.</p> <p>14 Peter Fletcher has assured many</p> <p>15 people in his entourage, including myself, that</p> <p>16 the fund strategy and the fund manager were, in</p> <p>17 his opinion, you know, credible, that he was</p> <p>18 speaking on a regular basis to the investment</p> <p>19 manager. And it happened later that this fund</p> <p>20 was a fraud and that the fund manager had</p> <p>21 committed a fraud. So in mine opinion, you</p> <p>22 know, Peter Fletcher was not someone who was</p> <p>23 good at due diligencing manager and -- you know,</p> <p>24 at weighing the pros and cons of investment</p> <p>25 strategies.</p>

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<p>293</p> <p>1 Q Are you of the opinion that at least</p> <p>2 at the time of this exchange that you were</p> <p>3 better at spotting investment fraud than</p> <p>4 Mr. Fletcher?</p> <p>5 <b>A Apparently, no.</b></p> <p>6 Q Yeah.</p> <p>7 <b>A Unfortunately not, as it turned out.</b></p> <p>8 Q Let me ask you -- and then we're</p> <p>9 almost done, but let me ask you, Square One</p> <p>10 Fund, you said earlier you were always one of</p> <p>11 its directors, correct?</p> <p>12 <b>A I was director of Square One Fund</b></p> <p>13 <b>during the entire life of the fund, and I'm</b></p> <p>14 <b>still director of the fund.</b></p> <p>15 Q Yeah. And -- but Square One Fund had</p> <p>16 other directors, correct?</p> <p>17 <b>A That's correct.</b></p> <p>18 Q And did you ever disclose to your</p> <p>19 fellow directors the same concerns that we've</p> <p>20 been discussing today about BLMIS?</p> <p>21 <b>A Not that I remember.</b></p> <p>22 Q Were there even board meetings that</p> <p>23 were had at Square One Fund?</p> <p>24 <b>A There were almost no board meetings.</b></p> <p>25 Q Why not?</p>	<p>295</p> <p>1 <b>counsel to withdraw with the element you</b></p> <p>2 <b>referred to.</b></p> <p>3 Q And, again, without divulging any</p> <p>4 confidential information, attorney-client</p> <p>5 privileged information, why did you give that</p> <p>6 instruction?</p> <p>7 MR. LEVIN: That's going to call for</p> <p>8 privileged information.</p> <p>9 MR. MOLINA: Okay. We can take a</p> <p>10 break just to see if I have anything else to</p> <p>11 ask. I think we're --</p> <p>12 MR. LEVIN: I'd like to know how much</p> <p>13 time is remaining.</p> <p>14 THE VIDEOGRAPHER: Please stand by.</p> <p>15 We are going off the record. The</p> <p>16 time is 6:03 p.m.</p> <p>17 (A recess was taken.)</p> <p>18 THE VIDEOGRAPHER: Okay. We are back</p> <p>19 on the record. The time is 6:12 p.m.</p> <p>20 MR. MOLINA: I have no further</p> <p>21 questions. I pass the witness.</p> <p>22 MR. LEVIN: I have nothing to add or</p> <p>23 ask except whatever procedural wrap-up we have.</p> <p>24 MR. MOLINA: I don't think the</p> <p>25 Trustee has any outstanding matters.</p>
<p>294</p> <p>1 <b>A Because it was a lightly operated</b></p> <p>2 <b>fund and that no -- very few board meetings were</b></p> <p>3 <b>required. I believe that the regulatory</b></p> <p>4 <b>environment at that time and the regulatory</b></p> <p>5 <b>environment today are very different, and -- as</b></p> <p>6 <b>well as the industry practices prior and after</b></p> <p>7 <b>2008 specifically.</b></p> <p>8 Q After the fund was uncovered -- the</p> <p>9 fraud was uncovered -- sorry -- Square One Fund</p> <p>10 filed a customer claim with the BLMIS estate,</p> <p>11 correct?</p> <p>12 <b>A Correct.</b></p> <p>13 Q And then it -- in 2010, it withdrew</p> <p>14 that claim, correct?</p> <p>15 <b>A Correct.</b></p> <p>16 Q Without divulging any attorney</p> <p>17 confidential information, what was the reason</p> <p>18 that you had that withdrawal?</p> <p>19 MR. LEVIN: Tell -- let me just</p> <p>20 caution you to be careful about attorney-client</p> <p>21 communications or any things your counsel told</p> <p>22 Square -- told you on behalf of Square One, and</p> <p>23 you can answer subject to that limitation.</p> <p>24 <b>A Following consultation with my -- the</b></p> <p>25 <b>counsel of Square One Fund, I instructed my</b></p>	<p>296</p> <p>1 MR. LEVIN: He will get a transcript?</p> <p>2 MR. MOLINA: Yeah, we can go off, off</p> <p>3 the record.</p> <p>4 THE VIDEOGRAPHER: Okay. Stand by.</p> <p>5 We are going -- this marks the end of</p> <p>6 the deposition. We are going off the record.</p> <p>7 The time is 6:13 p.m.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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## ACKNOWLEDGMENT OF DEPONENT

I, LUC ESTENNE, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me and any corrections appear on the attached Errata sheet signed by me.

\_\_\_\_\_  
(Date) (Signature)

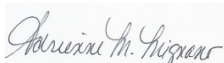
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## CERTIFICATE OF REPORTER - NOTARY PUBLIC

I, ADRIENNE MIGNANO, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me and thereafter reduced to typewriting under my direction; that reading and signing was requested; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 16th day of November, 2022.

My Commission Expires: June 2026.



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