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1 UNITED STATES
 2 SECURITIES AND EXCHANGE COMMISSION
 3 -----X
 4 In the Matter of:
 5
 6 OIG-509
 7 -----X
 8 WITNESS: NUMBER 60
 9 PAGES: 1 - 39
 10 PLACE: Ascendant Compliance Management
 11 140 west 57th Street
 12 New York, New York
 13 DATE: June 10, 2009

14
 15 The above-entitled matter came on
 16 for hearing at 11:20 a.m.
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0002

1 A P P E A R A N C E S:
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 3 On behalf of the Securities and Exchange
 4 Commission
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 6 H. DAVID KOTZ, ESQ.
 7 NOELLE FRANGIPANE, ESQ.
 8 United States
 9 Securities and Exchange Commission
 10 100 F Street NE
 11 Washington, DC 20549
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0003

1 P R O C E E D I N G S
 2 MR. KOTZ: We are on the record at
 3 11:20 a.m. on June 10, 2009 at the offices of
 4 John Gentile.
 5 Q. My name is David Kotz. I'm
 6 Inspector General of the United States

7 Securities and Exchange Commission. I have
8 with me my colleague from the Office of
9 Inspector General Noelle Frangipane. This is
10 an investigation by the Office of the Inspector
11 General, Case Number OIG-509.

12 I'm going to ask you certain
13 questions. Even though you're not going to be
14 giving an oath, please try to provide as full
15 and truthful answers as you can. Please
16 provide a verbal answer to the question, as a
17 nod of the head or a non-verbal response won't
18 be picked up by the Court Reporter. Please let
19 me finish my question before you provide your
20 response. I'll try to let you finish your
21 response before I ask the next question so the
22 record will be clear.

23 It's important that you understand
24 the questions and give accurate answers. If
25 there's anything you don't understand or

0004

1 anything you do not know or not sure about,
2 please let me know. Otherwise I will assume
3 that you heard and understood the question.

4 This is an official U.S.
5 Government law enforcement investigation. The
6 claims asserted in this case are serious ones.
7 It is very important you tell me everything you
8 know about the matter at hand and are
9 completely forthcoming and truthful.

10 Do you understand those
11 instructions?

12 A. Yes, I do.

13 Q. Let me just start with some initial
14 background. What was your education beginning
15 with college?

16 A. I have a bachelors degree from
17 Central Connecticut State University in finance
18 and an MBA from Fordham University.

19 Q. What years did you get those
20 degrees?

21 A. Central Connecticut 1983,
22 approximately, and Fordham approximately 1986.

23 Q. What did you do after you got your
24 degrees in terms of jobs?

25 A. I worked at Paine Weber, from Paine

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1 Weber I went to the SEC.

2 Q. When did you start with the SEC?

3 A. I believe it was May of 1987.

4 Q. So how long were you at Paine
5 Weber, just for a year?

6 A. A year or so.

7 Q. What did you do at Paine Weber?

8 A. I was a damaged analyst in their
9 legal department.

10 Q. What kind of stuff did you do?

11 A. If a customer alleged they lost
12 money and they were going to bring it to
13 arbitration or sue us. I would take statements
14 and deduce some of the damage, loss
15 calculations, turnover calculations, break even
16 points, things like that, to help Paine Weber
17 defend itself against the case.

18 Q. What was your first position with
19 the SEC in May of 1987?

20 A. I was a securities compliance
21 examiner.

22 Q. How long did you serve in that
23 position?

24 A. Approximately four-years.

25 Q. So somewhere around 1991?

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1 A. Yes. I think '92 I was promoted to
2 branch chief.

3 Q. What were your duties as a
4 securities compliance examiner?

5 A. To conduct audits of broker dealers
6 and occasionally we worked on investigations
7 with the broker dealer and the enforcement
8 staff.

9 Q. Did you do anything in that time
10 period relating to Ponzi schemes when you did
11 audits or investigations?

12 A. I don't recall specifically.

13 Q. Any particular matters involving
14 Ponzi schemes?

15 A. I can't say I recall specific Ponzi
16 schemes that I worked on as an examiner. I may
17 have, but I don't have a specific recollection.

18 Q. So, 1992 you became a branch chief.
19 What were your responsibilities as a branch
20 chief?

21 A. I supervised the staff of
22 examiners, securities compliance examiners.
23 There were perhaps between five and seven
24 examiners per branch chief.

25 Q. And that was also doing broker

0007

1 dealer exams?

2 A. The same thing as before, and
3 worked on some investigations with the
4 enforcement staff, BD enforcement staff.

5 Q. What division were you in at that
6 time?

7 A. We were part of market reg and then
8 we went over to OCIE some point in the mid
9 '90s, on or about.

10 Q. In that period 1992 there was no
11 OCIE; isn't that right?

12 A. I believe you're correct. I think
13 OCIE came later. We worked, I'm pretty sure at
14 that point it was the division of market
15 regulations.

16 Q. You were the chief of the broker
17 dealer inspection program?

18 A. I was a branch chief. At that time
19 there must have been four or five of us,
20 approximately.

21 Q. Prior to conducting an examination
22 of November 1992, have you heard the name
23 Bernie Madoff or Bernard Madoff or Bernard
24 Madoff Investment Securities?

25 A. I have heard of that name, yes.

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1 Q. How did you hear about that?

2 A. I worked on the enforcement case

3 involving two CPAs by the name of Avellino and
4 Bienes.

5 Q. I'm saying prior to working on the
6 Avellino and Bienes matter, had you heard the
7 name Bernard Madoff?

8 A. No, I don't believe so.

9 Q. How long were you a branch chief
10 for?

11 A. I was promoted to an assistant
12 director maybe 1996, approximately.

13 Q. As an assistant director you had
14 similar duties except you had branch chiefs
15 under you?

16 A. Yes. On the dates I'm a little
17 hazy on whether it was '95 or '97. I honestly
18 don't remember.

19 Q. How long did you a serve as an
20 assistant director?

21 A. Through early 1999.

22 Q. Where did you go after 1999?

23 A. To a private consulting firm,
24 securities compliance consulting firm called
25 National Regulatory Services, NRS for short.

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1 Q. How long did you work there for?

2 A. Through May of 2007.

3 Q. What were your duties, what was
4 your position there?

5 A. I was a director. My duties were
6 to conduct audits and risk assessments of
7 broker dealers. We also did training and
8 conferences. I was a speaker at our
9 conferences. It was very similar to what I was
10 doing at the SEC without the SEC's authority.

11 Q. And then in May of 2007 you went to
12 where?

13 A. IMS Consulting, which has since
14 changed its name to Ascendant Compliance
15 Management.

16 Q. And that's the position you hold
17 today?

18 A. Correct. I'm a partner. It's the
19 same type of business, consulting business,
20 investment advisor work, broker dealer work.

21 Q. So you believe the first time you
22 heard the name Bernie Madoff was in connection
23 with your work at the SEC involving this
24 Avellino and Bienes matter?

25 A. Yes.

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1 Q. At that time did you hear anything
2 about him, I mean did you research him, were
3 you aware of his reputation at all while you
4 were working on this matter?

5 A. I was aware that his firm was very
6 prominent in developing third market particular
7 automated trading, that's pretty much it. I
8 don't recall anything else.

9 Q. I'm going to show you a document.
10 We're going to mark it. Well, actually before
11 that, why don't we put this into evidence, this
12 document, which is the Confidentiality and
13 Nondisclosure Agreement. If you could just

14 take a look at that. Put your name and sign
15 it.

16 A. Do you mind if I take a few minutes
17 to read it.

18 Q. Please.

19 A. Can I make a quick copy of that
20 after?

21 Q. Sure.

22 I'm going to mark this document as
23 Exhibit 1, this is the Confidentiality and
24 Nondisclosure Agreement. This is the document
25 you signed today; is that right?

0011

1 A. Yes.

2 (Whereupon, the aforementioned
3 Confidentiality and Nondisclosure Agreement
4 were marked as Exhibit 1 in evidence as of
5 this date by the Reporter.)

6 Q. I'm going to mark as Exhibit 2
7 another document, which is a memorandum dated
8 November 16, 1992 to Demetrios Vasilakis and

9 Former Examiner #2. I'm going put it into
10 evidence as Exhibit 2 and ask you to take a
11 minute or two to look at that as well.

12 (Whereupon, the aforementioned
13 memorandum was marked as Exhibit 2 in
14 evidence as of this date by the Reporter.)

15 A. Okay.

16 Q. If you see on the second page of
17 this document it says pursuant to an Assignment
18 Memorandum dated November 16, 1992, you see
19 it's date November 22, 1992 and the first page
20 of Exhibit 2 is dated November 16, 1992, do you
21 think the first page of Exhibit 2 is the
22 Assignment Memorandum or is there more to it
23 that we're missing?

24 A. I believe this is the Assignment
25 Memorandum that goes to these two security

0012

1 compliance examiners.

2 Q. So, on November 16th of 1992 you
3 assigned to Demetrios Vasilakis and Former Examiner #2
4 Former Examiner #2 to do a cause exam of Bernard Madoff?

5 A. Yes.

6 Q. Now, what was your role in that
7 cause exam?

8 A. I really don't recall anything
9 about the audit. Obviously I reviewed it and
10 signed off on it and supervised it, but in
11 terms of being on site or conducting meetings
12 or reviewing records, I don't recall. In fact,
13 I completely forgot about this at all until you
14 mentioned it on the phone a few weeks ago. I
15 totally forgot we did this, but it appears to
16 be a very, very brief --

17 Q. You don't think you went on site?

18 A. I don't recall, although it says
19 some -- I thought I perused it and it said
20 somewhere there was a meeting with Mr. Madoff.

21 Q. Do you remember ever meeting Bernie
22 Madoff?

23 A. Just speaking to him on the phone.
24 I don't actually remember meeting him, but I

25 may have.

0013

1 Q. What do you remember about speaking
2 to him on the phone?

3 A. That he was responsive to document
4 request. He was very courteous, civil.

5 Q. Let me show you another document,
6 maybe that will help refresh your recollection.
7 We're going to mark this document as Exhibit 3.
8 This is a memorandum to the file dated June 24,
9 1992 from ^{former New York} ~~Enforcement Staff Attorney~~, Acting Branch chief,
10 broker dealer enforcement to the file.

11 (Whereupon, the aforementioned
12 memorandum was marked as Exhibit 1 in
13 evidence as of this date by the Reporter.)

14 Q. If you see this document talks
15 about the information that the SEC received
16 about Avellino and Bienes, allegations that
17 Avellino and Bienes may have been selling
18 unregistered securities and may be acting as an
19 unregistered investment company. It references
20 in a transaction that an investor would send
21 money, that they would invest the money. It
22 was set up to give the appearance of a demand
23 note, they give back a letter and they were
24 giving them between 13.5 percent and 18 percent
25 interest.

0014

1 If you see on the second page of
2 this document it says, "in order to assist me
3 in recommending to the Commission that the
4 staff take an injunction I have assembled a
5 group of examiners to help accumulate documents
6 and obtain necessary evidence." The group
7 consist of ^{Personal Privacy} ~~_____~~, you, ^{Personal Privacy} ~~_____~~ and
8 Robert DeLeonardis and John Knee. "I'll brief
9 them on the case."

10 So, it seems as though, and maybe
11 you can take a minute or two if you want to
12 read this document, but it seems as though
13 information was provided to the SEC relating to
14 concerns about investments made through
15 Avellino and Bienes and you were then put on
16 the team to look into it and that had led to
17 the cause exam. If you could take a look at
18 this document and see if that's the case.

19 A. Okay.

20 Q. Information was provided by
21 Avellino and Bienes, the team was assembled and
22 the case exam may have been as a result of the
23 information in the June 24 memo?

24 A. Yes, although I think after this
25 there was the whole Avellino and Bienes

0015

1 investigation, then came the cause exam that
2 you refer to. So, this cause exam here
3 wouldn't have been directly related to in the
4 matter of King Arthur, it would have been
5 really the follow-up full blown investigation
6 of Avellino and Bienes. So, it's similar.

7 Q. So there was a full blown
8 investigation of Avellino and Bienes in
9 connection with failure to register, acting as

10 an investment advisor without registration?

11 A. Yes.

12 Q. Do you also recall -- former New York
Enforcement Staff Attorney
13 stated to us that they were looking at Avellino
14 and Bienes for a Ponzi scheme?

15 A. I honestly don't remember that
16 coming up. It may have, but I don't have a
17 specific recollection.

18 Q. Do you remember what the purpose of
19 the exam you oversaw was, specifically?

20 A. Referring to the Ponzi scheme?

21 Q. Yes.

22 A. After reading this two-page report
23 it was to verify positions that were held at
24 Madoff by these Avellino and Bienes customers,
25 and according to the report the Bernard Madoff

0016
1 positions that the stock market would trace
2 back to the depository trust company which is
3 the industry custodian.

4 Q. Why would you go about doing that,
5 what would be the reason?

6 A. Just to verify that the positions
7 -- so, if I owned a hundred shares of IBM that
8 I really had a hundred shares of IBM segregated
9 at Madoff via DTC.

10 Q. And so, when you would do a Ponzi
11 scheme review or examination you were trying to
12 figure out if there was actual trading, isn't
13 that what you would do, doesn't that make
14 sense?

15 A. There's a difference between
16 looking at trading versus looking at end of day
17 or end of month positions. And based upon what
18 I just read in the cause exam, it appears as
19 though we were looking to verify positions that
20 Avellino and Bienes' customers had owned and
21 held their accounts at Madoff Securities. As
22 it says here the staff's examination was
23 conducted to verify BLM's proper segregation of
24 A and B's October 1992 month end securities
25 positions in BLM's segregated account at DTC.

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1 Q. So, Avellino and Bienes would have
2 represented that they had positions at Madoff
3 and the effort of the cause exam would be to
4 confirm whether that was an accurate
5 representation?

6 A. Yes. And again, that's based on
7 what I'm reading, I really don't recall the
8 details.

9 Q. It says in here, "the staff then
10 traced all of BLM's stock record positions to
11 DTC participants statements for November 12,
12 1992." What would be the reason to trace the
13 positions to DTC?

14 A. That confirms that they're
15 legitimate positions, that there really is
16 evidence of the book entry position of DTC
17 that's properly custody.

18 Q. Now, let me ask you this, and we
19 talked to Former Examiner #2 she indicated,
20 and I want to get your perspective on this,

21 that likely at that time the exam staff
22 wouldn't have gone to DTC itself, but would
23 have received the DTC records from Madoff, do
24 you know whether that's true or not?

25 A. That is likely to be true. I have
0018 no recollection of going DTC. I agree with

1 Former Examiner #2
2
3 Q. So, at that point in time if Madoff
4 had faked DTC records, then those positions
5 could have been confirmed through that method?

6 A. If he had faked them that's
7 correct. We would have relied on the fakes,
8 apparently.

9 Q. Have you ever done or do you know
10 what you would go about to do a Ponzi scheme
11 examination, if you were focused specifically
12 on Ponzi schemes what would you do?

13 A. I would follow the money and look
14 for -- this is just in general, not related to
15 this. Just follow the money and look at
16 representations made to clients, follow the
17 money, what happens to the money. Most cases
18 it disappears. It's just following the chain.

19 Q. Now, if you were doing a Ponzi
20 scheme examination and you were trying to
21 determine whether the entity was actually
22 engaged in trading, would you potentially go to
23 an outside third-party independent like DTC to
24 confirm that the trading that the broker dealer
25 said they were doing, they were actually doing?

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1 A. Well, here we did. I can't think
2 of any other Ponzi schemes that I worked on
3 that involved the broker dealer similar to this
4 situation, but if it had then very possibly we
5 would have gone to DTC, reviewed DTC records.

6 Q. So, if in fact there was no trading
7 going on and the DTC records you looked at from
8 Madoff were real, then it would have showed no
9 trading, right?

10 A. No. You have to distinguish
11 between trading and positions. You could have
12 buy or sell. At the end of the day if you own
13 the stock it will be evidenced on, in this case
14 the Madoff stock record, which will show you
15 owning the stock, i.e., you're long, and
16 segregation positions at DTC. So, where as
17 opposed to trading you can buy and sell, at the
18 end of the day there's nothing to custody,
19 nothing would show up on the stock record, end
20 of day stock record, okay. And so, therefore,
21 nothing would be DTC. I just want to make that
22 point to distinguish.

23 Q. If the positions weren't real and
24 in fact it was all fake and say a broker dealer
25 was telling the customers that he was buying

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1 positions for them but he wasn't, then a review
2 of DTC records would determine whether they
3 were actually positions or not?

4 A. Yes, if they're valid DTC records,
5 that should definitely tell the story. You

6 should be able to literally get them from order
7 ticket confirmations, monthly account
8 statements, transaction blotters, stock
9 records, DTC. There should be a flow.

10 Q. Let me show you another document.
11 we'll mark the next document as Exhibit 3.

12 (Whereupon, the aforementioned King
13 Arthur account fact sheet was marked as
14 Exhibit 3 in evidence as of this date by
15 the Reporter.)

16 Q. It says on it King Arthur fact
17 sheet, King Arthur account fact sheet, a
18 two-page document. This evidently is the
19 information that was provided to investors that
20 we know at Avellino and Bienes that led to the
21 investigation. I just wanted to get your
22 thoughts on it. It states, "what does it pay.
23 13.5 percent, the interest income is paid
24 quarterly." And it states, "yes, a hundred
25 percent. In no time is a trade made that puts

0021
1 your money at risk. In over 20-years there has
2 never been a losing transaction."

3 My first question is, just
4 generally if you received information that an
5 investor was stating to individuals who wanted
6 to invest that they would provide an investment
7 vehicle with no risk, that would be suspicious?

8 A. A red flag for sure.

9 Q. And then if you look on the second
10 page of the this documents it says, "the funds
11 you send to Avellino and Bienes are treated as
12 a loan by them." Would the fact that the
13 letter classified them as a loan be suspicious
14 as well?

15 A. Yes.

16 Q. Can you have a guarantee of a loan?

17 A. I suppose. This whole, just
18 perusing this quickly, yes, it's very
19 suspicious. The returns, it's a hundred
20 percent safe, treating it as a loan. You know,
21 perhaps they thought they could call it a loan
22 and it wouldn't be considered as a securities.

23 Q. But I mean as a factual matter,
24 really only the government can guarantee, fully
25 guarantee a loan because they can print money,

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1 right?

2 A. Yes, yes. A hundred percent
3 guarantee, yes. I mean you can have a
4 guarantee but it's only as good as the
5 creditor, financial worthiness of the creditor.

6 Q. So, do you remember now at the time
7 that, you know, there was this suspicious
8 investment vehicle offered by Avellino and
9 Bienes, do you remember that that was kind of
10 the issue that led to the investigation?

11 A. Yes, based on a review of this,
12 yes. Without these documents I vaguely recall
13 returns being offered in the 13 to 15 percent
14 range, minimum risk, but this makes it clearer.

15 Q. Avellino and Bienes would offer it
16 to their investors at the 13.5 percent with

17 minimal risk, but then they would make -- do
18 you remember that they said that essentially
19 all of the actual investing was done by Bernie
20 Madoff, and so they would make money on the
21 spread, right, between what the actual
22 investment was and what they were giving their
23 investors. So, in effect it would be higher
24 than 13.5 percent for them to make any money,
25 right?

0023

1 A. I don't honestly recall that
2 specifically, but it sounds reasonable, it
3 sounds like it was the case.

4 Q. And so, the work that you did in
5 the cause exam as talked about in Exhibit 2,
6 was that to determine how in fact Avellino and
7 Bienes were able to offer such a great
8 investment vehicle with such high percentages
9 with no risk?

10 A. The cause exam, no, it was not.
11 The cause exam focused on, were these real
12 positions. If Mr. Madoff was sending out
13 statements that said you own half a million
14 dollars worth of X Y and Z positions, were
15 those positions in fact real, were they custody
16 accurately. It would not have looked at the
17 trade strategy. That may or may not have been
18 done somewhere else, but honestly I don't
19 recall.

20 Q. So, you wouldn't have looked at
21 trading strategies, but you would have
22 determined whether there were positions at all.
23 If the SEC gets information that Avellino and
24 Bienes are giving this tremendous rate, right,
25 high returns, no risks, talking about in terms

0024

1 of a loan, you wanted to see whether it was
2 actually real, whether there were real
3 positions, not that it was just fake as in a
4 Ponzi scheme, perhaps, where you would take the
5 money from the next investor, correct?

6 A. That's a fair statement, yes.
7 Q. And since Avellino and Bienes said
8 that actually Madoff did the trading and the
9 investing for them, that's why you went to
10 Bernie Madoff; is that right?

11 A. That's correct, yes.

12 Q. Do you know whether in the cause
13 exam that was conducted November 1992, you were
14 looking into whether Avellino and Bienes'
15 positions were real or Bernie Madoff's
16 positions were real?

17 A. It would have been account
18 statements produced by Madoff.

19 Q. For Avellino and Bienes?

20 A. I believe so. I believe so.

21 Q. The focus was on Avellino and
22 Bienes, right?

23 A. Absolutely. I think as one of the
24 previous exhibits pointed out that we suspected
25 it was basically unregistered mutual funds

0025

1 slash investment advisor.

13 Q. Let me show you Page 40. On Page
14 40 at the bottom on line 25.

15 A. What line?

16 Q. The last line. Actually, if you
17 could move up to the middle page. You see it
18 says, you actually asked, "what type of
19 strategy, are you aware of the strategy that
20 Mr. Madoff utilizes? Oh, yes. Can you
21 describe that to me?" And then if you see he
22 continues, "Mr. Madoff's uses the hedges
23 basically as SEPs, he puts in calls. Every
24 security that we have in the long position has
25 a hedge, every single one of them. We usually

0028
1 call the hedge of the buying and selling, the
2 buying of convertible and the selling of the
3 underlying comes on short. Sometimes done the
4 same two, sometimes done two days at the long
5 position as well. This used to be called bona
6 fide arbitrage." And then they ask, "do you
7 have any input in how to input these strategies
8 at all?" And the answer is, "no, none at all."
9 And then the question is, "the sole discretion
10 of Mr. Madoff?" And the answer, "totally."

11 Does this refresh your recollection
12 that at least there were some questions about
13 the strategy that Madoff used?

14 A. Yes, this does refresh my
15 recollection.

16 Q. If you look on Page 75 of this
17 document. If you look on line 14 it says, "I
18 can honestly say, and you can check any record
19 that you want with me from 1962 to date,
20 thousands of transactions of what I call
21 arbitrage, which is bon-a-fide convertible
22 buying and selling." If you refer back to the
23 previous statement that's how he described
24 Bernie Madoff's strategy. He says, "there has
25 never been a loss."

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1 A. Right.

2 Q. Now, I guess, my question is, I
3 don't know whether you remember at the time or
4 just in general, would you consider that a red
5 flag or suspicious the way that the strategy
6 was described, that Avellino and Bienes were
7 saying from 1962 to 1992, 30-years, there has
8 never been a loss?

9 A. I would say it's a red flag.

10 Q. But you at least were not at any
11 point in time to look into the question of how
12 he was achieving those returns in terms of
13 Madoff's strategy?

14 A. I don't recall specifically one way
15 or the other. My recollection is no because we
16 were so focused on identifying the scope of the
17 fraud, the investors, the dollars, where the
18 assets custody, let's close this down and get
19 the investors their money back.

20 Q. Do you recall there was a receiver
21 appointed in this case?

22 A. Vaguely.

23 Q. As you indicated, the purpose of
Page 12

24 what you and the enforcement staff were doing
25 was to insure the money of the investors of

0030
1 Avellino and Bienes were paid back?

2 A. Yes, that was our primary concern.

3 Q. And at the end is it a fact that
4 the money was paid back?

5 A. I believe it was. I don't recall
6 specifically if every one got a hundred
7 percent, but I'm pretty certain we were
8 successful.

9 Q. Do you recall that because there
10 was a determination that the money was there
11 and the investments were paid back that it
12 wasn't at least a Ponzi scheme, it may have
13 been unregistered securities, but it wasn't a
14 Ponzi scheme because the money was returned?

15 A. Well, at that point I believe that
16 was our thinking. Knowing today what we know,
17 that's different.

18 Q. Was there any discussion at all
19 that you recall at the end after you insured
20 that the money was returned to Avellino and
21 Bienes' customers, that a fine against them and
22 they were told they couldn't sell unregistered
23 securities, was there any discussion about
24 continuing the investigation or an examination
25 into Madoff himself?

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1 A. I don't recall any such
2 discussions.

3 Q. Do you recall at all that there was
4 an effort made to insure that the investors of
5 Avellino and Bienes were paid back, do you
6 recall at all where the money came from?

7 A. No. I was not involved at all in
8 that part of the -- at that point I guess it
9 wasn't even an investigation. It had been
10 determined that there were problems,
11 violations. I don't know who actually handled
12 or oversaw the return of the assets of the
13 clients.

14 Q. Let me ask you just generally then.
15 If Avellino and Bienes were suspected of
16 running a Ponzi scheme and all the decisions
17 were made by Madoff, wouldn't it be a concern
18 that Madoff could misappropriate other
19 customers' funds in order to provide the
20 capital needed to pay back the investors of
21 Avellino and Bienes?

22 A. Was it a concern that he was
23 stealing from somewhere else?

24 Q. Right.

25 A. To pay back?

0032
1 Q. Right.

2 A. I don't recall that coming up, it
3 may have. I just don't recall specifically,
4 it's too long ago.

5 Q. Right. But I mean thinking of it
6 kind of generally, if you had allegations that
7 an entity was running a Ponzi scheme, right,
8 and you wanted to insure that the investors got

9 paid back. If they told you that all the
10 decisions, all the investing was actually done
11 by somebody else, right, wouldn't it be kind of
12 a logical concern that -- as you would in a
13 Ponzi scheme, you're going to take the money to
14 pay back the investors of Avellino and Bienes'
15 that the SEC was assuring would be paid back
16 from the money from other investors, as how a
17 Ponzi scheme would work?

18 A. Yes, I think whoever oversaw that
19 in retrospect should have been aware of that.
20 My assumption here today is that the monies
21 were made back from the accounts at Madoff,
22 perhaps the same accounts that we spoke about
23 earlier that were the subject of the cause
24 exam.

25 Q. But you don't remember specifically

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1 looking at the issue of where the money that
2 was used to pay back all the investors exactly
3 came from?

4 A. I don't recall that at all, and I'm
5 fairly certain it wasn't our broker dealer
6 staff. I don't believe we were involved at
7 all. At least the examiners, I should say, I
8 don't know about the attorneys.

9 Q. And you're not aware of any other
10 examination that was conducted during that
11 time?

12 A. No.

13 Q. Do you know if the examiners
14 attempted to independently verify Madoff's
15 discretionary brokerage account balances for
16 clients other than Avellino and Bienes'?

17 A. I don't recall if we did any of
18 that.

19 Q. You don't recall doing that?

20 A. No.

21 Q. Thinking back now, if the examiners
22 had checked all of Madoff's discretionary
23 brokerage account balances with DTC and had
24 gotten no records from DTC, couldn't they have
25 uncovered potentially the Ponzi scheme back in

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1 1992?

2 A. If --

3 Q. If the examiners had checked all of
4 Madoff's discretionary brokerage account
5 balances with DTC and looked at DTC records,
6 couldn't the Ponzi scheme potentially had been
7 discovered in 1992?

8 A. Potentially if those discretionary
9 accounts were the source of the funds being
10 paid back. I think if that were the case there
11 would have been a flood of complaints from
12 those clients who would have looked at their
13 statements, assuming they're legitimate, and
14 would have said what's going on, where's my
15 cash, where are my stocks. You're talking
16 about discretionary accounts at his broker
17 dealer, so -- unless he was able to completely
18 falsify everything, he wouldn't have been able
19 to do that. You follow me?

20 Q. I don't. Let me just try to
21 understand you. So, let's say Bernie Madoff
22 needed X sum of money. The SEC comes in and
23 investigates Avellino and Bienes. And they
24 essentially say we need to make sure that the
25 investors are paid back, we need X sum of money

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1 to make sure the investors are paid back. Why
2 couldn't he take that money from anywhere?

3 A. Theoretically he could, yes.
4 Q. He could either take the money from
5 his own, you know, funds, in order to insure
6 that this thing isn't reviewed or he can take
7 money from additional investors who come in, as
8 you would normally in a Ponzi scheme?

9 A. Absolutely could have been done,
10 yes.

11 Q. And so, checking all of Madoff's
12 discretionary brokerage account balances with
13 DTC as opposed to only the ones from Avellino
14 and Bienes would reveal that, wouldn't it?

15 A. Only with respect to those specific
16 accounts, yes. So, if he was stealing from
17 those accounts, David, you're correct, it would
18 have showed cash -- it would have showed
19 positions being sold and cash out to a bank
20 account that he controlled where he would then
21 -- you can tie that into the millions of
22 dollars paid back to the Avellino and Bienes'
23 customers.

24 Q. But at that point in time it was
25 not your understanding that that was a task

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1 that you were suppose to do?

2 A. It was not. I don't recall, quite
3 honestly. I don't believe so. If we did it
4 would have been evidence and reflected in the
5 report.

6 Q. And you didn't see it anywhere in
7 the report?

8 A. That's correct. The report clearly
9 focused on the Avellino and Bienes to set the
10 property segregation of Madoff and tracing it
11 back to DTC, that's what that report refreshes
12 my memory on.

13 Q. There was another matter involving
14 Telfran, do you remember anything about?

15 A. No.

16 Q. Anything else that you remember?
17 You said earlier that you remember Bernie
18 Madoff being cordial and responsive to the
19 document requests, do you remember specifically
20 what document requests were made?

21 A. No, I don't. I thought it was
22 great that the CEO of, you know, a fairly
23 reputable large broker dealer was personally
24 handling the matter. That was somewhat
25 unusual. I thought he was being very

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1 forthcoming and expressed some concern and he
2 obviously cooperated.

3 Q. Do you think that perhaps at the
4 time given that Bernie Madoff at least had a

5 good reputation in terms of the, you know, a
6 large broker dealer at the time, that maybe,
7 you know, there wouldn't have been thought to
8 look into him further?

9 A. I think that's a fair statement. I
10 can't say that I recall a meeting where that
11 came up, but thinking back I'm sure it did.

12 Q. okay. Anything else that you can
13 remember that we haven't covered?

14 A. No, I think that's it. I did the
15 best I could, it's 17-years.

16 Q. I appreciate your time. If you
17 could not talk about this pursuant to that
18 agreement.

19 A. Not a problem.
20 MR. KOTZ: Off the record.
21 (Time noted: 12:05 p.m.)
22
23
24
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0038

I N D E X

1			
2			
3	EXAMINATION BY		PAGE
4	MR. KOTZ		3
5			
6	EXHIBITS	DESCRIPTION	PAGE
7	1	Confidentiality Agreement	5
8	2	Memorandum	11
9	3	Memorandum	13
10	4	King Arthur account fact sheet	13
11	5	Memorandum	25
12	6	Complaint	25
13	7	Transcript	26
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

0039

C E R T I F I C A T E

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3 I, SHERRY SPALLIERO, a Notary Public for
4 and within the State of New York, do hereby
5 certify:

6 That the witness whose examination is
7 hereinbefore set forth was duly sworn and that
8 such examination is a true record of the
9 testimony given by that witness.

10 I further certify that I am not related
11 to any of the parties to this action by blood
12 or by marriage and that I am in no way
13 interested in the outcome of this matter.

14 IN WITNESS WHEREOF, I have hereunto set
15 my hand this _____ day of June, 2009.