

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff;

v.

**OASIS INTERNATIONAL GROUP,
LIMITED; OASIS MANAGEMENT,
LLC; SATELLITE HOLDINGS
COMPANY; MICHAEL J.
DaCORTA; JOSEPH S. ANILE, II;
RAYMOND P. MONTIE, III;
FRANCISCO "FRANK" L. DURAN;
and JOHN J. HAAS,**

Defendants;

and

**MAINSTREAM FUND SERVICES,
INC.; BOWLING GREEN CAPITAL
MANAGEMENT LLC; LAGOON
INVESTMENTS, INC.; ROAR OF
THE LION FITNESS, LLC; 444
GULF OF MEXICO DRIVE, LLC;
4064 FOUNDERS CLUB DRIVE,
LLC; 6922 LACANTERA CIRCLE,
LLC; 13318 LOST KEY PLACE, LLC;
and 40AKS LLC,**

**Relief
Defendants.**

**Case No.
8:19-cv-886-VMC-SPF**

**CFTC'S RESPONSE IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT BY DEFENDANT MICHAEL J. DaCORTA**

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The CFTC respectfully submits its Response in Opposition to DaCorta's Motion for Summary Judgment ("Motion") (Dkt. 750) under Fed. R. Civ. P. 56 and the Court's order of August 11, 2022 regarding motions for summary judgment. Summary Judgment Order, Dkt. 659. DaCorta's Motion wholly fails to address the elements of the CFTC's charges against him, and specifically, to raise any genuine issue as to a material fact. Consequently, the Motion must fail.

I. CFTC'S RESPONSE TO DACORTA'S STATEMENT OF MATERIAL FACTS

The CFTC notes that although not labeled as a Statement of Material Facts, counsel for DaCorta has represented to the CFTC that he considers paragraphs 1 through 22 under "Relevant Procedural History" to be the operative Statement of Material Facts required by this Court's order of August 11, 2022 regarding Motions for Summary Judgment. *See* Summary Judgment Order, Dkt. 659 at 2. DaCorta's statement of facts does not comply with the Court's order of August 11, 2022 regarding summary judgment motions because it does not contain record citations. *See id.* This Court's Summary Judgment Order states that "[f]ailure to submit a proper statement of facts constitutes grounds for denial of the motion," and the CFTC therefore requests that the Court deny DaCorta's Motion on these grounds. *Id.* at 2. If the Court instead considers the Motion, the CFTC responds below.

1. The statement that OIG and OM were never insolvent is a legal conclusion, and therefore denied. The CFTC similarly denies that DaCorta did

not make Ponzi or “Ponzi-like” payments. *See* CFTC’s Motion for Summary Judgment Against DaCorta (“CFTC Motion”), Dkt. 749, Statement of Facts (“Facts”) ¶¶ 46, 48 (interest payments and return of principal were paid to pool participants with pool funds).

2. Admitted.

3. Admitted that the CFTC filed its First Amended Complaint. Denied that the CFTC “alleged” injunctive relief, etc., but admitted that the CFTC requested such relief. *See* Complaint, Dkt. 110 ¶ 7 and Part VI.

4. Admitted that the United States filed the referenced motions, although the Motion to Intervene was Docket No. 148 and the Motion to Stay was Docket No. 149.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted that the United States filed a Motion to Further Extend the Stay, although this was Docket No. 417. Admitted as to the remainder.

10. Denied.

11. Denied that DaCorta incorporated OM. *See* Michael DaCorta Transcript from DaCorta Criminal Trial (Day 10) (“DaCorta Tr. (Day 10)”) ¹ 235:16-237:5 (DaCorta testified that that OM was formed by a company called

¹ DaCorta (Day 10) attached as “CFTC Response Ex. A.”

“Corp 95,” from whom DaCorta purchased OM). The CFTC is without sufficient information to form a belief as to the remainder of paragraph 11, which is without a record citation, and therefore denies the same.

12. Admitted that Joseph Anile worked for OIG. The CFTC does not have knowledge sufficient to form a belief as to whether DaCorta hired Anile and whether Anile worked for OIG in a legal capacity, or as to DaCorta’s state of mind in relying on Anile regarding “all legal matters, business and personal, for himself, OIG, and OM,” but understands Anile to deny the same. *See* Joseph Anile Transcript from DaCorta Criminal Trial (Day 6) (“Anile Tr. (Day 6)”)² 94:15-95:7 (Anile testified that he informed DaCorta at the outset that if Anile was going to be a principal in the Oasis venture, he could not be counsel and would “have to not act as attorney in any of these matters”). The CFTC does not have knowledge as to dates for which Anile acted as counsel to Lehman Brothers, Inc., but understands Anile has represented that his firm represented Lehman Brothers. *See id.* 76:14-24. The CFTC does not have knowledge as to DaCorta’s state of mind with respect to conversations with Anile, or whether they amounted to “professional work” or advice. All of these facts for which the CFTC does not have knowledge sufficient to form a belief are therefore denied.

13. Admitted that Anile received deposits to Bowling Green Capital Management, Anile’s personally-owned LLC with his wife Mary Anile, who were together the only signatories on the bank account for Bowling Green Capital

² Anile Tr. (Day 6) attached as “CFTC Response Ex. B.”

Management. With respect to the statement that “Mr. DaCorta paid Attorney Anile,” denied that DaCorta paid Anile from his own funds, but admitted that Anile received payments.

14. Denied that Anile incorporated OGFSA in 2012 but admitted that OGFSA was formed by Anile in Belize, although after 2012. *See* Complaint, Dkt. 110 ¶ 28 (entity time period listed beginning in August 2016); Receiver’s Motion to Retain Foreign Counsel in Belize, Dkt. 478 (OGFSA formed in approximately August 2016). Admitted that Anile incorporated OGFSL in New Zealand in 2012. Denied that OGFSA and OGFSL were “incorporated as broker-dealers,” for which there is no record citation. Denied that the entities were “licensed foreign-currency-exchange dealers,” for which there is no record citation.

15. Denied. *See* CFTC Motion, Dkt. 749, Facts ¶¶ 26-32.

16. Admitted that OIG was incorporated in 2013. With respect to footnote 3 contained in paragraph 16, the CFTC is without corporate formation documents or other information or knowledge sufficient to form a belief as to whether OIG owned “all the interest” in each of the listed LLCs, and therefore denies such. Also denied that Lagoon Investments, LLC is the address of “the office building” or any real estate, given it does not contain an address. *See* Michael DaCorta Transcript from DaCorta Criminal Trial (“DaCorta Tr. (Day 11)”) ³ 68:24-69:7 (discussing office building located in Longboat Key, which was 444 Gulf of Mexico Drive address).

³ DaCorta Tr. (Day 11) attached as “CFTC Response Ex. C.”

17. DaCorta has introduced no facts to show that OIG was a diversified corporation engaged in investments designed to produce varied revenue streams and this statement is without a record citation and therefore denied.

18. The CFTC does not know on which evidence DaCorta is relying to state that “OM and OIG collateralized all properties they owned through ATC Brokers in London,” which is without a record citation and therefore denied.

19. Denied that OIG was the sole customer of OGFXL and OGFSA and denied that OIG did not trade for any individual resident or group of residents of the United States. See CFTC Motion, Dkt. 749, Facts ¶¶ 20-25; see Statement of Additional Facts (“Add’l Facts”), *infra* Part II at ¶ 3-9. DaCorta states that OGFSA and OGFXL were broker dealers, which is without a record citation and is therefore denied.

20. Denied. See CFTC Motion, Dkt. 749, Facts ¶¶ 28, 31, 35-37; see Add’l Facts ¶ 1.

21. Admitted that OM and OIG were not dissolved and did not forfeit their corporate rights during the Relevant Period. DaCorta’s purported facts with respect to insolvency and ability “to lawfully meet any financial obligations” are legal conclusions and are therefore denied.

22. Denied that pool participants signed promissory notes in the prior iteration of the Oasis Pools. See Add’l Facts ¶ 2. Admitted that at some point in time, OIG moved to a promissory note structure. *Id.* The CFTC is without information or knowledge sufficient to form a belief as to whether every lender

signed a Promissory Note and Loan Agreement and Agreement and Risk Disclosures, or whether every pool participant who did not sign these documents had their money returned and therefore denies such.

II. STATEMENT OF ADDITIONAL MATERIAL FACTS BY CFTC

1. DaCorta testified regarding his forex trading numerous times throughout his criminal trial. DaCorta Tr. (Day 11) 54:11-20, 55:19-22, 55:25-56:9, 57:3-13, 118:18-119:2, 121:7-10, 202:19-203:4, 204:9-14.

2. At his criminal trial DaCorta testified:

At the end of 2016 when we converted everybody, what we did was we created the loan program. The loan program was designed so that the people would be loaning the money directly to Oasis International Group. Oasis International Group would then be managing all the money for Oasis International Group to make sure it's in compliance with the agreement that we provided to everybody. So our agreement to them was simply a promissory note. We promised to pay them back their principal on 90 days' notice.

DaCorta Tr. (Day 11) 46:12-20.

3. Funds from pool participants went to one of three Oasis-related entities: OIG, OM, and SHC. Elsie Robinson Declaration in Support of SRO Motion ("Robinson Decl."),⁴ Dkt. 4-1 at ¶¶ 45, 48, 50, 53, 57, 60; CFTC Motion, Dkt. 749, Facts ¶¶ 20.

4. For example, Citibank held an account (x0764) in the name of Fundadministration (later Mainstream), for the benefit of Oasis Global FX S.A. Robinson Decl. ¶ 30; CFTC Motion, Dkt. 749, Facts ¶ 21.

⁴ Robinson Decl. attached as "CFTC Response Ex. D."

5. Account 0764 received over \$10 million from accounts owned by OM, and over \$9 million from accounts owned by SHC. Robinson Decl. ¶ 57i-j; CFTC Motion, Dkt. 749, Facts ¶ 22.

6. Account 0764 also received over \$33 million directly from pool participants. Robinson Decl. ¶ 57a; CFTC Motion, Dkt. 749, Facts ¶ 22.

7. Funds from pool participants were then sent from the 0764 account to ATC Brokers. Robinson Decl. ¶ 30; CFTC Motion, Dkt. 749, Facts ¶ 23.

8. DaCorta testified at his criminal trial that all of the money sent to ATC Brokers was “lender money,” or money received from pool participants. DaCorta Tr. (Day 11) 233:15-18; CFTC Motion, Dkt. 749, Facts ¶ 24.

9. Once at ATC Brokers, the funds were deposited into a single account—in this example a trading account owned by OGFSA—and on the back end each pool participant was assigned a pro rata share of the profits, losses, and spread pay via their “back office.” DaCorta Tr. (Day 11) 160:1-7 (trading account contained lender money and spread pay was being allocated to “every single person”); *id.* at 161:17-24 (discussing allocation of spread pay to each individual); Joseph Paniagua Transcript from DaCorta Criminal Trial (Day 7) (“Paniagua Tr. (Day 7)”) ⁵ 196:16-25 (losses and profits automatically allocated by Spotex to pool participant subaccounts created by OIG).

10. At DaCorta’s direction, pool participants were issued misleading account statements that concealed the trading losses and misappropriation by

⁵ Paniagua Tr. (Day 7) attached as “CFTC Response Ex. E.”

reflecting balances owed to pool participants despite the fact that sufficient funds to pay these balances did not exist. Anile Tr. (Day 6) 216:25-217:22; DaCorta Tr. (Day 11) 159:4-161:1, 216:25-217:18.

11. DaCorta told potential pool participants that their promissory note with the Oasis Pools would guarantee “a minimum of 12 percent per year or 25 percent of the spreads that we capture on a daily basis using your capital.” Receiver Burton Wiand Declaration to CFTC’s Reply in Support of PI (“Wiand Decl.”) Dkt. 165-5 at 26, 17:17-18:5.

12. When the Court issued its Statutory Restraining Order on April 15, 2019 (Dkt. 7), OIG, OM, and SHC owed pool participants approximately \$120 million, but the total assets of the companies (excluding real estate) was less than \$10 million. Wiand Decl., Dkt. 165-1 at ¶ 23.a.

13. Mr. John Paniagua testified in DaCorta’s criminal trial that he never had any access to the books and records of Oasis, including those that reflected the profitability or losses of the company or trading data. John Paniagua Transcript from DaCorta Criminal Trial (Day 12) (“John Paniagua Tr. (Day 12)”) ⁶ 227:6-14.

14. At DaCorta’s criminal trial, a participant in the Oasis Pools named Patti Katter testified that she told DaCorta at a meeting “I wanted to invest in

⁶ John Paniagua Tr. (Day 12) attached as “CFTC Response Ex. F.” Please note the distinction between Joseph and John Paniagua, who are brothers, and who both at one time performed similar services for the Oasis Pools. Although the CFTC’s Motion (Dkt. 749) refers to only Joseph Paniagua, the present response by the CFTC refers to Mr. John Paniagua as simply “Mr. Paniagua” hereinafter, as Mr. Joseph Paniagua is not further mentioned in this Response.

something that I knew I wouldn't be able to lose the money because we were in a really big pinch at the time." Patti Katter Transcript from DaCorta Criminal Trial (Day 2) ("Katter Tr. (Day 2)")⁷ 13:24-19:6.

15. Ms. Katter testified that the \$100,000 she invested in the Oasis Pools was a significant amount of money for her family. *Id.* at 19:7-23.

16. Ms. Katter testified that due to a war injury suffered by her husband, she was unable to work and therefore could not save money for her children for college, or cars, or weddings, and that the \$100,000 they invested in the Oasis Pools was the "little cushion" they had, which was taken from them. *Id.* at 41:5-25.

17. Mr. Anthony Charles testified at DaCorta's criminal trial about his \$100,000 investment in the Oasis Pools. Anthony Charles Transcript from DaCorta Criminal Trial (Day 7) ("Charles Tr. (Day 7)")⁸ 136:21-137:12.

18. After his losses from the Oasis Pools, Mr. Charles testified that he was no longer able to send his son to private school, and that he has been impacted financially for years. *Id.* at 138:14-23.

19. Jason McKee, who submitted a declaration supporting DaCorta's Motion, also testified at DaCorta's criminal trial. See Jason McKee Transcript from DaCorta Criminal Trial ("McKee Tr. (Day 12)").⁹

⁷ Katter Tr. (Day 2) attached as "CFTC Response Ex. G."

⁸ Charles Tr. (Day 7) attached as "CFTC Response Ex. E."

⁹ McKee Tr. (Day 12) attached as "CFTC Response Ex. F."

20. Mr. McKee's testimony at DaCorta's criminal trial does not differ materially from the statements in his declaration. *See id.*

21. John Paniagua, who submitted a declaration supporting DaCorta's Motion, also testified at DaCorta's criminal trial. *See John Paniagua Tr. (Day 12).*

22. Mr. Paniagua's testimony at DaCorta's criminal trial does not differ materially from the statements in his declaration. *See id.*

III. LEGAL ARGUMENT

DaCorta's legal arguments for summary judgment are that (1) Oasis did not operate a commodity pool, and that (2) "as a matter of law" OIG and OM were not Ponzi schemes because neither were insolvent. First, the evidence presented at DaCorta's criminal trial unequivocally demonstrates that DaCorta solicited individuals with promises of no-risk foreign currency trading, pooled their money in one trading account located at ATC Brokers, and then used the money from the pool participants to trade foreign currency, or forex. This is a commodity pool by operation of law, regardless of DaCorta's own characterization.

Second, none of the five violations alleged in the Complaint (Dkt 110) require a determination of insolvency.¹⁰ *See* CFTC's Opposition to DaCorta's Motion to Dismiss (Dkt. 453); CFTC's Opposition to DaCorta's Second Motion to Dismiss (Dkt. 671); CFTC's Motion for Summary Judgment Against DaCorta

¹⁰ This is not the first time DaCorta has made an argument with respect to insolvency. On December 2, 2021, DaCorta filed a Motion to Dismiss Receiver (Dkt. 447) and argued, among other things, that "Oasis . . . was not insolvent, or about to be insolvent . . ." *Id.* at 3. The Court denied DaCorta's Motion to Dismiss Receiver on March 7, 2022. *See* Dkt. 481.

(Dkt. 749). DaCorta's argument fails to meet the standard articulated in Fed. R. Civ. P. 56.

A. DaCorta's Summary Judgment Burden.

A court may grant summary judgment only where (1) the movant shows that there is no genuine dispute as to any material fact and (2) the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993). If the non-moving party has the burden of proof on a specific issue, as here, the movant may satisfy his initial burden by (1) demonstrating the absence of evidence in support of an essential element of the non-moving party's claim, or (2) by supporting its motion for summary judgment with affirmative evidence demonstrating that the non-moving party will be unable to prove its case at trial. *See, e.g., Celotex*, 477 U.S. at 322-23, 235; *Fitzpatrick*, 2 F.3d 1112, 1115-6. "If the party moving for summary judgment fails to discharge the initial burden, then the motion must be denied and the court need not consider what, if any, showing the non-movant has made." *Fitzpatrick*, 2F.3d 1112, 1116.

B. OGFSA and OGFSL Were Commodity Pools

DaCorta has failed to meet his burden to show that there is no genuine issue of material fact that OIG and OM did not operate a commodity pool, whether by demonstrating an absence of evidence or offering affirmative evidence. The facts show, instead, that OGFSA and OGFSL were commodity

pools. Under 7 U.S.C. § 1a(10), commodity pool means “any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests,” which includes forex. *See* 7 U.S.C. § 1a(10)(A)(ii) (including in definition of commodity interests agreements, contracts, or transactions described in 7 U.S.C. § 2(c)(2)(C)(i), i.e., transactions in foreign currency). “The *sine qua non* of a commodity pool is ‘the aggregation of investors’ funds into a single account.’” *CFTC v. Amerman*, 645 F. App’x 938, 941-42 (11th Cir. 2016) (per curiam) (quoting *CFTC v. Perkins*, No. 06-4674 (RBK), 2009 WL 806576, at *4 (D.N.J. Mar. 25, 2009)). The material facts show that DaCorta, along with OIG and OM, solicited pool participants for the purpose of trading in commodity interests, including forex, and then pooled their funds in a common account that did in fact trade forex.

DaCorta makes summary declarations, with no record citations or legal authority, that the structure of the various Oasis entities should exempt OIG, OM, and DaCorta from the very rules that are designed to protect pool participants from fraudulent misrepresentations, omissions, and the catastrophic losses that they suffered at the hands of DaCorta. DaCorta cannot structure away a regulatory framework, and he certainly cannot obtain summary judgment on bare assertions.

1. The Oasis Pools Meet All of the Requirements of a Commodity Pool

DaCorta solicited funds to be combined into a single account for the purpose of investing in commodity futures contracts. Funds from participants in the Oasis Pools were aggregated into a single trading account at ATC Brokers. See CFTC Motion, Dkt. 749, Facts ¶¶ 20-25; Add'l Facts ¶¶ 3-9. Once at ATC Brokers, the pool participant money was deposited in a single account, for instance OGFXSA, one of the Oasis Pools. CFTC Motion, Dkt. 749, Facts ¶ 25; Add'l Facts ¶ 9. And once in the account, the funds were traded in the name of the pool, for example OGFXSA, and not in the name of any individual pool participants. CFTC Motion, Dkt. 749, Facts ¶ 25; Add'l Facts ¶ 9. Common funds were used to execute transactions on behalf of the entire account. *Id.* DaCorta testified at trial that all of the money sent to ATC Brokers was “lender money, or money received from pool participants. CFTC Motion, Dkt. 749, Facts ¶ 24; Add'l Facts ¶ 8. The pool participants then shared in accrued profits and losses via ATC, although DaCorta directed OIG employees to adjust those numbers in the “back office” such that pool participants could not see their pro rata share of the profits and losses. See CFTC Motion, Dkt. 749, Facts ¶ 45; Add'l Facts ¶ 10.

2. Later Promissory Notes Structure Does Not Change the Commodity Pool Analysis

That DaCorta later structured participation in the Oasis Pools via promissory notes (Add'l Facts ¶ 2) does not change the commodity pool analysis. Courts have found CPO-related fraud under 7 U.S.C. § 6o in cases where the

defendants styled contributions to the pool in the form of promissory notes. *See, e.g., CFTC v. Denari Capital LLC*, No. 3:19-cv-07284-EC, 2021 WL 6803132 (N.D. Cal. Nov. 24, 2021) (consent order) (resolving charges of retail forex pool fraud that involved, among other things, pool participants signing “promissory notes” purporting to be loans to the pool with a fixed rate of return) and *CFTC v. Watson*, No. 11-cv-10949, 2015 WL 13597924, at *3 (E.D. Mich. Aug. 26, 2015) (default judgment) (pool fraud involving, among other things, loans by pool participants for purportedly fixed rates of return).

Similarly, in *CFTC v. Collins*, No. 94 C 4375, 1997 WL 106135, at *1 (N.D. Ill. Feb 10, 1997), the court made no distinction between customers who made loans to defendant and those directly investing with defendant. In *Collins*, although the customers believed their money would be invested in commodities, they were sometimes told that the transactions were “loans.” *Id.* at *1. Notwithstanding the defendant’s characterization of the investments as “loans,” the court found that the defendant violated 7 U.S.C. § 6b by making misrepresentations “concerning the existence of or the value of their proportionate interest in a commodity pool.” *Id.* at *2; *see also CFTC v. Gresham*, No. 3:09–CV–75–TWT, 2011 WL 8249266 (N.D. Ga. 2011) (finding that promissory notes guaranteeing a percentage of defendant’s profits in trading forex was “in connection with [his] fraudulent conduct”).

The fact that DaCorta promised to pay pool participants a fixed interest rate of 12% also does not change the commodity pool analysis. First, pool

participants were to receive the higher of 12% annually or 25% of the profits from the spread transactions, proportionate to their investments. Add'l Facts ¶ 11. Second, courts have found a commodity pool even where pool participants received fixed interest payments. *See United States v. Johnson*, 405 F. App'x 746, 747 (4th Cir. 2010) (affirming convictions for money laundering and failure to register as a CPO for a Ponzi scheme where organizer used “loans” to trade and pay pool participants fixed interest).

3. The Oasis Pools Were Not ECPs

DaCorta argues that OGFXL and OGFSA—the Oasis Pools—“traded on their corporate account as eligible contract participants for their sole customer OIG.” Motion, Dkt. 750 at 40.¹¹ ECPs are, in relevant part, individuals *with amounts invested on a discretionary basis in excess of \$10 million*. 7 U.S.C. § 1a(18) (emphasis added); *see* DaCorta Tr. (Day 10) at 255 (DaCorta acknowledging that ECPs have a certain level of expertise and wealth). But the definition of an ECP *excludes* commodity pools *in which any participant is not otherwise an ECP*. 7 U.S.C. § 1a(18)(A)(iv). DaCorta cannot rely on hundreds of individuals to contribute tens of millions to a pooled account, and then declare that the account is therefore an eligible contract participant. Notably, DaCorta does not create a genuine issue of material fact about the ECP status of the

¹¹ Pinpoint citations to docket entries refer to the page numbers referenced in the upper right hand of the file-stamped copies.

hundreds of individuals who contributed to the Oasis Pools, and indeed most of those individuals were in fact not ECPs.

At DaCorta's criminal trial, a number of pool participants testified about the devastation DaCorta's conduct caused them, including Patti Katter, who testified that she told DaCorta she needed to invest in something where she "knew [she] wouldn't be able to lose the money" because her family was "in a really big pinch at the time." Add'l Facts ¶ 14. Ms. Katter testified that the \$100,000 she wired to DaCorta was a "significant" amount of money, and that her family lost their only financial cushion to DaCorta. *Id.* ¶¶ 15-16. A loss of \$100,000 that is a family's only financial cushion indicates that Ms. Katter was not an individual with amounts *invested on a discretionary basis* in excess of \$10 million. Another pool participant named Anthony Charles also testified at DaCorta's criminal trial. *Id.* ¶ 17. He testified that his \$100,000 investment in the Oasis Pools "has put [him] back years" financially, and that he would no longer be able to send his son to private school. *Id.* ¶ 18. Mr. Charles was similarly not an individual with amounts invested on a discretionary basis in excess of \$10 million. The Oasis Pools were therefore not ECPs.

4. DaCorta Engaged in Retail Forex Transactions

DaCorta engaged in retail forex transactions. Retail forex transactions are subject to the CFTC's jurisdiction under 7 U.S.C. § 2(c)(2)(C)(i)(I), which in relevant part applies to "any agreement, contract, or transaction in foreign currency" that is offered to, or entered into with, a person who is not an ECP "on

a leveraged or margined basis” The record is replete with admissions by DaCorta that the primary purpose of the Oasis Pools’ trading accounts at ATC Brokers was transacting in foreign currency, or forex. Add’l Facts ¶ 1. In fact, DaCorta’s own Statement of Facts acknowledges that “OIG was a diversified corporation engaged in investments to produce varied revenue streams from . . . Foreign Exchange (Forex) Trading” (Motion, Dkt. 750 at 7 ¶ 17) and that “only he was doing the forex trading” (*id.* at 32). And the testimony and declarations of pool participants included by DaCorta in his Motion also state that DaCorta’s representations included that he would invest in forex trading. Motion, Dkt. 750 at 12 (Jason McKee understood that OIG “would invest in forex trading”); *id.* at 36 (Harold McFarland testifying that “OIG and its affiliated companies were conducting legitimate business operations with Forex trades”).

C. DaCorta’s Insolvency and Ponzi Arguments Are Irrelevant and Unsupported by Admissible Evidence

Despite DaCorta’s mention of solvency over twenty times in his Motion, the CFTC did not charge DaCorta or any of the defendants with “insolvency” or with any violations that require proof of insolvency as an element. Any evidence of insolvency or lack thereof is therefore not relevant and cannot form the basis of summary judgment against the CFTC. Similarly, a determination that DaCorta operated a Ponzi scheme is not an element of any of the CFTC’s five counts against DaCorta. The CFTC has enumerated in detail the elements required for the violations alleged against DaCorta in the Amended Complaint. See CFTC’s

Opposition to DaCorta's Motion to Dismiss (Dkt. 453); CFTC's Opposition to DaCorta's Second Motion to Dismiss (Dkt. 671); CFTC's Motion for Summary Judgment Against DaCorta (Dkt. 749).

In addition, the testimony, declarations, and exhibits submitted by DaCorta in support of his insolvency argument do not comply with Fed. R. Civ. P. 56 or the Federal Rules of Evidence. Although not an element of the CFTC's claims against DaCorta, the CFTC will briefly address the insufficiency of the "affirmative evidence" DaCorta uses to support his insolvency argument.

1. Insolvency Is Not an Element of the CFTC's Charges

The CFTC charged DaCorta with (1) forex fraud by misrepresentations, omissions, false statements, and misappropriation; (2) fraud and deceit by CPOs and APs of CPOs; (3) failure to register as a CPO and retail forex CPO and AP of a CPO and AP of a retail forex CPO; (4) failure to receive pool funds in pools' names and commingling pool funds as a control person of OIG and OM, and (5) failure to provide pool disclosures as a control person of OIG and OM. *See* Dkt. 110 at 39 (Part V). The elements of these charges are discussed in detail in the CFTC's Motion for Summary Judgment against DaCorta. *See* CFTC Motion, Dkt. 749, Part VI. "Insolvency" is not an element for any of these claims and, in fact, solvent entities are perfectly capable of committing, and being convicted of, fraud.

DaCorta has not even made any argument that a determination of solvency serves to defeat any required element of these five counts. None of the cases cited

by DaCorta relate to violations of the Commodity Exchange Act or CFTC Regulations. *See* Motion, Dkt. 750 at 36-37. These cases instead analyze solvency as it relates to fraudulent transfers. *See, e.g. Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006) (court-appointed receiver's case to recover fraudulent transfer); *In re Fin. Fed. Trust*, 309 F.3d 1325, 1327 (11th Cir. 2002) (trustee adversary proceeding to avoid fraudulent transfers to employee). DaCorta is not charged with fraudulent transfers and, thus, these arguments are irrelevant and do not provide a basis for summary judgment against the CFTC on any of its claims.

2. DaCorta's Motion Is Also Not Supported by Admissible Evidence and Consists of Conjecture That Was Rejected by the Jury in DaCorta's Criminal Case

Despite there being no requirement that OIG, OM, or the Oasis Pools were insolvent or operating a Ponzi scheme for the CFTC's claims to proceed, DaCorta apparently offers declarations from Mr. Paniagua and Mr. McFarland relating to these issues. These declarations consist of expert opinions as to OIG's and OM's financial health and solvency. Mr. Paniagua's declaration violates Fed. R. Civ. P. 56 because it goes outside the scope of his personal knowledge to offer an opinion of OIG's and OM's solvency that is neither supported by sufficient data, nor the product of reliable principles and methods. Mr. McFarland's testimony as to OIG's and OM's solvency relies on irrelevant conjecture and on representations made by DaCorta to McFarland *years* after the CFTC filed its initial complaint as to DaCorta's future trading intentions at the time. Besides being irrelevant to any

of the five counts against DaCorta in the Complaint, this testimony is also inadmissible.

a. Mr. Paniagua's Declaration Violates Fed. R. Civ. P. 56 and the Federal Rules of Evidence

Mr. Paniagua opines that at no time was OIG or OM insolvent, but paragraphs 21 to 28 of Mr. Paniagua's declaration should not be considered for three reasons. First, much of Mr. Paniagua's declaration does not rely on his personal knowledge. Second, the exhibits attached to his declaration would not be admissible in evidence. Finally, and as already stated, the solvency of OIG and OM is not relevant to the CFTC's claims against DaCorta.

The second half of Mr. Paniagua's declaration violates Fed. R. Civ. P. 56. Fed. R. Civ. P. 56(c)(4) requires that "[a]n affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Mr. Paniagua's declaration is not based on his personal knowledge, but instead "relevant information made available to him." Motion, Paniagua Declaration ("Paniagua Decl."), Dkt. 750-3 at ¶ 22; *see also* ¶ 21 (Paniagua states "I have been asked to provide unbiased, objective analysis based on industry standards, sound scientific principles, and methodologies in my analysis of OIG"). But even if Mr. Paniagua claimed to be relying on personal knowledge, Mr. Paniagua admitted at DaCorta's criminal trial that he had no access to the books and records of Oasis including the trading

statements and their resulting profits and losses (Add'l Facts ¶ 13), yet he now seeks to make declaratory statements as to the solvency of OIG and OM.

Paniagua Decl. ¶¶ 28.

Paniagua states that he has been asked to provide “unbiased, objective analysis based on industry standards, sound scientific principles, and methodologies” in his “analysis” of OIG, and that in doing so he relies on his “education, training, and experience in the field of financial services.” Paniagua Decl., Dkt. 750-3 at 3 ¶¶ 21-22. Federal Rule of Evidence 702, “Testimony by Expert Witness,” applies to witnesses whose “knowledge, skill, experience, training, or education” allows them to testify in the form of an opinion. Fed. R. Evid. 702. Because he does not have personal knowledge of paragraphs 21 through 28 of his declaration, and instead relies on his “education, training, and experience in the field of financial services, the second half of Mr. Paniagua’s declaration appears to be expert testimony.

Fed. R. Evid. 702 requires that expert testimony be “based on sufficient facts or data” and to be “the product of reliable principles and methods.” Fed. R. Evid. 702(b)-(c). Mr. Paniagua’s testimony is neither based on sufficient facts or data, nor the product of reliable principles and methods. In paragraph 24 of his declaration, Mr. Paniagua states that he has “reviewed and analyzed the following documents,” which include “overall fund flows,” balance sheets, an “omnibus analysis,” and “spreads vs. lenders withdrawal—Acct Closure.” Paniagua Decl., Dkt. 750-3 at 3-4. Nowhere do Mr. Paniagua or DaCorta identify which

underlying documents were used to create these financial summaries, nor who created them. Despite the underlying failures, Mr. Paniagua relies on these documents to opine that “OIG and OM were solvent at all times before, and at the time of, the CFTC’s seizure of OIG and OM on 18 April 2019.” Paniagua Decl., Dkt. 750-3 at 4 ¶ 18. The CFTC and this Court are unable to judge the veracity of the financial summary exhibits with no knowledge of how, or by whom, they were created. And notably, neither Mr. Paniagua nor the unknown author of the summaries included the \$120 million in outstanding obligations to pool participants owed at the time the CFTC filed its initial complaint. See CFTC Motion, Dkt. 749, Facts ¶ 34; Add’l Facts ¶ 12 (total assets of the companies, excluding real estate, was approximately \$10 million). Mr. Paniagua’s testimony is simply not based on sufficient facts or data, nor is it the product of reliable principles, as required by Fed. R. Evid. 702.

To the extent DaCorta may argue that Mr. Paniagua’s declaration is permitted by Federal Rule of Evidence 701, “Opinion Testimony by Lay Witnesses,” that argument also fails. Fed. R. Evid. 701 requires that testimony in the form of an opinion by a lay witness is “not based on scientific, technical, or other specialized knowledge within the scope of Rule 702” and is “rationally based on the witness’s perception.” Fed. R. Evid. 701(b)-(c). Importantly, “a lay witness can only speak to what he in fact observed.” *Travelers Prop. Cas. Co. of Am. v. Ocean Reef Charters LLC*, 71 F.4th 894 (11th Cir. 2023). But Mr. Paniagua acknowledges that his opinion relies on his education, training, and

experience, as well as information made available to him (Paniagua Decl., Dkt. 750-3 at 3 ¶ 22)—not Mr. Paniagua’s perception. Again, Mr. Paniagua testified at DaCorta’s criminal trial that he did not have access to the books and records of the Oasis entities. Add’l Facts ¶ 13. Mr. Paniagua therefore cannot testify as to facts that he did not in fact observe. But whether expert or lay testimony, even if supported and in compliance with Fed. R. Evid. 701 or 702, Mr. Paniagua’s opinions on OIG’s and OM’s solvency do not create a genuine issue of material facts as to an essential element of any of the CFTC’s five counts against DaCorta.

b. The McFarland Testimony Is Replete with Speculation

Harold McFarland’s testimony (Motion, Dkt. 750 at 20-27) does not create a genuine issue of material fact, but instead consults a crystal ball and silver pricing charts to theorize what “might have been” had the CFTC not filed its initial complaint on April 15, 2019. McFarland opined on all manner of the value of the Oasis Pools and the assets of OIG and OM during DaCorta’s criminal trial, but the McFarland testimony DaCorta includes in his Motion focuses on a silver position held by the Oasis Pools at the time the CFTC filed its initial complaint. McFarland makes several speculative assumptions, including that if DaCorta would have waited until September 24, 2019 to sell a silver position held by the Oasis Pools on April 15, 2019, the Oasis Pools would have gained “just under \$20 million.” See Motion Exhibit 5 (Dkt. 750-5), McFarland Transcript (Day 11)

305:9-13; *but see id.* 305:23-306:3 (acknowledging a “pretty huge drop” in the price of silver after September 24).

All of McFarland’s testimony as to the price of silver, how long DaCorta might have held the position, when he might have sold it, and at what price—in other words, speculation upon speculation—is of no import. McFarland’s testimony is merely offered to bolster DaCorta’s claim that OIG, OM, and the Oasis Pools were not insolvent, which is irrelevant to the CFTC’s claims. In addition, neither DaCorta nor McFarland explain how even a \$20 million gain in DaCorta’s future, theoretical, silver position would serve to make up for the \$53 million a jury of his peers found he owed to participants in the Oasis Pools, which restitution judgment did not even account for interest and referral fees promised by DaCorta and owed to investors. *See* CFTC Motion, Dkt. 749, Facts ¶ 60. Regardless, because solvency has no part in the determination of whether DaCorta violated Counts I–V of the Complaint, McFarland’s testimony does not create a genuine issue of material fact.

D. A Jury of DaCorta’s Peers Found He Intended to Defraud

The jury in DaCorta’s criminal trial heard the testimony of Mr. Paniagua, Mr. Johnson, and Mr. McKee, whose declarations and testimony are cited in the Motion, and still found that DaCorta intended to defraud.¹² *See* CFTC Motion,

¹² With respect to paragraphs 1-20 of Paniagua’s Declaration, and the testimony and declarations of Jason McKee and Kevin Johnson, the CFTC will not endeavor to respond to every factual assertion. A handful of investors’ beliefs about DaCorta’s use of pool participant funds does not mean that DaCorta did not make numerous misrepresentations to any of the approximately 800

Dkt. 749, Facts ¶ 56. Although DaCorta submitted declarations for Jason McKee and John Paniagua as to their experience with the Oasis Pools and their beliefs about representations made by DaCorta in support of this Motion, McKee and Paniagua testified at DaCorta's criminal trial, and the declarations do not materially differ from that testimony. Add'l Facts ¶¶ 19-22.

DaCorta's own Motion acknowledges that "credibility determinations, the weighing of evidence, and the drawing of inferences from the facts are the function of the jury." Motion, Dkt. 750 at 3. A jury of his peers found DaCorta guilty. All of the witnesses identified in DaCorta's Motion testified at the criminal trial and DaCorta was still found to have fraudulent intent. The jury has already made credibility determinations, weighed evidence, and drawn inferences from the facts. Mr. DaCorta unquestionably defrauded hundreds of pool participants by misrepresentations, omissions, and false statements.

IV. CONCLUSION

DaCorta has failed to raise a single genuine issue of material fact in his Motion, and certainly has not met his burden to show that he is entitled to judgment as a matter of law on all five counts in the CFTC's Complaint. DaCorta was found guilty by a jury of his peers after more than two weeks of testimony,

other pool participants (or even those witnesses), as numerous other witnesses testified at DaCorta's criminal trial, including Ms. Katter and Mr. Charles.

under the same facts and circumstances alleged in the Complaint, beyond a reasonable doubt. DaCorta's Motion for Summary Judgment must be denied.

**COMMODITY FUTURES TRADING
COMMISSION**

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2023, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court via the CM/ECF system, which served all parties of record who are equipped to receive service of documents via the CM/ECF system.

I hereby certify that on August 7, 2023, I provided service of the foregoing via electronic mail to the following unrepresented parties:

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/s/ J. Alison Auxter

J. Alison Auxter

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff;

v.

**OASIS INTERNATIONAL GROUP,
LIMITED; OASIS MANAGEMENT,
LLC; SATELLITE HOLDINGS
COMPANY; MICHAEL J.
DaCORTA; JOSEPH S. ANILE, II;
RAYMOND P. MONTIE, III;
FRANCISCO "FRANK" L. DURAN;
and JOHN J. HAAS,**

Defendants;

and

**MAINSTREAM FUND SERVICES,
INC.; BOWLING GREEN CAPITAL
MANAGEMENT LLC; LAGOON
INVESTMENTS, INC.; ROAR OF
THE LION FITNESS, LLC; 444
GULF OF MEXICO DRIVE, LLC;
4064 FOUNDERS CLUB DRIVE,
LLC; 6922 LACANTERA CIRCLE,
LLC; 13318 LOST KEY PLACE, LLC;
and 40AKS LLC,**

**Relief
Defendants.**

**Case No.
8:19-cv-886-VMC-SPF**

**EXHIBIT INDEX TO CFTC'S RESPONSE IN
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
BY DEFENDANT MICHAEL J. DaCORTA**

Number	Title
A	DaCorta Trial Transcript (Day 10 - Michael DaCorta)
B	DaCorta Trial Transcript (Day 6 – Joseph Anile)
C	DaCorta Trial Transcript (Day 11 – Michael DaCorta)
D	Elsie Robinson Declaration in Support of Statutory Restraining Order (Dkt. 4)
E	DaCorta Trial Transcript (Day 7 – Joseph Paniagua, Anthony Charles)
F	DaCorta Trial Transcript (Day 12 - John Paniagua, Jason McKee)
G	DaCorta Trial Transcript (Day 2 - Patti Katter)

EXHIBIT A

**CFTC RESPONSE IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT BY
DEFENDANT MICHAEL J. DaCORTA**

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)
) 8:19-cr-605-WFJ-CPT-1
 PLAINTIFF,) Tampa
) April 29, 2022
 v.) 8:17 a.m.
)
 MICHAEL J. DACORTA,)
)
 DEFENDANT.)

DAY 10
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

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I N D E X

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GOVERNMENT EXHIBITS

ADMITTED

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6	506A	39
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9	508	43
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14	307B1	43
15	510	48
16	340	48
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18	511	50
19	309	50
20	309A	50
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25 GOVERNMENT EXHIBITS (Continued) ADMITTED

1	310B	53
2	311	53
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5	312A	53
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10	514	59
11	515	59
12	507A	59
13	507B	61
14	345	61
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17	348	61
18	516	66
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21	519	66
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23	554	76
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25 GOVERNMENT EXHIBITS (Continued) ADMITTED

1	557C	76
2	558B	76
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DEFENDANT EXHIBITS

ADMITTED

8	54	140
9	55	140
10	56	140
11	57	140
12	58	140
13	59	140
14	60	140
15	61	140
16	62	140
17	63	140
18	64	140
19	65	140
20	87 pgs 1-5	183

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(Proceedings commenced at 8:17 a.m.)

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THE COURT: Mr. Chee, did we reach any potential agreement on this point?

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MR. CHEE: No, Your Honor. We just walked in this morning, but I'm sure during the morning break, now that our team has talked really extensively about it, I think it will go much faster when I talk to Ms. Irvin.

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THE COURT: I'll let you do that. Just FYI, if it's authenticated, then it's my intention -- I don't believe -- I will just talk in street terms here. I don't believe it's counterfeit. In other words, I don't believe that, you know, three weeks before the search warrant that this was cooked up. Could it have been? Maybe. It doesn't -- my sniffer says that people write little, whatever you want to call it, self -- my mom used to do that, I will succeed, and then she would list the things why in this little journal. That's what this appears to be.

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Under 803(3) it appears to be portions of a statement of an intent or plan or motive of a future conduct of the declarant. So plan on some of this coming in, and maybe y'all can agree. Sometimes when you don't agree, neither side likes the results. So we will take it up after the morning break then. Will that work?

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MS. BEDKE: Yes, Your Honor.

1 THE COURT: You know, I need to probably break a
2 little bit early this afternoon, like quarter to five,
3 something like that.

4 MR. ALLEN: I really wanted to stay late on Friday,
5 Judge.

6 THE COURT: We can do it. That could be
7 accomplished. I kid you not, we had used to try stuff on
8 Saturdays. You couldn't do that now to save your life. The
9 judge would say you're coming in on Saturday. Of course, that
10 judge died of a heart attack.

11 MS. BEDKE: Your Honor, if you want to break at 1:30,
12 that works for me. My son is a senior in high school and
13 there's a big award ceremony this afternoon.

14 THE COURT: You are free to go.

15 MS. BEDKE: We'll see where we are.

16 THE COURT: It's actually the last day for the
17 Academy, too. I guess they all run out and leap into the
18 swimming pool which is very interesting.

19 So at the morning break we will take that up. And I
20 will have -- I haven't looked at the jury instructions yet,
21 but I have them laid out on my desk. So this weekend I will
22 do that, and we can talk about that Monday.

23 MR. ALLEN: Yes, Your Honor. We will be prepared to
24 do that on Monday.

25 (Jury escorted into the courtroom.)

DIRECT EXAMINATION OF SHAWN BATSCH

1 (Witness sworn.)

2 THE COURT: Thank you, ladies and gentlemen.

3 This is our new officer, Fred Bohlig. He is very
4 experienced and we are glad to have him.

5 We will break a little bit early. My impression is
6 there are some things going on downtown tonight. So trying to
7 get a little jump -- about 4:45 we will break today to try to
8 avoid getting tied up in some event traffic.

9 We are making good progress. I'll have a better feel
10 for that this afternoon and I think so will you.

11 Counsel, let's call your next witness.

12 MS. BEDKE: The United States calls Special Agent
13 Shawn Batsch.

14 THE COURT: All right.

15 **SHAWN BATSCH, CALLED BY THE GOVERNMENT, SWORN**

16 **DIRECT EXAMINATION**

17 BY MS. BEDKE:

18 Q Good morning.

19 A Good morning.

20 Q Would you please introduce yourself to the jury.

21 A I'm Shawn Batsch. I'm a special agent with the IRS
22 criminal investigation.

23 Q How long have been an IRS CI special agent?

24 A Twenty-one years.

25 Q Prior to becoming a special agent, tell us about your

DIRECT EXAMINATION OF SHAWN BATSCH

1 educational background.

2 A I have a Bachelor of Science degree in accounting and a
3 Bachelor of Science degree in finance from Florida State
4 University. I'm also a certified public accountant in
5 Florida. My license is on inactive status.

6 Q And when did you achieve your CPA?

7 A 1998.

8 Q Are you familiar with an individual named Michael
9 DaCorta?

10 A Yes.

11 Q How?

12 A He's the subject of the investigation that we are here in
13 court for.

14 Q And please describe in general terms your role in the
15 investigation.

16 A I was one of the case agents involved. And my role was
17 to do a financial analysis as well as interview witnesses and
18 recover evidence for potential prosecution.

19 Q Was your primary focus the analysis of financial records?

20 A Yes.

21 Q Agent Batsch, I have handed you what you has been
22 admitted into evidence as Government Exhibits 2, 3, 6, 7, 8,
23 9A, 16, 21, 26, 27, 31, 32, 46, 47, 49, 50, 51, 56, 61, 66,
24 67, 74, 75, 76, 77, 78. Do you have those?

25 A Yes.

DIRECT EXAMINATION OF SHAWN BATSCH

1 Q Do you recognize them?

2 A Yes.

3 Q What are they?

4 A They are bank records that were used in the financial
5 analysis that we are going to be discussing here today, very
6 voluminous bank records related to Oasis Management,
7 Mainstream Fund Services or Fund Administration accounts as
8 well as all the LLCs that were opened for the property
9 purchases at Wells Fargo bank and Mr. Anile's Bowling Green
10 account, 4Oaks account, as well as Mr. DaCorta's personal
11 accounts, personal credit cards and such.

12 Q And are there others too?

13 A Yes.

14 Q For example, account records for Full Spectrum Wellness?

15 A Yes, and Roar of the Lion.

16 Q I have handed you what's been marked for identification
17 as Government Exhibit 4. Do you recognize that?

18 A Yes.

19 Q How?

20 A These are checks that went along with Exhibit Number 4
21 for the Oasis Management 9302 bank account that were missing
22 from the original introduction of evidence.

23 MS. BEDKE: Your Honor, at this time pursuant to
24 803.6 and 902.11, the government would move for admission of
25 Exhibit 4.

DIRECT EXAMINATION OF SHAWN BATSCH

1 MR. ALLEN: No objection, Your Honor.

2 THE COURT: Admitted.

3 (Government Exhibit 4 admitted.)

4 BY MS. BEDKE:

5 Q Agent Batsch, did you also analyze these checks along
6 with the other records?

7 A Yes.

8 Q And did you prepare any summary exhibits to show the
9 results of your financial analysis?

10 A Yes, I did.

11 Q How did you do that?

12 A We took the bank accounts for Oasis Management and all
13 these entities that I just discussed, and we made electronic
14 versions of them. So they have been converted to Excel
15 spreadsheets. From there, we were able to manipulate and sort
16 the data to actually use so you don't have thousands and
17 thousands and thousands of transactions, bank records and wire
18 records and checks to deal with at one time.

19 Q I have handed you what have been marked for
20 identification as Government Exhibits 500, 521, 501, 502,
21 504A, 504B, 505A, 505B. And I think that's it for now. Do
22 you have those?

23 A Yes.

24 Q Do you recognize these exhibits?

25 A Yes, I do.

DIRECT EXAMINATION OF SHAWN BATSCH

1 Q How?

2 A These are summary charts that I used to prepare the
3 financial summary of the Oasis operation. They were used
4 because of the voluminous records that the bank records are in
5 fact.

6 MS. BEDKE: Your Honor, the government would move for
7 the admission of Exhibits 500, 521, 501, 502, 504A, 504B, and
8 505A at this time. And, pardon me, 505A and 505B.

9 MR. ALLEN: No objection, Your Honor.

10 THE COURT: Admitted.

11 (Government Exhibits 500, 521, 501, 502, 504A, 504B,
12 505A, 505B admitted.)

13 BY MS. BEDKE:

14 Q Let's start with Exhibit 500.

15 A Okay.

16 Q What is Exhibit 500?

17 A It's a financial summary of the investor fund
18 distribution. It's a main chart. So all the numbers on the
19 spreadsheet, I made numbers that would correspond to those
20 numbers. So there's a backup spreadsheet for nearly every
21 line on the spreadsheet.

22 Q So is this a kind of a master spreadsheet?

23 A That's correct.

24 Q Let's start at the top. What is the title of this
25 spreadsheet?

DIRECT EXAMINATION OF SHAWN BATSCH

1 A "Financial Summary of Investor Funds Distribution, Main
2 Chart." The date range for these records are January 1, 2015,
3 to April 18, 2019.

4 Q Now, does this cover the same information that Joseph
5 Paniagua's spreadsheet, Exhibit 90C, covers?

6 A No. Mr. Paniagua's spreadsheet was extracted from the
7 Spotex platform which was not associated with the bank account
8 or bank records in any form.

9 Q Was your master spreadsheet made exclusively based upon
10 the banking records?

11 A That's correct.

12 Q And does your spreadsheet or analysis cover the same time
13 period as the receiver, Burton Wiand?

14 A No. Mr. Wiand's analysis went back to the beginning of
15 the opening of the Oasis Management account which was in
16 October, November of 2011.

17 Q Does your master spreadsheet nonetheless cover the lion's
18 share of the financial activity that's the subject of the
19 records?

20 A Yes.

21 Q Let's look at the top section of the chart before we see
22 the first total. What's reflected here?

23 A This is mainly showing the investor funds, the deposits
24 from investors to the Oasis Management or the Fund
25 Administration or Mainstream Fund Services account, but

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1 because I started on January 1, 2015, I have included the
2 opening account balances in those accounts at January 1, 2015.

3 Q Let's take a look at the lines quickly. The first line
4 in this section says Fund Administration opening balance. And
5 which accounts or entities does that line refer to?

6 A I don't know exactly the number of the accounts, but
7 these are the Fund Administration accounts that were opened
8 for the benefit of Oasis International Group and Oasis Global
9 FX.

10 Q What about the next line? It says Oasis Management, LLC,
11 beginning balance?

12 A That was the Oasis Management 9302 account that was
13 mainly used during this operation.

14 Q And the next line says Fund Administration London account
15 opening balance. What is that?

16 A There was an account that Mainstream Fund Services, or I
17 should say Fund Administration at that time maintained for
18 Oasis International Group. And it was actually based in
19 London. It was closed down. It was only open for maybe a
20 year, but there were funds going in and out of that account.
21 So I had to account for it here.

22 Q So do the first three lines of your master spreadsheet
23 account for the opening balances for all of those accounts you
24 have mentioned at the time that your analysis begins?

25 A That's correct.

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1 Q What about the next line in this top section? It says
2 "Investor Funds"?

3 A These are the deposits from investors for this time
4 period, January 1 to April 18 of 2019.

5 Q And below that it says "Total." And what does that
6 reflect?

7 A That's a total of the opening balances in the investor
8 funds. It equals \$77,540,821.52.

9 Q Let's look at the next section of this chart, master
10 spreadsheet. In general terms, what's reflected here?

11 A These are the outflows from the Oasis Management and the
12 Mainstream Fund Services or Fund Administration accounts.
13 This is the uses of those funds that came in.

14 Q And there is a figure opposite each line item in this
15 section, correct?

16 A Yes.

17 Q And how did you arrive at those figures?

18 A Again, these are extrapolated from the bank records, the
19 electronic spreadsheets that were made from the bank account
20 information. So a separate spreadsheet was made for most of
21 these line items that total up these totals.

22 Q All right. Let's look at the bottom section of the
23 master spreadsheet. What's reflected in that section?

24 A This is the amounts that were frozen and liquidated by
25 the receiver's office. So at the time the receiver stepped in

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1 and took over the business on April 18, there was
2 \$2,149,654.18 in the Wells Fargo management account. And the
3 Citibank Mainstream Fund Services account he received
4 \$6,012,397.78 totaling \$8,162,051.96.

5 Q All right. Let's go back up to -- well, I want to
6 reference the top section of your spreadsheet again and ask
7 you to turn to Exhibit 521.

8 A Okay.

9 Q What is Exhibit 521?

10 A These are the investment deposits and payback to
11 investors in one spreadsheet.

12 Q Is every single investor deposit identified in the bank
13 records you analyzed included in this spreadsheet?

14 A There were some transactions that we were unaware of what
15 they were, but this is the best that we could do with the
16 number of transactions and number of investors. We believe
17 this is the majority of the funds that went in and out
18 regarding the investors.

19 Q If you weren't sure about a particular transaction,
20 whether it was an investor deposit, did you include it?

21 A If there was money coming in and out, it was included.
22 If there was money just being disbursed and we didn't know who
23 that individual was with the money coming in, it was put on
24 the spreadsheet.

25 Q So does this spreadsheet, Exhibit 521, correspond with

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1 the investor funds line item on your master spreadsheet?

2 A Yes.

3 Q Let's take a look at the section of this spreadsheet,
4 Exhibit 521, on December 1, 2017.

5 A So December 1, 2017, shows a wire in from Anthony Charles
6 and Sandra N. Feeney for \$100,000 on December 1, 2017. It was
7 wired into the Fund Administration account Citibank ending in
8 0764.

9 Q And that's not the only deposit on this date, correct?

10 A That's correct.

11 Q Let's turn to the section of this spreadsheet that covers
12 January 16, 2018. Do you see an entry there that corresponds
13 with Ian Howard's deposit?

14 A Yes. On January 16, 2018, there was a \$200,000 wire
15 transfer from I.W. Land Partners, which was Mr. Howard, to the
16 Fund Administration account at Citibank ending in 0764.

17 Q Let's turn a little further ahead to the section of
18 Exhibit 521 that shows what happened on February 2, 2018. Do
19 you see a line item there that corresponds to Deb Cheslow's
20 investment?

21 A Yes. On February 2, 2018, there was a wire in to the
22 Fund Administration Citibank account ending in 0764 in the
23 amount of \$185,000 from Deborah Cheslow.

24 Q And let's turn to the section of this exhibit that shows
25 what happened on February 20 of 2018. Do you see a line item

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1 there that corresponds to Patti Katter's investment?

2 A Yes. On February 20 of 2018 a deposit was made, a wire
3 in to the Citibank 0764 account with Fund Administration for
4 \$100,000 by Patti Katter.

5 Q And is it accurate to say that this exhibit includes a
6 great number of additional deposits?

7 A Yes.

8 Q And does it also reflect any withdrawals from the
9 accounts?

10 A From the investors, yes.

11 Q Would that include both withdrawal of principal if
12 someone chose to do that?

13 A Yes.

14 Q And does it include any so-called interest payments?

15 A Yes.

16 Q Let's turn to the very last page of this Exhibit 521 at
17 the very bottom. All right. We will zoom in on the very
18 bottom. Did you use -- the program you used, I don't know
19 what that was, what did you use here?

20 A It's just an Excel spreadsheet.

21 Q Did you total up the deposits as well as the
22 distributions back to investors?

23 A Yes.

24 Q And what was the amount of distributions back to
25 investors?

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1 A \$27,409,583.27.

2 Q And is it accurate that the total deposit number matches
3 that on your master spreadsheet?

4 A Well, the deposit is different. You asked me for the
5 money paid back.

6 Q I'm sorry.

7 A But, yes, the money paid back is reflected on the master
8 spreadsheet as well as the deposits.

9 Q And does the deposit amount -- let's start with this.
10 What is the deposit amount again just to be clear?

11 A \$77,204,194.57.

12 Q Is that the figure that you reflected on your master
13 spreadsheet?

14 A Yes.

15 Q How were these accounts funded?

16 A These are accounts funded by individual investors.

17 Q Let's turn now to Exhibit 501. What is Exhibit 501?

18 A This reflects the transfers that were made from the Oasis
19 account with Fund Administration, the Citibank, the Wells
20 Fargo, and the Wells Fargo London accounts, and the Bank of
21 America account. These are the transfers that were made to
22 ATC Brokers. And there's one deposit there in early 2015 to
23 CFH Clearing. This was for the purpose of forex trading.

24 Q And did you total up the amounts of the deposits, or
25 pardon me, the transfers to ATC for forex trading?

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1 A Yes.

2 Q Let's look at the last page of this exhibit. What was
3 the total amount transferred to ATC Brokers?

4 A Well, there is one deposit in there for CFH, but it's
5 \$22,375,000.

6 Q And how were these transfers, the one to CFH Clearing and
7 the remainder to ATC Brokers funded?

8 A Investor funds.

9 Q Is that amount of funds transferred to CFH and ATC
10 Brokers reflected on your master spreadsheet?

11 A Yes, it is.

12 Q Let's take a look at Exhibit 502. What is this
13 spreadsheet?

14 A This is an accumulation of payments made to individuals
15 associated with Oasis. So they're ones that worked there or
16 were passive members of Oasis at one time. So this is the
17 payments that were made to these individuals from 2015 to
18 April 18, 2019.

19 Q All right. And when you refer to staff, to whom are you
20 referring?

21 A For example, Lloyd Lyle, Joe Paniagua, John Paniagua,
22 Steven Dribusch, Vinny Raia. These individuals worked for or
23 were associated with Oasis.

24 Q And what do you mean by passive Oasis members?

25 A There were some individuals that didn't put any money

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1 into this operation but received money back. And those
2 individuals, many of those individuals were listed on the
3 Oasis International Group articles of incorporation in the
4 Cayman Islands. There's a list of members of that corporation
5 listed there.

6 Q What is the amount that you calculated was paid to staff
7 and passive Oasis members? Let's turn to the last page of the
8 exhibit.

9 A \$4,665,848.87.

10 Q And how were these payments funded?

11 A From investor funds.

12 Q Is this -- does this spreadsheet, 502, does this
13 correspond to an entry on your master spreadsheet?

14 A Yes.

15 Q Let's go back to your master spreadsheet, Exhibit 500 for
16 just a moment. In the distribution of funds section, have we
17 covered now the first three lines?

18 A Yes.

19 Q Payments back to investors, transfers to ATC and forex
20 trading, and payments to staff and passive members of Oasis?

21 A Yes.

22 Q Let's look at the next line item, DaCorta's residences.
23 Did you prepare a separate spreadsheet to show your analysis
24 of those transactions?

25 A Yes.

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1 Q Let's look at Exhibit 504A. What did you include in
2 Exhibit 504A?

3 A I included the payments that were made to close on the
4 properties, as well as there is a payment to pay off Lost Key
5 Place, which was his primary residence at the time of the
6 search warrant, as well as bank transfers to the LLCs in those
7 property names. For instance, 13318 Lost Key Place, LLC, had
8 a bank account at Wells Fargo. So did 6922 Lacantera had a
9 bank account at Wells Fargo. So I included payments that
10 were -- or monies that was paid to those other accounts or
11 transferred to those other accounts in the spreadsheet. Those
12 other accounts, those LLC accounts were eventually used to
13 make loan payments on seller carryback, mortgages, home
14 improvements, home maintenance and such.

15 Q What is the total amount that you calculated were paid to
16 either purchase these residences or toward the purchase and to
17 maintain them, improve them, renovate them and so forth?

18 A \$2,322,320.48.

19 Q And did you reflect this value on your master
20 spreadsheet?

21 A Yes.

22 Q Let's turn to 504B. What is Exhibit 504B?

23 A This is essentially the same spreadsheet but just for
24 2017. So these were transfers made to the Lost Key Place,
25 LLC, bank account from the Oasis Wells Fargo 9302 account or

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1 the Fund Administration account for the benefit of Oasis
2 International Group.

3 Q And how were all the transactions reflected on these two
4 spreadsheets, 504A and 504B, funded?

5 A By investor funds.

6 Q Let's turn to Exhibit 505A. What is Exhibit 505A?

7 A This is a spreadsheet that I made that incorporated
8 several different categories here. These were transfers.
9 These were payments made or transfers to Michael DaCorta or
10 his bank account, his personal bank accounts, payments for
11 school items, personal credit cards, home equity, line of
12 credit for a relative, and these were payments mostly made out
13 of the Oasis Management 9302 bank account.

14 Q What was the total amount that you calculated that were
15 transferred for the purposes you just identified? Let's look
16 at the last page of the exhibit.

17 A \$678,668.49.

18 Q Let's look at 506B. Before we do that -- and I misstated
19 the number, in any event. Before we do that, I would like to
20 ask you about a couple of other items.

21 Agent Batsch, I have handed you what have been marked
22 for identification as Government Exhibits 302R, 316, 320, 321,
23 329, 360A, 360B, 360C, 361A, 361B. Do you have those?

24 A I think some of those are previously admitted, but I
25 don't have 320 and 321 maybe.

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1 Q Was 320 previously admitted?

2 THE COURTROOM DEPUTY: Yes. April 22.

3 MS. BEDKE: Thank you so much.

4 BY MS. BEDKE:

5 Q So you don't have 320. Was there another one that you
6 were missing?

7 A I think 321 maybe.

8 Q Well, let's start with the others. That is 302R, 316,
9 329, 360A, B, and C, and 361A and B.

10 A Yes.

11 Q Thank you. Do you recognize those exhibits?

12 A Yes.

13 Q How do you recognize them?

14 A During the course of this investigation, some of these
15 are documents recovered at Mr. DaCorta's house or his computer
16 and/or credit card records, excerpts from credit card records
17 of his personal credit card accounts, Mr. DaCorta's.

18 MS. BEDKE: Your Honor, the government would move for
19 admission of Government Exhibits 302R, 316, 329, 360A, B, and
20 C, and 361A and B.

21 MR. ALLEN: Just one moment, Your Honor.

22 THE COURT: All right.

23 MR. ALLEN: No objection, Your Honor.

24 THE COURT: All right. Admitted.

25 (Government Exhibits 302R, 316, 329, 360A, 360B, 360C,

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1 361A and 361B admitted.)

2 BY MS. BEDKE:

3 Q Let's start with Exhibit 302R. What does this exhibit
4 relate to?

5 A This is some documents that were recovered from
6 Mr. DaCorta's residence during the search warrant that related
7 to a couple vehicle purchases.

8 Q All right. Let's look for example at page 2 of this
9 exhibit. It bears Bates stamp 1B003-CARS-000015.

10 A Right. Yes.

11 Q And what's reflected here?

12 A This is a car sale document from Cox Mazda, Cox Chevrolet
13 for a Mazda CX-3 for Steven DaCorta on July 29, 2017.

14 Q And do the other documents in the package or many of them
15 relate to this particular car purchase?

16 A Yes.

17 Q And are there also some documents that relate to the
18 purchase of a 2017 Maserati?

19 A That's correct.

20 Q Are these the kinds of transactions or uses of funds that
21 you included on your spreadsheet 505A?

22 A Yes. For the Mazda, there was a transfer from the Oasis
23 Management 9302 account to Mr. DaCorta's personal account, and
24 then a down payment was made for this vehicle.

25 Q Let's take a look at Exhibit 316. What is Exhibit 316?

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1 A This appears to be a residential lease for Mr. DaCorta's
2 daughter, Crystal DaCorta.

3 Q Let's look at the middle section of page 1, please. It's
4 Bates stamp Comp33-00064. Where did this document come from?

5 A This came from Mr. DaCorta's computer.

6 Q And where is the property rented located?

7 A Winter Park, 221 Holt Avenue, Number 5, Winter Park,
8 Florida.

9 Q And the tenant?

10 A Crystal DaCorta.

11 Q And what's the term of the lease?

12 A It's for three months, September 8, 2018, to December 8,
13 2018.

14 Q And in Section Number 4 on that page, what is the rent
15 payment, taxes, and charges?

16 A \$12,000.

17 Q Did you include information regarding this apartment
18 rental for Crystal DaCorta in your spreadsheet?

19 A Yes.

20 Q Why is that?

21 A Because there was a payment that was made from Oasis
22 Management 9302 account for this lease.

23 Q 320, which was previously admitted, so we will publish it
24 on the monitor. Let's start with page 1 of this exhibit.

25 What's pictured here?

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1 A That's Mr. DaCorta's driver's license. The car
2 dealership usually takes a copy of the driver's license when
3 you purchase a vehicle. So that's a copy of it.

4 Q Let's look at page 2 of Exhibit 320. It bears Bates
5 stamp Invest-40819. What is that document?

6 A This is a sales invoice for a 2015 Range Rover. The sale
7 date was June 3, 2016.

8 Q Let's just enlarge the top half of this page. So does
9 the sale date appear in the upper left-hand corner?

10 A Yes.

11 Q And who is the buyer?

12 A Michael DaCorta.

13 Q All right. Let's go just a little bit lower on the page
14 and zoom in on the lower half. Actually, that just begins to
15 show some of the fees and costs; is that right?

16 A Right.

17 Q Does that continue on page 3?

18 A Yes.

19 Q That page is Bates Stamp Invest-40820. Let's zoom in on
20 the top half. What was the total balance due on delivery?

21 A After any down payment, there's \$43,776.25 due.

22 Q Does it also appear there may have been a trade-in
23 vehicle?

24 A Yes.

25 Q Now, was there a credit application submitted in

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1 connection with the purchase of this vehicle?

2 A Yes. Part of the purchase price is financed through
3 Wells Fargo. So there is a credit application.

4 Q Let's turn to page 10 of Exhibit 320. It's Bates stamp
5 Invest-40827. And we will start by zooming in on the top half
6 of the page. Is this the credit application?

7 A Yes.

8 Q And who is the applicant?

9 A Michael DaCorta.

10 Q And let's zoom in on the bottom half of the page. Does
11 Mr. DaCorta report his gross income --

12 A Yes.

13 Q -- on this application?

14 A Yes.

15 Q How much does he report?

16 A He reports \$200,000 of gross income yearly as well as a
17 monthly rent and mortgage payment of \$2,600.

18 Q And when was this vehicle purchase made?

19 A 2016.

20 Q Did you include monies applied towards the purchase of
21 this vehicle in your spreadsheet?

22 A I believe -- well, yes, it's included because I believe
23 the payments that were made to this loan were from
24 Mr. DaCorta's personal account. So the monies that were
25 transferred to Mr. DaCorta's personal account are included in

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1 the spreadsheet.

2 Q During the period that you analyzed these records, did
3 you identify any income to the defendant other than from Oasis
4 investors?

5 A No. Just money he took from Oasis investors.

6 Q Let's take a look at Exhibit 321, page 1. Does that
7 appear to be Mr. DaCorta's driver's license again?

8 A Yes.

9 Q And what is this package, Exhibit 321?

10 A I believe this is the purchase of the Maserati.

11 Q Let's turn to page 2. This is one that you don't have
12 the physical exhibit in front of you; is that right?

13 A No.

14 Q What does page 2 reflect?

15 A This reflects the purchase of a 2017 Maserati by Michael
16 DaCorta on March 20, 2017.

17 Q Let's turn to page 2, pardon me, 3 of the exhibit. It
18 bears Bates stamp Invest-40855. What's the balance due on
19 delivery here?

20 A Well, there was a down payment of \$20,000 that's included
21 in my spreadsheet, but the balance due is \$69,398.04 which was
22 financed at Wells Fargo.

23 Q Was there a credit application then submitted by
24 Mr. DaCorta in order to finance the purchase of this vehicle?

25 A Yes.

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1 Q Let's turn to page 13 of Exhibit 321. Is this a credit
2 application?

3 A Yes.

4 Q Or part of it?

5 A Yes.

6 Q Who is the applicant?

7 A Michael DaCorta.

8 Q Does Mr. DaCorta again report his gross income for
9 purposes of applying for credit?

10 A Yes. He's listed as the CEO. And the employer is Oasis
11 International Group and listed his gross income at \$250,000
12 yearly with a second employer of \$16,666 monthly, as well as a
13 monthly rent and mortgage payment of \$2,200.

14 Q When was this vehicle purchased?

15 A 2017.

16 Q Was this income that Mr. DaCorta reported on his credit
17 application reflected on his 2017 income tax return?

18 A No.

19 Q Let's take a look at Exhibit 329. What does this exhibit
20 relate to?

21 A This is for the lease of a Land Rover by Mr. Frank Duran.

22 Q And was this lease -- were the funds used to initiate the
23 lease?

24 MR. ALLEN: Objection. Relevance as to Mr. Duran.

25 THE COURT: I didn't get the whole question.

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1 BY MS. BEDKE:

2 Q Were the funds applied to this vehicle -- I understand it
3 was leased -- did they come from Mr. Duran's compensation from
4 Oasis?

5 A Yes.

6 THE COURT: Overruled.

7 BY MS. BEDKE:

8 Q I'd like to turn to Exhibit 360A. What is Exhibit 360A?

9 A This is a statement, a credit card statement of Michael
10 DaCorta's credit card at Wells Fargo. It's a Visa card. It's
11 a credit card statement that spans the time period June 10,
12 2017, to July 10, 2017.

13 Q Let's drop down to the very bottom section of page 1 of
14 this exhibit. It's Bates stamped WF-3678-00027. The very
15 bottom section, please. And who is the credit cardholder
16 reflected on the statement?

17 A Michael DaCorta.

18 Q Let's turn to page 3 of exhibit, WF-3678-00029. What is
19 this section of the statement?

20 A These are some charges, some of the charges for that time
21 period in June and some of July.

22 Q Let's start by calling out just the top half of this
23 section so it's easier to see.

24 Agent Batsch, are you able to make out some of the
25 charges reflected in the purchases, balance transfers, and

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1 other charges of the statement?

2 A Yes.

3 Q Can you please read those?

4 A These appear to be charges in Italy. And there is
5 obviously a euro currency exchange calculation as well, but
6 these appear to be restaurants in Italy, restaurants and other
7 establishments. I have never been over there so I don't know
8 what they are, but the hotel, restaurants in Italy.

9 Q Let's take a look at entry Number 2. Does it say
10 "Astoria Garden Hotel, 648 Roma IT"?

11 A Yes.

12 Q And underneath that does it say "Euro Currency"?

13 A Yes.

14 Q And a third entry, does it say "Cafe Dell'Oro for Firenze
15 IT"?

16 A Yes.

17 Q Do you know if that's Florence?

18 A I don't know.

19 Q And underneath that it says "Euro Currency," correct?

20 A Yes.

21 Q Two entries down does it say "Bar La Gritta, Portofino
22 IT"?

23 A Yes.

24 Q And underneath that does it say "Euro Currency"?

25 A Yes.

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1 Q And are there additional entries related to
2 establishments in Rome?

3 A Yes.

4 Q Let's look at the "Fees Charged" section below. What's
5 reflected here?

6 A These appear to be the foreign currency conversion fees
7 that the credit card company charged to Mr. DaCorta for using
8 his credit card in Italy.

9 Q Let's turn to Exhibit 360B. And we will start at the
10 bottom of page 1. Is this another statement of Mr. DaCorta's
11 credit card?

12 A Yes.

13 Q Looking at the top of the page, what period of time is
14 covered by this statement?

15 A August 11, 2017, to September 8, 2017.

16 Q Turning to page 3 of this exhibit, Bates stamped
17 WF-3678-00037. I'd like you to focus on the "Purchases,
18 Balance Transfers, and Other Charges" section. What's
19 reflected here?

20 A These are the charges that occurred during that time
21 period. There's several charges here, to point out Michael's
22 on East, \$500.96, and Ann & Tony's Restaurant \$200, the Westin
23 in Sarasota, \$349, Loews Hotels, \$348, Baers Furniture,
24 \$2,519.05, and other transactions.

25 Q Let's turn to Exhibit 360C. Starting at the bottom of

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1 page 1, is this another of Mr. DaCorta's credit card
2 statements?

3 A Yes, it is.

4 Q And turning to the top portion of that same document,
5 what period of time does this statement cover?

6 A December 11, 2017, to January 10, 2018.

7 Q Directing your attention first to the "Purchase, Balance
8 Transfers and Other Charges" section of page 1 of the exhibit,
9 is there an example of a charge you would like to highlight?

10 A There is an Amazon charge for \$518. There's Village
11 Bikes in Lakewood Ranch for \$1,551.50, Bonefish Grill, \$122.

12 Q If we turn to page 3 of this exhibit, it's Bates stamp
13 WF-3678-00059. Are there additional purchases, balance
14 transfers and other charges there?

15 A Yes. There's more restaurant purchases. Total Wine and
16 More, \$251.38. Van Wezel Performing Arts Center, \$283.
17 Mediterraneo, \$476.45. Amazon, IL Conte, \$230.95. Apollonia
18 Restaurant, \$172.15.

19 Q Let's turn to Exhibit 361A. Starting at the bottom of
20 page 1, is this another credit card statement for Michael
21 DaCorta?

22 A Yes, it is.

23 Q And turning to the top of that page, what period is this
24 statement covering?

25 A June 9, 2018, to July 10, 2018.

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1 Q And focusing your attention on the "Purchases, Balance
2 Transfers and Other Charges" section of page 1, does it
3 reflect there additional charges of the kind you have been
4 describing including two at the Ritz-Carlton in Sarasota?

5 A Yes. There is one for \$303 and another for \$782. There
6 is SAATVA, if I'm saying that right, \$1,496. There is Brio
7 Restaurant for \$258.49.

8 Q And are there more charges still for restaurants and the
9 Ritz-Carlton on page 3 of this statement, which is Bates
10 stamped WF-9642-00043?

11 A There is another Ritz-Carlton here for \$369.60. Capital
12 Grille for \$484.13. Bonefish Grill, \$153.73. Four Pillars,
13 \$300. Seasons 52, \$226.

14 Q Let's look at Exhibit 361B. Is this the last in the
15 series of credit card statements for Mr. DaCorta?

16 A Yes.

17 Q There were others, correct?

18 A Yes. This is just a sample of the credit card
19 statements.

20 Q What period of time does this statement cover?

21 A August 11, 2018, to September 9, 2018.

22 Q Agent Batsch, you have been present as the case agent at
23 counsel table throughout the course of the trial, correct?

24 A Yes.

25 Q Were you present for Mr. Anile's testimony?

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1 A Yes.

2 Q Do you recall that this roughly aligns with the time
3 period during which Mr. Anile related that the defendant told
4 him there was a \$7.5 to \$15 million trading loss?

5 A Yes.

6 Q All right. Let's look at the center of page 1 of the
7 statement where it says "Purchases, Balance Transfers and
8 Other Charges." What's reflected here?

9 A There is a rental car company in White Plains, New York,
10 of \$618.51. Ritz-Carlton in Sarasota, \$869.63. Brio
11 Restaurant, \$370. JetBlue, \$368.19. Don Cesar Resort in
12 St. Pete, \$106.

13 Q Let's turn to page 3 of this statement. Does this page,
14 WF-9642-00055, reflect still more charges of this nature?

15 A Yes, it does, including Tommy Bahama Restaurant at \$583.
16 Oak & Stone \$205. Four Pillars \$315. Capital Grille, \$550.
17 Hillstone, \$258. Alford Inn at Rollins Winter Park, \$448, as
18 well as a couple APMEX, Inc., charges.

19 Q Is that APMEX, Inc.?

20 A Yes.

21 Q Do you know what those charges relate to?

22 A They relate to the silver bars or coins that Mr. DaCorta
23 was purchasing.

24 Q Based upon your financial analysis, were all of these
25 credit card payments or payments made on these credit card

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1 charges funded by Oasis investor money?

2 A So some of the charges were funded directly from Oasis
3 Management, and some of them were funded from transfers to
4 Mr. DaCorta's account and then paid to those personal credit
5 cards.

6 Q Did the funds always at least originate with the Oasis
7 Management account?

8 A Or the Oasis International Group. It's either one or the
9 other. All the funds that were used were investor funds.

10 Q Now I would like to have you turn your attention to
11 Exhibit 505B. What is 505B?

12 A This is the same spreadsheet basically we were talking
13 about previously but just for 2017.

14 Q And what is the total calculated expenditures for Michael
15 DaCorta, cars, personal credit cards, home equity, school for
16 2017?

17 A \$227,448.08.

18 Q Let's go back for a moment to your master spreadsheet,
19 Exhibit 500. And we will look at the distribution section,
20 the top part, the top part of the distribution section
21 starting with payments back to investors. Have we now covered
22 the first five line items here?

23 A Yes.

24 Q And do the numbers from your more detailed spreadsheets,
25 were they transferred to this master spreadsheet?

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1 A Yes.

2 Q I have handed you what have been marked for
3 identification as Government Exhibits 506A, 506B, and 350. Do
4 you recognize these exhibits?

5 A Yes.

6 Q How do you recognize 506A and 506B?

7 A These are spreadsheets that I made related to the
8 transfers and payments made for Full Spectrum Wellness and
9 Roar of the Lion entities.

10 Q And how do you recognize Exhibit 350?

11 A These are documents recovered from Mr. DaCorta's
12 computer.

13 MS. BEDKE: Your Honor, the government moves for the
14 admission of Exhibits 506A and B and 350.

15 MR. ALLEN: Just a moment, Your Honor.

16 No objection, Your Honor.

17 THE COURT: All right. Admitted.

18 (Government Exhibits 506A, 506B, and 350 admitted.)

19 BY MS. BEDKE:

20 Q Agent Batsch, let's start by looking at 506A. What is
21 this exhibit?

22 A This is a spreadsheet of transfers made to the Full
23 Spectrum Wellness, LLC, bank accounts or payments made on
24 behalf of Full Spectrum Wellness, and transfers made to Roar
25 of the Lion Fitness bank account, as well as payments made on

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1 behalf of Roar of the Lion Fitness.

2 Q How were these payments funded?

3 A They were all funded by either the Oasis Management
4 account or the Fund Administration account, which both were
5 investor funds.

6 Q What was the total amount of transfers made to Full
7 Spectrum Wellness or Roar of the Lion or on their behalf?

8 A \$841,406.42.

9 Q What is 506B?

10 A This is the similar spreadsheet but just for the year
11 2017.

12 Q And what was the total amount of the transfers for the
13 benefit of these entries, Full Spectrum Wellness, Roar of the
14 Lion just in 2017?

15 A \$211,651.93.

16 Q What kinds of payments did you or transfers did you
17 include in these spreadsheets?

18 A They are transfers from again the Oasis Management
19 account or the Fund Administration account to these entities.

20 Q Let's take a look at Exhibit 350. What is 350?

21 A These are a couple invoices that were recovered from
22 Mr. DaCorta's computers. There's a Sound Concepts invoice.
23 And at the top it says bill to Roar of the Lion Fitness.

24 Q And what was purchased as reflected in this invoice?

25 A Looks like a consultant kit and a compensation plan

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1 document and a retainer.

2 Q What was the total amount it looks like to be charged?

3 A \$1,715.

4 Q That's the total amount paid on this date, correct?

5 A Right.

6 Q And turning to page 2, it's Bates stamp Comp33-00090. Is
7 this the first page of what appears to be a brochure?

8 A Yes.

9 Q Jumping ahead to page 5 of this exhibit, Comp33-00093, is
10 this another page of what appears to be a brochure?

11 A Yes.

12 Q It goes on for several pages, correct?

13 A Right.

14 Q Let's jump to the last page of the exhibit, Number 11.
15 It's Bates stamp Comp33-00099. What's reflected here?

16 A This is an invoice again from Sound Concepts billed to
17 Roar of the Lion Fitness, LLC, for a 50 percent deposit on 250
18 kit boxes.

19 Q Is that 2,500?

20 A I'm sorry, 2,500, in the amount of \$4,200, and 50 percent
21 of a one-time die fee of \$320.

22 Q And what's the total invoice amount?

23 A \$4,520.

24 Q Is Exhibit 350 an example of the kind of payments that
25 were made using investor funds to or on behalf of Full

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1 Spectrum Wellness or Roar of the Lion?

2 A Yes.

3 Q I have handed you what have been marked for
4 identification as Exhibits 508, 307A, 307A1, 307B, 307B1, and
5 509. Do you recognize those exhibits?

6 A Yes.

7 Q Let's start with Exhibits 508 and 509. How do you
8 recognize those?

9 A These are spreadsheets that I made that relates to -- I
10 don't know that I have 509. They are spreadsheets that I made
11 in relation to Joseph Anile's residence, the purchase of his
12 residence and lot. And I believe 509 is supposed to be the
13 payments that were made to Bowling Green Capital and 40aks on
14 behalf of Joseph Anile.

15 Q Do you have that spreadsheet?

16 A No.

17 MS. BEDKE: May I approach, Your Honor?

18 THE COURT: Yes.

19 A There it is. Sorry.

20 BY MS. BEDKE:

21 Q Do you have 509?

22 A Yes.

23 Q And was your testimony accurate as to what that exhibit
24 refers to?

25 A Yes.

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1 Q And let me have you look then at Exhibits 307A, 307A1,
2 307B, and 307B1. Do you also recognize those?

3 A Yes.

4 Q How?

5 A These are purchase documents that were obtained during
6 the course of the investigation for Mr. Anile's residence and
7 a vacant lot that was near his residence that he also
8 purchased.

9 MS. BEDKE: Your Honor, the government moves for the
10 admission of Exhibits 508, 509, 307A, 307A1, 307B, 307B1.

11 MR. ALLEN: No objection, Your Honor.

12 THE COURT: All right. Admitted.

13 (Government Exhibits 508, 509, 307A, 307A1, 307B, 307B1
14 admitted.)

15 BY MS. BEDKE:

16 Q Let's start with Exhibit 508. What is 508?

17 A This is payments made from one of the Oasis accounts.
18 Most of these appear to be from the Fund Administration
19 account at Citibank to purchase Mr. Anile's residence, as well
20 as transfers that were made to 4064 Founders Club Drive, LLC,
21 bank account for the purpose of maintaining, making seller
22 carry back mortgage payments, home improvements and such, and
23 it also includes a purchase of a residential lot that was near
24 his house.

25 Q And looking at the title of this heading, I take it this

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1 relates to Joseph Anile. And we just misspelled Joseph. Had
2 a typo there.

3 A Yes, we did.

4 Q So let's take a look at Exhibit 307A. Well, before we do
5 that -- I'm sorry. A typo distracted me. Look at page 3 of
6 Exhibit 508. What is the total amount that you calculated
7 that was applied to purchase Mr. Anile's residence as well as
8 fund the LLC account in the name of the residence 4064
9 Founders Club Drive, LLC?

10 A The total?

11 Q Yes.

12 A \$1,555,669.87.

13 Q Let's look at 307A. What is 307A?

14 A That is a settlement statement for the purchase of
15 4064 Founders Club Drive.

16 Q Let's zoom in on the top half of the page. What is the
17 subject property of the settlement statement?

18 A 4064 Founders Club Drive in Sarasota, Florida.

19 Q And how is the purchaser or buyer identified?

20 A As 4046 Founders Club Drive, LLC. I think that was
21 supposed to be 4064 Founders Club Drive. There might be a
22 typo on the document.

23 Q Do you recall from the corporation records already
24 admitted into evidence there was a correction to the name of
25 the entity?

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1 A That's right. That is correct.

2 Q What is the contract sales price reflected on the
3 settlement statement?

4 A \$1,775,000.

5 Q Turning to page 6 of Exhibit 307A. Is the amount of the
6 initial payment for this property reflected?

7 A Yes.

8 Q What was that amount?

9 A \$703,753.

10 Q Was this purchase financed through a bank?

11 A It was seller financing. So that means that the seller
12 that sold the property required them to make payments to them
13 like a mortgage payment like you would a bank but to the
14 seller.

15 Q Let's look at 307A1. Is this an excerpt of a -- a
16 statement that is an excerpt of the Fund Administration
17 account records?

18 A Yes.

19 Q I'd like you to look at page 1. It's Bates stamp Invest
20 097435, and focus on the bottom section of this page.

21 A This reflects a wire to the Citibank Mainstream -- or
22 Fund Administration account from Bowling -- or I'm sorry.
23 This reflects a wire to Berlin Patten Ebling trust, which is
24 the closing agent or settlement agent for this transaction,
25 for \$703,753.

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1 Q Okay. And this wire to the settlement agent for the
2 purchase of the Founders Club house is coming directly out of
3 which account?

4 A The Citibank Fund Administration account.

5 Q Is that for OIG?

6 A Yes.

7 Q Let's look next at 307B. What is that exhibit?

8 A This is for the purchase -- this is a settlement
9 statement for the purchase of the lot that I had mentioned
10 earlier that was near his residence in the Founders Club. The
11 address property location of this purchase is 4058 Founders
12 Club Drive, Sarasota, Florida.

13 Q What was the contract price reflected on the settlement
14 statement?

15 A 190,000.

16 Q Turning to page 7 of Exhibit 307B. It's Bates stamp
17 Berlin-00022. Is there a payment for this purchase reflected?

18 A Yes.

19 Q Looking at line 1, what does it reflect?

20 A A wire of \$191,916.87.

21 Q Let's turn to 307B1. Is this a statement, excerpt of the
22 Mainstream Fund Services bank records?

23 A Yes.

24 Q Turning to page 3, which is Bates stamp Invest-097460,
25 the center of the page. Do you see that payment toward the

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1 purchase of the Founders Club lot reflected?

2 A Yes. There was a wire to Berlin Patten Ebling, PLLC,
3 trust on March 15 for \$191,916.87.

4 Q Is that of 2018?

5 A Yes.

6 Q And is this straight out of the OIG account?

7 A Yes.

8 Q Are those wire transfers, those payments reflected on
9 your summary spreadsheet 508?

10 A Yes.

11 Q Among others; is that right?

12 A Yes.

13 Q Let's turn to Exhibit 509. What is this exhibit?

14 A These are the transfers or wires to Bowling Green Capital
15 or 40aks related to payments for Mr. Joseph Anile.

16 Q Turning to the last page of this exhibit, what was the
17 total amount of those transfers as calculated by you and
18 reflected on the spreadsheet?

19 A \$1,897,030.91.

20 Q Agent Batsch, I have handed you what have been marked for
21 identification as Government Exhibits 510, 340, and 340B. Do
22 you recognize those?

23 A Yes.

24 Q How?

25 A 510 is a spreadsheet I made of payments made for the

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1 Christmas party. 340 is the Ritz-Carlton records obtained
2 during the investigation. And 340B is some documents
3 recovered from Mr. DaCorta's computer.

4 Q What year party do 340 and 340B correspond to?

5 A 2017.

6 MS. BEDKE: Your Honor, the government would move for
7 the admission of 510, 340, and 340B.

8 MR. ALLEN: No objection.

9 THE COURT: Admitted.

10 (Government Exhibits 510, 340, and 340B admitted.)

11 BY MS. BEDKE:

12 Q What's reflected in Exhibit 510?

13 A These are payments made from the Oasis accounts to the
14 Ritz-Carlton in Sarasota or to the band Envision Music for the
15 2017 and 2018 Christmas parties.

16 Q And what's the total amount reflected on page 2 of your
17 spreadsheet?

18 A \$319,723.99.

19 Q Looking at 340, are there quite a few documents related
20 to the 2017 party --

21 A Yes.

22 Q -- involving the Ritz-Carlton?

23 A Yes.

24 Q All right. Just briefly if you turn to page 32 of the
25 exhibit, it's Bates stamp Marriott-00034. Looking at the very

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1 top of the page, what does it reflect is the event and the
2 date of the event that is the subject of this documentation?

3 A OIG Christmas party holiday event. The date of this
4 invoice is December 9, 2017.

5 Q And is this document titled "Summary of Charges"?

6 A Yes.

7 Q Turn to the next page, Number 33 in the exhibit. It's
8 Bates stamp Marriott-00035. What is the total balance due as
9 reflected in the document?

10 A \$118,360.72.

11 Q Turning to 340B, what is this document?

12 A This is a contract, an email and a contract for the band
13 for the 2017 Oasis Christmas party.

14 Q So in addition to the banking records you analyzed, did
15 you consider some of the documentation like the Ritz-Carlton
16 documentation and the band contract in preparing your summary?

17 A Yes.

18 Q I have handed you what have been marked for
19 identification as Government Exhibits 511, 309, 309A, and
20 309B. Do you recognize those?

21 A Yes. These are -- 511 is the summary of payments made on
22 behalf or for the 444 Gulf of Mexico office building that
23 Oasis purchased. And the other documents relate to the actual
24 purchase of that building.

25 MS. BEDKE: The government would move for the

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1 admission of Exhibits 511, 309, 309A, and 309B.

2 MR. ALLEN: No objection, Your Honor.

3 THE COURT: Admitted.

4 (Government Exhibits 511, 309, 309A, and 309B admitted.)

5 BY MS. BEDKE:

6 Q Please describe Exhibit 511.

7 A These are payments for the purchase of the 444 Gulf of
8 Mexico office building that was on the bay in Sarasota that we
9 saw with Mr. Stone on the undercover video. This includes the
10 payments to close on the property as well as payments made to
11 the 444 Gulf of Mexico Drive, LLC, bank account, as well as
12 the payoff of that loan.

13 Q What is the total amount of funds that you traced to the
14 Gulf of Mexico property?

15 A \$2,552,463.05.

16 Q Let's turn to Exhibit 309 and zoom in on the top half of
17 page 1. What is this document?

18 A This is a settlement statement for the property, the
19 office building that I just mentioned at 444 Gulf of Mexico
20 Drive, Number 3 in Longboat Key, Florida.

21 Q What is the settlement date?

22 A Where is that? December 21, 2017.

23 Q What's the contract sales price?

24 A \$1,750,000.

25 Q Turning to page 6 this exhibit Bates stamped

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1 Berlin-00035. Is there a payment reflected in connection with
2 the acquisition of this office property?

3 A Yes. On November 13, 2017, there was a wire to the
4 settlement agent in the amount of \$1,250,000.

5 Q Turning to 309A. Is this another excerpt from the bank
6 statements of the Mainstream Fund Services account held for
7 the benefit of Oasis International Group?

8 A Yes.

9 Q Turning to page 1, Bates stamp Invest-097438, the bottom
10 third of the document, do you see a wire out of the OIG
11 account in connection with the acquisition of the Gulf of
12 Mexico property?

13 A Yes.

14 Q Where is that?

15 A On November 7, 2017, there was a wire to Berlin Patten
16 Ebling, PLLC, of \$1,250,000.

17 Q Was Berlin Patten Ebling the settlement agent?

18 A Yes.

19 Q And does that date, November 7 of 2017, correspond with
20 the clearing date of the wire reflected in the settlement
21 statement documents?

22 A Yes, it does.

23 Q Turning to 309B, is this another excerpt from the
24 Mainstream Fund Services account of OIG, another statement?

25 A Yes.

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1 Q I'd like you to turn to page 3 of Exhibit 309B. It's
2 Bates stamped Invest-086524, and we will zoom in on the bottom
3 half of the page. I'd like to direct your attention to
4 November 6 of 2018. And do you see a wire transaction that
5 relates to acquisition of the Gulf of Mexico property?

6 A Yes.

7 Q And what is that?

8 A There is a wire to Williams Parker Harrison Dietz for
9 \$501,655.60 on November 6, 2018.

10 Q What does this wire out of the OIG account represent?

11 A It used investor funds to pay off the loan for the
12 building.

13 Q For the Gulf of Mexico building?

14 A Yes.

15 Q And were these transactions, among others, included in
16 your spreadsheet, 511?

17 A Yes.

18 Q I have handed you what have been marked for
19 identification as Exhibits 512, 310, 310A, 310B, 311, 311A,
20 312, 312A, 313, and 313A. Do you recognize them?

21 A Yes.

22 Q How?

23 A The first one is a summary document of the payments for
24 the condominium purchases made by Oasis. And the others are
25 settlement statements related to the purchase of those.

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1 Q Are those the condominiums at Vardon Terrace?

2 A Yes.

3 MS. BEDKE: The government would move for the
4 admission of Exhibits 512, 310, 310A, 310B, 311, 311A, 312,
5 312A, 313, and 313A.

6 MR. ALLEN: One moment, Your Honor.

7 No objection.

8 THE COURT: Admitted.

9 (Government Exhibits 512, 310, 310A, 310B, 311, 311A,
10 312, 312A, 313, and 313A admitted.)

11 BY MS. BEDKE:

12 Q Agent Batsch, let's look at your summary chart which is
13 Exhibit 512. What did you include in this spreadsheet?

14 A I included payments that were made to close on the
15 condos. There were four that were purchased, as well as other
16 costs associated with the purchase or maintenance or
17 maintaining those condos.

18 Q And what was the total amount of money that you traced,
19 that was used for these purposes?

20 A \$813,665.69.

21 Q Let's look at Exhibit 310. What is this document?

22 A This is a settlement statement for the purchase of
23 16804 Vardon Terrace, Number 307, in Lakewood Ranch.

24 Q What's the settlement date?

25 A January 5, 2018.

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1 Q What's the sale price of the property as reflected on the
2 bottom half of page 1 of Exhibit 310?

3 A 187,000.

4 Q Let's turn to page 4 of this exhibit. It's Bates stamped
5 NAT-01395. And directing your attention to the bottom section
6 of this page, is there a section that reflects the amount
7 disbursed to acquire the property, including any fees?

8 A Yes.

9 Q What is that amount?

10 A \$194,772.36.

11 Q Turn to 310A. What is this document?

12 A It's an Oasis Management bank account statement.

13 Q Is that at Wells Fargo, the account ending in 9302?

14 A Yes.

15 Q Let me ask you to turn to page 2 of this exhibit. It
16 bears Bates stamp WF-9302-02159. Near the bottom of that page
17 that is titled "Transaction History," do you see a wire that
18 corresponds to the purchase of the Vardon Terrace property, in
19 particular Unit 307?

20 A Yes. There is a wire to Berlin Patten Ebling, PLLC, for
21 \$194,772.36 on January 5 of 2018.

22 Q Turn to 310B. What's 310B?

23 A It's a promissory note to Mr. Vincent Raia who also
24 worked at Oasis. Oasis sold this property to Mr. Raia for
25 a -- it's a short-term note of \$215,000, and he was to make

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1 payments of \$537.50.

2 Q So Mr. Vincent Raia bought the condo from Oasis?

3 A Yes.

4 Q And agreed to make payments pursuant to the promissory
5 note?

6 A Right.

7 Q Let's turn to Exhibit 311. What is this document?

8 A This is a settlement statement for another condominium at
9 Vardon Terrace at 16804 Vardon Terrace, Number 108.

10 Q Is this a separate unit?

11 A Yes.

12 Q What's the settlement date?

13 A February 12, 2018.

14 Q What's the sale price of the property?

15 A 190,000.

16 Q Let's turn to 311A. Is this another statement from the
17 Oasis Management account at Wells Fargo ending in 9302?

18 A Yes.

19 Q Looking at page 3, which is Bates stamp WF-9302-02168, do
20 you see a wire that corresponds to the acquisition of the
21 Vardon Terrace, Unit Number 108?

22 A Yes. There is a wire for \$202,777.02 to Berlin Patten
23 Ebling, PLLC.

24 Q Let's look at Exhibit 312. What is this exhibit?

25 A This is a settlement statement for another condominium in

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1 the same neighborhood.

2 Q What's the unit?

3 A 16904 Vardon Terrace, Number 106.

4 Q What's the settlement date for this purchase?

5 A July 13, 2018.

6 Q And the sale price?

7 A 187,000.

8 Q Let's turn to Exhibit 310 -- pardon me -- 312A. Is this
9 another Oasis Management account statement, Wells Fargo ending
10 in 9302?

11 A Yes.

12 Q On page 3 of this exhibit Bates stamped WF-9302-02213, is
13 there a wire on this statement that corresponds with the
14 acquisition of Vardon Terrace, Unit Number 106?

15 A Yes. There is a wire to North American Title in the
16 amount of \$195,922.20 on July 13, 2018.

17 Q And was there a fourth condominium purchased in the
18 Vardon Terrace development?

19 A Yes.

20 Q Let's look at 313. What is this?

21 A This is a settlement statement for a condominium located
22 at 17006 Vardon Terrace, Number 105, that was sold on
23 August 28, 2018.

24 Q What was the sale price for this unit?

25 A \$182,499.

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1 Q Let's look at Exhibit 313A. Is this another Oasis
2 Management bank account statement, the Wells Fargo account
3 ending in 9302?

4 A Yes.

5 Q Turning to page 5, Bates stamp WF-9302-02224. Do you see
6 a wire transaction that corresponds with the Vardon Terrace
7 Unit 105?

8 A Yes.

9 Q Where is that?

10 A There is a wire to North American Title in the amount of
11 \$192,169.27 on August 27, 2018.

12 Q Does this time period, August 2018, also correspond with
13 the time about which Mr. Anile testified Mr. DaCorta reported
14 a \$7.5 to \$15 million trading loss?

15 A Yes. That's correct.

16 Q Agent Batsch, did you consider the settlement statements
17 and related documents in addition to the banking records in
18 assembling your Exhibit 512?

19 A Yes.

20 Q I have handed you what have been marked for
21 identification as Government Exhibits 513 and 308. Do you
22 recognize them?

23 A Yes.

24 Q How?

25 A These are documents related to the purchase of a

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1 residence that Mr. Frank Duran was living in at 7312 Desert
2 Ridge Glen. The first one is just a one-line spreadsheet.
3 And the second one is a settlement statement.

4 MS. BEDKE: The government would move for admission
5 of Exhibits 513 and 308.

6 MR. ALLEN: No objection, Your Honor.

7 THE COURT: Admitted.

8 (Government Exhibits 513 and 308 admitted.)

9 BY MS. BEDKE:

10 Q What's reflected on your single line spreadsheet, 513?

11 A It's taken from the Fund Administration bank account.
12 There was a wire for \$600,000 to Berlin Patten Ebling for the
13 purchase of this property.

14 Q Let's look at Exhibits 308. What is this?

15 A This is a settlement statement of Berlin Patten for the
16 property at 7312 Desert Ridge Glen in Bradenton, Florida, on
17 November 7, 2017. The sales price is \$575,000.

18 THE COURT: Why don't we take our morning break. I
19 got a high sign from one of the jurors. So we will take our
20 morning break now and try to be back about 10:35. Thank you.
21 See you then.

22 (Jury escorted out of the courtroom.)

23 THE COURT: Mr. Chee, if you need until lunch to
24 complete that task, I think that's okay.

25 MR. CHEE: Thank you, Your Honor. Much appreciated.

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1 (Recess taken.)

2 THE COURT: All right, counsel. Thank you.

3 BY MS. BEDKE:

4 Q Agent Batsch, I have handed you what has been marked for
5 identification as Government Exhibits 514, 515, and 507A; is
6 that right?

7 A Yes.

8 BY MS. BEDKE:

9 Q Do you recognize them?

10 A Yes.

11 Q How?

12 A They are spreadsheets I made to support the master
13 summary chart we discussed.

14 MS. BEDKE: The government moves for the admission of
15 514, 515, and 507A.

16 MR. ALLEN: No objection, Your Honor.

17 THE COURT: Admitted.

18 (Government Exhibits 514, 515 and 507A admitted.)

19 BY MS. BEDKE:

20 Q Agent Batsch, what is Exhibit 514?

21 A This is a list of transactions from the Oasis Management
22 account or the Fund Administration account at Citibank for the
23 purchase of gold and silver bars or coins. Mostly, or all of
24 them actually, are from the Sarasota Rare Coin Gallery.

25 Q And what was the total amount that you traced into those

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1 purchases?

2 A \$615,116.

3 Q What is Exhibit 515?

4 A This is a list of sort of miscellaneous items categorized
5 under charity, gas, entertainment, grocery stores,
6 restaurants, retail shopping, home supplies and health. They
7 are kind of all lumped together in a spreadsheet.

8 Q And to whom are these attributable?

9 A These are payments made mostly from the Oasis Management
10 bank account.

11 Q And so are most of them attributable to Mr. DaCorta?

12 A Some of them are. I mean, it's its own separate
13 category.

14 Q And looking at the last page of this exhibit, how much
15 did you calculate was expended on these categories?

16 A \$205,380.34.

17 Q Let's look at Exhibit 507A. What is 507A?

18 A These are transactions for travel for Mr. DaCorta.

19 Q And what's the total amount that you determined was
20 expended for travel for Mr. DaCorta and related parties?

21 A \$121,374.81.

22 Q And how were these expenditures funded?

23 A By investor funds.

24 Q I have handed you what's been marked for identification
25 as Exhibit 507B, 345, 346, 347, and 348. Do you recognize

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1 those.

2 A Yes.

3 Q How?

4 A The first one is another summary chart of travel and
5 plane charter for 2017. And the others are some charter plane
6 invoices and itineraries and some pictures as well as a Disney
7 itinerary.

8 Q And how were these pictures and itineraries, et cetera,
9 acquired?

10 A They are from Mr. DaCorta's computer.

11 MS. BEDKE: The government moves for the admission of
12 Exhibits 507B, 345, 346, 347, and 348.

13 MR. ALLEN: No objection.

14 THE COURT: Admitted.

15 (Government Exhibits 507B, 345, 346, 347, and 348
16 admitted.)

17 BY MS. BEDKE:

18 Q Agent Batsch, what is Exhibit 507B?

19 A It's a similar spreadsheet that we were just talking
20 about but for 2017.

21 Q And how much was expended on travel and plane charter in
22 2017 alone?

23 A \$37,536.30.

24 Q Let me have you take a look at Exhibit 345, please. Is
25 this a collection of documents?

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1 A Yes.

2 Q And in general terms, how would you describe the
3 collection?

4 A They are emails and itineraries and invoices for private
5 plane charter.

6 Q Let me have you turn to page 6 of this exhibit. It's
7 Bates stamped Comp33-00006. What's reflected here? Let's
8 zoom in on the top half of the page. Page 6. What's
9 reflected here?

10 A It's an invoice for a trip from Sarasota, Florida, to
11 White Plains, New York on July 14, 2017, and returning
12 July 16, 2017, for 6 passengers. The total cost of this was
13 \$27,412.50.

14 Q What is the vendor that's providing this document?

15 A Unity Jets.

16 Q Would you turn to page 7 of the exhibit, please. It's
17 Bates stamp Comp33-00007. What does this page reflect? And
18 we will zoom in on the top half to begin.

19 A This is the itinerary for the trip we had just mentioned.

20 Q And just below that is there a passenger list?

21 A Yes.

22 Q Who does it identify as the passengers on this plane
23 flight with Unity Jets?

24 A Andrew DaCorta, Carolyn DaCorta, Crystal DaCorta, Michael
25 DaCorta, Steven DaCorta, and Frank Duran.

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1 Q Were there any other plane charters in 2018?

2 A Yes.

3 Q Let me have you turn to page 11 of this exhibit. It's
4 Bates stamped Comp33-00135. We will zoom in on the top half
5 of the page. What does this reflect?

6 A This is another invoice for a trip from Sarasota to
7 Georgetown, Kentucky, on April 5, 2018, and returning on
8 April 10, 2018, for a total of \$24,800.

9 Q Who is the vendor on this occasion?

10 A Unity Jets.

11 Q And let me have you turn to page 4 of the exhibit which
12 is Bates stamped Comp33-00004. We will zoom in on the top
13 half of the page. What's reflected here?

14 A This is a trip itinerary for the trip we had just
15 discussed.

16 Q Well, is this trip in August of 2018?

17 A I'm sorry. August 5 of 2018, to White Plains, New York,
18 and back to Sarasota on August 10, 2018.

19 Q Am I correct that the document we just looked at related
20 to a trip to Kentucky in April of this year?

21 A That's correct. Yes, that's correct.

22 Q And who are identified as the passengers?

23 A Michael DaCorta and Carolyn DaCorta.

24 Q Turn to document 346, Exhibit 346, please. What is
25 page 1 which is Comp33-00197?

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1 A Appears to be a photograph taken inside a private jet
2 with Carolyn DaCorta and Crystal DaCorta.

3 Q And what about page 2 of this exhibit? It's Bates stamp
4 Comp33-00198.

5 A This is a picture of Mr. Michael DaCorta. I'm not quite
6 sure who the other one is.

7 Q And do you know when these photographs were taken?

8 A I have no idea.

9 Q Let's look at Exhibit 347. It's Bates stamped
10 Comp33-00063. What's reflected here?

11 A This appears to be a photograph of Mr. DaCorta and his
12 wife in Italy.

13 Q Are you sure it's Italy?

14 A I'm not positive. I've never been.

15 Q Pardon me?

16 A I have never been there. I don't know.

17 Q Is it accurate to say that the writing, if you will, on
18 the building is in a foreign language, not English?

19 A That's correct.

20 Q And were you -- do you know when this was taken?

21 A I do not.

22 Q But you are recalling the testimony of the credit card
23 charges for the locations in Italy?

24 A Yes, correct.

25 Q Let's take a look at Exhibit 348. What's 348?

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1 A This is a Disney World folio for a stay at the Disney
2 Yacht Club Resort with Mr. Joseph Anile and Mr. Michael
3 DaCorta.

4 Q What are the dates of the stay according to the document?

5 A September 9, 2017, to September 12, 2017.

6 Q And what's the total expenditure on page 2 of the
7 exhibit?

8 A \$1,029.21.

9 Q Agent Batsch, are these among the kinds of documents in
10 addition to the bank records that you reviewed in assembling
11 your financial analysis?

12 A Yes.

13 Q I have handed you what have been marked for
14 identification as Government Exhibits 516, 517, 518, 520, and
15 519. Do you recognize those?

16 A Yes.

17 Q How?

18 A These are additional spreadsheets supporting figures that
19 were on that master summary.

20 Q Are you referring to Exhibit 500?

21 A Yes.

22 MS. BEDKE: The government would move for the
23 admission of Exhibits 516, 517, 518, 519, and 520.

24 MR. ALLEN: No objection.

25 THE COURT: All right. Admitted.

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1 (Government Exhibit 516, 517, 518, 519, and 520
2 admitted.)

3 BY MS. BEDKE:

4 Q Let's start with 516. What does this summary spreadsheet
5 relate to?

6 A This one is titled "Attorneys & Accountants." These are
7 payments that were made from the Oasis account for accountants
8 and attorneys during this time period, 2015 to April 2019.

9 Q All right. Looking at the top half of the first page of
10 this exhibit, where are those first several payments made, or
11 to whom are they made?

12 A D'Arcangelo & Company, LLP. That was the CPA prior to
13 Mr. Burling.

14 Q And below the entries for D'Arcangelo & Company, are
15 there some additional CPA expenditures?

16 A Yes. To Burling Consultants, CPA.

17 Q And lower than that on the bottom of this first page, are
18 there some expenditures for lawyers or law firms?

19 A Yes. There's Law offices of David Nick, Maples and
20 Calder in the Cayman Islands.

21 Q Let's turn to page 2. Are there more entries for
22 expenditures for lawyers or law firms?

23 A Yes.

24 Q Which are reflected here on page 2?

25 A I think the exhibit -- the trial director is off a little

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1 bit.

2 Q I believe you are right.

3 A There is also J. Bentley Caliendo, Ford Sumner.

4 Q All right. May I switch to the Elmo for just a minute?

5 Agent Batsch, I have placed page 2 of Exhibit 516 on
6 the overhead projector. Did you include some additional
7 entries for expenditures for lawyers and law firms?

8 A Yes.

9 Q And the lion's share of those entries refer to what law
10 firm?

11 A The ones on the screen, Maples and Calder in the Cayman
12 Islands.

13 Q And below that are there some additional expenditures?

14 A Yes. J. Bentley Caliendo, CPA, and Ford Sumner.

15 Q And where is Ford Sumner?

16 A New Zealand.

17 Q Does the last page of this exhibit reflect some
18 additional payments to Ford Sumner, New Zealand lawyer?

19 A Yes.

20 Q What's the total amount of expenditures for accountants
21 and lawyers you are able to identify from the banking records?

22 A \$291,721.08.

23 Q Let's turn our attention to Exhibit 517. What does this
24 exhibit relate to?

25 And could we switch back to the trial director?

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1 Thank you.

2 A These are payments made to Lakewood Ranch Main Street,
3 LLC, for the purposes of rent for an office space that Oasis
4 rented for a period of time in 2015 to '17 on Lakewood Ranch
5 Main Street.

6 Q And was that prior to the acquisition of the Gulf of
7 Mexico office building?

8 A Yes.

9 Q And looking at the last page of this exhibit, how much
10 were you able to trace as being expended on office rent?

11 A \$131,921.19.

12 Q Let's look at Exhibit 518. What is 518?

13 A This is the miscellaneous category.

14 Q What does that mean?

15 A There's just various insurance payments, general
16 corporation services payments, Fund Administration fees. Just
17 various items that were kind of lumped into one category so we
18 didn't have a very long front summary spreadsheet.

19 Q On page 1, does it also include some ATM withdrawals?

20 A Yes. This spreadsheet also includes the payment to the
21 Longboat Key Club of \$32,000 for membership.

22 Q Does that correspond to the check that the receiver,
23 Mr. Wiand, showed us the other day?

24 A Yes.

25 Q On page 2, for example, are there also some purchases, or

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1 payments rather, to GoDaddy.com?

2 A Correct.

3 Q And are there some registered agent fees included here?

4 A Yes.

5 Q So all of these miscellaneous expenses totaled up to how
6 much as reflected on the last page of Exhibit 518?

7 A \$686,455.40.

8 Q Turning to 520, what's reflected in 520?

9 A This is just an unknown category, just items that we
10 weren't sure what they really were. So we just kind of put
11 them in an unknown category.

12 Q What's the total of the transactions you weren't able to
13 categorize, if you will?

14 A \$664,962.57.

15 Q Like all the other transactions you have testified to
16 today, did these come up in the bank account records --

17 A Yes.

18 Q -- identified at the top of your testimony?

19 A Yes.

20 Q And let's turn to Exhibit 519. What is 519?

21 A It's just most of the spreadsheet is bank fees. So the
22 bank would charge an analysis and research fee and a wire fee
23 every time funds were wired out of the account. And there was
24 money constantly being wired out of this account. So it's a
25 voluminous amount of transactions and fees.

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1 Q Going to the end of the spreadsheet, how much did you
2 identify in bank fees and utilities?

3 A \$51,160.71.

4 Q And I think you talked to us about the fees, but you also
5 titled the spreadsheet "Utilities." What does that refer to?

6 A There could have been -- I would have to go back and look
7 at this. There could have been some phone charges, yeah,
8 AT&T.

9 Q I'm looking to the last page, for example. Are there
10 transactions, payments there for AT&T, Bright House, City of
11 Winter Park, Manatee County, UPS?

12 A Yes.

13 Q Were all the calculations made by virtue of your assembly
14 of these spreadsheets transferred to and reflected on your
15 master spreadsheet, Exhibit 500?

16 A Yes.

17 Q Let's take a look at 500. And let's zoom in on the
18 disbursement section. Have we covered the spreadsheets that
19 you assembled that correspond to each of the line items in
20 this section?

21 A Yes. There was only one spreadsheet because it was one
22 transaction that I didn't do, and it was the amount that was
23 sent to a Belize account. It was \$502,500.

24 Q Let's zoom in on that for a second. What does that
25 correspond to?

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1 A Well, there was a wire transaction, meaning a transfer to
2 a Belize account.

3 Q Is that the Belize account about which Mr. Wiand, the
4 receiver, said he is working to repatriate the funds?

5 A That's correct.

6 Q After assembling all these spreadsheets to break out the
7 different categories of expenses and transactions, did you
8 create some summaries of your summaries to more easily depict
9 the flow of funds?

10 A Yes, I did.

11 Q I have handed you what have been marked for
12 identification as Government Exhibits 500A, 500B, 500C, and
13 503. Do you recognize those?

14 A Yes. These are documents that I created to illustrate
15 the summaries that we were just talking about.

16 MS. BEDKE: The government would move for the
17 admission of Exhibits 500A, B, C, and 503.

18 MR. ALLEN: As demonstratives or substantive
19 evidence?

20 MS. BEDKE: They are summaries, Your Honor, of this
21 big collection of spreadsheets.

22 THE COURT: All right. You seek to admit them
23 substantively?

24 MS. BEDKE: I am seeking to do that, Your Honor.

25 THE COURT: I will admit them substantively as

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1 summaries. You will have the spreadsheets in evidence, and
2 you can go back and consider them. And these summaries are
3 for whatever worth, 100 percent or 0 percent that you deem
4 them appropriate. Thank you.

5 BY MS. BEDKE:

6 Q Let's start with 500A. Agent Batsch, is it accurate to
7 say that this exhibit summarizes virtually all of the
8 subsreadsheets that you testified to?

9 A Almost all of them, yes.

10 Q All right. Would you describe what this graphic summary
11 depicts?

12 A This shows that the total amount of investor funds --
13 again, this is for the time period January 1, 2015, to
14 April 18, 2019. Total investor funds that come in and then a
15 disbursement to five different categories here of uses of
16 those funds. This is not the entire amount of the
17 \$77 million, but this is a portion of it as shown on the
18 financial summary spreadsheet.

19 Q And the box at the bottom of the summary on the far left
20 refers to payments back to investors?

21 A Yes.

22 Q Does that correspond with your spreadsheet, Exhibit 521?

23 A Yes.

24 Q And what about the box on the bottom next to the right?
25 Does that reflect transfers from the Oasis accounts to ATC or

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1 on one occasion CFH or forex trading?

2 A Yes.

3 Q What about the middle box on the bottom?

4 A That's payments to staff and passive Oasis members.

5 Q And does that correspond with your spreadsheet, I believe
6 502?

7 A Yes.

8 Q And then the next box on the bottom to the right, it says
9 "DaCorta, Anile, Residential Properties & Related Entities."
10 What does that encompass?

11 A It includes the spreadsheet for Mr. DaCorta, the school
12 expenses, the vehicles expenses, the home equity line of
13 credit expenses, as well as travel and plane charters, the
14 condominium purchases, the purchases and payments for
15 DaCorta's residences, Mr. Joseph Anile and related company
16 transfers, the purchase of Frank Duran's residence, Anile's
17 residents and vacant lot, the gold and silver bars and coins,
18 the payments or transfers to Full Spectrum Wellness and Roar
19 of the Lion. And then that spreadsheet that was titled
20 "Charity, Gas Stations, Retail, Home Supplies, Entertainment,
21 and Restaurants."

22 Q So all of those multiple spreadsheets are depicted here
23 as one category --

24 A Yes.

25 Q -- for simplification?

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1 A That's correct.

2 Q And what about the box on the bottom far right that says
3 "Office Building"?

4 A That's the payments for the sale of the office building
5 or the payments to the 444 Gulf of Mexico, LLC.

6 Q All right. Let's turn to 500B. What is 500B?

7 A This is the second to the last box on the previous chart.
8 This breaks it down even further. These numbers were already
9 provided on the summary chart. They are just broken down on
10 this chart as a visual.

11 Q And so each one of the circles at the end of an arrow
12 corresponds with a different spreadsheet that you prepared
13 that we have discussed?

14 A Correct.

15 Q But here you can see it all in one place?

16 A Correct.

17 Q Let's turn next to Exhibit 500C. What is 500C?

18 A This depicts the amounts of deposits that were made by
19 investors by month for each year. So, for example, as you can
20 see in 2015, there were some deposits that weren't quite as
21 much. And then you go into '16 and they get a little bigger.
22 And '17 they go up, in 2018 even further. And then 2019 was a
23 little lower, but we also -- the business was closed down in
24 the middle of April.

25 Q Now, there are some dollar figures in little boxes kind

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1 of pointing down to certain points on the graph, correct?

2 A Yes.

3 Q What do those refer to?

4 A That's just to show the person reading this graph where
5 exactly that spot is on the chart.

6 Q So those numbers in the white boxes do not represent a
7 cumulative total of investment, correct?

8 A No. These are by month. So it's not -- it's not adding
9 the months up. It's each month the amount of deposits that
10 were made by investors.

11 Q And the total investor funds of just over 77 million
12 corresponds with your summary spreadsheet 521; is that
13 correct?

14 A That's correct.

15 Q Let's turn next to Exhibit 503. What is 503?

16 A 503 is a financial summary of the funds to Michael
17 DaCorta. So what I did here is I included his residences,
18 that spreadsheet with the transfers to him, personal credit
19 cards, cars, home equity lines of credit, school payments,
20 payments to Full Spectrum Wellness and Roar of the Lion and
21 the travel and plane charters. The top part is for January 1,
22 2015, to 2019, and the bottom part is just for 2017.

23 Q And why did you break out just 2017?

24 A Because that was the tax year that was charged in the
25 indictment.

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1 Q Agent Batsch, I have handed you what has been marked for
2 identification as -- hold on one minute here.

3 MS. BEDKE: Your Honor, may I approach?

4 THE COURT: Yes.

5 MS. BEDKE: I'm sorry. I just need to approach the
6 witness. I need to make sure I handed him the right document.
7 I'm sorry. I apologize. I have to make sure I got my numbers
8 straight.

9 BY MS. BEDKE:

10 Q All right. Agent Batsch, I have handed you what have
11 been mark for identification as Government Exhibits 554, 557B,
12 557C, 558B, and 558C; is that correct?

13 A Yes.

14 Q Do you recognize those?

15 A Yes.

16 Q How?

17 A These are certified copies of tax records that were
18 obtained in this investigation.

19 MS. BEDKE: The government moves for the admission of
20 Exhibits 554, 557B, 557C, 558B, and 558C.

21 MR. ALLEN: No objection, Your Honor.

22 THE COURT: All right. Admitted.

23 (Government Exhibits 554, 557B, 557C, 558B, and 558C
24 admitted.)

25

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1 BY MS. BEDKE:

2 Q And now you should also have Government Exhibit 551. Do
3 you recognize this one as well?

4 A Yes, I do.

5 Q What is this one?

6 A This one again is a certified copy of a tax return for
7 Oasis Management, LLC.

8 Q For what tax year?

9 A 2016.

10 MS. BEDKE: The government would move for the
11 admission of Exhibit 551.

12 MR. ALLEN: No objection.

13 THE COURT: Admitted.

14 (Government Exhibit 551 admitted.)

15 BY MS. BEDKE:

16 Q Now, Agent Batsch, did you have the opportunity to review
17 the 2016 partnership return for Oasis Management, LLC?

18 A I did.

19 Q And did you also review the 2017 Oasis Management
20 partnership return?

21 A I did.

22 Q And what did you observe when looking at the two returns
23 side by side, so to speak?

24 A They were very similar in nature, meaning the numbers
25 that made up the tax return.

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1 MR. ALLEN: I'm sorry. Your Honor, can I have a
2 conversation with Ms. Bedke?

3 THE COURT: Sure.

4 MR. ALLEN: Your Honor, can we come sidebar?

5 THE COURT: Yes.

6 (Bench conference on the record with all counsel
7 present.)

8 MR. ALLEN: Your Honor, the concern that I was
9 raising with Ms. Bedke is that this agent not express an
10 opinion to the lawfulness of any tax return other than 2017
11 because it would be 404(b) prior bad acts in evidence we have
12 not been given notice of. So if she wants to talk about the
13 numbers, I'm okay with that because they do relate to 2017,
14 but I don't want any evidence about other tax fraud alleged in
15 other accounts or any evidence related to that.

16 THE COURT: Sounds reasonable.

17 MS. BEDKE: And I was responding, Your Honor, that
18 I -- as Mr. Burling testified yesterday, some of the numbers
19 in the '17 return, which are the subject of Count 3, are
20 carryovers from '16. They all came from the same source.
21 It's the supposed interest payments, for example, that we
22 believe the evidence shows were just lender money. And so I'm
23 not asking him to say that the 2016 return was fraudulent, but
24 I think the implication is there. I don't believe that's
25 404(b) because the 2016 numbers, some of them flowed through

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1 to the 2017. That's how Mr. Burling testified the return was
2 prepared.

3 THE COURT: All right. Just don't have an expert
4 opinion rendered as to the legality of any year other than
5 2017. You can publish what the numbers were or where they
6 came from, all that stuff. And it may be argument in closing
7 that, hey, 2017 is bad, but let's don't obtain any expert --
8 this witness should not opine as to other years.

9 MS. BEDKE: All right. Your Honor, may I speak to
10 the witness for one minute to make sure we don't get a
11 misstatement?

12 THE COURT: Sure, sure, sure.

13 (End of bench conference.)

14 BY MS. BEDKE:

15 Q Agent Batsch, we were talking about the 2016 partnership
16 return and the 2017 partnership return for Oasis Management,
17 LLC, correct?

18 A That's correct.

19 Q And are the two linked or related in any way?

20 A No. They are separate tax years.

21 Q Do they include sort of the same categories of
22 information, income and expenses?

23 A Yes.

24 Q All right. And was there any data drawn from the 2016
25 return that made its way into the 2017 return?

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1 A Yes.

2 Q And what was that?

3 A There was a net operating loss that was carried forward
4 to 2017 as Mr. Burling testified yesterday about.

5 Q And the net operating loss was based upon what?

6 A Some expenses that were made and put on the tax return in
7 2016.

8 Q And --

9 A Also a loss that was included on Mr. DaCorta's 2016
10 return from Full Spectrum Wellness.

11 Q And were -- can you categorize those expenses and losses?
12 Let's start with expenses. What were they contributed to?

13 A Those expenses were attributed to interest expense that
14 was paid to partners in the partnership that was placed on the
15 tax return.

16 Q And some of those were carried over to the 2017 return?

17 A Yes. It created a loss amount that was carried over to
18 the 2017 return.

19 Q Okay. And with respect to the 2017 return, based upon
20 your investigation and analysis of the financial records, what
21 was your determination as to the proprietary of the interest
22 expense claimed on the 2017 return?

23 MR. ALLEN: Objection. Things we discussed at
24 sidebar.

25 THE COURT: We are talking about the 2017 return.

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1 MS. BEDKE: That's correct, Your Honor.

2 THE COURT: Go ahead.

3 A Because this business had no revenue stream, it was
4 simply money that was used from one investor to pay another in
5 the form of what they believed to be interest payments. There
6 was no interest expense. There was no profit that was
7 reported on Mr. Lyle's spreadsheet because there was no profit
8 on the trading. There was no spread pay. That was
9 fictitious. There was --

10 MR. ALLEN: Objection.

11 A -- only losses.

12 THE COURT: Hold on. Legal grounds?

13 MR. ALLEN: Foundation for this witness.

14 THE COURT: Ladies and gentlemen, this is an opinion
15 of this witness and subject to cross-examination. So I will
16 overrule the objection. Go ahead.

17 A So the numbers that were provided by Mr. DaCorta to
18 Mr. Burling included that spreadsheet that said 2017 profit
19 and distributed to all the partners, but there was no profit.
20 There was no money coming back into the accounts to pay any of
21 these individuals. These individuals believed they were
22 making money when there was no money that was to be made, not
23 one dime. So the interest expense that was used to pay these
24 individuals was just a diversion from other investors'
25 accounts, other investor funds. So there is no interest

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1 expense.

2 BY MS. BEDKE:

3 Q Let me pause there for a moment. So when you said there
4 was no money coming back, to what are you referring?

5 A There is no money coming back in any form or fashion for
6 any revenue stream for Oasis Management.

7 Q Did you see any money coming back from the ATC -- let me
8 back up and rephrase that.

9 You testified that in your analysis you saw payments
10 from OIG or Oasis to the ATC account, on one occasion the CFH
11 for forex trading, correct?

12 A Well, I think the payments actually came from the Fund
13 Administration account. So there were some funds that went
14 into Oasis Management, transferred to the Fund Administration
15 account and then transferred over to the ATC account, but
16 there were no funds that came back to the Fund Administration
17 account or Oasis Management.

18 Q So there were no profits from trading that made their way
19 back into --

20 A That's correct, yes.

21 Q And you didn't see any other money from any other account
22 associated with the trading that resulted in deposits into the
23 OIG account, correct?

24 A No. That's correct.

25 Q And how was the OIG account at Fund Administration later

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1 called Mainstream funded?

2 A With investor funds.

3 Q So is that the basis of your opinion that there was no
4 profit to make interest distributions or return of principal
5 other than from lender money or investor money?

6 A That's correct.

7 Q And is that further the basis for your statement that
8 this interest expense was inappropriate?

9 A That's correct.

10 Q You also mentioned that there was reported profit to the
11 limited partners of Oasis Management, LLC. Did I understand
12 you correctly?

13 A That's correct.

14 Q And what is the significance of that based upon your
15 analysis?

16 A Based on the spreadsheet that was provided to
17 Mr. Burling, it looked like it was the interest that they
18 assumed they were making on their investment, and it was
19 totaled down at the bottom. And that amount was put on the
20 tax return. It was like 443,000 as Mr. Burling spoke about it
21 before, but there were no profits. That number, it was
22 inappropriate as well. There should have been no revenues
23 reported to any of those partners in this venture.

24 Q Let me ask you if you also examined that portion of the
25 2017 return that related to Schedule C.

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1 A Yes. That was the Full Spectrum Wellness business.

2 Q And what did you observe with respect to Full Spectrum
3 Wellness and the figures entered on Schedule C?

4 A The figures on Schedule C are made up of mainly expenses
5 for Full Spectrum Wellness. And I have no dispute or argument
6 about the expenses, but the business was funded with a
7 diversion of funds from other investors to pay for his
8 personal business venture, Full Spectrum Wellness.

9 So the diversion of the funds from these investors
10 that put money into Oasis Management for the purpose of forex
11 trading, that should have been included as income because it
12 funded the Full Spectrum Wellness account, and therefore it
13 would have washed any sort of losses out of that. So the
14 losses that were generated from Full Spectrum Wellness were
15 also inappropriate because the amounts that were included to
16 fund Full Spectrum Wellness were not included as income.

17 Q Do I understand you to say that if any expenses
18 associated with Full Spectrum Wellness were properly to be
19 recorded on Mr. DaCorta's 2017 tax return, then it should have
20 been accompanied by the income to Mr. DaCorta by virtue of
21 taking funds from OIG to put into Full Spectrum Wellness?

22 A From Oasis Management to put into Full Spectrum Wellness,
23 yes.

24 Q So did the defendant claim the expenses but not the
25 income?

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1 A That's correct.

2 Q So in your opinion, how would you characterize the
3 reported income on Mr. DaCorta's 2017 U.S. individual income
4 tax return?

5 A Well, he didn't report any of the income, any of the
6 disbursements, the diversion of investor funds from the Oasis
7 Management account to his personal account to buy cars, the
8 Maserati, the Land Rover, the private jets, the trips to
9 Italy. Any of the transfers to his personal account, they
10 were also used for personal expenses, as well as payments made
11 for his residence that went into 13318 Lost Key Place to pay
12 for his personal residence, as well as the money that was
13 diverted to Full Spectrum Wellness and Roar of the Lion
14 Fitness.

15 Q Would that include payments and expenditures made in
16 connection to the Lacantera residence?

17 A No. That was in -- well, in 2018 he bought Lacantera.
18 So if we are talking about 2017. It does not include that.

19 Q All right. So you are excluding the Lacantera residence
20 because it was bought after the 2017 year?

21 A Right.

22 Q And so in sum, in your opinion was Mr. DaCorta's income
23 overstated, understated, accurate, not accurate? How would
24 you describe it?

25 A It was understated. And if you go back to the

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1 spreadsheet that I made on 503, I totaled up these amounts I
2 just mentioned of \$562,884.80 which should have been reported
3 as income because these were a diversion of funds, investor
4 funds for his use.

5 Q And because these funds were not reported on the 2017
6 individual income tax return, is it your belief that the
7 income was understated?

8 A That's correct.

9 Q Let's take a look at 557B. What is 557B?

10 A This is what we call an IRPT document. It is an
11 Information Returns Processing Transcript. It basically shows
12 what --

13 Q Let me have you pause for just a second. We are looking
14 at page 1 on the monitor, and I want to make sure we are with
15 you. This is the certification of this document you are
16 describing; is that right?

17 A Yes, it is.

18 Q Let's turn to page 2. It's Bates stamped IRS-03905. Is
19 that the document to which you are referring?

20 A Yes. I can't see it. Can you zoom in on it? There you
21 go.

22 So this is a document that reports any sort of W2s,
23 1099s, mortgage interest, things that are reported to the IRS.
24 This is what these documents report for a specific individual.
25 So if you worked somewhere and you got a W2, it would be

DIRECT EXAMINATION OF SHAWN BATSCH

1 reported on this document. If you received a 1099, it would
2 be reported on this document. All of these items are issued
3 for each tax year. So for this one, this is for 2017 for
4 Mr. Andrew DaCorta, Mr. DaCorta's son.

5 Q And what does it reflect?

6 A In the lower bottom part of this document on the bottom
7 left --

8 Q Let's zoom in on the bottom section there.

9 A You have got to go a little higher. There you go.

10 So it says that Andrew DaCorta received a W2 in the
11 amount of \$84,000 from Full Spectrum Wellness for 2017.

12 Q And what about 557C?

13 A This is the same document for Andrew DaCorta for 2018.
14 And in the lower bottom part of that document it shows he
15 received a W2 from Full Spectrum Wellness in the amount of
16 \$63,000 for 2018.

17 Q All right. Is this, if you know, after the time --
18 actually, let me strike that.

19 Let me turn next to 558B. What is 558B?

20 A This is the same document we just discussed but for his
21 other son, Steven DaCorta, for 2017.

22 Q Let's zoom in on the bottom half of page 2. It's
23 IRS-03914. What's reflected here?

24 A He received a W2 in the amount of \$17,000 from Full
25 Spectrum Wellness in 2017.

DIRECT EXAMINATION OF SHAWN BATSCH

1 Q Reflecting wages in what amount?

2 A 17,000.

3 Q And what is 558C?

4 A This is the same document for Steven DaCorta for 2018.

5 Q And on page 2, IRS-03917, what is reflected here?

6 A He received a W2 from Full Spectrum Wellness in the
7 amount of \$18,000.

8 Q Was Full Spectrum Wellness still operating in 2018?

9 A I don't believe so.

10 Q Turning back to 2017 and Mr. DaCorta's 2017 return, are
11 these payments to Mr. DaCorta's sons part of the expenses that
12 were claimed on the return?

13 A So they are part of the transfers that were made to the
14 Full Spectrum Wellness, LLC, bank account. So they took
15 investor funds, moved it to Full Spectrum Wellness, used it
16 for some expenses, also paid his two sons out of that account.
17 So the source is the investor funds.

18 Q So again on the return, the income is not reported, that
19 coming from the investors, but the expenses are claimed?

20 A That's correct.

21 MS. BEDKE: May I have a moment, Your Honor?

22 THE COURT: Yes.

23 MS. BEDKE: Thank you very much. Nothing further at
24 this time, Your Honor.

25 THE COURT: Cross-examination, please.

CROSS-EXAMINATION OF SHAWN BATSCH

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CROSS-EXAMINATION

BY MR. ALLEN:

Q Good morning, sir.

A Good morning.

Q How long have you worked for the IRS?

A Twenty-one years.

Q How many cases in those 21 years have you done with Ms. Bedke?

A Three or four.

Q You have other active cases with her now, right?

A Yes.

Q And you indicated that you were the case agent, co-case agent, correct?

A Right.

Q And a case agent works hand in hand with the prosecution, correct?

A That's correct.

Q In fact, you have been working day and night with Ms. Bedke and co-counsel in preparation of this case, correct?

A That's correct.

Q Every break you are meeting with them?

A I'm sorry?

Q Every break during this trial you are meeting with them?

A Sure.

Q You are talking to all of the government's witnesses?

CROSS-EXAMINATION OF SHAWN BATSCH

1 A Sure.

2 Q You're organizing the government's witnesses?

3 A Sure.

4 Q You are strategizing with the government on how to
5 respond to Mr. DaCorta's defense?

6 A Yes.

7 Q You as the case agent -- well, let me ask you this. You
8 are familiar with the rule of sequestration, right?

9 A Yes.

10 Q And that's the rule that's invoked at the beginning of a
11 trial that causes every witness that's going to be testifying
12 to sit outside of the courtroom until they are called for the
13 sole purpose that they won't hear the testimony of other
14 witnesses, correct?

15 A Yes.

16 Q Because if they hear the testimony of other witnesses,
17 then their testimony could be tainted by what they hear in the
18 courtroom, correct?

19 A Yes.

20 Q And you have sat in this courtroom and listened to the
21 testimony of every single witness almost, like you were out
22 for a little bit, correct?

23 A Sure.

24 Q And you have read the testimony of every government
25 witness so far, correct?

CROSS-EXAMINATION OF SHAWN BATSCH

1 A Yes.

2 Q And you are in essence part of the prosecution team,
3 correct?

4 A Yes.

5 Q And yet you are giving your opinion from that witness
6 stand as to what you believe Mr. DaCorta did wrong, correct?

7 A I don't know that -- what opinion am I giving?

8 Q Did you not just express your opinion as to what
9 Mr. DaCorta did incorrectly in his tax returns?

10 A Well, the IRS code specifically suggests that any income,
11 whether legal or illegal, should be reported on one's tax
12 return.

13 Q Says the IRS?

14 A Says the IRS.

15 Q And if somebody disagrees with the IRS, the IRS doesn't
16 just get to decide it. There is an adjudication process that
17 takes place. The IRS doesn't make the decision, right?

18 A The IRS didn't actually write the law. Congress did. So
19 not the IRS, but it's the law.

20 Q Okay. You are expressing your opinion as a member of the
21 prosecution team, correct?

22 A Yes.

23 Q Would that not be similar if I called Ms. Irvin to the
24 stand, who is on my defense team, to express her opinion as to
25 Mr. DaCorta's conduct?

CROSS-EXAMINATION OF SHAWN BATSCH

1 A No.

2 Q Okay. In addition to focusing on the finances and being
3 the case agent, as part of the prosecution team you were also
4 present at the execution of the search warrant at
5 Mr. DaCorta's residence on April 18, 2019, correct?

6 A Correct.

7 Q And that was a court-authorized search warrant, correct?

8 A Yes.

9 Q And the search warrant doesn't allow you to just take
10 anything. It specifically directs the type of things that you
11 can seize from the residence that Mr. DaCorta was residing at,
12 correct?

13 A Yes.

14 Q And specifically it's saying only seize things that could
15 be relevant to your investigation of the criminal offenses,
16 correct?

17 A That's correct.

18 MR. MURRAY: Your Honor, may we approach?

19 THE COURT: Yes.

20 (Bench conference on the record with all counsel
21 present.)

22 MR. MURRAY: Your Honor. This is the windup.

23 THE COURT: He is not going to do the windup. And I
24 think his question so far was appropriate. So do you have a
25 legal objection?

CROSS-EXAMINATION OF SHAWN BATSCH

1 MS. BEDKE: Your Honor, Agent Batsch is going to say
2 he doesn't know. Because there were a lot of agents there, he
3 doesn't know where the diary came from.

4 THE COURT: I might just judicially notice it came
5 from the house unless you are telling me that it wasn't.

6 MS. BEDKE: No. That's correct, Your Honor, it was.
7 He just doesn't personally know about that one.

8 THE COURT: I might instruct the jury that it came
9 from the house. You can ask the question. If you wish to ask
10 the question, you may, but don't do the lawyer dance with, you
11 know, talk about the exhibit.

12 (End of bench conference.)

13 MR. ALLEN: Approaching the defendant with Defense
14 Exhibit 81.

15 THE COURT: Yes.

16 BY MR. ALLEN:

17 Q Sir, can you look at Defense Exhibit 81?

18 A Okay.

19 Q Do you recognize what Defense Exhibit 81 is?

20 A Yes.

21 Q I'm sorry. Was that a yes?

22 A Yes.

23 Q Was that an item that was seized from Mr. DaCorta's
24 residence on April 18 of 2019, pursuant to the judicially
25 issued search warrant?

CROSS-EXAMINATION OF SHAWN BATSCH

1 A All I know is that this is in FBI evidence with the other
2 documents and stuff that was seized at the residence. I
3 cannot testify that this was seized at the residence. I know
4 that it was FBI evidence.

5 MR. ALLEN: Your Honor, I would ask the Court to --

6 THE COURT: And ladies and gentlemen, I looked at the
7 inventory list, and this was seized at the residence.

8 All right. Go ahead.

9 MR. ALLEN: Thank you, Your Honor.

10 Exhibit 87 if I misstated.

11 THE COURT: There you go.

12 BY MR. ALLEN:

13 Q You have had the opportunity, as we just clarified, to
14 listen to the testimony and the evidence that's come in in
15 this case, correct?

16 A Yes.

17 Q And that included Mr. Paniagua's testimony?

18 A Yes.

19 Q And that also included Agent Stone's testimony, correct?

20 A Yes.

21 Q And both Agent Stone and Mr. Joe Paniagua testified that
22 there was a risk disclosure loan agreement document, correct?

23 A That's correct.

24 Q And Agent Stone testified that he had gotten it both in
25 an email from Mr. Duran as well as clicking on the portal and

CROSS-EXAMINATION OF SHAWN BATSCH

1 being able to obtain it that way?

2 A Right.

3 Q And Mr. Paniagua testified that when a prospective lender
4 was applying to be a lender, they had to go through different
5 parts of the portal, sign up, and they had to click and
6 indicate that they had read and understood the note and risk
7 disclosure?

8 A That's what he said, yeah.

9 Q If we could pull up what's already been put into evidence
10 as Defense Exhibit 2.

11 THE COURTROOM DEPUTY: I'm sorry. Did you want the
12 presentation card?

13 MR. ALLEN: The trial director.

14 THE COURTROOM DEPUTY: I've got it.

15 MR. ALLEN: Thank you.

16 BY MR. ALLEN:

17 Q If we could turn to page 4 of that document, AWS-000765.
18 Pull out the "Use of Funds" section. That section says, "At
19 any time, in Oasis's sole discretion and without prior demand
20 or notice, Oasis may use any and all money loaned by lender,
21 including any interest therein, for any purpose whatsoever,
22 including without limitation any investment; the purchase or
23 sale of foreign exchange products, securities or commodities,
24 exchange or off-exchange products; the purchase or sale of any
25 business assets or liabilities, the purchase or sale of any

CROSS-EXAMINATION OF SHAWN BATSCH

1 real estate; or for any other purpose, including any general
2 company use or payment, any company payment or loans to any
3 company affiliate, officer, employee, or third party, any
4 company indebtedness or other company obligations." Did I
5 read that accurately, sir?

6 A Yes.

7 Q If we could pull up Government Exhibit 500A. We need to
8 switch over to the government's.

9 So the first thing on your column is you have
10 payments back to investors, \$27,409,583.27?

11 A Yes.

12 Q And you would agree with me that since it's a loan
13 pursuant to the loan agreement, it would be appropriate for
14 OIG to pay back investors with money, correct?

15 A With whose money?

16 Q With money, their money?

17 A Pay them back from their own money?

18 Q Well, when they loan the money to OIG, it's OIG's money,
19 correct?

20 A No.

21 Q Okay. So you disagree that if I said loan me \$10 and you
22 gave me \$10, that I couldn't use that \$10?

23 A If you said loan me money for the use of forex trading
24 and you then used it to buy a Florida mansion for yourself or
25 a Maserati for yourself, that's not what I intended my funds

CROSS-EXAMINATION OF SHAWN BATSCH

1 to be used for.

2 Q Well, I thought the question was, if I said, Mr. Batsch,
3 loan me \$10, do you agree or disagree that I could use that
4 \$10? That's the question. Yes or no, sir?

5 A I would ask you what it was for. What do you need \$10
6 for?

7 Q Okay. So you wouldn't loan me \$10? I thought we knew
8 each other.

9 A I probably would. But if somebody is going to ask me for
10 more money than that, I would ask what the purpose is.

11 Q I understand that. But my hypothetical is I'm asking you
12 for \$10.

13 A So in this situation for \$10, yes.

14 Q And if I came back to you and said here is your \$10 and
15 it happened to be the same \$10 you gave me, you would be upset
16 with that?

17 A No. For \$10, no.

18 Q If you gave me a hundred thousand dollars and I came back
19 to you and gave you back a hundred thousand dollars and it
20 happened to be your money, you would be upset with that?

21 A I wouldn't have given you a hundred thousand dollars
22 unless I knew what you were going to use it for.

23 Q Okay. Let's look at the second one. ATC Brokers and
24 forex trading, correct?

25 A Yes.

CROSS-EXAMINATION OF SHAWN BATSCH

1 Q That agreement specifically says we can use the money for
2 anything we want, but specifically we are going to use it for
3 forex trading, correct?

4 A It does.

5 Q Next you say "Payment to Staff and Passive Oasis
6 Members." The notice and loan agreement specifically says we
7 can use your money to pay staff and other expenses, correct?

8 A It does, but that's not what was represented in
9 conference calls and oral conversations with individuals about
10 what the use of their money is going to be used for.

11 Q I understand your desire as a member of the prosecution
12 team to get out the prosecution theory, but I would ask that
13 you please just answer my questions.

14 A Okay.

15 Q If you want to explain, you can. Okay?

16 A Well, then let me explain when you ask me a question.

17 Q Just ask, sir.

18 A Okay.

19 Q Next it says "DaCorta, Anile, Residential Properties and
20 Related Entities"?

21 A Right, yes.

22 Q And you keep referring to these as Mr. DaCorta's house,
23 Mr. Anile's house, Mr. Duran's house. All of these properties
24 were, LLCs, correct?

25 A They were in the title to an LLC that the bank account

CROSS-EXAMINATION OF SHAWN BATSCH

1 was controlled by Mr. Anile and Mr. DaCorta. Any and all
2 decisions made regarding the house were made by them. Their
3 families lived in those houses, but they were titled to
4 an LLC, yes.

5 Q Okay. Do you still need to explain?

6 A No.

7 Q Okay. So they are all in LLCs, correct?

8 A Yes.

9 Q And the loan agreement specifically said the money you
10 are loaning can be used to purchase real estate, correct?

11 A That loan agreement said that, yes.

12 Q And you would agree that all of these homes are real
13 estate, correct?

14 A They are real estate.

15 Q And the office building was real estate?

16 A That's real estate.

17 Q And in fact, not only is it in the loan agreement,
18 Mr. DaCorta specifically told Undercover Agent Stone, who was
19 pretending to be a lender, that the money would be used --
20 that money would be used for real estate, correct?

21 A No.

22 Q Okay.

23 A He said that his money was going to be used for forex
24 trading and they were using their own money for real estate
25 and other items.

CROSS-EXAMINATION OF SHAWN BATSCCH

1 Q Uh-huh. And when OIG borrows money, anybody borrows
2 money, it becomes their money to use, correct?

3 A No. Can I use an example here? The government issues
4 PPP loans.

5 Q Do you need to explain your answer of no?

6 A Yes.

7 Q Go ahead.

8 A The government issues PPP loans to businesses. This is
9 just an example. The government is going to loan a business
10 money, let's say a hundred thousand dollars, for the purpose
11 of them to use it on payroll. If the owner of that business
12 then goes and buys a Lamborghini with it, that is theft.

13 Q Right. So the loan has to be used for the agreed-upon
14 purpose?

15 A The agreed-upon purpose.

16 Q Okay. And Government -- I'm sorry -- Defense Exhibit 2
17 is the agreed-upon purpose, correct?

18 A That's not what's told to people. And I don't even know
19 who got those. I don't know that anybody received those or
20 signed those or read them. I don't know.

21 Q I understand your lack of knowledge. My question is,
22 this is the agreement as to what the money could be used for,
23 correct?

24 A That document you have in your hand says that they could
25 use it for whatever they want.

CROSS-EXAMINATION OF SHAWN BATSCH

1 Q And it specifically lays out what they mean by that,
2 correct?

3 A It does.

4 Q It doesn't just say we can use the money for whatever we
5 want. There's a definition of what they mean by that in the
6 agreement, correct?

7 A Well, it says "Whatsoever."

8 Q Okay. So you disagree that Government -- I'm sorry --
9 Defense Exhibit 2 lays out six, seven, eight, nine things that
10 they could use the money for?

11 A No. It says whatsoever, including, and all those things.

12 Q Okay. Let's pull up back on the screen then Defense
13 Exhibit 2. Okay. You would agree with me that there is more
14 words as to the use of funds than simply "Whatsoever,"
15 correct?

16 A Correct.

17 Q Do you need to explain?

18 A No.

19 Q Okay.

20 A Including, without limitation, any investment, purchase,
21 the sale --

22 Q So I guess you did need to explain.

23 Let's pull up Government Exhibit 500. And if we
24 could pull out the "Use of Funds" section of where the funds
25 went. We have discussed payment back to investors. We have

CROSS-EXAMINATION OF SHAWN BATSCH

1 already discussed that, correct?

2 A Correct.

3 Q We have discussed transfer of funds for forex trading,
4 right?

5 A Right.

6 Q We have discussed payment to staff and passive members of
7 Oasis, correct?

8 A Right.

9 Q Are we have discussed the resident that Mr. DaCorta was
10 residing at, correct?

11 A Yes.

12 Q We have discussed -- we have not discussed Mr. DaCorta's
13 cars, personal credit cards, home equity, LLCs, and school,
14 right?

15 A Right.

16 Q We haven't talked about that.

17 The promissory note and loan agreement says that it
18 can be used to pay officers, employees, and third parties,
19 correct?

20 A That loan agreement and promissory note, it went in
21 effect in what? 2018? Is that what we heard? A lot of these
22 things go back to 2015. Again, they were told their money was
23 going to be used in forex trading.

24 Q Will you answer my question now?

25 A What is your question?

CROSS-EXAMINATION OF SHAWN BATSCH

1 Q My question was, did the loan agreement not specifically
2 say that the money being loaned could be used to pay its
3 officers, employees, third parties?

4 A Your document there says that, yes.

5 Q Well, this is a document that came in through Mr. Joe
6 Paniagua who was a government witness, correct?

7 A Correct.

8 Q This is a document that came in through Agent Stone who
9 not only was a government witness but a former FBI agent,
10 correct?

11 A Correct.

12 Q It says Full Spectrum Wellness and Roar of the Lion. We
13 haven't talked about that yet, have we?

14 A No.

15 Q Okay. Mr. DaCorta specifically told Agent Stone that his
16 company was involved in equity financing, correct?

17 A Yes.

18 Q And equity financing is providing money to a company,
19 correct, for an ownership interest, correct?

20 A Correct.

21 Q And I believe you testified on direct examination that
22 Full Spectrum Wellness, Roar of the Lion were separate
23 companies from Oasis International Group, correct?

24 A Right, yes.

25 Q Next we have Mr. Anile's residence, and that's an LLC

CROSS-EXAMINATION OF SHAWN BATSCH

1 purchased with company money, correct?

2 A Yes.

3 Q We then have Anile Bowling Green Capital 4Oaks, and that
4 was Mr. Anile's company, correct?

5 A Yes.

6 Q And a lot of money went into that account, correct?

7 A Yes.

8 Q And his wife was a signatory on that account, correct?

9 A I think so.

10 Q Do you not recall him testifying to that?

11 A I don't recall. I know he was.

12 Q Do you recall him testifying about needing lawyers for
13 his family members?

14 A Yes.

15 Q Did you do an analysis of the Bowling Green account?

16 A We did.

17 Q Did it appear to you from your analysis that Mr. Anile's
18 wife was taking money separate and apart from any company
19 function or purpose?

20 A Repeat your question.

21 Q Sure. In your analysis of Mr. Anile's account for his
22 company, did it appear to you that his wife was withdrawing
23 money from that account that was unrelated to anything that
24 would have had any purpose for Oasis International Group?

25 A Well, any money going into Bowling Green Capital, 4Oaks

CROSS-EXAMINATION OF SHAWN BATSCH

1 was unrelated to anything having to do with Oasis
2 International. So that was all money that was -- the answer
3 to the question is yes, but it's all of the money that went
4 into Bowling Green and 40aks.

5 Q Was Ms. Anile subject of your investigation?

6 A No.

7 Q Did the issue of her having potential criminal liability
8 come up in your interactions with Mr. Anile?

9 A No.

10 Q We have next the Christmas parties, correct?

11 A Yes.

12 Q And you would agree, would you not, that the note is and
13 risk disclosure says that the money loaned could be used for
14 company expenses, correct?

15 A Yes, it says that.

16 Q And the Christmas parties were specifically for
17 participants in OIG, correct?

18 A Or other people that they invited, not just the
19 participants.

20 Q You think that was a personal function or do you think it
21 was a business function, the Christmas parties?

22 A You are asking me my opinion?

23 Q Sure.

24 A It was a function to persuade investors that Oasis was
25 successful and a prospering company that had a lot of money to

CROSS-EXAMINATION OF SHAWN BATSCH

1 keep them invested and not take a run on the bank and take
2 their money out.

3 Q That wasn't the opinion I was seeking, but my question
4 was do you think -- this is the opinion I'm asking you, okay?
5 And if you need to explain, feel free to. Just ask.

6 Do you think the Christmas parties was a private
7 party for Mr. DaCorta, Mr. Anile, or do you think it was
8 something for the purpose and benefit of Oasis International
9 Group?

10 A I think it was for the benefit of Mr. DaCorta and Anile,
11 because if these investors were happy, they would put more
12 money into Oasis.

13 Q Okay. So I guess by your logic it would benefit OIG?

14 A Sure.

15 Q We have discussed the office building, correct?

16 A Yes.

17 Q There are condo purchases, correct?

18 A Yes.

19 Q Condos are real estate, right?

20 A Yes.

21 Q We have Mr. Duran's residence, but that's an LLC,
22 correct?

23 A Yes.

24 Q Purchased with money that OIG got from lenders, right?

25 A From investors, yes.

CROSS-EXAMINATION OF SHAWN BATSCH

1 Q Well, people can loan money as an investment, right?

2 A I don't think even this loan program was in effect during
3 this time period. So it was investor money.

4 Q Okay. Let's talk about that. You were only able to look
5 at trading records from 2015 to April of 2017, correct?

6 A April 2019.

7 Q You are right. I got my dates confused. April of 2019,
8 correct?

9 A Yes.

10 Q And Mr. DaCorta was involved -- I mean, the allegations
11 stem from 2011 to 2019, April of 2019, correct?

12 A Yes.

13 Q And you mentioned on direct examination seeing in your
14 accounting, I guess, of one of your summaries about money from
15 CFH. Is that what it was?

16 A Yes.

17 Q And what was CFH?

18 A It's like ATC Brokers. They are a broker to facilitate
19 forex trading.

20 Q And what do these trading records show?

21 A I didn't review them.

22 Q I'm sorry?

23 A I didn't review them.

24 Q So you have no idea what the trading successes or
25 failures might have been prior to ATC Brokers?

CROSS-EXAMINATION OF SHAWN BATSCCH

1 A I know the receiver's office did, and no money came back
2 from CFH Clearing just like ATC Brokers.

3 Q Sarasota Rare Coin you have on here?

4 A That's correct.

5 Q That's the gold and silver that was purchased with money
6 that OIG had taken in in loans, correct?

7 A Investor funds, yes.

8 Q That they were loaning, correct?

9 A Investor funds.

10 Q Well, you listened to the testimony of all the people
11 that you called as investors, and they all agreed they were
12 loans, right?

13 A They were told that they were lenders, yes.

14 Q Well, they all testified -- you were here. They all
15 said, yeah, they were loans, right?

16 A They invested money in a forex platform. They were told
17 their money was loans, but they invested in a forex platform.

18 Q Do you not believe the testimony of Mr. Howard when he
19 said, I invested in a loan?

20 A He was told it was a loan, yes, correct. If you ask him
21 if he invested in Oasis, he'll say yes.

22 Q That he loaned money to OIG, correct?

23 A He would also say he invested in Oasis.

24 Q Correct. As a loan investment, right?

25 A Okay.

CROSS-EXAMINATION OF SHAWN BATSCH

1 Q All right. I mean, that's what Mr. Kihnke said too,
2 right?

3 A That they were told their money was loans, yes.

4 Q And that they perceived it as a loan, correct?

5 A They were told their money was a loan, and they received
6 a promissory note in exchange.

7 Q Okay. With the promise of interest, correct?

8 A Or the transaction fees from the forex trading.

9 Q Well, no. I believe their testimony was they got the
10 greater of 1 percent per month or 12 percent per year in
11 interest or 25 percent of the spread, correct?

12 A That's what their testimony is, yes.

13 Q Consistently across all of them, right?

14 A That's what their testimony is.

15 Q And you believe their testimony, right?

16 A There was no spread to pay them. I don't -- I believe
17 that they believed that, but that is not what happened behind
18 the scenes.

19 Q Okay. Belize account, correct?

20 A Yes.

21 Q And the testimony during this trial was that a
22 broker-dealer was incorporated in Belize, correct?

23 A There was a shell company in Belize that owned a
24 broker-dealer license.

25 Q So there was a broker-dealer license purchased in Belize,

CROSS-EXAMINATION OF SHAWN BATSCCH

1 correct?

2 A Correct.

3 Q And that would be a company expense, correct?

4 A The Belize account, I think it's still sitting in the
5 bank account.

6 Q No. The license for broker-dealer in Belize.

7 A Yes.

8 Q Charity, how much did Mr. DaCorta give to charity?

9 A I would have to look through the spreadsheet, but there
10 is some in there. It's not -- it's not significant to the
11 \$205,000, but there is some money to charity.

12 Q Well, it was significant enough for you to include it,
13 right?

14 A Yeah. I didn't want to disregard it.

15 Q Okay. But you don't know the number?

16 A No.

17 Q Gas stations, entertainment, grocery, restaurants,
18 retail, home supplies, and health, correct?

19 A Yes.

20 Q Things that an officer of a company or any individual
21 would use the money they are earning from their income line,
22 correct?

23 A You have to look at that spreadsheet to get more
24 specific. I think there are charges from Home Depot and
25 various retail purchases, stuff like that that I wouldn't

CROSS-EXAMINATION OF SHAWN BATSCH

1 expect someone to use investor -- someone's money to purchase.

2 Q Well, you have been to Home Depot, right?

3 A I have.

4 Q Yeah. Have you?

5 A I have.

6 Q You purchase things at Home Depot, right?

7 A I have for my personal use, yes.

8 Q Correct. And you used the income you get from the
9 federal government to do that?

10 A Right.

11 Q Okay. And so my question was, these are all things that
12 every person who has income would buy on a daily basis?

13 A Correct.

14 Q Travel expenses and plane charter, correct?

15 A Yes.

16 Q Those could be personal expenses or they could be
17 business expenses, right?

18 A Could be.

19 Q You don't know?

20 A Some of them, no.

21 Q Attorneys and CPAs, and I think Ms. Bedke went through
22 your sheet and was pointing out attorneys in New Zealand,
23 correct?

24 A Right.

25 Q And at one point they had a license for a broker-dealer

CROSS-EXAMINATION OF SHAWN BATSCH

1 in New Zealand, right?

2 A Right.

3 Q The CPAs, some of that is Mr. DaCorta's accountants that
4 he hired, Mr. D'Arcangelo and Mr. Burling?

5 A Correct.

6 Q Can you look at 516 for me, sir?

7 A Can you pull it up on the screen?

8 Q Can you guys pull up 516?

9 You are good at numbers I'm assuming being a CPA.

10 Can you give me a ballpark of how much money Mr. DaCorta paid
11 Mr. Burling to assist with his personal and business taxes?

12 A 2,500 maybe.

13 Q That's more than somebody would pay to use the online
14 Turbo Tax, right?

15 A I would hope so.

16 Q Do you do your own taxes?

17 A Yes.

18 Q You got a lot of experience being a CPA and working for
19 the IRS for 21 years and living and breathing the tax code as
20 part of your job?

21 A Sure.

22 Q But you would agree that when people have complex tax
23 issues, it's not uncommon for them to hire a CPA like
24 yourself?

25 A That's correct.

CROSS-EXAMINATION OF SHAWN BATSCH

1 Q Somebody who lives and breathes the tax code, correct?

2 A Yes.

3 Q And Mr. DaCorta spent over \$2,500 for a person just like
4 that?

5 A Correct.

6 Q If we could go back to 500. Pull out the expenses there.

7 Office rent. You would agree with me that the
8 agreement and risk disclosures would cover general operating
9 expenses?

10 A That agreement would, yes.

11 Q And I noticed that the rent stopped, didn't go all the
12 way through 2019, correct?

13 A Right. Yes.

14 Q And the reason the rent stopped is because OIG purchased
15 the office building, correct?

16 A That's correct.

17 Q For their -- they didn't need to rent a place to work.
18 They had purchased an office building, correct?

19 A That's correct.

20 Q We have the miscellaneous that you talked about, the
21 unknown you talked about. And then we have bank fees and
22 utilities. I'm assuming utilities is the power and lights at
23 the office building in the eleven, ten other properties, real
24 estate that was purchased?

25 A No. That was -- those, what you were just talking about

CROSS-EXAMINATION OF SHAWN BATSCH

1 there were normally paid out of those LLC accounts in the
2 property names. The utilities there was like phone, Bright
3 House, stuff like that that was probably unrelated. So these
4 are mostly like wire fee transactions and so forth.

5 Q Okay. Transactions regarding -- I hate to use the word
6 lender funds because you are going to argue with me -- but
7 transactions of the funds that were coming in, correct?

8 A Yes.

9 Q Would you agree -- withdraw that.

10 Were you at Mr. Anile's sentencing hearing?

11 A I was on the Zoom call, yes.

12 Q You were virtually present like everybody else that day?

13 A Right.

14 Q Including myself.

15 A Right.

16 Q Do you recall him explaining to Judge Scriven about how
17 he nearly almost died four times prior to his sentencing
18 because of being in the hospital with a heart condition?

19 A I do.

20 Q Do you recall him asking the Court for a lesser sentence
21 because of his health conditions?

22 A He might have. I don't know if it was verbal or in the
23 report that they issued. I don't remember, but he might have.

24 Q You would agree with me that he is in poor health?

25 A Yes.

CROSS-EXAMINATION OF SHAWN BATSCH

1 Q You would agree with me that it's harder to do prison
2 when you are in poor health than when you are in good health?

3 A Yes.

4 Q You would agree with me Mr. DaCorta -- I'm sorry --
5 Mr. Anile isn't eager to go to prison?

6 A That is correct.

7 Q You would agree with me that the reason he hasn't gone to
8 prison since he pled -- since he was sentenced in November of
9 2020 is so that he could be available to cooperate with the
10 government against Mr. DaCorta?

11 A I don't really know. I don't -- I wasn't involved in
12 those discussions about moving his court date back. So I
13 can't answer that.

14 Q Okay. Do you recall that issue coming up at the
15 sentencing hearing?

16 A I do. He had a report date. I believe they issued one
17 there. I don't remember what it was.

18 Q My question is, do you recall at his sentencing hearing a
19 request being made by the government that Mr. Anile be allowed
20 to stay out because he was still cooperating and would
21 potentially be testifying against Mr. DaCorta?

22 A Yeah. There was something along those lines like that,
23 yeah.

24 Q Do you want to refresh your memory or do you feel
25 comfortable that happened?

CROSS-EXAMINATION OF SHAWN BATSCH

1 A No. I think there is something like that in there. I
2 just don't remember specifically what that was.

3 Q And even though he testified a couple days ago, he still
4 hasn't reported for prison to your knowledge, correct?

5 A That's correct.

6 Q You indicated that we don't know that any of the lenders
7 actually saw the risk disclosure, correct?

8 A Well, I don't know about any of them. But the ones I've
9 contacted, I don't know that they have read or understood that
10 risk disclosure.

11 Q But you were here during Mr. Paniagua's testimony that
12 all of them -- by all of them, I mean Patti Katter, Deborah
13 Cheslow, Michael Chalhub, Charles Anthony and his wife, Matt
14 Kihnke had records of having opened an online portal account,
15 correct?

16 A Yes.

17 Q And you heard the testimony from Mr. Paniagua that none
18 of them could have had an account unless they clicked that
19 they had read, reviewed, and understood the risk disclosure?

20 A Okay.

21 Q And you recall, do you not -- I'm showing you Defense
22 Exhibit 225. That 225 relates to Patti Katter. Do you recall
23 that?

24 A Yes.

25 Q And that Ms. Katter testified that that was her

CROSS-EXAMINATION OF SHAWN BATSCH

1 signature. Do you recall that?

2 A Yes.

3 Q I'm showing you what's Defense Exhibit 224 for Deborah
4 Cheslow indicating that she had an online portal and her
5 testifying under oath that that was her signature. Do you
6 recall that?

7 A That is correct.

8 Q I'm showing you what's been already introduced into
9 evidence as Defense 209, which is the business record for
10 Mr. Chalhub, Michael Chalhub's online portal account. And he
11 testified under oath that that was his signature and that was
12 his wife's signature. Do you recall that?

13 A Yes.

14 Q I'm showing you what's been admitted into evidence as
15 Defense Exhibit 306, the account for Mr. Charles Anthony or
16 Anthony Charles and his wife Sonja. You recall him testifying
17 under oath, do you not, that that was his wife's signature and
18 his signature?

19 A Yes.

20 Q I'm showing you what's already been admitted into
21 evidence Defense Exhibit 215 for Mr. Matt Kihnke. Page 6 of
22 that document, do you recall testifying under oath that that
23 was his signature?

24 A Yes.

25 Q You recall Mr. Howard also identifying his signature when

CROSS-EXAMINATION OF SHAWN BATSCH

1 he testified, do you not?

2 A I wasn't in the room when he testified. So I can't --

3 Q If you can pull up Exhibit 521. This was you looking at
4 the bank records and identifying deposits from investors?

5 A Right.

6 Q From 2015 all the way through April of 2019?

7 A Yes.

8 Q Were you able to identify the names of all the investors
9 from this, from your review of the banks records?

10 A No. No. Because some people invested with companies.
11 Like, for example, Mr. Howard, I.W. Land Partners or whatever.

12 Q The receiver took over the Oasis AWS client portal
13 account, correct?

14 A Yes.

15 Q And the receiver provided both the government and myself
16 access to that, correct?

17 A Yes.

18 Q And the AWS account lists all of the active -- you will
19 call them investors, I will call them lenders, that were in
20 active status as of April of 2019, correct?

21 A Yes.

22 Q And Mr. Paniagua used that website to identify the number
23 of lenders that had loans outstanding that needed to be paid,
24 correct? And the government has introduced an exhibit that
25 Mr. Paniagua put together that was provided to the receiver,

REDIRECT EXAMINATION OF SHAWN BATSCH

1 correct?

2 A Yes. That's correct.

3 Q Did you or anybody else in law enforcement go into the
4 portal and identify all of the lenders?

5 A Mrs. Cheslow had a spreadsheet that did that.

6 Q Okay. That was that big blue spreadsheet that came in?

7 A Yeah.

8 Q Yes?

9 A Yeah, I think so.

10 Q And she did that by going into the AWS account to
11 identify them, correct?

12 A Correct.

13 Q And as we learned from Mr. Paniagua, they couldn't have
14 an AWS account unless they clicked that they had reviewed and
15 understood the risk disclosure, correct?

16 A Okay, yes.

17 MR. ALLEN: If I could have a moment.

18 THE COURT: Yes.

19 MR. ALLEN: No further questions, Your Honor.

20 THE COURT: Redirect, please.

21 **REDIRECT EXAMINATION**

22 BY MS. BEDKE:

23 Q Agent Batsch, is it customary for at least one case agent
24 and sometimes more to be permitted to sit in court throughout
25 the course of the trial?

REDIRECT EXAMINATION OF SHAWN BATSCH

1 A Always, yes.

2 Q And was it your understanding that you were permitted to
3 stay inside the courtroom throughout the proceedings
4 consistent with that customary practice?

5 A Yes.

6 Q And did you understand that all the parties agreed?

7 A Yes.

8 MR. ALLEN: Objection.

9 THE COURT: What's the legal basis for that?

10 MR. ALLEN: Can I come -- as to all parties agreed.

11 THE COURT: Overruled. Overruled.

12 BY MS. BEDKE:

13 Q Agent Batsch, Mr. Anile has been sentenced, correct?

14 A Yes.

15 Q And do you understand that it's possible that the
16 government would file a motion on his behalf if it determines
17 in its sole discretion he has provided substantial assistance?

18 A Yes.

19 Q Has anyone ever promised Mr. Anile a specific sentence?

20 A No.

21 Q Whose decision is it at the end of the day what sentence
22 or other penalties Mr. Anile gets?

23 A The judge.

24 MS. BEDKE: Nothing further.

25 THE COURT: Thank you. You may step down.

REDIRECT EXAMINATION OF SHAWN BATSCHE

1 Call your next witness, please, government.

2 MS. BEDKE: May we approach?

3 THE COURT: Sure.

4 (Bench conference on the record.)

5 MS. BEDKE: Your Honor, the government is prepared to
6 rest. We would just ask to be permitted over the lunch hour
7 to confirm that all exhibits we believe have been admitted are
8 in fact admitted.

9 THE COURT: Why don't you announce, "Rest," and then
10 we will give you leave to do that.

11 MS. BEDKE: Thank you.

12 (End of bench conference.)

13 THE COURT: We will take your next witness, please.

14 MS. BEDKE: At this time, Your Honor, the United
15 States rests its case in chief.

16 THE COURT: Well, thank you very much.

17 Ladies and gentlemen, subject to us checking out the
18 exhibits, making sure they're all in, the United States case
19 has rested the case in chief. The case, however, is not over.
20 So don't be developing any conversations among yourselves or
21 even conclusions. That all comes at the end when you're
22 conferring together.

23 So let's go to our lunch. Think we can come back at
24 quarter after one? Will that be enough time? Okay, at 1:15.

25 Please don't discuss the case or look on any outside

REDIRECT EXAMINATION OF SHAWN BATSCH

1 sources or anything like that. Thank you very much.

2 (Jury escorted out of the courtroom.)

3 THE COURT: I know y'all have to eat. Can we get
4 back at 1:00? Is that too soon to do Rule 29 and then talk
5 about this exhibit? Ms. Irvin says yes, so that's a done
6 deal.

7 On this judicial notice thing, I precluded Mr. Allen
8 with Volp from asking those questions. So rather than do some
9 sort of Touhy thing where we bring Volp back, et cetera, I
10 just did it. So to cure my -- what in hindsight now I should
11 have permitted him -- he didn't really help matters by being a
12 good lawyer and I wasn't perceiving it like I should have. So
13 I would ask if you refer to that exhibit, just don't mention
14 me. It's on the -- it's established that it's from the house,
15 which I understand is beyond peradventure, and this came from
16 the dwelling, from the residence. No one is going to argue
17 that it didn't. So don't say, "The judge said," because it's
18 very unusual that I did that, but to correct my Volp mistake
19 and avoid some Touhy thing, bring Volp back -- of course, now
20 he's probably in the Keys fishing or someplace -- that's why I
21 did it.

22 MR. ALLEN: One issue as to the journal. I have
23 noticed --

24 MR. MURRAY: Your Honor, I'm sorry to interrupt
25 Mr. Allen, but we have some serious contemporaneous objections

REDIRECT EXAMINATION OF SHAWN BATSCCH

1 under 803(3), and we ask that anyone in the courtroom who is
2 going to potentially testify regarding that issue be
3 sequestered.

4 THE COURT: All right.

5 MR. MURRAY: Just for that issue.

6 THE COURT: You got it.

7 Go ahead.

8 MR. ALLEN: Yes. I just noticed that since -- I
9 think since the journal has been here, the pages have started
10 coming out, which is not the condition it was in --

11 THE COURT: Yes, I saw that.

12 MR. ALLEN: -- when it was seized. So I don't want
13 some inference by the government that these pages could have
14 been stuck in that order.

15 THE COURT: They're not going to do that unless there
16 is some good faith basis for that. And I don't see that.
17 Plus, it's dated, and plus the pages generally follow. They
18 may say -- not logically but they do follow sequentially. So
19 I don't think that's going to be a problem.

20 MR. ALLEN: Yes, sir.

21 THE COURT: Now, you might get some clean copies
22 because I'm not sure --

23 MR. ALLEN: We have.

24 MS. IRVIN: I have them already.

25 THE COURT: So we'll see you at 1:00.

REDIRECT EXAMINATION OF SHAWN BATSCH

1 MR. ALLEN: Can I ask another question?

2 THE COURT: Yes, sir.

3 MR. ALLEN: I know we're redacting. If Mr. DaCorta
4 chooses to testify, so now the declarant who wrote it is
5 present in the courtroom, does it need to be redacted?

6 THE COURT: Well, we'll address that at the time. I
7 don't know. A real clever lawyer might say on redirect that
8 it's a prior consistent statement offered to rebut an
9 inference of recent fabrication. I don't know, and I'm not
10 going to guess. The rule still applies, you know.

11 MR. ALLEN: Yeah.

12 THE COURT: It still applies even if you take the
13 stand. So sorry I can't help you. We'll cross that bridge
14 when we come to it.

15 MR. ALLEN: Yes, sir.

16 THE COURT: Thank you. See you at 1:00.

17 (Lunch recess taken.)

18 THE COURT: Does the defense want to make a Rule 29
19 motion and get that record covered?

20 MR. ALLEN: Yes, Your Honor.

21 First, just because it's the very first federal case
22 I ever had got reversed all the way at the Supreme Court
23 because I didn't preserve something properly.

24 THE COURT: You do it.

25 MR. ALLEN: I'm renewing the motion for mistrial that

REDIRECT EXAMINATION OF SHAWN BATSCH

1 I raised at sidebar in reference to Mr. Ian Howard's reference
2 to Mr. DaCorta having defrauded people before.

3 Second --

4 THE COURT: And let me make just a note of that.

5 MR. ALLEN: Yes, sir.

6 THE COURT: That came from a rather unartful question
7 of an angry victim by the defense, which was he's innocent as
8 he sits here. That was not elicited by the government.

9 Secondly, there's some basis in the record for that.
10 There is an agreement not to, whatever the word is, represent
11 people within the United States for forex trading. And that
12 witness both in direct and cross testified that he had been
13 informed about a bankruptcy where rather than let the
14 customers take the hit, Mr. DaCorta took the hit. And that
15 came out in both direct and cross of this witness. So there
16 is some basis for his statement. And I'm not sure what a
17 limiting instruction, how we would have accurately crafted
18 that. And anyway, that's my point on that.

19 Go ahead.

20 MR. ALLEN: Your Honor, pursuant to Rule 29 taking
21 the evidence in the light most favorable to the government, we
22 submit to the Court that the government has not established by
23 prima facie evidence each and every element of all three
24 counts.

25 Thank you.

REDIRECT EXAMINATION OF SHAWN BATSCCH

1 THE COURT: Thank you. You are fully preserved, and
2 I deny the motion.

3 Let's talk about this. I did receive a redacted copy
4 of this material. I'm referring specifically to Exhibit 87.
5 Is that agreed upon? I know the government doesn't agree that
6 any of it's admissible.

7 Mr. Chee?

8 MR. CHEE: Yes, your Honor. Thank you.

9 The redactions that I believe Ms. Irvin forwarded to
10 the Court are what we both agree should be redacted. However,
11 the government does have additional argument on additional
12 pages that we believe should be redacted. So it's not
13 complete.

14 THE COURT: I have this agreement -- I'm not saying I
15 agree to this, but tell me what else you want out.

16 MR. CHEE: Just as a premise before that, Your Honor,
17 we would like just to renew our objection with respect to
18 foundation for this being authenticated. I don't know if the
19 Court wants it now or at a later time.

20 THE COURT: I assume that they are going to either
21 have the defendant authenticate it or someone who will say
22 this is his handwriting, I know his handwriting for reasons
23 predating this litigation. What would be the problem with
24 that authentication?

25 MR. CHEE: Well, Your Honor, under Eleventh Circuit

REDIRECT EXAMINATION OF SHAWN BATSCH

1 case law there is a requirement for contemporaneousness of the
2 entries into the journal. So there are only specific
3 individuals who can do that to say that the entries in the
4 journal were made contemporaneously with the defendant's state
5 of mind. There are individuals who cannot do that, and it is
6 our -- I mean, this is one of the elements, so to speak, for
7 the Court to find that --

8 THE COURT: Under 803(3).

9 MR. CHEE: Yes, under 803(3).

10 THE COURT: It doesn't smell counterfeit to me. What
11 you are saying is these dates, because the pages are dated,
12 these dates, the government has to prove these dates. All
13 right. Tell me what else you have.

14 MR. CHEE: Well, there is also the issue of the time
15 for reflection, Your Honor. Under the case law as well, the
16 Court needs to find that there was not an adequate period of
17 time for reflection.

18 THE COURT: What case is that? I haven't read that.

19 MR. CHEE: That would be the -- I'm pronouncing it
20 wrong probably, the Samsodien case out of the Southern
21 District of Florida, 2006 WL 84467.

22 THE COURT: I don't think you cited me that before,
23 did you?

24 MR. CHEE: I did not, Your Honor. We found that case
25 recently.

REDIRECT EXAMINATION OF SHAWN BATSCH

1 THE COURT: Go ahead.

2 MR. CHEE: The argument I would make under that case,
3 Your Honor, is that the Court also needs to ensure that this
4 statement or the statements in the journal were not made with
5 an appropriate time of reflection, you know, when the
6 statements were written down. Our indictment charges a
7 conspiracy from around 2011 to 2019. Statements in the
8 journal comprise years as to 2017, 2018, and even earlier. So
9 I think --

10 THE COURT: What else do you have?

11 MR. CHEE: I'm sorry, Your Honor?

12 THE COURT: Authentication. I'm not saying you can't
13 object in realtime, but what else do you have on
14 authentication?

15 MR. CHEE: Those are the two indicia that we believe
16 the Court should be aware of.

17 THE COURT: Talk to me about the text. Assuming I
18 deny that, what other text in this redacted copy do you object
19 to?

20 MR. CHEE: Do we want to take it up page by page,
21 Your Honor?

22 THE COURT: I'm asking you. So you can start -- so
23 this is not a consented stipulated copy.

24 MS. IRVIN: The copy that you received, Your Honor,
25 has our agreed-to redactions, but there are additional

REDIRECT EXAMINATION OF SHAWN BATSCH

1 redactions.

2 THE COURT: Tell me the additional ones, Mr. Chee.
3 I'm on page 1.

4 MR. CHEE: At least on the first page, right there,
5 Your Honor, we actually believe that the first block of
6 redaction should be removed. The defendant cites to a book.

7 THE COURT: Okay. I got that. Go ahead. Give me
8 your next page.

9 MR. CHEE: I'm looking through it, Your Honor. I'm
10 leafing through what I have here. Again on page 3, Your
11 Honor, from the -- I would say that the sentence that says, "I
12 realize," down to, "anything is possible." That's the third
13 page.

14 THE COURT: At the bottom it?

15 MR. CHEE: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. CHEE: That's what we feel we should have
18 redacted.

19 THE COURT: What else?

20 MR. CHEE: Top of page 4. It is like a title it
21 seems, the first three lines, Your Honor.

22 THE COURT: I thought the rule expressly mentioned
23 plan. Isn't plan in 803(3)?

24 MR. CHEE: It is, Your Honor, but that is in
25 isolation.

REDIRECT EXAMINATION OF SHAWN BATSCH

1 THE COURT: This says, "This is my definite plan to
2 achieve."

3 Give me your next redaction.

4 MR. CHEE: On the page marked 006, dated January 6,
5 2014, the last block of text -- well, actually everything else
6 on that page we feel should be redacted, Your Honor.

7 THE COURT: All right. What else?

8 MR. CHEE: We have agreed to remove the ledger
9 amounts. I think there's three pages. Those aren't in there.

10 THE COURT: I have that.

11 MR. CHEE: So turning to page 12.

12 THE COURT: Yes.

13 MR. CHEE: The last paragraph there, Your Honor.
14 "Anything you conceive in your mind," that sentence should be
15 removed.

16 THE COURT: All right.

17 MR. CHEE: Again, the first sort of block of text,
18 Your Honor, the first paragraph, page 13.

19 THE COURT: Okay.

20 MR. CHEE: And that's all we have, Your Honor.

21 THE COURT: Anything, Ms. Irvin? So you have agreed
22 to these portions, and then I decide on Mr. Chee?

23 MS. IRVIN: That's correct, Your Honor.

24 THE COURT: Here's my ruling subject to
25 authentication. I have looked at this hard and long, and this

REDIRECT EXAMINATION OF SHAWN BATSCH

1 does not smell to me like it's some counterfeit trick that
2 somebody painted the tape or whatever the word is. Okay?
3 I've been doing this a long time. I've been wrong before but
4 it doesn't smell like that. It's very close to being utterly
5 inadmissible under 403 because it is extraordinarily unusual,
6 but I think the statement of present intent offered to prove
7 that in the future that conformity was acted therewith is
8 permitted under Hillman. I'm not going to redact all these
9 paragraphs and all this. The first five pages are admissible.
10 Assuming it's authenticated, the first five pages. And I rule
11 under Rule 403 that the rest is not admissible.

12 For example, on page 6, that starts off,
13 "Retrospective," the rule does not permit that. And then he
14 kind of goes into stuff that's not really pertinent. And of
15 course the ledgers are not a business record. They don't come
16 in. And then page 12 is now present tense rather than
17 statement of future intent. And I don't find that -- the same
18 thing. Thirteen starts off reciting pretty much contrary to
19 the evidence so far about 2017. First five pages unredacted.
20 All right. Everybody got that? Assuming it's authenticated.

21 So I think the way you do it is if you can get it
22 authenticated, then you say and, Your Honor, I offer an
23 excerpt of Exhibit 87, and then we'll have the objections.
24 Okay?

25 See if they're ready.

DIRECT EXAMINATION OF KEVIN GOODALE

1 THE COURTROOM DEPUTY: Please raise your right hand.

2 (Witness sworn.)

3 THE COURTROOM DEPUTY: Could you please state and
4 spell your name for the record.

5 THE WITNESS: Kevin Goodale, G-O-O-D-A-L-E.

6 THE COURT: We will wait for that jury.

7 To the extent you can, Mr. Goodale, project your
8 voice. The PA system is pretty lousy here.

9 THE WITNESS: I can do that.

10 THE COURT: Fabulous. Thank you.

11 (Jury escorted into the courtroom.)

12 THE COURT: Thank you, ladies and gentlemen.

13 Mr. Allen, would you call the defense first witness, please?

14 MR. ALLEN: Yes, Your Honor. The defense calls Kevin
15 Goodale.

16 THE COURT: Thank you.

17 **KEVIN GOODALE, CALLED BY THE DEFENSE, SWORN**

18 **DIRECT EXAMINATION**

19 BY MR. ALLEN:

20 Q Could you please state your full name, introduce yourself
21 to the jury.

22 A Hi. My name is Mr. Goodale.

23 Q Mr. Goodale, where do you reside?

24 A Bradenton, Manatee County.

25 Q And where do you work?

DIRECT EXAMINATION OF KEVIN GOODALE

1 A I'm the owner of Atlas Appraisals.

2 Q What is Atlas Appraisals?

3 A Atlas is a residential real estate appraisal company.

4 Q And how long have you owned Atlas?

5 A I started Atlas Appraisals in 2005.

6 Q And how long have you been doing residential appraisals?

7 A I left banking and financing in 2002 to start the
8 appraisal endeavor. So it's going on my twenty-first year
9 now.

10 Q And what type of training is -- well, what's your
11 educational background?

12 A Education? Undergraduate degree from Heidelberg
13 University in '89 and then 12 years of banking and financing
14 experience, my last being branch manager and vice president of
15 SouthTrust which I left in 2002 to start the appraisal
16 endeavors. After three years of training and apprenticeship,
17 I started my own business, Atlas Appraisals, in 2005.

18 To further my designation, in the last couple years I
19 achieved the certified luxury home designation and am fully
20 accredited through the annual renewal process with the state.

21 Q And were you retained by my office to conduct some
22 residential appraisals?

23 A Yes.

24 Q Do you know on approximately how many properties?

25 A Eleven properties.

DIRECT EXAMINATION OF KEVIN GOODALE

1 Q And where were those properties located?

2 A In Manatee and Sarasota Counties.

3 Q And did you generate reports regarding your findings on
4 the appraised properties?

5 A Yes.

6 Q And what date periods were you looking at?

7 A I provided two reports on each property, one a
8 retrospective assessment as of April 19, 2019, and a current
9 valuation which essentially was February 1 of this year.

10 Q What is a retrospective appraisal?

11 A Retrospective and it's a -- all appraisal reports are
12 required to have an effective date, the date on which the
13 valuation of the property is deemed. A retrospective
14 appraisal report is a report based on a prior period in time.

15 Q And explain to the jury how a property -- the process of
16 appraising a property?

17 A Okay. A residential appraisal property, there actually
18 is a book called Uniformed Standards of Professional Appraisal
19 Practice or USPAP for short. It states all properties can be
20 valuated through three different valuation methods. You have
21 the cost approach, the sales comparison approach, and the
22 income approach.

23 Residential properties primarily deal with the sales
24 comparison and the cost approach. Most people recognize the
25 appraisal process through the sales comparison where they get

DIRECT EXAMINATION OF KEVIN GOODALE

1 comparable sales or comps. And that's where they compare and
2 contrast properties based upon similar laws of substitution.
3 Whatever your subject looks like, you would try to use very,
4 very similar properties and assess what those properties had
5 sold for and try to identify any discernible differences why a
6 market participant would pay more or less for the subject.

7 Q And what process did you employ on these 11 properties
8 you looked at?

9 A So on these 11 properties here, typically under a lending
10 situation, not in -- also to get a full idea of the property
11 that you are appraising, you would need to visit the property,
12 identify the exterior and interior components of the property.

13 My typical procedure is any time I approach a
14 subject, I measure all the exterior walls to identify the size
15 of the property and also walk the entire property to identify
16 any site additions or any aspects of the property that
17 contribute to value.

18 After I perform an exterior aspect review of the
19 property, then I turn my sights to the inside and identify
20 such things as the room count, the amenities, the type of
21 kitchen, the number of bathrooms, the number of bedrooms and
22 identify the quality and condition and assess the effective
23 age of the property for my full comparison in the sales
24 comparison approach.

25 This assignment was somewhat unique and different in

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1 that all 11 of these properties access could not be obtained
2 because occupants have changed, occupancy has changed. So I
3 couldn't walk up to a door, knock, and say, hey, do you mind
4 if I walk in your place and take a look at your property?
5 These people not involved with this case. So that access just
6 is not attainable. So I have to identify as best I can from
7 the exterior aspects of the house what the interior most
8 likely will reveal as far as the quality and condition of the
9 home when I complete my sales comparison assessment.

10 This particular assignment I was fortunate in that
11 all of the properties were in, if you will, homogeneous
12 neighborhoods, Founders Club, Lakewood Ranch Country Club,
13 Lakewood National where I was able to use comparable sales in
14 the same complex. I inspected all the properties from the
15 outside to identify if there's any glaring examples of
16 inferior or superior aspects and utilized those exterior
17 inspections when I obtained my comparable sales.

18 Now, as far as the note on my comparable sales, I
19 realize that there's in some aspects appraisers -- in any
20 appraisal assignment you have, there are those that want the
21 number to be higher or lower. To try to offset that argument,
22 I always try to bracket, if you will, comparable sales. If my
23 subject is at \$10, I'll look to obtain an \$11 comparable and a
24 \$9 comparable to bracket. That way I always have a ceiling
25 and floor of legitimate valuation, credible valuations and

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1 then identify applicable adjustments to refine the range of
2 values in my comparables.

3 And that's probably more than you wanted to know, but
4 that is the process I went through of identifying all these
5 properties, traveling to the properties, identifying the
6 exterior aspects, driving the comparable sales, looking at
7 comparable sales, utilizing inferior and superior ones to find
8 a range of value and then putting my conclusions together.

9 Q And if you had gone in -- if you were to get into the
10 interior and there were a lot amenities, upgrades, new
11 staircases, new flooring, could have that adjusted your
12 findings?

13 A To a degree, yes. To that note, the properties I was
14 tasked with reviewing, most of those are from -- 10 of the 11
15 are from high-end neighborhoods where that's rarely an issue
16 of homes being in detriment, in deteriorated conditions. So I
17 feel very confident. One of them was not in, if you will, a
18 high-end gated community, but it was in a very homogenous
19 neighborhood where there was a lot of properties that are very
20 similar to that subject.

21 MR. ALLEN: I'm approaching the witness, Your Honor,
22 with Defense Exhibit 54, 55, 56, 57, 58, 59, 60, 61, 62, 63,
23 64, and 65.

24 BY MR. ALLEN:

25 Q Sir, if you would look at these defense exhibits for me

DIRECT EXAMINATION OF KEVIN GOODALE

1 and review them.

2 A Yes.

3 Q And what are they?

4 A Appears to be my work product for the 11 properties and
5 exhibit item 54 being a cover, summary.

6 Q And these represent your professional opinion as to the
7 appraised value of these 11 properties on 4/19/2019 and then
8 the date you mentioned in February?

9 A Yes.

10 MR. ALLEN: Your Honor, at this time I would move
11 into evidence Defense Exhibits 54, 55, 56, 57, 58, 59, 60, 61,
12 62, 63, 64, and 65.

13 MS. BEDKE: May I have a moment, Your Honor?

14 Objection, Your Honor, to relevance of the more
15 recent appraisals.

16 THE COURT: All right. Come sidebar for a minute.

17 (Bench conference on the record.)

18 THE COURT: So I understand the point. So in Count 2
19 is a real estate transaction, but your conspiracy says that
20 they purchased these homes for a lavish lifestyle and personal
21 enrichment. So give me the relevance of the recent appraisal,
22 current day, basically February or whatever.

23 MR. ALLEN: Yes, Your Honor. One, the government
24 testified, their expert testified that he would not have any
25 capital to keep that account going as to the silver, the value

DIRECT EXAMINATION OF KEVIN GOODALE

1 of his capital that he could have taken a home loan on or he
2 could have sold.

3 Additionally, the government is saying that he
4 purchased these houses, as you know, to live a lavish
5 lifestyle. The fact that they have increased in value, it is
6 his position, as he said to Agent Stone, I'm buying the real
7 estate to strengthen our company, to hedge my investments.
8 And the fact that they went up in value is evidence of him
9 striving to succeed.

10 THE COURT: All right. Ms. Bedke, what do you have?
11 Anything else?

12 MS. BEDKE: Your Honor, frankly I think they are
13 certainly not the current appraisals are relevant. Perhaps
14 the appraisals at the relevant time because that's the period
15 that we're talking about. And I would just add with respect
16 to Count 2 that that really doesn't have anything to do with
17 the value of the house.

18 THE COURT: You're right.

19 MS. BEDKE: I just didn't want to confuse the issue.
20 I understand, I guess, that there is some dispute about the
21 value of the homes at the time. And I suppose how much money
22 they could have gotten out of them either to capitalize the
23 company, or I frankly assumed that part of the argument was
24 that Mr. Wiand sold them for less than he should have, but I
25 don't see the relevance of them now.

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1 THE COURT: All right. Overruled.

2 (End of bench conference.)

3 MR. ALLEN: Your Honor, at this time I would like to
4 publish -- sir, do you have --

5 THE COURT: I will admit those exhibits you listed
6 here.

7 MR. ALLEN: Thank you, Your Honor.

8 (Defendant Exhibits 54, 55, 56, 57, 58, 59, 60, 61, 62,
9 63, 64, 65 admitted.)

10 BY MR. ALLEN:

11 Q If you could publish Defense Exhibit 55, please.

12 And what is Defense Exhibit 55? What property is
13 that for? Could we pull up the name, please? Which property
14 is this, sir?

15 A I'm sorry. Are you speaking to me?

16 Q Yes, sir.

17 A That would happen to be the one out of ten that's not in
18 the --

19 Q I didn't give you 55. I apologize.

20 A I have this here. That's the same one, I believe.

21 Q Can you just tell us Defense Exhibit 55 is appraising?
22 What property, sir?

23 A The address, 1605 55th Avenue West in Bradenton.

24 Q If we could pull that out. Pull out the picture, please.

25 Is this the property you appraised?

DIRECT EXAMINATION OF KEVIN GOODALE

1 A Yes, sir.

2 Q And what was your finding as to that property
3 retrospectively on April 19, 2019?

4 A The valuation, the retrospective value of 170.

5 Q 170,000?

6 A Yes. I'm sorry. 170,000.

7 Q And what was the value in February of this year?

8 A 210,000.

9 Q If we could now publish 56. And what's the address on
10 this property?

11 A That property 4058 Founders Club Drive.

12 Q And if we could see the picture.

13 Is this the actual picture of the property?

14 A That is the property. It subsequently changed hands, but
15 this is a vacant land assignment as of the original
16 retrospective day.

17 Q So you're not appraising the actual building; just the
18 property?

19 A Correct. It is misleading to a degree because there is a
20 new home being constructed on a property that was a vacant
21 land assignment.

22 Q So what was the retrospective appraised value for that
23 vacant piece of land in April of 2019? Feel free to refer to
24 Defense Exhibit 54 if that's of assistance to you, your
25 summary.

DIRECT EXAMINATION OF KEVIN GOODALE

1 A You're right. That way I don't have to thumb through all
2 of these. That would be 275,000.

3 Q And if we could publish 57, Defense 57. And what is this
4 address that you appraised?

5 A 4064 Founders Club Drive.

6 Q And if we could pull out the photograph.

7 And that's the photograph that you took --

8 A Yes.

9 Q -- of the property?

10 A Yes.

11 Q And what was the retrospective appraised value in April
12 of 2019?

13 A 1,400,000.

14 Q And what was the appraised value in February of this
15 year?

16 A 2,450,000.

17 Q If we could publish 58. And what is 58, the property
18 that was being appraised?

19 A 6300 Midnight Pass on Siesta Key, Unit 1002.

20 Q So this is a condominium?

21 A Yes.

22 Q It's not that whole building that you appraised?

23 A Correct. Unit 1002, yes.

24 Q What was the retrospective value for this condominium in
25 April of 2019?

DIRECT EXAMINATION OF KEVIN GOODALE

1 A 1,100,000.

2 Q And what was the appraised value in February of this
3 year?

4 A 1,300,000.

5 Q If we could publish 59.

6 And what is the residential address for the property
7 here that you appraised in Defense Exhibit 59?

8 A 6922 Lacantera Circle.

9 Q And is this the photograph of the property you appraised?

10 A Yes.

11 Q What was the retrospective appraised value in April of
12 2019 for that property?

13 A \$2,125,000.

14 Q And what was the appraised value in February of this
15 year?

16 A \$3 million.

17 Q If we could publish 60.

18 What is the address on the property in your appraisal
19 for Defense Exhibit 60?

20 A 7312 Desert Ridge Glen.

21 Q Is this the property at Desert Ridge Glen that you
22 appraised?

23 A Yes, in Lakewood Ranch Country Club.

24 Q What was the retrospective appraised value in April of
25 2019?

DIRECT EXAMINATION OF KEVIN GOODALE

1 A \$925,000.

2 Q What was the appraised value in February of this year?

3 A 1,225,000.

4 Q And if we could publish Defense Exhibit 61.

5 And the address that you appraised in 61?

6 A 13318 Lost Key Place.

7 Q Is that the residence that you appraised?

8 A Yes.

9 Q And what was the retrospective appraisal for April of
10 2019?

11 A \$1,200,000.

12 Q And what was the appraised value in February of this
13 year?

14 A 1,900,000.

15 Q If we could publish Defense Exhibit 62.

16 What is the address for Defense 62?

17 A I believe 62, 63, and 64 all have the same address as
18 they are all condos in the same building. This particular 62
19 is 16804 Vardon Terrace, Unit 108.

20 Q If we could look at the picture for that.

21 It's one of the units in this condominium?

22 A Yes.

23 Q And what was the retrospective value of this unit
24 April 2019?

25 A Unit 108 was 220,000.

DIRECT EXAMINATION OF KEVIN GOODALE

1 Q And what is the value in February of this year?

2 A Actually 425,000.

3 Q And I know the pictures are going to be the same, but
4 let's blow up 63.

5 A Actually, the next three are the same identical floor
6 plans in the same complex built at the same time.

7 Q Is the value the same on all of them?

8 A Yes.

9 Q If we could just show the jury 64 on the overhead.

10 If you could read the retrospective and the February
11 of this year value for 64 again in the record.

12 A Sixty-four, which is Unit 515 -- I'm sorry -- Unit 105 --
13 I'm sorry. Unit 105.

14 Q That's okay.

15 A The retrospective value is 195, and the current value
16 399.

17 Q And those would be the same numbers for Defense 65 which
18 is Unit 307?

19 A Yes. 195 and 399.

20 Q If we could publish 54 for the jury, please.

21 And 54 is your summary reflecting what you just
22 testified to as to each of those properties. The first column
23 is the current value, and the second column is the
24 retrospective value as of 4/19/2019?

25 A Yes.

CROSS-EXAMINATION OF KEVIN GOODALE

1 MR. ALLEN: No further questions, Your Honor.

2 THE COURT: Have we cross?

3 **CROSS-EXAMINATION**

4 BY MS. BEDKE:

5 Q Good afternoon.

6 A Hello.

7 Q Would you agree with me that the values of these
8 properties have increased dramatically as a result of the
9 COVID-19 pandemic?

10 A Market conditions have definitely escalated over the past
11 three years, yes.

12 Q Is that anything anyone could have ever predicted?

13 A No.

14 Q Are you familiar with the receivership in the case
15 related to this one brought by the Commodity Futures Trading
16 Commission?

17 A I'm sorry. I am not.

18 Q Are you familiar with the concept of a receivership in
19 general?

20 A It's my understanding it's when assets are taken by
21 government entities.

22 Q Have you ever been employed, that is Atlas Appraisals, by
23 a receiver to appraise any properties for the use of the
24 receiver?

25 A No.

CROSS-EXAMINATION OF KEVIN GOODALE

1 Q Do you know an individual named Burton Wiand?

2 A No.

3 Q So you have never worked with him?

4 A No.

5 Q You never provided any appraisals to Mr. Wiand?

6 A No.

7 Q Would you agree with me that -- and correct me if I'm
8 wrong here -- that the sales comparison approach is somewhat
9 hampered when you can't get into the inside of a residential
10 property?

11 A It's not as credible. It's not as accurate because you
12 cannot identify with certainty the quality and condition of
13 the interior improvements.

14 Q So you have to include a little guesswork in your
15 appraisal based upon the comparable properties in the same
16 neighborhood; is that right?

17 A It's called an appraisal circle's extraordinary
18 conditions or hypothetical conditions based upon the
19 hypothetical condition or extraordinary condition that the
20 interior improvements are consistent with the exterior and the
21 homes within the immediate neighborhood.

22 Q And I believe you told Mr. Allen that if there were
23 improvements inside a property, perhaps a custom staircase or
24 some other improvement, that that could very well result in a
25 higher appraisal, but you wouldn't know that if you can't get

CROSS-EXAMINATION OF KEVIN GOODALE

1 inside?

2 A Correct. Either positive or negative aspects very well
3 could be possible.

4 Q Okay. So then if the property suffers from maybe water
5 intrusion and has mold problems, that would be an example of
6 something that would result in a decrease in the value of the
7 property?

8 A Exactly why this report has extraordinary assumptions
9 that I could not identify those aspects, but yes.

10 MS. BEDKE: May I have one moment?

11 THE COURT: Yes.

12 MS. BEDKE: Nothing further.

13 THE COURT: Redirect?

14 MR. ALLEN: None, Your Honor. Thank you.

15 THE COURT: Thank you, sir. You may be excused.

16 Good day.

17 Call your next witness, counsel.

18 MR. ALLEN: Your Honor, we would call Stanley
19 Foodman. We are getting him.

20 THE COURT: Thank you.

21 THE COURTROOM DEPUTY: Sir, raise your right hand.

22 (Witness sworn.)

23 THE COURTROOM DEPUTY: Could you please state and
24 spell your name for the record.

25 THE WITNESS: Stanley Ira Foodman, S-T-A-N-L-E-Y,

DIRECT EXAMINATION OF STANLEY FOODMAN

1 I-R-A, F-O-O-D-M-A-N.

2 THE COURTROOM DEPUTY: Thank you. Please take a seat
3 in the witness box.

4 THE WITNESS: Thank you.

5 **STANLEY FOODMAN, CALLED BY THE DEFENSE, SWORN**

6 **DIRECT EXAMINATION**

7 BY MR. ROSENTHAL:

8 Q Good afternoon, Mr. Foodman.

9 A Good afternoon.

10 Q Could you tell us what you do for a living, sir?

11 A I own a CPA firm.

12 Q I'm sorry?

13 A I am the founder and sole owner of a CPA firm.

14 Q What's the name of your CPA firm?

15 A Stanley I. Foodman, PA, Certified Public Accountants
16 d/b/a Foodman CPAs and Advisors.

17 Q Where is your accounting firm located?

18 A The current address is 777 Brickell Avenue, Suite 500,
19 Miami, Florida 33131.

20 Q And how long have you been a CPA?

21 A 1972.

22 Q And could you tell us briefly your educational
23 background?

24 A I first went to Miami-Dade College when it was called
25 Miami-Dade Community College. I then went on to the

DIRECT EXAMINATION OF STANLEY FOODMAN

1 University of Miami, graduated with my bachelor's degree in
2 1971 and kept on going and finished my master's degree in
3 1972.

4 Q What was your master's degree in?

5 A It's an MS in accounting.

6 Q So could you give us the history of where your career has
7 taken you since the time you became a CPA?

8 A Okay. So I started at KPMG.

9 Q What's KPMG?

10 A It's a large, one of the big four accounting firms. At
11 that time it was called Peat Marwick Mitchell & Company. From
12 there, I stayed there for a couple of years, and then I went
13 on to some other accounting firms locally. I spent about a
14 year or so at Florida Power & Light doing construction
15 accounting consulting for them. From there I went back into
16 public accounting where I have been ever since.

17 I was also brought into a program with the Florida
18 Department of Law Enforcement where I served as a reserve
19 special agent or auxiliary special agent, sworn, where I
20 worked on economic crime cases with them.

21 Q So your career included a stint with law enforcement?

22 A Yes.

23 Q And since then?

24 A Since then I have been actively involved in public
25 accounting. I am a certified fraud examiner. I'm certified

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1 in financial forensics by the American Institute of CPAs. I'm
2 certified in anti-money laundering by ACAMS, which is the
3 Association of Certified Anti-Money Laundering Specialists.

4 Since 2010, I have been focused very strongly in the
5 area of banking regulatory consulting for foreign financial
6 institutions. About one-third or more of my practice is in
7 the area of complex tax and international tax compliance for
8 U.S. taxpayers. Another part is forensic accounting. And the
9 third part is corporate governance.

10 Q You mentioned the term "forensic accounting." Could you
11 define that for us?

12 A Well, it's accounting for use in the court system.

13 Q And you mentioned your experience with tax. Can you tell
14 us a little more than that?

15 A Since I came out of college and got my master's degree
16 and began working, I have been involved in preparing tax
17 returns, the compliance side. I do some of the planning side
18 with attorneys. I feel that they're better at it than CPAs
19 are, so I work with them regularly, but my tax side of my
20 practice is currently we are doing about 400 tax returns a
21 year. A large part of it is complex tax dealing with
22 international partnerships, controlled foreign corporations,
23 U.S. domestic partnerships, U.S. corporations, S corporations,
24 and so on.

25 Q Have you ever had occasion to qualify as an expert

DIRECT EXAMINATION OF STANLEY FOODMAN

1 witness in the tax field?

2 A Yes.

3 Q In what courts?

4 A The federal -- the U.S. District Court in the Southern
5 District of Florida and in the Tax Court in Florida, in Miami.

6 Q Federal Tax Court?

7 A Yes.

8 Q Have you ever testified in the Middle District of
9 Florida?

10 A No, I don't think so. I don't remember doing so. I also
11 was qualified also in the Southern District in Palm Beach on
12 the tax side of a case involving a bankruptcy.

13 Q And what other types of matters have you testified as an
14 expert witness?

15 A Frauds of different kinds, anti-money laundering cases,
16 securities cases, very specific, very specific areas. I don't
17 consider myself a securities expert by any means. I would
18 always be on the tax side or following the money.

19 Q And have you had occasion to give presentations on
20 tax-related matters?

21 A Yes. I regularly do presentations for foreign financial
22 institutions. I also -- for foreign banks that have events in
23 Miami or attend events. These are regulators and bankers.
24 Also I presented for FACTA to the -- what is now the Florida
25 National Business Association, which was the Florida

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1 International Bankers Association. I've done presentations in
2 front of the Florida Association of Criminal Defense Lawyers
3 on tax defense and so on.

4 Q Have you published in the area of tax?

5 A Yes.

6 Q And approximately how many times?

7 A Oh, I don't know. I can't even begin to tell you. It's
8 in my CV. There's a large number of publications.

9 Q And how frequently do you publish?

10 A In the area of tax, probably at least several, once or
11 twice a month.

12 Q Now, were you retained by our office in order to conduct
13 a review of the tax aspect of this case?

14 A Yes. Specifically I was asked to look at tax returns.

15 Q And are you being paid to do so?

16 A Oh, yes.

17 Q And do you have an hourly rate that you are charging?

18 A Yes. I'm being paid at the rate of \$250 an hour which is
19 the rate that I -- it's sort of giving back. It's not my
20 normal hourly rate, but I charge the government when I work --
21 regardless of whether I'm working for the Federal Public
22 Defenders in the past, when I worked for the U.S. Attorney in
23 Miami, I also did the same thing. I provided a rate that was
24 about half of our normal hourly rate. It's a blended rate.

25 Q So we are getting you at a discount?

DIRECT EXAMINATION OF STANLEY FOODMAN

1 A Yes, 250 an hour. So a significant discount.

2 Q And you're also being compensated for your travel time
3 and expenses to come from Miami to testify?

4 A Yes.

5 Q Now, what documents did you review with respect to your
6 investigation in this case?

7 A I reviewed the 2017 OM, LLC, tax return 2016. I reviewed
8 Mr. DaCorta's personal income tax return for 2016 and '17 and
9 other documentation that was provided through your office
10 related to those tax returns.

11 Q And are you, Mr. Foodman, are you familiar with the
12 professional standards that govern certified public
13 accountants in the preparation of tax returns?

14 A All of us are required to follow Circular 230, which is a
15 Treasury Department IRS publication which determines our due
16 diligence and other things that we are required to follow.
17 The American Institute of CPAs has a set of standards which
18 are by reference incorporated into the Florida statutes
19 governing CPA practice.

20 Q What are the reasons for these standards?

21 A Well, it's to make sure as much as possible that
22 taxpayers when we are preparing returns, in my case as a
23 preparer, are going to prepare returns as accurate as possible
24 from information that we are able to receive from them to try
25 to prevent them from getting into trouble if it's possible.

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1 So, yes, the idea is to try to make sure that things are as
2 accurate as possible.

3 Q And you mentioned the term "diligence" a moment ago.
4 What is the CPA's requirement for diligence in the preparation
5 of tax returns?

6 A Under Circular 230 as it's written, and I understand it's
7 under review right now --

8 Q If I can back up for a second. Can you explain what
9 Circular 230 is?

10 A A publication put out by the Internal Revenue Service
11 which governs practice before the Internal Revenue Service by
12 accountants, attorneys, and I believe actuaries. In any
13 event, I don't know if they're still part of it, but I know
14 that attorneys and accountants are.

15 So with respect to diligence, okay, under Circular
16 230 we can -- it pretty much says that we can accept whatever
17 our clients tell us unless we have a reason to think that we
18 shouldn't accept it, in which case we should dig deeper and
19 make sure what we are getting is the most accurate information
20 possible from those clients and from the records that they
21 have.

22 Q Now, do you have a duty as a tax preparer to give
23 reasonable advice to your clients?

24 A I think we do, and the AICPA says we do. I interview
25 every one of my clients every year. They are provided with a

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1 tax organizer which asks them a number of requests. It's
2 probably four or five pages long just on questions. We also
3 for certain types of parts of tax returns dealing with
4 refundable credits, there are due diligence schedules that
5 must be filled out and questions that have to be answered.

6 Q And the flip side of that is do your clients have the
7 right to rely upon your reasonable advice?

8 A To my understanding, it's always been that way as far as
9 I know.

10 Q Did you have occasion to sit in yesterday on
11 Mr. Burling's testimony?

12 A Yes.

13 Q And did you sit in today on Agent Batsch's testimony?

14 A I'm sorry. My hearing aid is shot. So I need you to
15 speak up a little bit for me.

16 Q Did you have occasion -- you said you had occasion
17 yesterday to sit in on Mr. Burling's testimony?

18 A Yes.

19 Q Did you have an occasion today to listen to Agent
20 Batsch's testimony?

21 A No.

22 Q Now, going back to the standard that you described for
23 tax preparers, based upon your review of Mr. Burling's
24 testimony yesterday -- your opportunity to listen to

25 Mr. Burling's testimony yesterday, I'm sorry, do you -- is it

DIRECT EXAMINATION OF STANLEY FOODMAN

1 your opinion that Mr. Burling's conduct was consistent with
2 the professional standards that one would expect of a tax
3 preparer?

4 A I disagreed with some of what Mr. Burling said regarding
5 the work that he performed. The people that I generally
6 practice alongside of, and these are other CPAs in other firms
7 and myself, we're a little more diligent or thorough in our
8 questioning especially for complicated returns. And a
9 complicated return in my mind is anything other than a return
10 which has a W-2 and nothing else.

11 Q So would Mr. DaCorta's joint 2017 return and the
12 partnership return be considered in your mind to be
13 complicated?

14 A In my mind, it's a complicated structure.

15 Q Now, you said that you thought that Mr. Burling had
16 not -- or that you had disagreed with a lot of what
17 Mr. Burling or some of what Mr. Burling said. In what way, if
18 at all, do you believe that Mr. Burling failed to meet the
19 minimum professional standards for a CPA preparing a
20 taxpayer's return?

21 A Well, when Mr. Burling testified -- I believe Mr. Burling
22 testified -- you will correct me if I'm wrong, please -- that
23 he had looked at schedules, for example, of interest expense
24 that was deducted or that where 1099s were going to be sent to
25 investors. And he noticed that there were -- some of the

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1 payments that were on the schedule were returns of capital and
2 not interest. And so he asked it to be changed, and that's
3 fine. But in my mind what I would have done is I would have
4 started to dig deeper.

5 I was made privileged to a schedule which is labeled
6 a balance sheet. It appears to be a QuickBooks printout. And
7 that has a listing on it of payments from the bank accounts of
8 Oasis Management. And I did not see that any of those
9 payments showed up on the return of Mr. DaCorta, and I think
10 that that should have been looked at more deeply.

11 Q Let's assume that Mr. Burling did have a spreadsheet that
12 listed expenses by Oasis Management including expenses or
13 monies that were paid to Mr. DaCorta. What would
14 Mr. Burling's obligation have been under those circumstances?

15 A Depending on the nature of the payments and what they
16 were for, some of those expenses could very well have ended up
17 or should have very well ended up on the tax return of
18 Mr. DaCorta.

19 Q And even without such a spreadsheet, what obligations
20 would Mr. Burling have had to assure that all taxable income
21 was properly reported?

22 A When we do partnership work, this is where this is
23 originating, this is a limited liability company with
24 multi-members and one managing member apparently. When we do
25 that kind of work, we don't just necessarily accept the

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1 financial statements -- well, first of all, we ask for
2 financial statements. If I can't get them for the
3 partnership, then we will make sure that the books are written
4 up in such a way that a general ledger can be produced because
5 we don't know what's there, and partnerships are complicated
6 and it's easy to make mistakes. But if we get financial
7 statements, we will ask for other things that go along with it
8 because they are complicated. Partnership returns by their
9 very nature are not simple returns. And they can encompass
10 many different types of income and many different types of
11 presentations.

12 Q And were there any factors in this case that in your view
13 would have triggered, should have triggered Mr. Burling to
14 conduct a further inquiry?

15 A Well, my understanding was that he was not able to get
16 financial statements or complete financial statements for
17 Oasis Management, but he was getting -- he was getting a
18 schedule of items which are allocated, income items, loss
19 items which some that are allocated to members of the LLC.
20 And then he said that he -- if I understood it correctly, that
21 he took everything for all the other partners and gave the
22 balances or assigned balances to Mr. DaCorta, but I never
23 heard anything said about the reading of the operating
24 agreement to make sure that what was being done was in
25 conformity with the operating agreement for the LLC, which we

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1 do and all of my colleagues do.

2 Q Did you hear Mr. Burling's testimony that he had been to
3 Mr. DaCorta's home?

4 A Yes.

5 Q And was there anything about that in your mind that
6 should have triggered a further inquiry?

7 A With the amount of income being reported, there was a
8 disconnect between the apparent style of living of Mr. DaCorta
9 and the income that was being reported.

10 Q The income that was being reported by Mr. Burling?

11 A That was being reported on Mr. DaCorta's tax return by
12 Mr. Burling.

13 Q And so what under those circumstances should Mr. Burling
14 have done?

15 A Well, I would have wanted to know and -- I would have
16 wanted to know how he was living. Nobody lives simply by
17 breathing air. They have expenses. They have to have income
18 coming in absent an inheritance or something else, which I
19 would have inquired about, by the way, had he received money
20 by gift or by inheritance or something else. If his style of
21 living could not be balanced with the reported income, I would
22 have been very reluctant to sign a return.

23 Q And would that -- what is the concern there with the
24 failure to conduct that kind of an inquiry?

25 A It could be the return that's inaccurate will be filed.

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1 And if it's filed and it's inaccurate and I'm a CPA who did
2 the electronic filing, then I'm also responsible for things
3 that are on that return. I'm subject to certain penalties and
4 other things for inaccurate filings, not just the taxpayer.

5 Q Is it your experience that the tax code is complicated?

6 A Oh, yes.

7 Q And is it your experience that taxpayers are generally
8 themselves familiar with the tax code?

9 A Oh, no.

10 Q Is that why they hire CPAs?

11 A In general. There are a few that do read things and try
12 to become more familiar, but my experience is most of them
13 want to know if they are going to pay tax or not going to pay
14 tax. And if they are paying a lot of tax, they want to know
15 why they are paying a lot of tax. And if they are not paying
16 a lot of tax, they usually don't ask too many questions.

17 Q And is that why people hire CPAs?

18 A I think that's why they hire tax preparers in general.
19 And CPAs are supposed to be, along with enrolled agents that
20 are trained by the IRS, they are supposed to be sort at the
21 top of the heap, if you will, of people that prepare returns.

22 Q Now, you heard the testimony as to how Mr. Burling went
23 about preparing Mr. DaCorta's tax return?

24 A Yes.

25 Q And based upon your review of the tax return and the

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1 explanations provided by Mr. Burling, do you believe that
2 Mr. DaCorta had the right to rely on the return as prepared?

3 A Well, there were -- the information that I was provided
4 with, there were questions -- from the information provided to
5 me, there were questions by Mr. DaCorta concerning his return.
6 And Mr. Burling seemed to indicate that there was no taxable
7 income to be reported, and Mr. DaCorta relied on that.

8 Q And based upon the explanations provided by Mr. Burling,
9 did Mr. DaCorta have the right to rely on Mr. Burling's
10 explanation as to the results of the -- as to the 1040 tax
11 return?

12 A Yeah, I think so. I think the taxpayer should be able to
13 rely and do rely on their CPAs with regularity, or their tax
14 preparer.

15 Q You said you looked at the 2016 return as well, the 1040
16 return?

17 A Yes.

18 Q And was that basically consistent in structure with the
19 tax return that was prepared by Mr. Burling?

20 A Yes.

21 Q And did Mr. Burling prepare the prior tax return?

22 A I'm sorry?

23 Q Did Mr. Burling prepare the prior tax return?

24 A Prior to 2017?

25 Q Yes.

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1 A No.

2 Q And who prepared the -- from your review, who prepared
3 the 2016 tax return?

4 A That was the D'Arcangelo firm.

5 Q In New York?

6 A Yes.

7 Q And did both accountants thousands of miles away come to
8 the same conclusions as to how the tax return should be
9 prepared?

10 A No. They seemed very similar. There didn't seem to be a
11 lot of differences between them. I think there was consulting
12 income on one return and not consulting income on another
13 perhaps.

14 Q I'm sorry. I'm just having trouble hearing you.

15 A I'm saying the returns were essentially the same.

16 Q Did both accountants come to the conclusion that the
17 expenses from Full Spectrum Wellness should have been on
18 Mr. DaCorta's 1040 return from 2017?

19 A I assume they did because they prepared the returns and
20 entered it that way.

21 Q And that was on Schedule C?

22 A Yes.

23 Q And did Mr. Burling rely on the carried losses that the
24 prior preparer had placed on the 2016 return?

25 A Yes.

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1 Q And could you explain briefly how carried losses work?

2 A We're talking about what's called a net operating loss.

3 And those net operating losses are losses that result from
4 business transactions. The taxpayer is at, quote, at risk.

5 In other words, they are responsible for all the expenses and
6 personally responsible for them. And they make a statement
7 that they are personally responsible for them if they are at
8 risk. That's part of preparing the form.

9 The same thing would apply to other types of returns.

10 And in any event, they are allowed, they are permitted to

11 carry back losses a certain number of years and then carry
12 them forward. They can elect to carry them forward

13 completely, but generally they would carry them back and carry
14 them forward depending on what the election is. And these are
15 business losses which are carried forward in this case.

16 Q And is that a common practice?

17 A Yeah.

18 Q And is that permitted by the federal tax code?

19 A Yes.

20 Q Now, is it common or uncommon for business owners to pay
21 personal expenses from, say, their business bank account?

22 A What A lot of small businessmen do is they don't
23 necessarily separate their business life on their books the
24 same way. In other words, they use one bank account to pay
25 for many things. Especially where you have what's called a

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1 pass-through entity, which would be an S corporation or a
2 single member LLC, they will often just pay their expenses out
3 of there, their personal expenses. And there is an
4 expectation that what's personal would be treated as personal
5 and what's business would be treated as business.

6 Q And is that one of the functions of the CPA is to sort
7 out what's personal and what's business?

8 A Well, what we do in our office, and like I said, a lot of
9 my colleagues do the same thing, is we review those things and
10 we ask them questions, our clients, to determine if they are
11 truly business or they're not. And if they're not, in my
12 office we don't sign returns that we knowingly have personal
13 expenses on a business return. We won't sign those returns.

14 Q And is that an inquiry you conduct without being
15 specifically asked by the taxpayer to do that or by your
16 client to do that?

17 A That's how we practice. We look at things a little more
18 deeply.

19 Q And does it sound like Mr. Burling practiced that way?

20 A I didn't see the evidence of it in what I saw or what I
21 heard.

22 Q Let me ask you some specific questions about some issues.
23 In terms of where a residence is purchased by a company, the
24 purchase itself, is that taxable to the owner of the company?

25 A Depends on whether the owner is living in it.

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1 Q And if the owner is living in it, what should he do?

2 A Well, then it's an imputed income to the owner. It's
3 based upon the cost of operating the home, including the fair
4 rental value of the home and so on and so forth. So if it's a
5 U.S. corporation that's doing it, then that would go on -- as
6 I heard Mr. Burling say, on his form W-2. But if it's not
7 owned by a U.S. corporation, then it wouldn't necessarily go
8 on that form. And if it was owned by a partnership, for
9 example, it would pass through on Schedule K and Schedule K1
10 and pass through to that particular member or partner.

11 Q Is that one of the inquiries that you would typically
12 make?

13 A Yes.

14 Q Now, Mr. Burling had indicated that he had advised
15 Mr. DaCorta that there should be -- that he should put that on
16 a W-2 even though you say that he could not have done so.
17 Assuming such conversation had occurred, do you agree with
18 Mr. Burling that he should not have put that or he could not
19 have put that on the return because he didn't think it would
20 make any difference?

21 A No. It's income. It's reportable.

22 Q Is that one of the inquiries that you would ordinarily
23 make?

24 A Yes.

25 Q And would you have -- when Mr. Burling said he didn't

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1 think it would make any difference, was he acting in
2 compliance with accepted standards, professional standards?

3 A Not from my point of view because he signed a return that
4 he knew to be inaccurate. And that's part of the standards.
5 We are prohibited from signing returns if we believe them to
6 be inaccurate.

7 Q And assuming that Mr. Burling had signed the return, is
8 that an indication that perhaps that conversation never took
9 place?

10 A I'm sorry?

11 Q The fact that Mr. Burling signed the return, is that an
12 indication that perhaps that conversation never took place?

13 MS. BEDKE: Calls for speculation.

14 THE COURT: Sustained.

15 A I have no idea. To answer your question, I just don't
16 know.

17 BY MR. ROSENTHAL:

18 Q Okay. Now, there was testimony yesterday from
19 Mr. Burling that taxpayers generally look very closely at
20 their tax returns. Has that been your experience over the
21 years?

22 A It all depends. Some of my clients look very closely,
23 and others don't look at all. They're just happy to see what
24 the result is or unhappy to see what the result is depending
25 on whether they owe a lot of money or don't owe a lot of

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1 money. They don't necessarily dig into their tax returns, and
2 particularly in some of the really complicated returns that we
3 do because they can't read the return to begin with and they
4 are busy making a living. They don't want to be bothered, and
5 they'll tell me that.

6 Q Now, I want to talk to you about family businesses. Is
7 it uncommon or uncommon to have family members employed in a
8 business that's owned by another family member?

9 A It's not uncommon. It's relatively common. If they are
10 working there and they are performing a service, then there is
11 no problem with that.

12 Q And would there be a requirement then to issue a W-2 to
13 the employee even though it happens to be a family member?

14 A If they are working there, they are supposed to get a
15 W-2.

16 Q Is that W-2 an appropriate business expense
17 notwithstanding that the employee is a family member?

18 A No. A lot of businesses -- a lot of people start
19 businesses, and when their children get to a certain age, they
20 bring them in. Their wives work in those businesses and help
21 them. It's common.

22 Q Now, what are the potential consequences to a complaint
23 if the tax preparer fails in their professional obligations in
24 preparation of a return?

25 A Penalties, financial penalties and interest that's

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1 charged on the tax and the penalties. There is the potential
2 fraud penalty depending on how the return is viewed by the
3 Internal Revenue Service, which is 75 percent of any underpaid
4 tax as one example. And then there's other penalties that can
5 go up to 25 percent of the amount of the underpaid tax. The
6 penalties by themselves and interest can be more than the
7 actual tax involved. And then there is the potential for
8 being charged with a crime, either a misdemeanor or a felony.

9 Q So it's very important that the tax preparer does what he
10 or she is supposed to do?

11 A Yeah.

12 MR. ROSENTHAL: Thank you, sir.

13 THE COURT: All right. Cross-examination.

14 **CROSS-EXAMINATION**

15 BY MS. BEDKE:

16 Q Good afternoon, Mr. Foodman.

17 A Good afternoon, ma'am.

18 Q You would agree with me, would you not, that advice is
19 only as good as the information upon which it is based?

20 A Yes.

21 Q Stated another way, garbage in, garbage out, right?

22 A No, I don't know if I want to say garbage in, garbage
23 out, but it's certainly the advice -- the advice that person
24 gives to a client is a function of the information that they
25 are able to glean from the client.

CROSS-EXAMINATION OF STANLEY FOODMAN

1 Q So if a client doesn't provide a tax return preparer or a
2 CPA with all the relevant information, then they can't really
3 rely on the tax preparer's advice in good faith, correct?

4 A Well, that presumes that the taxpayer knows what's
5 relevant and what isn't.

6 Q That's exactly right. If the tax preparer does not
7 provide the CPA with all of the relevant information, then the
8 tax preparer cannot rely on the tax preparer's advice in good
9 faith, correct?

10 A The taxpayer would first have to know what's relevant.

11 Q I understand, sir. Assuming the taxpayer knows what is
12 relevant.

13 A Oh, okay.

14 Q If the taxpayer provides or fails to provide -- pardon
15 me. Let me start over.

16 Let's assume the taxpayer knows what money he is
17 taking out of his business, what his expenses are, he fails to
18 share that information with the tax return preparer. Are you
19 with me?

20 A I'm with you.

21 Q Then that taxpayer cannot rely in good faith on the tax
22 preparer's advice, correct?

23 A If the taxpayer had relevant information that the
24 taxpayer knew to be relevant and didn't share it with the
25 preparer, then the preparer would not prepare an accurate

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1 return, and that's what we're talking about.

2 Q And if the preparer doesn't prepare an accurate return
3 because he didn't get all the right information from the
4 client, that's not the preparer's fault, is it?

5 A If the preparer accepted all the information as given to
6 the preparer and asked no further questions and accepted
7 everything, then he accepted everything and he failed to -- he
8 prepared the return based on the information provided, what
9 was testified to.

10 Q Have you ever had a client fail to provide you with all
11 the relevant information you needed to prepare an accurate
12 return?

13 A You know, I don't know if I have or not, but I can tell
14 you I have had clients prior to my friendly inquisitions to
15 not provide me with things, and then I dig because something
16 just -- more information. We dig. That's what we do. And
17 that's what the people that I work with do, my other
18 colleagues.

19 Q Mr. Foodman, if you have an inkling that you don't have
20 all the information, I believe you testified you won't sign
21 that return, correct?

22 A If I believe that I have not received accurate and
23 complete information, than I don't sign returns, and I go and
24 I get -- and if I can't get the information for whatever
25 reason, it may just be because the person doesn't have it at

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1 hand, it may be because they need to go on extension, whatever
2 the reason is I won't sign that return at that time.

3 Q Some people are more trusting than others, correct?

4 A I'm going to ask you the same thing that I asked counsel.
5 My hearing aid which I normally wear is gone. I can't wear
6 it. It's dead. So I'm trying to turn my right ear to you so
7 I can hear you.

8 Q Let me ask it again. I will try and speak up.

9 A Thank you very much.

10 Q Some people are more trusting than others, correct?

11 A Sure. I imagine so.

12 Q Now, you were not the CPA to whom Mr. DaCorta went for
13 preparation of his 2017 return, correct?

14 A No.

15 Q And you were not the person to whom Mr. DaCorta provided
16 or didn't provide whatever information was turned over for
17 preparation of the 2017 return?

18 A That is correct.

19 Q And you were not present for any of the meetings that
20 Mr. DaCorta had with Mr. Burling, correct?

21 A No, I was not present for any of those.

22 Q You were not party to any of the phone conversations that
23 Mr. DaCorta and Mr. Burling had, correct?

24 A I have never seen Mr. Burling or Mr. DaCorta until this
25 trial and being here in the courtroom. I have never seen

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1 them, spoken to them or had anything to do with either one of
2 them in my life and still have nothing to do with either one
3 of them in my life other than what I'm doing right now.

4 Q I understand. And so you have no idea whether you have
5 all of the information that passed between Mr. DaCorta and
6 Mr. Burling. That would be impossible, correct?

7 A I have no idea what passed between them. I have no idea
8 what the totality of that information is.

9 Q You do know that based upon what you have seen and heard
10 that you would have sensed a disconnect between Mr. DaCorta's
11 lifestyle and his reported income?

12 A That's correct.

13 Q All right. And you would have felt the need to ask more
14 questions, correct?

15 A Yes.

16 Q But it's possible, is it not, that Mr. Burling may have
17 been a more trusting soul?

18 A Anything is possible.

19 Q You also testified that if a company purchased a
20 residence and Mr. DaCorta was living in it, that the, I guess,
21 and correct me if I'm wrong here, the cost of living in the
22 residence would be imputed income to him; is that correct?

23 A The rental value. The rental value. Remember, it
24 doesn't belong to him; it belongs to the company. So the
25 imputed rental value of that, because he is an employee of the

CROSS-EXAMINATION OF STANLEY FOODMAN

1 company, would go to his -- should go to his tax return.

2 Q So is that kind of equivalent to the cost of living in
3 the residence for that year?

4 A No.

5 Q Okay.

6 A No, it's not, because if I owned -- if I, for example,
7 owned a house and I rented it out, I get the rental income.
8 Now, if my corporation owned a house and paid the expenses for
9 it and I lived in it, I would still have to pick up the rental
10 income. Those expenses are the expenses of the corporation
11 that owns the house. It's not the expenses of the person
12 living in there. That would be like saying in this case that
13 where I live in a condominium that the maintenance fees are
14 somehow income to me, and they're not.

15 Q So in this case do I understand your testimony to be that
16 the rental income for the house at Lost Key Place would be
17 imputed income to Mr. DaCorta?

18 A The fair market rental value of that home would be,
19 should be imputed as income to Mr. DaCorta if he doesn't own
20 the home and he's living in it and he is an employee.

21 Q And that doesn't appear anywhere on Mr. DaCorta's 2017
22 return, correct?

23 A That's correct.

24 Q And you were present when Mr. Burling said he raised this
25 issue with Mr. DaCorta and he never really got much of an

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1 answer?

2 A I know that he said he raised the issue with Mr. DaCorta,
3 that's correct. And I don't think -- and he said that, if I'm
4 not mistaken, that he didn't think it was going to matter
5 because it wasn't going to eliminate his net operating loss
6 carried forward. And therefore he went ahead and filed the
7 return knowing that he didn't have that information.

8 Q And prior to saying that -- I agree with you. Prior to
9 saying that, he said Mr. DaCorta never really gave me a
10 response.

11 A I don't know how -- well, that's correct. He didn't give
12 him a response is what he said.

13 Q Now, you said you would have looked at it more deeply,
14 correct?

15 A Yeah. That's the way I practice, and that's the way the
16 colleagues that I work with practice.

17 Q But not everyone necessarily practices the way you do?

18 A Well, there's 200 million tax returns filed every year in
19 the United States approximately. And there are people who
20 practice and they charge \$125 to do a tax return, and those
21 tax returns are very simple. And those are sort of like
22 department stores, I guess, where they run through them. And
23 those are the people that have storefront practices who are
24 not necessarily licensed or regulated. Some of them are, by
25 the way, but not necessarily. And those fees can range

CROSS-EXAMINATION OF STANLEY FOODMAN

1 anywhere from, I don't know, \$125 up to let's say \$500 or
2 \$600. And the reason those people go to them is because they
3 can't afford to pay any more to get any more -- any more of a
4 more professional look at what they've got. And a lot of them
5 own small businesses. They drive trucks. They do all kinds
6 of things. And that's common, and we all do that. We all
7 know people who do that. My practice isn't like that.

8 THE COURT: All right. Well, let's get another
9 question and then you can do the answer.

10 THE WITNESS: I'm sorry?

11 THE COURT: We are going to do Q and A here.

12 MS. BEDKE: Thank you.

13 BY MS. BEDKE:

14 Q Mr. Foodman, I believe you testified that IRS Curricular
15 330 basically says that the CPA or tax return preparer can
16 accept whatever the client tells us unless we have reason to
17 dig deeper?

18 A Yeah. It's not Circular 330. I'm sorry. I'm not trying
19 to be difficult. It's Circular 230.

20 Q 230, thank you. I misheard you. So Circular 230 says in
21 general we can rely upon what the taxpayer tells us?

22 A That's right.

23 Q And you testified about the potential penalties to which
24 a tax return preparer could be exposed by signing on an
25 inaccurate return, correct?

REDIRECT EXAMINATION OF STANLEY FOODMAN

1 A Yes, I did.

2 Q But there are also penalties to which the taxpayer is
3 exposed, correct?

4 A Yes. I also testified to that.

5 Q Because ultimately it is the taxpayer's return, is it
6 not?

7 A Absolutely.

8 Q And the taxpayer in filing or causing that return to be
9 filed signs off on it under penalties of perjury, correct?

10 A Yes. There is a statement to that effect on the
11 second -- well, I don't know now. It's on the first page
12 these days, but yes.

13 Q And so when a taxpayer receives a draft return from his
14 preparer and then certifies by signing that form that he has
15 reviewed it, he is saying this is accurate. I'm attesting
16 that it's accurate under penalties of perjury, right?

17 A He's signing, because that's what he's signing.

18 MS. BEDKE: Nothing further.

19 THE COURT: Redirect, please.

20 **REDIRECT EXAMINATION**

21 BY MR. ROSENTHAL:

22 Q Mr. Foodman, in your experience, do taxpayers always
23 understand exactly what is on each schedule of their return?

24 A No, they do not.

25 Q Is it your understanding that they -- or is it your

REDIRECT EXAMINATION OF STANLEY FOODMAN

1 experience that they don't understand how the numbers that are
2 on their tax return got there?

3 A In many cases that's correct.

4 Q So if a taxpayer sees a draft of their return, will they
5 in every instance understand how that was arrived at?

6 A No.

7 Q Ms. Bedke asked you questions about garbage in, garbage
8 out and the information that's communicated from the taxpayer
9 to the tax preparer. In that regard, do you distinguish
10 information that was not provided to the taxpayer out of
11 negligence from information that's not reported, not given to
12 the tax preparer as a result of active concealment?

13 A Sure.

14 Q And would you distinguish information that's not provided
15 to the tax preparer because the taxpayer doesn't know it's
16 important as opposed to information that was actively
17 concealed?

18 A That's right.

19 MR. ROSENTHAL: That's all I have, Your Honor.

20 THE COURT: Thank you, Mr. Foodman. You are free to
21 go. Good day, sir.

22 Call your next witness, counsel.

23 MR. ALLEN: Your Honor, we would call Michael
24 DaCorta.

25 THE COURT: All right. Mr. DaCorta.

DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 THE COURTROOM DEPUTY: Please raise your right hand.

2 (Witness sworn.)

3 THE COURTROOM DEPUTY: Sir, could you please state
4 and spell your name for the record.

5 THE WITNESS: Michael DaCorta, M-I-C-H-A-E-L,
6 D-A-C-O-R-T-A.

7 THE COURTROOM DEPUTY: Thank you, sir. Please take a
8 seat in the witness box.

9 MR. ROSENTHAL: Your Honor, if I may, Mr. Foodman has
10 been excused. Can he remain in the courtroom?

11 THE COURT: Sure. Unless anyone objects to that,
12 sure.

13 Counsel.

14 MS. IRVIN: Thank you, Your Honor.

15 **MICHAEL J. DACORTA, CALLED BY THE DEFENSE, SWORN**

16 **DIRECT EXAMINATION**

17 BY MS. IRVIN:

18 Q Good afternoon, Mr. DaCorta.

19 A Good afternoon.

20 Q Mr. DaCorta, please tell the jury why you decided to
21 testify today.

22 A I have been waiting for this day for three years. It was
23 three years ago. The third anniversary was the day this trial
24 started when agents raided my home, three years ago since an
25 FBI agent threatened to use a sledgehammer to break down the

DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 walls of my house to see if I was hiding gold and silver in
2 the walls. And it's been three years since they threatened to
3 handcuff my wife on the couch as she sat there with my
4 daughter because she dared to ask a question.

5 Q You mentioned that it was a little more than three years
6 ago. And that was on April 18 of 2019; is that right?

7 A Correct.

8 MS. IRVIN: Your Honor, may I approach the witness?

9 BY MS. IRVIN:

10 Q Mr. DaCorta, I am providing you what has already been
11 admitted into evidence as Defendant's Exhibit 87 and also a
12 copy of that same exhibit. Now, I don't want you to open it
13 yet. I do want you to just look at it. Do you recognize --
14 excuse me one second, Your Honor. I think I gave him the
15 wrong copy.

16 Mr. DaCorta, I just placed in front of you
17 Defendant's Exhibit 87. Do you recognize it?

18 A Yes, I do.

19 Q What is it?

20 A It is a journal that I sporadically kept from I believe
21 2012 until roughly 2017 or 2018.

22 Q And for the record, what does that journal look like?

23 A It's just a reddish-brown leather-bound book.

24 Q Now, it is currently in a bag.

25 A Yes, it is.

DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 Q Do you know -- well, you've heard that it was already an
2 exhibit in evidence. Can you please open up -- take it out of
3 that bag and open it up to the first page.

4 A Okay.

5 Q Keeping it open on the first page, whose writing is that?

6 A That is my handwriting.

7 Q And in looking at that page, do you recall when you wrote
8 what's written on that page?

9 A Oh, yes, I remember it very specifically. It was the
10 date that I put down there on the page, November 27, 2012.

11 MS. IRVIN: All right. May we please publish
12 Exhibit 87, page 1, Your Honor?

13 THE COURT: Well, all right. I haven't formally
14 admitted that yet, that exhibit. So why don't you
15 authenticate the excerpt that we discussed or attempt to do
16 so.

17 BY MS. IRVIN:

18 Q Can you also -- in looking at page 1, do you recall in
19 making this writing on page 1?

20 A Yes, I do.

21 Q When you -- although it has a date on the top of it, do
22 you recall when you would write in this journal?

23 A Yes. I would write sporadically. When I started it was
24 for a specific reason because I read a specific book. I kept
25 it a few days in a row every so often, and then I dropped it

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1 and kind of picked it up here and there.

2 Q Although you said you wrote in it sporadically, would you
3 say that you would write in it on the same day that you
4 were --

5 A No. Whenever I just decided to pick it up and write.
6 There was no specific pattern.

7 Q Does the journal as you look at it -- and I would like
8 you to specifically look at pages 1, 2, 3, 4, and 5. Does it
9 accurately represent the journal that you kept?

10 A Yes, absolutely.

11 MS. IRVIN: Your Honor, we would ask to admit Defense
12 Exhibit 87.

13 THE COURT: All right. Any objections to one through
14 five?

15 MR. MURRAY: Yes, Your Honor. Can we approach,
16 please?

17 THE COURT: Well, just state your legal objection to
18 one through five.

19 MR. MURRAY: Foundation, contemporaneousness.

20 THE COURT: And we have discussed those points
21 before, haven't we?

22 MR. MURRAY: We have.

23 THE COURT: I will admit one through five, ladies and
24 gentlemen. One through 5 is admitted.

25 (Defendant Exhibit 87 pages 1-5 admitted.)

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1 MS. IRVIN: May I use the Elmo to publish, Your
2 Honor?

3 BY MS. IRVIN:

4 Q Now, Mr. DaCorta, you have in front of you a Xerox copy
5 of those same pages because it's on larger font for you to
6 read it. Can you please read page 1?

7 A Sure. Yesterday is Tuesday, November 27 -- oh, sorry.
8 Today is Tuesday, November 27, 2012. Yesterday I read a book,
9 "Outwitting the Devil." I thought it was the greatest and
10 most useful book I have ever read. I will use this journal to
11 keep track as to whether its ideas work. I believe they will
12 without any hesitation or doubt. The author recommended that
13 I put my major desire in life, something I would consider a
14 major success on page 1, and on page 2 what I am willing to
15 give in order to receive. Let's get started.

16 Q Mr. DaCorta, do you remember reading the book "Outwitting
17 the Devil"?

18 A Yes, I do.

19 Q And what did you take from reading that book?

20 A It was a book that really made you think about
21 subconsciously how you do things and just -- it's hard to
22 remember exactly at this moment. I do have some nerves, but
23 it is more or less a self-help book. It was written by
24 Napoleon Hill in the 1930s. It wasn't published then because
25 this was considered somewhat controversial at the time, but

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1 then it was published later on.

2 Q Can you please turn to page 2. And can you please read
3 page 2.

4 A My desire. My greatest desire is a result of my greatest
5 failure. In 2008, I suffered the loss of my business, ICT,
6 which caused great hardship to my family and all involved as
7 well as myself. My desire is to rebuild a new business in the
8 same manner as I built ICT, only this time use the lesson of
9 failure to catapult me to enormous success, so great that most
10 would believe to be impossible to achieve. I desire that
11 money for any purpose be of no issue. I desire to help as
12 many participants in ICT as possible and share the great
13 riches of success with all I come in contact with.

14 I can't even read my own handwriting.

15 And then use capital and all other resources to
16 spread positive messages that free people's minds and uplifts
17 all. I have no limits on my level of success. I can achieve
18 all I can imagine.

19 Q Mr. DaCorta, can you please turn to page 3. Read page 3,
20 please.

21 A Sure.

22 What I will give. I will begin by giving as many of
23 the author's books away as gifts and then engage the
24 recipients in positive conversation. As I achieve levels of
25 success in my new venture, I will invest time and money into

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1 creating an organization that will continually teach the
2 principles learned in this book and reach out to as many
3 people in as many places as possible to uplift and liberate
4 all. I realize my potential is only limited to my thoughts.
5 Therefore, my potential is unlimited because -- you moved it
6 on me there.

7 Q Sorry about that.

8 A That's okay.

9 Therefore, my potential is unlimited because I can
10 achieve anything I can imagine. Anything is possible.

11 Q Mr. DaCorta, can you please turn to page 4 starting from
12 the top.

13 A November 28, 2012. The definite plan to achieve definite
14 success is in realizing my desire. Oasis Capital Management,
15 S.A., a Belize company will acquire a forex license. A U.S.
16 corporation will be set up to own the Belize company and
17 complete a stock offering to raise capital to get started.
18 The Belize forex company will acquire foreign accounts from
19 around the world and become a major money manager that will
20 enjoy enormous and unlimited success. The success will be
21 shared generously with shareholders and all local community to
22 bring a new positive atmosphere to all in our sphere of
23 influence.

24 Q Now, if you can please turn to page 5. And also starting
25 from the top if you could please read.

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1 A November 29. Heading to Long Island to meet Joe and Ray.
2 Ambit first, and then we will finalize my definite plan for
3 the Belize operation. It will be great day. We will do Ambit
4 meeting at Andy's tonight. Rolando is coming and adding a
5 check to Oasis.

6 Q Thank you, Mr. DaCorta. We will come back to this
7 journal later on in your testimony, but I'd like to begin with
8 who you are. How old are you?

9 A I'm 57 years old.

10 Q Where did you grow up?

11 A I group up in the Bronx, New York.

12 Q Who raised you?

13 A My mom and dad.

14 Q What did you learn from your parents?

15 A Learned a lot. They were -- my dad was a waiter in an
16 Italian restaurant. My mother was a paraprofessional at the
17 Board of Education of New York City. They were hard workers,
18 very hard workers, and they were very competitive. So when
19 you went to school, you made sure you brought home the right
20 report card or you had problems.

21 Q What was your neighborhood in the Bronx like?

22 A It was a very nice neighborhood, mainly private brick
23 homes, a lot of Italian, Irish, Jewish, some Spanish. It was
24 really a mixed neighborhood but a very nice, pleasant
25 neighborhood.

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1 Q In your neighborhood, can you tell the jury who

2 Mr. Joseph Besserman was?

3 A Mr. Besserman was our landlord where my parents -- before
4 they bought their own home and when I was growing up.

5 Q What did you learn from Mr. Besserman?

6 A Mr. Besserman was a very unique individual. He was a
7 very hard worker. He was a holocaust survivor. He owned a
8 grocery store. He was a real estate agent, and he owned the
9 home we lived in. So he taught me a lot of tangible things
10 and he taught me a lot of intangible things. Tangible things
11 is he taught me how to take care of the land, plant
12 vegetables, take care of rose bushes, a lot of things outside.
13 He always offered to allow me to shovel the snow and mow the
14 lawn to get paid. And he would make me a contract the
15 beginning of each winter. It was \$10 to shovel. Regardless
16 of whether it snowed an inch or two feet, you still got your
17 \$10, but it he was a very good man.

18 Q Where did you go to elementary and high school?

19 A I went to St. Lucy's School in the Bronx which was just a
20 couple of blocks from my home. And then I went to Blessed
21 Sacrament High School in New Rochelle which was a long ride.

22 Q What were your interests in high school?

23 A Every young boy -- I mean, I had great interest in
24 sports, but I loved American history, and I always loved math.

25 Q Did you have any jobs while you were in high school?

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1 A Yes, I did.

2 Q And tell me about one of those jobs.

3 A Well, my first job, I was 15 years old. I was hired for
4 Royal Card Store. It was a Hallmark stationery store.

5 Q Who owned the store?

6 A Stanley and Eva Freed.

7 Q What did you learn from the Freeds?

8 A Hard work. I mean, they were great people. They were
9 actually also holocaust survivors. And they actually made a
10 pact with each other to meet, for both of them to meet at the
11 Eiffel Tower on a certain day in the future if they survived,
12 and they did.

13 Q Did anything about the jobs that you had in high school
14 teach you about the value of money?

15 A Oh, sure. Stanley was a great teacher. He would always,
16 regardless of what we were doing, pricing things or just
17 general business ideas, he would always -- he took a liking to
18 me, so he always taught me things. He taught about lost
19 leaders, which he gave away loose leafs at the cost he
20 purchases at in order to draw people in to buy others things.
21 So he was a very good businessman.

22 Q Did you have any interest in finance or investing when
23 you were in high school?

24 A Oh, yes, I did.

25 Q Tell me about that.

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1 A I guess I was about 15 or 16, and I saw the stock tables
2 on the daily news, and I asked my dad what it meant, and so he
3 explained. So I asked him so if I buy a stock, a hundred
4 shares and it goes up a dollar, I can make a hundred dollars?

5 And he said, yes.

6 And I looked at my dollar savings, passbook savings
7 book and I looked and I saw that the money I had in there was
8 earning a few cents every quarter. So I asked him if I could
9 take the funds out of my bank account and put it into the
10 stock market.

11 Q What happened with that first investment?

12 A The first thing I did was I bought 50 shares of US Air
13 and 50 shares of American Airlines. I loved the airlines and
14 I loved to fly back then also, and I also was very patriotic.
15 So when I saw US Air and American Airlines, I decided to buy
16 those two. American Airlines I purchased at nine and
17 seven-eighths. And US Air at 12 and a half. I remember it to
18 this day.

19 Q Have you always had a knack for remembering dates and
20 numbers?

21 A Pretty much.

22 Q Where do you think that comes from?

23 A I don't know.

24 Q In addition to investing in stocks, is there anything
25 else that you invested in?

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1 A Yes. It was right around the time where silver had
2 crashed from \$50 to \$4 because the Hunt brothers failed in
3 cornering the silver market. So I purchased a thousand ounces
4 of silver at \$4.17.

5 Q Now, what year are we talking about?

6 A That was probably -- Ronald Reagan was probably
7 president. So it was probably around 1980, 1981.

8 Q About how old were you at this time?

9 A Sixteen-ish, 17. Probably 17 by the time I purchased the
10 silver.

11 Q And when you purchased the silver, where did you keep it?

12 A I bought one -- I bought ten, 100-ounce Engelhard bars.
13 And when they were delivered to my home, I put them at
14 Manufacturers Hanover Trust on Allison Avenue in a safety
15 deposit box.

16 Q Why did you put it in a safety deposit box?

17 A At that time we lived in the Bronx. We had a small,
18 little house. And obviously I wanted to feel safe. So I went
19 to the bank to put it in a safety deposit box.

20 Q What year did you graduate from high school?

21 A 1982.

22 Q And after high school, what did you decide to do?

23 A I went to Lehman College in the Bronx.

24 Q What did you major in?

25 A Economics.

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1 Q How did you pay for college?

2 A Well, I had a New York State Regents scholarship for part
3 of it, and I paid for the rest of it myself.

4 Q Did you work while you were in college?

5 A Yes, I did.

6 Q Where did you work?

7 A A couple of different Italian restaurants. I believe Ann
8 and Tony's was one, and Gino's Cafe was the other.

9 Q Did you have any internships?

10 A Yes, I did. I had an internship at Lehman Brothers on
11 55 Water Street in New York City.

12 Q And that internship you had while you were in college?

13 A Yes. I went to classes on Monday, Wednesday, and Friday.
14 And I went to Manhattan for the internship on Tuesdays and
15 Thursdays.

16 Q Did you graduate from Lehman College?

17 A No, I did not. I left after three and a half years.

18 Q Why didn't you graduate?

19 A I was actually offered the opportunity to get my broker's
20 license by Stuart-James, and I was paying for my own college.
21 And the courses I was taking at that point were just courses
22 that I had to to finish up. And they were -- I looked at it
23 as just an economic situation. I could either pay to finish
24 these classes right now or I can go get my license and start
25 working and always come back and finish at night.

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1 Q Let's talk about your broker's license. How old were you
2 when you were first pursuing your broker's license?

3 A I believe I might have taken it before my 21st birthday,
4 but it was right around 21 years of age.

5 Q What did you have to do to get that broker's license?

6 A You had to pass a Series 7 exam.

7 Q What's a Series 7 exam?

8 A Well, the FINRA expert explained it to some degree. It's
9 a 250-question test that encompasses pretty much all types of
10 securities and bonds and every type of investment.

11 Q So what's the purpose of that particular exam?

12 A To demonstrate at least a somewhat level knowledge of the
13 industries that you are about to enter.

14 Q Was there any other exam that you needed to pass?

15 A Yes. To be a broker, you had to pass a Series 63, which
16 was a New York state license for regulations and for sales
17 practices.

18 Q Now, I think you mentioned it, but where was this
19 starting position once you became a broker?

20 A I was with Stuart-James & Company in White Plains,
21 New York.

22 Q I guess I skipped an important question. Did you pass
23 the Series 7 and 63 exams?

24 A Excuse me? I missed that.

25 Q Did you pass the Series 7 and Series 63 exams?

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1 A Yes, I did.

2 Q Now, you started at Stuart-James. Were you earning a
3 good income?

4 A The first month I made over \$9,000 and my father was
5 amazed. He couldn't believe you could actually earn that much
6 in a month. So it was a good first month. The second month I
7 think I only earned \$3,300, but it was a sales job.

8 Q What did this income allow you to do?

9 A Well, my parents were looking to buy a home. And I was
10 able to loan them \$5,000 to add to their down payment.

11 Q What can you tell me about that home that you assisted
12 your parents with?

13 A Well, my mom just turned 94 last week, and she still
14 lives there. My dad passed about a year and a half ago. And
15 my sister is there with my mom taking care of her.

16 Q Other than the financial benefits of being a broker, what
17 did you enjoy about working on Wall Street?

18 A I enjoyed the challenge every day. Regardless of the
19 fact you are going to the same desk and doing the same thing,
20 every day was just a great opportunity, a new opportunity, and
21 there was always something new going on in the world. So it
22 was a very exciting type of job, I felt.

23 Q What does a stockbroker do?

24 A Well, a broker is pretty much -- especially back then it
25 was all transactional business. So a broker had to go out,

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1 get their own book of business and then recommend to each

2 individual client what they felt suitable for that client.

3 Obviously the industry has changed since then, but that's the

4 way it was back in that time.

5 Q For the next couple of years, where did you work as a
6 stockbroker?

7 A From Stuart-James I believe I went to Austin Davenport on
8 the next one.

9 Q Did you stay as a stockbroker?

10 A I did at that point.

11 Q At what point did you change your position?

12 A Well, when I was at Stuart-James, I realized that the
13 brokers on the desk were really interested in just making
14 commission. They weren't interested in actually recommending
15 companies that may actually go up in value. The company was
16 trying to sell a company called Venus cruise lines. It was a
17 cruise ship -- I'm sorry. It was a cruise line with no cruise
18 ship. So it was a penny stock, and they were pushing us
19 because there were lots of commissions involved. And I just
20 didn't like that whole thing. So I went to Austin Davenport.
21 The brokers were somewhat older, somewhat more sophisticated,
22 but they also had bigger mortgages. So they were kind of cut
23 from the same grain where they were trying to sell to meet
24 their monthly expenses. So at that point in time I decided
25 that the retail part of it wasn't for me.

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1 Q And when you did that, what position did you then
2 transition to?

3 A I applied and I accepted a job at Waterhouse Securities.
4 I believe it was at 14 Wall Street at the time.

5 Q What was your position at Waterhouse?

6 A That was as an equities trader.

7 Q How is an equities trader different than a stockbroker?

8 A Well, a trader is executing trades, orders that are
9 coming in from Waterhouse's desks. And you are there just to
10 execute those trades. You are not making any recommendations
11 to anybody.

12 Q For how long were you working at the trading desk at
13 Waterhouse?

14 A Well, shortly after taking a big pay cut to take the job
15 because I thought it was something that I would rather do and
16 I would rather learn at a lower salary at a young age and then
17 begin to move on, OWest Securities offered me a significant
18 amount higher salary to the same exact job. And it was on
19 90 Broad Street. So it was only two blocks from where I
20 worked on Wall Street.

21 Q During your time working on Wall Street and for Wall
22 Street firms, how many firms do you think you worked for?

23 A You know, it's probably eight to ten mainly because as I
24 got into the trading routine and you -- it was -- from OWest
25 it went to sort of a different type of trading. And at that

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1 point in time you were kind of offered certain deals. And you
2 went where you were going to be paid the most for what you
3 were doing because it was more or less you were generating
4 your own income.

5 So when that -- when I got into that style of
6 trading, it was moving around a little bit, because if you
7 were getting paid 80 percent of your profits in one place and
8 someone else offers you 85 percent, you would go because I'm
9 doing the same exact amount of work making the same decisions
10 but could bring 5 percent more home for my family, why not.

11 Q In your experience, was it common in the financial sector
12 for people to change firms?

13 A Oh, sure. You would get -- brokers and traders, they get
14 lured from other firms all the time.

15 Q Was it also common in your experience for people in the
16 financial sector to change positions?

17 A Yeah. I mean, they change positions depending on -- you
18 know, some people start, they don't like the situation they're
19 in, so they move to a different department, yes.

20 Q In working at Stuart-James, at Waterhouse, at OWest, what
21 did you learn by working at these different firms?

22 A Well, OWest was interesting because they had a clientele
23 that I believe you had to have a million dollars to open an
24 account with them. And this was 1986, '87. So that was quite
25 a large investment for anyone. It's a lot of money now, but

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1 back then it was a tremendous amount of money to just entry
2 level into a company. And most of them managed their own
3 money. So we were there just to execute the trades. And it
4 was a great place to work. They offered me the head options
5 trader position. So I had to go take a Series 4 exam to do
6 that, pass that exam. I became the head options trader. And
7 then shortly after that the 1987 crash came. So that was a
8 very interesting day.

9 Q So let's talk about what made that day interesting, as
10 you said. What happened?

11 A Well, from 1987, the market sold off about 25 percent in
12 one day. Things were not as they are today where you have
13 instant communications and you have everything done
14 electronically. We used to handwrite the tickets. We had a
15 doctor by the name of Dr. Lin who had \$8 million in equity in
16 his account that morning, but he was short puts across the
17 board. He used to short what they call put options, collect
18 the revenue from them and they would always expire worthless
19 because you only got hurt if the stock went down. And the
20 stocks were continuously going up, and so they expired
21 worthless and he would keep the sale price and that would be
22 his profit.

23 Unfortunately, that day the stocks didn't go up and
24 he ended up losing \$10 million in one day, and he only had
25 8 million in the account.

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1 Q I want you to slow town a little bit because you are
2 giving us a lot of information. What did you learn from that
3 story that you just told about Dr. Lin?

4 A Well, I realized there is a tremendous amount of
5 opportunity and potential in that industry, but I also
6 realized if you don't manage the risk you could have a major
7 problem very quickly.

8 Q What did you do as far as work after the 1987 market
9 collapse that you described?

10 A So after the crash, things got kind of slow. Very few of
11 the clients had money to trade anymore, so our phones weren't
12 ringing quite as much. It was getting a little boring. I was
13 spending my mornings doing crossword puzzles instead of
14 trading. So at that point in time my brother purchased a
15 beverage center with his brother-in-law from his wife's side
16 of the family.

17 Q I'm going stop you right there if I may. Let's take this
18 sort of in small parts because there's a lot that we're going
19 to cover, and we will come back to the business with your
20 brother. In the meantime that you are starting your career on
21 Wall Street and you're working for financial firms, what's
22 happening in your personal life?

23 A So I met Carolyn, my wife, when we were 21. We dated for
24 a year. We got engaged for a year, and we got married. So we
25 were married at 23 years old.

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1 Q Did you go on a honeymoon?

2 A Yes, we did. We went to Hawaii.

3 Q Did you take a lot of trips together?

4 A Back then, you know, we were always together, but I don't
5 know if we did a lot of trips. After Hawaii we probably
6 didn't go too far because we had our first son, Andrew, within
7 18 months or 20 months.

8 Q Did you take any anniversary trips?

9 A We went to the Sands Hotel in Atlantic City, I think, for
10 our second or third anniversary.

11 Q What about for your 30th anniversary?

12 A We went to the Cayman Islands. That was the first time
13 we vacationed without the kids since our honeymoon.

14 Q Now, I think you mentioned one of your sons. How many
15 children do you have?

16 A Three.

17 Q And tell me about them.

18 A Andrew is my oldest. Steven is my second son. And
19 Crystal is my daughter.

20 Q How old are they?

21 A Believe 32, 30, and 25. It's going so fast I can't keep
22 track anymore.

23 Q Where did you and Carolyn raise the kids especially when
24 they were younger?

25 A When Andrew was six months old, we decided to move out of

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1 the Bronx. And we moved north about 70 miles to Dutchess
2 County to the Poughkeepsie area.

3 Q Would you consider that a suburb?

4 A It's a suburb, but it's quite far. So it's not a suburb
5 that most people would commute to the city because it was a
6 long ride.

7 Q About how far was it from New York City?

8 A It's about 80 miles as the crow flies, but by train or
9 car it can be two hours.

10 Q What activities were your kids involved in growing up?

11 A Well, my sons played Little League Baseball obviously.
12 They played hockey, youth hockey. My daughter -- they were in
13 the Boy Scouts. My daughter was in the Girl Scouts. My
14 daughter was in cheerleading. She did a couple of other
15 things. There was always something going on.

16 Q Were you involved with your kids in their activities?

17 A Yes. I was a Little League coach and a hockey coach.

18 Q What other community activities were you involved in?

19 A We did lots of things. My wife was on the PTA, and there
20 was always something to do within the community. So there was
21 always something going on.

22 Q While you are living in Poughkeepsie, were you still
23 working at OWest in New York City?

24 A Let's see. No. I think I had moved to -- I had gone to
25 Beverage World. We purchased Beverage World before we moved

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1 to Poughkeepsie.

2 Q Let's talk about Beverage World. Tell me about that.

3 A Like I said, my brother's partner, he did not want to be
4 in the business anymore. He didn't like the hours or the --
5 it was quite heavy work. He was a barber by trade. So he
6 wanted to go back and cut hair. I purchased his part of the
7 business, and me and my brother were in business together.

8 Q Now, was this your brother's regular profession?

9 A No.

10 Q What was his regular profession?

11 A My brother was actually a communications engineer for
12 Citigroup.

13 Q Can you describe the Beverage World business?

14 A It was a beer and soda distributor in New York State.
15 It's called a C license where you could retail and wholesale.
16 So you have retail customers that walk in, and you also can go
17 out and get wholesale accounts. We had trucks and we used to
18 run the trucks for deliveries.

19 Q Are you still trading for yourself during this time?

20 A Yes. After I left OWest, I used to trade from Beverage
21 World on and off.

22 Q What would be a typical day for you at Beverage World
23 while you're running the business?

24 A It was a 12-hour day. And it was unloading trucks,
25 loading trucks, warehouse work, taking care of people at the

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1 register. It was a very long day, and it was a day where you
2 had a lot of activity. You were always on your feet.

3 Q How long did you and your brother operate Beverage World?

4 A I think about three or four years.

5 Q And then what happened?

6 A We decided to sell it. We had brought the sales from
7 about 600,000 a year to about 2 million a year. And we just
8 decided -- he wanted to go back to what he did, and I wanted
9 to go back to what I did, and we had our fill of retail and
10 working 12 hours a day, six days a week. So we sold it and we
11 moved on.

12 Q What did you learn from your time working at Beverage
13 World?

14 A I learned I didn't want to be in a retail business, but
15 it was a very hard job, and you give a lot of respect to the
16 people who are out there working those type of businesses
17 because they're not easy.

18 Q After selling Beverage World, what did you decide to do?

19 A I went back and retook my test to regain my licenses
20 because when you are out for more than two years, they expire.
21 I had to retake them to once again demonstrate I had the
22 knowledge to go back into the industries.

23 Q In going back into the industry, what did you do?

24 A I formed my own Nasdaq broker-dealer. Market -- I'm
25 sorry.

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1 Q What was that called?

2 A Market Trend Securities.

3 Q You had gone from being a broker and an equities trader
4 to running Beverage World. What led you to Market Trend
5 Securities?

6 A Well, when I was with OWest, I used to kind of go from
7 department to department and learn what each department did.
8 And by the time I was done with Beverage World, because I
9 owned it, I felt like I liked owning the business even though
10 it wasn't the business I wanted to own. So I decided I would
11 start my own broker-dealer, start very small and try and build
12 it up.

13 Q Were you the only person running Market Trend Securities?

14 A No. I had two partners.

15 Q And what did the three of you -- how long did the three
16 of you run this company?

17 A Well, I had two partners. They were both -- I was I
18 think 27 or 28 at the time, and they were in their late
19 fifties. One was a CPA, and one was a retired executive at
20 AT&T. So the AT&T partner was just a silent partner, and the
21 CPA actually took his FinOps license. So every broker-dealer
22 needs a financial operations principal. So instead of me
23 having to hire one, he took the exam and he became our
24 financial operations principal.

25 Q So where are we timeline wise? Around what year is this

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1 that Market Trend Securities begins?

2 A Let's see. 1991, right around there.

3 Q How long did Market Trend Securities, your involvement in
4 Market Trend Securities last?

5 A I believe I stayed with them two or three years. I
6 wanted to expand the business, grow it and do some different
7 things. They were kind of happy with the structure of the
8 firm the way it was. We were making enough money, and they
9 were kind of gearing up to get to retirement. And they didn't
10 want to add on any risk or take on any more responsibility.
11 So I asked them if they would have one of their -- someone --
12 the FinOp had a friend in New York City who was around his age
13 who was also a trader. So we arranged where I would sell my
14 portion of the company to him and he would take over my
15 position and I moved on.

16 Q What did you learn from creating and working at Market
17 Trend Securities?

18 A Well, I learned a lot about running a broker-dealer
19 obviously. I had to deal with our clearing, which at the time
20 was Ernst & Company. And at that point in time you learn
21 something from every single venture you go into, but I learned
22 that again being in that retail environment, it just wasn't
23 something I wanted to do even within the financial industry.
24 So once again, I gravitated back to just trading.

25 Q What happened, if you know, to Market Trend Securities

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1 after you left?

2 A Market Trend Securities stayed in business until I think
3 2005.

4 Q You mentioned you went back to trading. Where did you
5 work next?

6 A It's a long time ago, but I believe it was -- I believe
7 it was Onsite Trading.

8 Q What kind of work did you do at Onsite Trading?

9 A You were just a proprietary equities trader.

10 Q What does that mean to be a proprietary equities trader?

11 A So Onsite Trading had a setup where we did all our
12 business through Spear, Leeds & Kellogg. They provided us all
13 the technology, all the trading capital. What we would do --
14 or the leverage I should say. What we would do is Onsite
15 Trading was a fund or an LLC. You would buy into it. And
16 then they would allocate a certain amount of the total
17 leverage they got from Spear, Leeds to each trader depending
18 on your deposit, your experience, and your performance over
19 time.

20 Q And that describes how one would earn money on Onsite
21 Trading; is that correct?

22 A Yes. So you had to be profitable to take home a
23 paycheck, but you were paid at a certain percentage of the
24 profits you generated, but every trade you put through, you're
25 paying commissions to Spear, Leeds. So it was a symbiotic

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1 relationship, but it was a good opportunity.

2 Q Did you have another employment opportunity while you
3 were trading at Onsite Trading?

4 A Yes. I believe at that time I was called by a headhunter
5 and asked if I wanted to take a job or wanted to at least go
6 for an interview with what they told me was a very
7 up-and-coming firm on Long Island called Sterling Foster.

8 Q And what was Sterling Foster? What was the company
9 about?

10 A They were a brokerage firm who did initial public
11 offerings.

12 Q Okay. What's an initial public offering?

13 A It's when a company is actually going public for the
14 first time.

15 Q And what's the purpose of the initial public offering or
16 the IPO?

17 A When companies want to raise capital to run their
18 businesses or need an influx of capital to expand their
19 business, they will often raise money in the markets.

20 Q What were your -- what was the position that you were
21 being sought after at Sterling Foster?

22 A So that job was a compliance issue because I had a
23 Series 24 which allowed me to own my own firm, a Series 4
24 which was an options principal. So I had the licenses to
25 supervise, and they needed compliance people there. So I was

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1 hired as a compliance officer.

2 Q What happened while you were working at Sterling Foster
3 as a compliance officer?

4 A I began just knowing what a trading desk should be doing
5 and knowing the rules about IPOs. I began to realize there
6 was something that was not right going on there, and I began
7 to inquire about different things.

8 Q What concerned you about what you were observing about
9 the IPO?

10 A The activity of the stock when it came public. It was
11 just, it set off alarm bells right away, within the first day
12 or two.

13 Q As a result of your concerns, what did you do?

14 A I went to the president of the company and I asked to
15 speak with him. And I asked him -- I told him what I thought
16 was going on, and he fired me on the spot.

17 Q How did you react to that?

18 A Well, Carolyn was pregnant with Crystal at the time. So
19 it was a little nerve-racking, but I realized if I bring this
20 up and he fires me, it's probably better that I'm not working
21 here.

22 Q Do you regret telling the president of Sterling Foster
23 about your compliance concerns considering the fact that you
24 were let go?

25 A No.

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1 Q Why is that?

2 A Because they were shut down, and they had committed
3 serious fraud with their IPOs.

4 Q After unexpectedly leaving Sterling Foster, what did you
5 do next?

6 A I think I went back to Onsite Trading at that point.

7 Q Do you recall if you may have worked at a place called
8 Lexington Capital Partners?

9 A Yes. That would have been after because I believe I went
10 back to Onsite Trading. The same thing happened. I was
11 called by a headhunter and offered a position into a company
12 that was not a registered broker-dealer yet but they were
13 actually going for their broker-dealer license.

14 Q And what kind of work did Lexington Capital Partners do?

15 A Excuse me?

16 Q What kind of firm was Lexington Capital Partners?

17 A Well, they were seeking registration as a broker-dealer
18 by Nasdaq.

19 Q Did you assist them in getting their broker-dealer
20 license?

21 A Yes. I signed a contract with them, and I assisted them
22 through the process, which may have taken a year. And then
23 once they got the broker-dealer license, I left.

24 Q After you left, then what kind of work were you doing?

25 A I believe at that point I had started Empire State

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1 Brewing while I was at Lexington Capital Partners, which was
2 brewing my own -- it was my own beer company. I didn't brew
3 the beer myself. I had it contracted out by a brewery, Lions
4 Brewery in Wilkes Barre, Pennsylvania.

5 Q What was the name -- was there a name or particular
6 product of the beer that you were brewing?

7 A Yeah. So the name of the company was Empire State
8 Brewing because New York state is the empire state. And the
9 name of the beer was Wall Street Lager.

10 Q And the Wall Street Lager product that you started, did
11 you start that after you left Lexington, or was this something
12 that you had been working on before?

13 A Oh, no. I worked on it as I commuted on the train for
14 quite a few months before we launched it.

15 THE COURT: Hold on one second, counsel. I'll take a
16 poll.

17 Afternoon break or keep going? All right. Afternoon
18 break. Let's come back at 3:30. We'll run until 4:45.

19 Please don't discuss the case. Thank you.

20 (Recess taken.)

21 THE COURT: We lost Officer Fred. We have Officer
22 Mike Anderson here. So he is welcome.

23 All right. Counsel, have at it.

24 BY MS. IRVIN:

25 Q When we left off, we were talking about Empire State

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1 Brewing. What kind of company was Empire State Brewing?

2 A A beer company that marketed and branded beer.

3 Q What did you do to get the company started?

4 A Well, to get it started, I came up with the marketing
5 plan, designed a logo. I had to work with the printing
6 companies to put the boxes, six-pack holders, all the things
7 that would go into making a beer product, and then obviously
8 you contract a brewer and then begin marketing the product.

9 Q In addition to the marketing of the product, was there
10 anything that you needed to do to raise funds for the company?

11 A Yes. We used a private offering.

12 Q What was that private offering memorandum called?

13 A It was called Empire State Brewing Company. It was just
14 a preferred 506, Reg D Rule 506 offering.

15 Q Did you seek any legal advice in preparing this private
16 offering memo?

17 A Yes.

18 Q Who did you call to seek legal advice?

19 A That would be Joseph Anile.

20 Q How did you come to learn about Joseph Anile?

21 A I was with an investment firm who was interested in
22 taking a look at the beer brand. And they had recommended
23 that I call him because I told them, you know, what I was
24 planning on doing, and they told me that he would be the type
25 of attorney I would need.

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1 Q Did you learn anything else about Mr. Anile and what kind
2 of an attorney he was at that time?

3 A Yes.

4 Q What did you learn about Mr. Anile?

5 A Well, I was told by the people who --

6 MS. BEDKE: Objection, hearsay.

7 BY MS. IRVIN:

8 Q Without saying that someone told you something, what did
9 you learn about who Mr. Anile was? What type of law did he
10 practice, if you know?

11 A Mr. Anile was a corporate attorney heavily involved in
12 securities and financial, regulatory-type issues.

13 Q Did you decide to call Mr. Anile to assist you?

14 A Yes, I did.

15 Q And when you sought out his legal advice, did you end up
16 hiring Mr. Anile?

17 A I do not believe I hired him for that project. I spoke
18 to him, but I never actually hired him. He did give me
19 advice, but I never hired him.

20 Q About what year was this when you first had this contact
21 with him?

22 A 1998, I believe it was.

23 Q Did you say 1998?

24 A Yes, 1998.

25 Q Now, when it got started how was Empire State Brewing

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1 doing?

2 A Well, we produced 10,000 cases of beer on our first run,
3 and we went out and we sold them into a few different states
4 and to different distributors, but I realized that we were
5 having a problem getting distribution into the main part of
6 New York that we needed. We had a distributor in Lower
7 Manhattan called Grill Beverages, and they hit the Wall
8 Street -- they covered the Wall Street area. But in
9 Westchester County where you wanted to really have the beer
10 sell, we were having problems because the larger distributors
11 like Bud and Coors, they refused to take -- the distributors
12 that had those products were restricted from taking our beer
13 on their trucks.

14 Q To deal with the distribution challenge that you had,
15 what did you do?

16 A Well, I decided to bring on someone from Budweiser to
17 assist me because it wasn't my industry and I didn't really
18 know about it. So I went to someone who was more expert in
19 the industry, and he recommended that we begin to create our
20 own distribution network within the areas that we were having
21 trouble.

22 Q Did that seem to help the initial distribution problems
23 or challenges you were having?

24 A Yes and no. We had to actually go out and purchase a
25 license again to distribute beer. And we ran into a gentleman

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1 who owned five of the beer and soda C licenses that I had
2 originally had with my brother which was the same type of
3 operation, but he had five locations and he was looking to
4 sell them.

5 Q Did your business stay solely distributing beer?

6 A No.

7 Q What else did Empire State Brewing end up distributing?

8 A So what happened was we made a deal to purchase those
9 five beverage centers. And in the process of buying them,
10 what you needed to do is in order to get the distribution in
11 that area, to have a truck run with just one brand on it, just
12 wasn't going to be profitable. So we had to go out and sign
13 up other brands to be willing to allow us to market them.

14 Q Was having these additional brands enough to keep Empire
15 State growing successfully?

16 A We were growing. The five beverage centers brought in
17 the 3 or \$4 million worth of retail sales. So we were
18 beginning to grow, but unfortunately that's a low margin
19 business that needs a tremendous amount of capital. So the
20 amount that I raised in the offering wasn't enough, and I had
21 to look to go out to a Merchant Bank see if we could raise
22 some additional capital.

23 Q What happened when you went to Merchant Bank to get more
24 funding?

25 A We ended up finding a Merchant Bank I believe it was out

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1 of Boston, and they offered to work with us to raise around
2 \$7 million, I believe.

3 Q What kind of financing was Merchant Bank giving you?

4 A They were looking for ownership in the company. So it
5 was going to be an equity deal.

6 Q What happened with that funding, with that \$7 million I
7 think you said?

8 A Well, we went through the process for quite a long period
9 of time. They were doing their due diligence. We were at the
10 time funding the operation from both the revenue from the
11 beverage centers and from my trading at Onsite Trading,
12 because what I did was I opened the account there for the
13 company and I had all my revenue go into the account to keep
14 it afloat until the time Merchant Bank was able to close the
15 deal.

16 Q Just so that I'm clear, at the same time that you were
17 growing Empire State Brewing, what else were you doing to
18 assist the financial growth of Empire State Brewing?

19 A I was actually trading at Onsite to keep the funds
20 flowing in, to keep Empire State Brewing funded while we were
21 waiting for the deal to close.

22 Q What happened with Merchant Bank and the funding that
23 they were going to provide?

24 A It was right around the Asian financial crisis, and they
25 ended up not being able to do the deal.

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1 Q As a result of -- and not being able to do the deal meant
2 what?

3 A It means that we had lots of commitments with different
4 brands, and we had -- we were in the process of closing the
5 deal on the five beverage centers because we are operating
6 them under contract, but we didn't close on them because we
7 needed the funds to close on them. So it made that entire
8 part of the operation just unable to continue because the
9 funding just wasn't there.

10 Q As a result, what happened to Empire State Brewing?

11 A I had to just piecemeal sell off what we had, and it
12 ended up having to close down completely.

13 Q How did this affect you personally?

14 A It was a big impact. I ended up having to file for
15 personal bankruptcy.

16 Q What year was this?

17 A I believe it was right around 1999, 2000. I can't
18 remember exactly.

19 Q How did you feel about filing for bankruptcy?

20 A Oh, it was devastating. I mean, I worked really hard to
21 build that business, to try and grow it. And to have
22 something like that happen where you were promised funding and
23 all of a sudden it just disappeared and I had put everything I
24 had into the company to keep it going in the interim. So it
25 was a devastating blow. Plus, it was a really fun business to

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1 do. It was enjoyable to try to grow it. So it was a big
2 disappointment.

3 Q What did you learn from your experience trying to build
4 Empire State Brewing that you would take going forward?

5 A Well, I mean, you learn I think more from failure
6 sometimes than you do from success, but I learned that you
7 can't go into something undercapitalized. And there were
8 quite a few lessons you learn, but one of them is I guess -- I
9 mean, it's a long time ago. So I'm just trying to think, and
10 I'm a little nervous obviously, but I can't think off the top
11 of my head just something specific. But it was obviously
12 something that was a very difficult time for us when that
13 happened.

14 Q You mentioned that at the same time you were building
15 Empire State Brewing, you were also still trading at Onsite
16 Trading, correct?

17 A Yes. That was roughly around the time of the Asian
18 financial crisis. And I believe oil had dropped to about \$11,
19 \$11.50 a barrel, and that was one of the opportunities I used
20 while I was there.

21 Q What kind of trading were you doing that might have been
22 different from what you were doing before?

23 A Well, it was similar to what I did at Onsite before. You
24 were putting up your own capital. Spear, Leeds is giving you
25 a large bank roll for the day. And depending on your

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1 positions and your performance, sometimes they increased it,
2 sometimes they don't, but you are able to invest in pretty
3 much anything you want because they had access to every
4 market.

5 Q You mentioned oil commodity trading, I think. How did
6 that impact you at this time working with that kind of
7 trading?

8 A Well, I started getting into the oil part of the business
9 because, like I said, oil had dropped to about \$11.50 a
10 barrel. And I think at that time the estimates were from
11 analysts that it took about \$14 to get it out of the ground.
12 So you knew no one was going to pump any oil until the
13 stockpiles start to be depleted. So at that point in time I
14 started buying oil and oil stocks, stocks that were very
15 depressed at the time.

16 Q What else did you start learning about with respect to
17 trading at about this time?

18 A So oil is dollar denominated. So usually when the dollar
19 is weak, oil is increasing in price. And when the dollar is
20 strong, oil is decreasing in price. So if you had a large oil
21 position and you wanted to hedge it, you'd use the U.S. dollar
22 to hedge it.

23 Q What does that mean to hedge something?

24 A It means to take an opposite, something that has an
25 opposite, an inverse point of view. If the dollar is going

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1 up, oil is going down. If oil is going up, the dollar is
2 usually going down. So if you are long oil, which means you
3 own the oil, you want to protect it with a dollar position to
4 offset it just in case.

5 Q In learning about this, is there anything else that you
6 started getting involved in with respect to trading? Since
7 you were talking about the importance of the dollar, was there
8 anything else that you got involved with at this time?

9 A Well, after Empire State Brewing went down, that was
10 about the time where I started looking into the currency
11 trading more as a full-time thing, because up until that point
12 in time I more or less just traded equities, equity options.
13 Started with the oil at Onsite. And then once I started using
14 the dollar to hedge that position, I decided to look into it a
15 little more. So at that point in time I went down to 44 Wall
16 Street. A firm was putting together a rigorous training
17 program on foreign exchange. And I believe it was about a
18 three- or four-week endeavor.

19 Q We have heard a lot about foreign currency trading. Can
20 an individual person, based on your experience, trade forex?

21 A Anyone can trade it if they like.

22 Q Where could an individual person trade forex?

23 A Usually there are companies within the United States that
24 offer retail services. FXCM is one of them.

25 Q In your experience, is forex trading risky?

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1 A Oh, yes, absolutely.

2 Q Why is that?

3 A Well, it's not so much that the currencies move a lot.
4 It's just that the leverage makes it risky. Currency moves in
5 very small increments. So if you are buying it for face
6 value, you have very little risk. But if you are using
7 leverage, then you obviously have risk. If you are trading at
8 50 times leverage and the currency declines 2 percent, you
9 have lost a hundred percent of your money.

10 Q So let's take one of those points and make sure that we
11 understand. Can you explain what you mean by leverage?

12 A Sure. Leverage means you put up a dollar. And you
13 could, let's say, buy \$10 worth of whatever you are buying.
14 So you can multiply your buying power.

15 Q What about that leverage description affects or makes
16 forex trading risky?

17 A Yes. Exactly.

18 Q Can you explain what makes it risky was my question.

19 A Okay. Well, the leverage makes it risky for the simple
20 fact that if you have a hundred thousand dollars and you are
21 trading \$10 million worth of currency at the time, it takes a
22 very small decline in the currency to wipe out the \$100,000
23 deposit.

24 Q About what year are we talking about when you start
25 getting involved in forex trading?

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1 A I remember it very clearly because it was after 911
2 because I had to go down to 44 Wall Street for the training
3 and everything was still there. So it was 2002.

4 Q By this point in 2002, roughly how many years had you
5 been working as a financial broker or trader for Wall Street
6 firms?

7 A Roughly from 1986 to 2002. So that's 16 years.

8 Q By this point in 2002, roughly how many years had you
9 been investing your own money in the stock market?

10 A Well, since I was 15 or 16, so.

11 Q Around 20 years?

12 A I guess, yeah.

13 Q By this point in 2002, were you still investing your own
14 money in the stock market?

15 A No. After -- pretty much I believe after I left Onsite,
16 that's when I went into the currency market. And I just
17 never -- I don't think I ever went back to the equity market.

18 Q Why was that?

19 A I just focused on the foreign exchange market. No reason
20 in particular.

21 Q Were you still investing in silver?

22 A Always.

23 Q And why is that?

24 A Silver is real money. 1792 Coinage Act of the United
25 States defines what a U.S. dollar is, and a U.S. dollar is

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1 371.25 grains of silver. So the reason why you want to own
2 silver is because it's real money. It will always be there.
3 Fiat currencies come and go. They always seek the -- they
4 will always end up at a value of zero at some point in time
5 because fiat currency means that it's by decree, it's fiat.
6 There's nothing to back it up.

7 Q It sounds like -- well, based on that description, where
8 do you put silver investing in your portfolio of investments
9 that you have?

10 A Well, silver would be a big part of it because, like I
11 said, it's real money.

12 Q Do you recall at this time if forex was regulated by any
13 government entity in 2002?

14 A In 2002, it was only regulated at the FCM level. That's
15 futures commission merchant. So the companies that actually
16 took in the money and facilitated the trading, the clearing
17 firms, they had a small amount of regulation. But anyone who
18 wanted to gather clients and trade, there were no regulations
19 in 2002 as of that moment.

20 Q What else happened in 2002 related to any business
21 opportunities that you might have had?

22 A So that was the year I formed International Currency
23 Traders.

24 Q What kind of business was International Currency Traders?

25 A It was a commodity trading advisor. So what we did is we

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1 managed individual accounts in the foreign exchange market.

2 Q What was your role in the business?

3 A I was the president of the company and the head trader.

4 Q For how many years did ICT operate?

5 A 2002 until we officially closed in 2009, but we ceased
6 trading after the Lehman Brothers collapse in the fall of
7 2008.

8 Q Now, getting back to ICT, is that the same ICT that you
9 were reading about in your journal when we started?

10 A Yes, it is.

11 Q I think I asked you earlier if forex was regulated in
12 2002. What year did that change, if you know?

13 A If I remember correctly, I think it was around 2005.

14 Q As a result of those 2005 regulation changes, what action
15 did you have to take?

16 A I became a member of the NFA, and I registered with the
17 CFTC.

18 Q Is there anything else that you had to do in starting
19 ICT?

20 A Sure. In order to be registered, you had to pass the
21 Series 3 which is a commodities exam.

22 Q Did you pass that exam?

23 A Yes, I did.

24 Q What was the purpose of passing the Series 3 exam?

25 A Just to show your ability and knowledge of the commodity

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1 futures market.

2 Q You mentioned something about Lehman Brothers. What was
3 happening in financial markets around 2007 and 2008?

4 A Well, 2007 -- really the mortgage crisis really began in
5 2006. There were liquidity issues throughout the system in
6 2006 and 2007, but it all came to a head in 2008 when Lehman
7 Brothers went down.

8 Q When you say "liquidity issues," what does that mean?

9 A Well, the markets, fixed income markets have overnight
10 lending between banks. So banks lend each other money to make
11 up the differences. If one bank has more cash and the other
12 bank has more assets, they have to switch sometimes. They
13 have to trade that. So what will happen is the liquidity
14 lines got tied up because banks didn't have liquidity and
15 banks were entrusting other banks at that point in time.

16 Q As a result of those mortgage-backed securities problems,
17 if you know, what happened?

18 A Well, the mortgage-backed securities caused the largest
19 financial crisis in American history.

20 Q How did that affect banks?

21 A Well, Lehman Brothers went down completely. Wachovia
22 Bank had to be taken over by Wells Fargo to survive. Merrill
23 Lynch had to be taken over by Bank of America to survive. AIG
24 was on the ropes. And because of that, their counterparty at
25 Goldman Sachs was in trouble. And therefore everybody went to

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1 the U.S. government to try and get a bailout to keep these
2 banks afloat.

3 Q Was Lehman Brothers one of those companies who were
4 bailed out by the government?

5 A No. They needed \$6 billion to survive. They were
6 allowed to go down, and it cost us a few trillion dollars to
7 do that.

8 Q How did this financial crisis affect ICT?

9 A Well, we got caught in the turmoil. So one evening our
10 clearing firm just shut their feeds off, and we ended up
11 getting hit on a position probably for about 80 percent of the
12 capital we had. So we had to shut down.

13 Q On what date or what time frame did ICT stop conducting
14 business?

15 A I think it was somewhere in October of 2008.

16 Q Did the U.S. government bail you out like it bailed out
17 other banks?

18 A No. I wasn't big enough for that.

19 Q How did closing ICT affect you financially?

20 A Oh, again it was devastating because our clients were
21 doing well and then overnight you have an 80 percent loss.
22 Everybody had individual accounts. They could log in. I was
23 a CTA. So we didn't touch any of the money. The money had to
24 go directly to our clearing firm. Our clearing firms set up
25 the accounts. The only thing I had was a limited power of

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1 attorney which allowed me to trade on their accounts. But we
2 lost probably 80 percent overnight.

3 So what I did at that point was I took everything we
4 had left in the firm, anything in our commission accounts,
5 anything anywhere in the firm and I credited back as much as I
6 could to each individual client on a percentage allocation.
7 And at that point in time, I told everybody I don't think we
8 are going to be able to do this anymore for a while because
9 the markets were in a tremendous amount of turmoil and we just
10 didn't have enough capital to be able to continue.

11 Q How did closing ICT affect you personally and
12 financially?

13 A Well, I was left with nothing because I had everything I
14 had in that company also. And at that point in time, you
15 know, when something like that happens and it was pretty
16 devastating, I just used what we had left to credit who was in
17 the accounts, and I walked away overnight. I had went from
18 having a successful company that had income to having nothing.
19 So that ended up causing me to declare bankruptcy once again.

20 Q Did you hire an attorney to assist you in that
21 bankruptcy?

22 A I did.

23 Q And who did you hire?

24 A Well, at first I called Mr. Anile again and I asked him
25 his advice.

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1 Q Let me stop you right there. You mentioned that you
2 called Mr. Anile. There had been some time since you had
3 spoken to him, had it not?

4 A No. He actually sets up -- yeah. He sets up -- he set
5 up ICT and the DaCorta Group in 2002 for me.

6 Q Did Mr. Anile represent you in the bankruptcy?

7 A No. I called him. He said he really doesn't do that
8 type of law, but he recommended someone for me to call.

9 Q After you closed ICT in late 2008, did someone contact
10 you about ICT?

11 A Yes.

12 Q And who or what agency contacted you?

13 A We were shut down for several months already. And I got
14 a call from the NFA saying they needed to do a closing audit.

15 Q How did they contact you? I think you said --

16 A My cell phone.

17 Q As a part of the NFA's audit, what did you decide to do?

18 A Well, what I decided to do was to sign an informal
19 agreement with them.

20 MS. IRVIN: Your Honor, may I approach the witness?

21 Thank you.

22 BY MS. IRVIN:

23 Q Mr. DaCorta, I'm showing you what's been previously
24 marked as Government Exhibit 111. Do you recognize it?

25 A Yes, I do.

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1 MS. IRVIN: Your Honor, may I publish?

2 THE COURT: Yes.

3 MS. IRVIN: Can I publish to the Elmo?

4 THE COURT: It was already admitted, right?

5 MS. IRVIN: It was, Your Honor.

6 THE COURT: Yes.

7 BY MS. IRVIN:

8 Q Mr. DaCorta, can you see this on the screen in front of
9 you?

10 A Yes, I can.

11 Q What's the date at the top of this agreement?

12 A It's August 9 of 2010.

13 Q And if you I'm going to turn to -- let me ask you this:

14 On page 2, do you recognize your signature?

15 A Yes, I do.

16 Q And what date did you sign this?

17 A August 9, 2010.

18 Q What were the reasons that you decided to sign this
19 agreement?

20 A Well, at the time I had no funds to hire an attorney. I
21 wasn't really thinking of staying in the business anymore. So
22 I just wanted to move on with my life.

23 Q And what did you understand the terms of the agreement
24 were?

25 A It was pretty simple. I was agreeing not to become a

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1 member of the NFA, to seek membership or to reregister with a
2 CFTC member firm or become a principal in one.

3 Q How did it affect your current NFA membership?

4 A Oh, well, I had applied to withdraw from membership even
5 before this happened. I applied before they even came for the
6 audit.

7 Q How did it affect any admission or denial as to the
8 audit's findings?

9 A Oh, I made sure I told their attorney that I wouldn't
10 admit to anything that they were alleging. So he agreed to
11 put into the agreement that I would neither admit nor deny.

12 Q What did it mean with respect to your agreement about
13 forex?

14 A It simply meant that I would not seek registration with
15 the CFTC or become a member of the NFA.

16 Q After you closed ICT in 2008, what did you do?

17 A Okay. So after I closed in 2008, I was -- I think
18 unemployed for about a year or two. It was a reasonable
19 amount of time. My wife had went and got a job at a medical
20 facility to kind of stem the tide while I was looking for
21 something. I was looking to change industries altogether. So
22 it was a little bit more difficult to find something because
23 you're looking to change from an industry that you were in
24 most of your life.

25 Q What was the reason that you wanted to change industries

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1 at that time?

2 A After what happened in 2008, I was just a little tired
3 and burnt out. It was a super busy time from 2002 and 2008.
4 I was working around the clock. And to have everything happen
5 in like one day, it was just so devastating that I just
6 decided to move on.

7 Q Around this time -- I think we are in about 2010; is that
8 correct?

9 A Correct.

10 Q Did you meet someone in 2010 as you were taking a break
11 from working in the financial industry?

12 A Well, the next thing I did was Ambit Energy with Ray
13 Montie. I believe that was June of 2011, if I'm not mistaken.

14 Q Who is Ray Montie?

15 A Ray Montie at the time was a national consultant with
16 Ambit Energy.

17 Q What is Ambit Energy?

18 A Ambit Energy is a company out of Dallas, Texas, that was
19 basically an electricity reseller.

20 Q How did you come to meet Ray Montie?

21 A At one point during the day, I believe it was a Friday
22 afternoon, I just received an email into my spam. And I never
23 look at spam emails, but for this one time in particular, I
24 clicked on it and it said an opportunity in the energy
25 industry. And being that I had traded oil and I had some sort

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1 of interest in that, I decided to call them.

2 Q What happened when you called the number?

3 A I called Ray. I got his voicemail. I left him a
4 message. He called me back probably an hour later.

5 Q What did you learn from your conversation with
6 Mr. Montie?

7 A Sure. I think we spoke for at least an hour, hour and a
8 half. He told me about his business. And I told him I think
9 it's something that I could be successful at. So we decided
10 to meet at a later date.

11 Q In addition to it being sort of a business that dealt
12 with electricity, what was it about the opportunity that drew
13 you to the business?

14 A Well, again, it's an opportunity to work for yourself and
15 control your own destiny. So I just thought because it was a
16 multilevel marketing company, I was never really into that.
17 However, when I heard what the product was, most multilevel
18 companies sell products. So you have to constantly call
19 people to see if they want to reorder. And on top of that,
20 the products are usually overpriced so that way the money
21 could make money and make everybody selling them make money,
22 but Ambit Energy was selling electricity. So if someone
23 decided to switch electricity bills and they were going to get
24 a discount, then every time they paid for their electricity,
25 you got paid a commission. So you really only had to sell

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1 them on it one time. And as long as their bill was discounted
2 and they were happy, every time they paid their electric bill
3 you made money.

4 Q The Ambit company that you were referring to, is that the
5 same Ambit that is -- that you read about, you read to us in
6 your journal earlier this afternoon?

7 A Yes, it was.

8 Q And is the Ray that is also mentioned in your journal,
9 that the same Ray Montie that you read to us from your journal
10 earlier today?

11 A Yes, it is.

12 Q For about how long did you participate in Ambit Energy?

13 A 2010 -- I mean, 2011 I started. I think I did it really
14 hard for a little while and then kind of slowly got less and
15 less, but I pretty much retained -- was within it probably
16 until I moved to Florida, because once I moved to Florida,
17 it's not in this state. The state is not deregulated with
18 electric. So they don't have any business here.

19 Q Did you work directly with Ray Montie, or was this just a
20 one-time phone conversation that you had with him?

21 A Oh, no. Ray went out of his way to drive from Long
22 Island to Poughkeepsie on a regular basis to help me build the
23 business.

24 Q And working together did you work just once a month?
25 Were you working together on a regular basis?

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1 A No. When you work with Ray, you work every day. So he
2 was up here. He was up in Poughkeepsie pretty much three or
3 four times a week helping me build my business. Every time
4 that I had appointments, he would come and help me until I
5 really learned how to do it on my own.

6 Q How did Ray Montie learn about your experience in the
7 financial world?

8 A We just were always together driving to different
9 meetings. So we would just talk as friends, whether it was
10 sports, politics, business. We just had conversations about
11 everything.

12 Q When he learned about your financial background, what did
13 he want you to do?

14 A Well, at some point Ray asked me if he would just put a
15 few dollars in an account for himself would I trade it for
16 him.

17 Q When you say would you trade for him, what was it that
18 you were going to be trading for Mr. Montie?

19 A Foreign exchange.

20 Q What was your response?

21 A At first I was a little reluctant because I was still
22 kind of feeling the effects of what happened with ICT, but Ray
23 has a way of convincing you. So I told him -- after a couple
24 of times, I said, sure, that's fine.

25 Q Did anything else affect your decision to start to trade

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1 for him in forex?

2 A Yeah. So I believe that I wasn't seeing the Ambit
3 business grow big enough, quick enough for me to support my
4 family. So I told Ray I loved the business, I enjoyed doing
5 it, but I think I'm going to have to go and pursue a full-time
6 job and do it part-time. So at that point in time he said
7 would it help if I gave you some money to trade for me and I
8 will split the profits with you.

9 Q Logistically, how is it that you traded for him?

10 A It was just simple. It was just a handshake. So he
11 opened an account for himself in his own name, and he just
12 gave me the login credentials.

13 Q With those login credentials, what did you end up trading
14 for him?

15 A What did I --

16 Q How much did you trade for him?

17 A I think he started with \$25,000.

18 Q And what happened with those trades?

19 A I think in about seven or eight weeks it was up to
20 33,000.

21 Q Did he pay you for the trades?

22 A Oh, yeah. He promised he would pay me. Whatever he
23 promised, he keeps his promise.

24 Q And what was the agreement between the two of you with
25 respect to the trades?

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1 A I think it was 50/50, but I think he probably even gave
2 me more because he knew I needed it more than he did. He is a
3 very generous individual.

4 Q After you traded that first I think you said \$25,000 for
5 him and made a profit, what did Ray Montie want you to do?

6 A Ray asked me if he could ask a few people to join us.
7 And I again was a little reluctant, and I said we can't do it
8 as individuals, individual accounts. I'm not going to log
9 into three or four different accounts at the same time. I
10 said if we did that, we have to kind of form a little
11 investment club.

12 Q Why would it be difficult or why couldn't you trade for
13 multiple people as individuals?

14 A Well, if they were individuals, you would literally have
15 to log in to every individual account. So if I buy something
16 for Ray and someone else -- by the time you get to someone
17 else, the price may have changed and then they are going to
18 have different results. And everyone's just all friends. So
19 it would be easier to trade from one account.

20 Q In making the decision to now trade for Mr. Montie and a
21 few other people, what was your plan or your thought about how
22 you would do this?

23 A We figured we would make a little club out of it. So I
24 actually purchased a company by the name of Oasis Management,
25 LLC, that was through Corp 95, I believe. They used to form

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1 companies. They were a service. They would form the company
2 in advance. Instead of you having to go through the process,
3 you would go on and buy it. The minute you bought it, you got
4 all the financial -- all the corporate documents.

5 Q So let's unpack that because there was a lot of
6 information in there. You decided that you were -- I think
7 you mentioned in deciding that you were going to do this small
8 group of trading, that you wanted to start a company. Is that
9 what you were --

10 A Right. The only way to do it is to form some sort of
11 entity.

12 Q And about how many people were going to be involved in
13 this club?

14 A It was a handful. I mean Ray said five or six people at
15 the beginning.

16 Q In deciding that you were going to invest for this small
17 group of people, take us step by step through how you came
18 about forming this company. What was the first thing that you
19 did?

20 A Well, the first thing I did was at that point in time I
21 just went online and found Oasis Management through the
22 service. And I was able to -- I was able to take it, get it
23 as a company in my possession, own it. And then at that point
24 in time I needed some advice about how to set it up.

25 Q So you said that you contacted a company called Corp 95?

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1 A Yes. I believe it was called Corp 95.

2 Q What is Corp 95?

3 A It's just a company that forms corporations in different
4 states. And you can kind of pick and choose whichever one you
5 like. It just happened that Oasis Management sounded like a
6 good name. So that's the one I chose. There were other ones
7 on the site at the time.

8 Q So it may not be something that a lot of people are
9 familiar with. So that's the reason I'm taking you through
10 this step by step. You contact Corp 95. Where is the company
11 located?

12 A Oasis was a Wyoming corporation.

13 Q And when you talk about the companies that already had
14 names, is there a particular name that is given to these kinds
15 of companies?

16 A They are called shelf companies because they are already
17 formed. They have never been used. No one has ever owned
18 them before. They are formed by the agent whoever formed
19 them, an attorney. And they are just on a shelf waiting to be
20 purchased. They are already done. So you don't have to go
21 through the process of getting an EIN number, a taxpayer
22 number for the corporation. All of that is already done.

23 Q In addition to those benefits that you have talked about
24 with respect to a shelf company, is there anything else that
25 is a benefit of having a shelf company that is already made?

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1 A It was just much quicker. And on top of that, it's just
2 more cost effective. It was all set up already and it saves
3 you time. So the cost of setting it up is probably similar to
4 going and getting it set up from scratch, but you just save a
5 few days.

6 Q Who were the principals of this new company, Oasis
7 Management?

8 A It was just myself. And then the limited partners
9 started to come in. So Ray was obviously the first limited
10 partner, Ray Montie.

11 Q So in your role in Oasis Management, were you a general
12 partner? Were you a limited partner?

13 A I was a general partner.

14 Q With respect to Ray Montie, I think you said this
15 already, was he a general or limited partner?

16 A He was a limited partner.

17 Q And about how many other limited partners do you recall
18 there being when you first started Oasis Management, LLC?

19 A I think it was a handful, maybe six or eight.

20 Q Approximately if you recall, how much money were the
21 limited partners providing for trading?

22 A I think the total including Ray's money at that time was
23 about 90 or \$95,000.

24 Q What kind of trading were you going to do for this Oasis
25 Management company that included these limited partners?

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1 A Yes. We did foreign exchange again, and we did it
2 through CitiFX, which is owned by Citigroup.

3 Q When you say that you did the trades through CitiFX, what
4 is CitiFX?

5 A CitiFX was a foreign exchange dealer, but it was owned by
6 Citigroup. So it was within the Citibank corporation.

7 Q Was there any decision that you made about how you were
8 going to trade the funds that had been provided to Oasis
9 Management from the limited partners?

10 A It was just -- we were just trying to get in and make
11 some money, but it was something that was very limited. So
12 what we would do is go in, trade here and there a day. It
13 wasn't like trading around the clock. It was just a trade
14 here, trade there and try to generate profit. And if I
15 generated enough profit within a few days or a month or a
16 week, I would just stop trading for the month.

17 Q Were there any decisions that you made about the way that
18 you were trading to affect the risk?

19 A Yes. So what happened was after what happened with ICT,
20 I never again wanted to put up 100 percent of the capital we
21 had to trade. So what I did is I would put a small percentage
22 of it. I would keep the rest back, and I would use the
23 leverage to be able to reflect the return on the total amount.

24 Q And so to be clear, in order to do that, what was the
25 decision that you made about the funds that you were going to

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1 be trading on CitiFX?

2 A It was going to be traded in one corporate account.

3 Q And anything, any decision that you made regarding what
4 percentage might be traded on that account?

5 A It depended, but I think, you know, we never put more
6 than 40 or 50 percent of the money into the account.

7 Q Did this small Oasis Management investment club do well?

8 A It did. The first few months we did extremely well. I
9 think the only statement I know of that exists, CitiFX, I
10 think we were up \$281,000 in May of 2012. So we only had to
11 put up 200,000. And then we added another 200,000 I think
12 somewhere late in April. So by May we had a significant
13 return on our money in a few months' time.

14 Q As a result of this short-term success, what, if
15 anything, did Ray Montie want to do?

16 A Me and Ray, we'd constantly talk. And we talked about is
17 there any way to turn this into a real business. It's just a
18 club. And again I was reluctant because I knew what happened
19 with ICT. I obviously knew of the NFA letter. So at that
20 point in time, I said if we want to do something, we need to
21 call and ask an attorney.

22 Q In making that decision to call an attorney, who did you
23 call?

24 A I called Joe Anile.

25 Q Before we get to the agreement, why Joe Anile?

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1 A Joe Anile had set up ICT. And Joe Anile was probably at
2 that time someone that I knew of that was one of the best
3 corporate and financial attorneys that I knew.

4 Q What was the purpose for calling Mr. Anile?

5 A I called him to ask him if he would want to meet with us
6 because we were thinking about doing something a little bit
7 more with our idea. And I asked him if he would sit down with
8 us and kind of just, you know, talk and bat around ideas.

9 Q Where is it that -- well, before I get there, was it only
10 you that was going to meet with Mr. Anile?

11 A Oh, no. Me and Ray were going to meet him together.

12 Q Do you know whether Mr. Anile and Ray Montie knew each
13 other at that time?

14 A No, they did not.

15 Q Where is it that you decided to meet?

16 A We met initially at a diner on Long Island. And it was a
17 combination of a little Ambit talk and then afterwards talk
18 about how to proceed with the ideas we were thinking of.

19 MS. IRVIN: Can I just have one moment, Your Honor?

20 BY MS. IRVIN:

21 Q When you went to meet with Mr. Anile and Mr. Montie, what
22 was the purpose of the discussion?

23 A Well, the purpose of the discussion was to seek his
24 counsel on how to maybe turn a small investment club into a
25 business again.

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1 Q Would you say it was a brainstorm or do you think it
2 was -- would you say that this was just to float the idea to
3 Mr. Anile?

4 A Yes. This was just an initial meeting. During that
5 meeting, you know, Joe agreed that he would help us in some
6 way. And he said give me a couple of days to think it over
7 and I'll call you back. And he did a couple days later.

8 Q Do you remember if you and Mr. Anile met again following
9 that meeting and at the diner with Mr. Montie?

10 A Yes.

11 Q Let's just take it step by step. Do you remember when
12 you met Mr. Anile again?

13 A Yes. So first he called me and he said he had some ideas
14 and he would like to meet again. So he said he was willing to
15 drive to my home in Poughkeepsie and he did that.

16 Q When you say he had to drive up, where was Mr. Anile
17 living at the time?

18 A Joe lived on Long Island.

19 Q What was the purpose of this meeting?

20 A This was a brainstorming meeting. I wanted to give him
21 more information, and I wanted him to give me some feedback on
22 what he thought would be a proper way to proceed.

23 Q Where did this meeting take place?

24 A At my home in Poughkeepsie, 5 Pat Drive.

25 Q Was anyone else home at the time that you met with

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1 Mr. Anile?

2 A I think Carolyn was home.

3 Q Do you remember about what time of day it was?

4 A He came around 10:00, 10:30 because he wanted to leave
5 after the traffic subsided. So he got to my house probably
6 between 10:30 and 11:00.

7 Q As part of your discussion that you said was
8 brainstorming, were you talking about how this company that
9 you were trying to form would be formed?

10 A Yes.

11 Q And did Mr. Anile give any suggestions for the structure
12 of the company?

13 A Yes, he did. The first thing we did was we just talked
14 about broad ideas. And the first thing I did was I showed
15 Mr. Anile the letter from the NFA before we proceeded and did
16 anything.

17 Q Where was the letter from the NFA located in your house,
18 if you remember?

19 A Yeah. Actually it was just in a file I had. I think --
20 I'm not sure where. It was probably in my office though, but
21 I had the letter available.

22 Q Why did you show the letter to Mr. Anile?

23 A Because I wanted to make sure whatever we did we'd be in
24 compliance with that letter.

25 Q Explain what you mean about being in compliance with that

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1 letter.

2 A Well, the letter clearly stated that I agreed not to
3 reregister with the CFTC or become a member with the NFA. So
4 I wanted to make sure whatever he decided to structure, we
5 would not need to seek membership. And if we did, I would ask
6 him to go and contact them to renegotiate it if it needed to
7 be done.

8 Q Do you recall if Mr. Anile read the letter?

9 A He did, absolutely.

10 Q Actually, let me correct that. Do you recall if
11 Mr. Anile read the NFA informal agreement?

12 A Yes, he did.

13 Q And was that agreement that you showed to him, if you
14 remember, the same signed agreement that we reviewed earlier
15 this afternoon?

16 A Absolutely. That's the one it was.

17 Q What was Mr. Montie's reaction to reading the NFA
18 informal agreement that you signed?

19 A Mr. Montie didn't read it.

20 Q Pardon me. Mr. Anile. What was Mr. Anile's response to
21 you showing him the NFA informal agreement?

22 A He looked at it. He read it. And he said this won't be
23 a problem with anything. We are going to structure.

24 Q At that time, Mr. Anile was working in what kind of
25 capacity as an attorney, if you know?

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1 A He was just -- he was an attorney. I mean, he was a
2 financial attorney, a corporate attorney. And he knew
3 regulations both from the SEC side and the CFTC side.

4 Q At that time when you are having this conversation with
5 Mr. Anile in 2012, for about how long had you known Mr. Anile?

6 A Since 1998.

7 Q What did you know about his reputation?

8 A His reputation as far as I know was stellar. I mean,
9 everyone I ever met that knew him told me what a great guy he
10 was and told me how smart he was. Everybody would comment on
11 how smart he was and how successful he was. So obviously I
12 never envisioned him wanting to be a partner because I didn't
13 think he would want to be a partner with me and Ray doing a
14 small deal, but he was someone that I had a great amount of
15 respect for.

16 Q Was he someone that you trusted?

17 A Oh, absolutely.

18 Q Did you rely on his counsel, his advice that he was
19 giving you regarding the NFA informal agreement?

20 A Absolutely, 100 percent.

21 Q In brainstorming the company that you wanted to form, how
22 did you envision your role in this new company?

23 A Well, I envisioned that I would take care of the
24 investment end of it, Joe would take care of the legal end of
25 it, and Ray would take care of the marketing end of it.

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1 Q Why is that?

2 A Because Ray was a marketing guy, I traded, and Joe was
3 the attorney. So it made sense.

4 Q When you say that Joe was the attorney, did you envision
5 or discuss that he would only be in charge of legal?

6 A Well, at that point in time we were talking about a hedge
7 fund. And I didn't expect Joe to ask to be a partner. But he
8 said, you know, what I would love to do, he says I would love
9 to be a partner on this if you guys are willing to take me as
10 a partner.

11 Q So you said that you did not think that he would -- you
12 had not thought about him being a partner. You had thought
13 about him being in charge of legal. Was there anything else
14 that you thought you would want him to be in charge of if he
15 was going to be a part of this company?

16 A Well, if he was going to be a part of the company, the
17 only realistic reason why I would give him a partnership is
18 for his legal and compliance experience.

19 Q I think you mentioned that he suggested a hedge fund as a
20 possible structure for this company?

21 A Yes.

22 Q What's a hedge fund?

23 A A hedge fund is just a fund that takes in money from
24 different investors. And it's usually much longer term. It's
25 not very liquid. So usually you have to tie your money up for

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1 three to five years at a minimum. And you make investments in
2 whatever you tell people you are going to make investments in.

3 So you have an offering, and the offering specifies what the
4 fund is going to do. And then you pursue those investments.

5 Q What were the goals that you and Mr. Montie and Mr. Anile
6 had for this company that you were working to form?

7 A Well, after the 2008 crisis, the one thing I wanted was
8 liquidity. So it was absolutely essential to me that whatever
9 we formed, we didn't tie the people up for three to five years
10 like a normal hedge fund did.

11 Q Any other goals that you had?

12 A Well, you are always going to have goals of growing your
13 business and being successful. But for the most part we
14 wanted it to be liquid, and we wanted it to be something that
15 we would pursue different investments so we could diversify.

16 Q Was a hedge fund created?

17 A Yes.

18 Q What was the name of the hedge fund?

19 A Sierra Partners.

20 Q Was there a similar offering for funds for Sierra
21 Partners?

22 A Yes. We did a confidential private offering memorandum,
23 but this time we did a Reg D 504, not a 506.

24 Q Who did the legal work for that offering?

25 A Joe did it all.

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1 Q When we talk about the legal work that he did for setting
2 up a hedge fund, if you know what does that entail?

3 A Well, I mean, it's a little bit more involved than just
4 setting up a company. So I don't know the details, but
5 Mr. Anile had a lot of experience doing it. And he said, you
6 know, he'll handle all of that. And within a few weeks he had
7 it all set up.

8 Q Is there anything generally that you understand about --
9 even though you may not understand the details, were there
10 general things that he was doing to create the Sierra fund
11 hedge fund?

12 A Sure. Once you form the company and the partnership, you
13 have to go out and get prime brokers, banking relationships.
14 You have to sign agreements with those prime brokers and
15 banking relationships. So he did all of that behind the
16 scenes while we were working on figuring out how to set up the
17 investment end of it.

18 Q Once Mr. Anile completed that hedge fund setup for Sierra
19 Partners, what was your reaction to the final product as a
20 hedge fund?

21 A Well, initially when I looked at it, I realized that the
22 prime broker setup he had set up for us, I believe it was
23 through Cowen & Company, the minimums were extremely high.
24 And I thought to myself we are never going to be able to grow
25 a business big enough, fast enough to offset the minimums. So

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1 that and then the fact that it did not turn out to be as
2 liquid as I had requested, I decided it's not something we
3 should continue to pursue.

4 Q As a result of that, what did you and Mr. Montie and
5 Mr. Anile decide with respect to Sierra Partners hedge fund?

6 A We decided to just put it on the shelf.

7 Q And when you say "put it on the shelf," what do you mean?

8 A It's formed. It was a formed hedge fund and it had some
9 value, but I believe we had one investor who sent in a hundred
10 thousand dollars. It was in escrow. We just sent him his
11 money back and we just put the company on hold.

12 Q After you put the company on hold, then what did you and
13 Mr. Anile and Mr. Montie decide to do?

14 A We began to think about ways of moving forward. And at
15 that point in time I knew sort of the structure I wanted to
16 do, but Mr. Anile and I decided that -- I believe he spoke
17 with outside counsel. I think it was Jack Drohan. And I
18 think at that point in time we decided to set up a registered
19 investment advisor in the Cayman Islands.

20 Q Before we talk about that investment advisory company, at
21 this point what is your role in -- again, you are still
22 forming this company. Is your role staying the same as the
23 person that -- the roles that you were going to have in Sierra
24 Partners?

25 A Yes. Pretty much. I was going to be the investment

DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 maker, the investment decision maker. Joe was going to be the
2 attorney. Ray was going to help with marketing.

3 Q Now that you are moving to a new idea, what was going to
4 be the name of this company?

5 A Well, since I had Oasis Management already set up, I just
6 told Mr. Anile that why don't we keep the name similar. So he
7 formed it at Oasis International Group.

8 Q If you recall, how do you remember Mr. Anile setting up
9 the structure between Oasis International Group and Oasis
10 Management, LLC?

11 A So at the beginning they were and they remained two
12 separate companies. Over time we began to -- I began to make
13 Oasis Management mirror what Oasis International Group was
14 because my goal was to merge the two and bring them together.
15 So I believe we would have achieved that in 2019. So Oasis
16 International Group would have owned a hundred percent of
17 Oasis Management.

18 Q So that moved us way forward into the future. But back
19 when it was just beginning, was there a certain relationship
20 that was created or that there was a thought to creating
21 between Oasis International Group and the already existing
22 Oasis Management, LLC?

23 A Well, eventually when Oasis International Group got off
24 the ground and we would use -- Oasis Management, instead of
25 using CitiFX, we would end up using Oasis International Group.

DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 Q Were one of those two companies going to be considered a
2 retail company or a parent company?

3 A Yes. Oasis International Group would have been the
4 parent company of everything we did from here on in.

5 Q In creating the funding for this company, was there a
6 fund offering made?

7 A Yes. There was another offering.

8 Q Who wrote that offering?

9 A Mr. Anile did.

10 Q When we talk about this offering, is there an official
11 name for what this offering memorandum is called?

12 A Yes. It's called CPOM, confidential private offering
13 memorandum.

14 Q Even though it's called a memorandum, is it short or is
15 it lengthy?

16 A It's lengthy.

17 Q Is this something that you would have created, or is this
18 something that Mr. Anile drafted?

19 A No. Mr. Anile took care of that.

20 Q As part of the confidential -- excuse me. As part of
21 this offering memorandum, what kind of information is included
22 in this memorandum, if you know?

23 A Nature of the business, who the officers are, the stock,
24 how the stock is distributed, how many shares you are selling,
25 what type of shares you're selling, how the new shareholders

DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 will be treated as far as what their stock, whether it's a
2 voting stock, nonvoting stock. So there is a lot of
3 information within it. There are risk factors obviously in
4 it, but there is a tremendous amount of information.

5 Q With respect to this offering for funds, really that
6 means you are raising funds for Oasis International Group,
7 right?

8 A Correct.

9 Q And what were the kinds of stock offerings that were
10 offered?

11 A We offered preferred shares, so --

12 Q What does that mean?

13 A Preferred shares are ahead of the common shares. So we
14 as owners owned the common shares, and we gave the
15 shareholders a position above us which is the preferred
16 shares. So their shares have to be worth more than they put
17 in before our shares could be worth anything.

18 Q In addition to this preferred stock offering, what other
19 steps did you and Mr. Anile and Mr. Montie have to take to get
20 OIG off the ground?

21 A Well, I mean, obviously we had to begin to operate the
22 business. So once we raised some funding, and we broke
23 escrow, at that point in time we had to set up a clearing
24 firm.

25 Q And what clearing firm did you use?

DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 A We used CFH in London the first time.

2 Q For how long did you use CFH?

3 A From the beginning, which I believe is 2013-ish, to
4 somewhere around the early part of 2015.

5 Q What's the purpose of CFH with respect to your business
6 that you are running in OIG? What are they doing for you?

7 A So they were essentially the clearing end. They provided
8 the back office system. They provided the trading platforms,
9 and they provided the clearing services.

10 Q We were heard a lot about the back office. Just to give
11 some context to that because it's been a little while, when
12 you were working on Wall Street back in the '80s and '90s,
13 what did a physical back office look like?

14 A Well, back then it was fairly large room with lots of
15 desk and lots of papers, but technology kind of changed that a
16 little bit.

17 Q What was the purpose of the back office whether then in
18 the late '80s and '90s or now when we are in about 2010 in our
19 timeline here?

20 A The back office is to simply keep track of everything
21 going on on the front end, everything that's going on in the
22 trading desk, everything that's going on within your
23 operations. So whatever happens during the day, it has to go
24 through your back office. All the trades have to be cleared.
25 If there's any errors or trades that don't match up, you have

DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 to make sure they are matched up. So it's a really
2 administrative part of the business.

3 Q Is it also an accounting part of the business?

4 A Absolutely.

5 Q Is that the purpose that CFH was going to accomplish for
6 OIG? That's why you had them?

7 A Right. When you're trading and you need to have those
8 trades distributed among different subaccounts, you need some
9 sort of accounting system to do that.

10 Q In addition to CFH, was there anything else that OIG
11 needed to have to start operating?

12 A Well, I mean obviously besides the capital, besides a
13 clearing firm, well, we wanted -- you don't need a
14 broker-dealer, but I wanted the broker-dealer after my
15 experience in 2008.

16 Q Why did you want a broker-dealer?

17 A Well, the broker-dealer is something that -- you place
18 your money with the broker-dealer. So if you are trading
19 without it, you are putting pretty much all your money out to
20 trade. With the broker-dealer you could put a percentage of
21 it up. So after learning what happened in 2008 and not having
22 any control over that and then having at that time our
23 broker-dealer, which was Icon Global Markets, have a very bad
24 evening where they shut our feed off and we couldn't trade for
25 two or three hours, I never wanted to see that happen again.

DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 Q So let's talk about where the broker-dealer is located.

2 Where is the broker-dealer that you all decide to purchase?

3 A So the first one at the advice of Mr. Drohan in New York
4 City, who is a very high-level CFTC attorney, he goes around
5 the country speaking on CFTC issues, he recommended a company
6 in New Zealand.

7 Q Was OIG successful in purchasing the New Zealand
8 broker-dealer?

9 A Yes, we were.

10 Q Is that the same broker-dealer that you referred to when
11 you were reading from the journal earlier that afternoon?

12 A No. That was a different one.

13 Q Okay. Let me go back to when you started. I think you
14 mentioned the Caymans. Why was the decision made to domicile
15 OIG in the Caymans?

16 A Both Mr. Anile and Mr. Drohan thought that would be a
17 good place to be. At the beginning of our operations, we were
18 thinking of offering services outside of the United States,
19 regular customers. And inside the United States we would only
20 accept ECPs. And at that point in time everyone would have
21 their own subcontract, and everyone would see everything
22 that's going on in the back office as far as each trade.

23 Q So this is again early on in the formation of OIG. And I
24 heard you say that you were only accepting ECPs; is that
25 correct?

DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 A That's correct.

2 Q What's an ECP?

3 A Eligible contract participant.

4 Q What is an eligible contract participant?

5 A It's a person that has a level of expertise and wealth
6 that the regulatory agencies feel that they don't need advice
7 from the regulatory industry to make their own decisions.

8 Q What was your understanding of the amount of wealth that
9 an ECP must have, if you know?

10 A Mr. Anile used to handle this, but I think it's either
11 five or \$10 million in net worth.

12 Q With respect to any ECP that would be providing funds to
13 Oasis International Group, would that person go through
14 Mr. Anile?

15 A Yes. They would have had to fill out a questionnaire,
16 provide ID, provide an electric bill, certain amount of
17 information, and then Mr. Anile would have to either approve
18 it or not approve it.

19 Q Again, this time it's early on, what is your role in
20 Oasis International Group at this time while you are just
21 purchasing the broker-dealer and just starting the company?

22 A So I was the CEO. And at that point in time I was
23 looking to reach out to bring a few people into the company
24 that may help us grow.

25 Q At that time were you taking a salary?

DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 A No.

2 Q How were you being compensated for your work?

3 A I always was compensated through Oasis Management.

4 Q What was Mr. Montie's role or position in OIG at that
5 time?

6 A He was the president.

7 Q And did Mr. Montie take a salary from OIG?

8 A I'm sorry. I thought you said Mr. Anile.

9 Q No. Mr. Montie.

10 A Mr. Montie was an equal partner.

11 Q Did Mr. Montie take a salary, if you know?

12 A No.

13 Q How often would you speak with Mr. Montie about the
14 day-to-day business of, first, Oasis Management, LLC?

15 A We spoke more about Ambit at that point in time and OM,
16 LLC, early on. That would be like an after conversation just
17 because we were together a lot.

18 Q How often would you speak or meet with Mr. Montie about
19 Oasis International Group?

20 A Again, it would be sporadically. Maybe a couple days a
21 week we would talk about it just in general.

22 Q Now, let's talk about Mr. Anile's role. What was
23 Mr. Anile's role in Oasis International Group?

24 A Well, as an equal partner he was -- when I spoke to Ray,
25 I said, Ray, Joe would like to be a partner in this.

DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 And he said, what do you think?

2 And I said, well, Joe is one of the top attorneys I
3 know. If we could have him in-house, I think it's a smart
4 thing to do to have an attorney as one of your partners. So
5 that was the only reason why we would have Joe as a partner,
6 because that was what he did. That was his function, to be
7 our attorney and be our compliance officer.

8 Q You heard Mr. Anile testify that he was not the attorney
9 for OIG. What is your reaction to that?

10 A That's a false statement.

11 Q Why is that?

12 A He was always the attorney. Pretty much everyone who
13 testified here only knew him as the attorney for OIG. And
14 there would have been no reason to offer him a partnership
15 because he didn't bring anything else to the table.

16 Q How was Mr. Anile compensated for his work at that time?

17 A My initial agreement with Mr. Anile was to pay him
18 \$10,000 a month.

19 THE COURT: All right. Well, let's stop right there.
20 Let's call it a week, shall we?

21 Ladies and gentlemen, we are making very good
22 progress. I will have a report for you Monday once I figure
23 out kind of where we are. We are making very good progress.

24 Please leave this case right here. Don't even think
25 about it. It's not over yet. And I will see you Monday. Can

DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 we come in Monday at 8:30? Is that a hardship or can we do
2 it? Let's get after it.

3 Thank you very much. Please have a very good
4 weekend.

5 (Jury escorted out of the courtroom.)

6 THE COURT: Have a good weekend, everybody.

7 (Proceedings concluded at 4:43 p.m.)

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DIRECT EXAMINATION OF MICHAEL J. DACORTA

1 UNITED STATES DISTRICT COURT)
2 MIDDLE DISTRICT OF FLORIDA)

3
4 **REPORTER TRANSCRIPT CERTIFICATE**

5 I, Tracey Aurelio, Official Court Reporter for the United
6 States District Court, Middle District of Florida, certify,
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8 the foregoing is a true and correct transcription of the
9 stenographic notes taken by the undersigned in the
10 above-entitled matter (Pages 1 through 259 inclusive) and that
11 the transcript page format is in conformance with the
12 regulations of the Judicial Conference of the United States of
13 America.

14 /s Tracey Aurelio

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Tracey Aurelio, RMR, RDR, CRR
Official Court Reporter
United States District Court
Middle District of Florida
Tampa Division
Date: September 4, 2022

EXHIBIT B

**CFTC RESPONSE IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT BY
DEFENDANT MICHAEL J. DaCORTA**

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)
) 8:19-cr-605-WFJ-CPT-1
 PLAINTIFF,) Tampa
) April 25, 2022
 v.) 9:07 a.m.
)
 MICHAEL J. DACORTA,)
)
 DEFENDANT.)

DAY 6
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

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I N D E X

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(Proceedings commenced at 9:07 a.m.)

THE COURT: Thank you for the memos. We can talk about that at the end of the day today. It sure looks to me like that last sentence in 803(3) is sort of tailor-made for this exhibit. So let's keep going, and we can talk about it at lunch or at the end.

MR. ALLEN: Assuming the Court decides to not let it in without Mr. DaCorta testifying, I would still like to be able to have him identify it as something that came from the house.

THE COURT: Well, he's on the stand, right?

MR. ALLEN: Yes.

THE COURT: And the problem with you doing that before is you, because you're a good lawyer, you did the big windup.

MR. ALLEN: If the Court would prefer, I think they are going to call Agent Batsch and I can do it through him.

THE COURT: And the question is was Defense Exhibit 71, or whatever the number is, was this also found in the house, and the answer is yes. It's not the big windup.

MR. ALLEN: Yes, sir.

THE COURT: I'm delighted to hear from you. The last sentence in 803(3), which I'm not sure you discussed expressly in your thing is -- I have been on the other end of that too.

CROSS-EXAMINATION OF RICHARD VOLP

1 It's like, oh, come on. Anyway, I haven't read all the cases
2 yet.

3 MS. BEDKE: So just to be clear, Your Honor -- I'm
4 sorry. So it's not going to come up with this witness but it
5 will with Agent Batsch.

6 THE COURT: Right.

7 (Jury escorted into the courtroom.)

8 THE COURT: Thank you very much, ladies and
9 gentlemen. I hope everybody had a good weekend.

10 So where is our witness?

11 MR. ALLEN: They just went to get him, Your Honor.

12 THE COURT: Counsel, you're on cross.

13 MR. ALLEN: Thank you, Your Honor.

14 BY MR. ALLEN:

15 Q Good morning, sir.

16 A Good morning.

17 Q Sir, when we left off on Friday, I was making my way
18 through your handwritten notes of your interview of
19 Mr. DaCorta a little over three years ago on April 18 of 2019.

20 Do you recall that?

21 A Yes, sir.

22 Q Would it be fair to say that you cannot recall every
23 specific question I asked you on Friday and every specific
24 answer you gave?

25 A Yes, that's correct.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q And that's because our human minds don't work that way?

2 A Yes, that's correct.

3 Q And you would agree with me, would you not, that if I
4 asked you that same question three years from now, it would be
5 even more difficult to recall specifically what you said and
6 what I asked?

7 A That is correct.

8 Q On page 3 of your handwritten notes, I believe we left
9 off where you wrote, "Joe Anile -- friend for many years --
10 M.D. asked him to advise." And I assume M.D. is your
11 shorthand for Michael DaCorta?

12 A Yes, that's correct.

13 Q And does "asked to advise" mean legal advice?

14 A On how to set the companies, the LLCs and things like
15 that for the businesses and the properties.

16 Q Underneath that you note that he's a partner in Oasis
17 Global, meaning Joe Anile?

18 A Yes.

19 Q "Has access to back office but not trading account."
20 Does that refer to Mr. Anile?

21 A Yes.

22 Q Having access to what back office? The ATC back office?
23 The Oasis back office, or do you recall?

24 A I believe it was the Oasis back office.

25 Q Not access to the ATC account, Spotex account?

CROSS-EXAMINATION OF RICHARD VOLP

1 A I do not know for sure if he had access to the Spotex
2 account.

3 Q Because you can't recall specifically looking at your
4 notes three years later?

5 A I don't know if it's that specifically or that it was
6 specifically differentiated between Oasis back office, Spotex
7 back office or ATC. I don't recall at this time.

8 Q Because memories fade?

9 A Yes, sir.

10 Q You have then, "Knows what the" -- is that numbers?

11 A Yes.

12 Q "Knows what the numbers are and lost money in trading"?

13 A Yes, sir.

14 Q Referring to that Mr. Anile knows what the trading
15 numbers are, and that at that moment in time that you were
16 interviewing Mr. DaCorta, they were having losses in trading?

17 A Yes, sir.

18 Q "Does all the bill paying and contracts." What's the
19 word after that?

20 A "Wires go out."

21 Q "Wires go out."

22 A Yes, sir.

23 Q Does that refer to Mr. Anile doing all the contracts,
24 like drafting the contracts and sending the wires out of the
25 domestic bank account?

CROSS-EXAMINATION OF RICHARD VOLP

1 A I believe so, yes.

2 Q You believe so or you know? You have a specific memory?

3 A Yes, sir. That's my understanding, that Mr. Anile was
4 the one responsible for sending the wires out.

5 Q How are you certain that's your understanding? Because
6 Mr. DaCorta said it or because you know that from being
7 involved in investigating this matter for three years?

8 A That's my memory from our interview with Mr. DaCorta at
9 that time.

10 Q How do you know it's not a memory that was created
11 falsely because of your investigation and knowledge of
12 everything else about this case?

13 A I guess it would be impossible to know if somehow
14 memories are falsely created, but my memory on this is from
15 the interview from that day, sir.

16 Q You then have, "M.D. handles trading and what assets to
17 acquire." Maybe I did ask you this because now I'm having a
18 memory. That would be Mr. DaCorta doing the forex trading.
19 And the "assets to acquire" would be the real estate and gold
20 and silver?

21 A Yes.

22 Q You have, "J.A. is aware there is no revenue coming in."
23 Is that in reference to the same domestic account that you
24 were talking to Mr. DaCorta about earlier in the interview?

25 A That's referring to Oasis in general, that there's no

CROSS-EXAMINATION OF RICHARD VOLP

1 revenue stream. If you remember on page 1, the bottom, when
2 we asked where his revenue stream is, he said, "I don't know."
3 And again, then, he's saying here there is no revenue stream
4 coming in.

5 Q Correct. And on Friday when I was talking about the
6 revenue stream, do you not recall that your answer being,
7 yeah, we were looking at the domestic account and we saw no
8 other revenue stream coming into the domestic accounts?

9 A Yes, sir. I remember our conversation from Friday.

10 Q Then, "Has not added up how much money is owed to
11 investors -- thinks owes 50 million." Is that referring to
12 Mr. Anile or to Mr. DaCorta?

13 A Mr. DaCorta.

14 Q "Trusted J.A.," that refers to Joe Anile, "to take what
15 he needs to live on"?

16 A Yes. Yes, sir.

17 Q So Mr. DaCorta is saying that he trusted Mr. Anile to
18 properly manage the domestic bank accounts?

19 A That when asked how Mr. DaCorta and Mr. Anile knew how
20 much to take or what their agreement was as far as personal
21 living expenses or extravagant expenses, that Mr. DaCorta said
22 that Mr. Anile is -- let's see here. I lost my spot on my
23 notes, but that he would trust that he took what was needed to
24 live off of.

25 Q You would agree with me that there is nothing in your

CROSS-EXAMINATION OF RICHARD VOLP

1 written report that talks about extravagant spending, any of
2 the other stuff that you just added to the line of, "Trusted
3 J.A. to take what is needed to live on"?

4 A I believe there is reference to that directly, sir.

5 Q On this page where that line is written?

6 A Previously in our conversation on, I believe maybe page 1
7 or 2. I would have to review exactly where, but I do believe
8 that it talks explicitly about that.

9 Q Would you agree, "Needs to live on," does not give one
10 the inference of extravagancy?

11 A I agree with that.

12 Q And you chose the words "needs to live on," correct, in
13 this report right here?

14 A Yes, sir.

15 Q "M.D. cannot access Mainstream"?

16 A Yes, sir.

17 Q Mainstream is the domestic bank account, correct?

18 A Yes, sir.

19 Q And did your subsequent investigation verify that in fact
20 Mr. Anile was the only signatory on the Mainstream account?

21 A I did not do a forensic analysis of the bank account. So
22 I wouldn't be able to answer that question, sir.

23 Q You then wrote, "J.A. can send money from Mainstream
24 to" -- is that "anyone"?

25 A Yes, sir.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q Did you determine if that was a true statement?

2 A This statement is -- or this document is based on notes
3 taken from our interview with Mr. DaCorta. So what I'm doing
4 is conveying what he relayed to us.

5 Q I understand that, but you are also the co-case agent on
6 this case, correct?

7 A Yes, sir.

8 Q You have done a lot more in this case than just interview
9 Mr. DaCorta three years ago?

10 A Yes.

11 Q My question is, did you or the other agents, to your
12 knowledge, determine whether or not Mr. Anile had the ability
13 to wire money from Mainstream to anywhere?

14 A Again, I did not do the forensic analysis on the bank
15 accounts. That would be a question to ask the people that
16 did. So I wouldn't feel comfortable answering definitively to
17 that.

18 Q So you don't know?

19 A Yes, sir.

20 Q Then it says, "Does not know who he deals with at
21 Mainstream." Does that mean Mr. DaCorta does not know who
22 Joseph Anile deals with at Mainstream?

23 A Yes, sir. Currently at that time Mr. DaCorta did not
24 know who the point of contact was at Mainstream, but then he
25 said that Mike Nolan at Mainstream was the person that

CROSS-EXAMINATION OF RICHARD VOLP

1 Mr. Anile used to deal with.

2 Q Did you or anybody else involved in the investigation of
3 Oasis confirm or refute that Mr. Anile was dealing with Mike
4 Nolan at Mainstream?

5 A I do not know that information offhand, sir.

6 Q Is that first word on the next line "had" or "and"?

7 A "Had," sir.

8 Q Okay. "Had bank account in Belize -- shut down and kept
9 their money"?

10 A Yes.

11 Q Who had a bank account in Belize?

12 A Oasis.

13 Q And who shut down and kept the money?

14 A So my understanding was that --

15 Q Hold on. Is it your understanding from what Mr. DaCorta
16 said or your understanding from your subsequent investigation?

17 A From the subsequent investigation.

18 Q Okay.

19 A My understanding from the subsequent investigation was
20 that the Belize account had been shut down due to concerns by
21 the country of Belize in the way that Oasis was representing
22 the company, and that that was the cause of them shutting down
23 the Belize aspect of it.

24 Q "J.A. set up things with Mainstream. J.A." -- is that,
25 "manages wires"?

CROSS-EXAMINATION OF RICHARD VOLP

1 A The line is "J.A.," as in Joseph Anile, "set up things
2 with Mainstream and he moves money through ATC as in ATC
3 Brokers.

4 Q Meaning money out of the Oasis domestic operating account
5 being wired to ATC, money then being used to trade in forex
6 and generate spread revenue and/or profits and losses?

7 A I would agree with that other than I do not view the
8 spread as being revenue.

9 Q Income?

10 A I don't believe that's income, sir.

11 Q "Has discussed with J.A. how to turn it around"?

12 A Yes, sir.

13 Q Meaning the losses?

14 A Yes, sir.

15 Q Meaning the 3.8 million ounces of silver that he
16 anticipated was going to skyrocket?

17 A Meaning that when Mr. DaCorta, as a few lines, maybe ten
18 lines previously admitted they were \$50 million negative, that
19 he was trying to find a way to turn things around with
20 Mr. Anile.

21 Q Correct. And the way he told you he was going to turn it
22 around was that he had 3.8 million ounces of silver which he
23 anticipated was going to skyrocket?

24 A He had thought so, but he also said that he was, it
25 appeared, desperately trying to find a revenue stream to bring

CROSS-EXAMINATION OF RICHARD VOLP

1 in.

2 Q Where does it say at that line that he appeared to be
3 desperately trying to find a revenue stream to bring it in?

4 A It does not say that on that line, but numerous times I
5 believe in here it talks about trying to achieve a revenue
6 stream.

7 Q Would you agree with me that I am making my way
8 meticulously through every line of your report and have not
9 missed a line yet?

10 A Yes, sir.

11 Q I'm sorry?

12 A Yes, sir.

13 Q I apologize. I said "report." It's really just notes.

14 A Yes, sir.

15 Q Go to page 4. It says, "Not operating as a
16 broker-dealer"?

17 A That is correct, sir.

18 Q That's all you have written there, correct?

19 A Yes. When we are talking with Mr. Anile about the way
20 OIG was set up, Mr. DaCorta advised with us or talked with us
21 about that he really isn't a broker-dealer in the sense that
22 Mr. DaCorta is essentially the only person trading for that
23 one account that it is in. Individual investors aren't
24 trading forex through Oasis. That they are the only ones.
25 So, therefore, it's not really a broker-dealer.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q Because he's not individually managing individual
2 client's segregated accounts. He is trading corporate money
3 in the trading account. That's what he's saying by not being
4 a traditional broker-dealer, correct?

5 A Yes, sir. There is essentially only one person doing the
6 trading.

7 Q Next it says, "Took over 41 percent of Mirror Images."
8 Do you know what Mirror Images is?

9 A I believe it was --

10 THE COURT: Hold on for a moment. We are going to
11 take a quick break here. We have a little comfort break. So
12 we will take a break for 15 minutes and see how we are doing.

13 And also my computer is not working so I need to get
14 Mr. Houston on that. Thank you. Fifteen minutes.

15 (Recess taken.)

16 THE COURT: Thank you. We got our computer running.
17 So, Mr. Allen, have at it.

18 MR. ALLEN: Thank you.

19 BY MR. ALLEN:

20 Q Agent Volp, I believe we left off talking about the
21 notation on page 4 of your handwritten notes, "Took over
22 51 percent of Mirror Images." I think the question was, do
23 you know what Mirror Images is?

24 A I believe it's a business. The details of Mirror Images
25 I'm not familiar with, but a business, yes.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q And as you previously testified, you put a line, and then
2 if there's little dashes underneath that, everything
3 underneath that line relates to that top line, correct?

4 A Typically, yes. Like an outline where if it's offset to
5 the right, it would typically fall under the thing above it.

6 Q The heading?

7 A Yes.

8 Q So offset of the heading, "51 percent of Mirror Images,"
9 you write, "Thought eventually they would get ahead"?

10 A Yes.

11 Q And then you write, "Trying to use investor money to
12 generate income"?

13 A Yes, sir.

14 Q And since that's under Mirror Images, it's talking about
15 him using investor money to do equity investing in companies,
16 correct?

17 A Yes.

18 Q And then you write, "Agreed that they were telling people
19 was a misrepresentation." And since that's offset, are you
20 referring to they weren't telling people they were using
21 lender money for equity financing?

22 A Yes, sir. At that point in the conversation, I spoke
23 with Mr. DaCorta about the fact that the money that they were
24 using for things like Mirror Images wasn't what they were
25 advertising to lenders.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q Well, the FBI had sent an undercover agent, specifically
2 Agent Stone, who you worked with in the Sarasota office, and
3 Agent Stone on a recorded undercover operation with
4 Mr. DaCorta, Mr. DaCorta, did he not, specifically say we are
5 using the money that's loaned to us for some equity investing?

6 A Yes, but he also relayed to or it was relayed to Agent
7 Stone that when he specifically said, I don't want my money in
8 real estate and things like that, it was relayed to Agent
9 Stone that his money was not going to be used in things like
10 real estate.

11 Q Right. He said the company's capital would be used,
12 correct?

13 A I believe something along those lines, yes.

14 Q And you would agree when a company borrows money, the
15 money they borrow becomes their working capital, correct?

16 A Yes, sir.

17 Q Let's go on to the next section because you put a space
18 in there, which I think you're trying to denote it's a
19 different topic, correct?

20 A Yes, sir.

21 Q And you wrote, "Steven Dribusch -- brought him in to look
22 at...", what's that word?

23 A Watch.

24 Q "Watch the trading"?

25 A Yes, sir.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q Steven Dribusch was one of the traders that Oasis
2 International Group had working for them, sir?

3 A Yes, sir.

4 Q So there was Michael DaCorta, Steven Dribusch, and Fred
5 Viscogliosi, correct?

6 A Yes, sir.

7 Q And I guess the continuation of that sentence is,
8 "Platform a few hours a day"?

9 A Yes, sir.

10 Q Do you have a clear memory what the three dots takes the
11 place of what was said by Mr. DaCorta as you sit here today?

12 A I believe, sir, that it was that Mr. DaCorta was saying
13 Steven Dribusch was brought in to look at the accounts and
14 watch the trading platform a few hours a day.

15 Q Well, isn't that what you have written already?

16 A Yes, sir.

17 Q So do you not -- the three dots usually take the place of
18 something, correct?

19 A I don't have a specific memory on the three dots other
20 than I was summarizing the content of the conversation.

21 Q And that's what you're doing throughout your notes. You
22 are summarizing, correct?

23 A Yes, sir.

24 Q And you're already there with a mindset that Mr. DaCorta
25 is involved in a Ponzi scheme, correct?

CROSS-EXAMINATION OF RICHARD VOLP

1 A Yes, sir.

2 Q And would you not agree that you are not -- because of
3 that mindset, the things that you are perceiving, you're
4 trying to fit the narrative that you already have, correct?

5 A No, sir. I'm trying to accurately document the
6 conversation we had with Mr. DaCorta.

7 Q Well, an audio/visual recording would have accurately
8 documented it, correct?

9 A Possibly. Possibly not, sir.

10 Q Because the equipment could have broke?

11 A Because there are numerous examples of video that doesn't
12 accurately portray what is going on based of angles and other
13 factors.

14 Q Can you give me an example of a video/audio that is set
15 in front of a person who is talking directly to the video and
16 audio where it did not accurately reflect what was being said
17 and spoken?

18 A I don't have an example that I could relay in court right
19 now for that specific example, sir.

20 Q Did you not just say there's lots of examples where the
21 video and audio recording doesn't depict what was actually
22 taking place?

23 A Yes, sir.

24 Q You were talking about a different scenario than the one
25 I just gave you of putting the camera and audio in front of

CROSS-EXAMINATION OF RICHARD VOLP

1 somebody?

2 A I was talking in general, sir.

3 Q You wrote, "Last couple months he knew they were," what
4 is that word?

5 A "They weren't doing well."

6 Q Meaning the profit and loss trading?

7 A Yes, sir.

8 Q "Has access to make the trades," meaning Steven Dribusch
9 had access to do trading?

10 A Yes, sir.

11 Q "Fred also has access and trades a few hours a day."
12 Underneath that you write, "Viscogliosi -- knows they are
13 losing money again in the profit and loss trading"?

14 A Yes, sir.

15 Q "John Haas -- brings in IRA money to Oasis, lives in
16 New York." And that's the individual who owned Satellite
17 Holdings, correct?

18 A I believe so, yes.

19 Q And the Satellite Holdings was not owned by Mr. DaCorta
20 or anybody at Oasis International Group?

21 A Not to my knowledge.

22 Q Then you have a space. So I guess we're going to a
23 different topic, correct?

24 A Yes, sir.

25 Q And you have "R.M.," Ray Montie?

CROSS-EXAMINATION OF RICHARD VOLP

1 A Yes, sir.

2 Q "Has invested money, does not know," and then it's left
3 blank, but that would be about the losses?

4 A Yes, sir.

5 Q The next line. "M.D. -- always pays when they go out to
6 eat -- mostly with other people in the company"?

7 A Yes, sir.

8 Q Then you have, "Intended to pay the company rent but has
9 not happened." Rent for what?

10 A For the residence that they are living in.

11 Q The one at Lost Key Place?

12 A Yes, sir.

13 Q So he is indicating that it was his intent to pay rent to
14 live there?

15 A Yes, but he hasn't been doing that.

16 Q Then you have, "Joe," I'm assuming that's Paniagua
17 because I know about the case.

18 A Yes, sir.

19 Q Is that Joe Paniagua?

20 A Yes, sir.

21 Q Dash, "Handles the back office." That's both the
22 Spotex/ATC back office as well as the Oasis lender portal,
23 correct?

24 A That was my understanding, sir, yes.

25 Q "Receives the reports every day underneath Joe Paniagua."

CROSS-EXAMINATION OF RICHARD VOLP

1 Which reports are you talking about?

2 A I believe that was the trading reports from ATC Brokers,
3 sir.

4 Q Which also shows how much spread revenue is being
5 generated even though you don't believe that it's revenue?

6 A ATC Brokers -- I believe the spread pay was generated
7 from Spotex, not ATC.

8 Q But he sees those records, the Spotex records?

9 A I don't recall specifically about the Spotex records. I
10 believe that that was in reference to ATC Brokers.

11 Q Let's talk about that. Do you know the relationships
12 between Spotex and ATC?

13 A I have a general understanding, sir, but I'm not an
14 expert on that by any means.

15 Q Did you know that Spotex wrote the software that ATC is
16 using in providing to Oasis International Group?

17 A That is my understanding, sir, yes.

18 Q So when we talk about the Spotex records, those are just
19 a duplicate of what the ATC records are, would they not be if
20 it's their software and everything in the software deals with
21 what is happening at ATC and OIG?

22 A If that's your understanding, sir. I wouldn't be able to
23 testify to the Spotex aspect of things, and I believe that has
24 already been done.

25 Q I'm not trying to testify. If you don't understand,

CROSS-EXAMINATION OF RICHARD VOLP

1 that's okay.

2 A Okay.

3 Q "Has access to the ATC account," meaning Joe Paniagua,
4 right?

5 A Yes, sir.

6 Q "Knows there are other assets -- but does not know the
7 way it is set up," correct?

8 A Yes.

9 Q And then you put in brackets, "As a Ponzi scheme." And
10 you testified yesterday Mr. DaCorta never used the words
11 "Ponzi scheme?"

12 A That is correct. I was trying to capture the nuances of
13 the conversation. And I try to make my notes as accurate and
14 honest as I can, so therefore I made sure to put brackets
15 around that to differentiate if that is my own interpretation
16 or understanding from the conversation versus quotes. And
17 again, I was trying to make these notes as accurate as I could
18 to the conversation.

19 Q Right. And so right here clearly in your notes you're in
20 this interview interpreting what Mr. DaCorta is saying to fit
21 your narrative that he was involved in a Ponzi scheme. That's
22 why you wrote it down when he didn't say "Ponzi scheme,"
23 right?

24 A No, sir. I am putting it in brackets because that is the
25 intent of the line that was spoken, but it was not verbatim

CROSS-EXAMINATION OF RICHARD VOLP

1 said as a Ponzi scheme. And I wanted to make sure my notes
2 accurately reflected the conversation.

3 Q You testified yesterday on cross-examination as to what
4 the FBI's website has defined a Ponzi scheme to be, correct?

5 A Yes, sir.

6 Q And generally it is investors are being told of an
7 investment opportunity. They're told that their dividends and
8 profits are coming from that investment opportunity, but in
9 truth and fact it is coming from other subsequent investors?

10 A Yes, sir.

11 Q You wrote that Mr. DaCorta said, "Paniagua knows there
12 are other assets but does not know the way it is set up."

13 You would agree with me, would you not, that you
14 didn't write, "Mr. DaCorta said there are no real dividends or
15 interest. We are just paying people from other lenders,"
16 correct? You didn't write that, right?

17 A I did not write that, correct.

18 Q And you would agree with me that what you wrote does not
19 meet the definition of a Ponzi scheme that you agreed on
20 Friday was the definition that the FBI has listed as a Ponzi
21 scheme on their website, and you agreed with that definition,
22 correct?

23 A I do agree with the definition on the FBI website, and I
24 stand by this, that I'm trying to capture the intent of it,
25 and the intent of that portion of the conversation, we were

CROSS-EXAMINATION OF RICHARD VOLP

1 talking about it being set up as a Ponzi scheme.

2 Q Okay. You didn't write anything here that would meet the
3 definition of a Ponzi scheme at this line, did you, sir?

4 A Not on this specific line, no.

5 Q Because Joe Paniagua knowing there's other assets doesn't
6 mean it's a Ponzi scheme, right?

7 A Correct.

8 Q Him not knowing the way it's set up doesn't mean it's a
9 Ponzi scheme, right?

10 A Correct.

11 Q Going to page 5, "Updates based on the spread," correct?

12 A Yes.

13 Q That's Mr. DaCorta saying that Oasis' customer portal is
14 being updated to show the lenders what their interest increase
15 is based on the daily spread they're generating, correct?

16 A Yes.

17 Q And that that information on the spread, your next line
18 you say, "ATC gives the information," and that relates to the
19 spread. ATC is given the information on what the spread was,
20 correct?

21 A Yes, sir.

22 Q "M.D. does not know -- set up the website -- J.P. would
23 know." So Michael DaCorta does not know who set up the
24 website. That's referring, I suspect, to Oasis International
25 Group's lender portal sign-in thing, correct?

CROSS-EXAMINATION OF RICHARD VOLP

1 A Yes, sir.

2 Q And J.P. refers to who?

3 A Joe Paniagua.

4 Q And so he's saying Joe Paniagua would know?

5 A Yes, sir.

6 Q Did your investigation uncover whether or not Joe

7 Paniagua knew who set up the Oasis customer portal?

8 A Yes, I believe so, sir.

9 Q And it was John Paniagua, his brother, right?

10 A Yes, sir.

11 Q Who was also a lender, right?

12 A I believe so, yes.

13 Q Then you have a space, and you write, "Does not know how

14 much loss with ATC Brokers"?

15 A Yes, sir.

16 Q Meaning Mr. DaCorta or Mr. Paniagua?

17 A Mr. DaCorta did not know what their actual losses were

18 specifically with ATC Brokers.

19 Q But he never denied that there were losses. He just

20 didn't know the exact number?

21 A Correct.

22 Q "Michael DaCorta gets an email to pay investors back.

23 Michael DaCorta sends money back to them depending on which

24 account it comes from"?

25 A Yes, sir.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q So this is Mr. DaCorta indicating that they do pay money
2 back to lenders, correct?

3 A Yes, sir.

4 Q And as you noted in your under oath search warrant
5 affidavit, that your investigation up to that point had shown
6 over \$20 million had been paid back to lenders, correct?

7 A Yes, sir. Just like you had brought up a couple of times
8 the definition of a Ponzi scheme, that they are paying back
9 the previous lenders based on the money that was in those
10 accounts.

11 Q I appreciate your desire to sneak that in, but the
12 question was, your investigation showed, as you testified to
13 under oath in the search warrant affidavit, that they did in
14 fact pay back over \$20 million to lenders. Yes or no, sir?

15 A Yes, sir.

16 Q Then you write, "Vinny Raia bought a condo." Who is
17 Vinny Raia?

18 A One of the employees of Oasis, sir.

19 Q And he did in fact buy a condo, correct?

20 A I believe so, sir.

21 Q And then he wrote -- can you make out that name? I
22 should say "you wrote."

23 A I'm sorry?

24 Q Can you make out that name?

25 A I'm sorry. I didn't realize you were waiting on me, sir.

CROSS-EXAMINATION OF RICHARD VOLP

1 I believe it's Stephen DaCorta, sir.

2 Q And what's one of Mr. DaCorta's sons?

3 A Yes, sir.

4 Q And he's indicating lives in one. And I'm assuming
5 because it's underneath the line where you talk about Vinny
6 Raia bought a condo, that "lives in one" means a condo?

7 A Yes.

8 Q And, "Deb Cheslow lives in one," I'm assuming a condo?

9 A Yes, sir.

10 Q And then, "Buckinghams live in one and pay rent"?

11 A Yes, sir.

12 Q Did your investigation verify that the Buckinghams were
13 paying rent in one of the condos?

14 A That was my understanding, yes.

15 Q And then you have, "6300 Midnight Pass -- one investor
16 agreed to sell, and they credited his account -- had the cash
17 at the time." Does the cash at the time mean the person who
18 purchased it had the cash at the time or that OIG had the cash
19 at the time, or do you have any recollection whatsoever?

20 A My understanding was that at the time that they purchased
21 that condo or made the agreement, that they had that amount of
22 cash in their bank accounts.

23 Q Who had that cash?

24 A Oasis, sir.

25 Q In other words, they could have given him cash for it as

CROSS-EXAMINATION OF RICHARD VOLP

1 opposed to crediting his account?

2 A I don't know for certain without looking at the bank
3 account for that specific time. And again, I didn't do the
4 forensic analysis on the bank account. So I wouldn't be able
5 to testify whether or not there was the cash in that account
6 on that date.

7 Q I wasn't asking you whether that was a true statement. I
8 was asking you whether that was the inference that you recall
9 him saying?

10 A I believe so, sir, yes.

11 Q And then you have Mr. -- can you read that name for me?

12 A Scamardella, sir.

13 Q Dash, "Investor"?

14 A Relating to the Midnight Pass condo, sir.

15 Q He then indicated, "Midnight Pass condo is used for
16 business visitors"?

17 A Yes, sir.

18 Q And then a squiggly line. I think it's "Duran -- has no
19 idea." I'm assuming that's about the losses again?

20 A Yes, sir.

21 Q "Been paid 600,000 last year"?

22 A Yes, sir.

23 Q Then you have, "M.D. says Duran is not in the know." I'm
24 assuming about the losses?

25 A Yes, sir.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q "Oasis bought his home as a foreclosure to flip his home
2 in a few years"?

3 A Yes, sir.

4 Q And that's common. People buy homes in foreclosure and
5 flip them and make a profit. You are aware of that, right?

6 A Yes, sir.

7 Q And that's what Mr. DaCorta said was the purpose of the
8 home that Mr. Duran was living in, correct?

9 A Yes, sir.

10 Q Did you ever find any evidence that the home wasn't
11 purchased on a foreclosure?

12 A I did not locate anything to the contrary.

13 Q You then write, "J.A.," I'm assuming that's Joseph Anile,
14 "Sends requires to F.D.," I'm assuming Frank Duran, "personal
15 account"?

16 A Yes, sir.

17 Q "Does not know how they determined how they knew how to
18 pay"?

19 A Yes, sir. We were asking about how much everyone makes
20 for OIG, what their salaries were and how they determined
21 that.

22 Q Well, it would appear that you did an indentation and
23 stuck this underneath the comment about Frank Duran's personal
24 account. Given your normal practice, would it not be more
25 accurate to interpret your notes from three years ago that he

CROSS-EXAMINATION OF RICHARD VOLP

1 was referring to he doesn't know how Mr. Anile determines how
2 much to pay Frank Duran?

3 A You could interpret it that way, yes, sir.

4 Q Well, is that the accurate interpretation or some other
5 interpretation or because this was three years ago you really
6 don't know?

7 A My memory of it was that there was no set standard for
8 how to pay employees. There was no standard across the board
9 or performance based or tenure based on anything of that
10 nature.

11 Q So your memory today three years later is inconsistent
12 with the method that you had been employing up to this point
13 in time in your handwritten notes. Is that your testimony?

14 A Related to this line, that it related to Mr. DaCorta
15 talking about how they determined or not knowing how to
16 determine how much to pay each person, yes.

17 Q Okay. Is there some way I could tell three years later
18 when you are not following your standard procedure for putting
19 it underneath to refer to the thing above?

20 A I think that, you know, my notes are a pretty accurate
21 representation of the conversation and that the overall intent
22 is very well maintained.

23 Q So that's a no, there's no way for me to tell when you
24 are not applying your standard procedure?

25 A That's correct, sir.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q You then back over again, not underneath the comment
2 about Frank Duran's personal account, you have, "Gil sends
3 invoice, paid 150 an hour."

4 A Yes, sir.

5 Q And that's Gil Wilson?

6 A Yes, sir.

7 Q And then there's, "Deb 15K per month"?

8 A Yes, sir.

9 Q And that's Deb Cheslow?

10 A Yes, sir.

11 Q And then J.P. is Joe or John Paniagua?

12 A Joe Paniagua, sir.

13 Q They have the same first initial?

14 A They do, sir.

15 Q "Paid monthly," is that a 9 or a 5?

16 A It's an 8 to 10.

17 Q 8 to 10K?

18 A Yes, sir.

19 Q K referring to thousand?

20 A Yes.

21 Q V.R. I'm assuming is Vinny Raia?

22 A Yes.

23 Q Paid monthly?

24 A Yes, sir.

25 Q Seven to 8K referring to 7 to 8,000?

CROSS-EXAMINATION OF RICHARD VOLP

1 A Yes, sir.

2 Q Going to page 6, you write, "Roar of the Lion -- totally
3 separate," correct?

4 A Yes, sir.

5 Q And your investigation uncovered that Roar of the Lion
6 was a protein powder supplement company?

7 A Yes, sir.

8 Q That was going to be network marketed but then ultimately
9 was going to be ecommerced?

10 A I believe so, sir.

11 Q And is it not true that during the execution of this
12 search warrant at the business address on Gulf Bay or whatever
13 it's called, Gulf Drive, there were actually canisters of the
14 Roar of the Lion product there, correct?

15 A I wasn't at that search warrant, and I don't remember
16 seeing photographs of those canisters, so I'm not sure. They
17 could have been. I'm not sure, sir.

18 Q You are not disputing it. You just don't know?

19 A Yes, sir, that is correct.

20 Q And then you put, "Thought they could build a business"?

21 A Yes, sir.

22 Q And that was a business that he was doing with his son,
23 correct?

24 A Yes, sir.

25 Q Do you recall which son? Was it Andrew or Stephen or do

CROSS-EXAMINATION OF RICHARD VOLP

1 you recall, or was it both?

2 A I don't recall at this time, sir.

3 Q I'm assuming it was said and you just didn't note it in
4 your report and now you can't recall because you didn't write
5 it down?

6 A I believe it was Stephen, but I don't recall at this
7 moment on the stand. And so I don't want to confuse the two
8 sons.

9 Q You would agree if it was video and audio recorded, we
10 would know for certain which son he said, correct?

11 A Potentially, sir.

12 Q Because there's these rare occasions when video and audio
13 doesn't capture what's really going on, although you can't
14 think of an example where that's ever happened.

15 A Or, sir, if he didn't specifically say which son during
16 the conversation.

17 Q Okay. I thought you just testified he did say which son,
18 you just can't recall?

19 A I believe that it was Stephen, sir, but I don't recall
20 specifically at this time. I just don't want to mix up the
21 two sons.

22 Q Okay. And then it says, "Have an online store," correct?

23 A Yes, sir.

24 Q And your investigation revealed there was in fact an
25 online store for Roar of the Lion product, correct?

CROSS-EXAMINATION OF RICHARD VOLP

1 A Yes, sir.

2 Q And we're back over, so I'm assuming it's a new topic,
3 but as we've learned it may not be. "Wires gold and silver."
4 Can you make out what you put there?

5 A Yes, sir. "Wires for the gold and silver are at J.A.,"
6 so Joseph Anile's house as well.

7 Q Okay. And a wire is like a bank wire, right?

8 A Yes, sir.

9 Q Wiring the money, right?

10 A Yes, sir.

11 Q And so there are wires at Joe Anile's about gold and
12 silver?

13 A I believe, sir, that this is saying that the gold and
14 silver is also at Mr. Anile's house.

15 Q Well, it doesn't say that, does it?

16 A Correct, sir.

17 Q You wrote, "Wires gold and silver at Joe Anile's,"
18 correct?

19 A Yes, sir.

20 Q And in fact, you testified on direct examination in --
21 can you put on the Elmo, please?

22 You testified in Government's Exhibit 305 and
23 painstakingly went through all these receipts that these were
24 all cash purchases for the gold and silver?

25 A I believe there were some wires, sir.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q In these receipts?

2 A I believe so. If I recall. I mean, we can go through
3 all the invoices if you'd like, but I believe there are some
4 wires for \$225,000, a hundred and some thousand dollars. I
5 certainly can go through the receipts and find those.

6 Q I'll take your word for it. There were not any wires
7 found at Mr. Anile's house regarding gold and silver, correct?

8 A I don't believe so, sir.

9 Q You made a mistake, right, by writing the word "wires"?

10 A Potentially, sir, yes.

11 Q Well, potentially or you did?

12 A I believe we were talking about the wires for the gold
13 and silver and that the gold and silver was found at
14 Mr. Anile's house.

15 Q You just didn't have the ability to accurately write out
16 what was being said?

17 MR. MURRAY: Your Honor, I object. Argumentive.

18 THE COURT: Overruled.

19 A I did not write verbatim every word that was said, but I
20 documented the summary of our conversation as accurate and
21 authenticate as I was able to.

22 BY MR. ALLEN:

23 Q Because you're not a court reporter, right?

24 A I'm not.

25 Q You're not a video camera?

CROSS-EXAMINATION OF RICHARD VOLP

1 A No.

2 Q Not an audio recorder device?

3 A No, sir.

4 Q But you didn't let Mr. DaCorta write it out in his own
5 handwriting, correct?

6 A He certainly could have if he wanted, but we did not have
7 him do that, sir.

8 Q You did not offer him the opportunity to do that, did
9 you, sir?

10 A I believe in the last three years he's had that
11 opportunity, sir.

12 Q Thank you. I'm talking about the day you are in the room
13 with him by yourself with Agent Batsch separated from his
14 family after you came in his door with guns blazing -- not
15 blazing -- drawn. You didn't give him the opportunity to hand
16 write his statement; isn't that correct?

17 A He did not sign a confession, no.

18 Q The question, sir --

19 A Yes, sir.

20 Q -- is you did not give him the opportunity to hand write
21 his statement. Yes or no?

22 A He did not write his statement. Yes, that's correct.

23 Q The question is, you did not give him the opportunity to
24 write a statement. If we could focus on the word
25 "opportunity," please.

CROSS-EXAMINATION OF RICHARD VOLP

1 A That is correct.

2 Q And you did not give him your handwritten notes and say,
3 Mr. DaCorta, please review this. I want to make sure I get a
4 very accurate account of what you're telling me today, and
5 make any corrections if I miswrote down what I was perceiving
6 you to say. That wasn't provided to him either, was it?

7 MR. CHEE: Your Honor, I object. And I also move for
8 the introduction of the notes.

9 THE COURT: You are going to have cross. Objection
10 overruled -- redirect.

11 BY MR. ALLEN:

12 Q Do you need me to reask the question?

13 A Yes, please.

14 Q You did not take your handwritten notes at the end of
15 that two-plus hour interview or two-hour or hour-and-45
16 interview and give your notes to Mr. DaCorta and say, here,
17 Mr. DaCorta. We have been talking to you for two hours. I
18 have been taking notes, and I want to ensure that I accurately
19 captured what you were saying. Please review my notes and
20 make any corrections that you think are appropriate. You
21 didn't do that, did you?

22 A I did not say that to Mr. DaCorta, no.

23 Q You didn't even give him an opportunity to read your
24 notes on that day, did you?

25 A He did not read them, that is correct.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q Because you did not give him the opportunity?

2 A That is correct.

3 Q Do you think if you gave him the opportunity, he would
4 have said no?

5 MR. CHEE: Objection. Speculation.

6 THE COURT: That calls for speculation.

7 MR. ALLEN: I'll move on.

8 BY MR. ALLEN:

9 Q Underneath the, "Wires gold and silver at Joe Anile's,"
10 you write, "Checks were paid by M.D." Checks for the gold and
11 silver or what checks?

12 A I believe so, sir.

13 Q You believe so or you have a memory?

14 A I do recall Michael DaCorta signing the checks, yes.

15 Q Which checks? For what? For the gold and silver or for
16 furniture or for all of the above? For what?

17 A I believe the gold and silver, sir.

18 Q You believe or you know?

19 A I believe so, sir.

20 Q You are not certain or you are sure?

21 A I'm confident that Mr. DaCorta signed checks for the gold
22 and silver.

23 Q I know that. We saw that in a government exhibit.

24 A Yes, sir.

25 Q My question is, in the interview are you confident that's

CROSS-EXAMINATION OF RICHARD VOLP

1 what he was talking about?

2 A Yes, sir.

3 Q Or was he talking about other checks?

4 A Yes, sir.

5 Q Yes, sir, you're confident that's what he was talking
6 about?

7 A Yes, sir.

8 Q Are you sure your memory has not been created of that
9 because you have actually looked that he wrote checks to the
10 gold and silver place?

11 A If you look on the line above it, it talks about the gold
12 and silver. And then the line below it talks about Vinny
13 picking up the gold and silver. It's nested in there. I
14 think it references that. It is supported by the statements
15 around it in the documents, sir.

16 Q Right, but did we not just earlier find out that that's
17 not always the way you did it. Sometimes it doesn't relate to
18 the thing right below it?

19 A Well, in any conversation, yes, it's going to switch
20 topic to topic as you go through, yes.

21 Q Okay. You then write, "Vinny picking up all," meaning
22 the gold and silver, right?

23 A Yes, sir.

24 Q "J.A. did," what's that word?

25 A All the legal writing.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q Including the promissory notes, risk disclosure, loan
2 agreement, correct?

3 A Correct, sir.

4 Q "Said he did not discuss the disclosures with J.A.,"
5 meaning Joe Anile. And I guess because it's right under the
6 legal writing, he's talking about the risk disclosure?

7 A Yes, sir.

8 Q And that's the risk disclosure that Agent Stone
9 pretending to be a lender received in an email from Frank
10 Duran and also was able to print and download off of the
11 lender portal on the Oasis International Group site?

12 A Yes, sir.

13 Q And then you have a space. And it looks like the next
14 section deals with Mr. DaCorta's taxes, correct?

15 A Yes, sir.

16 Q You have, "Taxes -- M.D. said he did not know what was on
17 his taxes"?

18 A Correct.

19 Q Meaning the taxable income?

20 A I believe the numbers that were generated for the tax
21 return, sir.

22 Q Because he had hired a CPA to do them, right?

23 A Yes, sir.

24 Q And you write underneath the taxes, "No other source of
25 revenues." And that's related to what was on his taxes?

CROSS-EXAMINATION OF RICHARD VOLP

1 A Yes, sir.

2 Q "Does not know how they wrote off losses," referring to
3 they being the CPAs?

4 A Yes, sir. Whoever prepared his taxes.

5 Q And then you wrote, "Did not disclose trading losses for
6 taxes"?

7 A Yes, sir.

8 Q Were you talking about Mr. DaCorta's personal tax return
9 or his business tax return or both of them all at the same
10 time, or do you not have any memory of specifically which tax
11 returns you were discussing?

12 A I believe they were the personal tax returns, sir.

13 Q In your experience, do people put their business losses
14 on their personal tax returns?

15 A I have no experience with business taxes, sir.

16 Q Okay. "J.A.," meaning Joseph Anile, "brought someone in
17 to take care of things." Who's the someone, and what are the
18 things that he brought the person in to take care of?

19 A I believe that they had started some sort of audit. I
20 don't recall the name of the person at this time.

21 Q Not saying the name wasn't given. Just looking at your
22 notes, you can't recall?

23 A That is correct, sir.

24 Q "Just gave tax preparer bank account statements and said
25 do what needs to be done, both personal and business"?

CROSS-EXAMINATION OF RICHARD VOLP

1 A Yes, sir.

2 Q Meaning I hired a CPA, I gave him the records and said do
3 what you need to do?

4 A That is my understanding, sir.

5 Q Never said I want you to -- I told him to put fake
6 numbers in there, correct?

7 A He did not say that to us, sir, yes.

8 Q Joe Anile did tell his accountant to do that, didn't he?

9 A I don't have direct knowledge of what Mr. Anile told his
10 accountant, sir.

11 Q Were you not at his proffer?

12 A I was at one of his proffers. He had several proffers,
13 sir.

14 Q Okay. Then you write, "This is something that spiraled
15 out of control." I'm assuming the losses again?

16 A Yes, sir.

17 Q "Does not know how they" what?

18 A "Would generate a business loss." I believe relating to
19 the taxes again.

20 Q He doesn't understand how he could have generated a
21 business loss?

22 A I believe for tax purposes, sir.

23 Q Because he is not the CPA?

24 A I guess that would be speculating on his intent for that,
25 sir.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q Well, did he just randomly put these words together,
2 "Does not know how they would generate a business loss," with
3 nothing before or after it to give context to what he was
4 talking about?

5 MR. CHEE: Objection to the argumentative phrasing of
6 that question.

7 THE COURT: Overruled.

8 A So my understanding, sir, is that he, Mr. DaCorta, was
9 saying he did not know how they, the tax preparers, would
10 generate the business losses.

11 BY MR. ALLEN:

12 Q Okay. And there's a number written?

13 A Yes, sir.

14 Q What's the purpose of the number?

15 A I believe it's the passcode for Mr. DaCorta's phone.

16 Q Okay. Underneath it you talk about, "Only information on
17 office computer"?

18 A Yes, sir.

19 Q Are you sure it's not the password for the office
20 computer?

21 A I believe the password for the office computer is
22 Rangers94 which is below it.

23 Q Okay. So you guys seized Mr. DaCorta's cell phone?

24 A Yes, sir.

25 Q He gave you the password?

CROSS-EXAMINATION OF RICHARD VOLP

1 A Yes, sir.

2 Q And when the FBI seizes somebody's cell phone, they can
3 download all the text messages, correct?

4 A Yes, sir.

5 Q If the phone is being used to search the Internet, they
6 could get the browser history, correct?

7 A Yes, sir.

8 Q Emails off the phone?

9 A Potentially, sir.

10 Q And I would assume that the FBI left no stone unturned in
11 investigating Mr. DaCorta?

12 A I believe, sir, that we did a thorough investigation,
13 yes.

14 Q And there's nothing on the phone, no text messages of
15 Mr. DaCorta entering a partnership in crime, correct?

16 A I don't recall the specifics on the phone, sir.

17 Q You would agree that if there was some conversations
18 between him and Mr. Anile about running a Ponzi scheme or
19 defrauding people, that's something the FBI would have flagged
20 and turned over to the U.S. Attorney's Office so they could
21 use it during this trial, correct?

22 A To answer your question before that there was -- whether
23 or not we flagged or saw anything on the phone, I don't recall
24 anything, but throughout my experience during investigations,
25 people that are involved in criminal activity oftentimes don't

CROSS-EXAMINATION OF RICHARD VOLP

1 want to use their phone or document it knowing that the
2 government has access to things like downloads.

3 Q Okay. You were a state police officer, correct?

4 A State certified, yes, sir.

5 Q And you worked narcotics offenses, right?

6 A I did for a time, yes, sir.

7 Q And you would agree with me that people often use their
8 phone in illegal activity, and you have experienced that when
9 you were a law enforcement officer; isn't that true?

10 A Yes, sir.

11 Q And in fact, text messages and emails are oftentimes the
12 most incriminating evidence, are they not?

13 A They could be, sir, yes.

14 Q You seized Mr. DaCorta's computers?

15 A Yes, sir.

16 Q That's where you got these aquarium receipts or invoices,
17 correct?

18 A We received a number of the invoices from both within his
19 residence and the computers, yes, sir.

20 Q I mean, during your direct examination you highlighted
21 Bates stamps that said "Comp" on them, correct?

22 A Yes, sir.

23 Q To verify that they came from Mr. DaCorta's computer,
24 correct?

25 A Yes, sir.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q There were no incriminating emails on his computer
2 between him and Mr. Anile where they were conspiring
3 explicitly to defraud people or talking about defrauding
4 people, correct?

5 A Yes, sir.

6 Q There is no email communications off of Mr. DaCorta's
7 computers about intentionally misleading people, correct?

8 A I think that would be open to interpretation, sir.

9 Q Okay. You searched Mr. Anile's computers, correct?

10 A I believe that they were searched, yes.

11 Q You searched Mr. Anile's cell phones, correct?

12 A Yes, sir.

13 Q Mr. Anile made recorded conversations secretly with
14 Mr. DaCorta, Mr. Paniagua, and others after the search
15 warrants, correct?

16 A Yes, sir.

17 Q He didn't do that at the direction of the FBI, correct?

18 A He did not. That is correct.

19 Q He did it on his own accord?

20 A Yes, sir.

21 Q But he certainly provided those to the FBI once he
22 started cooperating, correct?

23 A Yes, sir.

24 Q There was nothing on Mr. Anile's phone, text messages
25 between Mr. DaCorta and Mr. Anile where they had explicitly

CROSS-EXAMINATION OF RICHARD VOLP

1 talked about defrauding investors, correct?

2 A I don't recall anything of that nature, sir.

3 Q There was nothing in Mr. Anile's emails off his computer
4 where him and Mr. DaCorta were specifically talking about
5 being in an agreement to do a Ponzi scheme or defrauding
6 investors or lenders, correct?

7 A Correct.

8 Q There was nothing on any of the audio recordings that
9 Mr. Anile provided to the FBI where he secretly recorded
10 Mr. DaCorta, Mr. Paniagua, and others where they were talking
11 about the gig is up, we've been defrauding people, we've been
12 running a Ponzi scheme, nothing of an incriminating nature in
13 any of those?

14 A That is correct.

15 Q In fact, the exact opposite is what's heard on the audio
16 recordings that were secretly done by Mr. Anile with
17 Mr. DaCorta and others, correct?

18 A I don't recall all of those conversations. And I do not
19 believe I personally reviewed every one of those recordings,
20 sir.

21 Q You are the co-case agent?

22 A Yes, sir.

23 Q And a case agent is the person, the agent who is in
24 charge of case?

25 A Yes, sir.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q You and Agent Batsch?

2 A Yes, sir.

3 Q And you decided to not listen or review all the evidence
4 even though you are the case agent?

5 A In a case this large, sir, it is impossible to review
6 every single minute of every audio. And I believe that Agent
7 Stone had listened to those recordings. So I trust that Agent
8 Stone did an adequate job based on his experience. Just like
9 yourself, sir, I'm sure you didn't review every document in
10 this case, that you relied on your colleagues.

11 Q Did you trust Agent Stone to tell you if there were
12 incriminating statements on those audio recordings?

13 A Absolutely, sir.

14 Q And he didn't tell you that, right?

15 A Right.

16 Q So would it be fair for you to assume there isn't
17 anything incriminating on there?

18 A Yes, sir.

19 Q Next we have a space. Then, "Knew that it was wrong and
20 wanted to protect everyone until they turned it around,"
21 meaning the losses, correct?

22 A Yes, sir.

23 Q And turning it around meaning I have 3.8 million ounces
24 of silver, and silver is about to skyrocket?

25 A No, sir. Turning it around as in that it was an

CROSS-EXAMINATION OF RICHARD VOLP

1 unsustainable Ponzi scheme, that there is no way they were
2 going to be able to repay people and make whole the promises
3 that they had made people on the portal and in person and in
4 email.

5 Q Wow, you just elected not to write any of that part down
6 in the report?

7 A It is written down, sir, that he knew it was wrong and he
8 wanted to protect everyone, meaning trying to generate revenue
9 until they could turn it around and have a revenue stream come
10 in.

11 Q Well, there is nothing in here about a Ponzi scheme,
12 correct?

13 A That is correct, sir.

14 Q There is nothing in here about generating revenue in this
15 sentence, correct?

16 A Yes, sir.

17 Q You didn't write any of that down, correct?

18 A Yes, sir.

19 Q But you did write down earlier in your report that
20 Mr. DaCorta said I'm aware of these losses. I purchased
21 3.8 million ounces of silver. I think in a year it's going to
22 skyrocket, correct?

23 A Yes, sir.

24 Q But you're confident as you sit here today three years
25 later with nothing written here but what's written here that

CROSS-EXAMINATION OF RICHARD VOLP

1 he was talking about a Ponzi scheme and generating revenue to
2 turn it around and not talking about the 3.8 million ounces of
3 silver that he anticipated was going to skyrocket and turn it
4 around. That's your testimony?

5 A Yes, sir, that was my understanding.

6 Q Your understanding or your memory?

7 A My understanding, sir.

8 Q From your memory?

9 A Yes, sir.

10 Q On the last page you write, "100K earmarked for company."
11 Is that "and"?

12 A Yes.

13 Q "In case something goes wrong." Is this referring to the
14 U.S. currency that was found in Mr. DaCorta's closet?

15 A Yes, sir.

16 Q And Mr. DaCorta told you, did he not, that in case there
17 was a problem and the banks got shut down, he had enough cash
18 to operate the business and make payroll?

19 A Yes, sir.

20 Q And then you write, "gold in planter's bucket"?

21 A Painter's bucket.

22 Q Painter's bucket. And that's the gold and silver that
23 you were showing the other day?

24 A Yes, sir, that Mr. DaCorta had put in behind his clothes
25 in his closet, yes.

CROSS-EXAMINATION OF RICHARD VOLP

1 Q Let's talk about that.

2 A Yes, sir.

3 Q If we could pull up Government's Exhibit 302H, assuming
4 it's in the TrialDirector.

5 This is the gold and silver we're talking about?

6 A Yes, sir.

7 Q You testified on direct that the gold and silver was
8 hidden in Mr. DaCorta's closet?

9 A I believe so, sir, yes.

10 Q Would you anticipate somebody to keep that much gold and
11 silver just sitting on their coffee table?

12 A No. I would expect it to be in a bank vault or a safety
13 deposit box, sir.

14 Q How about a safe?

15 I'm showing the government what's been marked as
16 Defense Exhibit 253.

17 MR. ALLEN: May I approach?

18 THE COURT: Of course.

19 BY MR. ALLEN:

20 Q Do you recognize what's depicted in Defense Exhibit 253?

21 A Yes, sir. It looks like it's a gun safe.

22 Q And this safe was found during the searches conducted by
23 the FBI on April 19 of 2019, was it not?

24 A Yes, sir.

25 Q And it was found at the Lacantera property, was it not?

CROSS-EXAMINATION OF RICHARD VOLP

1 A I believe so, yes.

2 Q And the Lacantera property was the property that was
3 being refurbished?

4 A Yes, sir.

5 MR. ALLEN: Can we publish to the jury Defense
6 Exhibit 253? I would move it into evidence.

7 MR. CHEE: No objection, Your Honor.

8 THE COURT: D253 is admitted.

9 (Defendant Exhibit 253 admitted.)

10 BY MR. ALLEN:

11 Q And this is the first page of 253, correct?

12 A Yes, sir.

13 Q And if we could go to the second page. And that's the
14 second page?

15 A Yes, sir.

16 Q So that's showing the safe, first page opened, second
17 page closed, correct?

18 A Yes.

19 Q Would you not agree with me that this safe that was at
20 the Lacantera property was large enough to hold all of the
21 silver and gold and currency that was found in Mr. DaCorta's
22 bedroom closet?

23 A Yes, sir.

24 Q And Lacantera was the residence that Mr. DaCorta and his
25 family would be moving to once the renovations were done?

CROSS-EXAMINATION OF RICHARD VOLP

1 A Yes, sir.

2 Q Now, if we could pull up Government's Exhibit 305. And
3 these are the receipts for the purchase of gold and silver,
4 correct?

5 A Yes, sir.

6 Q I believe you testified on direct examination that it
7 totaled about \$600,000?

8 A I believe \$670,000.

9 Q And I believe you testified that these purchases
10 generally began in January and went up until shortly before
11 the search warrant?

12 A Yes, sir.

13 Q Of 2019?

14 A Yes, sir.

15 Q And this would have been during the same time period that
16 Mr. DaCorta was holding that 3.8 million ounces of silver
17 position on the trading site, correct?

18 A Yes, sir.

19 Q That he was anticipating would skyrocket?

20 A Yes, sir.

21 Q I believe on direct examination you testified that the
22 mortgage on the Lost Key Place residence was satisfied?

23 A Yes, sir.

24 MR. ALLEN: If you could put on the overhead, the
25 Elmo.

CROSS-EXAMINATION OF RICHARD VOLP

1 THE COURTROOM DEPUTY: It's on.

2 MR. ALLEN: Thank you.

3 BY MR. ALLEN:

4 Q You recall your testimony on direct examination about the
5 two aquariums, one for \$47,722?

6 A Yes, sir.

7 Q And the second one for \$80,370.91?

8 A Yes, sir.

9 Q That was reflected in Government's Exhibits 315?

10 A Yes, sir.

11 Q And that on direct examination you described it as an
12 invoice, but on cross-examination you said it could have been
13 a quote?

14 A Yes, sir.

15 Q And you said you didn't find any aquariums in any of the
16 properties?

17 A Correct, sir.

18 MR. ALLEN: I'm showing the government what's been
19 marked as Defense Exhibits 304 and 305.

20 MR. CHEE: Thank you.

21 BY MR. ALLEN:

22 Q Sir, what is Exhibit 304 and 305?

23 A It appears to be the same documents that were put on the
24 screen in maybe a different resolution or able to bring up
25 some of the nuances in the document.

CROSS-EXAMINATION OF RICHARD VOLP

1 MR. ALLEN: Permission to publish 304 and 305?

2 THE COURT: Yes, please.

3 BY MR. ALLEN:

4 Q Showing you 304. The difference between 315 and 304 was
5 it does in fact note that it's a custom quote, correct?

6 A Yes, sir.

7 Q And the same thing for Defense 305. It actually says
8 it's a custom quote?

9 A Yes, sir.

10 Q It would appear that there was a mistake on the copying
11 of Government's 305. It simply didn't pick up that
12 resolution?

13 A Correct, sir.

14 Q It wasn't intentional; just a mistake?

15 A Yes, sir.

16 Q But you would agree now that we have the actual correct
17 resolution that these aquarium statements were not invoices.
18 They were just quotes?

19 A Yes, sir.

20 Q And there was no evidence that Mr. DaCorta or anybody at
21 OIG purchased an \$80,000 aquarium or a \$47,000 aquarium?

22 A Yes, sir.

23 Q Would it be fair to say that the receipts that the
24 government introduced through you were in two categories. One
25 were the receipts for the gold and silver, correct?

CROSS-EXAMINATION OF RICHARD VOLP

1 A Yes, sir.

2 Q And then the other category would be like this aquarium
3 stuff, all things to improve the company's investment
4 properties, correct?

5 A Yes, sir.

6 Q You didn't introduce receipts that Mr. DaCorta was buying
7 fancy jewelry, correct?

8 A Correct.

9 Q Or that his wife had \$20,000 purses or shoes, correct?

10 A Correct.

11 Q All of the receipts that you introduced in your direct
12 examination related to things to improve the interior of the
13 Lacantera property, right?

14 A Mostly, sir, yes.

15 Q And you would agree, would you not, that if you are
16 flipping homes or buying them as an investment, that you will
17 increase the value of the properties by improving the
18 amenities inside the property, correct?

19 A Potentially, sir. There's different calculators to see
20 what your return on investment is. If you renovate a
21 bathroom, for instance, maybe you get 80 percent in return
22 when you sell. And there are other calculations you can make
23 to determine if you're going to make money or not by
24 renovating.

25 Q But you have seen those shows, Flipping Houses, all of

CROSS-EXAMINATION OF RICHARD VOLP

1 those shows on TV, right?

2 A Yes, sir.

3 Q And they are tearing them down and making them nicer to
4 increase the value, right?

5 A Yes, sir.

6 Q You're not telling me that's not what's regularly done in
7 investment of homes and real estate?

8 A It can be, sir. I'm just saying that I wouldn't be able
9 to definitively say if the investments done in this situation
10 would have increased the property value based on the cost. I
11 don't have that.

12 Q Because you're not a property appraiser, correct?

13 A I'm not.

14 Q Okay. You talked about the three vehicles that
15 Mr. DaCorta had purchased in your direct examination, correct?

16 A Yes, sir.

17 Q Two of those three vehicles he had seven-year loans,
18 correct?

19 A I don't recall specifically what the loan amounts were.
20 If that is your understanding, I'm not going to dispute it.

21 MR. ALLEN: If I could just have a moment, Your
22 Honor.

23 THE COURT: Of course.

24 MR. ALLEN: No further questions, Your Honor.

25 THE COURT: Redirect, please.

REDIRECT EXAMINATION OF RICHARD VOLP

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REDIRECT EXAMINATION

BY MR. CHEE:

Q Good morning, sir. How are you today?

A Good morning.

Q Agent Batsch [sic], is somebody a broker-dealer simply because they form an offshore shell company and call themselves one?

A No, they are not.

Q Are you familiar with Spotex?

A I am.

Q Is Spotex a bank?

A No, they are not.

Q Is Spotex a financial institution?

A Not to my knowledge.

Q Do they actually hold any money?

A No.

Q Is Spotex merely a way of facilitating forex trading?

A Yes.

Q Are you aware of whether Mr. DaCorta was banned from forex trading?

MR. ALLEN: Objection. Outside the scope of cross.

THE COURT: Sustained.

BY MR. CHEE:

Q During your conversation with the defendant, did he admit to you to the fraud perpetrated by Oasis and himself?

REDIRECT EXAMINATION OF RICHARD VOLP

1 A Yes, sir.

2 Q How many times do you think he did that in the course of
3 your conversation with him?

4 A It was numerous times. I think I would have to estimate
5 three or four, but I believe potentially more than that during
6 the course of the conversation, yes.

7 Q Now, at the FBI training academy which you mentioned
8 briefly in direct examination, were you trained to take notes?

9 A Yes, sir.

10 Q And what did your training tell you about what
11 specifically to take down while you are writing notes?

12 A Generally speaking, taking notes is kind of the default
13 method that we use. And we are supposed to write down the
14 highlights, the important things to try to document the
15 intent, the feel for the testimony given or the statement
16 given.

17 Q Did you take a course in penmanship at the FBI academy?

18 A I did not.

19 Q Well, your notes are very eligible. I was able to read
20 them.

21 MR. ALLEN: Objection.

22 THE COURT: That's not a question. Sustained.

23 MR. CHEE: Your Honor, at this time I would ask the
24 Court -- I would like to move the notes that Agent Volp wrote
25 into evidence pursuant to 801(D)(1)(b) and also under the rule

REDIRECT EXAMINATION OF RICHARD VOLP

1 of completeness.

2 MR. ALLEN: I have no objection to his notes coming
3 into evidence.

4 THE COURT: They are admitted then without objection.
5 Do you want to give me an exhibit number for that?

6 MR. CHEE: Yes, Your Honor. It's going to be
7 Exhibit 330.

8 THE COURT: 330 is admitted without objection.
9 (Government Exhibit 330 admitted.)

10 BY MR. CHEE:

11 Q Now, Agent Volp, on direct examination you testified that
12 the dogs were barking, correct?

13 A Yes, sir.

14 Q Did you write down that the dogs were barking in your
15 notes?

16 A I do not believe so.

17 Q During cross-examination we watched a few Ring videos
18 showing the outside of 13318 Lost Key Place. Why did you ask
19 the defendant to wait outside?

20 A It was for our safety so that we could secure the
21 residence and make sure that there were no other threats to us
22 when we executed our search warrant. We want to do it in the
23 most professional way and safe manner for us and anyone else
24 involved such as Mr. DaCorta's family or anyone else that
25 could be in the residence.

REDIRECT EXAMINATION OF RICHARD VOLP

1 Q After watching the video, did it appear to you that the
2 defendant was agitated or upset in any way?

3 A It did not appear so to me.

4 Q Did you have any intention to arrest the defendant that
5 day?

6 A No, we did not.

7 Q Now, why didn't you read the defendant his Miranda rights
8 at the time of the interview?

9 A The defendant was not in custody. In order for Miranda
10 rights to apply, there needs to be custody and interrogation.
11 While we were having a conversation with Mr. DaCorta, he
12 certainly was not in our custody and was free to leave.

13 Q Was Mr. DaCorta, the defendant, ever handcuffed at any
14 point?

15 A He was not.

16 Q Did he agree to talk to you?

17 A He did.

18 Q Were his wife and daughter allowed to leave the
19 residence?

20 A If they wanted to, they could have, yes.

21 Q In your training with respect to financial fraud, do you
22 normally see co-conspirators admit to the wrongdoing in emails
23 and in communications?

24 A No, I do not.

25 Q Did you expect to see an email or a text message saying I

REDIRECT EXAMINATION OF RICHARD VOLP

1 am committing fraud?

2 A No, I did not.

3 Q In the course of your interview and your investigation,
4 do you know whether the defendant disclosed that he was banned
5 from trading in forex to the investors?

6 A I do not recall any instance in which he disclosed that
7 to investors.

8 Q In the course of your investigation, did the defendant
9 disclose to people giving him loan monies that he would buy
10 and live in luxury residences?

11 A I do not believe he disclosed that.

12 Q And in the course of your investigation, did the
13 defendant say that his Oasis managers or officers would live
14 in luxury residences purchased by the company?

15 A He did not.

16 Q Did the defendant disclose to investors that he would be
17 purchasing luxury cars for him and his Oasis officers?

18 A He did not.

19 Q Did he disclose that he was making adjustments to make
20 negative accounts positive?

21 MR. ALLEN: Objection. Outside the scope.

22 THE COURT: It's getting pretty close. Sustained.

23 THE WITNESS: I did not --

24 THE COURT: That's sustained. Go ahead. He will
25 give you another one.

REDIRECT EXAMINATION OF RICHARD VOLP

1 BY MR. CHEE:

2 Q Turning to the exhibit that defense counsel showed you
3 showing a safe, was there any gold and silver in fact found in
4 that safe?

5 A There was not.

6 Q And what was the state of construction of 6922 Lacantera
7 Place?

8 A It was still being finished. The residence was not
9 habitable at that time. I believe that there was finishing
10 work going on that would take a few more weeks.

11 Q Would it be wise to keep gold and silver in an unfinished
12 house?

13 A I do not believe so.

14 Q Where would you expect that quantity of gold and silver
15 to be stored?

16 A In a safe deposit box.

17 MR. CHEE: Mr. Houston, may I please have access to
18 the Elmo?

19 Showing defense counsel Government's 315.

20 Your Honor, I would like to republish 315.

21 THE COURT: All right.

22 BY MR. CHEE:

23 Q Do you recall Government's 315?

24 A Yes, sir.

25 Q Was this the copy of the exhibit that the government --

REDIRECT EXAMINATION OF RICHARD VOLP

1 that I showed you on direct examination?

2 A Yes, sir.

3 Q I would like you to read right at the bottom after the
4 description there. What does it say?

5 A The bottom left, "a quotation prepared by" -- that line?

6 Q Yes, sir.

7 A Then it says, "This is a quotation for the goods named.
8 Subject to condition noted below, does not include cabinet,
9 canopy, woodwork. To accept this quotation, sign here and
10 return."

11 Q Would you have expected the fish tanks that cost to the
12 tune of \$80,000 to be in the completed Lacantera residence had
13 that occurred?

14 A If the residence isn't completed, then I wouldn't know
15 potentially what more would be going in there, correct.

16 Q In the course of your investigation and reviewing
17 documents found at the defense residence, you found -- did you
18 find other documents pertaining to home improvement and
19 improvement work done at 6922 Lacantera Place?

20 A Yes, that is correct.

21 Q Did it appear that it was actively under construction?

22 A Yes, sir.

23 MR. CHEE: Your Honor, I would like to publish
24 Government's 330.

25 THE COURT: All right. Is it admitted?

REDIRECT EXAMINATION OF RICHARD VOLP

1 MR. CHEE: It is admitted.

2 THE COURT: All right.

3 BY MR. CHEE:

4 Q Could you read the first bullet point that's on the
5 screen there on Government's 330?

6 A Yes, sir. "Explained that he does not need to talk."

7 Q What do you mean by that, and why did you write that
8 down?

9 A It was --

10 MR. ALLEN: Asked and answered, Your Honor, on
11 direct.

12 THE COURT: Overruled. It's redirect.

13 BY MR. CHEE:

14 Q I will ask the question again. Why did you write down
15 what you did on the first bullet point?

16 A Because it was important to document and memorialize that
17 we explained to Mr. DaCorta that he did not need to talk to
18 Agent Batsch and myself.

19 Q Did he agree to talk?

20 A He did.

21 Q Did Mr. DaCorta, the defendant, ever ask for his lawyer
22 to be present?

23 A He did not.

24 Q Did he ever indicate during the interview that he had a
25 lawyer?

REDIRECT EXAMINATION OF RICHARD VOLP

1 A No, he did not.

2 Q I'd like you to read the last bullet point there on the
3 screen in front of you starting with the word, "Confronted."

4 A Yes, sir. "Confronted with being 40 million short and
5 20 million loss in forex, asked where is his revenue stream."

6 And in quotes I put, "I don't know," referring to
7 Mr. DaCorta's direct answer.

8 Q And what did that response mean to you?

9 A When we asked where his profits were, how he was making
10 money and how this generated revenue, Mr. DaCorta said he did
11 not know.

12 Q Did that strike you as odd?

13 A It did strike me as odd because our investigation had
14 shown that he was repaying investors with other investor
15 money, not any sort of profit or revenue coming in from ATC
16 Brokers.

17 Q And turning to page 2 of Government's 330. Sir, I would
18 like you to read the fourth bullet point from the top.

19 A The one that starts with, "Things got out of hand"?

20 Q Yes, sir.

21 A "Things got out of hand too quick, and I didn't know how
22 to handle it."

23 Q What did that mean to you?

24 MR. ALLEN: Asked and answered.

25 THE COURT: Overruled.

REDIRECT EXAMINATION OF RICHARD VOLP

1 A What it meant to me was that the money coming in from
2 friends and family and other investors started to grow faster
3 than Mr. DaCorta could handle and that their trading losses
4 compounding with their spending and the revenue that they had
5 lost, the money they had lost in forex trading along with the
6 extravagant expenses of spending had compounded quickly and
7 that Mr. DaCorta didn't know how to salvage what had occurred.

8 BY MR. CHEE:

9 Q Is that the kind of response that you see in the course
10 of your fraud training and experience?

11 MR. ALLEN: Objection.

12 THE COURT: Yeah. Let's stick to the exhibit.

13 BY MR. CHEE:

14 Q I'd like to go down two more bullet points starting with,
15 "Ray." Can you please read that?

16 A "Ray doesn't realize the losses. Probably thinks assets
17 are in flux."

18 Q Why did you write that down, and what does that mean?

19 A It is relating to Ray Montie, that according to
20 Mr. DaCorta, Ray Montie did not know the trading losses and
21 that Mr. DaCorta was indicating Ray Montie probably thinks the
22 assets are in flux or generated from their profits.

23 Q Going to the bullet point starting with, "this" above the
24 word "Anile," could you please read that into the record,
25 page 2, Government's 303?

REDIRECT EXAMINATION OF RICHARD VOLP

1 A I'm trying to find where.

2 Q It would be the third from the bottom, sir.

3 A Where it starts with, "Sometimes"?

4 Q Above that one, two above that one.

5 A Okay. "Has not told anyone about the losses with ATC
6 Brokers."

7 Q What impact did that statement have on you?

8 MR. ALLEN: Objection. Relevance.

9 THE COURT: I don't think that's relevant what impact
10 it had on his person, on this witness's -- sustained.

11 BY MR. CHEE:

12 Q Why did you write that down, Agent Volp?

13 A During the course of our investigation, we wanted to
14 learn the extent of the fraud and who at Oasis, if anybody
15 else, was aware of the Ponzi scheme and who had any liability
16 or could be a co-conspirator.

17 Q Would you please read the last two bullet points shown on
18 the screen?

19 A You said the last two, sir?

20 Q Yes, sir.

21 A "Sometimes I think about how everything occurred. I
22 don't know how this occurred. I am sorry." And quotations
23 for those last two indicating Mr. DaCorta said them directly.
24 And then also in his mind he wanted to make it right.

25 Q This is page 3 of Government's 330. Could you please

REDIRECT EXAMINATION OF RICHARD VOLP

1 read the bullet point starting with, "Gil Wilson"?

2 A Yes. "Gil Wilson brought in to assist new investors.
3 Does not know anything." And then in quotes, "He did nothing
4 wrong. He is an innocent kid."

5 Q What impact did the words "innocent kid" have on you?

6 MR. ALLEN: Objection. Relevance.

7 THE COURT: Probably not -- the impact on this
8 individual sitting here is not relevant.

9 BY MR. CHEE:

10 Q Why did you write down that Gil Wilson according to the
11 defendant was an innocent kid?

12 A Because we were looking for co-conspirators and trying to
13 understand who would have any culpability, but it also struck
14 me as pretty profound that Mr. DaCorta was saying Gil Wilson
15 did nothing wrong, he is innocent. My experience has been if
16 I'm talking to a normal person in an interview --

17 MR. ALLEN: Objection. Relevance.

18 THE COURT: Overruled. He can finish his answer. Go
19 ahead.

20 BY MR. CHEE:

21 Q You can finish what you were testifying to, sir.

22 A My experience is if you are talking to someone and they
23 indicate their co-worker is innocent, it implies that somebody
24 is guilty. By saying that Gil Wilson did nothing wrong, it's
25 implying -- coming from Mr. DaCorta, it's implying that

REDIRECT EXAMINATION OF RICHARD VOLP

1 somebody did something wrong. So that was a pretty profound
2 statement to me indicating that Mr. DaCorta not only felt that
3 somebody did something wrong but somebody was the opposite of
4 innocent; guilty.

5 Q I'd like to turn to page 5, Government's 330. Please
6 read the top bullet point.

7 A Top bullet point says, "Web page updates based on
8 spread."

9 Q What is your understanding of the spread based on your
10 investigation?

11 A So my understanding of the spread is essentially it's
12 money that is redirected off of each trade. The analogy that
13 I have used while trying to describe this is when you swipe
14 your credit card and the credit card company gets the
15 2 percent transaction fee. So the spread pay would be kind of
16 that transaction fee that occurs based on the trade.

17 Q Did you understand for that to be real profit?

18 MR. ALLEN: Objection. Leading.

19 THE COURT: Sustained.

20 BY MR. CHEE:

21 Q How do you understand the concept of spread in the
22 operation of Oasis?

23 A My understanding of the spread is that it wasn't revenue
24 or profit, that it was just redirecting money from the trading
25 account which was then retraded, and ultimately the majority

REDIRECT EXAMINATION OF RICHARD VOLP

1 of that was lost as well.

2 Q Would you please read the last sentence on the screen
3 here?

4 A "Does not know how much loss with ATC Broker."

5 Q Are you familiar with the ATC account in London, United
6 Kingdom?

7 A I am, yes.

8 Q Do you know, sir, how much money was left in that
9 account?

10 MR. ALLEN: Outside the scope of cross.

11 THE COURT: Sustained.

12 BY MR. CHEE:

13 Q Turn to the next page, which is page 6. I would like you
14 to read the second last bullet point from the bottom.

15 A "This is something that spiraled out of control."

16 Q Why did you choose to write that down in your notes here,
17 sir?

18 A I felt it was important to document Mr. DaCorta's intent
19 and his feelings when he was talking to us to the best of my
20 ability, and that it appeared that by Mr. DaCorta saying that
21 things had spiraled out of control, that this wasn't a
22 calculated, intentional thing that things had gotten out of
23 hand, and that Mr. DaCorta did not know how to create a
24 profitable business based on where he was at.

25 Q Could you please read the last sentence on the screen?

REDIRECT EXAMINATION OF RICHARD VOLP

1 A "Knew that it was wrong and wanted to protect everyone
2 until they could turn it around."

3 MR. CHEE: If I may have a brief moment of the
4 Court's time.

5 Thank you, sir. No further questions.

6 THE COURT: All right. You may step down.

7 Why don't we take our morning break, ladies and
8 gentlemen. We will run until right until 11:15 and then run
9 until 12:30. Thank you for your close attention. Please
10 don't discuss this matter or look on outside sources. Thank
11 you.

12 (Jury escorted out of the courtroom.)

13 MS. BEDKE: Your Honor, with the Court's permission
14 we will bring Mr. Anile into the courtroom over the break. It
15 takes him a few minutes.

16 THE COURT: Sure.

17 MS. BEDKE: And we are going to replace the regular
18 chair with his wheelchair.

19 THE COURT: Fabulous.

20 MS. BEDKE: It fits better and he has asked, Your
21 Honor, if he can have some orange juice on the stand. Is that
22 all right?

23 THE COURT: I'm totally fine with it. If possible
24 let's find him like an opaque cup. I have some downstairs, so
25 they don't think it's weird.

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 MS. BEDKE: Thank you, Your Honor.

2 THE COURT: I had a witness once who ate a banana on
3 the stand. He was hypoglycemic. Or a Cliff bar.

4 (Recess taken.)

5 THE COURT: Call your next witness, government.

6 MS. BEDKE: The United States calls Joseph Anile.

7 THE COURT: Mr. Anile, if you will be sworn.

8 THE COURTROOM DEPUTY: If you will raise your right
9 hand.

10 (Witness sworn.)

11 THE COURTROOM DEPUTY: Can you state your full name
12 for the record.

13 THE WITNESS: Joseph Salvatore Anile, II.

14 **JOSEPH SALVATORE ANILE, II, CALLED BY THE GOVERNMENT, SWORN**

15 **DIRECT EXAMINATION**

16 BY MS. BEDKE:

17 Q Good morning, Mr. Anile.

18 A Good morning.

19 Q The microphone is that kind of bar in front of you. If
20 you could just be sure to speak into that. And you can move
21 it a little closer to you.

22 A I have a red light. Is that off or on?

23 Q It's on.

24 A Can you hear me?

25 Q Yes, sir.

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 How old are you, Mr. Anile?

2 A Fifty-eight years old.

3 Q How far did you go in school?

4 A I received a Juris Doctor, law school.

5 Q Where did you go to law school?

6 A Washington College of Law.

7 Q And when did you get your law degree?

8 A 1990.

9 Q Could you briefly describe your employment history after
10 you graduated from law school?

11 A After law school?

12 Q Yes, sir.

13 A I worked at Cadwalader, Wickersham & Taft in Manhattan.

14 Q Is that a law firm?

15 A It is. It is the oldest law firm in America. I worked
16 there for a gentleman by the name of Tom Russo. And soon
17 after arriving there he left the firm, and the firm had some
18 issues, and I left also. I set up my own shop. Tom went over
19 to Lehman Brothers. He started, I think, as assistant general
20 counsel, subsequently became general counsel and worked his
21 way up to vice chairman under Richard Fuld. When I had my own
22 shops I represented some of the former clients that I had
23 represented while I was at Cadwalader. And then Tom hired me
24 to also represent Lehman Brothers.

25 While working at Lehman Brothers, many of the people

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 there introduced me to their colleagues and friends. So I
2 started working mostly for domestic entities, large
3 corporations, and then foreign banks who were trying to get
4 into the business. So I represented banks all over the world,
5 England, the Netherlands, Italy. And I did that through most
6 of the '90s. 2000 September 11 was life altering. I lost two
7 of my offices that day, my offices at 3 World Financial Center
8 next to the World Trade Center, and at 17 Battery which was a
9 couple blocks away, around the block. They were shut down
10 because they had to shut down -- downtown Manhattan was
11 closed.

12 I started to rebuild. My clients had all been kind
13 of -- it was a different economic circumstance. Things
14 changed drastically. I rebuilt my practice probably around
15 2004 or 2005. And 2007 and 2008 came and the economy changed
16 significantly again. And at that point I was out of work for
17 about a year. And then I joined up with some friends. We
18 formed a small firm, and I was a partner in that firm. And
19 that lasted about a year. And then a friend of mine came to
20 me. He was the former mayor of Glen Cove and executive of
21 Nassau County, Long Island, and he was setting up a Long
22 Island office for a larger firm in Rochester, New York, called
23 Harris Beach and asked if I would like to be part of that. So
24 I signed an agreement with them to serve as counsel to that
25 firm for about two years. And we set up an office in

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Bloomingdale, New York. That was about 2010. Ironically, Tom
2 Russo had subsequently left Lehman Brothers after the collapse
3 in 2007 and he went to work for AIG as general counsel. AIG
4 changed its name to Chartis at that point. And while I was at
5 Harris Beach, one of the things they asked me to do was to
6 solicit AIG Chartis. Harris Beach had already been listed as
7 counsel in connection with insurance claims. So they would be
8 on different panels, for example, say toxic torts or
9 something. So you go on a rotation. And when the company
10 issues a claim, the appropriate vendor, like the counsel would
11 be appointed.

12 I worked with Mr. Russo again to get Harris Beach
13 appointed to more panels so that they could increase the
14 volume of their business. At that time, AIG had an annual
15 legal expenditure of about \$3 billion a year. So there was
16 plenty of room for me to help with that.

17 Q Let me interrupt you there and just ask if you also had
18 the opportunity to do some work, legal-related work, while you
19 were a law student?

20 A Sure.

21 Q And what was that?

22 A I worked as a law clerk at the Commodity Futures Trading
23 Commission for Stephen Meyer of the Division of Enforcement,
24 and he was a direct report to Dennis Klejna. He was the
25 director of the Division of Trading -- the Division of

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Enforcement. I worked on --

2 Q Well, let me ask this. When did you work there at the
3 CFTC?

4 A 1988 and '89.

5 Q Was this during the school year or during the summer?

6 A One and one. I think it was summer, two summers, and I
7 believe one was partial in the school year as well.

8 Q In general terms, would you describe your legal work,
9 your legal career as transactional in nature or were you a
10 trial lawyer?

11 A Transactional in nature only.

12 Q Exclusively?

13 A Pretty much.

14 Q Mr. Anile, do you have any health issues?

15 A Yes.

16 Q And in particular, have you received a health-related
17 diagnosis recently?

18 A Yes. I have been recently diagnosed with potential early
19 onset Alzheimer's disease.

20 Q Is that potential, you said, early onset Alzheimer's, a
21 definitive diagnosis at this time?

22 A No. I'm not eligible -- the proper testing would have
23 included a magnetic resolution image test of my brain. And
24 I'm not eligible for that test because of work that had been
25 done to my heart in 2019. So I had to take a CAT scan which

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 was inconclusive. So they then said we are just going to have
2 to do a PET scan which I think is coming up in a month or so.

3 Q So is it fair to say that the testing or evaluation
4 process is ongoing?

5 A That's correct.

6 Q Are you taking new medication for that condition?

7 A For that condition, no.

8 Q How does it affect you?

9 A After my -- I had some significant surgeries in 2019.
10 And after the surgeries, apparently what had happened over a
11 period of time is that I would do something like watch a movie
12 with my children or have a conversation and subsequently
13 forget the entire event occurred. And when I brought that to
14 the attention of my primary care physician, he wasn't sure if
15 it was the medication because I'm on an incredible amount of
16 medication now or if it was a result of the potential
17 Alzheimer's disease.

18 Q Let me ask this. Do you find that the condition and/or
19 the medication affects your memory, and if so, how?

20 A It only affected my memory to the extent of my recent
21 events. My past memory is fine especially with respect to
22 this period or even all the periods. And we're not sure if
23 it's the medication that had done it. So they are saying, no,
24 it's probably Alzheimer's which is why we're looking into it.

25 Q Is that why the evaluations are ongoing?

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q Now, Mr. Anile, have you ever committed a federal felony
3 offense?

4 A Yes.

5 Q What federal felonies have you committed?

6 A Conspiracy, money laundering, and filing a false tax
7 return.

8 Q Do you see anyone in this courtroom who participated in
9 that conduct with you?

10 A Yes.

11 Q Could you please identify the person to whom you are
12 referring by pointing him or her out and describing what they
13 are wearing?

14 A Of course. Mr. DaCorta seated here wearing a brownish
15 blazer, blue shirt, and blue silver tie.

16 MS. BEDKE: Your Honor, the government would ask that
17 the record reflect identification of the witness.

18 THE COURT: Noted.

19 BY MS. BEDKE:

20 Q Mr. Anile, did you plead guilty to those federal
21 felonies?

22 A I did.

23 Q Pursuant to a plea agreement?

24 A Yes.

25 Q And did your plea agreement contain cooperation

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 provisions?

2 A It did.

3 Q What did those provisions apply in general terms?

4 A That I will provide information as requested by the
5 government, truthfully, honestly and completely, and that
6 based upon that information, the quality, nature, extent and
7 usefulness to the government, that I would do that in this
8 matter and any other matter that was brought to me.

9 Q Mr. Anile, I would like to direct your attention to
10 April 18 of 2019.

11 A Yes.

12 Q What happened on that date?

13 A My home was raided by the Federal Bureau of Investigation
14 about 6:00 or 7:00 in the morning, I believe it was. It was
15 early. They came to the door with many agents, and it took
16 about a day during which point they seized all of my
17 electronics, communication devices, books, records, and
18 transportation. They confiscated my vehicles as well.

19 Q Where were you living at the time? Where was this home?

20 A 4064 Founders Club Drive in Sarasota, Florida.

21 Q You indicated your transportation was taken; is that
22 correct?

23 A That's correct.

24 Q What do you mean?

25 A I had two vehicles in the garage. And they seized both

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 vehicles.

2 Q What were the vehicles?

3 A I'm sorry?

4 Q What were the vehicles?

5 A What were the vehicles?

6 Q Uh-huh.

7 A Oh, I think one was a 2013 Mercedes GLE, you know, like

8 the little van. And the other one was a 2015 Ferrari

9 California T.

10 Q So were the vehicles driven by family members also

11 seized?

12 A Yes. The van was my wife's car, and the California

13 vehicle was my vehicle.

14 Q Did your son also have a vehicle that you bought or

15 helped him buy?

16 A Yes. I had helped him purchase a used Mercedes, the

17 little one, the CLK. I put a deposit down on it and he made

18 payments. He lived in Jacksonville, Florida, at the time, and

19 they went to his office and they seized it from his workplace.

20 Q Were you interviewed on April 18 of 2019?

21 A For the entire day.

22 Q How did you react or respond after April 18 of 2019 to

23 those events?

24 A Without having any means of communication, I had no way

25 to touch base with anyone. I did have a home telephone which

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 I knew worked.

2 Q Do you mean a landline?

3 A A landline, yes, as part of my cable television package.

4 The FBI when they were with me during our interviews said

5 several things. Agent Stone --

6 Q Let me stop you there. So based upon what was told to

7 you, what if anything did you do?

8 A I tried to contact attorneys but it was Holy Week. It

9 was the week of Easter. This was, I think, Wednesday. And

10 the day was shot because it was like later in the day at that

11 point, and I was not able to get anyone on the phone. I was

12 able to finally get an attorney who was completely unfamiliar

13 with these, as was I, with this type of a matter. And he said

14 he couldn't help me, but he did suggest that I just take notes

15 when I speak to people and whatnot. Instead of doing that, I

16 just figured if I spoke to anybody, I would just record them.

17 Q So did you make recorded telephone calls?

18 A Yeah. I had my cell phone, and I was able to record from

19 the speaker phone of my landline.

20 Q Did you have your cell phone, or was your cell phone

21 seized?

22 A No. I'm sorry. What did I do? I don't know how I did

23 it. I had a device of some sort. It may have been an old

24 Lanier or something like that, an old dictaphone. I forgot

25 how I did it.

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Who did you call?

2 A Well, I didn't have anyone's numbers because all the
3 numbers were in the cell phone that was seized. So it took a
4 day or so to get the number of people. I ultimately was able
5 to call Michael DaCorta, John Caliendo, Joseph Paniagua, and
6 Ray Montie.

7 Q Did you record all of those calls?

8 A Yes.

9 Q Did the individuals you just named know that you were
10 recording the calls?

11 A No.

12 Q Why did you make and record these calls?

13 A Well, I thought it would be easier than taking notes in
14 the first instance, and second, I was actually -- because I
15 was not familiar with it, the case that was presented to me
16 when I was approached by the FBI was the Commodities Futures
17 Trading Commission v. Oasis and many of the Oasis entities and
18 the individuals involved with Oasis including myself. I
19 thought it was a regulatory matter. I didn't know it was a
20 criminal matter. And one of the things that the agent had
21 told me during our interview process was that Michael DaCorta
22 confessed, said it was a scam and said that I was the only one
23 who knew. I knew that to be true. I did not tell that to the
24 agent, but I wanted to see whether or not anybody actually
25 said that. I wanted to see if I could get out of it.

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 So what I did was when I was talking to people, I --
2 pleading ignorance, I didn't know anything. Did you know
3 anything. It was kind of like the Three Stooges thing. I had
4 thought that the FBI also was still recording my line, my
5 landline. They told me they were surveilling me for over six
6 months prior and that they had recordings. So I assumed my
7 phones were still tapped.

8 Q Do you know if -- now, do you know if your phone was ever
9 tapped?

10 A No, I do not know.

11 Q Do you know whether the agents were referring to the
12 conference calls to solicit lenders?

13 A At this point in time I believe there were referring to
14 the conference calls that were made on these free conference
15 calls.com type of things and they must have had tapes of
16 those.

17 Q Did you know that at the time that you placed these
18 recorded calls to Mr. DaCorta, Mr. Caliendo, and Mr. Montie?

19 A No. I believe I was still being surveilled.

20 Q So were you concerned that the government was still
21 listening in?

22 A Absolutely.

23 Q Did that impact how you said what you said?

24 A Yes. I did not -- I lied. I wasn't going to confess on
25 the phone. I wanted to go on a fishing expedition and see who

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1 was saying what behind the scenes.

2 Q Did the government ask you to make these calls?

3 A No. In fact, when I finally spoke to an attorney later,
4 I think it was actually Easter night, who had complete
5 familiarity with these types of matters, they yelled at me.
6 They said that, first, I shouldn't have had any conversations
7 with the co-defendants, substantive conversations, seeing that
8 I was obstructing and/or interfering with an ongoing
9 government investigation and that I would have to report the
10 fact that I had made those recordings to the government
11 immediately. And I did.

12 Q Did you stop then making --

13 A Oh, absolutely. Well, what I did first was I called
14 everyone and said I was told this, do not have any substantive
15 conversations with anyone, it can be considered interference.
16 I repeated what I was told after which I stopped making -- and
17 the reason I recorded those was to prove that I did that
18 because I didn't want the government or anyone to think that I
19 was trying to impede an ongoing investigation.

20 Q At some point later in time, did you tell the government
21 that you had made some recorded phone calls in the days right
22 after the searches?

23 A Right. Soon after that, I was in touch with the agent
24 who had visited my home, Agent Stone, and I gave to him a copy
25 of these.

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Mr. Anile, I want to take you back now to the summer of
2 2012.

3 A Sure.

4 Q Where were you during the summer of 2012?

5 A My -- I was of counsel at Harris Beach. And that ended
6 in early, I would say maybe June, July, or August of 2012. My
7 mom lived in St. Petersburg, Florida, and she was very ill and
8 had COPD and had grown increasing ill. My brother, Frank,
9 lived in New York, lived near me, and he had stopped
10 everything he was doing to go take care of my mom. So since I
11 was now done with work, I agreed with my brother that I would
12 come down and send him back up so he could go spend time
13 obviously in New York with his fiancée. I came down and I
14 lived here in St. Petersburg at my mom's house. And that's
15 when -- roughly when Mr. DaCorta reached out.

16 Q So during the time you were down here taking care of your
17 mother, were you gainfully employed?

18 A No. I think I was still receiving payments although no
19 work was required of me at that point from Harris Beach.

20 Q And how were you set financially in a general sense?

21 A Well, other than the money I was receiving, I had no
22 money. I was not doing well.

23 Q You indicated just a moment ago you had contact with the
24 defendant?

25 A Yes.

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1 Q How was that contact made?

2 A Michael called me because he wanted to engage my services
3 as an attorney. He had applied for a license as a
4 broker-dealer in Belize, and he had received a statutory
5 disqualification basically and asked if I knew anything about
6 that, and I did not, not in the case of Belize, but I said I
7 would be happy to look into it for him.

8 Q Did the defendant tell you what he meant by statutory
9 disqualifications?

10 A No. I don't even know if he knew that's what it was. He
11 just said they said no, and he didn't understand why there was
12 a no. I found out that it was a statutory disqualification
13 because I contacted local counsel and they kind of told me
14 that it was. I called a firm down in Belize.

15 Q Before we get into that, prior to this time, had you been
16 acquainted with Mr. DaCorta?

17 A A mutual friend, I don't know who, introduced us in the
18 mid '90s. I was a lawyer, and Michael was introduced to me to
19 help him. He had a company and he was trying to raise capital
20 for the company, corporate finance. And he hired me as an
21 attorney to do a securities offering which would be exempt
22 from registration pursuant to the Securities and Exchange
23 Commission rules.

24 Q And so you had done some legal work for Mr. DaCorta
25 previously?

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1 A Yes.

2 Q All right. So on the occasion when he called you in the
3 summer of 2012, what, if any, action did you take?

4 A I told him I would look into it and I would be happy to
5 see if I could do something about it.

6 Q And what did you do?

7 A In connection with the Belize matter, I contacted local
8 counsel in Belize, found out that it was a statutory
9 disqualification. It would not likely be overturned. I told
10 that to Michael, and he asked if I could challenge it. And I
11 did. I prepared a challenge, an opinion letter trying to
12 challenge the matter for him.

13 Q I have handed you what has been marked for identification
14 as Government Exhibits 80B and 80C. Do you recognize those
15 documents?

16 A Yes, I do.

17 Q In general without reading them, what do they relate to?

18 A Specifically what I just said. In the first instance --

19 Q Wait a minute, Mr. Anile. I'm sorry. They haven't been
20 admitted into evidence yet. So do they relate to the
21 challenge you just referred to that Mr. DaCorta asked you to
22 make?

23 A Yes. Both of these documents relate to the challenge
24 that I made regarding the findings of the International
25 Financial Services Commission of Belize regarding Mr. DaCorta.

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1 MS. BEDKE: The government would move for the
2 admission of 80B and 80C.

3 MS. IRVIN: No objection.

4 THE COURT: They are admitted, 80B and 80C.

5 (Government Exhibits 80B and 80C admitted.)

6 BY MS. BEDKE:

7 Q Let's start with 80B. If we can put the first page on
8 the trial director.

9 Mr. Anile, the document is being projected onto the
10 screen, and you should feel free to look at the hard copy or
11 the screen, whichever is easier.

12 A All right.

13 Q What is the date of this letter?

14 A November 28, 2012.

15 Q And who wrote the letter?

16 A I did.

17 Q To whom did you address the letter?

18 A The director of the International Financial Services
19 Commission. That's the regulatory body that governs financial
20 services in the country of Belize.

21 Q What was the subject of your letter to that director?

22 A Specifically I addressed the fact that Mr. DaCorta had
23 received a disqualification based on his having filed a
24 personal bankruptcy in the past, and I was challenging it
25 because I said that -- I was comparing U.S. law basically at

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1 their request because I did speak to them about challenging it
2 prior to doing this. So I was comparing U.S. law basically to
3 their law.

4 Q Let's turn quickly to the last page, page 7. And whose
5 name appears in the signature block there?

6 A Mine.

7 Q Were you successful in your efforts to persuade the
8 Belizean regulator?

9 A No.

10 Q And how did you find out that your challenge wasn't
11 successful?

12 A About a month later they had sent a letter to me denying
13 the challenge.

14 Q Let's take a look at 80C. What's the date of this
15 letter?

16 A December 17, 2012.

17 Q And who sent the letter?

18 A A manager of Belize Corporate Services. That was signed
19 by the general director of the International Financial
20 Services Commission.

21 Q Let's look at page 2, the signature block. Is this the
22 denial of your challenge?

23 A Yes. And this is the individual to whom I sent the first
24 letter we discussed.

25 Q What did you understand the effect of this denial to be?

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1 A That Mr. DaCorta would not be able to hold a brokerage
2 license in Belize.

3 Q Let's look at the last paragraph right above the
4 signature block. Could I have you read that slowly, please,
5 for the court reporter?

6 A Having considered all the facts, we have come to the
7 conclusion that Mr. DaCorta is not a fit and proper person to
8 be granted a license for trading in securities which would
9 involve his handling of large amounts of funds belonging to
10 clients. We, therefore, regret to inform you that we are
11 unable to process this application further.

12 Q Mr. Anile, did this letter effectively put an end to this
13 particular project?

14 A Yes.

15 Q Did Mr. DaCorta ask you to do any other work for him?

16 A We were anticipating that answer, the answer that you see
17 here, the denial of the claim. So Michael suggested that I
18 help set up a hedge fund. I had set up hedge funds in the
19 past for many clients. And he thought that perhaps he could
20 do a domestic United States hedge fund and assets and do
21 broad-based investing in many different areas to invest in all
22 kinds of projects including foreign exchange, but the foreign
23 exchange was a limited amount. You are only limited to
24 5 percent of the total amount of assets that are under
25 management.

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1 Q Did this project involve an entity by the name of Oasis
2 Management, LLC?

3 A Oasis Management was throughout this entire period
4 Michael's personal company. He told me that it was his
5 company and he used it to trade foreign exchange for family
6 and friends and make investments, and he was very successful
7 with it. And he used that to pay the bills to engage these
8 projects.

9 Q Did you have any role in forming or incorporating Oasis
10 Management, LLC?

11 A No.

12 Q Was it in existence prior to you receiving the call from
13 the defendant in the summer of 2012?

14 A Yes.

15 Q So what was the entity or name of this new fund that he
16 talked to you about?

17 A Well, I was going to represent Mr. DaCorta and create the
18 hedge fund, and then he asked me instead if I would like to be
19 a principal in the fund. So I explained to him, and we had a
20 long conversation about this that I couldn't be counsel if I
21 were going to be a principal. I would have to not act as
22 attorney in any of these matters and have to hire counsel.
23 And he agreed. And we hired -- well, what I did was I called
24 a friend first in this case who I knew was an administrator of
25 funds, and I wanted to see whether he had available a fund

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1 that had already been set up but hadn't been used. We could
2 have purchased it, and it would have expedited the matter.
3 When I contacted him, he did not. So he then introduced us to
4 a law firm that we engaged to set up a hedge fund on our
5 behalf.

6 Q What law firm did you engage to set up the hedge fund?

7 A Bryant Rabbino.

8 Q And once you engaged that law firm, what was the first
9 order of business?

10 A I had set up a couple of entities. I think I just
11 purchased them -- I don't remember how we did it -- for
12 Michael, Ray Montie, the other partner, and myself. And we
13 told him that Michael was going to be the chief investment
14 officer, the one who would handle the investing and whatnot.
15 And customarily what you do when you have someone who is going
16 to be handling all the funds is they do a due diligence review
17 of the person to see if they have any problems that would
18 prevent them from doing this. So Bryant Rabbino comes up to
19 the due diligence review of the entity, which I had just set
20 up for Mr. DaCorta, as well as Mr. DaCorta himself.

21 Q Was this -- let me rephrase. Is this akin to a
22 background investigation of sorts?

23 A Yes. It would have gone through all of his background to
24 see if there was a reason why he would be basically ineligible
25 to act as a trading advisor and handle money.

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1 Q Is that necessary?

2 A Yeah. You want full disclosure on a document. You want
3 to say that the person has -- if there were any issues that
4 were noted, sure.

5 Q Who performed this due diligence review?

6 A Bryant Rabbino, our counsel.

7 Q And did you receive any kind of report informing you of
8 the results of that inquiry?

9 A Yes.

10 Q I have handed you what's been marked as Government
11 Exhibit 80A. Do you recognize that document?

12 A I do.

13 Q How do you recognize it without speaking to its
14 substance?

15 A It's on letterhead of the law firm, our counsel, Bryant
16 Rabbino, and it's addressed to me.

17 MS. BEDKE: Your Honor, the government moves for the
18 admission of Exhibit 80A.

19 MS. IRVIN: No objection.

20 THE COURT: Admitted.

21 (Government Exhibit 80A admitted.)

22 BY MS. BEDKE:

23 Q Let's publish page 1. What's the date of this
24 correspondence?

25 A October 16, 2012.

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1 Q And whose letterhead is the letter written on?

2 A Bryant Rabbino, LLP.

3 Q Is that the name of the law firm you engaged at this
4 time?

5 A That's correct. They were our counsel at that time.

6 Q And to whom is the letter addressed?

7 A To me.

8 Q And without going chapter and verse, what does this
9 letter report?

10 A It is an investigation, a background investigation of
11 Mr. DaCorta. And it talks about a lot of little things and
12 basically says that he should be fine to engage as an
13 investment advisor for the firm.

14 Q Let me have you address your attention to page 3 of the
15 letter. It's Bates stamped Anile-00237.

16 A Page 3?

17 Q Yes, sir.

18 A I'm looking at it now.

19 Q Could you read the mid-section starting with "Subject
20 to"?

21 A Beginning with, "Review Conducted?" No?

22 Q Let's start with "Subject to the qualifications," just
23 above that.

24 A I see. "Subject to the qualifications, limitations, and
25 assumptions set forth herein, our targeted review and findings

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1 for the review period are as follows:

2 Review conducted: A national background check of
3 criminal records from county courts, Department of
4 Corrections, administration of the, courts and other legal
5 agencies of various types of offenses, including felonies,
6 misdemeanors, et cetera.

7 Findings: No record of any convictions against
8 Mr. DaCorta or the investment manager was discovered."

9 Q Please continue.

10 A Continue?

11 Q Yes, sir.

12 A Sure.

13 "Review Conducted: A New York state background check
14 of civil records from county courts for Mr. DaCorta, including
15 property tax liens, general tax liens, bankruptcies, small
16 claims, and judgments associated with Mr. DaCorta.

17 Findings: No item related to the securities or other
18 fraud or misconduct in connection with Mr. DaCorta serving as
19 a fiduciary was discovered."

20 Q Let me interrupt you there for just a moment. Mr. Anile,
21 at this time were you aware that roughly two years earlier
22 Mr. DaCorta had entered into a settlement agreement with the
23 National Futures Association?

24 A No, I was not.

25 Q Do you know if Bryant Rabbino was ever made aware of that

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1 settlement?

2 A No, they were not.

3 Q Please continue.

4 A The check of civil records did discover that Mr. DaCorta
5 has filed for personal bankruptcy on two occasions as
6 described in more detail below.

7 "Mr. DaCorta filed for personal bankruptcy under
8 Chapter 7 of the bankruptcy code in the Southern District of
9 New York, Poughkeepsie, on July 7, 2010, and was released from
10 bankruptcy on October 6, 2010.

11 B. Mr. DaCorta filed for personal bankruptcy under
12 Chapter 7 of the bankruptcy code in the Southern District of
13 New York, Poughkeepsie, on February 26, 2001, and was released
14 from bankruptcy on June 6, 2001. The existence of multiple
15 bankruptcies may be cause for further inquiry."

16 Q So in the case of this project, this hedge fund, was
17 bankruptcy a deal breaker?

18 A No.

19 Q Was that different from what the Belize authorities had
20 said?

21 A Yes.

22 Q Would you please read Number 3 at the bottom of page 3 of
23 this letter?

24 A "Review conducted: A check of the database of the
25 Securities and Exchange Commission, including a review of

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1 enforcement, litigation, and regulatory actions."

2 Q Let's move to the top of page 4. What were the findings
3 as to that review?

4 A "No past or current actions to which Mr. DaCorta is or
5 was a party were discovered."

6 Q Let me have you read Number 4 and Number 5, please.

7 A "Number 4. Review Conducted: A check of the database of
8 the Financial Industry Regulatory Authority, including a
9 review of enforcement, litigation, and regulatory actions.

10 Findings: No past or current actions to which
11 Mr. DaCorta is or was a party were discovered.

12 Five. Review Conducted: A check of the databases of
13 each of the National Futures Association and Commodity Futures
14 Trading Commission, including a review of enforcement,
15 litigation, and regulatory actions.

16 Findings: No past or current actions to which
17 Mr. DaCorta is or was a party were discovered."

18 Q Mr. Anile, does Number 6 refer to a search of records in
19 the court system in the Southern District of New York?

20 A Yes.

21 Q And are there any findings as to that part of the review?

22 A Yes. "Review Conducted: A search of the public access
23 to court electronic records, PACER, and the Case
24 Management/Electronic Case Filing system covering the District
25 Court in the Southern District of New York and telephone

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1 interviews with plaintiff's counsel to confirm that the two
2 litigation matters that Mr. DaCorta voluntarily disclosed and
3 represented had been dismissed were in fact so dismissed."

4 Q I'm sorry. Does the letter provide some additional
5 details regarding those actions that had been dismissed
6 thereafter?

7 A This letter here?

8 Q Yes, sir.

9 A Yes.

10 Q Okay. With this due diligence inquiry in hand, what if
11 anything else happened with this hedge fund?

12 A We proceeded to move ahead with the fund and Michael
13 began so solicit investors.

14 Q What was the name of this venture?

15 A Sierra Partners was the general name. There were
16 subentities, but Sierra Partners was the name of the fund.

17 Q When did it start operation?

18 A I'm not sure. I would say the fall of 2012.

19 Q And how long was it in operation?

20 A Very brief. We had one investor for about \$100,000. And
21 by December of that year, Michael decided to close the fund,
22 and we returned the funds to the one investor.

23 Q Did the defendant tell you why he wanted to close the
24 fund and return the money?

25 A Well, he believed that he was being limited by the fact

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1 that he would only be able to have 5 percent of the assets on
2 the management in foreign exchange and he wouldn't be able to
3 produce a return profitable enough to attract investors.

4 Q How do you know that?

5 A He said that.

6 Q He told you that?

7 A Yes.

8 Q So did your work with the defendant stop after Sierra
9 Partners was closed down?

10 A No. He actually had, prior to making this decision,
11 another idea. He had been speaking with his colleagues in the
12 foreign exchange business. And they introduced us, Michael
13 and I and Ray, to a law firm in Manhattan, in midtown
14 Manhattan.

15 Q When was this?

16 A January of '13.

17 Q Did the defendant tell you what this new idea was?

18 A Well, I don't think he knew completely himself. He said
19 that he wanted to go into the brokerage business, almost as he
20 originally envisioned in Belize.

21 Q Who were the principals to be in this business?

22 A The same principals from the hedge fund, Mr. DaCorta,
23 myself, and Ray Montie.

24 Q I'm sorry. Who was the third?

25 A Raymond Montie.

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1 Q Was counsel engaged to work on this new endeavor?

2 A Yes. We met with the firm Drohan & Lee in January. And
3 we hired Mr. Jack Drohan to be our attorney for this matter,
4 for the ongoing matters.

5 Q Why did you not do the legal work required?

6 A As originally agreed, if I were going to be part as a
7 principal, director, or officer, I would not act as counsel in
8 any case.

9 Q Were there any other lawyers or law firms engaged in
10 connection with this project?

11 A Not that I'm aware of at that point. Jack Drohan was the
12 initial one who started everything.

13 Q And during the meetings with Mr. Drohan and his firm, did
14 the defendant formulate a plan?

15 A Mr. Drohan had an idea. And we adopted the plan that he
16 proposed.

17 Q What was the plan?

18 A He would create an entity in the Cayman Islands, which is
19 common he said for this sort of thing. And he would register
20 it with the Cayman regulators as a registered investment
21 advisor. And that would be the parent company. And then we
22 would acquire a broker-dealer. And it just so happens that he
23 represented many of these types of entities and he had a
24 broker-dealer that he knew of that was for sale and he would
25 act as a broker selling it to us for a fee.

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1 Q Who is "he"?

2 A Jack Drohan.

3 Q Did you pursue acquiring an entity in the Cayman Islands?

4 A Mr. Drohan established for us the parent company that we
5 called Oasis International Group Limited. It became the
6 registered investment advisor in the Cayman Islands, yes.

7 Q And were there any other lawyers involved in that
8 process?

9 A Yes.

10 Q Who?

11 A Mr. Drohan had to engage local counsel in the Caymans.

12 Q Excuse me?

13 A Mr. Drohan engaged local counsel for us in the Caymans.

14 Q Who?

15 A Maples & Calder.

16 Q Let me publish what's already been admitted as Government
17 Exhibit 5A.

18 Mr. Anile, do you recognize this exhibit?

19 A I do.

20 Q What is it?

21 A It looks like the certificate of incorporation for Oasis
22 International Group in the Cayman Islands.

23 Q You said that in addition to Oasis International Group
24 there was another entity that was to serve as broker-dealer;
25 is that right?

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1 A That's correct.

2 Q What entity was that?

3 A When we purchased it through Mr. Drohan, it had a name
4 like Interbrokers or something of that nature and it had
5 changed, and then we changed it again. Mr. Drohan changed it
6 on our behalf to Oasis Global FX.

7 Q Where was this entity that you purchased?

8 A New Zealand.

9 Q I would like to publish what's been admitted as
10 Exhibit 11A.

11 MS. BEDKE: Pardon me, Your Honor.

12 MS. IRVIN: No objection, Your Honor.

13 THE COURT: Thank you.

14 BY MS. BEDKE:

15 Q Let's turn to page 2, please. We are going to enlarge
16 the top part of page 2 of Exhibit 11A. What does this
17 reflect, Mr. Anile?

18 A This is the New Zealand entity titled Oasis Global FX
19 Limited. That is the New Zealand registration number. It had
20 one director, 100 shares, 23 documents issued. The 100 shares
21 were allocated all to one shareholder, Oasis International
22 Group Limited. That would be the parent company, which is the
23 Cayman Islands entity that we talked about earlier.

24 Q I would like to publish what's been admitted as
25 Exhibit 11B. Directing your attention to page 1 of 11B on the

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1 monitor, what's reflected here?

2 A This appears to be a publication from the New Zealand
3 Companies Office regarding the certificate of incorporation
4 for Oasis Global FX Limited, and it includes the registration
5 number. And it has the amendments to the name. So when it
6 was sold to us, it originally was incorporated I guess as
7 Interfinance Group Limited on the 8th day of May 2012. And it
8 changed its name to FX Direct Capital Limited on June 26,
9 2012. And then when it was sold to us, we changed the name to
10 Oasis Global FX Limited on July 15, 2013.

11 Q Why did this venture require a broker-dealer?

12 A As I understand it, in order for a person to enter into a
13 trade in foreign exchange, they would have to go to a
14 broker-dealer to execute the trade.

15 Q You have to own a broker-dealer to use a broker-dealer?

16 A No.

17 Q So --

18 A A person can probably go to a broker-dealer and just
19 execute directly through them.

20 Q Did the defendant have any opinion as to whether it was
21 preferred to own a broker-dealer or use the services of
22 another broker-dealer?

23 A Well, the idea is simple. You would purchase a
24 broker-dealer as we did, and then you hook up with a larger
25 broker-dealer which has clearing functions. They are part of

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1 an exchange network that clears trades so that when customers
2 buy and sell, they clear the trades. And they offer you
3 what's called a white label service. So essentially you pay
4 them to give you their entire platform, but you put your name
5 on what your customer sees.

6 So in this case it would have been a web-based
7 platform. A client would go to the web-based platform under
8 Oasis Global FX, and they would actually be in the portal.
9 They wouldn't know it. In the back office they would see --
10 would be the back office of the broker that we used for our
11 white label services.

12 Q So am I understanding correctly that in this scenario,
13 Oasis Global FX is not really doing any brokering. It's a
14 conduit to the other brokerage with the clearing functions?

15 A Right. Many firms, I might add, do this customarily.
16 And they try and cut a good deal with the actual broker from
17 whom they obtained the white label services, and they charge
18 more because essentially they are the ones guiding the
19 traffic. So this is a common way of doing business I'm told.

20 Q Who were the target clients of this venture?

21 A As we were in New Zealand, initially we discussed
22 targeting Asia, the Asian markets, and maybe the Spanish
23 markets.

24 I should point out that when you are a licensed
25 broker-dealer in New Zealand, for example, you are not allowed

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1 to solicit New Zealand clients. In this case, we were also
2 U.S. individuals. We were domiciled here. We were not
3 allowed to target American clients. And Canadian clients,
4 because Canada has a rule that unless you are registered in
5 the United States, you would have to not be able to target
6 Canadian clients. So theoretically we were prohibited from
7 targeting New Zealand, U.S., and Canadian clients, but the
8 rest of the world was open to us.

9 Q What investment services were to be offered?

10 A Foreign exchange brokerage. So you would have either
11 self-directed accounts where somebody happens onto your
12 platform and they trade the account on their own behalf, or
13 you could offer what's called a managed account where somebody
14 comes and you trade it on their behalf.

15 Q And in the case of Oasis International Group and its
16 Oasis Global FX subsidiary, what were the clients -- which of
17 those services did the clients select?

18 A I believe we managed accounts. I don't recall having any
19 self-directed account.

20 Q Did Oasis International Group have any money to engage in
21 and grow this venture at the outset?

22 A When we hired Mr. Drohan to create all of this, we also
23 asked him to do a corporate finance for the company, much like
24 I did for Mr. DaCorta as I said earlier. So he did an
25 offering of the company, Oasis International Group securities.

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1 He did an offering that's exempt from registration with the
2 Securities and Exchange Commission.

3 Q When you say "he," who are you referring to?

4 A Mr. Drohan, our counsel.

5 Q Were you familiar with the shorthand term "Reg D"?

6 A Yes.

7 Q What is a Reg D offering?

8 A That is the provision pursuant to which you would apply
9 for exemption from registration under the Securities and
10 Exchange laws. Provided that you would adhere to those rules,
11 you are able to do certain things and raise a certain amount
12 of money. There are limitations.

13 Q What kind of corporate finance option did Mr. Drohan
14 undertake?

15 A I don't recall if it was a 504 or 506, to be blunt. I
16 know Michael wanted -- Michael's target goal was to raise
17 about \$5 million. He thought if he had about \$4 million of
18 proprietary funds to trade, that he could be successful doing
19 that. And he needed about a million dollars of operating
20 capital.

21 In addition, Michael had claimed that he had about
22 400,000 in expenses putting all of this together. So upon
23 closing, we would have to reimburse him that amount. So
24 whatever we took in, so hopefully 5.4, 400 would go off the
25 top to Mr. DaCorta's group, Oasis Management, a million would

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1 hopefully go towards operating expenses for Oasis

2 International Group, and then 4 million would have been

3 traded. That was the goal.

4 Q Was any money raised?

5 A I believe about a million and a half. A million two or a
6 million five. I don't recall exactly.

7 Q From approximately how many investors, if you recall?

8 A Fifty to 60, 75. Fifty to 75.

9 Q You are not certain?

10 A Not off the top of my head, no.

11 Q What did those investors receive in exchange for the
12 funds they put into OIG?

13 A The shares being offered were not common shares. They
14 were preferred shares, nonvoting shares. And because there
15 were preferred shares, they received a 12 percent annual
16 payment which was payable I believe quarterly by the company
17 after closing.

18 Q So who controlled the company? Who were the principals?

19 A The principals were the same as with the hedge fund. It
20 was Mr. DaCorta, myself, and Mr. Montie.

21 Q Did that change after the offering and the issuance of
22 the shares you just described?

23 A No. We still have the bulk of the shares. When we did
24 the offering, Mr. DaCorta added some other common shareholders
25 to the list. So the bulk of the shares were of course the

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1 three principals shareholders, but then Oasis Management
2 received some shares and some other entities and individuals
3 received shares so that there was maybe, I'm guessing, 10, 15
4 common shareholders, not significant other than the three, and
5 then the rest were the preferred shareholders.

6 Q Did this OIG operation have a bank account?

7 A No. We were unable to open a bank account. We had great
8 difficulty. And then this presented problems for us going
9 forward, yeah.

10 Q Were you able to address it?

11 A We tried. When you live in the United States, as we all
12 do, we are residents of the United States and you own a
13 foreign entity and you go to a bank, a foreign bank and you
14 say I would like to open a bank account, they won't do it.
15 And I had relationships with many banks and I called some
16 friends. No matter what we did, the answer was always no. We
17 tried banks in New Zealand -- that would have been the
18 easiest -- in Australia. Oh, my, we tried all over the place.
19 Cayman. We always were pretty much rejected.

20 Q So how did you address the issue of not having a bank
21 account for OIG to conduct this business you've described?

22 A At first Mr. Drohan was aware of this. So he helped us.
23 The funds that were put into his account at his law firm, his
24 attorney's account, he used to help make initial disbursements
25 and payments for us. But he didn't want to do that any longer

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1 so he introduced us to another colleague or client named -- I
2 think it was called Fund Administration, an administrator of
3 hedge funds and services.

4 Q I believe I neglected to ask you too, Mr. Anile, were
5 there any lawyers involved in this deal you've been describing
6 in New Zealand --

7 A Yes.

8 Q -- separate and apart from the lawyers in the Cayman
9 Islands?

10 A Absolutely. Whenever you have an undertaking such as
11 this, you have to have local counsel. And in the case of the
12 Caymans it was Maples & Calder. And in the case of New
13 Zealand, it was Ford Sumner.

14 Q So at this point there are lawyers in New York, the
15 Cayman Islands, and New Zealand involved; is that right?

16 A That's correct.

17 Q I handed you what has been marked for identification as
18 Government's 5B and 5C. Do you recognize those?

19 A I do.

20 Q How?

21 A One is an administration agreement that I'm familiar with
22 that we executed with Fund Administration. And the other is
23 an email addressed from me to the folks over at Fund
24 Administration.

25 Q Do both of these exhibits relate to efforts to establish

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1 a bank account for OIG?

2 A Yes.

3 MS. BEDKE: Your Honor, the government would move for
4 admission of Exhibits 5B and 5C.

5 MS. IRVIN: No objection.

6 THE COURT: Admitted.

7 (Government Exhibits 5B and 5C admitted.)

8 BY MS. BEDKE:

9 Q Let's publish 5B. We are going to zoom in on the center
10 of the page here, page 1. What's reflected there?

11 A The name of the entity, Fund Administration, and the
12 title of the contract, "Administration Agreement."

13 Q What was Fund Administration?

14 A As I understood it, it was an entity that provided
15 services primarily for hedge funds, so administrative
16 services. They would do reconciliations, banking, audits.
17 They would be on top of things that went on typically with the
18 fund.

19 Q Let's turn to page 2 of this agreement. It's Bates
20 stamped Mainstream Fund-00002. Would you read the first
21 paragraph, please?

22 A This administration agreement, the agreement, is made and
23 entered into as of September 4, 2013, by and between Oasis
24 International Group, Ltd., the company, and Fund
25 Administration, Inc., a New York corporation.

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1 Q I'm going to ask you to move down to the bottom half of
2 that page and read the services of Fund Administration.

3 A The services of Fund Administration. Fund Administration
4 agrees to perform the following custodial and administrative
5 services for the company's bank accounts in accordance with
6 the company's offering and operating agreements:

7 Reconciliation of cash/custodial statements daily,
8 verify anti-money laundering procedures on all deposits,
9 subscriptions and withdrawals.

10 Q Let me ask you to pause there. It says verify AML
11 procedures, correct?

12 A Yes. I wasn't sure that everybody would be familiar with
13 AML.

14 Q What does AML mean?

15 A Anti-money laundering.

16 Q What does that refer to?

17 A Well, they verify the payments, who they were received
18 from, how they are being disbursed, et cetera, so they are not
19 part of something else.

20 Q What's bullet point Number 3?

21 A Wire funds to trading account as directed by client for
22 margin requirements. Pay company-approved expenses. Wire
23 investor proceeds or distributions upon request.

24 Q Let me ask you to turn to page 3. It's Bates stamped
25 Mainstream Fund-00003. Did OIG pay Fund Administration for

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1 provision of these services?

2 A Yes.

3 Q What was the fee?

4 A For their basic services, it was the greater of 2,500 per
5 month or \$50 per transaction.

6 Q And during these early days, typically what did OIG have
7 to pay Fund Administration?

8 A 2,500 per month.

9 Q Let me turn to Mainstream Fund-00004. Who signed this
10 agreement with Fund Administration on behalf of OIG?

11 A I did.

12 Q And who signed for Fund Administration Incorporated?

13 A Ms. Denise DePaola. She was the chief executive officer
14 for Fund Administration.

15 Q Let's look at Exhibit 5C. By way of general description,
16 what is this exhibit?

17 A This is an email from Ms. DePaola to me -- or from me to
18 Ms. DePaola.

19 Q Let's start with page 2, which is Bates stamped
20 Mainstream Fund-00007. What's the subject of this email?

21 A The subject? "Oasis Stand-Alone Accounts."

22 Q And what stand-alone accounts were asked to be
23 established?

24 A We asked that they establish two bank accounts, one in
25 the name of the parent company, Oasis International Group

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1 Limited, and one in the name of the broker-dealer subsidiary,
2 Oasis Global FX.

3 Q Let's turn back to the page 1 of this exhibit, Mainstream
4 Fund-00006. Mr. Anile, I would like you to read your email to
5 Mr. DePaola in the middle of the page there. What's the date
6 of this email?

7 A September 16, 2013.

8 Q And what do you write?

9 A Denise, as discussed, attached please find a copy of the
10 confirmation of the wire transfers into our accounts, \$125,000
11 into Oasis Global FX Limited, and \$25,000 in Oasis
12 International Group Limited. Upon Wells' clearance of our
13 funds, that is 48 hours, please have Wells wire \$100,000 from
14 the Oasis Global FX Limited account into our CFH London
15 account pursuant to the instructions below. Please do not
16 hesitate to contact me with any questions that you may have.
17 Best, Joe.

18 And I provide a link to CFH Clearing which would have
19 enabled them to make a deposit into the account that's
20 specified.

21 Q What is CFH Clearing?

22 A When we set up the account, as I said earlier, you would
23 be a broker with whom you did a white label service. CFH was
24 our initial broker that provided us with white label service.

25 Q Now, once you got OIG, Oasis Global FX, a bank account

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1 through Fund Administration and a clearing firm, was this
2 venture off the ground?

3 A Yes.

4 Q And did investors send their money to invest?

5 A I'm sorry?

6 Q Did investors send money in?

7 A Early on I think it was a slow go. I don't recall. I
8 mean, we had some come in perhaps, yeah.

9 Q Was it successful?

10 A Not by normal standards, probably not.

11 Q Did you ever have any discussions with the defendant
12 about it?

13 A He was working very hard to try and create accounts, to
14 try to bring in accounts.

15 Q Did he ever articulate to you any frustrations with any
16 of the entities with whom you were working?

17 A Are you referring to the contractual relationships that
18 we established?

19 Q Well, were things working fine with the clearing firm?

20 A No. He was very upset with them. He thought that they
21 were screwing up a lot of his trades. He had hired two
22 traders to work with him.

23 Q Who were they?

24 A Brian McMahon in San Francisco and Matthew Cozzolino in
25 Pennsylvania. His theory was that at least with a minimum of

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1 three traders, he would be able to cover the market because
2 the markets were open 24 hours a day from like Sunday to
3 Friday night. So this way he could have help trading. And so
4 there were three traders that had access to the system and
5 would trade the accounts. And he was not happy with the way
6 the trades were being handled or processed by CFH. Also, he
7 wasn't really happy with the way the other traders were
8 working at some point also.

9 In addition, we had utilized the services at the
10 recommendation of Mr. Drohan, Jack Drohan. Another one of his
11 clients or friends had a company called Credit Risk Services,
12 I believe. His name was Nick Papadatos, I think. And Nick's
13 company was to provide our company with what was known as a
14 B-book service for risk minimization. And what that meant
15 essentially was that they would have complete access to our
16 trading as well. So they would be able to see our trades.
17 And based upon their algorithms, they would make trades
18 alongside you which may be equal and opposite to your own
19 trade.

20 So, for example, if you have a profitable trade, they
21 may have that same trade losing. And if you have a losing
22 trade, they may have the same trade profitable. And as a
23 result, you minimize the overall risk of the firm. So we had
24 that. Michael was very unhappy with that over a period of
25 time, and I think he was arguing with them.

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1 Q How do you know that?

2 A He expressed dissatisfaction to me and to Nick
3 constantly.

4 Q At some point did the defendant take some action to make
5 a change?

6 A Yeah. We fired Nick at some point. I think we just
7 stopped using his services. And he also ultimately fired Matt
8 and Brian.

9 Q So he fired --

10 A He had another person -- fired, yeah. He terminated
11 their services.

12 Q I'm sorry. I just want to be clear. So do I understand
13 that you said that he fired the gentlemen who was providing
14 the B-book services?

15 A Yes.

16 Q And did he fire the two traders?

17 A Yes.

18 Q And what if any other changes were made?

19 A We also had someone working for us who handled the back
20 office. He was introduced to me by Michael as a long-time
21 friend and employee of Michael for many years. His name was
22 Lloyd Lyle. Butch was his nickname. Butch was handling the
23 back office for all of it. And Michael never -- he didn't
24 express displeasure about Butch. He was unhappy with the way
25 the whole thing was working out.

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1 Q Are you familiar with an entity known as ATC Brokers?

2 A Yes.

3 Q What is ATC Brokers?

4 A Essentially the same thing as CFH Clearing. It's another
5 brokerage firm that Michael wanted to switch from because of
6 his dissatisfaction with CFH. It was introduced to Michael
7 by -- Michael had a friend that he knew through Oasis
8 Management. He said Oasis Management, his company, was
9 clearing using a broker, quote, CitiFX, I believe, and the
10 gentleman, Michael Merachi I believe his name was, was the
11 head of CitiFX. And he took a job with ATC Brokers as one of
12 its head.

13 Q Where was ATC Brokers located? Did it have any presence
14 in the United States?

15 A Yes.

16 Q What was that?

17 A In California the day-to-day contact was a gentleman by
18 the name of David Manoukian, and he was in California.

19 Q Approximately when did the shift from using CFH to ATC
20 Brokers occur?

21 A '14, '15. I'm not entirely certain. Do you have a --
22 I'm not certain.

23 Q I have handed you what's been marked for identification
24 as Government Exhibits 81A, 81B, and 81C. Do you recognize
25 those, Mr. Anile?

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1 A Yes.

2 Q And without reading the documents, how do you recognize
3 them?

4 A They are related to our application and agreement with
5 ATC Brokers or Oasis Global FX.

6 MS. BEDKE: Your Honor, the government would move for
7 the admission of Exhibits 81A, 81B, and 81C.

8 MS. IRVIN: No objection.

9 THE COURT: They are admitted.

10 (Government Exhibits 81A, 81B, and 81C admitted.)

11 THE COURT: Are we good or do we want to break?
12 Anybody want to break or keep rolling a little bit? All
13 right. Keep rolling.

14 BY MS. BEDKE:

15 Q Let's talk about 81A first. What is this exhibit,
16 Mr. Anile?

17 A It looks like an application to ATC Brokers.

18 Q Let's look at page 1 just below -- well, we will enlarge
19 the top half of page 1.

20 A Okay.

21 Q What's the name of document in the upper right-hand
22 corner?

23 A "Corporate Application."

24 Q And what's the submission date of this application?

25 A April 13, 2015.

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1 Q What's the company name making the application?

2 A Oasis Global FX Limited.

3 Q And its address is reflected as where? Country?

4 A New Zealand. This is the New Zealand broker-dealer.

5 Q Let's blow up the second bottom half of page 1. Who is
6 identified as the authorized person?

7 A I am, Joseph Salvatore Anile.

8 Q Let me have you turn to page 4 of this document. It's
9 Bates stamped MLAT-ATC-00034. Let's enlarge this top half of
10 the page, please. Who is identified as the president of Oasis
11 Global FX?

12 A It says -- what I'm looking at says Oasis International
13 Group. Michael DaCorta is listed as the president, and I'm
14 the vice president and secretary and treasurer.

15 Q And pardon me. I misspoke. So on the top of this page
16 it's referring to the shareholder, correct?

17 A The top of the page is referring to the shareholder, yes.

18 Q Oasis International Group?

19 A That's correct.

20 Q And who signed this document?

21 A I did.

22 Q Let's turn to 81B. Top half of page 1. What's the title
23 of this document?

24 A "Financial Institution Questionnaire." That was the
25 original document that had to be completed in order to get the

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1 application underway. This was done by a drop-down menu of
2 some sort, I recall.

3 Q Would you read the very first two sentences at the top of
4 the document, please?

5 A The undersigned has applied for a foreign exchange
6 trading account with ATC Brokers Limited. The questionnaire
7 below would need to be completed accurately and in full as
8 indicated in each section.

9 Q And what entity completed the application -- or the
10 financial institution questionnaire? Pardon me.

11 A It's for Oasis Global FX Limited, the New Zealand entity.

12 Q And do you know who actually completed this
13 questionnaire?

14 A I believe I did.

15 Q How did you do that?

16 A Online in a series of drop-down menus. I think you just
17 go and complete it.

18 Q Let's turn to the last page. It's Bates stamped
19 MLAT-ATC-00010. Who signed for the applicant?

20 A I did.

21 Q When?

22 A April 24, 2015.

23 Q Let's look at 81C. What is the title of this exhibit?

24 A "Omnibus Agreement," ATC Brokers' Omnibus Agreement.

25 Q And page 2 of the agreement. It's Bates stamped

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1 Invest-077020. The top of the page, who are identified as the
2 parties to the omnibus agreement?

3 A ATC Brokers Limited and Oasis Global FX Limited.

4 Q And what's the date of the agreement?

5 A May 28, 2015.

6 Q And in general terms, Mr. Anile, what does this agreement
7 provide?

8 A This would be the same type of agreement that we had had
9 with CFH, what's known as a white label agreement. They would
10 provide us with execution -- we would execute through them
11 services and whatnot, and they would clear it for us in the
12 back office, and we would use their electronic portal for our
13 clients.

14 Q Once you were working with ATC, was Butch Lyle still
15 handling the back officer for OIG?

16 A No. Michael didn't want Butch to work on this project
17 with us. And he was looking for another person to handle the
18 back office. And I suggested my brother, Frank.

19 Q Your brother?

20 A My brother, Frank, yes.

21 Q What's his full name?

22 A Frank Joseph Anile.

23 Q And what was Mr. Frank Anile tasked with doing?

24 A Back office. It's basically operations. He was
25 originally working with David Manoukian to set up all of the

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1 accounts and get all the processing straight, make sure that
2 the portal was able to operate, that we were able to mesh with
3 it so our clients would see what they needed to see. And
4 that's quite a bit of work just setting that all up.

5 Q Are you familiar with the name Spotex?

6 A Yes.

7 Q What is Spotex?

8 A I believe that is the electronic service that they used
9 for the web, the web-based part of the ATC firm.

10 Q And who provided Spotex's online platform to OIG?

11 A ATC.

12 Q And that's who your brother was dealing with; is that
13 right?

14 A Yes. Well, he was dealing with David, Dave Manoukian,
15 but yes.

16 Q During the course of your brother serving in this
17 position, did he ever express any concerns to you about the
18 defendant's conduct?

19 A Yes. On one occasion --

20 MS. IRVIN: Objection.

21 BY MS. BEDKE:

22 Q I'm not going to ask you what your brother told you, all
23 right? Did you have a discussion with him about his concerns?

24 A Yes.

25 Q What, if any, action did you take based upon that

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1 discussion with your brother, Frank Anile?

2 A I called Michael, and I told him that he had apparently
3 falsified a customer.

4 MS. IRVIN: Objection, Your Honor. Hearsay. This is
5 based on the conversation that he says he had with his
6 brother.

7 THE COURT: Well, he can relate his conversation with
8 the defendant. So to that extent it's overruled.

9 BY MS. BEDKE:

10 Q So Mr. Anile, what did you tell the defendant?

11 A I told him that he had falsified a customer statement and
12 that he wasn't allowed to do that. That's typically not done.
13 He basically grossed it up or he added money back to the
14 account that was not there. And he acknowledged that he knew
15 that, and he told me he wouldn't do it again.

16 Q How long did your brother, Frank Anile, serve in that
17 role as handling the back office for OIG?

18 A Unbeknownst to myself and I guess everyone else, Frankie
19 was sick and dying at the time that he did this. He had
20 cancer and he was taking drugs for it, which I didn't know,
21 like morphine and stuff. I only became aware of that later in
22 '15. So Thanksgiving of '15 I became aware that he was very
23 ill. And he died in February of '16.

24 Q February of 2016?

25 A Yeah.

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1 Q Who took over for your brother?

2 A While Frank was putting all of this together, he hired an
3 assistant, a mutual friend of ours, Joseph Paniagua. And Joe
4 worked with Frankie setting everything up with Dave Manoukian.
5 So Joe was able to continue the role afterwards, and he became
6 essentially the back office operator.

7 Q And how long did Joseph Paniagua handle the back office
8 for OIG?

9 A Until April 18, 2019.

10 Q How long did Oasis Global FX operate in New Zealand?

11 A Through the end of 2015. New Zealand had been having
12 problems. Because of its proximity geographically to Asia, a
13 lot of Asians were using it for broker-dealer services like us
14 and they were committing fraud. So New Zealand was clamping
15 down on nonresident broker-dealers.

16 The first thing they did, I believe, was made a
17 requirement that we would have to open an office in New
18 Zealand. Fortunately, Michael had a friend of his who lived
19 in New Zealand, and we contacted him. His name was Stephen
20 Prescott and we contacted him. And he was hired by that
21 company, Oasis Global FX, to represent our office in New
22 Zealand. And we paid him a quarterly fee for his services and
23 the office. And then I had to --

24 Q Let me interrupt you for a moment, if I may. So prior to
25 this issue in New Zealand with the residence requirement, for

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1 lack of a better description, did Oasis Global FX have any
2 physical presence in New Zealand?

3 A There was no requirement. We had none. We did not have
4 one.

5 Q So it didn't have an office?

6 A In New Zealand, no.

7 Q It didn't have any employee?

8 A No.

9 Q And where was Mr. Prescott located? Where did he office?

10 A One of the towns in New Zealand. I don't know if I can
11 actually say these towns.

12 Q Was there a traditional office established once
13 Mr. Prescott came into the picture?

14 A In New Zealand, yes.

15 Q And what did Mr. Prescott do?

16 A He just acted as custodian of records. I provided him
17 with digital copies of all the company records so that he
18 could house them in his office there.

19 Q Was he really doing any work?

20 A No. He was available for inspection though in the event
21 the local regulators wanted to audit our company. So he had
22 copies of all the records there available to them. That was
23 the requirement.

24 Q Did that ultimately satisfy the regulators in New
25 Zealand?

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1 A No.

2 Q What happened?

3 A They passed another law requiring that in order for a
4 company to be a nonresident and broker-dealer, they would have
5 to have at least one principal and director living in New
6 Zealand.

7 Q Did you discuss this new development with the defendant?

8 A Yes.

9 Q And what did he say?

10 A Well, we talked about me going there actually first. And
11 it was just not a good time for me. I still had one child in
12 high school. So we said, all right, well, what could we do?
13 And we talked to Mr. Drohan and others. And basically we
14 allowed the company to expire throughout 2015. So they were
15 going to deregister it. We would have lost our license by the
16 end of 2015.

17 Q I have handed you what's been marked as Government's 82A.
18 Let's start with that one. Do you recognize this exhibit?

19 A Yes, I do.

20 Q How, without getting into the details?

21 A This is a notice from the regulatory agency in New
22 Zealand that we were going to be deregistered.

23 MS. BEDKE: The government moves for the admission of
24 Exhibit 82A.

25 MS. IRVIN: No objection.

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1 THE COURT: It will be admitted.

2 (Government Exhibit 82A admitted.)

3 MS. BEDKE: Let's publish it.

4 BY MS. BEDKE:

5 Q What's the date of this letter?

6 A June 24, 2015.

7 Q And who is the letter from?

8 A The Financial Markets Authority. That is the regulatory
9 body in New Zealand governing in this case our broker-dealer.

10 Q And to whom is this letter addressed?

11 A To me.

12 Q On behalf of Oasis Global FX Limited?

13 A That is correct.

14 Q And what is the subject line there under the salutation?

15 A "Deregistration of Oasis Global FX from the Financial
16 Service Provider Register," something like that.

17 Q And is this the action to which you were referring?

18 A Yes.

19 Q Did OIG or Oasis Global FX try to mount any challenge?

20 A No, because we could not comply with the required laws.

21 Q So what was plan B?

22 A To obtain another broker-dealer in another jurisdiction.

23 Q And what, if any, communications did you all have with
24 ATC regarding this situation?

25 A Mr. DaCorta was in constant contact with Mr. Manoukian on

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1 this issue. So David was aware that we were going to allow
2 this to expire. And Michael had suggested a couple of
3 alternatives, and we implemented both of them pretty quickly.

4 Q Mr. Anile, did I hand you what's been marked for
5 identification as Government Exhibit 82?

6 A 82B.

7 Q I'm going to give you two additional exhibits marked 83
8 and 84.

9 Do you recognize Exhibits 82B, 83, and 84?

10 A Yes.

11 Q And in general terms, what do they relate to?

12 A They appear to be correspondence, emails from Mr. DaCorta
13 to Mr. Manoukian at ATC regarding the issue of our
14 deregistration from New Zealand.

15 MS. BEDKE: Your Honor, the government moves for the
16 admission of Exhibits 82B, 83, and 84.

17 MS. IRVIN: May I just have a moment, Your Honor?

18 THE COURT: Sure.

19 MS. IRVIN: No objection.

20 THE COURT: They are admitted.

21 (Government Exhibits 82B, 83, and 84 admitted.)

22 BY MS. BEDKE:

23 Q Let's start with 82B. Let me have you direct your
24 attention to the very top of the exhibit. To whom is this
25 email addressed?

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1 A David Manoukian at ATC Brokers.

2 Q From whom?

3 A Michael DaCorta.

4 Q On what date?

5 A August 3, 2015.

6 Q What's the subject?

7 A The deregistration of -- oh, I'm sorry -- Oasis Global FX
8 Limited.

9 Q Pardon me?

10 A Oasis Global FX Limited is the subject.

11 Q What does Mr. DaCorta write to Mr. Manoukian?

12 A That we ceased operations effective June 26, 2015, and we
13 deregistered on June 29. It did not become effective though
14 until much later in the year, but that's correct. All company
15 account agreements were assigned to Oasis Global Nevis
16 Limited, a Nevis corporation wholly owned by Oasis
17 International Group.

18 Q I need to ask you to slow down a beat for the court
19 reporter. You are reading just a little too fast.

20 A All company account agreements were assigned to Oasis
21 Global Nevis limited, a Nevis corporation wholly owned by
22 Oasis International Group Limited, the sole shareholder of the
23 company, effective as of July 9, 2015, pursuant to the terms
24 of said agreements. Oasis Global Nevis Limited is authorized
25 to conduct the same services provided by the company on behalf

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1 of all existing accounts maintained at ATC Brokers limited.

2 Q To what is the defendant referring when he is talking
3 about Oasis Global Nevis Limited?

4 A Global -- Oasis Global Nevis was set up as a company
5 incorporated in Nevis that Nevis law would permit to act as a
6 broker-dealer because they had no formal registration
7 requirements for such activity. So we were theoretically able
8 to conduct the same services in place of the New Zealand
9 broker-dealer.

10 Q The one that had been deregistered?

11 A The one that was being deregistered, yes.

12 Q So did you stick with this Nevis option?

13 A No. David Manoukian understood and agreed that this was
14 the case, but he said that he would prefer if we had a formal
15 license from an authorized regulator.

16 Q And did the defendant decide where he wanted to go?

17 A Yes. Because we -- when we set up Oasis Global Nevis, we
18 also simultaneously set up a company called Oasis Global
19 Belize in Belize. So we decided to submit an application to
20 Belize for a broker-dealer.

21 Q Let's take a look at Exhibit 83. To whom is this email
22 addressed?

23 A David Manoukian.

24 Q From whom?

25 A Michael DaCorta.

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1 Q On what date?

2 A September 23, 2015.

3 Q And what's the subject?

4 A "Oasis Pending Belize Application."

5 Q And what does Mr. DaCorta write to Mr. Manoukian on this
6 occasion?

7 A Dave, it was a pleasure speaking with you yesterday. As
8 discussed, the banking/financial services application of
9 Oasis, IBC is pending approval. Our counsel is currently
10 unable to predict the time required for final approval from
11 the IFSC; however, to be on the safe side, we estimate that it
12 may take an additional 60 days. The delay was caused by the
13 time required to set up the bank account for the new Belize
14 IBC we had to form to file for the IFSC license. I will
15 provide you additional details as soon as they are available.
16 Best regards, Mike.

17 Q And on this email looking a little below the closing
18 there, who is Mike?

19 A Michael DaCorta, CEO and chief investment officer of
20 Oasis International Group.

21 Q The defendant refers to a couple of -- or he uses some
22 acronyms here. What is meant by Belize IBC?

23 A In Belize, apparently if you set up a company, it's
24 called an international business corporation, I believe. So
25 it's just a company in Belize is an IBC.

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1 Q And what is the IFSC?

2 A That's the entity we discussed earlier in connection with
3 Mr. DaCorta's application, the International Financial
4 Services Commission of Belize. That's the regulatory
5 authority in Belize.

6 Q Let me have -- we will put 80C back up for just a moment.
7 It's been admitted. We will highlight the top half.

8 Mr. Anile, Exhibit 80C is now on the screen. Is that the
9 entity to which you are referring when you talk about IFSC?

10 A Yes, it is.

11 Q Were you able to secure a license from the regulators in
12 Belize?

13 A Yes.

14 Q How?

15 A I had to act as the sole shareholder because Mr. DaCorta
16 was previously declared unable to hold it as a result of his
17 statutory disqualification. So I was the sole shareholder of
18 the company. The new company, which we then had to change the
19 name pursuant to requirements of the IFSC, the new company
20 became called Oasis Global FX, S.A. So it was the same,
21 similar name to the New Zealand broker-dealer, but it just
22 said "S.A." which is the designation for corporation in
23 Belize.

24 Q Let me have you look at Exhibit 84, please. To whom is
25 this email addressed?

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1 A David Manoukian.

2 Q From whom?

3 A Michael DaCorta.

4 Q When?

5 A November 19, 2015.

6 Q And what's the subject?

7 A Oasis.

8 Q What does Mr. DaCorta write to Mr. Manoukian in this
9 email?

10 A Dave, as I outlined on the phone the other day, we are
11 pursuing the Belize IFSC for a full FX broker-dealer license.
12 The process is ongoing. We expect to at least be listed as
13 pending on their regulator's website within two to three
14 weeks, if not sooner. I will keep you informed as progress is
15 made. Belize shuts down for at least two full weeks for
16 Christmas. So very little gets done in December. Best
17 regards, Mike.

18 Q I would now like to publish what's been admitted as
19 Exhibit 12A. It will appear on the monitor, Mr. Anile.

20 A Yes.

21 Q This is page 1 of Exhibit 12A. Do you recognize that?

22 A Yes.

23 Q It's Bates stamped Invest-077125. What is it?

24 A It is the original certificate of incorporation for Oasis
25 Global Belize, S.A., which was subsequently amended to become

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1 Oasis Global FX.

2 Q What is the date of this certificate of incorporation?

3 A July 1, 2015.

4 Q And turning to page 2 of Exhibit 12A, which is Bates
5 stamp Invest-077126, what appears here?

6 A The whole page?

7 Q Yes. Just in general, what is this?

8 A This appears to be the International Business Companies
9 Act of Belize. And it is the articles of associations of our
10 corporation. These would be the bylaws of the company.

11 Q Let's turn to Exhibit 12B which is previously admitted.
12 Page 1, is that another copy of the certificate of
13 incorporation of Oasis Global Belize, S.A.?

14 A Yes.

15 Q All right. Let's turn to page 2 of this exhibit. It's
16 Bates stamped Invest-077152. What is this document?

17 A It appears to be the first meeting of the board for Oasis
18 Global Belize.

19 Q We will highlight the top half of the document. What's
20 the reported date of this first meeting of the board of
21 directors?

22 A July 1, 2015.

23 Q Turning to page 2 of the meeting minutes, if you will.
24 It's Bates stamped Invest-077153. Would you read Paragraph 3?

25 A Three. Election of officers of the corporation.

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1 Whereas, the following person was nominated as officers of
2 Oasis Global Belize, S.A.:

3 President and chief executive officer, Joseph S.
4 Anile, II. Secretary, Joseph S. Anile, II. Treasurer, Joseph
5 S. Anile, II. Now, therefore, be it resolved that the
6 forenamed person be and is elected to the offices set opposite
7 his name, to assume the duties and responsibilities fixed by
8 the memorandum of association and articles of association of
9 Oasis Global Belize, S.A.

10 Q Why were you the only officer?

11 A Because I was a sole shareholder, officer and director of
12 the company.

13 Q Why was the defendant not an officer?

14 A Because he wouldn't have been eligible for the -- if we
15 did it as an application for the IFSC. He had previously been
16 disqualified.

17 Q And you are talking about the challenge you attempted to
18 make in 2012?

19 A That's correct.

20 Q Let's look further down this same page to Item No. 5,
21 distribution of common stock of the corporation. To whom is
22 the common stock issued?

23 A Distribution of common stock of the corporation. Now,
24 therefore, be it resolved that the board of directors of the
25 corporation hereby authorizes and directs the treasurer of the

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1 corporation to issue the certificates representing shares of
2 common stock of the corporation as follows:

3 Name: Joseph S. Anile II. Number of shares to be
4 issued, 100,000. Certificate number, 001.

5 Q Were you always the sole shareholder of this entity in
6 Belize?

7 A Yes.

8 Q Let's turn to the last page of the document. It is Bates
9 stamped Invest-077156. Who signs at the end of the document
10 titled "First Meeting of the Board of Directors, Oasis Global
11 Belize S.A."?

12 A I did.

13 Q I would like to turn to Exhibit 12C, previously admitted.
14 What's the title of this exhibit?

15 A The "Memorandum and Articles of Association," once again
16 of Oasis Global FX, S.A., formerly, Oasis Global Belize, S.A.

17 Q Does this document refer to the name change you mentioned
18 earlier?

19 A It does. And the amendment date is listed there on the
20 document as well.

21 Q What is that?

22 A It was amended on the 29th of August, 2016, by our local
23 counsel, I might add.

24 Q Did OIG ever have an office, a physical office in Belize?

25 A No.

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1 Q Did it have legal counsel there?

2 A Yes.

3 Q Who?

4 A No. I did. I was represented in Belize.

5 Q Pardon me?

6 A Oasis Global FX had counsel in Belize.

7 Q Was that counsel you?

8 A No.

9 Q Who was it?

10 A Glenn D. Godfrey & Company located at Barrack Road in
11 Belize City.

12 Q I have handed you what have been marked for
13 identification -- one moment.

14 Mr. Anile, I handed you what's been marked for
15 identification as Government 85A, 85B, 86, and 87. Do you
16 have those?

17 A Yes, I do.

18 Q And do you recognize them?

19 A Yes, I do.

20 Q In general terms how?

21 A It appears to be the amended agreements with ATC Brokers
22 and a letter regarding the forex license from counsel in
23 Belize, and a copy of the license itself, I believe.

24 MS. BEDKE: Your Honor, at this time the government
25 moves for admission of Exhibits 85A, 85B, 86, and 87.

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1 MS. IRVIN: No objection.

2 THE COURT: They're admitted.

3 (Government Exhibits 85A, 85B, 86, and 87 admitted.)

4 BY MS. BEDKE:

5 Q Let's start with 85A. What is this document?

6 A A corporate application for ATC Brokers.

7 Q Why was this application necessary?

8 A Because a new entity was being financed through ATC
9 Brokers. The entity that was previously at ATC Brokers would
10 have been the New Zealand entity. And the subsequent entity
11 would have been the Nevis, and the new entity would be the
12 Belize entity.

13 Q Look at page 2. It's Bates stamped Invest-079552.
14 Looking at the top half of the page, what's the name of the
15 company to which this application with ATC Brokers applies?

16 A The company is Oasis Global FX, S.A.

17 Q In what country?

18 A Belize.

19 Q Who is the authorized person, looking at the bottom half
20 of the document?

21 A I am.

22 Q And why is that?

23 A I was the sole shareholder, director, and officer of the
24 company.

25 Q Now, a little bit below that in the bottom third of this

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1 same page, there are some boxes and arrows. Do you see those?

2 A Yes, I see them.

3 Q What does that relate to?

4 A The boxes are my address and cell phone number and my
5 email address.

6 Q Why are there extra boxes there on the monitor in red and
7 arrows?

8 A I'm not sure. That is the address of the rental property
9 that Oasis International Group had in Florida, I believe.

10 Q Let's look at the first box on the left. It says
11 residential address. It says 251 Bayville Avenue, Number 76;
12 is that correct?

13 A That's correct.

14 Q And what is that address?

15 A That is my post office box in Bayville, New York.

16 Q Was that your mailing address at the time?

17 A That was my mailing address, yes.

18 Q And the address in the box says 13315 Lost Key Place,
19 Lakewood Ranch, Florida, correct?

20 A That's what it says, yes.

21 Q And what is that address?

22 A I believe that's the address for the property rented in
23 Lakewood Ranch, Florida, by Oasis International Group.

24 Q Let me have you turn to page 3 of the exhibit. It's
25 Bates stamped Invest-079553. At the top half of the page,

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1 it's headed "Trading Experience Information," correct?

2 A Yes.

3 Q And what do you report there?

4 A That I have one year or less experience as a trader in
5 securities, options, commodities, futures, foreign exchange,
6 and contracts for difference.

7 Q Was the same true for the defendant?

8 A No.

9 Q Let's look at financial information in the middle. It
10 says total annual income under 25,000 USD. What does that
11 mean?

12 A That means that I made less than 25,000 per year in
13 United States dollars, that my net worth, which would be
14 assets minus liabilities, was a million to less than
15 5 million, and that my liquid assets would be between 250 and
16 \$1 million.

17 Q Now, were you getting paid for your work with the
18 defendant during this period?

19 A I was.

20 Q How were you paid?

21 A Initially Mr. DaCorta paid all bills out of his company,
22 Oasis Management, until such time as we finished the offering
23 for Oasis International Group through Mr. Drohan. When we
24 closed that deal, we broke escrow, and we were paying them
25 from the attorney's account. And then subsequent to that, all

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1 payments were made from Fund Administration.

2 Q Were you using the attorney -- that would be Drohan &
3 Lee?

4 A Yes.

5 Q Their trust account until you -- let me ask the question.
6 Did you have the use of the attorney's trust account until OIG
7 made arrangements for accounts through Fund Administration?

8 A That's correct.

9 Q And after that were you paid through Fund Administration?

10 A Yes.

11 Q How much were you paid?

12 A For the first several years \$10,000 per month. After
13 that I think we upped it to like twelve-five and then 15.

14 Q Pardon me?

15 A I think we upped it to about \$12,500 a month and then 15
16 or 17,000 a month.

17 Q So it went up to 15 and maybe 17,000 a month over time?

18 A Yes, until I moved to Florida.

19 Q So at the time that you filled out this application, was
20 your total annual income under \$25,000 U.S.?

21 A Personal income. The money was paid into a company, and
22 my company had expenses it would write against those amounts.
23 And then what I received from that personally was less than
24 the amounts taken in.

25 Q Let me have you look at the very first question under

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1 this financial information. Under the boxes we just were
2 looking at, what's the question there? Are you able to see
3 it?

4 A I'm sorry. Please --

5 Q Underneath the boxes that refer to annual income, net
6 worth and liquid assets, there is a question.

7 A The boxes are personal boxes for me.

8 Q Underneath the boxes, do you see a question, have you
9 ever declared bankruptcy within the past ten years?

10 A Yes.

11 Q And how did you respond?

12 A No.

13 Q How would Mr. DaCorta have been required to respond?

14 A Yes.

15 Q And is that why you filled this out?

16 A No. I filled this out because I was the sole shareholder
17 and owner of the company applying.

18 Q Did you serve as sole officer, shareholder, and director
19 of the Belize entity?

20 A That's correct. And that's the entity I believe that
21 this is for, for the application.

22 Q Let's take a look at Exhibit 85B.

23 THE COURT: All right. Why don't we take our lunch
24 break since we are switching exhibits. We are going to try to
25 get back here at 2:00. Thank you. Please don't discuss the

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1 case or look to outside resources. Thanks so much. We will
2 see you at 2:00.

3 (Lunch recess taken.)

4 BY MS. BEDKE:

5 Q Mr. Anile, before the lunch break, we were talking about
6 OIG's new application with ATC Brokers. And I wanted to have
7 you direct your attention to Exhibit 85B. And we will put it
8 on the monitor. What is this document?

9 A This is the ATC Brokers omnibus agreement.

10 Q Let's turn to page 2. We're going to blow up the top
11 half of the agreement or enlarge it. Who are the parties to
12 this omnibus agreement?

13 A ATC Brokers Limited and Oasis Global FX, S.A.

14 Q And is this the Belize entity?

15 A This is the Belize entity, yes.

16 Q What is the date of this agreement between Oasis Global
17 FX, S.A., and ATC Brokers?

18 A January 6, 2017.

19 Q And were the services that ATC Brokers was providing or
20 to provide any different from that reflected in prior
21 agreements?

22 A No. This is essentially the same agreement that we
23 previously had with the new entity in place of the old entity.

24 Q And what in particular was ATC Brokers supposed to do?

25 A Once again, ATC Brokers would be the brokerage firm for

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1 our firm providing us with a white label service into their
2 portal so that our clients would see them. And they would
3 execute our trades on our behalf through their electronic
4 network clearing firm.

5 Q So what precisely was Oasis Global FX in Belize meant to
6 do?

7 A When accounts came through with our firm, we would
8 execute them on their behalf.

9 Q Is Oasis Global FX Belize actually doing the trading?

10 A No.

11 Q Is it executing the trades? Where is that happening?

12 A They are actually executed on the underlying firm. ATC
13 is executing them on our behalf. We enter them into their
14 system.

15 Q Does Oasis Global FX Belize provide any kind of an online
16 platform to display the trading data?

17 A No.

18 Q Who provides that?

19 A ATC Brokers.

20 Q Through Spotex?

21 A I would -- I believe so, yes.

22 Q Was there a physical office in Belize held by Oasis
23 Global FX Belize?

24 A No. We rented I believe a space through our law firm,
25 our counsel there.

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1 Q Who was counsel in Belize?

2 A Glenn Godfrey & Company.

3 Q Was there an employee working for Oasis Global FX Belize?

4 A No.

5 Q Were you the only person on Oasis Global FX Belize?

6 A That's right.

7 Q Let me have you take a look at Government Exhibit 86 that
8 was admitted just before the lunch break. What is this
9 exhibit?

10 A A letter from counsel, Belize counsel, Glenn Godfrey to
11 me.

12 Q Let's enlarge the top half of the document.

13 What's the date of this letter to you?

14 A March 29, 2016.

15 Q What's the subject?

16 A The forex license application.

17 Q And what does the author of the letter write to you?

18 A That they have submitted the application of my entity,
19 Oasis Global FX, S.A., to the International Financial Services
20 Commission on our behalf.

21 Q Who signed the letter?

22 A Seir Salam, the legal assistant at Glenn Godfrey.

23 Q And Glenn Godfrey & Company, LLP, was whom?

24 A Counsel to Oasis Global, at this point Belize, so.

25 Q Let's look next at Government Exhibit 87 admitted into

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1 evidence right before the break. What is Exhibit 87?

2 A This is a copy of a Belize license of the International
3 Financial Services Commission issued to Oasis Global FX, S.A.,
4 for trading in financial and commodity-based derivative
5 instruments and other securities.

6 Q What's the date of this document?

7 A It was issued on the 28th of October, 2016.

8 Q What is the address of Oasis Global FX, S.A., as
9 reflected on the license?

10 A 21 Regent Street, Belize City, Belize.

11 Q Are you familiar with that address?

12 A It is, I believe, the address of -- the attorneys
13 provided me with that address. That may have been an address
14 I was renting from them for the purpose of the application.

15 Q Did you as the person behind this entity ever rent a
16 physical office like you would think of an office?

17 A No.

18 Q How did OIG handle banking once the broker-dealer entity
19 was removed from New Zealand and transferred to Belize, in a
20 manner of speaking?

21 A We had the same issue, that it was difficult to open up a
22 foreign bank account. However, our local counsel was able to
23 open up two bank accounts in Belize on behalf of this entity.

24 Q Did you continue any relationship with Fund
25 Administration?

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1 A Yes.

2 Q What was Fund Administration's role going forward?

3 A Fund Administration continued to operate as before,
4 paying all of the bills for Oasis International Group, the
5 parent company. All bills.

6 Q At any time during your dealings with Fund
7 Administration, did it undergo any changes?

8 A At some point Fund Administration was acquired by an
9 Australian entity called Mainstream Fund Services.

10 Q And so what happened to the name of the entity?

11 A I'm sorry?

12 Q What happened to the name of the entity?

13 A It changed from Fund Administration to Mainstream Fund
14 Services.

15 Q Who handled the relationship between OIG and Fund
16 Administration, later Mainstream Fund Services?

17 A I did on behalf of Oasis International Group.

18 Q Can you describe for the jury what you did on behalf of
19 OIG to interact with Fund Administration, later known as
20 Mainstream Fund Services?

21 A I monitored activity. Any activity in the account would
22 be sent to me, a reconciliation of sorts. So I monitored
23 incoming and outgoing wires, and I authorized payments as
24 necessary.

25 Q With whom did you work at Fund Administration and

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1 Mainstream Fund Services?

2 A Primarily Michael Nolan.

3 Q How did you communicate with Mr. Nolan?

4 A Either telephonically or by email.

5 Q I have handed you what have been marked for

6 identification as Government Exhibits 9B, 9C, 9D, and 57. Do

7 you recognize those?

8 A Yes, I do.

9 Q How, in general terms?

10 A This is the correspondence which would have been sent

11 between Fund Administration/Mainstream Financial Services and

12 myself.

13 MS. BEDKE: Your Honor, the government moves for the

14 admission of Exhibits 9B, 9C, 9D, and 57.

15 MR. ALLEN: No objection.

16 THE COURT: Admitted.

17 (Government Exhibits 9B, 9C, 9D, and 57 admitted.)

18 BY MS. BEDKE:

19 Q What is Exhibit 9B?

20 A 9D?

21 Q B like boy.

22 A This would be a cash reconciliation of the accounts at

23 Mainstream Fund Services for our entities.

24 Q I'm sorry?

25 A For our entities there.

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1 Q Let's put page 1 on the monitor. It's on the monitor
2 sideways. We are going to see if we can flip it. If not, we
3 will switch to the overhead projector.

4 Could we use the overhead projector for a few
5 moments, please.

6 This is 9B, page 1. What is the document entitled?

7 A "Cash Reconciliation."

8 Q And whose document is it? Who issued it?

9 A It's on the letterhead of Mainstream Fund Services.

10 Q And what entity does this cash reconciliation relate to?

11 A Three Oasis entities. Oasis International Group, the
12 parent company, Oasis Global FX, S.A., the broker-dealer which
13 is now a Belizean entity, my Belizean entity, and Oasis Global
14 Nevis Limited, which was the other entity that was set up.

15 Q How often did you receive documents of this description?

16 A I believe almost daily.

17 Q What was the purpose?

18 A To ensure that I was familiar with the activity in the
19 accounts.

20 Q Were you a signer on this account?

21 A No.

22 Q If you weren't a signer on the account, how did you
23 handle the banking?

24 A These accounts were Fund Administration accounts at
25 Citibank that they had attained for us when we first went

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1 there. And basically they opened accounts in our name on
2 their behalf. So they were doing all the banking for us.

3 Q Is that why you had to go through Mr. Nolan?

4 A That's correct.

5 Q Let's turn to page 2 of Exhibit 9B. What's reflected
6 here?

7 A This appears to be a drill down of information for the
8 accounts on a specific date.

9 Q Let's start with the top portion. It says Oasis
10 International Group Limited, correct?

11 A That's correct.

12 Q Opening balance; is that right?

13 A That's correct.

14 Q What kind of currency?

15 A The U.S. dollar denomination.

16 Q What's reflected in the activity column?

17 A Those would be the individuals or entities to which
18 payments were made or received.

19 Q All right. With respect to payments received, which are
20 those?

21 A The ones that would have a positive number in the
22 right-hand corner under USD. The negative numbers indicated
23 by the parentheses would be payments made by the company.

24 Q All right. So are the payments to -- let me ask it this
25 way. Is the line for Joseph Davies, does that represent a

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1 deposit or a withdrawal or expenditure?

2 A That is a deposit. It's a positive number.

3 Q What about the line for Joshua Bell?

4 A The same. That is a deposit number of \$10,000.

5 Q What about the line for Andrew and Brian Krause's?

6 A That is also a positive number depositing \$15,000.

7 Q And is that true for the next four entries through and

8 including Lucre, LLC?

9 A Yes.

10 Q Do you recognize any of those names?

11 A No.

12 Q All right. Below Lucre, LLC, there are several names

13 that have numbers in parentheses opposite, correct?

14 A That's right.

15 Q And so what does the line for Stephen Dribusch reflect?

16 A Stephen Dribusch was paid \$8,000. That's a debit.

17 Q Who is Stephen Dribusch?

18 A Stephen Dribusch was a trader that worked with Michael.

19 Q What about Elysium International Group? What does that

20 line reflect?

21 A That is also a payment of \$10,000 that was made to

22 Elysium.

23 Q And do you know what if any individual is associated with

24 Elysium International Group?

25 A Elysium is, I believe, Joseph Paniagua's company.

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1 Q Do you know how much Mr. Joseph Paniagua was paid for his
2 work on the back office?

3 A This indicates that he was receiving \$10,000. That may
4 have changed from time to time. I don't recall.

5 Q What if anything was Frank Anile paid when he was
6 handling the back office?

7 A I don't recall.

8 Q After Frank Anile passed, was there any payment made to
9 help with his family?

10 A Yes. It was made to Bowling Green Capital.

11 Q What was the purpose of that?

12 A For his funeral expenses.

13 Q Anything after that? Did he have any surviving family?

14 A Yes. I'm sorry. I believe that part of the Elysium
15 payment included a rental payment for Frank's former premises
16 in which his fiancée was living.

17 Q What about the line for Fred -- I don't even know if I
18 can pronounce it.

19 A Fred Viscogliosi.

20 Q What does that line reflect?

21 A It is a payment. It is debit. So it's a payment in the
22 amount of \$10,000.

23 Q And what, if any, role did that gentleman have with OIG?

24 A I believe he was also a trader who worked with Mike.

25 Q What about Bowling Green Capital Corp., what is that

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1 line?

2 A That is a debit. So it's also a payment to that entity,
3 Bowling Green Capital.

4 Q In the amount of what?

5 A \$17,500.

6 Q And who is associated with Bowling Green Capital Corp.?

7 A That is my personal entity. That was my personal entity.

8 Q Does that mean OIG paid you through Bowling Green Capital
9 Corp. \$17,500 on this occasion?

10 A That's correct.

11 Q What about 444 Gulf of Mexico Drive, LLC, what is that
12 line?

13 A That is a debit indicating a payment of \$25,000.

14 Q And what is 444 Gulf of Mexico Drive, LLC?

15 A That is a wholly-owned entity of Oasis International
16 Group that had real estate located at 444 Gulf of Mexico
17 Drive.

18 Q What was that real estate?

19 A That was used as the office building.

20 Q For what?

21 A For Oasis Global FX.

22 Q What about 46 -- pardon me -- 4064 Founders Club Drive,
23 LLC, what does that line reflect?

24 A That indicates a debit, which is a payment made to that
25 company in the amount of \$32,500. And 4064 Founders Club

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Drive was like 444, an entity wholly owned by Oasis

2 International Group. Real estate.

3 Q What kind of real estate was it?

4 A That was the private residence in which I lived. I was

5 living there and rehabilitating the house.

6 Q Is that the premises where you were residing at the time

7 of the searches on April 18 of 2019?

8 A Yes, that's correct.

9 Q So what's the closing balance of OIG on this date?

10 A Taking into account the debits and the credit, there is a

11 final balance for that day of \$3,867,117.17 U.S. denominated.

12 Q What's the date?

13 A November 27, 2018.

14 Q Let's take a look at the last page of 9B, page 3.

15 Mainstream Fund-08507 is the Bates number.

16 A Okay.

17 Q What does this page 3 reflect?

18 A This appears to be a screenshot of the data previously

19 provided on the other page, which I'm assuming was compiled by

20 Mainstream in the first instance. This page is actually a

21 screenshot of the activity from Citibank as further

22 verification of what they had reported.

23 Q How often did you say you received a cash reconciliation

24 from Mainstream Fund Services?

25 A I'm unsure whether I received it daily or only when there

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1 was a change in activity, like an activity report. I'm not
2 sure.

3 Q Let's take a look at 9C. What's this exhibit?

4 A Cash reconciliation report for Mainstream Fund Services
5 for the entities Oasis International Group Limited, Oasis
6 Global FX, S.A., and Oasis Global Nevis.

7 Q Where is Global FX, S.A.?

8 A It is the second entity listed with I guess the
9 subaccount number ending in 9550.

10 Q Is this the -- does that correspond with the Belize
11 entity?

12 A Yes.

13 Q What about the Oasis Global Nevis? Were you using Nevis,
14 the Nevis entity in March of 2019?

15 A No. We had established those accounts for the purpose of
16 utilizing them when we first deregistered from the New Zealand
17 company. So we opened the accounts. We funded the accounts.
18 And we just never changed them.

19 Q Page 2 of 9B, the last page of the exhibit, what does
20 this reflect?

21 A This looks like a screenshot of the subaccounts at
22 Citibank for Mainstream Fund Services for the accounts listed
23 on the previous page with a date March 8.

24 Q So, Mr. Anile, can you describe for the jury the kinds of
25 correspondence or communications you would have with Mr. Nolan

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 at Mainstream Fund Services?

2 A In what respect?

3 Q What was the purpose of your communications with
4 Mr. Nolan?

5 A I would inform him of payments to make. And he would
6 inform me of payments received as well as made.

7 Q What would you do when Mr. Nolan would advise you of
8 payments received?

9 A Notify Mr. DaCorta.

10 Q Why?

11 A Typically Michael knew of payments being received before
12 they were received. He would actually ask me did we receive
13 such and such. I would look to the email to see if it was
14 received, and I would let him know whether or not it was
15 received. When it was in fact received, I would let him know
16 those funds were received.

17 Q Where did the deposits into the OIG account held by
18 Mainstream Fund Services come from?

19 A At this point in time in '18 and '19 they were coming
20 from lenders to the company.

21 Q Were they coming from any other source other than
22 lenders?

23 A No.

24 Q What about prior to 2018 and 2019, where did the money
25 that was deposited into -- I guess it would have been the Fund

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1 Administration account then; is that right?

2 A Well, the period which we acted as broker to self-traded
3 accounts or managed accounts, they would have been from
4 investors.

5 Q Is there any other source of deposits into that account
6 other than investors?

7 A No.

8 Q Let's take a look at 9D.

9 A Excuse me. May I clarify the last answer?

10 Q Yes, sir.

11 A Except for the opening balances which I believe were
12 funded from the attorney's account at Drohan & Lee when we
13 first opened the account, that money was moved over from
14 Drohan & Lee to Fund Administration.

15 Q How much money did you say that was?

16 A I don't recall.

17 Q Well, how much money was raised in the original offering?

18 A Between 1.2 and 1.5 million, minus 400,000, less expenses
19 that we spent while we were at Drohan & Lee. I don't know
20 what that is.

21 Q Would you agree that it was less than a million dollars?

22 A Yes.

23 Q And that million dollars came from investors who bought
24 shares in OIG; is that right?

25 A That's correct.

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1 Q So then all the money that went into the account, whether
2 it went directly or through the lawyer's trust account, was
3 that investor money?

4 A Only the money that came from the lawyer's trust account
5 was investor money. It was shareholder money. All other
6 funds were at all times investor money and then followed by
7 lender money.

8 Q Let's look at 9D. Who is this email from?

9 A It is from me to Mike Nolan.

10 Q And who is copied?

11 A Andrew MacDonald. He also worked at Fund Administration.

12 Q What's the date of the email?

13 A December 15, 2017.

14 Q What's the subject?

15 A "Oasis International Group, Ltd., Wire Transfer to the
16 Ritz-Carlton, Sarasota."

17 Q What do you write to Mr. Nolan?

18 A Michael, please send a wire transfer in the amount of
19 \$8,439.19 from and for the benefit of OIG to the Ritz-Carlton
20 Sarasota to the instructions set forth below. If it can't be
21 done today, please let me know. If you have any questions,
22 please do not hesitate to contact me. Thanks, Joe.

23 Q Do the instructions you referred to appear below?

24 A They do.

25 Q Why did you ask Mr. Nolan to send a wire from OIG to the

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1 Ritz-Carlton?

2 A Oasis International Group had booked the Ritz-Carlton for
3 its 2017 Christmas holiday party to be held at the
4 Ritz-Carlton.

5 Q Let's take a look at 57. Is this another email from you
6 to Mr. Nolan?

7 A It is.

8 Q On what date?

9 A December 12, 2017.

10 Q What's the subject?

11 A "Oasis International Group Limited Wire Transfer to
12 Bowling Green Capital Corp."

13 Q Would you please read the email slowly?

14 A Michael, please wire \$15,000 to Bowling Green Capital
15 Corp. The foregoing is a recurring vendor, and you should
16 have the wire transfer information on file. If you have any
17 questions, please do not hesitate to contact me. Thanks, Joe.

18 Q Why did you direct Mr. Nolan to wire \$15,000 from OIG's
19 account at Mainstream Fund Services to Bowling Green Capital
20 Corp.?

21 A I would have directed Mr. Nolan in the case of any
22 payment to be made. I don't recall that specific.

23 Q If you were directing money to Bowling Green Capital
24 Corp., what does that mean? Who is that going to?

25 A That's my personal corporation, but that could have been

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 in connection with other payments made. I don't know what
2 that's related to in absence of the information.

3 Q Did you receive a lot of money --

4 A Yes.

5 Q -- from the OIG account and the Bowling Green Capital
6 Corp. account?

7 A Yes.

8 Q Did you spend it on personal things, family things?

9 A Yes. Over the period of seven years that I was with the
10 company, yes.

11 Q Other than the deposits into this account that you were
12 describing, did you ever see any money come back from ATC into
13 the OIG account maintained by Mainstream Fund Services?

14 A No, I did not.

15 Q Did you see money or direct money or ask Mr. Nolan to
16 wire money from the OIG account to ATC?

17 A Yes, regularly.

18 Q Why?

19 A Mr. DaCorta would call or write and ask for funds to be
20 sent to the trading account.

21 Q And did you do so?

22 A Yes.

23 Q And what was the purpose of those funds going to ATC?

24 A For trading on behalf of the company.

25 Q Do you have any idea how much money you directed

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1 Mainstream fund to send from the OIG account to ATC for
2 trading?

3 A (Witness did not answer.)

4 Q Now, by the time of the email about the Ritz-Carlton
5 wire --

6 A December 17 --

7 Q Yes, sir. Where are OIG's clients from?

8 A The lenders were primarily I later learned New York
9 mostly but the United States.

10 Q Were there any clients outside the countries you
11 identified earlier, New Zealand, United States, and Canada?

12 A If I may just correct something. We are no longer
13 licensed in New Zealand. So that entity is now licensed in
14 Belize. It would now not be allowed to take clients from
15 Belize, but it could now take clients from New Zealand if it
16 wanted to do so. So the restriction to America and Canada
17 would still apply if they were trading funds on behalf of
18 those investors. And I don't recall if there were any from
19 Canada or anywhere else. There may have been one from Canada,
20 maybe more. I don't know.

21 Q So the overwhelming majority were from where?

22 A The United States.

23 Q Is this a fact that you ever discussed with the
24 defendant?

25 A Yes, of course.

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1 Q When?

2 A In 2017.

3 Q Why did you have that discussion?

4 A Related to the lenders versus the investors, and so in
5 2017 we are talking about lenders to the company. Because
6 they were lending the company the money, they were receiving
7 on a short-term promissory note a rate of payment for
8 interest. So we discussed it, and we didn't think that would
9 matter if they were from the United States versus if they were
10 investors.

11 Q Well, did you ever have a discussion about the CFTC or
12 registration requirements?

13 A At what point in time?

14 Q Well, ever.

15 A Yes, early on we did. And when we talked about the types
16 of investors we were looking for when we were a New Zealand
17 entity, and it would have been duplicative regulatory
18 information provided and would have been very costly.

19 Q With whom did you have this conversation?

20 A Mr. DaCorta.

21 Q Why was it an issue? Why did you even discuss it?

22 A Because we weren't supposed to take United States
23 residents or people from Canada as investors unless we are
24 registered in the United States.

25 Q So what happened when you started taking investors from

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 the United States?

2 A At that point in time, Michael had informed me that he
3 was aware of a rule exemption for registration. And he was
4 made aware of it I believe by Matthew Cozzolino, a trader that
5 worked with him. And there was an exemption from registration
6 if you were investing money on behalf of exchange contract
7 participants. And I was unfamiliar with this.

8 So we went to our counsel who at the time was Drohan
9 & Lee and we asked them, and they agreed that that is correct.
10 An exchange contract participant as an investor would not
11 require you to register. And they could be a resident of --
12 the individual entity could be a resident of the United
13 States.

14 Q And what is an exchange -- what did you say it was?

15 A Exchange contract participant.

16 Q Is that referred to at times as ECP?

17 A ECP for short we called it, yeah.

18 Q What's required? What is an ECP?

19 A I don't recall offhand, but it was kind of a super
20 accreditation. And so in some of the regulations to be an
21 accredited investor, you may have to have a certain knowledge
22 level or certain value of income or certain assets. These
23 assets were quite high, I think.

24 Q Do you remember how high?

25 A Five or \$10 million. I don't recall.

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1 Q Pardon me?

2 A Five or \$10 million. I don't recall.

3 Q Do you know whether all of OIG's investors had that kind
4 of money?

5 A I don't. I don't know.

6 Q During the course of the conversation about ECP, was
7 there also a discussion about the defendant's settlement with
8 the NFA?

9 A No.

10 Q Did you understand that he was effectively banned from
11 soliciting U.S. persons to engage in forex trading or engage
12 in forex trading on their behalf?

13 A No. I did not know that until the CFTC said that, but
14 Mr. DaCorta had received a clean bill of health in the due
15 diligence report from Bryant Rabbino.

16 Q If he were banned from trading forex on behalf of U.S.
17 residents, it wouldn't matter if they were super accredited
18 ECPs or not, right?

19 A That's correct, yes.

20 Q If they are U.S. residents, they can't be solicited,
21 correct?

22 A That's correct.

23 Q And did you ever have a conversation with the defendant
24 about the desire to be offshore and outside U.S. regulatory
25 enforcement and oversight?

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1 A The initial conversations that occurred with Drohan & Lee
2 were just that, yes.

3 Q And why was that something the defendant desired? Did he
4 say?

5 A Not specifically. I recall that I just think it was
6 easier to do. To open up -- to be registered at the CFTC,
7 they had a lot of trading restrictions in terms of the amount
8 of money that you had to set aside as an entity. So if you
9 were an entity that wanted to trade, you would have to have a
10 certain amount of capital in reserve against the trading that
11 you did, et cetera.

12 So I think in conversations with Mr. DaCorta and
13 Mr. Drohan, the decision to be a foreign entity was one that
14 we pursued. And that was similar to what Mr. DaCorta's
15 decision was prior to me working with him when he came with
16 the license from Belize that had been denied.

17 Q In early 2017, what's the OIG business model then?

18 A Ask that again.

19 Q In early 2017 --

20 A Yes.

21 Q -- what is the OIG business model?

22 A In early 2017, we were still taking investors, either
23 self-directed or managed accounts.

24 Q Where were you living?

25 A In New York.

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1 Q Did you ever make the trip to Florida to visit on OIG
2 business?

3 A I did. The first time I came down was in February '17,
4 early '17.

5 Q When you came to Florida, where did you come? Where did
6 you go?

7 A The house that the company was renting, which may be
8 13315 Lost Key Place was the rental property. Mr. DaCorta was
9 living there previously. And then the company purchased a
10 house across the street, which I'm assuming is 13318 Lost Key
11 Place. And he was living in this home and I stayed in the
12 rental home when I came to visit.

13 Q Whether you came to visit, did you say it was February of
14 2017?

15 A I believe so.

16 Q Approximately?

17 A Yes, approximately.

18 Q What was the purpose of your visit or your trip?

19 A We had rented an office in Lakewood Ranch on Main Street.
20 I was coming down just to see, you know, to see what was going
21 on and to prepare for moving down. Michael wanted all people
22 eventually to move down to Florida. So I had to move down
23 eventually. Joe Paniagua would have to move eventually. So I
24 was coming to visit and see what was going on.

25 Q Where was OIG's office?

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A It's called Lakewood Ranch Main Street. It's kind of a
2 development with stores, shops, and office buildings.

3 Q Was this before OIG purchased the office at 444 Gulf of
4 Mexico?

5 A Yes.

6 Q Are you familiar with an entity by the name of Lagoon
7 Investments, Inc.?

8 A Yes.

9 Q How are you familiar with Lagoon Investments, Inc.?

10 A I believe Lagoon is a company that we used for domestic
11 purposes, and we paid the rent for the office space with that
12 entity. I'm not sure.

13 Q Let me publish what's been admitted as Government
14 Exhibit 60. Turning to page 4 of this exhibit, it's Bates
15 stamped FLDOS-00148. What's reflected here?

16 A This is a cover letter generated online for the State of
17 Florida to the New Filing Section for the Division of
18 Corporations. And it seems to be like a pull-down menu that
19 you would type into and then you print up the application.

20 Q What's the subject of the cover letter?

21 A "Lagoon Investments, Inc."

22 Q And all correspondence is to be directed to whom?

23 A Me at my post office box on Long Island.

24 Q Let's turn to the next page of this exhibit. It's Bates
25 stamped FLDOS-00149. What is this page?

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1 A This is an application by a foreign corporation to do
2 business in Florida.

3 Q Which foreign corporation is making the application?

4 A Lagoon Investments, Inc.

5 Q Was it a foreign corporation in terms of being outside
6 the United States?

7 A No. It is a South Dakota corporation formed May 27,
8 2014.

9 Q So was it foreign to Florida because it was originally
10 incorporated in another state?

11 A That's correct. So to do business in the State of
12 Florida, it had to act as a foreign corporation in the State
13 of Florida.

14 Q Let's turn to the next page. It's Bates stamped
15 FLDOS-00150. Who were the directors of Lagoon Investments?

16 A Michael DaCorta and myself.

17 Q Who are the officers?

18 A Michael DaCorta, me.

19 Q And who signed this document?

20 A I did.

21 Q During this same trip in or about February 2017, did you
22 meet with the defendant?

23 A Yes.

24 Q What happened?

25 A The morning following my arrival, he rang the bell and he

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1 asked if I would go for a walk and I did. Ostensibly it was
2 to show me the block and the neighborhood. We were just
3 chatting. And as we were walking, he informed me that he had
4 suffered a trading loss.

5 Q He had suffered what?

6 A A trading loss.

7 Q Did he say how much?

8 A Yes.

9 Q How much?

10 A He said he lost \$4 million.

11 Q How did you respond?

12 A There had been red flags as to the possibility of losses.
13 So his saying it to me was a little bit of a relief because I
14 realized there would be losses and I thought they were far
15 less than I would have thought. And I said, well, okay, we
16 can get the partners together, meaning myself, Mike, and Ray
17 and we can perhaps borrow the money from our own families and
18 friends and then just shut down that aspect of the business,
19 and we had other things going on that were very good that we
20 could have continued with.

21 Q Did the defendant agree with that proposal?

22 A No.

23 Q What did he say?

24 A He said that would not be necessary, that we didn't have
25 to tell Ray or anything about it, that he had it covered.

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1 Q Did he say what he meant by "he had it covered"?

2 A Yes.

3 Q What did he say?

4 A He had a very specific plan of trading, and it wouldn't
5 happen quickly. It would happen over a period of months, but
6 he would be able to go in and out of the market and basically
7 make up the deficit which he then referred to as a gap, a
8 trading gap.

9 Q Did you two discuss disclosing this gap to the investors?

10 A No. We agreed not to discuss it with anyone.

11 Q Why?

12 A If you discussed it with the investors, they would have
13 probably stopped investing and wanted their money back. And
14 we would have been back to square one where we had to borrow
15 the money to pay the investors back.

16 Q Weren't the investors entitled to disclosure of that
17 information?

18 A Yes.

19 Q Did you agree to hire an auditor or accountant to help?

20 A No.

21 Q Did you take any other steps to try and rectify what the
22 defendant described as the gap?

23 A Excuse me?

24 Q Did you take any other steps to address what the
25 defendant described as the \$4 million gap?

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A No.

2 Q How much money had come in from OIG -- into OIG from
3 investors up to this time; do you know?

4 A I don't know.

5 Q How many investors?

6 A From the reports I was seeing as to the payments being
7 received and made, I could only identify maybe 50 or 60 as
8 names that would regularly appear.

9 Q Do you recall any of those names?

10 A Some, yes.

11 Q Can you give the jury some examples?

12 A Satellite Holdings Corp. was a regular one. That was
13 John Haas. Kevin Carrigan was another individual that he was
14 regular, and some others.

15 Q Did you check the bank records to see if you could see
16 this \$4 million gap?

17 A No.

18 Q Did you check the trading record?

19 A No.

20 Q Did you talk with Ray Montie about the \$4 million gap?

21 A No.

22 Q Why?

23 A Because I agreed that I wouldn't do it.

24 MS. IRVIN: I'm sorry. I could not hear.

25 A I agreed that I would not speak about to anyone.

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1 BY MS. BEDKE:

2 Q Agreed with whom?

3 A With Mr. DaCorta.

4 Q Do you know whether the defendant was able to cover the
5 gap?

6 A Over the coming months he kept saying he narrowed the
7 gap. And towards the middle or end of '17 he said it was
8 covered, yeah.

9 Q Did you see any evidence of that?

10 A No.

11 Q Did you just take his word for it?

12 A Yes.

13 Q At some point did you permanently relocate to Florida?

14 A Yes. After my son graduated in June of '17, I relocated
15 on December 1, 2017.

16 Q And where did you relocate?

17 A I was going to stay originally at the house rented by the
18 company, 13315 Lost Key Place.

19 Q Did you stay there?

20 A I did. And I wasn't there but a few days and there was a
21 hurricane so I had to leave the premises. And then I returned
22 like a week later, and the landlord informed us that he sold
23 the house and I had to be out by October 30 or something like
24 that, the end of October.

25 Q So did you have to find another house?

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1 A Yes.

2 Q What did you find?

3 A Well, we discussed the rental market which was
4 increasing. I don't recall what we were paying for that
5 property at the time. I think it was -- I don't recall. It
6 was in the 4,000 range. So either renting or purchasing. And
7 Michael had introduced me to a couple of his friends that were
8 brokers. And I looked at purchasing properties for the
9 company but only if they would provide seller financing.

10 Q Why was that important?

11 A Because the company would use very little of its money.
12 The seller would finance it. And we would wind up with an
13 asset that could be very valuable.

14 Q Where did you find a house?

15 A Several properties upon which we made offers that were
16 accepted were ultimately rejected for the seller financing.
17 Ultimately I purchased a property for the company at
18 4064 Founders Club Drive.

19 Q How was it purchased? What were the mechanics of the
20 transaction?

21 A I believe I had to put down a deposit and take seller
22 financing for the balance. We hired local counsel for all of
23 the real estate transactions, and that's what they did.

24 Q Was this house purchased in your name?

25 A No. It was owned by the company, Oasis International.

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1 All real estate transactions were.

2 Q Let's take a look at what's been admitted as Exhibit 30.

3 Turn to page 2. The next page. Looking at I believe page 4

4 of this exhibit, it's Bates stamped FLDOS-00026. What is this

5 document?

6 A The articles of amendment to the articles of organization

7 of 4046 Founders Club Drive. And it changed it from 4046

8 Founders Club Drive to 4064 Founders Club Drive.

9 Q Is 4064 Founders Club Drive an address?

10 A It is.

11 Q For what?

12 A The property located at 4064 Founders Club Drive.

13 Q And who was living there?

14 A I would reside there ultimately with my wife.

15 Q And that was your family home?

16 A Yes.

17 Q Did you pay rent to the company?

18 A No.

19 Q Were there bank accounts established in the name of

20 this LLC, 4064 Founders Club Drive, LLC?

21 A Yes.

22 Q Why?

23 A To make payments for the company I had to pay not only

24 the down deposit but taxes and payments to the homeowner's

25 association of Founders Club for rehabilitation of the house.

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1 The house had some damage. It had water damage and some mold
2 issues, and I had to correct all of those things.

3 Q How was -- how were the accounts in the name of 4064
4 Founders Club Drive, LLC, funded?

5 A From Oasis International Group through Mainstream.

6 Q And how was Mainstream funded?

7 A From the lenders.

8 Q So the lenders' money was transferred to the Founders
9 Club, LLC, account and used to maintain this house where you
10 and your family lived?

11 A Yes.

12 Q Did you purchase any other real property using the name
13 Founders Club?

14 A Yes.

15 Q What?

16 A There was a lot adjacent to 4064. I believe it was 4058,
17 but I don't recall offhand, and it came on the market soon
18 after I had moved into 4064, and we purchased the lot.

19 Q Let's take a look at what's been published previously or
20 admitted previously as Exhibit 35. Go to page 3 of this
21 exhibit. It's Bates stamped FLDOS-00004. What is this
22 document?

23 A It says the Articles of Organization for the Florida
24 Limited Liability Company of 4058 Founders Club Drive which
25 would be the lot.

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1 Q How was that --

2 A I'm sorry?

3 Q How was that lot owned? In what name?

4 A It would also have been owned in the name of Oasis
5 International Group Limited.

6 Q And how was the purchase of this lot funded?

7 A If I recall correctly, it also came from Oasis
8 International Group, probably into the 4064 account. And I
9 must have used that to make the payment. This was paid in
10 full in cash. And that would have ultimately come from
11 mainstream.

12 Q We can take that down.

13 In or about the fall of 2017, did the OIG business
14 model change?

15 A Yes.

16 Q What happened?

17 A Soon after I arrived in Florida and while I was working
18 with these issues and Michael had said that he closed the gap,
19 he said that he had an idea which would benefit us in the long
20 run. Rather than acting as a broker-dealer for investors, we
21 would simply borrow funds from lenders, and then the funds
22 would be proprietary to us as a company.

23 Q Why is that going to benefit you in the end? Did
24 Mr. DaCorta say?

25 A Well, the initial thought I think is he said that if it

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1 was proprietary funds, we won't have an obligation to report
2 our profits or losses to the investors because they're not
3 investing. All the investor would know is that they are
4 receiving one percentage point a month in interest plus a
5 special interest that he calculated.

6 Q Is that advantageous to you?

7 A Well, it would give latitude to the company to make
8 different investments, not just in foreign exchange but the
9 real estate and some businesses that he was looking at, yeah,
10 and other things.

11 Q Did you agree to go along with the defendant's idea to
12 make this change?

13 A Yes.

14 Q Who were the principals after this change in structure
15 and approach?

16 A I'm sorry?

17 Q Who were the principals of OIG after this shift in the
18 business model?

19 A The principals never changed.

20 Q Did the defendant tell you what Mr. Montie's role was
21 going to be?

22 A From the outset, from the very beginning, Ray was
23 introduced to me as -- he was involved in another company, his
24 personal business. It was called Ambit. And he was a
25 consummate salesman. So Michael had hoped that at some point

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1 when Ray's business at Ambit matured that Ray would kind of
2 slowly walk away from Ambit a bit and focus on sales for us
3 and that he would assist us with sales.

4 Q Did that ever happen?

5 A I believe it started to occur after we switched from
6 investors to lenders, yes.

7 Q What makes you say so?

8 A In 2018 money was flying in and out of the accounts. We
9 had been relatively small I thought to this point, but in 2018
10 after switching to a lender-based system, the company seemed
11 to grow exponentially.

12 Q Was there any new paperwork introduced in connection with
13 this change in business model?

14 A Yes.

15 Q Would you describe it, please?

16 A A promissory note had to be issued to the lenders where
17 the company was a borrower. The promissory notes were short
18 term. I think we originally discussed like a matter of days,
19 and then we ultimately ended up on 90 days or 60 days. I
20 don't recall, but it was a very short-term notes. They were
21 12 percent annualized percent, which comes out to 1 percent a
22 month. So for however many days it was, that's how it would
23 have been prorated. And there was a special interest
24 provision in the note that provided that the lender would
25 receive extra interest if it was -- I think there was a

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1 greater or less than concept that was built into this -- if
2 we, being the borrower, had used that dollar and traded the
3 similar amount in terms of the amount of the transaction fees
4 earned on it. So the bottom line would be it's not based on
5 profits or losses. The extra interest would be simply based
6 on the volume, the amount of trades made in an account by
7 Oasis.

8 Q How did you come to that understanding?

9 A Michael explained it that way and that's the way I wrote
10 it. I don't have the language exactly.

11 Q Were there any other paperwork changes?

12 A We had to transfer all of the accounts. So I think there
13 was a lot of account transfer information going on as well.
14 In connection with the promissory notes, we had to use a lot
15 of disclosures.

16 Q Risk disclosures?

17 A Yes.

18 Q What was that?

19 A Well, I kind of kept the idea that it would be the same
20 risks as if it were the account we used previously. So the
21 paperwork that we had previously, the managed account
22 documents or the self-directed documents, we had risk
23 disclosures in there. I kind of used those. And then Michael
24 and I talked about it and he wanted to embellish a section to
25 talk about our ability, almost like with the hedge fund, to do

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1 anything, to invest in businesses, to invest in real estate,
2 to reflect all the things that were actually being done.

3 Q And did you write a risk disclosure in connection with
4 what the defendant wanted?

5 A Yes. I created like a legalese paragraph based on that
6 conversation.

7 Q And what did you think of that risk disclosure once it
8 was in final?

9 A After I did it, I showed it to Mike, and I said I don't
10 think people will sign it. It's egregious at best.

11 Q Why?

12 A Well, it basically says if you give us your money, we can
13 do anything we need to do with it. We can use it for any
14 purpose whatsoever. And that's that. And these are not
15 collateralized notes. So there is nothing that we have to do
16 for you. You are basically loaning us money for no particular
17 reason.

18 Q Is there any security? So what's the risk?

19 A Everything.

20 Q Did you ever put any of your own money into this?

21 A No.

22 Q Why?

23 A I believed it was a scam.

24 Q Did you ever refer anybody to put money into this?

25 A No.

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1 Q You mentioned that the risk disclosure indicated the
2 company could do whatever they wanted with the money, correct?

3 A Yes.

4 Q And so what kinds of things were the lenders' money used
5 to do?

6 A Well, in the first instance the money that comes in would
7 be used for company operations, the payment of ordinary
8 expenses, the office expenses, et cetera. Also for our real
9 estate business, you know, the buildings and the homes and
10 other properties were purchased too, condominiums and such.
11 And we were looking into active businesses. We had had
12 previously a business which wasn't working out well, medical
13 devices, Full Spectrum Wellness I believe. And we were
14 looking into a cannabis business and a business for Mirror
15 Innovation. It was an advertising business. So Michael was
16 actively working with people to find business opportunity.

17 Q Let's take those one at a time. You said the lender
18 money could be used for operating expenses, correct?

19 A That's correct.

20 Q So to keep what you called a scam running?

21 A Yes.

22 Q You said it could be used to buy real estate, correct?

23 A That's correct.

24 Q Did any of that real estate ever generate any income or
25 other money that came back into the OIG account?

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1 A Not that I'm aware of, no.

2 Q You also said you were looking to invest in active
3 businesses; is that right?

4 A That's correct.

5 Q And you mentioned Mirror Innovations?

6 A Yes.

7 Q What was that?

8 A Michael had come across a company from friends of his
9 that had invented a film that you can actually put on a mirror
10 or glass and you can still see through it. So you still see
11 the mirror or glass but you can print on it and it would be
12 like an advertisement. So pick, if you will, a stall in the
13 stadium. If you went into that stall and you see yourself,
14 you see it, but the reflection on top would say Budweiser or a
15 company name.

16 Q Did that investment ever generate any income that came
17 back into the OIG account with Mainstream?

18 A No. The company closed before we were able to pursue it.
19 We actually consummated a transaction in purchasing half of
20 the company, a little more than half. Michael always tried to
21 wire at least 50, 51 percent of the company. So we had
22 51 percent of Mirror Innovations. We didn't get to do
23 anything with it.

24 Q How much money in OIG funds was spent pursuing the deal
25 that never happened?

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1 A I don't think in that case any money was spent.

2 Q You didn't have any expenditures in connection with
3 purchasing 51 percent interest and whatever else was happening
4 to get the deal done before the company closed?

5 A No. I believe the way that Michael negotiated the deal
6 is that we had to create sales, a certain dollar volume of
7 sales within a certain period of time for the transaction to
8 be closed. So I think to get our shares we had to sell let's
9 say a hundred or \$200,000 worth of sales within the first so
10 many months.

11 Q Did that ever happen?

12 A No.

13 Q Was any income generated that came back to OIG?

14 A No.

15 Q Are you familiar with an entity called as PortaMax?

16 A Yes.

17 Q What's PortaMax?

18 A A company that Michael introduced to us, a great company.
19 This company had created an electric generator. So the
20 generator was strong enough to power an apartment and in some
21 cases even a house. And you would charge it, it would be
22 fully loaded. And then it could be recharged with solar
23 panels that came with it. It would be smokeless because it
24 wouldn't rely on diesel or any other fuel. And in the case of
25 a hurricane, it would be instrumental for condominiums or

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1 apartments or people that had ventilators or machines or
2 oxygen.

3 Q So how much lender money from the OIG account was put
4 into the deal involving PortaMax?

5 A None.

6 Q None?

7 A No.

8 Q Did the deal ever generate any income that came back to
9 the OIG account?

10 A No.

11 Q Are you familiar with an interest or effort to acquire an
12 ECN?

13 A Yes.

14 Q What is that?

15 A As I recall, that is the back end. That would be Spotex.
16 That is the back end of the broker-dealer, clearing end. So
17 that's the electronic network that clears the trades. And
18 apparently some of them were selling in the industry amongst
19 themselves at a very, very high multiple. I forget what it is
20 now. And Dave Manoukian had been talking to Michael about us
21 buying a percentage of that company. I think it was Spotex in
22 this instance, but Dave had all kinds of ridiculous almost
23 requirements for it. But it sparked an interest on Michael's
24 part because he said this would be a great thing to do based
25 on what was going on with the market. So we did investigate

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1 it and look at it.

2 Q Did you expend any lender funds from the OIG account with
3 Mainstream trying to acquire an ECN?

4 A No.

5 Q Did that effort result in any money coming back into the
6 OIG account for the benefit of the lenders?

7 A No.

8 Q Did you have any business activity in China or in
9 connection with any Chinese companies?

10 A Sort of. In 2014, I had been approached by a friend who
11 thought I was still acting as an attorney. And he said I
12 would like to hire you to go to China, and I said I can't do
13 that. I now work with Oasis, this company. And he told me
14 what he had in mind. Him and his friend, his colleague was
15 from Canada, an importer/exporter into China and he had some
16 significant contacts there he was working with. In speaking
17 with them, it appeared that they wanted to come to America and
18 maybe go public here in this country or work with American
19 companies and would I be interested in doing it. I said I
20 would have to talk to Michael because I don't work as an
21 attorney. And I went to Michael and we discussed it, and we
22 said this would be an interesting possibility. We could open
23 up an investment advisory business. We could work with
24 Chinese entities and bring them to America and advise them how
25 to do things.

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1 So with that, Michael permitted me to pursue it. And
2 I went to China in October of 2014, I think it was, and I was
3 there for a few weeks, I don't recall, maybe longer, and I met
4 the head of the companies, and I negotiated a deal with them.
5 And they wanted to come to America. It was everything I just
6 said. It was an investment advisory agreement. We had to
7 meet with their attorneys over a long period of time. They
8 were going to give us office space there, et cetera. And the
9 key to the whole deal, though -- I was a little skeptical --
10 is that I wanted them to give us a retainer. I wanted to make
11 sure that they were committed to doing this.

12 So I returned to the States. And I said, this is
13 great, this is what we have. And Michael said what do you
14 think?

15 I said, I don't know. They have to provide us with a
16 retainer.

17 And he said, write something up. And I wrote a
18 little something about it and showed it to him. And he said,
19 this is great if it's real.

20 I said, it's real. We have the documents.
21 Everything's been executed but we don't have the retainer
22 which would close the documents. I said, all right.

23 Q Did you ever receive the retainer?

24 A No.

25 Q Did OIG ever use lender funds to invest in this Chinese

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1 companies or make this deal happen?

2 A Other than me going there and spending that money, no.

3 Q Did any money come back from these ventures in China or
4 attempted ventures in China to the OIG account with
5 Mainstream?

6 A No.

7 Q Are you familiar with an entity by the name of Full
8 Spectrum Wellness?

9 A Yes.

10 Q What's Full Spectrum Wellness?

11 A I believe that was the entity we set up to work with one
12 of Michael friends, Larry Waldman. Larry is a salesman of
13 medical equipment.

14 Q Let me -- I'm sorry.

15 A In South Florida.

16 Q Let me publish what's been previously admitted as
17 Exhibit 45. Let's turn to page 3. What is this page,
18 FLDOS-00176?

19 A This is the articles of organization forming the limited
20 liability company, Full Spectrum Wellness to market health
21 care devices and other things as permitted by law.

22 Q Let's turn to the next page. It's Bates stamp
23 FLDOS-00177. Who is the manager of this entity?

24 A Michael DaCorta.

25 Q Did OIG expend any lender funds from the account with

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1 Mainstream into Full Spectrum Wellness?

2 A I believe so, yes.

3 Q Do you know how much?

4 A After all was said and done, during the conversation
5 Michael said basically we spent over a million dollars. I
6 don't know the numbers, though.

7 Q So you are not sure?

8 A I'm not sure, but I think it was over a million dollars.

9 Q Did Full Spectrum Wellness ever generate any money that
10 came back into the OIG account with Mainstream to benefit the
11 lenders?

12 A No.

13 Q Did any of these businesses, these active businesses
14 generate any money that came back into the OIG account?

15 A No.

16 Q Did you attend OIG's 2017 holiday bash?

17 A Yes, I did.

18 Q Let's publish what's been previously admitted as
19 Exhibit 340A. Are you able to see 340A, the photographs on
20 the monitor?

21 A I am, yes.

22 Q Do you recognize them?

23 A It looks like the interior of the Ritz-Carlton where the
24 holiday party was held in 2017.

25 Q Let's turn to -- bear with me one second here -- page 11

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1 of this exhibit. It's Bates stamped Comp33-00178. Who is
2 depicted there?

3 A That's Michael DaCorta speaking to the people at the
4 party.

5 Q Let's turn four more pages in to the image Bates stamped
6 Comp33-00182. Do you recognize anyone in that photo?

7 A Yes.

8 Q Who?

9 A That is Matt Kihnke standing with a beard, and hugging
10 him is Frank Duran.

11 Q Who is Matt Kihnke?

12 A Matt was introduced to me by Michael. Matt was an
13 investor in our company.

14 Q Who was Mr. Duran?

15 A Frank Duran was also introduced to me by Michael. Frank
16 worked with us. He worked with Michael on sales for the
17 company.

18 Q Let's turn one more page to the one Bates stamped
19 Comp33-00183. Do you recognize anyone in this photo?

20 A I certainly do. That's me in the center. To my
21 immediate left is my dearest friend, was my dearest friend
22 Roland Lorenzo. He was a former boss of mine at both Lehman
23 Brothers and Credit Suites. And to my immediate right, the
24 gentleman there was a friend Bob Oliveri. And those were just
25 patrons that Frank Duran had brought to the party that were

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1 goofing around.

2 Q Let's turn to the last page of this exhibit. It's Bates
3 stamped Comp33-00186. Who is depicted here?

4 A That would be me on the left, Ray Montie to my immediate
5 left, Michael DaCorta to Ray's immediate left, and Aaron
6 Rutskey, I believe is his name, to Michael's immediate left.

7 Q Were any presentations made at this party?

8 A Yes. I think peering over, that may be Kevin Carrigan.
9 He is photo bombing in the back.

10 Q Who is Kevin Carrigan?

11 A Kevin was a friend of Michael's. Who worked with Michael
12 in sales for the company.

13 Q What kind of work did he do for the company?

14 A I believe he tried to sell products.

15 Q Were there any presentations at this party?

16 A Yes.

17 Q By whom?

18 A By Michael.

19 Q Did the defendant tell everyone in attendance about the
20 \$4 million gap and how he had closed it?

21 A No.

22 Q Did you?

23 A No.

24 Q In early 2018, who is handling the back office at this
25 time?

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1 A Joseph Paniagua.

2 Q Is he handling it all by himself?

3 A I believe so.

4 Q Is he managing?

5 A I think he was a little underwater. He wanted to bring
6 an assistant.

7 Q Why is that?

8 A Joe was responsible for everything and we were small and
9 it was fine. He was onboarding. He was dealing with client
10 relations when people wanted to withdraw funds, et cetera.
11 All of a sudden things start to happen a lot faster, and I
12 think Joe was overwhelmed and switching the system over from
13 one type of paperwork to the other type of paperwork. I think
14 he was responsible for trying to get all of that executed. I
15 simply provided all the blank forms after Michael and I
16 discussed it, gave them to Joe. Joe had to fill in the
17 information, and that was a lot of work.

18 Q Did Mr. Paniagua, Joseph Paniagua, also generate some
19 reports for you?

20 A He generated a daily report for me regarding Oasis Global
21 FX as well as quarterly reports and annual reports that had to
22 be filed with the IFSC in Belize.

23 Q Who else got the daily report prepared by Joseph
24 Paniagua?

25 A Mr. DaCorta.

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1 Q And what was the purpose of the daily reports prepared by
2 Joseph Paniagua for you and the defendant?

3 A There was extensive data on them that was relevant to
4 what Michael was doing in trading and all that. And then the
5 one report that related to the Belize company was simply the
6 amount of fees that were being charged by Oasis Global FX to
7 Oasis International Group per transaction and accruing in my
8 account.

9 Q Let's talk about that for a moment. You were explaining
10 that under this new model lenders could get 1 percent a month,
11 correct?

12 A Yes.

13 Q Or they could get a higher amount?

14 A Yes. If I had the words, I could explain it better, but
15 yeah, something like that.

16 Q Are you familiar with the word "spread"?

17 A A little bit from what Michael said, yeah.

18 Q Does that have anything to do with what you were
19 describing, these transaction fees?

20 A Yes, I believe so. No. I don't know if it was so much
21 the spread as the volume, but I think the spread was used to
22 calculate the volume. I would have to see the calculation,
23 the way it was written.

24 Q Who paid the transaction fees you were describing?

25 A Theoretically Oasis International Group paid them now

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1 because they were borrowing the funds from the lender, and
2 they would execute trades through the broker-dealer. And the
3 broker-dealer was charging a fee for them.

4 Q Who was charging a broker-dealer to whom?

5 A Oasis Global FX was charging Oasis International Group a
6 fee for executing trades on the platform.

7 Q And the money used to trade on the platform came from the
8 OIG account with Mainstream, correct?

9 A That's correct.

10 Q And that account with Mainstream was funded by what?

11 A Investor dollars.

12 Q Or lender dollars?

13 A Yes.

14 Q And so that money that went to be traded was whose money?

15 A Essentially it's lender money.

16 Q And that's the money that's being used to pay the fees?

17 A That's correct.

18 Q Did you and the defendant tell the investors and lenders
19 that there were fees being charged?

20 A No, not to my knowledge.

21 Q Did you and the defendant tell the lenders there were no
22 fees being charged?

23 A I believe that Mr. DaCorta was telling them there were no
24 fees being charged, yes.

25 Q Was that part of the pitch?

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1 A I was not involved in sales, but to the extent I
2 overheard different conversations, I would say, yes, that
3 would be part of the pitch.

4 Q This volume generated what? The volume trading you
5 mentioned, what did you generate?

6 A I'm sorry. I don't understand the question.

7 Q You said a moment ago that there was a volume of trading,
8 correct?

9 A Right.

10 Q All right. Why is that significant?

11 A The more trades executed by the company would create a
12 higher volume number because that's the transaction that's
13 being generated, and it would create an alternate number of
14 the interest rate versus the 12 percent. And that was used
15 not only to calculate lenders but also people who introduced
16 lenders. Michael was calling them introducing brokers. So
17 they would get a fee based on that amount as well.

18 Q So based upon what you said a moment ago then, the more
19 trades there are, the more transaction fees are generated
20 which means the more the lenders are paying the fees?

21 A That's correct.

22 Q And what happens to those fees? Where do they go, if
23 anywhere?

24 A They were being accrued in an account for Oasis Global
25 FX.

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1 Q Did they ever go back to the OIG account with Mainstream?

2 A No.

3 Q And what happened with the trading that was happening
4 with ATC Brokers? Was that profitable? Did it generate a
5 loss?

6 A Please repeat the question.

7 Q Let me rephrase.

8 Did the trading that OIG did using ATC Brokers result
9 in a profit or losses?

10 A Well, at that point I don't know. I mean, that's the
11 account that would have lost money previously and now was
12 conducting business. And they weren't sending money back to
13 the account. So there were probably losses.

14 Q Do you know for sure?

15 A I didn't see -- I didn't see the trading. So I don't
16 know that, but I do know that no money was ever returned in
17 cash to the company from that account.

18 Q At some point in later 2018, did you have a discussion
19 with the defendant about the trading?

20 A Yes.

21 Q When?

22 A Around August of '18.

23 Q What did the defendant tell you?

24 A Michael came to my home and we sat out by the pool and he
25 said he had significant losses, between seven and a half and

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1 \$15 million. He didn't know the amount.

2 Q How much money did he say he had lost?

3 A Seven and a half to \$15 million.

4 Q From the FX trading, the forex trading?

5 A It wasn't clear to me what the total losses were an
6 aggregate of.

7 Q How did you respond to that statement?

8 A I was overwhelmed. I said, this is clearly a Ponzi
9 scheme.

10 He said, yes, I know.

11 And I said, well, we need to get our arms around
12 this. And we agreed to hire an accountant who would come in
13 and audit everything and look at all the books and records.
14 And we wouldn't tell anyone until we had real information what
15 we would say.

16 Q You wouldn't tell anyone you didn't have real
17 information. What do you mean?

18 A Right. We didn't know -- we didn't know what the losses
19 were, if they were accurate. That's correct. It was too much
20 of a variable to say that number. And the company had assets
21 that maybe had to be recalculated for fair market value. It
22 was just we did not have a handle on the losses. Seven and a
23 half to \$15 million is not an accurate statement. And we
24 agreed not to say anything and have an accountant calculate
25 them.

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1 Q Did you and the defendant make a plan to disclose the
2 losses of between seven and a half million and 15 million to
3 the lenders?

4 A We specifically agreed not to disclose it and to have the
5 accountant come in.

6 Q Did you look at the financials to try and get to the
7 bottom of it?

8 A What financials? I'm sorry.

9 Q Well, did you look at any banking records or other
10 documents --

11 A No.

12 Q -- to try and put a finer point on the amount of the
13 trading losses?

14 A No, I did not.

15 Q Did you look at the trading data?

16 A No, I did not.

17 Q You said you hired an auditor?

18 A Yes.

19 Q Who was that?

20 A John Caliendo.

21 Q When did you retain his services?

22 A Right after that call, I called John and I asked if he
23 would be available to help us. I said we may have some
24 losses. I didn't indicate what or how. I said we had some
25 assets, we had a lot of stuff going on and he would have to

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1 get involved, and it would probably take some time because he
2 would have to go through all the different entities, all the
3 different assets, all the different liabilities and whatnot.

4 Q Did he get the job done?

5 A No.

6 Q Why?

7 A During this period, the company was also creating a back
8 office system, a web platform. We had hired Joe Paniagua's
9 brother, John Paniagua, who was a computer expert at FINRA,
10 formerly the New York Stock Exchange. He had been doing this
11 forever, and he had familiarity with setting up these systems.
12 So he was working very closely with Michael and particularly
13 Joe how to structure it and put data together. Joe had
14 already been very busy, and his time was now tied up on
15 creating the new back office platform. Joe would also be
16 required to help John Caliendo to provide him the data. I was
17 giving John access to all the books and records, but Joe would
18 have to give him specific client information to help him as
19 well. And I think John got kind of caught up in some of that.
20 Even though I gave him everything, I think he trudged along,
21 but I don't think he got very far.

22 Q You mentioned several people in that. I just want to
23 sort it out for the record. John Caliendo was doing what?

24 A He was the accountant hired to figure out what was going
25 on.

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1 Q And John Paniagua was doing what?

2 A He was the IT expert who was helping to create -- he was
3 hired to create our back office, the Oasis International back
4 office platform which was going to hopefully be rolled out in
5 '19, later that year or next year.

6 Q Joe Paniagua was doing what?

7 A Back office as usual, but he had to assist his brother,
8 John, to get a lot of data and information to him so John
9 could not only set up the accounts, but figure out how
10 everything was working and be able to put everything together.
11 And Joe also was required at this point to now assist John
12 Caliendo to get him certain data. I was giving John books and
13 records.

14 Q You were giving John who books and records?

15 A John Caliendo. I gave him access to everything, all of
16 the Mainstream data, all the stuff that I had, but Joe had a
17 lot more stuff. Joe, don't forget, had copies of all of the
18 promissory notes.

19 Q In the meantime while John Caliendo is gathering
20 information to conduct this audit, did you and the defendant
21 push the pause button on Oasis and stop taking in new lender
22 money? Did you keep spending money?

23 A Yes.

24 Q Did you keep spending money out of the OIG account at
25 Mainstream Fund Services?

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1 A Yes.

2 Q Is that the one funded with lender money?

3 A Yes.

4 Q Was that the one that never received any money back from
5 the business ventures?

6 A Yes.

7 Q Is that the one that never received any money back from
8 ATC?

9 MS. IRVIN: Objection, Your Honor. Leading.

10 THE COURT: Overruled.

11 A Yes.

12 BY MS. BEDKE:

13 Q Roughly when did you say the defendant told you that
14 there were losses of 7.5 to \$15 million?

15 A I believe it was August or September. I'm not --

16 Q Of which year?

17 A '18, 2018.

18 Q When did the defendant purchase the home at Lacantera?

19 A I think it was at or around that time.

20 Q Let's take a look at what's been previously admitted as
21 Exhibit 314. Is that in?

22 THE COURTROOM DEPUTY: 314 is.

23 BY MS. BEDKE:

24 Q We'll just highlight the top. What's the settlement date
25 on the purchase of the home at 6922 Lacantera Circle in

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1 Lakewood Ranch?

2 A This says October 1, 2018.

3 Q To the best of your memory, is this purchase after
4 Mr. DaCorta told you about millions of dollars in trading
5 losses?

6 A Yes.

7 Q And did the money for this purchase come out of the Oasis
8 Management account?

9 A I assume so. I don't recall.

10 Q Let's take a look at 314A. Do you see the wire there on
11 October 1 for \$608,345.88?

12 A I do.

13 Q And let's go back to page 1 of this exhibit for a moment.

14 A If I may point something out. This is a Wells Fargo
15 account in the name of Oasis Management, LLC. I never saw
16 these bank records.

17 Q Pardon me?

18 A I'm unfamiliar with this record. This was Michael's
19 personal company.

20 Q All right. Let's just enlarge what you mentioned. This
21 is Oasis Management's account, correct? And how was this
22 account funded?

23 A I don't exactly know. From time to time money would be
24 sent from Oasis International Group to that account. There
25 were occasions when that account lent Oasis money in the early

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1 days. The \$400,000 that was paid as a reimbursement from the
2 initial funding that Drohan & Lee did on the Reg D deal, that
3 went to this account. I don't know how this account acquired
4 money. I can't answer that.

5 Q Okay. Let's take a look at 306A. This was previously
6 admitted. This is the settlement statement for the purchase
7 of the home at 13318 Lost Key Place in Bradenton, Florida.

8 A Yes.

9 Q Let's highlight the top of the document. Are you able to
10 see that, Mr. Anile?

11 A Yes, I am.

12 Q What's the settlement date at the bottom of the monitor?

13 A March 18, 2016.

14 Q Okay. Let's look next at 306A2 previously admitted into
15 evidence. And I want to direct your attention to a
16 transaction on February 12 of 2019. We will enlarge that. Do
17 you see that wire for \$653,293.67?

18 A I do.

19 Q On February 12 of 2019?

20 A Yes.

21 Q Let's go to the top of this page which is Bates stamped
22 Invest-088769. Whose account is this?

23 A I'm not sure from this information.

24 Q Is it the account at Mainstream?

25 A It says Mainstream, yes. I would assume it's Oasis

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1 International Group.

2 Q Let's go back to page 1. Highlight the top of the
3 document, please. Is this the Citibank account held by
4 Mainstream for OIG?

5 A Yes. The other ones only had 10,000. So I assume that's
6 the account, yes.

7 Q Had you and the defendant gotten to the bottom of the
8 millions of dollars in trading losses by the time he paid off
9 the Lost Key Place house?

10 A No. I recall Michael asking me to pay off that home from
11 that account, from the Oasis International Group account. The
12 property was owned by Oasis International Group, and I think
13 there was a timing component to the contract. That final
14 payment was due.

15 Q Did you and the defendant tell the investors you were
16 going to pay off the Lost Key house where the defendant and
17 his family were living?

18 A No.

19 Q Did you not think to tell them that you were making these
20 kinds of transactions when there was millions of dollars in
21 trading losses?

22 A No, we didn't tell them.

23 Q Did you buy yourself a Ferrari during this same general
24 period?

25 A Yes.

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1 Q Let's take a look at Exhibit 325.

2 Mr. Anile, I have handed you what has been marked for
3 identification as Government Exhibits 323, 324, 325, and 326.

4 Do you recognize those?

5 A Yes, I do.

6 Q How do you recognize them?

7 A These are invoices in connection with cars purchased by
8 me.

9 MS. BEDKE: Your Honor, the government would move for
10 the admission of Exhibits 323, 324, 325, and 326.

11 MS. IRVIN: No objection.

12 THE COURT: Admitted.

13 (Government Exhibits 323, 324, 325, and 326 admitted.)

14 BY MS. BEDKE:

15 Q Mr. Anile, let's look first at Exhibit 325.

16 A Sure.

17 Q We will enlarge the top part of this document. What's
18 the date on this bill of sale?

19 A January 8, 2018.

20 Q And who is the buyer?

21 A Bowling Green Capital.

22 Q And whose corporation is that?

23 A My personal company.

24 Q What did you buy on this occasion?

25 A A 2013 Maserati Gran Turismo.

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1 Q What funds did you use to pay for it?

2 A The funds that were in that account that were received by
3 that company from Oasis International Group's Fund
4 Administration account.

5 Q And did you keep this Maserati?

6 A For about a year.

7 Q And what did you do after that?

8 A I traded -- it lost some value. So I traded it in for a
9 car that I thought wouldn't lose as much value.

10 Q Was it a straight across trade? Turn in the Maserati,
11 get something else?

12 A I don't think so. I traded it twice. I first traded it
13 for a 2010 Ferrari, and I had to pay a difference.

14 Q Let's take a look at Exhibit 326. And we will enlarge
15 the top part of page 1. What's the date of this bill of sale?

16 A January 31, 2019.

17 Q Had you resolved the issue of the millions of dollars of
18 trading losses by this time?

19 A No, I did not.

20 Q And what did you buy?

21 A I bought the Ferrari California T, 2015.

22 Q Who is identified as the buyer on this bill of sale?

23 A 4Oaks, LLC.

24 Q What is 4Oaks, LLC?

25 A That is a new company set up by me in January of 2019 to

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 replace Bowling Green Capital.

2 Q How was 4Oaks, LLC, funded?

3 A From the Oasis International Group account at Mainstream.

4 Q How much did it cost to buy this 2015 Ferrari California

5 T?

6 A \$57,134 plus the trade-in of the Maserati.

7 Q So what was the original sales price before the trade-in?

8 A \$157,900 plus \$795.

9 Q And you received how much credit on your Maserati

10 trade-in?

11 A \$62,000.

12 Q So you came up with another \$57,000 and change to add to

13 the Maserati to get the Ferrari; is that right?

14 A That's correct.

15 Q Even though you and the defendant still hadn't told any

16 of the investors about the gap?

17 A That's correct.

18 Q Did Oasis throw another holiday party in 2018?

19 A Yes, it did.

20 Q Let's take a look at what's previously been admitted as

21 341A. Do you recognize these photos?

22 A It appears to be the interior of the Ritz-Carlton

23 ballroom for the holiday party.

24 Q Let's look at page 4 in this series. It's Bates stamped

25 Comp33-00190. Who is depicted in that photo?

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1 A That's Michael, Michael DaCorta speaking on the
2 microphone.

3 Q I'm sorry. Who is it?

4 A Michael DaCorta speaking on a microphone to the crowd at
5 the Ritz-Carlton.

6 Q Did Mr. DaCorta make a presentation to the crowd at the
7 2018 holiday party?

8 A He did.

9 Q Did he tell everyone present all together in one place
10 that he had suffered between seven and a half and \$15 million
11 in trading losses?

12 A He did not.

13 Q Did you?

14 A I did not.

15 THE COURT: We will take our break now. Let's get
16 back here as best we can just right after 4:00, if we can.

17 Thank you, ladies and gentlemen. Please don't
18 discuss the case with anyone or consult outside sources.
19 Thank you.

20 (Jury escorted out of the courtroom.)

21 MR. CHEE: Your Honor, this morning the government
22 filed a motion requesting two attorneys representing witnesses
23 in the government's case to bring their cell phones into the
24 courthouse. The Court granted the order and in a subsequent
25 order asked the government to file a motion or if they didn't

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1 have time just to bring it up to the Court's attention. So we
2 ask that if the Court would be so kind as to do that.

3 THE COURT: Therefore, I will require a blank piece
4 of paper. I'm going to write one. Write down their names on
5 a blank piece of paper and hand it to me and I will make that
6 into an order with my pen.

7 MR. CHEE: Thank you, Your Honor.

8 THE COURT: We will shock the people downstairs.
9 Just hand it up to Mr. Houston.

10 (Jury escorted into the courtroom.)

11 THE COURT: Counsel, did you want to hand that to me?

12 Thank you. I'm sorry about all the inconvenience
13 with the phones, but we have some people coming in for trial
14 and I have to do an order to get them through the security to
15 get the phones. So that's what this is about.

16 You're on direct.

17 MS. BEDKE: Thank you, Your Honor.

18 BY MS. BEDKE:

19 Q Mr. Anile, I believe we were looking at what's been
20 previously admitted as Exhibit 341A, photos from the 2018 OIG
21 holiday party.

22 A That's correct.

23 Q I want to have you turn to page 8. It's Bates stamped
24 Comp33-00194. Do you recognize anyone in this photo?

25 A Kevin Carrigan is the man seated on the far right in the

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 greenish gray suit.

2 Q And I believe you indicated what his role with Oasis was
3 before. What was that?

4 A He was a salesperson who worked with Michael.

5 Q Was he like a John Haas, if you know?

6 A I don't know exactly. I think he was also an investor to
7 some extent.

8 Q Was this an expensive party?

9 A I think that the Ritz-Carlton was overpriced. They
10 charged us quite a bit. They had requirements that you had to
11 pay so much in advance too. And even if you canceled at the
12 last minute, they would keep all the money. So payments on
13 these parties began nearly a year in advance of the party so
14 that this party, for example, was mostly prepaid long before
15 this date, well over 150,000. And there was a band that was
16 probably another 10, 15 grand. There were a lot of expenses.

17 Q Were the final expenses paid at or about the time of the
18 event in December of 2018?

19 A All expenses had to be paid probably prior to the event
20 with some exceptions because I think some of the guests were
21 using hotel rooms at our expense and cleaning up afterwards.

22 Q Hotel rooms, who paid for that?

23 A I think we picked up the tab on some of them. I don't
24 recall. I just know we had to pay a lot of bills.

25 Q I have handed you what's been marked for identification

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 as Exhibits 341B and 341C. Do you recognize those?

2 A Yes. I recognize them.

3 Q How do you recognize them?

4 A They are related to the 2018 holiday party at the
5 Ritz-Carlton.

6 MS. BEDKE: The government moves for admission of
7 Exhibits 341B and 341C.

8 MS. IRVIN: No objection.

9 THE COURT: They're admitted.

10 (Government Exhibits 341B and 341C admitted.)

11 BY MS. BEDKE:

12 Q Let's publish 341B. What is 341B? We will enlarge the
13 top part of the screen on page 1.

14 A This was the band that we had hired to perform at the
15 holiday party. And it's an email from Envision Music to
16 Michael DaCorta.

17 Q And is there an attachment to the email?

18 A The subject is "Contract Attached, December 1, 2018,
19 Event." And the attachment would be the contract for musical
20 services, December 1, 2018, Oasis International.

21 Q Let's take a look at the contract. This is page 2 of
22 Exhibit 341B. Bates stamped Comp33-00001. Was the name of
23 the band Dana Kamide and The Buzzcatz Band?

24 A Dana Kamide and The Buzzcatz Band is the artist to
25 perform services, yes.

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q What was the price of the band for the party?

2 A Is it on the next page? I don't see it.

3 Q Let's take a look at the next page, Bates stamped

4 Comp33-00002. What's the charge?

5 A A total amount of \$10,300.

6 Q Let's take a look at Exhibit 341C. The first page is

7 Bates stamped Comp33-00153. What is this?

8 A It's titled "OIG's Second Annual Christmas Party,

9 Saturday, December 1, 2018, From 6:00 to 11:30, Ritz-Carlton,

10 Sarasota."

11 Q And below that heading what's reflected there?

12 A It looks like a list of attendees.

13 Q How many people attended that party?

14 A I'm uncertain. I don't know.

15 Q Pardon me?

16 A I don't know.

17 Q Let's turn past the guest list to the page Bates stamped

18 Comp33-00158. We will zoom in on the top half of the page to

19 begin with. What's reflected here?

20 A The Ritz-Carlton breaks down their charges. Certain

21 things are included and certain aren't. And they do it in

22 terms of quantity of items served regardless of headcount.

23 They -- I don't know if it's taken from an estimation or how

24 they come about these numbers.

25 Q Well, this is an estimate on November 23 of 2018,

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 correct?

2 A Yes.

3 Q For banquet charges?

4 A Yes.

5 Q What's the estimated amount including tax and service
6 charge?

7 A \$155,865.56.

8 Q Is that just for food and beverage?

9 A It says, yes, just food and beverage charges estimated
10 with taxable service and sales.

11 Q Let's look at the next section, the middle of this page.
12 What does miscellaneous and labor include?

13 A Ice carvings, bartenders, carving chefs, dessert station,
14 coffee, bartenders, centerpieces, chairs, a piano and place
15 cards.

16 Q What's the estimated cost for that?

17 A The estimated cost would be a total of \$9,683.50
18 including a service charge and taxes.

19 Q Let's look at the next section of the document that's
20 labeled "Valet." What's the charge for valet for 75 guests?

21 A \$1,123.50.

22 Q And the next section under that is labeled "Guest Room
23 Charges," correct?

24 A Yes.

25 Q And what's the estimated total amount for that?

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A It looks like \$2,394 as well as \$450 incidentals.

2 Q So below that, "Total Miscellaneous"?

3 A \$3,454.08.

4 Q So the total estimated cost from just the banquet
5 department is \$170,126.64; is that right?

6 A Yes.

7 Q And that doesn't include the band or anything else,
8 right?

9 A That's correct. It does not include the band.

10 Q Let's look at the next section of this exhibit, this page
11 which is Bates stamped Comp33-00159 says meal selection and
12 table assignments. What does this reflect?

13 A This is the guest list and I assume the meals that they
14 chose prior to arriving so that they can be ordered at the
15 Ritz-Carlton to be served that night.

16 Q Am I right that the options included grilled filet mignon
17 and black grouper?

18 A Yes, that's correct.

19 Q And chicken?

20 A Yes.

21 Q And OIG threw this party even though you knew and the
22 defendant knew that there were seven and a half to \$15 million
23 in trading losses, correct?

24 A That's correct.

25 Q How were the lenders to know about these trading losses

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 if you and the defendant didn't tell them?

2 A They would have had no other means of knowing.

3 Q You mentioned right before the break that by this time,
4 late 2018, John Paniagua was working on a new online portal;
5 is that right?

6 A That's correct.

7 Q Was that portal designed to show the investors everything
8 that was going on with OIG?

9 A Conceptually that would have occurred over time. I think
10 the initial design was to show a lender their paperwork, the
11 promissory notes and whatnot which would have lessened the
12 work of Joe Paniagua so they can print the paperwork as
13 needed, and the amount of money lent and the amount of accrued
14 interest, I assume.

15 Q Well, the accrued interest would always go up; is that
16 right?

17 A That's correct.

18 Q Would the account statements for the lenders ever show
19 any losses?

20 A Not to my knowledge, no.

21 Q Was that misleading?

22 A Yes.

23 Q Mr. Anile, in addition to the Founders Club home that you
24 were living in with your family and the Founders Club lot and
25 the Lost Key home Mr. DaCorta and his family were living in

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 and the Lacantera home, were there any other homes purchased
2 by Oasis using OIG lender money?

3 A We had a condominium on Siesta Key and numerous
4 condominiums in a new development in Lakewood Ranch.

5 Q Are you familiar with the condominium owned by an entity
6 called Midnight Pass?

7 A Yes. That is the Siesta Key condominium.

8 Q How did OIG acquire that condo?

9 A A lender to OIG, John Scamardella owned the property.
10 And he agreed to transfer it to OIG for a credit to his
11 account in the amount of \$1 million.

12 Q Do you know at the end of the day what, if any, actual
13 money Mr. Scamardella got for his condominium?

14 A I do not, no. He just received a credit on his statement
15 for a million dollars. I don't think he received any actual
16 cash.

17 Q What about Desert Ridge Glen, are you familiar with that?

18 A Yes.

19 Q What was that house?

20 A That was a home in Lakewood Ranch that was acquired by
21 Oasis International Group in which Frank Duran lived.

22 Q Are you familiar with the house at Lacantera?

23 A Yes.

24 Q How?

25 A When I was looking at homes, Michael had suggested to me

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 that I go look at that house. It was owned by the people who
2 had sold him the home in which he was living on Lost Key
3 Place.

4 Q Did you look at it?

5 A I did, yes.

6 Q And why did you decide to go with the Founders Club
7 residence instead?

8 A It needed a great deal of work which would have prevented
9 me moving in in a timely fashion. I had to be out of the
10 other property within so many days. And I could live in a
11 property while it was being rehabilitated, but I could not
12 live in a property while it had to be completely redone. That
13 home required work.

14 Q So who bought the Lacantera house?

15 A Michael bought it for himself.

16 Q Later on were there any improvements or renovations made?

17 A He made significant improvements.

18 Q Where did the money come from to do that?

19 A I'm not sure.

20 Q Other than lenders' money, was there any other money in
21 Oasis used to pay the expenses associated with continuing to
22 operate this business?

23 A No.

24 Q Other than the lenders' money, was there any money in OIG
25 available to pay lenders interest or to return their principal

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1 if they requested it?

2 A There was no money available to pay their interest or
3 return principal, but the company did have at this point
4 certain assets that may have been liquidated if necessary.

5 Q Had those assets been liquidated?

6 A Excuse me?

7 Q Had any of those assets been liquidated at this time?

8 A No.

9 Q Had any money from any of those assets ever made its way
10 back into the OIG account?

11 A No.

12 Q So what money was used to make the interest payments and
13 principal returns that were requested?

14 A The operating account at Mainstream Services was coming
15 from the lender directly. They were paying for their own
16 interest and principal.

17 Q Did there come a time when you came into possession of
18 some gold coins, silver bars, things of that nature?

19 A Yes.

20 Q How did that happen?

21 A Michael had informed me that he acquired some gold and
22 silver, and he thought it was important that we have access to
23 hard metals in the event of any issues, economic issues in
24 America. And he took me to a broker that he had used in
25 Sarasota, and I caused to be purchased 10,000 ounces of

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1 silver, 200 ounces of gold.

2 Q When you say you "caused to be purchased" that silver and
3 gold, what do you mean?

4 A I ordered the gold and silver from the broker, and I paid
5 the bill from one of the companies. I forget which.

6 Q Did that money come from OIG?

7 A Ultimately, yes, of course.

8 Q From the Mainstream account?

9 A Yes.

10 Q Where was it discovered in your home?

11 A Excuse me?

12 Q Where was it discovered in your home?

13 A I kept the silver bars in my office and the gold I
14 believe in my wife's closet. I was having a safe installed
15 and it had not yet been installed at the time that the
16 government raided the home.

17 Q Did you also have cash?

18 A Yes.

19 Q How much?

20 A Approximately \$63,000.

21 Q Who did that belong to?

22 A \$50,000 was given to me by Michael. A client had given
23 him cash to open an account in the amount of \$100,000. So
24 Michael gave me 50,000 of that, and that was 50,000 of the
25 money found. The other money was miscellaneous funds that

DIRECT EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 belonged to my family. I don't know.

2 Q So a lender gave the defendant cash?

3 A Yes.

4 Q And you put \$50,000 in the closet? Is that what you
5 said?

6 A Ultimately it would have gone into the safe, yes. It was
7 in my closet when it was found.

8 Q Not into the OIG account with Mainstream?

9 A No. We were going to maintain some cash and metals
10 outside of the accounts in the event there was a banking
11 issue.

12 Q Did Joe Paniagua ever have access to the Mainstream Fund
13 Services account records?

14 A Not to my knowledge.

15 Q Did you have access to all those records?

16 A Yes.

17 Q Did the defendant have access to all those records?

18 A For a period of time he received them directly from
19 Mainstream, and then somehow Mike Nolan just stopped sending
20 them to Michael directly. And then he always had access
21 through me. We always discussed them. So we kind of knew
22 what was going on generally. I gave John Caliendo access
23 digitally, and I gave him complete access to the computer
24 where everything was housed.

25 Q That was when you retained him in the fall of 2018?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A That's correct.

2 Q Was that to get a handle of the magnitude of the trading
3 losses?

4 A That was to get him to get a handle on each entity and
5 their assets including the cash accounts. He would have to go
6 through them from scratch as an accountant and figure out what
7 came in, what went out, et cetera.

8 MS. BEDKE: May I have a moment, Your Honor?

9 THE COURT: Yes.

10 MS. BEDKE: No further questions at this time.

11 THE COURT: Let's have some cross-examination,
12 please.

13 **CROSS-EXAMINATION**

14 BY MS. IRVIN:

15 Q Good afternoon, Mr. Anile.

16 A Good afternoon.

17 Q Can you hear me okay?

18 A Yes.

19 Q Would you agree with me that an attorney's reputation is
20 one of the most important things that an attorney can have?

21 A Yes, I would agree with you.

22 Q An attorney's reputation is based on their work ethic,
23 correct?

24 A It is based on many things including work ethic, correct.

25 Q Would it also be based on their knowledge of the law?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Among other things, yes.

2 Q Would it be based on their ethics?

3 A Yes.

4 Q Their ability to be trusted by their clients?

5 A Yes.

6 Q Their professionalism?

7 A Yes.

8 Q And would it also be based on how they handled their
9 caseload and how they treated their clients?

10 A How they work with their clients on their projects. I'm
11 not a litigator, so yes.

12 Q So that's right. Your primary work is in the corporate
13 and the financial side of the law; is that correct?

14 A That's correct.

15 Q And so because of that, you are not generally -- in your
16 practice, you are not generally in a courtroom; is that right?

17 A I have seldom, if ever, been in a courtroom.

18 Q The majority of the time that you spent as a lawyer, you
19 spent in your office or in other offices of clients; is that
20 right?

21 A That is correct.

22 Q Another part of an attorney's reputation is built really
23 early on in their education. Would you agree with that?

24 A Yes.

25 Q So the pedigree, where you came from when it comes to

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 your education matters. Would you agree?

2 A To some extent, yes.

3 Q So, for example, you went to NYU for your undergrad?

4 A That's correct.

5 Q Well respected university especially in the Northeast?

6 A I believe so.

7 Q You chose to go there. So you chose it for a reason,

8 right?

9 A Sort of. I was living in the area at the time. So it
10 was just convenient for me, yes.

11 Q You grew up in the New York City area?

12 A Yes, I'm from that area.

13 Q So you didn't have to go too far from home in order to
14 get your degree?

15 A That's correct.

16 Q Your degree was in economics?

17 A Yes.

18 Q While you were there, you also made the dean's list?

19 A Perhaps on occasion. I don't recall.

20 Q And you were also a part of an international economic
21 fraternity; is that right?

22 A Yes.

23 Q So you, it appears, had a very early interest in
24 economics and in financial matters right when you went into
25 college; is that true?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes. I found it interesting.

2 Q After college, you then attended -- you testified you
3 attended the Washington School of Law. That's American
4 University in DC; is that right?

5 A That's correct.

6 Q And when you were there, you also received highest honors
7 in regulation of securities markets?

8 A Yes. That's correct.

9 Q And that's a class that you took when you were in law
10 school, right?

11 A Yes.

12 Q And you were also the editor of the Administrative Law
13 Review?

14 A Yes.

15 Q And one of the things that we are taught when we are in
16 law school is to really work on being on Law Review, making a
17 name for yourself so that you can be better prepared for law
18 firm work, correct?

19 A Or research and writing perhaps, yes.

20 Q And to make yourself more marketable to firms that you
21 would want to work for, correct?

22 A Yes.

23 Q One of the other things that you insured that you did
24 while you were a law student is you made sure that you had
25 really helpful internships; is that correct?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q And those internships, I think you said one of them was
3 at the Commodity Futures Trading Commission, and that was in
4 Washington, DC; is that correct?

5 A That is correct, yes.

6 Q And that's while you were attending law school?

7 A That's correct.

8 Q You worked one or two summers and then an additional
9 semester while you were working at the CFTC?

10 A To the best of my knowledge, yes.

11 Q And most of the time, if you would agree with me, the
12 reason why these internships are important is because they
13 help set the groundwork for the kind of work you want to do
14 when you graduate from law school?

15 A That is correct.

16 Q Okay. Did you have any other internships while you were
17 in law school?

18 A Not to my knowledge.

19 Q Did you work for the Attorney General of New York State?

20 A Yes, I did.

21 Q And was that while you were in law school?

22 A No. That was in college. I worked as an assistant
23 economist to Professor Janusz Ordoover who was an economist for
24 the Attorney General for the State of New York. We worked on
25 the cement case, the bid rigging in the cement industry in the

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 City of New York, and I was calculating market concentration
2 and share, yeah.

3 Q It's clear that you had a very early interest in finance
4 and economics and antitrust maybe?

5 A Yes.

6 Q When you graduated from law school, you graduated in the
7 top 15 percent of your class?

8 A Yes.

9 Q And then you sat for the New York State Bar?

10 A Yes.

11 Q A pretty rigorous state bar. Would you agree?

12 A Yes. It was a test.

13 Q Three-day bar?

14 A I think two, maybe three. I don't recall.

15 Q But you basically sit there for two or three days getting
16 tested on both state law and on federal law; is that true?

17 A Yes.

18 Q And you passed the bar?

19 A Yes.

20 Q And having passed the bar, you started your very first
21 job at Cadwalader, Wickersham & Taft. That sounds very
22 impressive. Is that the first place that you worked out of
23 law school?

24 A Yes. I was employed there prior to passing the bar,
25 right out of school. So I commenced my work before I was

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 sworn in.

2 Q So before you even passed the bar, you already had a job
3 lined up coming straight out of law school?

4 A Yes.

5 Q And is this what you refer to as the oldest firm in the
6 United States?

7 A They like that as part of their reputation, yes.

8 Q Is that true that they are the oldest firm in the United
9 States?

10 A Yes.

11 Q While you were there, you were an associate. What does
12 that mean to be an associate?

13 A For example, a student graduating today from a school
14 going to Cadwalader, you would begin at the lowest level and
15 you would be working for people more senior. You would have
16 junior associates and senior associates and then partners who
17 were junior level and partners who were senior level.

18 Q So it's starting at the bottom floor basically of where
19 you are at a law firm as a lawyer?

20 A Of course.

21 Q So it's very much learning the firm's practice, very much
22 learning the firm's clientele, correct?

23 A That's correct.

24 Q And you generally have a mentor or a senior partner when
25 you are at one of those firms; is that true?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A One or more depending upon the groups in which you're
2 placed.

3 Q And while you were there, the majority of the work that
4 you were doing was in securities, commodities, correct?

5 A Initially, yes, that's correct.

6 Q You also did banking, and you also did corporate law; is
7 that right?

8 A Yes. And technically it was called the real estate
9 group. So I was responsible for -- and I think I did one
10 transaction early on in real estate as well.

11 Q That's the kind of work you did at the very beginning of
12 your corporate law practice, correct?

13 A That's correct.

14 Q You also assisted institutions in establishing
15 broker-dealers?

16 A Yes. I helped -- at that firm we did that.
17 Broker-dealers and clearing firms on the securities side.

18 Q You provided ongoing legal advice and representation
19 before regulatory authorities; is that correct?

20 A Yes.

21 Q And those regulatory authorities would be, for example,
22 the Securities and Exchange Commission?

23 A Yes.

24 Q Or the CFTC that we have heard a lot about?

25 A Yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Okay. Any other organizations that you would have dealt
2 with with respect to regulation?

3 A We used to call them self-regulatory organizations, SROs,
4 like the New York Stock Exchange, that sort of thing. And we
5 would work with them sometimes as well, yeah.

6 Q Location wise, where was that office located in New York?

7 A 100 Maiden Lane, downtown.

8 Q Would that be on Wall Street?

9 A A block away.

10 Q So the majority of your clients, would you agree, were
11 other Wall Street firms or companies?

12 A At that time they were physically located downtown, yeah.

13 Q You were at that firm for approximately two years. And
14 what caused you to leave?

15 A First, it was the early '90s and there was economic
16 turmoil on Wall Street. So firms were trimming. But in my
17 case it was not only that. My immediate supervisor, my boss,
18 was leaving the firm soon after.

19 Q I think you mentioned his name. What is his name?

20 A Thomas A. Russo.

21 Q Mr. Russo, I think it's fair to say, was a mentor to you?

22 A Yes.

23 Q And he is one of the attorneys who took you under his
24 wing while you were in this very first job as an associate,
25 correct?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q And when he left, you then decided that you needed to
3 make some decisions about leaving as well, right?

4 A Yes.

5 Q So what did you do?

6 A I set up my own shop. I incorporated as a professional
7 company. And I began to work almost immediately with some of
8 my clients from Cadwalader.

9 Q Now, when you say you incorporated as your own company,
10 did you hire an outside law firm to incorporate your law firm
11 for you or did you do it yourself?

12 A Back then there was no real Internet. I would use a
13 service. In New York the service we used in Albany was called
14 Blumberg. So you would use a service that would help you
15 incorporate in the state.

16 Q So the service was provided in order to make it easier
17 for when people needed to start their own company, correct?

18 A I'm sorry? Please say that again.

19 Q The service that you're talking about, the point of it
20 was to help folks be able to incorporate their company or
21 their law firm in a very easy, practical way?

22 A Yes.

23 Q So that's what you used to help you incorporate your law
24 firm?

25 A Yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q And when you started your law firm, was it called
2 Anile & Associates?

3 A No. I believe it was simply my name.

4 Q And how was it incorporated? For example, was it a
5 partnership?

6 A A professional corporation is what was used.

7 Q Is that what you maintained when you became
8 Anile & Associates? You stayed as a professional corporation?

9 A I think that was a doing business as Anile & Associates,
10 yeah.

11 Q When you started, was it just Anile and no associates?

12 A No. Once I received work from Lehman Brothers, I was
13 always required to bring other people on to assist me.

14 Q And starting this new law firm, you had already worked
15 for two years. And it sounds like you may have already
16 started establishing your reputation as a reputable corporate
17 attorney. Would you agree with me?

18 A Yes.

19 Q Because of that, I would assume some of those clients may
20 have come over to you from the other law firm. Is that true?

21 A For certain types of work they would have used me, yes,
22 but there are certain things that you can't use a small firm
23 for.

24 Q They decided to use you because of the good work that you
25 had done for them at the other firm?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q And because of your reputation?

3 A Yes.

4 Q And at your firm you continued to do the similar kind of
5 work that you had done at the previous law firm, correct?

6 A No.

7 Q How did it change?

8 A It became more broad-based. I was required to do many
9 different areas now. As a transactional attorney, I began to
10 do a little of everything, to assist my clients in their doing
11 of things. Many of these clients had in-house counsel in some
12 cases in the hundreds. And I would be part of their team to
13 get projects done with them or I would help them put together
14 a team to get a project done. So things changed pretty
15 dramatically for me at that point.

16 Q When we talk about the transactional nature of your work,
17 does that really mean that we're talking about contracts?

18 A Depends. Primarily a contract would be the item upon
19 which everything else was based, but it could have been very
20 specific to an instrument, a monetary instrument. It could
21 have been specific to a desk that traded instruments or an
22 entity that would have sold these things. It could have been
23 anything.

24 Q But the majority of the work that you were doing was
25 paper?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Paperwork, sure.

2 Q Correct?

3 A Yes.

4 Q And the words on the page mattered?

5 A Yes.

6 Q And ensuring that the words in the agreement were what
7 the parties were agreeing to mattered?

8 A (Witness nods head.)

9 Q Paying attention to detail mattered?

10 A Yes.

11 Q Because there was a lot of money at stake?

12 A In some circumstances, yes.

13 Q Among the things that you worked on, because you said you
14 have now expanded your practice, you were now working on
15 product development --

16 A Yes.

17 Q -- in some circumstances. Okay. Were you doing
18 employment litigation?

19 A Litigation, no. I did some employment work for people
20 who were litigating. So if there was an employment matter
21 that a client had, I would assist them perhaps with the
22 termination agreements or things of that nature. And there
23 were a couple of cases where I was called into arbitrations.

24 Q So you might give advice on, for example, about how a
25 contract for termination might be drafted?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q You might give advice on a negotiation having to do with
3 that particular client's employee being terminated?

4 A Perhaps.

5 Q You might be the person who actually drafts the document
6 for that particular client?

7 A Depending on the client, yes.

8 Q Outside of that, you also expanded into other parts of
9 the financial and banking industry, correct?

10 A Yes.

11 Q So some of the things that you were doing had to do with
12 prime brokerage, domestic and international securities
13 lending?

14 A Yes.

15 Q Financing of equity securities?

16 A Yes.

17 Q Dealing with governmental and other debt?

18 A Yes.

19 Q For some of us, this is complicated stuff.

20 A They are simply contracts that were promoted by industry
21 associations. Early on it would have been the Securities
22 Industry Association which later became FINRA, or it would
23 have been the International Securities Dealers Association.
24 We did agreements that would have led to things that are now
25 known as derivative transactions and such. So there became

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 models and forms that were adopted by the industry. And all
2 the counterparties would agree to these forms. And all we
3 were left to do was negotiate addenda to the forms for things
4 that we did not agree with in terms of liability shifting.

5 Q So it sounds like there were aspects of your profession
6 where there were models and forms, but these are complicated
7 matters when we're talking about securities and we're talking
8 about financing and we're talking about debt with the size of
9 the companies that you were dealing with, right?

10 A Yes.

11 Q You also expanded through your law firm into startup
12 ventures?

13 A Yes.

14 Q And among those were things like what we have heard
15 about, hedge funds?

16 A Yes.

17 Q You worked with investment advisors?

18 A Yes.

19 Q You worked again with broker-dealers?

20 A Yes.

21 Q With trading desks and services?

22 A Yes.

23 Q And as a part of this, this also meant that you were now
24 creating new relationships in addition to the ones that you
25 had created with your prior law firm, correct?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Of course.

2 Q And this also gives you the opportunity, like you said,
3 to be able to provide particular services to clients outside
4 of their in-house counsel?

5 A Please say that again. I'm sorry.

6 Q You mentioned that there were some services that you were
7 able to provide for some larger companies in addition to what
8 their in-house counsel was doing for them.

9 A Perhaps.

10 Q So what is in-house counsel?

11 A A firm would hire an attorney to work specifically and
12 only to represent the entity for which they worked. So if you
13 take a small firm, they could have let's say one attorney. He
14 would be called counsel or general counsel, and he would
15 represent that entity. Not any of the individuals that work
16 for the entity, just the entity itself.

17 When the entities become larger and own many other
18 entities, they may have to separate those functions amongst
19 different people. And by the early '90s, for example, Lehman
20 Brothers had nearly a thousand attorneys at one point. And
21 that's a staggering number because the largest firm on Wall
22 Street, a law firm which had gone out of business prior to
23 that had around that many attorneys. This was a staggering
24 number. So there was probably a sense of overkill because of
25 the way they were dividing work. And a lot of the firms tried

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 to shuffle that around and make sure that it was appropriate
2 to what they were doing, and they got the numbers down.

3 Q So it sounds like it afforded other attorneys the
4 opportunity to do work when in-house counsel would reach out
5 to them to hire them for a particular project or transaction?

6 A Yes.

7 Q And that happened for you. You would be contacted, for
8 example, by in-house counsel who would be hiring you for a
9 particular project or transaction for their company?

10 A No, not in my case.

11 Q Okay. So how would it work with in-house counsel with
12 how you were hired?

13 A Generally I would be presented or introduced or promoted
14 by a business person with whom I worked at another firm who
15 introduced me to someone or who left that firm and went to
16 another firm and they wanted to hire me there. I would then
17 go and be introduced to in-house counsel, and they would
18 ultimately have to approve me. And they would put me on
19 what's called an approved vendor list where you would be a
20 vendor of services to that company, and it was relatively easy
21 in the early 1990s. It changed as time went on.

22 Q Is that how Lehman Brothers became one of your clients,
23 through the relationship that you had established?

24 A First with Tom Russo. So that was slightly different,
25 that one. In his case, he had one of our mutual friends call

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 me in and introduce me to a bunch of unit heads, guys who ran
2 desks. And if they wanted, if they liked me and wanted to
3 hire me, they would, and they in fact did.

4 Q It sounds like the relationships that you developed over
5 time assisted you in being able to bring more clientele to
6 your firm?

7 A Yes.

8 Q What happened with Lehman Brothers in 2008?

9 A It went out of business.

10 Q How did it go out of business?

11 A It depends on how you look at it. There was a large --
12 it crashed. There was a large share position against it. It
13 had to do with many moving parts.

14 Q The market crashed in 2008?

15 A Yes.

16 Q And what happened to Lehman Brothers?

17 A It went bankrupt.

18 Q How did that affect your firm?

19 A Not just Lehman Brothers. All of my clients were
20 adversely affected because they were all involved in the same
21 industries. And it was prior to 2007 and 2008. There was, as
22 I would probably call it, a liquidity crisis a year or so
23 before which caused firms to have a lot of problems in
24 general. And they started changing the way they were doing
25 business at that point. So that by the time '07 and '08 came

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 around, it was devastating to all the firms on the street.

2 Q So I want to pause you there, and we will come back to
3 sort of that point in time in 2008. And I want to talk to you
4 about your relationship with Michael DaCorta.

5 A Yes.

6 Q You met him some years before your working relationship
7 on Oasis and OIG, correct?

8 A Yes.

9 Q You met him back in the mid to late '90s?

10 A I believe so, yes.

11 Q And he was introduced to you by a mutual friend?

12 A Yes.

13 Q That mutual friend was connecting you and Mr. DaCorta
14 because he knew that Mr. DaCorta needed some legal advice for
15 a business that he was starting, correct?

16 A Yes.

17 Q And that business was Empire State Brewing?

18 A I believe so.

19 Q So he reached out to you based on this friend knowing
20 your reputation as a great attorney.

21 A As an attorney, yeah.

22 Q Without getting into what the discussions were about from
23 an attorney-client perspective, you did provide him advice
24 with respect to his business, Empire State Brewing, correct?

25 A I don't recall exactly to be honest, but yeah.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q If he had been reaching out to you for advice, it would
2 have been for legal counsel, correct?

3 A At that stage, yes.

4 Q And that's because of the kind of work that you were
5 doing for other clients, right?

6 A I believe that's how we were introduced, yes.

7 Q So, for example, he might have reached out to you to
8 assist in helping him create his corporation?

9 A Perhaps.

10 Q He might have reached out to you to assist him with
11 product development?

12 A He could have, yes, but it's unusual.

13 Q In any event, during that time you did have a
14 professional, legal relationship with Mr. DaCorta?

15 A (Witness nods head.)

16 Q And over the years you stayed in touch off and on?

17 A Yeah. He contacted me again a few years later to help
18 him set up a company for another business he was
19 incorporating. And I used once again Blumberg services, and I
20 set up a company for him.

21 Q In that same circumstance because of this good
22 relationship that you and Mr. DaCorta had back in the late
23 '90s, he reached out again to you early 2002?

24 A I don't know when it was, but whatever it was.

25 Q The purpose of that again was for him to seek your legal

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 advice --

2 A Perhaps.

3 Q -- about a company that he was forming and to make sure
4 that he was doing it right?

5 A (Witness nods head.)

6 Q And he trusted your good counsel?

7 A I don't think I provided much services on that occasion.
8 I think that was just simply to obtain the certificate of
9 incorporation for him.

10 Q At some point he also contacted you for personal legal
11 advice, correct? And we are not going to get into what that
12 might be.

13 A I don't recall.

14 Q Might he have contacted you about a problem that his
15 daughter was having when she was in college with a particular
16 apartment that she was living in?

17 A I don't recall.

18 Q Is it often that you would have clients that would be
19 your corporate clients that would reach out to you for
20 personal matters, legal matters?

21 A Perhaps.

22 Q And if they reached out to you for a personal legal
23 matter that you didn't have experience in, you might give them
24 a recommendation to another colleague who could help them?

25 A Generally, yes, of course.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Do you recall if Mr. DaCorta reached out to you for any
2 other legal advice related to him personally? For example, we
3 have heard that he had filed for bankruptcy in the past.

4 A Yes.

5 Q Did he not reach out to you when it came time to make the
6 decision to file for bankruptcy, that he contacted you for
7 your advice on an attorney that he could contact?

8 A I don't recall that at all.

9 Q Over the course of this time frame, again this is
10 pre-Oasis and Oasis International, you and Mr. DaCorta were
11 friends?

12 A I always considered Michael a friend.

13 Q You were both married?

14 A Excuse me?

15 Q You were both married?

16 A Yes.

17 Q You both had kids. You both coached Little League teams
18 for your kids?

19 A That I'm unfamiliar with. I know I did. I don't know if
20 Michael did. We never discussed it.

21 Q You were involved in your communities?

22 A Once again, I don't know to the extent Michael was. I
23 have no idea.

24 Q So you were friendly but you were not friends in that way
25 where you would know about what was going on with his children

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 or his community activities?

2 A Correct.

3 Q Let's get back to what happened after the 2008 crash.

4 Anile & Associates has closed temporarily?

5 A Yes.

6 Q And you then are not employed for some time?

7 A About one year.

8 Q And following that you joined Harris Beach?

9 A No.

10 Q What happens after that?

11 A Following that I joined the small firm that I put
12 together with some friends. The name of the firm was Joseph
13 Anile Marrone Forcina & Maimone.

14 Q And who is Marrone?

15 A Marrone was a friend, Gerard Marrone. He was a friend
16 that I had met a couple years prior to that. He was a
17 litigator.

18 Q And what kind of law did he practice?

19 A Litigation.

20 Q So the firm that you joined was a litigation firm?

21 A No. Each person had a different area that they could
22 work in. And the idea was if we worked together, we would
23 hopefully attract clients from our various respective practice
24 areas and introduce them to the others in their areas and
25 perhaps be able to grow a firm.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q So the goal was to have a diverse practice?

2 A We tried.

3 Q And to be able to bring in clients from different areas.

4 And you said, we tried?

5 A Yes.

6 Q How -- for how long did you try to get this law firm
7 going?

8 A I believe it was less than a year.

9 Q And what happened?

10 A It didn't work out very well. My clients had changed
11 significantly in terms of what they did and how they were
12 doing it, and they were no longer using small firms. I was no
13 longer really going to be on any vendor list. They were
14 focusing on different aspects of firms. They wanted like, for
15 example, larger malpractice policies. Malpractice policies
16 are usually based on size and things of that nature, not
17 anything in particular, and they wanted a larger firm. So I
18 was slowly being phased out. And they certainly weren't going
19 to use my guys as litigators on their practice. And vice
20 versa. Their clients had no need for someone like me.

21 Q Timing wise, is this now when you join Harris Beach?

22 A Yeah. 2010.

23 Q And Harris Beach was located where?

24 A Rochester, New York.

25 Q Not New York City?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A We had an office on Wall Street. The main firm -- it's a
2 Rochester-based firm with offices throughout New York State.

3 Q And you were hired of counsel?

4 A For an office that was to be opened in Uniondale,
5 New York. That was initially the goal.

6 Q Are what's the difference between an associate and of
7 counsel?

8 A Of counsel would probably be somebody who just advises
9 the other lawyers in the firm. So I introduced them to some
10 of my clients. They would ask for help with some of their
11 clients. I didn't generate any client matters directly. I
12 worked for theirs. The matters I generated were for them. It
13 wasn't for me. It was matters that I had nothing to do with.

14 Q When you say you were advising other attorneys on their
15 work --

16 A Yes.

17 Q -- were you still operating as a transactional attorney?

18 A Yes.

19 Q And when you were advising other attorneys, you are
20 reviewing their work?

21 A No, no, no. Perhaps. Let's assume that one attorney had
22 a client. In this case Harris Beach's client was Jones
23 Trading. Also the firm here, Edwards, they have these
24 different clients and they have a matter that perhaps crosses
25 into my area of expertise. Rather than lose that matter to

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 another firm, they would ask me to help them to secure it so
2 that they can keep their client within our firm.

3 Q You had your own clients at Harris Beach?

4 A No. I worked for other clients of other people, and
5 anything I brought in actually came in through them. I did
6 not have the opportunity to bring in my own clients.

7 Q It's interesting that you describe it in that way. Are
8 they the clients of the firm as opposed to your personal
9 clients like you might have had in your law firm,
10 Anile & Associates?

11 A Yes.

12 Q So that has changed the way that you relate to the
13 clients that you were dealing with, right?

14 A Yes.

15 Q About this time you receive a call from Mr. DaCorta. And
16 Mr. DaCorta wants to meet with you and introduce you to a
17 friend of his named Ray Montie?

18 A Yes.

19 Q At the time that this happened, you were still living --
20 you were living in Long Island; is that correct?

21 A Yes.

22 Q And you had not met Ray Montie at this point?

23 A That's correct.

24 Q You, Mr. DaCorta, and Ray Montie meet at a diner in Long
25 Island, correct?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A I don't recall. I recall one of the first times meeting
2 Ray was at a meeting for Ambit, for his company. Michael took
3 me to -- I remember it was like a hotel in Westchester
4 somewhere I'm saying -- I could be wrong -- and they were
5 putting on presentations, and Ray got up and put on a
6 presentation for the audience. And he was very charismatic,
7 and he was a good salesman.

8 Q You are familiar with Ambit at that time because your
9 brother was involved in Ambit, correct?

10 A No. To that meeting I brought my brother and some other
11 friends because Michael said come and see. We saw how it was
12 operating. Frankie joined at that meeting.

13 Q Either before or around that time frame when you go to
14 the Ambit meeting, you did go to a diner to meet with
15 Mr. DaCorta and Mr. Montie, correct?

16 A I don't recall.

17 Q So you don't recall that you three had a meeting to
18 discuss Oasis Management, LLC?

19 A I'm sure we did. I just don't recall under what
20 circumstances those meetings occurred.

21 Q Let's put aside that it happened at a diner. Do you
22 recall that the three of you met somewhere to talk about Oasis
23 Management, LLC?

24 A Yes.

25 Q And at the time that you met, the goal of the meeting was

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 for Mr. DaCorta to tell you about an idea that he and

2 Mr. Montie had, correct?

3 A No. I think it was more Mr. DaCorta was introducing me

4 to Ray because he had already told me his idea.

5 Q At the meeting that you had, they wanted to discuss how

6 best to set up a particular program for their company. And a

7 suggestion that you had was a hedge fund, correct?

8 A I don't recall.

9 MS. IRVIN: Your Honor, may I have a moment?

10 THE COURT: You want to go or run for a few more

11 minutes? Can we hang on a few more minutes? All right.

12 We'll keep going.

13 BY MS. IRVIN:

14 Q So I just want to make sure that I understand. You don't

15 remember meeting at the diner?

16 A I'm sure we met somewhere.

17 Q So you remember that there's a meeting?

18 A Yes.

19 Q You remember that it's with Mr. DaCorta?

20 A Excuse me?

21 Q You remember that Mr. DaCorta is there?

22 A Of course.

23 Q You remember that Ray Montie is there?

24 A Yes.

25 Q And they are talking to you about starting a new company?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A I had already been informed of that by Michael.

2 Q So you had already had a phone call with him?

3 A Yes.

4 Q And as a result of that phone call, you were interested
5 in meeting with them?

6 A Of course.

7 Q When you met with them, you discussed some options for
8 how this company might be structured, correct?

9 A That's correct.

10 Q Among those options you suggested a hedge fund?

11 A Perhaps.

12 Q Does Sierra Capital sound familiar to you?

13 A Of course.

14 Q Do you recall that as a result of that conversation that
15 you three had, you would start to do work to create Sierra
16 Capital which was a hedge fund?

17 A Absolutely not.

18 Q You don't recall that?

19 A I hired counsel to create Sierra Capital. I may have
20 said that I would do that. And then when Michael asked me to
21 do that, we had a different conversation, but I did not work
22 ever as an attorney on Sierra Capital.

23 Q Let's break that into a few parts here because I think we
24 got ahead of ourselves. The beginning of the conversation
25 that the three of you had was simply talking about what are

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 some possible structures for this company that they wanted to
2 start. So a brainstorming session. Fair to say?

3 A Sure.

4 Q Among those ideas was a hedge fund?

5 A (Witness nods head.)

6 Q You did not immediately agree to join this group at that
7 meeting that you had, correct? Meaning you didn't immediately
8 agree to join Mr. DaCorta and Mr. Montie?

9 A I don't know if it was offered at that meeting. I'm not
10 recalling this. But if I was being asked to do it as an
11 attorney, of course I would discuss it as an attorney.

12 Q After that meeting, the initial meeting, do you recall
13 that you had a subsequent meeting with Mr. DaCorta at his
14 house?

15 A I did go to Michael's house once, I believe. I don't
16 recall why. I thought things were farther along when I went
17 there.

18 Q I'm sorry. Could you repeat that?

19 A I thought we were farther along in the process. I left
20 New York in the summer of '12, and I moved to St. Petersburg.
21 And I stayed there until November. October 28, '12, my mother
22 passed away. On that same day Hurricane Sandy destroyed my
23 house on Long Island and my family was displaced. They
24 actually stayed at a friend's house, and I couldn't get my
25 mother's body back to New York to be buried because it was

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 flooded. And I don't think I got her back until mid-November.

2 And I came home at that point. So mid-November, late

3 November. And I was -- I remember having conversations with

4 Michael on the phone in Florida. So I was here.

5 Q So timing wise, it sounds like there was a lot that you
6 were dealing with at this time personally in your family; is
7 that correct?

8 A Yes.

9 Q I'm actually speaking about before that. So it may have
10 been happening about the same time?

11 A I'm in mid '12. That's when I recall this happening.

12 Q Okay. You recall going to Mr. DaCorta's house? And I'm
13 talking about the time frame after you've had the meeting with
14 Mr. DaCorta and Ray Montie, you recall going to his house?

15 A I recall going to his house, yes.

16 Q You recall having a follow-up meeting to discuss the
17 possible corporate structures for this company that he wanted
18 to create, correct?

19 A No, I don't recall what the meeting was about. I just
20 recall going to his house. I know I went there to meet with
21 him for some reason.

22 Q You recall that Mr. DaCorta said, I need to show you a
23 document. You recall that Mr. DaCorta showed you a copy of an
24 NFA settlement agreement, correct?

25 A Absolutely not.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 MS. IRVIN: Your Honor, may I have a moment?

2 THE COURT: Yes.

3 MS. IRVIN: Your Honor, may I approach the witness?

4 THE COURT: Yes.

5 MS. IRVIN: Your Honor, I provided Mr. Anile a copy
6 of Government Exhibit 111. The copy that I provided him
7 doesn't have the exhibit tag on it, but I just wanted it for
8 him to review.

9 BY MS. IRVIN:

10 Q Mr. Anile, this has already been admitted into evidence.
11 If you take a minute to review it, and then I will ask you
12 some questions about it.

13 Mr. Anile, you have had a chance to review the
14 document I handed you?

15 A Yes.

16 Q And that was the document that Mr. DaCorta showed you
17 when you went to his house in 2012?

18 A No. I have never seen this document until the other day.

19 Q If you could please publish 111.

20 It's already been admitted into evidence, but I just
21 want to be able to review it with you understanding that your
22 testimony today is that you have not seen that document; is
23 that correct?

24 A That's correct.

25 Q Now, what kind of document is this by the title?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A An agreement between the National Futures Association and
2 International Currency Traders Limited and Mr. DaCorta.

3 Q You are familiar with the National Futures Association?

4 A Excuse me?

5 Q You're familiar with the National Futures Association?
6 You know what they are?

7 A I believe it's an SRO associated in the CFTC, with the
8 CFTC.

9 Q So in your experience in the financial industry and
10 corporate law, you have never heard of the National Futures
11 Association?

12 A Early in my career when I was doing commodities work
13 probably in 1991, '90, '91.

14 Q So you have heard of the National Futures Association?

15 A Yes.

16 Q And it sounds like you understand that they're a part of
17 the CFTC, correct?

18 A I think it's an SRO that supports the CFTC.

19 Q So it sounds like you do understand what it is. And the
20 agreement is dated what date on that first line?

21 A Excuse me?

22 Q What's the date on the first line of that agreement?

23 A August 9, 2010.

24 Q So assuming that you do remember that you had this
25 meeting with Mr. DaCorta, this would have been an agreement

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 that was signed before you met with him at his house, correct?

2 A Yes.

3 Q If we could go on to the next section, who is this
4 agreement between according to your reading of the agreement?

5 A In the second full paragraph?

6 Q Yes.

7 A The International Currency Traders.

8 Q And?

9 A And the --

10 Q Commodity Trading Advisor, NFA member?

11 A Okay.

12 Q If you go below the blacked out section, can you please
13 read that sentence that starts with "Whereas"?

14 A The third full paragraph? "Whereas, NFA," the recital
15 there?

16 Q Yes?

17 A Is considering recommending formal disciplinary action
18 against ICT and DaCorta based on the deficiencies found in the
19 2009 audit of ICT.

20 Q Now, you did read this full agreement, correct?

21 A I perused it a moment ago.

22 Q If you would like some more time to read it, I can give
23 you time to read it.

24 A Okay.

25 I think I understand.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Is your understanding, after having time to read the
2 agreement, that no disciplinary action would be taken against
3 Mr. DaCorta?

4 A That is correct.

5 Q If you could please turn to page 2, is it also your
6 understanding from your review of this agreement that this is
7 an informal agreement?

8 A I'm sorry?

9 Q From your review of this agreement --

10 A Right.

11 Q -- is it your understanding after reading it that this is
12 an informal agreement between Mr. DaCorta and the NFA?

13 A To the contrary. It's a formal agreement. It says right
14 here that it's signed by the NFA and Mr. DaCorta on his behalf
15 and on behalf of ICT.

16 Q It is a signed agreement, but it's not one that is
17 published, correct?

18 A It does not address that issue in this document. I'm
19 sorry. I don't know that.

20 Q I'm sorry. I couldn't hear what you said.

21 A It does not address the issue of publication in this
22 document. So I don't know what that means.

23 Q In that last paragraph where it says, "In consideration
24 of the NFA's agreement," it sets out certain sections that as
25 long as Mr. DaCorta agrees to those sections, the NFA is

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 agreeing not to take disciplinary action against him; is that
2 correct?

3 A Yes. That's what it says.

4 Q Thank you.

5 If Mr. DaCorta had shown you this agreement, is it
6 something that you would have been able to give him legal
7 counsel on?

8 A After 2010? Probably not.

9 Q And the reason you could not give him legal counsel after
10 2010 is because you were not practicing?

11 A I would hire an expert to advise on this one.

12 Q You would hire an expert to advise Mr. DaCorta on that
13 agreement?

14 A I would suggest a guy like a Jack Drohan or somebody who
15 does this on a regular basis.

16 Q And that is despite the number of years of practice that
17 you have working as a transactional lawyer before regulatory
18 authorities?

19 A Yes, especially because of the number of years working as
20 a transactional attorney. It's time to -- you have to know
21 what you can opine on and what you can't opine on.

22 Q So this is not your area of the law is what you are
23 saying?

24 A The CFTC, a formal action of the CFTC, perhaps the NFA,
25 that is not -- I would suggest -- I mean, I would suggest he

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 get additional advice on that.

2 Q So the kind of work that you had done up to this point
3 for your own law firm and for the prior law firms were not the
4 kinds of cases that would be or the kinds of matters that
5 would be before the CFTC?

6 A Early in my career I did such cases. Later in my career
7 I did not. As with every area of law, especially highly
8 regulated areas, things change on a continual basis. I
9 haven't practiced law now, it's over ten years, right? So I
10 would never have given an opinion on anything today regardless
11 of my substantial background. I wouldn't because things have
12 probably changed so much I wouldn't know what to do with it.

13 Q When you say that you have not practiced law for ten
14 years, did you officially retire from practicing law in 2012?

15 A No, but I stopped acting as an attorney in which case you
16 would stay current on everything you do as much as you can. I
17 was just doing paperwork and I was acting as an administrative
18 counsel.

19 Q When you say that you were just doing paperwork, is that
20 the kind of work you were doing at Harris Beach?

21 A No. A little different.

22 Q So I'm confused. It appeared that you worked for Harris
23 Beach from 2010 to 2012; is that correct?

24 A That's correct.

25 Q And so from 2010 to 2012 you were just reviewing papers?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 You were just reviewing documents? Were you not practicing
2 law?

3 A Yes, I was practicing law.

4 Q And you were of counsel at that firm, correct?

5 A Yes.

6 Q And as a part of being of counsel, you were reviewing
7 contracts?

8 A Yes.

9 Q You were reviewing agreements?

10 A Yes.

11 Q You were assisting with negotiations?

12 A Yes.

13 Q You were monitoring and supervising other attorneys?

14 A Yes.

15 Q That sounds like you were practicing law.

16 A Up to 2012 I was, yes.

17 Q And in 2012, you just stopped practicing law completely?

18 A When I joined as a member of OIG by our agreement, yes.

19 Q Would it surprise you that there are members or employees
20 of Oasis Management, LLC, and OIG who considered you the
21 attorney for OIG?

22 A I specifically told anyone that I was not acting as an
23 attorney for OIG, and I certainly didn't act as an attorney
24 for Oasis Management.

25 Q Would it surprise you that investors -- excuse me. Would

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 it surprise you that lenders also believed that you were the
2 attorney for OIG?

3 A That would not surprise me, no.

4 Q And it wouldn't surprise you because that's how you were
5 a part of this company?

6 A No. That's how I was referred to, as an attorney.

7 Q So you brought compliance experience to this job?

8 A Yes.

9 Q You brought legal experience to this job?

10 A Yes.

11 Q You reviewed contracts as a part of your role in OIG?

12 A Together with counsel depending upon the matter. We had
13 counsel for everything, yeah.

14 Q But you reviewed the contracts, correct?

15 A Depending on the circumstances, with counsel I would.

16 Q You reviewed the contracts in your capacity as an
17 attorney for OIG?

18 A Absolutely not. I reviewed contracts together with
19 counsel that was advising us. So, for example, if we were
20 talking about Sierra Partners counsel was Brian Rabbino. If
21 you were talking about OIG, it could have been Drohan & Lee.
22 It could have been Ford Sumner. It could have been the
23 numerous counsel that we had to hire. For real estate, we had
24 to hire firms for that. These are things I could have done.
25 I did not do them. I did not perform those services

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 intentionally and as agreed upon.

2 Q That's because you were actually acting in your capacity
3 as OIG's in-house counsel?

4 A Absolutely not.

5 Q The way that you describe in-house counsel is not that
6 different from how you just described your role.

7 A I would have held myself out and called myself general
8 counsel and I would have used that as a title. On nowhere do
9 I appear as general counsel. I'm simply an administrative
10 officer. And I actually resent almost being called general
11 counsel in this matter.

12 Q So if you were just an administrative officer --

13 A Yes.

14 Q -- it's odd then that you would have memos that would be
15 signed Joseph S. Anile, Esquire.

16 A I signed few things that way. I would only sign certain
17 documents that way.

18 Q That's because you're an attorney?

19 A Occasionally, yes.

20 Q Do you get to pick and choose?

21 A I think I signed one document that way that I saw today.

22 Q When you say "occasionally," that means you get to pick
23 and choose when you are going to be an attorney?

24 A No. Sometimes I just like using the word "Esquire."

25 Q I'm sorry?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A I occasionally sometimes like using the title "Esquire."

2 Q So again, it sounds like sometimes you're an attorney and
3 sometimes you're not?

4 A For all purposes herein, I was always referred to as
5 either president, the vice president, secretary or treasurer,
6 an officer. I was already referred to as a director. I was
7 also referred to as an administrative officer. We had to have
8 a title for everything.

9 Q Is it fair to say by using the "Esquire" after your name,
10 that likely made it probable that the people reading the memo
11 would know that you were an attorney?

12 A What memo is that?

13 MS. IRVIN: Your Honor, may I have a moment?

14 THE COURT: All right. While she is looking for
15 that, we will break for the day.

16 So thank you very much. We will see you here just
17 before 9:00. Same annoying admonition again, but have a good
18 evening and safe drive. Thank you.

19 (Jury escorted out of the courtroom.)

20 THE COURT: Mr. Chee's order is here for his cell
21 phones.

22 MR. ALLEN: At some point we would still like to make
23 argument on the hearsay exception we noted in our memo.

24 THE COURT: Okay.

25 MR. ALLEN: We don't have to do it now.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 THE COURT: So you are ready to talk about that last
2 line in 803?

3 MR. ALLEN: I think Ms. Irvin is going to make that.

4 THE COURT: Is it important for you to have? I mean,
5 we are not going to get into it tomorrow, are we?

6 MR. ALLEN: No.

7 THE COURT: All right. Well, I have read your
8 pleading. I read the government's pleading. I haven't read
9 all the cases. I do personally recall Veltmann because Joe
10 Ruddy tried that thing about three times. It is a pretty
11 amazing case. I will read those cases and then we'll do it.
12 So you'll have plenty of time.

13 MR. ALLEN: Yes, Your Honor.

14 The only other issue I would bring up to the Court is
15 scheduling. So the government had told this Court at the
16 status that they anticipate it would take seven days for them
17 to complete their case, and we anticipated four to five days.
18 From speaking with the government, they think it's going to
19 take them at least ten days to complete their case.

20 THE COURT: They are stinkers, aren't they?

21 MR. ALLEN: I know, right? And so that would take us
22 through Friday. I'm letting the Court know that we are going
23 to need four days. And I know the Court was talking about --

24 THE COURT: All right. Well, let's try to get the
25 thing done before I have to leave for Atlanta, but maybe not.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Go ahead.

2 MR. ALLEN: I can just tell the Court that I would
3 like to get it done before Friday because I have that Grand
4 Canyon scheduled trip for Saturday. And Ms. Irvin, who is
5 doing the closing, has an anniversary cruise on the 9th.

6 THE COURT: I will run as late as you want. I'm just
7 trying to take it easy.

8 MR. ALLEN: I'm not trying to burden the jurors.

9 THE COURT: I don't need to see the Buzzcatz anymore.
10 I'm sure we'll see them one more time if someone else takes
11 the stand. I've seen the Buzzcatz twice on paper, not in a
12 live show, but we've got that, Buzzcatz and all that. All
13 right. Well, you think I can run them long? I think we have
14 one juror that lives in Venice or someplace. That's a long
15 way away. I will run as late as you all want as long as we
16 don't get a rebellion here.

17 MR. ALLEN: Yes, sir.

18 THE COURT: We will probably have to -- I was waiting
19 until tomorrow to make a call on the next trial. I'm sure
20 they are all on tenterhooks, if that's still a word. All
21 right. So let me read Veltmann again and those cases.

22 MR. ALLEN: Yes, sir.

23 THE COURT: What else? Anything else?

24 MR. ALLEN: To try to expedite, they are calling a
25 custodian witness to introduce some tax records of Mr. DaCorta

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 and his children. We are prepared to stipulate that those
2 will come in and not need to make it any longer than we need
3 to.

4 THE COURT: Much appreciated.

5 MS. BEDKE: And we will just dispense with that
6 witness given that the stipulation negates the need to call
7 him.

8 THE COURT: Great. Well, thanks everybody.

9 And Mr. Chee, if that fabulous order is no good,
10 Mr. Houston can do a fancier one.

11 MR. CHEE: It's quite sufficient, Your Honor.

12 THE COURT: Thanks everybody.

13 (Proceedings concluded at 5:25 p.m.)
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CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 UNITED STATES DISTRICT COURT)
2 MIDDLE DISTRICT OF FLORIDA)

3
4 **REPORTER TRANSCRIPT CERTIFICATE**

5 I, Tracey Aurelio, Official Court Reporter for the United
6 States District Court, Middle District of Florida, certify,
7 pursuant to Section 753, Title 28, United States Code, that
8 the foregoing is a true and correct transcription of the
9 stenographic notes taken by the undersigned in the
10 above-entitled matter (Pages 1 through 267 inclusive) and that
11 the transcript page format is in conformance with the
12 regulations of the Judicial Conference of the United States of
13 America.

14 /s Tracey Aurelio

15 _____
16 Tracey Aurelio, RMR, RDR, CRR
17 Official Court Reporter
18 United States District Court
19 Middle District of Florida
20 Tampa Division
21 Date: September 3, 2022
22
23
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EXHIBIT C

**CFTC RESPONSE IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT BY
DEFENDANT MICHAEL J. DaCORTA**

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)
) 8:19-cr-605-WFJ-CPT-1
 PLAINTIFF,) Tampa
) May 2, 2022
 v.) 8:25 a.m.
)
 MICHAEL J. DACORTA,)
)
 DEFENDANT.)

DAY 11
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

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I N D E X

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DEFENDANT EXHIBITS

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(Proceedings commenced at 8:25 a.m.)

2

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MR. ALLEN: So two issues, Your Honor. One has to do with the NFA agreement that's been brought into evidence that was redacted.

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THE COURT: Right.

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MR. ALLEN: So the Court is aware, the reason that had been redacted is we had entered an agreement with the government in lieu of me filing a 403 motion or 404(b) motion that we would redact that and we wouldn't go too far abreast. During Mr. DaCorta's direct examination on Friday, he went too far abreast. And so in light of that, the government is going to go further into the NFA agreement because we opened the door to it to some degree. So it is our intent on direct examination to introduce through Mr. DaCorta the unredacted version of the NFA agreement. So I wanted the Court to be aware of why that is why that's happening.

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THE COURT: Sure.

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MR. ALLEN: Also, over the weekend in light of the evidence that's come in, we have made some strategy decisions regarding our defense cause. And I'm in a position to tell the Court what we anticipate what's going to happen in the defense case for timing purposes. So Mr. DaCorta will finish his direct and cross-examination and redirect we anticipate today. We will then recall Mr. Burling regarding the records

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1 he didn't recall. That should be pretty short. We also have
2 available the appraiser who did the appraisal for the
3 commercial property. It should be pretty short. And then we
4 have our expert witness, Mr. McFarland. He's a CPA witness.
5 We are prepared to put all of them on today if we get to it
6 today.

7 Tomorrow I'm concerned that we are going to have some
8 gaps, and it's for the following reasons. So tomorrow it will
9 be the finishing of Mr. McFarland or the starting of
10 Mr. McFarland. We have two lenders that are going to come
11 testify. We have a third lender, John Paniagua, who the Court
12 has heard about who also did the IT work on the back office
13 for Oasis. He has a lawyer. He is booked to fly in Tuesday
14 night to testify Wednesday. I'm trying to see if we can get
15 him on a plane today, but we very well may run out of
16 witnesses tomorrow with one witness left go, which is John
17 Paniagua. Assuming we can't get him here today so that he
18 could testify tomorrow, what I would propose is that if we
19 take up the jury instructions after our last witness on
20 Tuesday, come in Wednesday, do John Paniagua and go straight
21 into closings on Wednesday.

22 THE COURT: All right. Well, that assumes the
23 government doesn't have any rebuttal.

24 MR. ALLEN: Correct.

25 THE COURT: Do you anticipate any?

1 MS. BEDKE: Not at this time, Your Honor.

2 THE COURT: Let's just -- because I need to leave
3 Wednesday evening. So let's see if we can just move heaven
4 and earth to get Mr. Paniagua here sooner.

5 MR. ALLEN: I'm trying, Your Honor.

6 THE COURT: I know you are. Everybody is working
7 real hard. I know. A million moving parts in one of these
8 trials.

9 MR. ALLEN: Your Honor, would it be your intent to
10 have the jury deliberating Thursday and Friday?

11 THE COURT: I don't know that there are any judges in
12 this building.

13 MR. ALLEN: I think you're right.

14 THE COURT: Maybe Judge Merryday. I doubt it. So
15 that would be another reason to try to get Mr. Paniagua here.

16 MR. ALLEN: We are working on it now. I can only
17 tell the Court that we talked to his lawyer this morning, and
18 he said unlikely but he would check with his client. So we
19 are trying.

20 THE COURT: I don't think the jury instructions -- I
21 have gone through them this weekend. I don't think there is
22 much to talk about it, but we will talk about it.

23 MR. ALLEN: And we have some additional we will be
24 filing tonight, some defense-related stuff.

25 THE COURT: Okay.

1 MR. ROSENTHAL: Your Honor, there was also a motion
2 to allow Mr. McFarland to get his electronic equipment in.

3 THE COURT: The easiest way to do that is to draft an
4 order, or if you want me do it by hand, write down his name,
5 all that. And Paniagua too. I mean, I don't care. To me the
6 whole thing is just the silliest rule, but whatever. I'm not
7 in charge.

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DIRECT EXAMINATION OF MICHAEL DACORTA

1 (Jury escorted into the courtroom.)

2 THE COURT: Thank you, ladies and gentlemen. I hope
3 everybody had a good weekend.

4 Counsel you may continue your direct.

5 MS. IRVIN: Thank you, Judge.

6 **MICHAEL DACORTA, CALLED BY THE DEFENSE, PREVIOUSLY SWORN**

7 **DIRECT EXAMINATION**

8 BY MS. IRVIN:

9 Q Mr. DaCorta, when we finished Friday afternoon, we were
10 discussing the development of Oasis International Group. But
11 before we continue that conversation, there are a few items I
12 want to revisit from Friday's testimony. Okay?

13 A Sure.

14 Q Relatively earlier in your testimony on Friday, do you
15 recall testifying about an agreement that you had between the
16 National Futures Association and you personally?

17 A I do.

18 Q And that agreement, I think you testified, also included
19 a company that you owned at the time. And what was the name
20 of that company?

21 A International Currency Traders.

22 Q And do you recall that you testified International
23 Currency Traders operated from about 2002 to about October of
24 2008?

25 A Correct.

DIRECT EXAMINATION OF MICHAEL DACORTA

1 Q It what was ICT?

2 A ICT was a CTA, which is a commodity trading advisor.

3 Q What did ICT trade?

4 A ICT traded foreign exchange.

5 Q Was ICT registered with the NFA?

6 A Yes, it was.

7 Q Do you recall that you testified on Friday that in
8 October of 2008 ICT ceased options and it closed, correct?

9 A Correct.

10 Q You also testified that at some point ICT closed. The
11 NFA did a closing audit of ICT. Is that what you recollect?

12 A Yes.

13 Q When you learned about the ICT audit, were you given an
14 opportunity to respond to that audit's findings?

15 A Yes, I was.

16 Q After you had the opportunity to respond to those
17 findings, what decision did you make about the audit and the
18 findings?

19 A After I wrote the letter, I made a decision to make the
20 agreement with the NFA that I would no longer seek
21 registration and membership.

22 MS. IRVIN: Your Honor, may I approach the witness?

23 THE COURT: Yes. Of course.

24 BY MS. IRVIN:

25 Q Mr. DaCorta, do you recall on Friday when we discussed

DIRECT EXAMINATION OF MICHAEL DACORTA

1 this agreement, that there was a redacted version of the
2 agreement that we reviewed?

3 A (Witness nods head.)

4 Q And that agreement --

5 MS. IRVIN: May I publish on the Elmo?

6 THE COURT: Of course.

7 BY MS. IRVIN:

8 Q That agreement was already entered into evidence as
9 Government's Exhibit 111. And do you recall that when we
10 reviewed this, there were certain sections of the agreement
11 that were redacted or blacked out?

12 A Yes, I do.

13 Q Can you see those redactions on page 1 of Government
14 Exhibit 111?

15 A Yes, I can.

16 Q What's the date on this exhibit?

17 A It's August 9 of 2010.

18 Q And also, I think those were the extent of the exhibits,
19 but do you see on the second page -- are you able to see any
20 other redactions?

21 A Yes. There seems to be one on the very bottom.

22 Q Do you recognize your signature on this?

23 A Yes, I do.

24 Q Now, I handed you what has been previously marked as
25 Defendant's Exhibit 308. Do you see that in front of you?

DIRECT EXAMINATION OF MICHAEL DACORTA

1 A I do.

2 Q What is that?

3 A It's the same agreement unredacted.

4 Q Does it fairly and accurately represent the entire
5 unredacted agreement?

6 A Yes, it does.

7 MS. IRVIN: Your Honor, may we admit Exhibit 308?

8 THE COURT: 308 will be admitted.

9 MR. MURRAY: No objection.

10 (Defendant Exhibit 308 admitted.)

11 BY MS. IRVIN:

12 Q Mr. DaCorta, we are going to go through this agreement.

13 And first at the very top of the page, just as a comparison to
14 what we just saw, what's the date on the agreement?

15 A August 9 of 2010.

16 Q In the second paragraph, does it state the date that the
17 NFA conducted the audit?

18 A It says 2009.

19 Q In conducting the audit, who were the parties that were
20 being audited in Paragraph 2?

21 A ICT itself, the company, and myself as the principal.

22 Q It appears that there are certain findings that were made
23 by the NFA about you and ICT. And those are listed in
24 Paragraph 2; is that correct?

25 A Yes, it is.

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1 Q Of those findings, I'm going to go through them with you.
2 If you could please look at Paragraph 2, line three. What is
3 the first finding that the NFA discovered as a result of its
4 audit?

5 A It says, deficiencies in connection with their
6 solicitations of investors to make loans to ICT and/or DaCorta
7 and purchase stock in a company owned and operated by DaCorta.

8 Q So those are two of the findings that the NFA made with
9 respect to ICT and to you personally; is that correct?

10 A That's correct.

11 Q And the next line, what does it say are the findings of
12 the audit by the NFA as to you and ICT?

13 A The audit cited ICT with failing to register certain
14 individuals as associated persons, list certain branch
15 offices, supervise AP, which are associated persons, working
16 at the branch offices, adopt and implement promotional
17 material, procedures, or development, and implement a business
18 continuity and disaster recovery program or adequate ethics
19 training program.

20 Q On the next line, please read what yours and ICT's
21 response was to those findings?

22 A ICT and DaCorta denied many of the findings in NFA's
23 audit report, especially those relating to their solicitations
24 of loans and stock purchases from investors.

25 Q In the third paragraph, please read what it states that

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1 NFA was recommending, considering to recommend as a result of
2 the findings of the 2009 audit of ICT?

3 A NFA is considering recommending formal discipline action
4 against ICT and DaCorta based on the deficiencies found in the
5 2009 audit of ICT.

6 Q The fourth paragraph describes conditions under which the
7 NFA would decide not to seek those formal disciplinary
8 actions. And starting on line 2 with, "If ICT," would you
9 please read what those conditions are?

10 A If ICT could agree to withdraw from NFA membership and
11 not reapply for registration as an NFA member, or act as a
12 principal of an NFA member at any time in the future, and
13 DaCorta would agree to withdraw from NFA associate membership
14 and as a principal of ICT and not reapply for registration as
15 an NFA member or associate, or act as a principal or NFA
16 member at any time in the future.

17 Q In reviewing that particular paragraph, what was your
18 understanding of what you needed to do or you would agree to
19 do to ensure that the NFA would not seek formal disciplinary
20 action against you or ICT?

21 A Not seek to be a member of the NFA and not seek
22 registration of the CFTC.

23 Q What was your understanding of your rights that you would
24 have if you went forward with a formal disciplinary proceeding
25 before the NFA?

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1 A I'm sorry. Can you repeat the question?

2 Q If you decided not to enter this agreement and instead
3 decided to go forward and have formal disciplinary
4 proceedings, what was your understanding of what your rights
5 would be in those proceedings?

6 A Well, it would have been something where I would have had
7 to hire an attorney that was in that field of practice to act
8 to defend me against the allegations.

9 Q At that time did you have funds to be able to hire an
10 attorney to represent you?

11 A No, absolutely not.

12 Q If we can now look at the last paragraph on page 1 of
13 Defense Exhibit 308. What did the NFA decide?

14 A Now, therefore, NFA does hereby agree to forego
15 recommending formal disciplinary action against ICT and
16 DaCorta based on NFA's 2009 audit, and settle all issues
17 arising therefrom.

18 Q If you could please turn to page 2. This paragraph
19 explains what you are agreeing to do and what the NFA is
20 agreeing to do with respect to this agreement, right?

21 A Correct.

22 Q So in the first two lines beginning with, "In
23 consideration," and ending with, "Audit," can you just read
24 that first section all the way up to, "Audit"?

25 A In consideration of NFA's agreement, ICT, without

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1 admitting or denying the findings in NFA's audit, hereby
2 agrees --

3 Q Hold on one second. Just in reading that section right
4 there, what was your understanding that ICT was stating as a
5 part of this agreement based on what that line says?

6 A That ICT is not admitting or denying any of their
7 findings.

8 Q Okay. And because of that, it then continues with what
9 ICT agrees to do under this agreement, correct?

10 A Correct.

11 Q If you could just read up until the semicolon.

12 A Hereby agrees to withdraw from NFA membership and not
13 reapply for registration as an NFA member or act as a
14 principal of an NFA member at any time in the future.

15 Q What was your understanding that ICT had to do under this
16 agreement?

17 A Withdraw its membership and not reapply.

18 Q And not reapply for what?

19 A NFA membership.

20 Q Moving on to the next section that is specific to you,
21 Mr. DaCorta, please read what the next three lines state.

22 A DaCorta, without admitting or denying the findings in
23 NFA's audit, hereby agrees to withdraw from NFA associate
24 membership and as a principal of ICT and not reapply for
25 registration as an NFA member or associate or act as a

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1 principal of an NFA member at any time in the future.

2 Q What is your understanding of what you were agreeing to
3 do under this agreement?

4 A I was agreeing to withdraw as a member of the NFA, my own
5 associate membership, and not reapply for membership in the
6 NFA.

7 Q And what does it also say about working for any member
8 company that was registered with the NFA?

9 A Right. I agreed also not to work for any as a principal.

10 Q Please continue to read the rest of that sentence
11 beginning with, "ICT and DaCorta," and I'm going to have you
12 stop where I have my pen.

13 A ICT and DaCorta further agree that in the event they were
14 to breach this agreement by applying for registration as an
15 NFA member or associate or acting as a principal of an NFA
16 member, then -- I'm sorry. Is that where you want me to stop?

17 Q Yes. So you understand there's a part of this that you
18 are agreeing to, but there is also a consequence if there is a
19 breach.

20 What is your understanding of the word "breach"?
21 What does this mean to you?

22 A Breach is if you violate the terms of the agreement.

23 Q So if you break the terms of the agreement, it then says
24 what happens? If you can read starting with where you left
25 off at, and let's just do one at a time what each of those

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1 possible consequences of a breach could be.

2 A Then their breach of this agreement shall constitute sole
3 good cause for, one, denying their applications for
4 registration as an NFA member or associate.

5 Q So if you decided to breach this agreement, what would be
6 the consequence to you or ICT under this Number 1 explanation?

7 A If I reapplied, they would deny me. That would be
8 grounds for denial.

9 Q And the "they" is the NFA?

10 A Yes, sorry.

11 Q Let's look at Number 2. Please read Number 2.

12 A Denying the application for registration as an NFA member
13 of any firm of which either of them is a principal.

14 Q What is your understanding of what that says?

15 A Any firm that registers, tries to register with the NFA
16 as a member that I am a principal of, that firm will be
17 denied.

18 Q It would be denied what?

19 A Membership in the NFA.

20 Q And then lastly Number 3.

21 A And/or revoking the registration of any NFA member of
22 which either of them is a principal.

23 Q When you agreed to this, did you understand those two
24 pages that we just reviewed?

25 A Yes, I did.

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1 Q As a result of that, did you sign the agreement?

2 A I did.

3 Q And when is it dated?

4 A August 9, 2010.

5 Q Is this the full agreement?

6 A Yes, it is.

7 Q How did this agreement, you signing this agreement affect
8 ICT?

9 A ICT closed business for good.

10 Q How did this agreement affect ICT?

11 A ICT was closed. It was out of business and no longer a
12 member of the NFA.

13 Q Totally understand. But how did this agreement that you
14 signed with the NFA affect ICT?

15 A ICT could no longer apply for membership with the NFA.

16 Q It wasn't operating anymore, right?

17 MR. MURRAY: Objection. Leading.

18 A No, it was not operating.

19 THE COURT: Overruled.

20 BY MS. IRVIN:

21 Q Was ICT operating?

22 A No, it was not.

23 Q What if any effect then did the NFA agreement have on
24 ICT?

25 A ICT ceased operations.

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1 Q Okay. Is it fair to say that there was no effect on ICT
2 because it was already closed?

3 A Well, that's correct because we ceased any trading
4 operations in October of 2008.

5 Q How did you signing this agreement affect your ability to
6 trade forex?

7 A It prohibited me from trading forex as an NFA member or
8 registration with the CFTC.

9 Q What else?

10 A As far as? I'm sorry.

11 Q What else did this agreement require from you?

12 A It required me to no longer have any ability to
13 reregister or apply for membership with the NFA.

14 Q Was it your understanding that you could continue to
15 trade forex as a non-NFA member?

16 A Yes. As long as I was a non-NFA member and I didn't fall
17 under the jurisdiction for any reason, there would be no
18 reason for me not to be able to.

19 Q And what was your understanding based on?

20 A The initial conversation with the compliance department
21 at CitiFX.

22 Q Was that -- let's get to that because I think that that's
23 the next step of what we are going to talk about. We are
24 going to fast forward to your meeting with Ray Montie.

25 A Okay.

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1 Q You testified on Friday about meeting Ray Montie and the
2 time that you started working at Ambit. Do you recall that?

3 A Yes, I do.

4 Q And in your testimony you said that you told Mr. Montie
5 about your financial background and what happened at ICT.

6 A Correct.

7 Q What did you tell him about the August 9, 2010, NFA
8 agreement that we just reviewed?

9 A At that point in time, I never mentioned it.

10 Q Why is that?

11 A There was really no reason to because if I -- we were
12 just talking in general terms at that point in time.

13 Q You have also testified about Mr. Montie asking you to
14 trade for him individually. Do you remember that?

15 A Yes, I do.

16 Q And I think you testified that you had some hesitation at
17 first, but then you decided that you were going to trade for
18 him?

19 A Correct.

20 Q What was your understanding at that time about how the
21 NFA agreement that you signed affected your ability to trade
22 forex for Ray Montie?

23 A It had no effect whatsoever.

24 Q Why is that?

25 A Because an individual can make an agreement with a single

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1 individual, especially if they're friends, to trade or to do
2 anything at that point in time. There was no jurisdiction
3 over one individual trading for a single individual.

4 Q At the time that you decided that you were going to trade
5 foreign currency for Mr. Montie, did you show him the NFA
6 agreement?

7 A No, I did not.

8 Q Why not?

9 A At that point in time, again there would be no reason to.
10 It didn't -- I wasn't violating it in any way, and it was
11 not -- it was an offline agreement. So it was done just
12 simply to move my life on. So it was -- I didn't feel any
13 reason to show it. I had told him what happened with ICT. So
14 that was the main subject matter that I spoke about.

15 Q When you state that it's an offline agreement, what do
16 you mean by that?

17 A It was an informal agreement. It was just between me and
18 them and it wasn't publicized in any way whatsoever or put
19 into the record.

20 Q You also testified that after you started trading or at
21 least your initial trade for Mr. Montie, that that first trade
22 went well?

23 A Yes. The first few weeks went extremely well.

24 Q And as a result of that, Mr. Montie encouraged you to
25 trade for other people?

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1 A That's correct.

2 Q And the discussion about that, I think you testified that
3 that was called the friends and family program?

4 A Correct.

5 Q And about how many people do you recall were in that
6 group?

7 A The initial were six to eight including Montie.

8 Q Of those six to eight people, what were they considered?
9 Were they just considered individual investors, or did you
10 consider them to have a particular status?

11 A No. They were considered limited partners of the company
12 that we used to create the club.

13 Q And what was that company called?

14 A Oasis Management.

15 Q What was your understanding about your ability to trade
16 forex for these six to eight limited partners keeping in mind
17 the NFA agreement that you signed?

18 A Correct. Well, I wanted to make sure I was in
19 compliance. So first thing I did was contact CitiFX. I had
20 someone there that I knew and explain to him what I was
21 looking to do, which was to have a very small handful of
22 people in one company where I would only be trading one
23 account, the company account. I would not be trading for each
24 person individually. And then he went to his compliance
25 department to ask --

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1 MR. MURRAY: Objection. Hearsay.

2 THE COURT: Sustained.

3 BY MS. IRVIN:

4 Q Let's back up to CitiFX. What was the role of CitiFX
5 with Oasis Management, LLC, during the time frame that you are
6 talking about?

7 A CitiFX was where Oasis Management applied to have an
8 account to be able to trade foreign exchange through their
9 dealing desk.

10 Q And time frame, are we talking about 2011?

11 A I believe it was January of '12, 2012.

12 Q So in January of 2012, explain the reasons why you would
13 have contacted CitiFX in order to ask questions about being
14 able to do forex trading for these six to eight people?

15 A Sure. Because I very simply wanted to make sure I would
16 be in compliance.

17 Q Do you recall the name of the person that you spoke to at
18 CitiFX?

19 A I believe his name was Michael Merachi.

20 Q What that someone that you already had an established
21 relationship with?

22 A I knew Mike back and forth through a couple of other
23 people that I dealt with. So I knew of him, and I knew he
24 worked at CitiFX on the desk. So he was the first call I
25 made.

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1 Q In speaking to Mr. Merachi, did you tell him about the
2 NFA agreement that you signed?

3 A No. I just told him that -- I'm trying to remember next.
4 It's a long time ago. I may have. I may not have. I just
5 remember telling him that I wanted to do it to make sure that
6 we would not need to be members of the NFA.

7 Q Based on the conversation that you had with Mr. Merachi
8 at CitiFX, then what was your understanding about your ability
9 to conduct foreign exchange trading for those six to eight
10 limited partners at Oasis Management, LLC?

11 MR. MURRAY: Objection, Your Honor. It's backdoor
12 hearsay.

13 THE COURT: Sustained.

14 BY MS. IRVIN:

15 Q In your decision making to trade forex for these six to
16 eight people, what was your concern?

17 A My concern was that I would violate the NFA agreement.
18 So I wanted to make sure that I would not. And I needed to do
19 it in a way that would be consistent with keeping in
20 compliance with the agreement.

21 Q Now, at the time we are talking about -- at this time we
22 are talking about Oasis Management, LLC. Just a reminder, we
23 are going back to kind of catching up to where we were on
24 Friday. Who were the principal as the Oasis Management, LLC?

25 A I was the general partner, and then everyone else was

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1 limited partners. Ray was obviously the first limited
2 partner.

3 Q What kind of trading were you doing?

4 A Foreign exchange.

5 Q A related question to what we talked about with those
6 limited partners. What was your understanding about your
7 ability to conduct forex trading for Oasis Management, LLC, in
8 light of the NFA agreement that you signed?

9 A At that point in time, I was aware and informed that I
10 would not be in violation of the agreement.

11 Q Let's move forward now. Almost caught up here to the
12 formation of Oasis International Group. About what year, what
13 time frame are we talking about?

14 A I believe it was somewhere late 2012, early 2013.

15 Q You have testified already about the formation of the
16 company. And where was the company OIG domiciled?

17 A Cayman Islands.

18 Q Who drafted the incorporation documents?

19 A Mr. Anile.

20 Q Are you aware of any outside counsel that were hired to
21 assist Mr. Anile in completing the incorporation documents?

22 A I do not believe he had any outside counsel for that
23 specific purpose.

24 Q Who were the investors at the very beginning with OIG?

25 A Well, the first thing we did in order to raise working

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1 capital was to sell the preferred shares. So that was filed
2 as a Reg D 504.

3 Q Let me stop you there. When you said you are selling
4 preferred shares, what does that mean?

5 A Well, we own the common shares. And we -- when Mr. Anile
6 put the offering together, we created a preferred status. So
7 that way those people would earn a dividend. They wouldn't
8 have voting rights, but they'd earn a dividend. And their
9 shares were senior to ours. So their shares had to be valued
10 ahead of ours and have some value before our shares had any
11 value.

12 Q Does that mean that they owned part of Oasis
13 International Group?

14 A Yes, they did. They were equity stakeholders.

15 Q And the purpose of these stakeholders was to provide what
16 kind of financing for OIG?

17 A It was equity working capital.

18 Q In addition to these preferred status stockholders, who
19 were other investors, if any, in OIG?

20 A Once we were set up and we established -- we purchased
21 our broker-dealer at that point in time, our business model
22 was to take on in non-U.S. foreign exchange customers and/or
23 ECPs, which are exempt from regulatory issues.

24 Q Why was that the business plan?

25 A That was the business plan initially for the simple fact

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1 that we wanted to be in that business as part of our business
2 and we wanted to make sure again I was in compliance with my
3 NFA agreement. So therefore we had only non-U.S. customers or
4 ECPs which are exempt from the rules and regulations.

5 Q How did the process work if someone wanted to participate
6 as an investor as an ECP? What are the steps they would have
7 to take?

8 A They had to fill out a fairly extensive questionnaire.
9 And they had to provide us with some sort of ID and different
10 personal pieces of information. All of that would go directly
11 to Mr. Anile. And then he would make a decision whether he
12 approved them as an ECP or not.

13 Q What role, if any, did you have in reviewing these ECP
14 applications?

15 A Oh, I had absolutely none.

16 Q What kind of trading was happening at this time at OIG?

17 A That was foreign exchange trading for individual
18 customers.

19 Q And those individual customers, were those ECPs that you
20 just described?

21 A Yes, them and non-U.S. individuals or companies.

22 Q Was the trading for the individual ECPs or for OIG?

23 A It was specifically for the individuals.

24 Q Over what timeframe was this trading for these individual
25 ECP accounts?

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1 A From 2014 to December of 2016.

2 Q And about how many ECP participants were investing at the
3 time?

4 A At the beginning it was a handful, I mean, 10, 12 maybe
5 total.

6 Q What was your understanding about your ability to trade
7 forex for these ECPs in light of the NFA agreement that you
8 signed?

9 A The first thing I did before we formed the company was to
10 show Mr. Anile the letter to make sure we were in compliance.
11 And he assured me --

12 MR. MURRAY: Objection. Hearsay.

13 THE COURT: Well, I'll overrule that.

14 BY MS. IRVIN:

15 Q You can finish your answer.

16 A So Mr. Anile approved the type of operation we were
17 conducting was within the agreement.

18 Q When you are referring to the agreement -- may I publish
19 to the Elmo?

20 When you are referring to the agreement, are you
21 referring to a redacted agreement?

22 A I'm referring to the agreement itself.

23 Q So I have on the Elmo Government's Exhibit 111 which is
24 redacted.

25 A Yes.

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1 Q Is this the agreement that you testified that you showed
2 to Mr. Anile?

3 A Yes. I showed him an unredacted version.

4 Q You showed him an unredacted?

5 A Yes.

6 Q So that would be the one we just finished reviewing, and
7 that's Defendant's Exhibit 308?

8 A That's correct.

9 Q Do you recall when you showed him the agreement, was it
10 the same signed agreement that we reviewed this morning?

11 A It was the exact same agreement.

12 Q Based on your conversation with Mr. Anile and your review
13 with him of the NFA signed agreement, what was your
14 understanding of your ability to trade forex for these ECPs
15 that fell under Oasis International Group?

16 A I was given the green light. It was okay.

17 Q Did you seek any other advice or counsel outside of
18 Mr. Anile with respect to this decision?

19 A No.

20 Q Why not?

21 A Mr. Anile, this was his part of the law that he
22 specialized in. So when he looked at it, he reviewed it, I
23 knew his resume, I knew he had worked for the CFTC in the
24 past, and I knew his entire career was both in securities
25 regulations and that type of law. So when he told me we are

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1 fine, I completely 100 percent trusted him.

2 Q Now, you mentioned that you referred to this agreement as
3 an offline agreement. Why was it important to you to stay in
4 compliance with an agreement that was offline, not published?

5 A I always play by the rules. Whether it's sports,
6 business or life, I play within the rules. I signed an
7 agreement, and I wanted to stick to it.

8 Q You mentioned that you signed the agreement and you
9 wanted to stick to it. What does signing the agreement with
10 the NFA mean to you?

11 A Well, what does it mean to me? I mean, any agreement
12 that I sign means that I'm going to stick to it, I'm going to
13 abide by it. I don't breach agreements. If I make an
14 agreement with someone, whether I speak with them, shake their
15 hand or sign something, I do my best to always keep that
16 agreement.

17 Q Now, OIG is just getting off the ground. And who are the
18 principals that are involved in OIG at the beginning?

19 A It's Mr. Anile, myself, and Mr. Montie.

20 Q And just a quick review. What was Mr. Montie's role in
21 OIG at this time?

22 A Mr. Montie was extremely busy with his own business. He
23 was at that point a silent partner. He was helping marketing
24 at the beginning. He was there to be the person that helped
25 with the marketing of the business.

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1 Q What was Mr. Anile's role in OIG in particular at the
2 beginning?

3 A Well, Mr. Anile was the president and he was the attorney
4 and compliance officer. Everything we did, corporate law,
5 regulatory law, it all went through Joe and got approved by
6 Joe. Otherwise, we didn't do it.

7 Q When you say "regulatory law," are you speaking about
8 compliance?

9 A Absolutely.

10 Q What was your role at OIG?

11 A My role was to trade and to also look for other business
12 investment opportunities because we were looking to diversify
13 the company immediately. When we took in our initial share --
14 when we sold our shares, those monies were designated for both
15 making other business decisions as well as trading.

16 MS. IRVIN: Your Honor, may I have a moment?

17 BY MS. IRVIN:

18 Q Outside of you, Mr. Montie, and Mr. Anile, were any
19 personnel hired to assist in the developing of Oasis
20 International Group?

21 A Yes. We initially hired three people prior to closing
22 the preferred deal, and we told them that their positions
23 would start once we broke escrow and started actually
24 operating.

25 Q Now, at this time when you are getting ready to hire

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1 these initial personnel, where are you living?

2 A I'm in New York, Poughkeepsie, New York.

3 Q Where is Mr. Montie living?

4 A I believe at that time he was on Long Island in New York.

5 Q Where is Mr. Anile living?

6 A Long Island, New York.

7 Q Was that helpful to what you were trying to create, to
8 have the three of you relatively close to each other
9 geographically?

10 A Oh, sure.

11 Q Of the people you hired, were those also people who were
12 living in the New York, Long Island area?

13 A No.

14 Q Tell me about who you hired initially to get OIG up and
15 running from the administrative side.

16 A Sure. So we hired Brian McMahon who lived in California
17 to operate the back office. He had a lot of experience with
18 that with a previous foreign exchange company. And I knew him
19 through that relationship. When I had my company, he came to
20 try to persuade me to use their system. So I knew him from
21 that.

22 I hired Matt Cozzolino. Matt Cozzolino actually
23 worked for some of the clearing firms that I dealt with in the
24 past. He was a really good worker and he was very well
25 educated within the foreign exchange arena. So I hired him.

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1 Q Let me stop you right there. What did you hire Matt
2 Cozzolino to do?

3 A Matt was specifically supposed to bring on other money
4 managers just to trade through our system and use our
5 platform. We weren't -- not to bring money for us to manage
6 but simply to bring in other people who managed their clients'
7 money and use our platform to facilitate their trading.

8 Q At this time while you are hiring people, is there
9 trading that is going on, forex trading that is going on?

10 A Well, when we originally hired them, no, we hadn't
11 started yet.

12 Q In addition to Brian McMahon and Matt Cozzolino, was
13 anybody else hired?

14 A Yes. Butch Lyle.

15 Q What was his role?

16 A He had various roles, but mainly he was keeping different
17 spreadsheets and just helping out on various different
18 miscellaneous type items.

19 Q Would you say that he was an administrative person?

20 A Sure.

21 Q Would you say he was an accounting person?

22 A To some degree, yes.

23 Q How did things go with Brian McMahon starting to create
24 the back office for OIG?

25 A Everything went fine at that point in time. He knew what

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1 he was doing.

2 Q At some point did you make a decision that you were going
3 to move from New York to Florida?

4 A Yes.

5 Q Why was that?

6 A I always wanted to move to Florida since I was 21. My
7 wife didn't want to leave New York. So once our daughter
8 graduated high school, we made a decision that once she was
9 out of school and going to college that we would make the move
10 to Florida.

11 Q In the decision to move to Florida, how did that affect
12 any of these three initial hires and the jobs that they were
13 doing for Oasis International Group?

14 A Well, I made a decision after speaking with Mr. Anile --
15 and I believe I spoke with Mr. Montie about this also -- I
16 wanted to have everybody under one roof if possible. So I
17 made them the offer to come down. They could continue to do
18 their jobs, but I told them that if they were going to
19 continue with us, once we moved the company to Florida, I
20 wanted them to move and be under one roof.

21 Q Who of those three initial hires decided to stay on at
22 OIG with the move to Florida?

23 A So the way it worked out was Matt Cozzolino was divorced
24 and had young children and he couldn't move from Pennsylvania.
25 So he did not move. Brian McMahon was in California. He

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1 thought about it for a few days but then made a decision he
2 was not willing to make the move either. And Butch Lyle did
3 not -- he had lived in Tampa his entire life, moved to North
4 Carolina. He was kind of enjoying retirement in the
5 mountains. So he decided not to move, but Butch I found a
6 spot for in Oasis Management. So he continued with me.

7 Q Because Mr. McMahon decided that he was not going to stay
8 with the office, what did you decide or who did you hire to
9 now run the back office?

10 A Well, I spoke with Mr. Anile and I told him obviously the
11 first thing we need to hire is someone in the back office. We
12 didn't really need to replace Matt Cozzolino immediately, or
13 ever technically, but we needed someone for the back office.
14 And that's when Mr. Anile recommended that we hire his
15 brother.

16 Q And his brother is Frank Anile?

17 A That's correct.

18 Q What was your understanding about Frank Anile's
19 background with respect to his ability to run a back office?

20 A Mr. Anile, Joe Anile, told me that Frank had worked on
21 some big projects and put together some very large back
22 offices for other banks. And he said he was extremely
23 experienced in the industry. So obviously I trusted Joe. I
24 had no reason not to when he told me Frank was a great worker
25 and knew the business. So I hired him.

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1 Q Was there anybody else that you interviewed or you
2 explored to hire for that position?

3 A No. Once Joe recommended him and told me his extensive
4 background specifically in that area, I said let's hire him.

5 Q Once Mr. Frank Anile gets started, where is he living at
6 the time while you are continuing to build OIG?

7 A He lived very close to his brother, Joe. So he was also
8 on Long Island.

9 Q And the job that he had in building the back office, what
10 is it exactly that Mr. Frank Anile was doing to create the
11 back office?

12 A Well, he is really not creating it. It is already
13 created in ATC. So you white label it, but we had certain
14 parameters that we needed to make sure was functional. So he
15 would regularly do testing just to make sure that things get
16 up correctly and that all the calculations that needed to be
17 done were correct.

18 Q And ensuring that those calculations were correct, do you
19 know who he would have contact with to be able to fix or
20 adjust any of those issues?

21 A Oh, sure. So he would contact Dave Manoukian directly,
22 which was the president of ATC.

23 Q Was this a task that Mr. Frank Anile was assigned and
24 doing on his own basically in a corner office?

25 A Oh, yeah. I mean, Frank knew what he was doing. We told

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1 him make sure everything works, test everything, let us know
2 when everything is operational and functional.

3 Q Can you describe what your communication was with
4 Mr. Frank Anile about the back office and anything that he was
5 working on?

6 A He would normally call me just tell me if anything was
7 not hitting up correctly. He would put in test accounts just
8 to see how they hit up, how the responses came back. So he
9 would see what the potential customer would see just to make
10 sure all the responses were correct.

11 At one point he was -- there was some balances back
12 there and he was noticing that they were off by pennies on
13 rollovers, and he brought it to my attention. And I told him
14 talk with Dave and see what the difference is. I said it's
15 only pennies, but he made a very big deal about it.

16 Q When you said he spoke to Dave, what Dave are you
17 speaking about?

18 A Dave Manoukian at ATC.

19 MS. IRVIN: Your Honor, may I have a moment?

20 May we publish using the laptop? Thank you.

21 BY MS. IRVIN:

22 Q Mr. DaCorta, can you see on your screen what has already
23 been admitted as Exhibit 170?

24 A Yes, I do.

25 Q Do you recognize this?

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1 A Yes, I do.

2 Q What kind of document is this?

3 A Excuse me?

4 Q What kind of document is this?

5 A I believe it's an email.

6 Q At the top who is it from?

7 A You will have to make it a little bigger. So it's from
8 Ritesh at Spotex. And it's going to I guess the support desk.
9 The reason Oasis -- I'm trying to see who it's to. To support
10 desk. So Ritesh is asking his support desk to check on some
11 of the discrepancies that Frank found.

12 Q Do you know who Ritesh Agrawal is?

13 A One of the programmers at Spotex.

14 Q What's the date on this email message?

15 A It's July 1 of 2015.

16 Q On July 1, 2015, who was the person who was working the
17 back office at OIG?

18 A Frank Anile.

19 Q Can we go to the subject of the email? In reviewing
20 this, what do you recognize this to be?

21 A I recognize that to be -- the discrepancies that Frank
22 had found in the back office that he asked Dave Manoukian at
23 ATC to check with Spotex to make sure we correct the rolls.

24 Q For example, if we can go to the June 5 opening balance
25 date and difference, what does that indicate with respect to

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1 what's right or wrong about that balance?

2 A The balance was off by 2 cents.

3 Q How about for the one that's listed underneath where it
4 says "See IB Compensations" for that day?

5 A It's \$149,992 account, and it was off by 3 cents.

6 Q In going to the other two examples for June 26, what is
7 the difference that was found?

8 A Seven cents.

9 Q And what about the last noted balance?

10 A It looks like 7 cents again.

11 Q Why is Frank Anile noting 2-cent, 7-cent differences to
12 Spotex?

13 A Frank was very particular, and he told me that if
14 something is off by 2 or 3 cents a day, over weeks, months,
15 cents turn into dollars and dollars turn into hundreds of
16 dollars and you have lots of discrepancies and it is harder to
17 find out where they occurred. So he tried to nip them in the
18 bud.

19 Q This is one example. Are you aware of other times when
20 Mr. Anile noted that there was a difference between OIG back
21 office numbers and Spotex numbers?

22 A He may have a few other times. There was -- like I said,
23 every time he did it, he would calculate it to the penny each
24 day. He wouldn't wait a month. So he knew each day what the
25 balances should be. So if there was any discrepancies, at

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1 that point he immediately took it up with ATC.

2 Q Are you aware of how these would be fixed? If there were
3 errors, how would those be fixed and by whom?

4 A Right. Well, those errors were on ATC's side and Spotex
5 side. So they would go in and adjust the balance.

6 Q As far as you understand, was that a pretty easy fix?

7 A Oh, sure. Once they found the reason, the cause and they
8 also knew the amount, it's a simple fix.

9 Q Now, we are going to take a pause from talking about OIG.
10 And I want to talk to you about some statements and stories
11 that Mr. Joseph Anile testified about during his testimony.
12 Okay?

13 A Sure.

14 Q One of the things that he said was that when his brother,
15 Frank Anile, was working for OIG's back office, Mr. Joseph
16 Anile testified that his brother, Frank Anile, told him that
17 you falsified a customer's statement. What do you say to
18 that?

19 A Never happened.

20 Q How do we know that it never happened?

21 A Well, Number 1, I know I never asked him to do it.
22 Number 2, I had absolutely no ability to go into the back
23 office. The administrative passwords are different. Only
24 Frank had them. And Frank would have actually had to make the
25 change. So he wouldn't have called Joe. He would have called

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1 me and said, you know, why are we doing this? So it never
2 happened.

3 Q And to be clear, did you ever ask Frank Anile to change a
4 customer's statement?

5 A Never.

6 Q Mr. Joseph Anile also testified to a conversation that he
7 says took place in February of 2017. Mr. Anile testified that
8 he met with you to go for a walk. According to Mr. Joseph
9 Anile's testimony, you told him about suffering a trading loss
10 of \$4 million. He also said that during this conversation you
11 both agreed that this gap, what he called it, would not be
12 reported to the investors and that you both agreed during this
13 conversation to not tell the investors. Let's start first, do
14 you recall this conversation taking place?

15 A No, I do not.

16 Q What is your response to Mr. Anile saying that you were
17 discussing a \$4 million gap with him in February of 2017?

18 A Several things. Number 1, I never discussed a gap of
19 \$4 million with Mr. Anile in February --

20 Q Why is that?

21 A -- of 2017. Number 1, we didn't have a \$4 million gap in
22 2017.

23 Q Let's get to the next part. He stated that as a part of
24 this discussion that he says took place, that you both agreed
25 you were not going to tell the investors about this \$4 million

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1 gap, is what he called it. What do you say to that?

2 A I never agreed to something that didn't exist. And I
3 would never agree to something like that in the first place
4 anyway.

5 Q Would you agree to keep loss information from investors
6 with Mr. Anile?

7 A Never.

8 Q Why not?

9 A It's just not the right thing to do. I mean, I would
10 never do that. We had a program that the way -- I just
11 wouldn't do it. I mean, there is no reason for me to ever do
12 that. The people that we are talking about here are people
13 that I knew personally. Mr. Anile didn't. But every single
14 one of those people were personal people I knew, shook their
15 hands.

16 Q Let's get to the third story that Mr. Anile testified to.
17 Timing wise, Mr. Anile testified as to a 2018 discussion that
18 he said he had with you. His testimony was that you went to
19 his house and that you told him about a seven and a half to
20 \$15 million total loss. So first, do you recall this
21 discussion?

22 A No, I do not.

23 Q Do you recall ever discussing with Mr. Anile any point in
24 time a seven and a half to a \$15 million loss to OIG?

25 A Absolutely not.

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1 Q In his testimony, Mr. Joseph Anile stated that he said to
2 you, this is clearly a Ponzi scheme and you agreed. What do
3 you say to that?

4 A It's outrageous. It never happened.

5 Q Would you ever say that your business at Oasis
6 International Group or at Oasis Management, LLC, was a Ponzi?

7 A No.

8 Q Why not?

9 A Because it was not.

10 Q During that same discussion, Mr. Joseph Anile testified
11 that you both agreed that you were not going to disclose the
12 supposed seven and a half to \$15 million loss to the
13 investors. What do you say to that?

14 A It never happened. And in addition to that, I would just
15 like to say there would not be this 7 to \$15 million gap.
16 Mr. Anile saw the numbers from Mr. Paniagua every single
17 evening. He knew to the penny exactly where we were. He was
18 the only one to know all the funds coming into Mainstream and
19 all the money going out of Mainstream. So there would be no
20 news for me to bring him because he had all the knowledge of
21 everything that was going on each and every night.

22 Q Now, we are going to break down in a few minutes or over
23 the course of the rest of the morning what was going on at OIG
24 in 2017 and 2018. But generally speaking, there were times
25 that OIG suffered losses, correct?

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1 A Absolutely.

2 Q When OIG suffered loss, was there a plan in place to be
3 able to address those losses?

4 A Sure. In 2017, we were net positive at the end of the
5 year for the difference between the spreads and the P&L. In
6 2018, once I had some losses and we were moving forward, the
7 markets was very difficult in 2018. I immediately began to
8 take corrective action towards the mid to end of the year.

9 Q We will get into the details of that corrective action.
10 But generally speaking, what were the kinds of actions that
11 you were taking when you saw that there were losses?

12 A I slowed down the trading and I began to accumulate the
13 silver position.

14 Q When you say you slowed down the trading, explain what
15 you mean by that.

16 A I just reduced the volume to reduce the risk in the
17 actual day-to-day trading which created a lower spread revenue
18 for the lenders. As you heard a couple of lenders say it sort
19 of slowed down towards the end of 2018. The reason why, it
20 was a conscious decision on my part to slow down the trading,
21 to accumulate the silver and give the silver a chance to
22 recoup some of the losses that we had incurred earlier in the
23 year.

24 Q What do you mean by accumulate silver? What was the
25 point of taking what you call a particular silver position?

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1 A Well, again, silver is a commodity. Silver is real
2 money. Silver will always have a value. It's never going to
3 zero. So I observed it. I traded it all the time. But in a
4 few months during '18, it was in a very, very narrow range and
5 I observed that range. And at a certain point I began buying
6 it and accumulating it where I was building a position for the
7 single purpose of holding it to certain levels in order to
8 recoup the losses that we had incurred.

9 Q Is it fair to say that was a way to be able to protect
10 what was going on with losses at OIG?

11 A Yes. If you slow down the trading, you are going to
12 reduce any potential losses on that and you accumulate the
13 silver at that price. Silver goes to \$19, your losses are
14 completely eliminated.

15 Q Let's get back to OIG and the time frame of 2017. You
16 talked a little bit about that. What changes, if any, were
17 going on with OIG at the beginning of 2017?

18 A At the end of 2016 is when we decided to go completely to
19 a loan program where we would take -- first thing we did was
20 we told everyone that was a customer they could either close
21 their account and take their money or they can convert it to a
22 loan. And we also offered to buy all the preferred
23 shareholders' shares back to clean up, to make sure we had no
24 other shareholders in the company.

25 So the first thing we did, which took a couple of

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1 months, was to repurchase or convert the preferred
2 shareholders and then also close all the existing customer
3 accounts. Once that was achieved, I think it was sometime in
4 March we began to take in new loans.

5 Q When you say "take in new loans," how is the business
6 model for OIG different from 2016 to 2017?

7 A So in 2016, you were just a regular brokerage customer.
8 You logged into your account like you would at any brokerage.
9 You saw the profit and loss for the day. You saw everything
10 going on in the account every day. You could take your money
11 out any time you want because it's there, it's your money.

12 At the end of 2016 when we converted everybody, what
13 we did was we created the loan program. The loan program was
14 designed so that the people would be loaning the money
15 directly to Oasis International Group. Oasis International
16 Group would then be managing all the money for Oasis
17 International Group to make sure it's in compliance with the
18 agreement that we provided to everybody. So our agreement to
19 them was simply a promissory note. We promised to pay them
20 back their principal on 90 days' notice.

21 Q Hold on a second because we are getting a little bit
22 ahead of ourselves. So we got a loan program that OIG is
23 starting, correct?

24 A Correct.

25 Q Why is there this change in business model from 2016 to

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1 the 2017 loan program? Let's take it one step at a time.

2 What's the reason why OIG is making this change?

3 A So one of our ECPs came to me in I guess in the middle of
4 the year 2016. And I think he had half a million dollars. I
5 don't remember the amount. He asked me is it possible instead
6 of me being in the trading account, because he is going to
7 need money quickly, he says is it possible I could loan it to
8 you so that way I'm not subject to the ups and downs of the
9 market? I will loan you guys the money and just pay me an
10 interest rate, and that way my principal, whenever I need it I
11 can just request it. So that is the first thing that
12 happened.

13 At that point, I went to Mr. Anile and I asked him is
14 it possible that he could be a lender. Mr. Anile informed me
15 that any person could lend any company money as long as they
16 agree on the terms and -- they are in agreement on the terms,
17 but it doesn't matter at that point what the jurisdiction is
18 because if it's a short-term loan, anyone can loan money to
19 any company anywhere.

20 Q Before this particular ECP came to talk to you about
21 loaning money, had that been something that you and Mr. Anile
22 and Mr. Montie had been talking about with respect to changing
23 the business model?

24 A No.

25 Q Is it fair to say that this gentleman coming to you and

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1 talking to you about it sparked an idea for a change in the
2 business model?

3 A Yes, it did.

4 Q What was the reason, what was the benefit, if any, of
5 having this loan program for OIG?

6 A Well, if you have a loan program and if I -- when I spoke
7 to Joe about it and I asked him several questions, he said
8 there would be absolutely no restriction of a U.S. citizen
9 making a loan directly to a company as long as everybody
10 agrees on the terms of the loan agreement.

11 Q How would this be helpful to a potential investor who
12 might be loaning money to OIG? What's the benefit to them?
13 And I don't want to get to the promissory note part of it.
14 We'll get to that, but was there any benefit to a particular
15 lender?

16 A At that point in time we decided we would absorb any
17 profit and loss and we would pay them a specific amount of
18 interest or a specific amount of additional interest based
19 upon our trading volume but that the profit and loss would be
20 OIG's.

21 Q You started to talk about this a little bit, but I do
22 want to -- this is important for us to discuss. What were the
23 options that investors had if they were investing in the 2016
24 program, and you are now letting them know there's this
25 opportunity to go into the 2017 loan program, what are the

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1 options for those investors? Take them one at a time.

2 A Well, in 2016 when we shut down that program, we made it
3 clear to every account holder and anyone else who had money
4 with us in any way that either they convert to the loan
5 program or they take their money back. They have the option
6 to either be refunded or look at the loan agreement, the term,
7 and if they wish to agree and proceed, then they would convert
8 to a loan.

9 Q Let's use an example of the person who decided they did
10 not want to go forward with the loan program. How would they
11 let OIG know that that's what they wanted to do?

12 A They would simply send in a withdrawal form.

13 Q What would be the next step?

14 A It would get processed and a wire would be sent to them.

15 Q Would that refund their investment in full?

16 A Correct, whatever they had in their account because they
17 were a customer at that point. So whatever they had in their
18 account, they could request a full amount of the money that
19 was in their account.

20 Q If a person decided that they wanted to convert to the
21 2017 loan program, how would they notify OIG?

22 A Joe Anile created documents for that. I don't really
23 know exactly how he did it, but there was some sort of
24 agreement to do it. I'm not sure if he sent them the money
25 back, had them resend it under the loan agreement or if he had

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1 some conversion documents that he created.

2 Q Either way, were there documents that those investors had
3 to agree to to move forward with the 2017 loan program?

4 A Yes, absolutely.

5 Q What were the funds that would be loaned to OIG be used
6 for?

7 A A percentage would be used for collateral deposit for
8 foreign exchange trading, and the balance of it could be used
9 for pretty much any investment decision we decided we would
10 like to make.

11 Q What would be some examples of those investment decisions
12 that you could make as OIG?

13 A Well, we could pretty much make many different decisions,
14 but we stuck to real estate, physical silver and gold, and
15 other businesses, so equity financing.

16 Q Could the loans be used for the operating expenses of
17 OIG?

18 A Yes, they could.

19 Q Under the terms of the loan agreement, could the loan
20 money be used for private equity that OIG was seeking?

21 A Yes, it could.

22 Q Under the terms of the loan agreement, was it possible
23 for that money to be used for the purchase of hard gold and
24 silver?

25 A Yes, it was.

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1 Q Under the terms of the loan agreement, was it possible
2 for those funds to be used to maintain what you have referred
3 to as a silver position for OIG?

4 A Yes, it was.

5 Q You started to talk about this. This is now a good time
6 to talk about it. What were the terms of the loan?

7 A The terms of the loans are very simple. Someone is going
8 to loan us money. That capital is ours to run the company
9 with. We promise them 12 percent per year or 25 percent of
10 the transaction fees, whichever is greater.

11 Q One of the things that you testified to was the
12 importance of liquidity. Why is that important?

13 A Well, after 2008, the main cause of the 2008 crisis was a
14 lack of liquidity in the banking system. And a lot of people
15 got very nervous about that, and they should have. And when
16 we put this program together, what I wanted to do was make
17 sure that if someone needed their money, they could have it
18 within a reasonably short period of time.

19 Q How is your concern for liquidity built into this loan
20 program?

21 A It's built into the loan program by making it a 90-day
22 callable note. So any time someone needed their money, they
23 knew they were only 90 days away from receiving it at maximum.

24 Q And what process would they have to take in order to
25 withdraw any principal or any interest from that loan?

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1 A They would just simply send in a withdrawal form.

2 Q And how would the money be sent to them?

3 A The withdrawal form would go to the back office, Joe
4 Paniagua at that point in time. He would then process it, let
5 Mr. Anile know of the withdrawals. Mr. Anile would then wire
6 the money from the Mainstream account.

7 Q How did this new business model of moving from the 2016
8 investments to now the 2017 loan program affect your forex
9 trading strategy?

10 A So we developed -- when we started it, the model was
11 built on the fact that we were going to create a four-pip
12 spread. We were going to use that spread as our revenue.
13 Anything above that spread would be our profit. The spread
14 itself was broken down to where we were going to be giving one
15 pip to the lender. Three pips would be retained by the
16 company as revenue. The three pips would be used for, let's
17 say, LSA fees, which are the people who brought us loans, and
18 we were paying an extra quarter pip on.

19 Q And hold on one second because I think we are getting a
20 lot of information there. You mentioned LSAs. So let's break
21 that down. You talked about a four-pip spread. Three pips to
22 the company, and then one pip to the lender?

23 A Correct.

24 Q Now, take me to the next part of what you said. Let's
25 make sure we are breaking this down into steps so that it's

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1 clear how this plan was intended to work.

2 A Right. So the three pips were used by the company for
3 all of its expenses including paying the lender service
4 agents.

5 Q Say that last part again.

6 A Including paying the lender service agents.

7 Q Who are the lender service agents?

8 A So those are people who introduced us to people who made
9 a loan. So, for instance, I know Mr. Duran has been mentioned
10 in this courtroom. Mr. Duran brought Mr. Kihnke who testified
11 here as his loan -- the person he bought a loan from. So
12 Mr. Duran -- Mr. Kihnke would get one basis point. Mr. Duran
13 would get a quarter of one of the three basis points we earned
14 for compensation for bringing in that loan.

15 Q Let's do a comparison of a person who just comes to you
16 directly. Explain how a lender coming to you directly, not
17 being referred by anyone, how would the spread -- how was the
18 spread intended to help that person or to help OIG in earning
19 revenue?

20 A Well, if a person came directly, they would just get the
21 one pip. There would be no one getting a referral fee. So
22 OIG would earn all three pips on the other side.

23 Q Now, you gave an example of someone who may have an LSA
24 who may have referred another person to OIG?

25 A Correct.

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1 Q If you can just go through that example again of how
2 would the spread work in that example where it's OIG, a person
3 referring, and a lender.

4 A Sure. So the lender always gets the one pip. Now added
5 to the three pips that OIG earns, we are going to give a
6 quarter of that pip to the lender service agent.

7 Q And that was the plan that was in place with respect to
8 spread at the beginning of 2017 or throughout 2017?

9 A It was before the loan program was initiated. That was
10 the business model that I created.

11 Q With respect to the forex trading that you were doing at
12 the time, we're talking about 2017, was there any particular
13 strategy that you were taking with the percentage of funds
14 that you were trading?

15 A Yes. So it was always a rather small percentage of the
16 total funds that we would use as a collateral deposit at ATC,
17 but what we would do is we would represent a hundred percent
18 of the funds on ATC's Spotex website. So that way the spread
19 allocations can be made accurately and correctly to each
20 person for their full balance of their loan.

21 Q What was the reason for only using a small percentage of
22 those funds?

23 A Well, it's a lot of lessons over a lot of years,
24 especially from 2008, but what I wanted to do was use a small
25 percentage of it, collateralize the account at ATC with the

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1 full amount, trade as if I had the full amount with only a
2 small deposit, hold the rest of the funds back either in banks
3 or hard assets like real estate, gold and silver. Because
4 cash in the bank, you need a certain amount to operate your
5 business on a monthly basis, but cash in the bank is sitting
6 there earning nothing while inflation depreciates the value of
7 it. So instead of holding it in cash, I would rather hold it
8 in real estate or gold and silver or other assets that
9 actually will increase in value as inflation goes higher.

10 Q How did this plan strategy that you had in place work in
11 2017?

12 A It worked well. It was the first year. We only went
13 from March to December. We were -- I believe we were net
14 positive \$1.6 million at the end of December of 2017. Then
15 you had to take back out the -- you had to back out the
16 brokerage fees and the rollovers. But all in all for the
17 first year of business for a new model, I thought it was
18 fairly successful.

19 Q Who was doing the forex trading in 2017?

20 A 2017 I believe it was me solely. I may have hired one of
21 the traders towards the end of the year, but it was certainly
22 me the majority of the year.

23 Q And that would have been from March to December of 2017?

24 A Correct.

25 Q What was your day like, an average day in 2017, if you

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1 were the only person who was trading?

2 A Well, from Sunday at 5:00 p.m. until Friday at 5:00 p.m.,
3 you are pretty much on all the time. So it's 18 hours a day,
4 sometimes waking up in the middle of the night because I would
5 set alarms on my phone so if prices got to certain levels it
6 would wake me up, but it was around-the-clock business. And
7 at that point in time it was just me, but you are trying to
8 make it work and didn't want to bring on another trader until
9 I was sure the process was going to work.

10 Q What is it about forex trading that makes it an
11 around-the-clock business? And break that down into pieces
12 for me.

13 A Sure. So the day starts in Wellington, New Zealand,
14 rolls to Australia, Japan, Europe, you know, Frankfurt,
15 Germany. So it keeps coming as the sun comes. So it goes
16 around the world and never shuts down. If we're in the middle
17 of the night here, Europe and Asia are very active. So you
18 always have opportunities, and there is always trading going
19 on 24 hours a day.

20 Q Is it fair to say that there are markets that are open
21 throughout an American business day?

22 A Absolutely. It's opened not only 24 hours, but there are
23 very few holidays that are holidays in all countries. So
24 other than Christmas and New Year's, there are no holidays.

25 Q When we are talking about markets, we are talking about a

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1 U.S. market, correct?

2 A Correct.

3 Q What other markets would be involved in your average
4 daily trading that you were doing for forex?

5 A Well, the European market, London and the ECB. You have
6 Asia obviously, the bank of Japan. It goes around the world.
7 So every country, every area of the world is included. And
8 different parts are active at different times because of
9 obviously the time. So when Australia is very active, we're
10 sleeping. And when we are very active, they're sleeping, but
11 there is always trading.

12 Q Is there any break, when there is no trading?

13 A No.

14 Q What about Sunday?

15 A Well, yeah. From Friday at 5:00 p.m. -- I'm sorry. From
16 Sunday at 5:00 p.m. until Friday at 5:00 p.m. So you have a
17 break from 5:01 Friday night until 5:00 Sunday night.

18 Q As these loan documents and accompanying paperwork are
19 coming in, who is the person who is reviewing these loan
20 documents that are coming in?

21 A Well, they would go through the back office.

22 Mr. Paniagua would look at them first. However, the wires
23 would come in directly to Mainstream. So Joe Anile would see
24 the wires as they came in and notify Mr. Paniagua that a loan
25 was consummated.

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1 Q And I did not address this, but it was brought up in
2 Mr. Joseph Anile's testimony. At some point why was there a
3 change in the back office from Mr. Frank Anile to Mr. Joe
4 Paniagua?

5 A Frank had passed away.

6 Q And do you remember when that happened?

7 A It was sometime in 2016 prior to us converting to the
8 loan agreement.

9 Q How soon after Mr. Frank Anile passed away, did Mr. Joe
10 Paniagua take over the back office?

11 A Pretty much immediately. He just needed a few days to
12 get up to speed, but he was back there immediately.

13 Q How was it that Mr. Paniagua was hired?

14 A Mr. Paniagua again was a very close friend of Frank Anile
15 and also the Anile family. So Joe -- when Frank passed away,
16 Joe recommended that we hire Joe Paniagua.

17 Q And how did the transition from Frank Anile running the
18 back office to Joe Paniagua running the back office, how did
19 that go? How was it?

20 A It was pretty seamless. I mean, Joe Paniagua called Dave
21 Manoukian at ATC. He got up to speed with how the software
22 works. Joe is a numbers guy. He was probably better than
23 Frank just specifically with numbers and spreadsheets and
24 things like that. So Joe got up to speed within days, and it
25 was seamless at that point.

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1 Q At the end of 2017, there's a Christmas party?

2 A That's correct.

3 Q What was the reason for OIG hosting a Christmas party?

4 A Well, it was a new program. We had what I thought was a
5 fairly successful year just from the point of view that we put
6 the model together, we began to build the business based
7 around that model. Everybody involved was all people that
8 pretty much I knew or met through Ambit, the majority of them.
9 So it was really like, okay, let's bring everybody down. We
10 had just purchased a building in Longboat Key, but we hadn't
11 closed yet, but we wanted people to come down, see the
12 building, get to meet us if they hadn't and also get to meet
13 each other.

14 So it was kind of like a little bit of a marketing
15 event that we all get together, but also a little bit of a
16 thank you for being part of the group. So it was just a
17 really nice time.

18 Q Of the people who were at the party, who were invited to
19 the party, were they all lenders?

20 A 95 percent of them were. There were a few friends that I
21 had made in Sarasota. Since they were local, I just said why
22 don't you come. And also Mr. Anile invited a few of his
23 friends I believe from outside of the state.

24 Q There was a sizable money that was spent for this
25 Christmas party.

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1 A That's correct.

2 Q Any regrets about spending that amount of money for the
3 Christmas party in 2017?

4 A In 2017, looking at it -- I looked at it as an event that
5 we did absolutely zero marketing. We spent no money on
6 marketing. So I looked at it as something that was marketing,
7 advertising. Like Mr. Kihnke says, he spends hundreds of
8 thousands of dollars marketing his business. So at that point
9 in time we had a fairly break-even, slightly positive year. I
10 thought it was a good idea to bring it down.

11 Now, the cost was a little bit more than I had
12 anticipated because Joe handled what everything was as far as
13 after we made the agreement with them to use their facility.
14 Joe made a decision about open bars and certain food and
15 things like that. So it was a little bit more than I had
16 anticipated, but if you take an advertising budget and divide
17 it by 12, it was roughly about \$10,000 a month for the company
18 to use as an advertising budget.

19 Q Rolling out of 2017 and into 2018, what was your daily
20 work day like at the end of 2017?

21 A It was getting extremely busy because at that point in
22 time we were trading but we were pursuing many different types
23 of potential deals. We were purchasing real estate. So there
24 was a lot more going on than just trade every day.

25 Q If you know, what was Joe Paniagua's daily life like in

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1 particular towards the end of 2017?

2 A Joe was just incredibly busy. He was working around the
3 clock. I would speak to him sometimes at 2:00, 3:00 in the
4 morning. He was still up doing things. So he was a
5 workaholic, but we needed him to be like that because there
6 was an enormous amount of work that needed to be done.

7 Q At the end of 2017 things are going pretty well for your
8 first year. Are there any decisions that you, Mr. Anile make
9 about hiring more people?

10 A Yes. Well, in 2017 as the business started to grow, I
11 went to Joe and I said I think we need a professional CFO.

12 Q Let me hold you right there. What is a CFO?

13 A A chief financial officer.

14 Q And now go ahead and explain why you thought you needed
15 one.

16 A Well, we were growing a little bit faster than I thought
17 at the initial stages, and I realized how complicated the
18 business was going to get with all the other outside
19 investments we were doing. So I went to Joe and I said -- you
20 know, he's the legal guy, he's the compliance guy. I said we
21 need a finance guy, someone who can crunch the numbers.

22 Q After having -- was this a one-time -- I don't want you
23 to get into the subject matter, but was this a one-time
24 conversation that you had with Mr. Anile?

25 A No. It was ongoing from mid 2017 through the entire time

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1 frame.

2 Q Was this a conversation that you were having with anyone
3 else who worked at OIG?

4 A I may have mentioned it to Joe Paniagua. I know Joe
5 Paniagua mentioned to me that he had mentioned to Mr. Anile
6 also that we needed a CFO. Joe was extremely busy back there,
7 and he just felt like, you know, we need a CFO here.

8 Q When you say Joe was really busy, are you saying Joe
9 Paniagua was really busy?

10 A Yes.

11 Q Who was performing the chief financial officer's duties
12 during 2017?

13 A It was Joe Anile.

14 Q How was that working out?

15 A Well, I didn't really know because he said -- every time
16 I asked him, he said I've got it, I'm handling it, I've got
17 Peachtree software, I've got everything on the computer. At
18 some point when we are ready, we will hire a chief financial
19 officer and I will just turn everything over to them.

20 Q At any point did you suggest a particular person who you
21 thought could fill that role of CFO?

22 A Yes, I did.

23 Q And what was -- without saying what he said, what was
24 Mr. Anile's response to who you suggested?

25 A He said no.

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1 Q Was he open to having a conversation about it?

2 A No.

3 Q At any point did Mr. Paniagua suggest that it be
4 important for OIG to hire a CFO?

5 A Yes, many times.

6 Q Do you know whether or not Mr. Joe Paniagua spoke to
7 Mr. Joe Anile about that?

8 A I know he spoke to him, but I don't know how many times,
9 but he specifically told me at some point in time during '18
10 that --

11 MR. MURRAY: Objection, Your Honor. It's hearsay.

12 THE COURT: Sustained.

13 BY MS. IRVIN:

14 Q At any point did Mr. Anile agree that OIG needed a CFO?

15 A Yes. Towards the middle to the end of 2018.

16 Q Was a person hired to be the CFO?

17 A Yes. It wasn't the person I wanted, I suggested.

18 Q Who was the person that was hired to be the CFO?

19 A It was Mr. Anile's personal CPA from many years back.

20 Q What's his name?

21 A John Caliendo.

22 Q When did he start in the position of being a CFO for OIG?

23 A I believe officially right at the end of 2018, the very
24 end.

25 Q Let's talk about Mr. Anile's salary. When OIG first

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1 started, was there an agreement as to how much Mr. Anile was
2 going to be paid for his services to OIG?

3 A Yes, there was.

4 Q What was that agreement?

5 A \$10,000 a month.

6 Q Over what period of time?

7 A It never changed.

8 Q Was that agreement in writing?

9 A No, it wasn't.

10 Q How did the \$10,000 amount come about?

11 A When we first got started, Joe told me for him to be a
12 full-time active partner, that's roughly what he would need.
13 So at that point in time I agreed. And I believe I paid him
14 for the first 18 or 20 months. So I had -- at that point I
15 had control and I paid him \$10,000 a month.

16 Q When you said that you paid him \$10,000 a month, what was
17 your understanding that Mr. Anile would be paid for?

18 A Legal and compliance work as a partner in the firm.

19 Q And also president of OIG?

20 A Correct.

21 Q You said that you paid him over the course of about 18
22 months?

23 A Eighteen to 20 months, I believe.

24 Q And \$10,000 every month?

25 A Yes. I think there were a couple months that it might

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1 have been a little bit more and the next month I made it a
2 little less because he needed more for one month. So it came
3 out -- at the end of the total time I paid him, it averaged
4 out to 10,000 a month. It might have averaged slightly lower
5 than that.

6 Q Would that be from the beginning of OIG all the way
7 until -- what point are we talking about okay?

8 A So it was actually before the formation of OIG when we
9 were just gathering everything and trying to decide which way
10 to go. And I paid him every single month until OIG was funded
11 and the Fund Administration account was open.

12 Q Once the Fund Administration was open, did anything about
13 the way Mr. Anile was paid change?

14 A Yes. He had control of the checkbook at that point in
15 time. So he was paying himself.

16 Q And what was your understanding, despite the fact that he
17 now had control of the checkbook, how much he would be paid?

18 A \$10,000 a month.

19 Q Did you ever check to see if he was paid, paying himself
20 \$10,000 a month?

21 A No.

22 Q At any point did you come to learn that he was paying
23 himself more than \$10,000 a month out of that account?

24 A Yes.

25 Q How much did you learn that he was paying himself above

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1 the \$10,000, if you know?

2 A Well, I didn't learn until after this event happened when
3 we were shut down, but it was considerably more than \$10,000 a
4 month.

5 Q Why wouldn't you have a written agreement with Mr. Anile
6 to contract not just for the amount that you were paying him,
7 a written contract, but also to set out what his job duties
8 were? Why not have just a written contract to make it easier?

9 A Well, in retrospect I wish I did. However, Joe was an
10 attorney. I trusted him. I trusted him implicitly. I
11 trusted him as a brother. I mean, he was the type of guy who
12 came from a different pedigree than I did. I was a small
13 business owner. Joe came from the upper echelons of different
14 types of companies. He introduced me to people on a regular
15 basis that were at the upper echelon of investing and
16 business. And I trusted him.

17 Ray and I felt we were honored to have this guy as
18 our partner because, you know, two guys like us have a guy
19 like Joe Anile who has all these credentials as their partner,
20 we thought this is great. You know, we have nothing to worry
21 about. Joe takes care of all the legal and the compliance.
22 As long as he guides us and tells us what to do, we're good to
23 go.

24 Q As a part of Mr. Joe Anile's position as the attorney for
25 OIG, he testified that there were times that he hired outside

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1 counsel. Do you recall that testimony?

2 A Yes, I do.

3 Q And did you know that there were times that he hired
4 outside counsel?

5 A Absolutely. He always told me that any time we had to do
6 business in a different jurisdiction like the Cayman Islands,
7 like New Zealand, like Belize, that he had to hire local
8 counsel and that he would interact with them and make sure
9 everything was done according to what we needed.

10 Q Was there any other time that you can recall that he
11 would hire outside counsel for work that you all were doing
12 for OIG?

13 A Sure. So when we purchased the initial broker-dealer, he
14 hired Drohan Lee in New York City to do that transaction.

15 Q As a part of that transaction, where is it that you
16 were -- OIG was looking to purchase the broker-dealer?

17 A That broker-dealer at the suggestion of Jack Drohan was
18 in New Zealand.

19 Q What happened in OIG's attempt to purchase a
20 broker-dealer under your name?

21 A We could not.

22 Q And what was the reason for that?

23 A So when -- well, when I applied in Belize initially --
24 this is before OIG was even formed -- I learned that the
25 bankruptcy I had was a statutory disqualification. So the

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1 people who were giving me all the paperwork and providing the
2 service to make the application should have informed me ahead
3 of time because I disclosed the bankruptcy on the forms. They
4 should have informed me that that's a statutory
5 disqualification. They didn't. We spent the money to have it
6 done. We put it through, and it was rejected simply because
7 of that statutory disqualification.

8 Q Had you known that your bankruptcy which you disclosed
9 was a statutory disqualification, would you have even applied
10 for the broker-dealer in Belize?

11 A No. It would have made no sense.

12 Q What would you have done instead?

13 A Well, I would have obviously sought the advice of an
14 attorney to figure out which direction to go. I made that
15 decision prior to OIG being formed.

16 Q Did Mr. Anile ever hire outside counsel for the purchase
17 of real estate that OIG was seeking to acquire?

18 A Not outside counsel for advice, but we hired a law firm
19 to complete the transactions.

20 Q Would Mr. Anile in had your experience be the primary
21 attorney who would be handling those various real estate
22 transactions?

23 A Yes.

24 Q Let's start talking about some of those transactions.
25 You talked about Longboat Key. What's the Longboat Key

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1 building?

2 A The Longboat Key building was our company headquarters.
3 It was a beautiful building on Sarasota Bay. And it came up
4 for sale, and we thought it would be not only a great property
5 to run the business out of but a great investment to, you
6 know, secure some capital and to have that capital
7 appreciating while we were operating out of there.

8 Q Explain what you mean about how that particular office
9 building would have been financially or was financially
10 beneficial to OIG.

11 A I believe we purchased it for 1.7 or 1.75. We did some
12 renovations. And I don't know what the current appraisal is,
13 but it's worth considerably more than we paid for it.

14 Q Timing wise, what year did you -- or what part of the
15 year in 2017 did you purchase the office building?

16 A We purchased it in the fall. I think we closed sometime
17 either December or January of '18.

18 Q Was this the first purchase that you made real estate
19 wise with respect to -- that OIG made real estate wise?

20 A I do not believe so. I think 13318 Lost Key Place was
21 purchased prior to the building.

22 Q And what was that property?

23 A So that was a private residence. I was renting a home at
24 13315 Lost Key Place. 13318 was empty. The owners were
25 looking to sell it and do owner financing. I looked at the

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1 property. They were selling it for what I thought was a good
2 price as far as for the potential appreciation. So we decided
3 to purchase that property through OIG. So OIG owned that
4 property. And then we had the private mortgage, which was a
5 three-year balloon. So we paid interest only for three years.
6 And at the end of the three years we completed the obligation
7 and paid off the mortgage.

8 Q Who was living at that residence?

9 A I was living at that residence.

10 Q Who owned that residence?

11 A Oasis International Group.

12 Q Was that residence listed as an LLC or a limited
13 liability corporation?

14 A Yes, it was.

15 Q Do you know the reason for that?

16 A Yes. So Mr. Anile told me that every single property we
17 buy, even though it's going to be owned by the parent company,
18 should be put in what you call a single-purpose entity. So he
19 created an LLC to purchase each property. And the LLC that
20 purchased that property was owned either by Oasis
21 International Group or Oasis Management depending on which
22 company was buying it.

23 Q For the Longboat Key office, under what entity -- who
24 owned that? OIG?

25 A Oasis International Group.

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1 Q Okay. And what about Lost Key?

2 A Lost Key was owned by Oasis International Group.

3 Q Are those the only two properties that OIG acquired
4 during 2017?

5 A I believe so. I mean, I don't know a hundred percent.
6 6300 Midnight Pass, I'm not sure if that was '16 or '17.

7 Q Among the properties that OIG was seeking to acquire, to
8 buy, what was the point of purchasing this property?

9 A That was very simple. Instead of having all this cash in
10 the bank, you take some of that cash, you put it into real
11 estate, protect the cash from just sitting in a bank doing
12 nothing. And the real estate, you are going to achieve
13 capital gains eventually as you hold the property. All the
14 properties we purchased were properties that we made sure we
15 were purchasing at a price that would be advantageous to the
16 company for capital gains in the future.

17 Q Were improvements made to those properties that were
18 purchased by Oasis International Group?

19 A Sure. Some were for sure.

20 Q In total, do you know how many properties OIG owned by
21 the time they were closed in 2019?

22 A Well, we owned a total of 11 properties between Oasis
23 International Group and Oasis Management.

24 Q What kinds of properties were those?

25 A Some of them were very expensive homes. Some of them

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1 were condos, inexpensive condos that were just built that we
2 bought prior to the development completion so we got it at a
3 very good price. And we paid for it in full so there was no
4 mortgage on it. We have had a beach condo that we were
5 planning on renting on a regular basis because that's what
6 people did in that building. However, that facility was hit
7 by a tornado a couple of years before we purchased it on
8 Siesta Key and there was damage to the area. So what happened
9 was the condo complex had just gotten a settlement from the
10 insurance. There was a tremendous amount of work being done.
11 So we didn't want to have people coming and renting that
12 facility until the work was completed because Joe thought it
13 would be a liability. If somebody got hurt with all the
14 construction going on, they would sue us. So he said let's
15 not do any renting until everything is done. At that point in
16 time those condos sometimes rented for \$3,000 or \$4,000 a week
17 during the season.

18 Q Outside of that unexpected event that caused that
19 property not to be a rentable property right away, were the
20 other residences, whether condo or home, was someone living in
21 those residences?

22 A Most of them, yeah, I believe so.

23 Q So let's talk about the house that you were living in.
24 What's the address of that house?

25 A 13318 Lost Key Place.

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1 Q And that was an LLC?

2 A Correct.

3 Q What was the reason for you living in that particular
4 house if it was an LLC owned by Oasis?

5 A Oh, so initially we figured you purchase a house, you
6 live in it for a couple years. You are going to take good
7 care. You are going to make sure it's well maintained. And
8 then you're going to turn it over and sell it in a couple
9 years, two or three years later hopefully for a profit.

10 Q Did you make improvements to the home you were living in
11 at the time?

12 A 13318, limited improvements, but we made some.

13 Q Was there a second house that was purchased that you
14 intended to move into as your primary residence?

15 A Yeah. So in 2018 Oasis Management purchased Lacantera
16 Circle.

17 Q What was the reason for that purchase?

18 A It was the same owners that owned the 13318. They had
19 called me and asked if I would be interested in purchasing it.
20 And I asked them would you make the same deal where you did
21 owner financing. And they said, yes, they would provided the
22 down payment was enough that they could do whatever they had
23 to do. So we made that deal with them again.

24 Q What was your intention about moving into that residence?

25 A So when we purchased Lacantera, we purchased it at what

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1 we thought was an excellent price because it was a very
2 beautiful property, oversized, waterfront view in the back.
3 It was on a lake. There was a waterfront view in the front
4 also because there was a big pond in the circle. So it was
5 really a prestigious piece of property. So we felt like we
6 would do some renovation on it, sell the 13318 property, which
7 was now worth probably 30 percent more than we paid for it,
8 move into that property for a short period of time because it
9 was just me and my wife and it was a huge property, but we
10 thought we would move in, give it a couple of years to
11 appreciate, and then put that one back on the market also.

12 Q Did you make improvements to the Lacantera house?

13 A Substantial ones, yes.

14 Q And the reason for the improvements was for what purpose?

15 A Well, it was a very, very high-end house on a beautiful
16 piece of property. And the interior was kind of -- the house
17 was built and never finished. Then the people we purchased it
18 from, they bought the house. The husband was sort of a
19 handyman so he did a lot of the work himself. And it really
20 wasn't done up to standards of that type of house and that
21 type of neighborhood.

22 So what we did was we said -- we went in, I brought
23 in a contractor, I told him what the goals were. He explained
24 what he would do. We did a tremendous amount of work. And
25 then we were shut down prior -- probably two to three weeks

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1 prior to it being completed.

2 Q And again, what's the end goal for Lacantera Place for
3 that residence? What's the end goal for that?

4 A I believed that within two or three years we could flip
5 it for a million-dollar profit.

6 Q Do you know if Mr. Anile was living in a home that was --
7 in a residence that was owned by either OIG or Oasis
8 Management, LLC?

9 A Yes, he was.

10 Q What was his address?

11 A 4064 Founders Club Drive.

12 Q Do you know when he moved into that residence?

13 A It was I believe sometime in late 2017 or early 2018. I
14 don't remember.

15 Q Was the plan for Mr. Anile's residence to also fall under
16 the umbrella, if you will, of Oasis?

17 A Yes. It was owned by Oasis International Group and it
18 was also financed by the owner.

19 Q Was there a similar end goal to live in the house for a
20 certain period of time and then basically sell it for a
21 profit?

22 A Yes. Joe hated gated communities. He wanted to move --
23 Joe Anile did not like gated communities. So he was there
24 temporarily.

25 Q There were a number of other smaller residences, some

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1 condominiums or smaller homes. Tell me about what was the
2 reason for OIG or Oasis Management, LLC, acquiring those
3 properties, and what was that goal.

4 A Well, the goal is always to make money. It was a process
5 of diversifying our portfolio, buying assets that would
6 appreciate as the dollar would depreciate, which is always my
7 reason for going into this business in the first place. After
8 2008, I felt that the problem was never solved, it was papered
9 over. And I thought the next crisis was going to be a dollar
10 crisis. So my goal was to then try and create assets that
11 would appreciate as the dollar depreciated, meaning as the
12 dollar depreciates, you have inflation, so you want your value
13 of your assets to go up at least as fast or faster than the
14 rate of inflation.

15 Q You said that the goal was to make money. To make money
16 for whom?

17 A For OIG.

18 Q And in turn, making money for OIG meant what?

19 A It means you can keep your promises to your lenders.

20 Q Of these other smaller residences and condominiums, if
21 you recall, who lived in them?

22 A So I purchased four condos at Lakewood National for Oasis
23 Management prior to Lakewood National being completed. So I
24 got preconstruction prices. So I purchased the first one for
25 Vinny Raia because he was coming down.

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1 Q And who is Vinny Raia?

2 A He worked for our company.

3 Q What was his job at your company?

4 A He was specifically for property management.

5 Q So one of those condos was for him?

6 A Yes. And he paid the company rent.

7 Q Who else?

8 A The second condo I believe was -- well, there were two
9 right away. Jordan Buckingham and his wife who worked on the
10 Roar of the Lion project, he lived in one and he also paid us
11 rent.

12 Q Any other OIG employee live in any of these residences
13 that were owned by OIG?

14 A The third one, Deb Cheslow. So she worked for us
15 full-time. She was moving from Daytona where she had her life
16 over there, and she was moving on very short notice. So I
17 told her she could live there. She signed a lease with us,
18 but I said I would waive the rent for the first few months
19 until she got settled. She had to incur some expenses to buy
20 new furniture and different things. And then my son, Steven,
21 who was working for Roar of the Lion, had the fourth condo.

22 Q What was the reason for having OIG or OM, LLC, employees
23 living in condos that were also owned by the company?

24 A Well, first of all, condo purchases were just great
25 investments. We purchased them at the perfect time. And then

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1 we're bringing people in from out of state to work for us. So
2 it was close by as far as the proximity to where I lived and
3 where Joe lived and also to where the office was. So if you
4 had to go into the office, you weren't right there but you
5 were 10 miles away.

6 Q Were there any plans to build a new office?

7 A Build a new office?

8 Q Or move into a new office?

9 A No.

10 Q So you were staying at the office location?

11 A Oh, 444 Gulf of Mexico Drive was going to be our -- we
12 were renovating the upstairs. And we were going to move our
13 offices upstairs and either rent the downstairs floor or use
14 the downstairs floor for other businesses as we needed it.

15 Q If you had been able to move into the Gulf of Mexico
16 office, what would have happened to the original office for
17 OIG? What would you have done with that?

18 A The original office was on Lakewood Ranch Main Street.
19 We just rented it. So once we were able to move into the
20 building, we obviously let that lease expire.

21 Q Is there anything that was particularly unique about the
22 Gulf of Mexico location?

23 A Oh, it was incredibly unique. It was waterfront
24 property, a boat dock in the back. It was just a tremendous
25 piece of property.

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1 I remember when Matt Kihnke came for the first time,
2 and he is a real estate expert and a builder, and he looks at
3 it and says, you guys hit the jackpot with this one.

4 Q What was the reason that that was a particularly unique
5 property?

6 A It was unique because, Number 1, it was on the water.
7 Number 2, it was part of a condo complex. There were three
8 buildings on one large piece of property. The front property
9 was Michael Saunders real estate on Longboat Key. The second
10 building was the administrative facility for the Longboat Key
11 Club which was across the street, and then there was our
12 building which was on the water.

13 Q Was there a plan or discussions with you and Mr. Kihnke
14 about purchasing that property?

15 A Yes.

16 Q Tell me about that.

17 A Well, Michael Saunders had owned --

18 MR. MURRAY: Objection. Hearsay.

19 BY MS. IRVIN:

20 Q Without saying what anyone said --

21 A Sure.

22 Q -- what were your plans?

23 A Right. We purchased our building from Michael Saunders.
24 She owned that piece of property. She also owned the front
25 piece of property on the street. So she owned it, the real

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1 estate agent. The middle piece was owned by a large hotel
2 complex that took over the Longboat Key Club. So when we saw
3 it, the front building we were thinking was coming up for sale
4 because it looked like she was retiring and she was
5 liquidating a lot of properties. So our objective was to buy
6 her property. We would have two out of three votes in the
7 condo complex so our votes would be a majority. And at that
8 point in time we thought about using the entire property for
9 construction of a condo complex. That was Matt's business. I
10 was going to leave that to him, but that was the plan.

11 Q How would the acquisition, the purchase of that land help
12 OIG financially?

13 A It would have been an enormous -- if it was built and
14 successfully marketed the way Matt had marketed his other
15 properties, it would have been an enormous success.

16 Q How would that have affected any of the lenders at OIG?

17 A We would have a tremendous amount of profit built into
18 the company and therefore more protection for their loans.

19 Q Did that property fit into your plan for purchasing real
20 estate as a part of the diversification you were seeking for
21 OIG?

22 A Yes, it did.

23 Q In addition to real property, were there other
24 opportunities that you were seeking to diversify OIG?

25 A Yes.

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1 Q Tell me about those.

2 A There were multiple companies that we were looking at.
3 However, the one that we actually had physical control over,
4 Mirror Innovations, we had purchased 51 percent of the company
5 without putting up any money. We made a deal with the owners
6 that were unable to market and manufacture the product that
7 they had. So we were able to -- we felt we were able to
8 successfully do what they needed. They gave us 51 percent of
9 their company provided that we achieved a certain amount of
10 success in two years. Otherwise, the patent would revert back
11 to them.

12 So we made a deal that we would take over the patent,
13 own 51 percent of the company. At that point in time we would
14 have two years to achieve a certain level of sales. And if we
15 didn't, we would revert the patent back to them. If we did,
16 we would be fully vested and own 51 percent of the company and
17 control the patent 100 percent.

18 Q So let's break that down into smaller pieces.

19 A Sure.

20 Q What was the product?

21 A The product was a very unique patented film that was able
22 to be produced and put onto mirrors anywhere, in any arena or
23 any venue, restaurant, anywhere in the country or the world.
24 The company had gotten a bid for \$5 million for Citi Field
25 where the New York Mets play. However, they didn't have the

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1 ability to produce it. They didn't have the money to produce
2 it. So that's when they looked to us to maybe help them and
3 do something.

4 Q How does a person like you who is running OIG, doing
5 forex trading, acquiring real estate properties, how are you
6 finding out about this opportunity?

7 A So this opportunity came from a very good friend of mine
8 who is in New York. He was actually an investment advisor in
9 New York. They were his personal friends. The gentleman who
10 invented the film actually passed away. And the two other
11 guys were just investors. They had no expertise. They had no
12 knowledge of how to run the business or what the business even
13 entailed. So at that point in time my friend put them in
14 touch with us. I think I flew up to New York to meet them.
15 We discussed it. I came back and gave Joe Anile my reports
16 from what they were doing, what they said, and I asked Joe to
17 then contact my contact in New York and see if we could make a
18 deal.

19 Q So let's try to keep this in smaller pieces.

20 A Okay.

21 Q Why does it matter to OIG? It sounds very interesting,
22 but what impact, if anything, is acquiring this product, how
23 is that going to impact your business?

24 A We thought it could be an enormous opportunity as far as
25 the business opportunity. However, we also realized that it

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1 was going to be an enormous amount of capital to make it work.
2 So therefore we had a specific plan. And that plan was
3 supposed to be implemented the week after we were shut down.

4 Q Taking it in parts again because it's a lot to take in,
5 what were the terms, as you understood them, that OIG would be
6 responsible for, that you would be responsible for doing if
7 you decided to go through with this agreement?

8 A Sure. Well, we closed on the business. We actually own
9 51 percent and we had control of the patent. So that was
10 done. Those documents, Joe Anile, he did them all. All the
11 agreements were done. He had me come and sign all the
12 agreements. So all of those companies were set up. We owned
13 51 percent of the company. That was done.

14 At that point in time, Joe Anile said this is going
15 to be way over our heads but I have the right people who could
16 handle this. So he called a good friend of his in New York
17 who owns -- who is a CEO of a multibillion-dollar publicly
18 traded company and asked his assistance. We were then put in
19 touch with a company that was the parent company of the
20 Gannett newspapers. And Joe had a meeting with them the
21 following week after we were shut down. My contact in
22 New York had professional films made, professional samples
23 made for Joe to be able to present it to them.

24 Q What is it that you, Joe Anile, OIG intended to do had
25 you been able to go forward with this agreement now that you

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1 owned 51 percent of the patent?

2 A So our discussions were we don't want to get involved
3 with this as far as the risk of producing this and marketing
4 this. We need to turn this over to a company that has those
5 type of contacts and has that type of capital. So Joe made a
6 preliminary -- had a preliminary discussion with this company.
7 He had a meeting with them the following week. And the terms
8 of the deal were going to be that that company take over the
9 entire project for us. They handle the production, the
10 marketing, the distribution, and we get paid a royalty only.
11 So we would have been totally passive. Every piece of
12 material that they sold or distributed, we would have gotten
13 paid a few cents on the dollar, but it was totally passive
14 where we would have had absolutely no risk.

15 Q Again, what benefit to OIG would this agreement have
16 been?

17 A It would have been pure profit. We had absolutely no
18 expenses whatsoever in the deal. We bought the company
19 without paying a penny for it. We acquired 51 percent of the
20 company. And Joe Anile had some contacts within different
21 arenas because his uncle worked for the NFL and was a very
22 predominant person in the NFL at one point. He passed away,
23 but Joe had a lot of contacts. And between this company and
24 the contacts Joe had with certain venues, Joe thought it was
25 going to be the biggest thing we ever did.

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1 Q To what benefit then would that have been to the lenders
2 of OIG?

3 A It would have been beyond beneficial. We would have had
4 profits that would once again be able to anchor the company
5 and secure and collateralize any loan or any interest.

6 MS. IRVIN: Your Honor, may I have a moment?

7 THE COURT: Yes. And while she's -- well, go ahead.

8 MS. IRVIN: I just need to check a document. I
9 didn't know if this is a good time for a break.

10 THE COURT: I think it is. So let's just come right
11 back at 11:00, ladies and gentlemen. Please don't discuss the
12 case or look at outside stuff. We will see you at 11:00.

13 Thanks so much.

14 (Recess taken.)

15 THE COURT: Thank you, ladies and gentlemen. There
16 is nothing worse than judges that complain. So I shouldn't be
17 complaining. It is like a bad look, but they get the chiller,
18 the AC chiller at the same place they bought the PA system.
19 So they say they are running it. It shouldn't have gone off,
20 and thanks for putting up with it.

21 All right, ma'am. Have at it.

22 MS. IRVIN: Thank you, Judge. May I approach the
23 witness with an exhibit?

24 THE COURT: Of course.

25 MS. IRVIN: Your Honor, may I have a moment?

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1 THE COURT: Yes.

2 BY MS. IRVIN:

3 Q Mr. DaCorta, I handed you what's been marked as
4 Exhibit 151. Do you recognize it?

5 A Yes, I do.

6 Q What is it?

7 A It's is the asset purchase agreement between 7Mile
8 Partners, Versatile Media Group, Mirror Innovations, LLC, Ross
9 David Jurman and Mark Vitaliani.

10 Q Does it have a date on it?

11 A Effective as of February 4, 2019.

12 Q Does this document that I handed you fairly and
13 accurately represent the agreement to which you were
14 previously testifying about before we took a break?

15 A Yes.

16 MS. IRVIN: Your Honor, move to admit Defendant's
17 Exhibit 151.

18 MR. MURRAY: No objection, Your Honor.

19 THE COURT: Admitted.

20 (Defendant Exhibit 151 admitted.)

21 BY MS. IRVIN:

22 Q On the front page, Mr. DaCorta, it says 7Mile Partners.
23 Who is 7Mile Partners?

24 A There were several people involved in the deal. I'm not
25 a hundred percent sure who each one. Joe Anile dealt with

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1 these people specifically.

2 Q If you could please turn to Bates No. JSA-C-002164.

3 Mr. DaCorta, are you familiar -- while we are getting to that
4 page number, there are no page numbers at the bottom of that
5 document, are there? In the document that you are looking at,
6 are there any page numbers other than the Bates number?

7 A No.

8 Q So while we are getting to that Bates number,
9 JSA-C-002164, do you recognize the name Versatile Media Group?

10 A Yes.

11 Q And what do you recognize that as?

12 A That was one of the companies that was part of the deal.

13 Q That was part of what?

14 A That was part of the deal. I believe that might have
15 been our company. Joe did all of this. It was just done in
16 February of 2019. So I wasn't a hundred percent up to speed
17 on how he structured the deal.

18 Q Do you see the section that says, "Article II, Offices"?

19 A Yes.

20 Q Under "Article II, Offices," do you recognize an address
21 that's listed in Section 1?

22 A Yes, I do.

23 Q What address is that?

24 A 444 Gulf of Mexico Drive, Longboat Key, Florida 34228.

25 Q What is significant about that address?

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1 A That's the company property.

2 Q Whose name is listed in that same paragraph?

3 A Joseph S. Anile, II.

4 Q Turn to the page that has the Bates No. JSA-C-002479.

5 And do you see at the top of the page where it says

6 "Shareholder"?

7 A Yes.

8 Q Can you explain what that section that shows,
9 shareholder, common stock, and percentage interest means?

10 A Sure. So 7Mile Partners was our company that Joe set up.
11 We purchased -- we acquired 51 percent of the company. The
12 next two gentlemen, Mr. Jurman and Mr. Vitaliani, they were
13 the two partners that had invested in the company when the
14 other gentleman had passed away. So they were retained in
15 this deal. And LNS Consulting was the gentleman who brought
16 the deal to us.

17 Q Is this the same agreement that you testified meant that
18 7Mile Partners and OIG would own 51 percent of the Mirror
19 Innovations patent?

20 A That's correct.

21 Q Would you agree that not all of your private equity
22 dealings were successful?

23 A Absolutely.

24 Q What about a program called Full Spectrum Wellness? Do
25 you recognize that?

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1 A Yes, I do.

2 Q And what was Full Spectrum Wellness?

3 A So Full Spectrum Wellness was formed because of a contact
4 I had in South Florida, a gentleman by the name of Larry
5 Waldman who was in the business of medical devices.

6 Q And how did you come to meet Larry Waldman?

7 A I don't remember exactly. I think he actually met my
8 son, Andrew. And through my son, Andrew, I eventually met
9 Larry.

10 Q And what kind of work did Larry do?

11 A Larry was in the health care industry. So he dealt with
12 different things, marketing things to doctors.

13 Q Year frame wise or time wise, when did you have a
14 conversation with Mr. Waldman about this medical device?

15 A I think it was 2016.

16 Q What was the medical device?

17 A It was called Renua. It was a medical device that was
18 able to monitor and diagnose certain things within the body
19 that wasn't intrusive. So I was always into health and
20 wellness, and I didn't like things when you go for tests and
21 they are intrusive. So I thought that this might be something
22 that we would market.

23 Q What about your experience in forex, in the financial
24 markets, with real estate, made you think that you wanted to
25 be involved in a medical device?

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1 A Well, I know the medical industry, if you can have a
2 device that's useful for testing and it's reimbursed by
3 insurance, there is a significant amount of profit that can be
4 made. So when I'm looking at companies, I'm not looking at a
5 specific company in any industry because I wasn't going to run
6 it. I would bring in people that have that talent and that
7 expertise. It was just a matter of finding the type of
8 company that could return a profit.

9 Q Who would they be returning a profit for?

10 A That company would have been returning a profit for Oasis
11 Management.

12 Q Full Spectrum Wellness was incorporated in what year?

13 A I don't recall.

14 Q You think that it was around 2016 or 2017?

15 A No. It was before that. It was incorporated probably
16 2014 or 2015.

17 Q And did it fall under Oasis Management, LLC?

18 A Yes, it did.

19 Q What was the purpose of Full Spectrum Wellness once you
20 had the opportunity to meet and talk to Larry Waldman?

21 A So Larry introduced me to the company president that
22 produced the machine in Nashville, Tennessee, I believe in
23 December of 2016. At that point in time we went into contract
24 with both Larry and Renua where we would help market the
25 device.

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1 Q Renua was the company that created the medical device?

2 A Yes.

3 Q Were there any expenses that you incurred as a result of
4 trying to develop this medical device?

5 A Yes. So initially Larry Waldman was doing all the work.
6 Larry had met my son. At some point in time we got to a point
7 where we needed someone to come on and help Larry with the
8 marketing. He asked my son if he would be willing to be that
9 person, to take part in that, my eldest son, Andrew. I told
10 them you talk amongst yourselves. If you guys agree, that's
11 fine. Andrew had a job at Starwood Hotels in the Walt Disney
12 with the Swan, Dolphin. So I told him it is a big step. If
13 you want to leave your job and take a chance, that's up to
14 you, but you talk to Larry and you guys make the decision.

15 Q What did Andrew decide to do with respect to leaving his
16 job and starting to do work with Larry Waldman and marketing
17 Renua?

18 A So Larry convinced him that it would be a tremendous
19 opportunity. Larry showed him projections, different things.
20 And Andrew thought, okay, I'm still young, I'll take the
21 chance.

22 Q How old was he when he joined this venture?

23 A He was in his mid twenties.

24 Q What was your understanding of what Andrew's role was
25 going to be in assisting Larry Waldman in marketing Renua?

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1 A So Larry told me that he would take Andrew on all the
2 appointments until Andrew had it down how to present it to a
3 doctor's office or a medical facility. And then once Andrew
4 had proper training, he would send him out on his own and we
5 would be able to cover more doctors' facilities at the same
6 time.

7 Q Was there ever any training that Andrew or Larry Waldman
8 attended with respect to Renua and better understanding the
9 medical device?

10 A Yes. So what happened was Larry was talking with the
11 doctors that we were thinking about placing the medical device
12 with. They needed someone to come in and teach them how to
13 use the device. At that point in time Larry asked my son,
14 Steven, because my son, Steven, was more on the technical end
15 of things that he liked. So Larry asked my son, Steven, if he
16 would be willing to take on that part of the job.

17 Q And what was Steven's decision, if you know?

18 A Steven agreed. And at that point in time I had to fly
19 Andrew and Steven out to Carson City, Nevada, to meet with the
20 company directly and go through a process of training on the
21 specific machine.

22 Q What happened with -- let me ask you this. Larry
23 Waldman, how was he paid with respect to the work that he was
24 doing for Full Spectrum Wellness?

25 A So our deal with him was every machine we placed,

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1 depending on the revenue coming back from each machine based
2 upon the doctor's use of it and insurance reimbursements, he
3 was going to get a percentage of that.

4 Q Was he at any time, for example in 2016, was he receiving
5 a consulting income?

6 A Yes, he was. At the beginning he was receiving
7 consulting income until we had it up and running.

8 Q You talked about some of the expenses, the training and
9 the travel that was needed in order to get Andrew, Steven and
10 also Mr. Waldman up to speed on how best to market the device.
11 Do you know roughly the expenses that Full Spectrum Wellness
12 incurred in 2016 for that?

13 A Well, you mean dollar wise?

14 Q Yes.

15 A Offhand, I don't know. Probably a couple hundred
16 thousand dollars.

17 Q What about in 2017?

18 A I would say again two to \$300,000.

19 Q Okay. What happened to Full Spectrum Wellness's efforts
20 to market Renua?

21 A So what happened was we placed the machine with several
22 doctors' offices. We got very good feedback as to what they
23 liked about the machine. The problem was that the company who
24 manufactured the machine in Nevada told us there would be no
25 problem with insurance codes getting doctors reimbursed, but

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1 that didn't turn out to be true. So every time a doctor used
2 the machine and submitted it for insurance, the insurance
3 would turn them down. Larry told me that was a temporary
4 issue, he'll figure it out. They tried for a while, but
5 eventually they never got reimbursed.

6 We had purchased the machines because our deal was we
7 would purchase the machines, place them with the doctor. The
8 doctor would use them and have to pay us a certain amount of
9 the insurance reimbursement for each test. So at that point
10 in time the machine was a paperweight because no one was
11 getting paid on it.

12 Q What did that mean for your sons, Andrew and Steven?

13 A It meant that their job was no longer in existence, and
14 it meant that we had to take the loss on Full Spectrum
15 Wellness. So at that point in time once we were that far into
16 it and I realized we weren't getting reimbursed, we just had
17 to cut bait and take the loss.

18 Q Keep that in mind, Full Spectrum Wellness, because we are
19 going to transition here and talk about your taxes,
20 specifically your 2017 taxes.

21 In your experience as a working adult, have you ever
22 prepared your own taxes?

23 A Not since I was about 16 or 17 years old.

24 Q Who has been preparing your taxes for the most part,
25 let's say in the last 10 to 15 years?

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1 A Well, I had D'Arcangelo & Company do it for a long period
2 of time.

3 Q And who is D'Arcangelo & Company?

4 A They are a CPA firm in Poughkeepsie, New York.

5 Q Is there a particular accountant or CPA that you worked
6 with at D'Arcangelo?

7 A Yes. Michael Betros.

8 Q For about how long did Mr. Betros prepare your taxes?

9 A I'm thinking -- I had Tarlow & Company in New York City
10 in 2002, 2003. I'm thinking he took over around 2004. So he
11 went from 2004 to 2016.

12 Q Would you recall if he, Mr. Betros at D'Arcangelo
13 prepared your 2015 tax return?

14 A Yes, he did.

15 Q Do you recall if Mr. Betros at D'Arcangelo prepared your
16 2016 return?

17 A Yes, he did.

18 Q What specific returns did he prepare for you?

19 A He prepared my personal returns, Oasis Management
20 returns, and if there was any other businesses involved in
21 Oasis Management.

22 Q Was there a certain way that the two of you would prepare
23 for the filing of taxes every year?

24 A Yes.

25 Q What was that process?

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1 A The first thing I would do is provide him with every
2 single statement for my personal bank accounts and for any
3 companies that he was doing the returns for.

4 Q What would be the next step in the process after you
5 provided those documents to Mr. Betros?

6 A So Mr. Betros had a larger firm. So he had staff
7 accountants so he would then task a staff accountant to go
8 through my bank statements line by line. And then they would
9 call me to ask me if they were unsure if something was
10 business or personal because Oasis Management flowed through
11 to my personal taxes. They would ask is this personal or is
12 this a business expense.

13 Q Was there ever an occasion where you had questions about
14 a tax return that Mr. Betros prepared for you?

15 A You know, I'm the type of guy that the CPA is the expert.
16 I provide him everything. Whatever he asks for, I give him.
17 When he sends it back to me, I look at the bottom line. And
18 I'm not one that understands tax laws. They are very
19 complicated and they change on a regular basis. So I
20 essentially answer any questions he has. He produces the
21 return. He tells me about the return, what went into it, and
22 that's about it.

23 Q If, for example, Mr. Betros contacted you, or someone on
24 his staff, and said that they need additional documentation,
25 what would you do?

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1 A Provide it immediately.

2 Q Did your working relationship with Mr. Betros change at
3 any point and for what reason?

4 A Yes. Well, when I moved to Florida, it's just I like to
5 provide -- wherever I live, I like to give the business to the
6 local area. So when I was down here, there is no reason for
7 me to have a CPA 1,200 miles away. There are plenty of great
8 CPAs right here where I lived in Sarasota. So I just thought
9 it would be better to have a personal relationship with
10 someone that was local in the area.

11 Q How did you go about finding a new accountant or CPA to
12 handle your taxes?

13 A I think I asked a few people in my neighborhood just for
14 recommendations. And once I got those recommendations, I
15 called two or three different offices and made a decision to
16 go visit one of them. And I hired that individual.

17 Q And who was that?

18 A That was Mr. Mark Burling.

19 Q When did you first meet Mr. Burling, or how did you come
20 in contact with him?

21 A So I spoke to him over the phone and he invited me to his
22 office right in Lakewood Ranch. I believe it was Town Center.

23 Q When you met with him, what returns did you ask him to
24 prepare for you?

25 A Well, I sat down with him and I told him this is

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1 complicated because we have a lot of moving parts and there
2 are things that are just getting started so I'm going to have
3 to give you a long explanation. And at that point in time I
4 explained to him what Oasis Management did. I explained to
5 him my role. I explained to him we had another company called
6 Oasis International Group. I explained to him that Oasis
7 International Group owned the home I was living in but I was
8 paying the mortgage with Oasis Management.

9 Q Did you discuss at any point the recent transition that
10 Oasis Management, LLC, had been making from limited partners?

11 A Yes. I told him that we were going to be changing, that
12 this would be the last return as limited partners and we were
13 going to be switching to a loan system, the same as OIG,
14 because my goal was to make it parallel and then eventually
15 have OIG and Oasis Management completely merged.

16 Q Why would it be important for you to tell Mr. Burling
17 about the change that was going on at OM, LLC, regarding those
18 limited partners?

19 A Well, he would have had to provide the return, do the
20 return, and it had to be an end return, I understand, because
21 we were changing the whole structure of the company. So he
22 had to file it differently than if we were continuing.

23 Q As a part of this meeting that you had with Mr. Burling,
24 did you tell him about the process that you generally used
25 with your previous accountant, Mr. Betros?

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1 A Yes, I did. I told him the exact process, and I gave him
2 D'Arcangelo's phone number, gave him Mike Betros's contact
3 number, and I said please call him and consult with him. Tell
4 him to transfer my records, and he will be very helpful with
5 you. I already let him know that I will be making the change,
6 and just ask him any questions you need to ask.

7 Q I may have asked you this already, but do you recall
8 where you first met Mr. Burling?

9 A Yes, at his office. It was Town Center Parkway or
10 something in Lakewood Ranch. It was just --

11 Q Do you recall about what time of year this was?

12 A No.

13 Q Did you ever meet with Mr. Burling anywhere other than at
14 his office?

15 A Yes. At my home.

16 Q And what was -- which home? What address?

17 A 13318 Lost Key Place.

18 Q About how many times did you and Mr. Burling meet at your
19 home address?

20 A I would say two times maybe.

21 Q If you remember, where would you meet with him?

22 A Yes. I met him in my personal office.

23 Q Was there a particular order -- since this was a
24 complicated set of tax returns, was there a particular order
25 in which documents had to be prepared in order to assist

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1 Mr. Burling in being able to complete both the Oasis

2 Management taxes and your individual taxes?

3 A Yes. As I remember, the limited partner part of it had
4 to be done first. And then after all the limited partner K-1s
5 were done, everything remaining flowed to my personal taxes.

6 Q As far as you understand it, you just mentioned a form
7 called a K-1. What do you understand a K-1 form is?

8 A It's a partnership tax form. It just means that you
9 weren't paid on a W-2 or 1099. You're part of a partnership.

10 Q Do you know if there is anyone at Oasis International
11 Group or Oasis Management, LLC, that helped provide
12 documentation to Mr. Burling to assist in preparing the K-1
13 forms for the partners?

14 A Yes. Butch Lyle.

15 Q Why Butch Lyle?

16 A Butch handled the tracking of all the limited partners,
17 their balances and any interest or any -- at that point it was
18 profit for them but it was interest for Oasis Management
19 because I was receiving -- if you want me to explain that, but
20 it's a little bit more complicated.

21 Q Sure. Go ahead.

22 A So Oasis Management put their funds with Oasis
23 International Group. Oasis Management is earning spreads from
24 Oasis International Group, not necessarily trading profits.
25 Those funds, because they're still limited partners, have to

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1 report it to the partners as profits. So therefore that's
2 the -- in 2016 that's the way it worked because they were
3 limited partners for the last year, not lenders.

4 Q And the person who kept track of those amounts, it sounds
5 like it was Butch Lyle; is that correct?

6 A That's correct, yes.

7 Q You also mentioned that there was a certain way that
8 these taxes had to be filed. So did one return have to be
9 filed before the other, as far as you know?

10 A I really don't. I just know that the corporate --
11 usually the limited partnership return has to be filed first,
12 and then my personal taxes would be filed after.

13 Q Do you recall whether your personal return was filed on
14 time in 2017 or if there was an extension?

15 A I believe he filed an extension for both the company and
16 the personal.

17 Q Do you recall how long that extension was?

18 A I believe you get six months, but I believe the corporate
19 return is due a month before the personal return, if I
20 remember correctly.

21 Q And so it's your understanding that Mr. Burling sought an
22 extension for both your personal return and for the
23 partnership returns?

24 A That's correct.

25 Q In the process of preparing to meet with Mr. Burling to

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1 prepare your taxes, what documents did you provide

2 Mr. Burling?

3 A When Mr. Burling came to my home, I knew the process
4 because I knew it was going to be the same exact process as
5 D'Arcangelo. So I would have to give him my personal tax
6 returns, my Oasis Management tax returns. I'm sorry. My
7 personal bank statements, the Oasis Management bank
8 statements, and Full Spectrum bank statements because Oasis
9 Management owned Full Spectrum.

10 Q Did you have any communications with Mr. Burling about
11 why he was filing the extensions for the returns?

12 A No. He just said it's a tremendous amount of work and he
13 asked if I would mind if he went on extension.

14 Q At any point during the process of gathering documents,
15 did Mr. Burling go back to you and ask for additional
16 documents?

17 A I don't recall.

18 Q What happened when you received the tax returns to review
19 and sign?

20 A When he sent me the return, I looked at the bottom line
21 and there was a \$400,000 loss.

22 Q And what did you think when you saw that?

23 A I thought \$400,000 is a big number on any tax return,
24 positive or negative. So I thought something is not right.

25 Q As a result of seeing that bottom line number, what did

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1 you do?

2 A I made a phone call to Mr. Burling.

3 Q As a result of that phone call, what did you understand
4 was going to happen with your tax return?

5 A So I called Mr. Burling and --

6 MR. MURRAY: Objection. Hearsay, your Honor.

7 THE COURT: Well, why don't you approach.

8 (Bench conference on the record with all counsel
9 present.)

10 THE COURT: So you're going to have him say what
11 Burling said and what Burling said to him, what he said to
12 Burling and what Burling said to him.

13 MS. IRVIN: I don't want him to say what each person
14 said. I would rather have what was his understanding after he
15 had the phone call so that we can understand why he then took
16 the steps to go forward with the return and sign it and have
17 it filed.

18 THE COURT: All right. And why isn't this part of
19 his good faith defense reliance upon the CPA?

20 MR. MURRAY: It's not a relevancy objection, Your
21 Honor. Just the only basis for that testimony is going to be
22 what Burling said. So it's just a rephrasing hearsay.

23 THE COURT: All right. But why isn't that relevant
24 to his state of mind and as to reliance defense?

25 MR. MURRAY: It is relevant. We are not contesting

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1 relevance.

2 THE COURT: So what are you saying?

3 MR. MURRAY: It sounded like they were making a phone
4 call. He was about to say what Burling said.

5 THE COURT: I know. Suppose he did. Isn't that
6 hearsay admissible as relevant on his state of mind?

7 MR. MURRAY: I suppose so, Your Honor.

8 THE COURT: Well, let's just see if you can do the
9 understanding so we're not so rank on a hearsay.

10 MS. IRVIN: Thank you.

11 (End of bench conference.)

12 BY MS. IRVIN:

13 Q Mr. DaCorta, without saying what Mr. Burling said, you
14 mentioned that you had a phone call with him. As a result of
15 that phone call with Mr. Burling, who is preparing your taxes,
16 what was your understanding?

17 A My understanding was that the number on the return was
18 correct, and then I signed it.

19 Q During that phone call, again without saying what
20 Mr. Burling said, did you ask questions of him?

21 A Yes, I did.

22 Q Do you recall any of the questions that you asked him?

23 A Yes, I do.

24 Q What were some of those questions?

25 A The Number 1 question was I see a large loss. I know I

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1 lived all -- you know, I lived the entire year. I spent
2 money. I live in the house, and I thought the house -- even
3 though Oasis Management was paying it, I thought there is
4 potentially income liability there. So I told him, are you
5 sure it's correct?

6 Q Any other questions that you recall asking him?

7 A No, other than was it correct and my concerns that the
8 loss seemed too large to me.

9 Q Despite your thought that the loss was too large, did you
10 sign that tax return?

11 A Once he assured me that it was correct, I signed it.

12 Q And at the time that you signed it, was that after the
13 conversation that you had with Mr. Burling?

14 A Yes, it was.

15 Q Did whatever explanation that Mr. Burling made make sense
16 to you?

17 A Yes. I mean, I'm not an accountant, and unfortunately I
18 don't look -- I just look at the bottom line, and that was
19 probably a mistake on my part, but I took his advice and I
20 signed it.

21 Q As a result of taking his advice, were you relying on his
22 knowledge and experience as a CPA and accountant?

23 A Yes. I mean, I always rely on not only a CPA but an
24 attorney. Anything that has to do with business that's
25 outside of my expertise, I always rely on someone that's

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1 licensed or is an expert in that field.

2 Q At the time that you signed and submitted the return, did
3 you believe it to be accurate based on the explanation that
4 Mr. Burling gave to you?

5 A I did.

6 Q Now, in talking about the private equity deals that you
7 have looked at as a part of OIG, we have talked about one that
8 was set to be successful, Mirror Innovations, and one that
9 didn't end up quite as successful as you wanted it to be, Full
10 Spectrum Wellness?

11 A Correct.

12 Q Was there another company that OIG or Oasis Management,
13 LLC, was involved in that was one where there was success?

14 A There was one that had just recently been launched. So
15 we anticipated success with it.

16 Q And what was that company?

17 A Roar of the Lion Fitness.

18 Q What was Roar of the Lion Fitness?

19 A Roar of the Lion was a health and fitness company.
20 Essentially what it did was it produced both supplements from
21 an herbal side and also a sports nutrition line.

22 Q I think I have asked this question in a different way,
23 but you are a person who is involved in forex, you have a
24 financial background, you certainly have experience in
25 acquiring real estate. Why are you getting involved in a

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1 nutritional supplement company?

2 A I was a nutrition buff since I took sports medicine in
3 college, and it's something that always interested me.

4 Q How did the idea of Roar of the Lion products come about?

5 A Well, both my sons besides their regular schooling also
6 took a course in integrated nutrition in Manhattan. It was a
7 special nutritional program. So they both had some experience
8 and some knowledge and some interest. My oldest son, Andrew,
9 had a lot more interest in that specific part than my middle
10 son, but at that point in time I had already met with HP
11 Ingredients a year or two before. They are a company in
12 Sarasota, Florida, that actually produces the raw materials.
13 They take in the raw materials for supplements, and they had a
14 scientist on staff that helped develop the products.

15 Q What's the reason for taking a protein supplement? Why
16 would you take it?

17 A The protein side was different. That was the herbal
18 side, but the protein side is simply -- anyone who works out
19 or goes to the gym usually is looking for a protein
20 supplement.

21 Q So this was more than just one product?

22 A It was multiple products.

23 Q In addition to the protein supplements, what were the
24 other supplements that Roar of the Lion developed?

25 A So there were seven herbal products, one for each chakra

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1 that my son developed with the scientist at HP Ingredients.
2 Then we produced a protein powder, both vanilla and chocolate
3 that was all natural, no sugars or no artificial anything in
4 them. We produced a creatine product, preworkout product. I
5 think that's about it.

6 Q Time frame wise, you said you mentioned that you met with
7 somebody in Sarasota. What was the time frame that it took?
8 How much time did it take for you to develop the products that
9 Roar of the Lion had?

10 A From the very beginning until launching, probably a year
11 and a half.

12 Q Over what period of time? 2017 into 2018?

13 A We launched it on an online store and began selling
14 product I believe early 2019.

15 MS. IRVIN: Your Honor, may I approach the witness?

16 THE COURT: Yes.

17 BY MS. IRVIN:

18 Q Mr. DaCorta, do you recognize the -- and just watch the
19 paper on the microphone. The document that I just showed to
20 you, do you recognize it?

21 A Yes, I do.

22 Q What is it?

23 A Those are some of the products that Roar of the Lion
24 Fitness produced and marketed.

25 Q Did you have the opportunity to look through all six

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1 pages, seven pages?

2 A Yes. The protein is not here.

3 Q Do these documents in front of you fairly and accurately
4 represent some of the products that Roar of the Lion produced
5 to sell?

6 A Yes.

7 MS. IRVIN: Your Honor, move to admit Defendant's
8 Exhibit 152.

9 MR. MURRAY: No objection.

10 THE COURT: Admitted.

11 (Defendant Exhibit 152 admitted.)

12 MS. IRVIN: May I publish?

13 THE COURT: Yes.

14 BY MS. IRVIN:

15 Q So Mr. DaCorta, looking on the first page, what were
16 these supplements for?

17 A So we had all seven chakras, one product for each. We
18 produced and launched the first three. We were going to step
19 out and do a couple, like the next four, like every couple of
20 months introduce a new one. And the preworkout, obviously
21 it's a prework out. You would take that before going to the
22 gym. And the creatine powder, most people usually mix it with
23 the protein powder after a workout.

24 Q So if we look at the very bottom one, the largest
25 container, it says "Preworkout"?

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1 A That's correct.

2 Q Next to it, it says "Creatine Tri-Power"?

3 A That's correct.

4 Q So these would be supplements one might take before
5 working out?

6 A Yes. Those would be sports nutritional products.

7 Q And what about the "Empower" bottle that's listed at the
8 left? It believe it says "Detox." What is that for?

9 A That's a detox. So that one was for -- I don't remember
10 specifically exactly what each -- I know "Impassion." I know
11 "Awaken" and "Power," it was something to do with detoxing,
12 but I'm not a hundred percent sure. My son developed these.
13 So I was just there to help market it and put the business
14 together.

15 Q And the second page, I think shows those same containers
16 but the back side that shows the ingredients; is that correct?

17 A Yes.

18 Q This was quite an endeavor creating these products it
19 seems. Can you explain how -- after meeting with the person
20 that you met with in Sarasota, take us through the road of
21 developing the products that end up in these bottles for sale.

22 A Oh, it was an enormous amount of work, not just the
23 products but containers, labels. You had to bring on also a
24 company to handle producing the website, make it an online
25 site. You had to then integrate a sales tax company, because

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1 when you're online you can sell in any state. Therefore, you
2 have to pay sales tax in that state. There was enormous
3 amount of work with just the development and the specific
4 formulations for each of the seven herbal products. It took
5 an extensive amount of time. It was mixing and matching
6 different ingredients, different percentages of different
7 ingredients. And my son worked with the scientist at HP to
8 get that done.

9 Q At what point were these products then ready to sell?

10 A They were ready to sell and being sold early 2019.

11 Q How were they being sold?

12 A They were being sold in an online store. So we had a
13 website. We had -- Jordan Buckingham created a marketing plan
14 where we would do all sorts of ads on Google, Facebook. He
15 had the whole social media thing going on. We produced videos
16 at the gym to then put on the website or put in ads, short
17 ads. So there was a tremendous amount of effort put into this
18 company.

19 Q What kind of financial effort was put in for the things
20 that you are talking about, marketing, product development,
21 the actual packaging?

22 A Sure. I mean, it had to be at least five to \$600,000
23 when you consider all the inventory because we had all our
24 inventory produced. It was all shipped to a company on the
25 east coast of Florida. We had software that when someone

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1 ordered online, the order would go to the shipping company.
2 The shipping company would send and bill for it, but we would
3 know every product sold and how we were going to get paid for
4 it. So there was a lot involved, but we were at the point
5 where we launched. And at the time we launched, with the
6 inventory included, it had to be somewhere between five and
7 \$600,000.

8 Q Five hundred to \$600,000 that you had spent to get this
9 company off the ground with products ready to launch?

10 A Correct.

11 Q What time frame was the company Roar of the Lion online
12 and ready to launch inventory?

13 A It was already launched and selling product in 2019.

14 Q And do you know when it started? Did it start in 2018 or
15 did it start in 2019?

16 A We may have made a few sales in 2018, but I think that
17 the big launch was in early 2019.

18 Q Do you know what the inventory was that was being held at
19 the beginning of 2019 when you launched online?

20 A I don't know specifically off the top of my head, but I
21 know it was in probably a thousand containers of creatine, a
22 thousand of each protein flavor. It was somewhere between 500
23 to a thousand per. The smaller bottles might have been more
24 than a hundred thousand. I'm not 100 percent sure.

25 Q In addition to having an online presence to sell this

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1 inventory, were there any steps that Roar of the Lion took to
2 try to sell these products?

3 A Yes, there was.

4 Q What were those steps?

5 A At some point in time I met someone at the gym who owned
6 a -- it was more or less like a smoothie nutritional type
7 storefront next to the Crunch Gym in Sarasota. So he invited
8 me to the store to look it over, and I went there and looked
9 it over and looked at his books and everything.

10 Q What was the purpose of going and looking at his books
11 and talking to him?

12 A Well, we were thinking about purchasing the business. It
13 had about a half million dollars in existing sales, but it was
14 also where you're marketing these type of products. So what
15 we can do is the proteins that he used to make the shakes
16 with, instead of buying the proteins he bought and pay
17 wholesale price, we were producing them. So we had a producer
18 price. So every protein shake we make, we'd have a higher
19 profit margin. And in addition to that, he had one location
20 that was a storefront. He had another location inside an LA
21 Fitness gym, and he had a contract to open up five more within
22 five other LA Fitness gyms over a specific period of time.

23 Q What was Roar of the Lion's plan with respect to the
24 LA Fitness where he currently had a lease?

25 A We were going to -- we actually went to contract. So we

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1 actually met with his -- him, his wife and his broker at
2 444 Gulf of Mexico Drive in our conference room. I made a
3 deal to purchase the company for \$193,000. And we were
4 planning on closing on May 15, 2019.

5 MS. IRVIN: Your Honor, may I approach with an
6 exhibit?

7 BY MS. IRVIN:

8 Q Mr. DaCorta, I just handed you Defendant Exhibit 147.
9 What is it?

10 A It seems like the agreement we made with the company and
11 some of their financials, and also their lease agreement with
12 LA Fitness.

13 Q Does this fairly and accurately represent the contract
14 that you entered into with Mad Nutrition Smoothies?

15 A Yes, it does.

16 MS. IRVIN: Your Honor, we move to admit
17 Defendant's 147.

18 MR. MURRAY: No objection, Your Honor.

19 THE COURT: Admitted.

20 (Defendant Exhibit 147 admitted.)

21 BY MS. IRVIN:

22 Q Mr. DaCorta, on the front page of this exhibit there is
23 some writing. Do you recognize the writing?

24 A No, I don't recognize the writing. I think it may have
25 been their broker.

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1 Q Pardon?

2 A I think it may have been the seller's broker who put that
3 together.

4 Q If you could please turn to page 2. At the top of
5 page 2, who is Mad Nutrition Smoothies?

6 A That was the company we were looking to acquire.

7 Q And the point of this contract was to do what exactly?

8 A We were purchasing their entire business operation.

9 Q And at the top of this page, what does it say?

10 A "Facility License Agreement."

11 Q Do you see where it says "Recitals"?

12 A Yes.

13 Q What does it say is the name of the company that is
14 listed there?

15 A LA Fitness.

16 Q And again, what's the point of LA Fitness in relationship
17 to the agreement that you have with Mad Nutrition?

18 A So Mad Nutrition had one storefront that was a standalone
19 storefront that was next to a Crunch Fitness. However, they
20 also had another location within an LA Fitness gym in a
21 different part of Sarasota, and they used to sell their
22 smoothies inside the gym.

23 Q How does this agreement benefit OIG?

24 A Well, this would have benefited Oasis Management.

25 Q Pardon me. I knew that. How does this agreement benefit

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1 Oasis Management, LLC?

2 A Well, Oasis Management owned Roar of the Lion, and Roar
3 of the Lion was selling product online. But when you also
4 would have had a physical presence in two locations and adding
5 four or five locations within gyms, the sales should have
6 increased. The amount of exposure, the brand would also
7 increase. So the bottom line is you are in business to make
8 money, and that's what we were looking to do.

9 Q What were your intentions in entering into this agreement
10 with Mad Fitness and in leasing the space in LA Fitness? What
11 did you anticipate was going to happen if you were able to see
12 that through?

13 A We'd increase the business substantially because they had
14 about five to \$600,000 of existing sales. And in addition to
15 that, when you put it all together under the Roar of the Lion
16 umbrella and put all the products together, we envisioned we
17 would have a company that would be very profitable in a very
18 short period of time.

19 Q Was this also an opportunity to be able to sell the Roar
20 of the Lion products in an actual storefront?

21 A Absolutely.

22 Q What happened to Roar of the Lion Fitness?

23 A It was taken over by the receiver when we were shut down,
24 and it was just abandoned.

25 Q Do you know what happened to the inventory?

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1 A I think it was destroyed.

2 Q We talked about how there was a change in business model
3 from 2016 to 2017. Is there any change in business model from
4 2017 into 2018 for OIG?

5 A Yes.

6 Q What is that?

7 A It's the same model, but what we needed to do was we
8 needed to enhance the customer service part of the business.
9 And we needed to automate some of the operations in the back
10 office.

11 Q What were the changes or modifications that you were
12 making to make that happen?

13 A So at that point in time, Mr. Anile wanted to make
14 everything electronic. So what he did was he put a plan
15 together, and then we created -- we tasked Joe Paniagua as the
16 project manager, and then he hired his brother who was a
17 programmer, computer specialist to write the program.

18 Q What's Joe Paniagua's brother's name?

19 A John Paniagua.

20 Q At what point during 2018 did John Paniagua start working
21 for OIG with respect to that program that you are discussing?

22 A Right. I mean, he was working as a contractor, not
23 actually as an employee. So it had to be early mid 2018 where
24 they started testing the concept.

25 Q Any other changes to the business model or plan going on

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1 with OIG in 2018?

2 A Well, once that was completed, then the way it worked was
3 everyone had to re-register their loans through that portal.
4 They had an opportunity to review all the documents. If they
5 no longer wanted to proceed, they would then tell us and we
6 would send them their money back. If they wanted to proceed,
7 they would sign the document, agree to the terms, and we would
8 move forward.

9 Q Is that similar to what OIG did in the transition from
10 2016 to 2017?

11 A Pretty much the same process exactly.

12 Q Are you aware of lenders who decided to not go forward in
13 2018 with OIG?

14 A Yes. There was more than one.

15 Q Are you aware of those lenders getting their money sent
16 back to them?

17 A Yes, they did.

18 Q Was there any change in the forex trading plan, or did
19 that same forex trading plan stay the same as it had been in
20 2017?

21 A Well, the plan changed because of the fact that we did
22 incur losses in 2018. So at that point in time I wanted to
23 slow the trading down and reverse those, give us an
24 opportunity to make up those losses. So it changed a little
25 bit because we were slowing down the day-to-day, in-and-out,

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1 every-moment-of-the-day trading, and we did a little of that,
2 but we built a silver position at that point in time.

3 Q So let's talk about the losses in 2018. How was 2018
4 profit and loss wise different than 2017 profit and loss wise
5 for OIG?

6 A Well, in 2017, we were fairly slightly positive to break
7 even. In 2018, we definitely suffered losses on the P&L side.

8 Q As a result of the losses that you saw on the P&L side,
9 what action, if any, did you take? And let's do it step by
10 step anything that you did.

11 A Well, the first thing was to slow down the trading. You
12 wanted to take a corrective process. Your shift is moving in
13 a certain direction and the waves are too big. You kind of
14 turn your sales and go in a different direction.

15 So at that point in time you realize that the system
16 due to the market conditions that year wasn't working the way
17 it was designed to work. So you had to make an alternative
18 move. So what we did was we slowed down the trading. I
19 informed our traders that we would slow down the trading. We
20 would build a silver position, and we would trade the silver
21 position in and out based upon the fluctuations in silver,
22 which are a little bit more slow. They are not like a
23 currency. So you have more time to kind of read charts and
24 see things going in certain directions.

25 Q Okay. Is it fair to say that 2018 was a tough year when

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1 it comes to losses for OIG?

2 A Oh, yes. It was not a good year.

3 Q In light of the fact that there were losses in 2018, a
4 lot of the evidence that we have heard, some of the evidence
5 that we have heard, has been about cars that you purchased,
6 plane rides that you took, private plane rides that you took.
7 Let's talk about that. Okay?

8 Let's first talk about salary or compensation. How
9 did you compensate yourself or how did OIG or Oasis
10 Management, LLC, compensate you for the work that you were
11 doing every day since Oasis Management, LLC, started or Oasis
12 International Group started? How were you compensated for
13 your work?

14 A So I did not get paid from Oasis International Group. I
15 got paid from Oasis Management.

16 Q And how did that work?

17 A So Oasis Management would put capital with Oasis
18 International Group. And just like an LSA would get paid on
19 the percentage of the basis points, that's how I got paid for
20 Oasis Management. So as our volume increased, our IB account
21 would build up in the amount of dollars that were in that
22 account for me to recognize as Oasis Management revenue. And
23 from that revenue, I would make a decision what I can spend,
24 what I can't spend.

25 Q Was there an agreement in place that said Mr. DaCorta

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1 gets paid X amount of money for the work that he does for
2 Oasis Management, LLC?

3 A No, because at that point Oasis Management had loans
4 only. My obligation was to pay those loans and pay interest.
5 And anything that flowed through Oasis Management was
6 eventually going to float to my personal taxes.

7 Q Was there any agreement that was in place that said this
8 is how much Mr. DaCorta is going to be compensated by OIG for
9 the work that he is doing in forex trading?

10 A No.

11 Q So how did you decide how much money to withdraw from an
12 account to pay yourself or to pay your bills?

13 A So again, I am being paid by Oasis Management, not Oasis
14 International Group. Oasis Management has a certain amount of
15 funds at Oasis International Group. And Oasis Management is
16 earning those funds into their IB account. At that point in
17 time, I only have a small percentage of the funds at Oasis
18 International Group. So I could use -- I could leave it there
19 and continue to earn more spreads on it or I could take it
20 back. But the way I did it was we always had enough capital
21 in our operating account so I didn't have to bring the
22 money -- I mean, I did make some withdrawals from Oasis
23 International Group. There are certain withdrawals, but I
24 didn't withdraw it on a regular basis.

25 Q Let me ask it a different way. How did you decide how

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1 much to take out to pay your own bills?

2 A It was basically a day-to-day thing depending on how we
3 were doing.

4 Q So if you had to pay an electric bill, where was that
5 money coming from?

6 A Right. I took the money as my bills came up. I didn't
7 have a set salary.

8 Q So if you had an electric bill, where did you pay that
9 from?

10 A I would most likely move it from Oasis Management to my
11 personal account and pay it. There are times I would pay it
12 directly from Oasis Management simply because it would flow
13 back to me anyway.

14 Q If you had to make a payment on a car note, where, what
15 bank account would that payment come from?

16 A So Oasis Management would transfer the funds to my
17 personal account, and I would write the check from my personal
18 account.

19 Q Knowing what you know now, would you still do it the same
20 way?

21 A No.

22 Q How would you do it differently?

23 A Well, I would have insisted that we had a CFO in 2017.

24 And I would have put the -- instead of having an outside
25 accountant, I would have had a CFO that had the full picture

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1 of the whole business and someone professional that could
2 handle that type of job. And they would have advised us in
3 the correct way to do things. It was --

4 Q Go ahead.

5 A It was a very sloppy setup because we were doing so many
6 different things at the same time, and we were kind of feeling
7 our way as to what we were going to do and how we were going
8 to do it. We changed a couple of times. So we were really in
9 desperate need of a CFO much earlier. And I blame myself for
10 not insisting upon it because I asked Mr. Anile to hire one
11 and he kept turning me down.

12 Q Would it have been easier what you know now to just sort
13 of designate a salary for yourself?

14 A Oh, yes.

15 Q Knowing what you know now, would it just have been
16 smarter to designate a salary for Mr. Anile?

17 A Yes.

18 Q There is some testimony about cars that you owned. What
19 can you tell me about those cars and their purchases?

20 A Sure. So I had a Range Rover Evoque, which is the lowest
21 level Range Rover. It was on the lot as a leftover from the
22 year before. I think I purchased it in 2015 or 2016. I
23 purchased that car with a seven-year loan attached to it.

24 Q Where did the funds for that car note come from to pay
25 each month?

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1 A That would have been transferred from Oasis Management to
2 my personal account. And I would have paid the loan with my
3 personal account.

4 Q What other vehicle did you own at that time? And we are
5 talking about 2018 now.

6 A I think at that time I had a Mustang. I'm not a hundred
7 percent sure. I might have had a Dodge Caravan.

8 Q At one point you owned another Land Rover; is that
9 correct?

10 A Yes. That was later on.

11 Q When you owned that Land Rover, was that on a loan or did
12 you pay it outright?

13 A There were three cars. Two had notes. The other Range
14 Rover, the white one I paid in full.

15 Q What about the Maserati?

16 A The Maserati had a seven-year loan.

17 Q Knowing that OIG had losses in 2018, why was it okay for
18 you to have what are considered to be luxury vehicles?

19 A Well, I believe they were purchased in 2017. And in 2017
20 we were having a fairly good year. In 2017, I had substantial
21 spreads that were being accumulated at Oasis Management.

22 Although I didn't pull them all back, I took some back. I
23 don't remember exactly the amount. But when I looked at the
24 overall picture -- I believe one of them was purchased in the
25 spring of 2017. At that point in time I was projecting out

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1 that the company was going to be growing and successful. And
2 I really didn't think there was any problem with owning a
3 vehicle. I worked 18 hours a day, six, seven days a week
4 between all the different projects we were doing. So I just
5 thought it's a car. I mean, I know it's an expensive car, but
6 I felt like I put in the effort and I was putting in the work
7 that was equivalent to the expenditure.

8 Q Some of the testimony also talks about trips that you
9 took. So let's first talk about vacations. How many
10 vacations do you think you went on with your wife over the
11 course of your 34-year marriage?

12 A Thirty-four years, I mean, not a tremendous amount, but I
13 know specifically from 2009 to the 2019, we went on four
14 vacations totaling a total of 25 days. So that's
15 approximately 2.5 days of vacation a year.

16 Q There was some testimony about a trip that you took to
17 the Caymans. Do you recall what that trip was for?

18 A That was our thirtieth wedding anniversary. That was the
19 first time we went away without the kids since our honeymoon.

20 Q There was also testimony about a trip that you and your
21 wife took to Italy?

22 A Yes.

23 Q Tell us about that.

24 A So our daughter had to take -- well, she took a course in
25 Florence through Rollins College. It was part of the

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1 curriculum and the program they offered her. So she went for
2 that course in Florence. I believe it was a two- or
3 three-week course. And we had never been to Europe, never
4 been to Italy. I always wanted to go. So at that point in
5 time we said wouldn't it be nice to meet her there when her
6 course is over and we will just stay ten days and fly home.
7 So we drove down to Miami to get a flight directly to Rome on
8 Alitalia Airlines, and we flew coach to Rome.

9 Q In addition to vacation, the handful of vacations that
10 you mentioned, there is also testimony about three trips that
11 you took on private planes.

12 A That's correct.

13 Q What were the reasons for taking those trips, generally
14 speaking, those three trips on private planes?

15 A Well, the first one was a very tight schedule. I think I
16 went on a Friday and came home on a Sunday. I had to meet the
17 person who -- I believe that was the same person that brought
18 us Mirror Innovations on -- I don't know if it was
19 specifically about Mirror Innovations at that time or if it
20 was another deal he was bringing us, but I went up there to
21 meet him. My parents lives up there. Carolyn's mom lives up
22 there. They are in their -- at the time I guess they were in
23 their late eighties. So while I was up there for the day, I
24 thought I would get to see them also.

25 Q Do you recall when that trip that you are talking about

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1 occurred? Would that be around 2017 or 2018?

2 A It was 2017.

3 Q And do you recall about what month it was?

4 A I believe July.

5 Q What was the reason why you chose to take a private plane
6 for that trip that weekend?

7 A Well, I was the only trader at the time. So the way the
8 schedule was on the regular flights, I would lose Friday and
9 Monday as two trading days. So when I calculated roughly what
10 we would do in revenue and the cost of the plane, I thought I
11 would come out ahead.

12 MS. IRVIN: Your Honor, may I approach the witness
13 with exhibits?

14 BY MS. IRVIN:

15 Q Mr. DaCorta, I have just handed you Defendant's 309 and
16 310.

17 A Yes.

18 Q Take a look at those and tell me if you recognize them.

19 A I do.

20 Q First as to 309, what is it?

21 A That is a statement for the trading I believe for the
22 Friday before. Yes, Friday before I left.

23 Q And it is a statement from where?

24 A It is a statement from the back office from Spotex.

25 Q For what company?

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1 A It's an Oasis statement.

2 Q Does it fairly and accurately represent the Oasis account
3 summary from July 13, 2017, to July 14, 2017?

4 A Yes, it does.

5 Q And what about Defendant's 310? Do you recognize that?

6 A I do.

7 Q What is it?

8 A That is the same statement for the same account only it's
9 the 17th, the Monday. So one is for the Friday, and the next
10 one is for the Monday.

11 Q Does this Exhibit 310 fairly and accurately represent the
12 Oasis account summary that you have in front of you?

13 A It does.

14 MS. IRVIN: Your Honor, move to admit Defendant
15 Exhibits 309 and 310.

16 MR. MURRAY: No objection, Your Honor.

17 THE COURT: Admitted.

18 (Defendant Exhibits 309 and 310 admitted.)

19 BY MS. IRVIN:

20 Q I'll publish on the Elmo.

21 Mr. DaCorta, when I see this account listed right
22 here, what does that account mean?

23 A Well, it says "Read Only" because this is the -- after we
24 were shut down, we were provided access, read only, so nothing
25 could be changed.

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1 Q That's not generally what it would say, correct?

2 A No.

3 Q What can you tell me about what's listed on the front
4 page of this account summary? What is this showing me?

5 A Those are the closed positions for that day. So
6 positions we had and we closed.

7 Q Let's now turn to -- let's use the top example, "Symbol."
8 Or actually, we'll use the second one. What is this one?

9 A That's the euro against the U.S. dollar.

10 Q What is this next column?

11 A That's the volume we did that day in that currency.

12 Q Next to that?

13 A That is the average price that we bought or sold it at.

14 Q What about the next column?

15 A Gross P&L.

16 Q What's that mean?

17 A That means the P&L including any charges.

18 Q Meaning profit and loss?

19 A Right, yes.

20 Q Rollover?

21 A Rollover is if we had to pay interest if we held any of
22 the positions overnight.

23 Q What about dividend?

24 A Dividend is just there. But in our case there would
25 never be anything in dividends.

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1 Q What's the difference between gross P&L and net PL?

2 A Net PL is just the bottom line P&L.

3 Q Let's move to the third page of Exhibit 309. This looks
4 like these are the totals. What's important for me to note
5 about this page?

6 A So this was specifically just for the results for the
7 Friday before I left. And the profit and loss for Friday was
8 \$43,968.07. The spread take was \$70,533.99. We paid \$8,000
9 in brokerage fees and \$2,400 in rollovers. So we had a fairly
10 substantial day to the upside.

11 Q So let's go through this again. The profit and loss for
12 that Friday, July 14.

13 A Correct.

14 Q Before you took that trip is this information, correct?

15 A That's correct.

16 Q So the profit and loss at the end of the business day
17 that day was \$43,968.07?

18 A Correct.

19 Q And the spread was \$70,533.99 at the end of that day?

20 A Yes, it was.

21 Q And that's the Friday before you went on this quick trip
22 up to either do business and/or see family?

23 A Right.

24 Q If you could then turn to Defendant's Exhibit 310. What
25 dates are listed on this account summary?

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1 A That's just taking from the close of business on Friday
2 to the close of business on Monday.

3 Q And so when we are looking at the end results when we
4 turn to page 3, those are the end of day results on Monday,
5 July 17?

6 A Yes, that's for one trading day.

7 Q In looking at these totals, what is it that's important
8 for me to look at?

9 A Well, the profit/loss is \$121,533.62.

10 Q What was the spread?

11 A The spreads are \$10,537.73.

12 Q So it was slightly lower than Friday but it was still
13 positive, correct?

14 A On that day we had less volume but just more movement in
15 our direction. So we took a much bigger profit and we made
16 less on the spreads because we weren't trading as much.

17 Q What was your ending balance for that day?

18 A \$1,128,448.14.

19 Q What had allowed you to be able to earn that spread and
20 profit and loss on that Monday -- on that Friday and Monday in
21 mid July 2017?

22 A I was the only trader. So if I wasn't there to trade,
23 there would be no trading.

24 Q If you had decided to take a commercial flight, for
25 example, how might that have changed your plans?

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1 A Well, I remember the schedules were different. So I
2 would have lost Friday and Monday.

3 Q I want to take you to April 18 of 2019. How would you
4 describe that morning?

5 A You saw it on the video. It's hard to describe when you
6 are not used to that type of situation. It was overwhelming,
7 frightening. I can't even think of the words right now.

8 Q Thinking about the moment when you hear the pounding on
9 the door and you open the door, describe how you felt.

10 A Well, I hear pounding on the door and somebody screaming.
11 It's Lakewood Ranch Country Club. It's 7:00 in the morning.
12 So I know something is wrong. I just don't know what's going
13 on. I'm just out of bed. So it's not a pleasant way to wake
14 up. As soon as I open the door, Agent Batsch and Volp had
15 their nine millimeter pistols pointed at me.

16 Q Where was your wife when that happened?

17 A She was kind of coming to the front door hiding behind
18 the wall trying to figure out what was going on.

19 Q Did you understand what was going on at that moment when
20 you had guns pointed towards you?

21 A No. It's a little bit difficult to kind of come to your
22 understandings that quickly when you're confronted with
23 something like that.

24 Q About how much time passed before you were able to fully
25 understand why agents were at your front door?

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1 A Well, I heard someone in the driveway screaming, this is
2 an IRS -- FBI enforcing an IRS search warrant.

3 Q What did that mean to you?

4 A I'm not a hundred percent sure because I've never had a
5 problem with the IRS in my life. So I figured if I had a
6 problem, they would either contact my accountant or send a
7 letter. I didn't expect to be greeted with armed individuals.

8 Q We have heard testimony about you being interviewed in
9 your house. Do you recall about how much time passed between
10 them first entering your house and then you being sat down to
11 be interviewed?

12 A I would say eight to ten minutes.

13 Q Once you were interviewed and in the room, did you know
14 where your wife was?

15 A Not exactly, no.

16 Q Were you concerned about her?

17 A Yes, I was concerned about a lot of things. My wife and
18 my daughter were the Number 1 things.

19 Q While you were being interviewed, did you know where your
20 daughter was?

21 A Not exactly. I mean, I knew they made them come out, and
22 I figured they kind of corralled them and had them under guard
23 somewhere.

24 Q The testimony that at least one of the agents gave
25 reflected that two agents interviewed you in a room in your

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1 house that has a pool table. Do you remember that?

2 A Yes.

3 Q And we know from the testimony that your interview was
4 not recorded, right?

5 A That's correct.

6 Q Would you have wanted your interview to be recorded?

7 A Now I would. But, I mean, at that point I just wasn't
8 really thinking very clearly. I mean, I just wanted to
9 hopefully clear up whatever the issue was. I mean, I felt
10 there had to be some misunderstanding. So I figured let me
11 just speak with them and try to clear this up.

12 Q In the agent's testimony and notes, they related that
13 they told you that OIG and Oasis Management, LLC, was a Ponzi
14 scheme. Do you recall them telling you that?

15 A I believe Agent Batsch said it.

16 Q How did you react to that?

17 A I didn't. I just kind of shrugged my shoulders. At that
18 point I kind of understood now what was going on because the
19 conversation that they had early on made me understand that no
20 one was looking to truly understand the company. They were
21 just looking to validate their preconceived notions.

22 Q At any point during this interview, did you agree that
23 OIG and Oasis Management, LLC, was a Ponzi scheme?

24 A No, I did not.

25 Q At any point during this interview, did you agree or

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1 state that OIG or Oasis Management, LLC, was a fraud?

2 A Absolutely not.

3 Q Why not?

4 A Because it wasn't.

5 Q During the time that you were being interviewed, did you
6 try to explain how your business really worked?

7 A I tried at the beginning, but it was clear that minds
8 were made up. I was told that they had all the documents. I
9 think it took two and a half years to get all the documents,
10 but I was told they had all the documents. I was told our
11 legal agreements are worthless, and I was told -- I believe
12 the word was my silver position or my thought of a silver
13 position going higher was a pipe dream.

14 Q They were in your house taking your documents. You
15 didn't know where your wife or your daughter was. Hours later
16 after they left, how did you feel?

17 A It was just devastating. I mean, I don't think I spoke
18 for three days except trying to call Joe Anile trying to
19 understand what was going on.

20 Q Why Joe Anile?

21 A He was the company attorney. He was the person I relied
22 on for these types of matters. This is exactly why he was a
23 partner. If there was any problem or discrepancy or if any
24 regulator had a question, I mean, I thought they'd send a
25 letter. I thought they would give us an opportunity to sit

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1 down with them and explain. I didn't expect an armed group of
2 individuals with battering rams, a sledgehammer and guns
3 drawn. You know, they said they surveilled me. If they
4 surveilled me, they knew me and my family were very peaceful
5 people. They should have knocked on the door like human
6 beings.

7 Q In calling Joe Anile, what were your reasons for calling
8 him in particular?

9 A I wanted to know if he would be able to get attorneys
10 working on this ASAP. I mean, I said, Joe, what's going on
11 here? Who can you call? He was the guy that always told me
12 he had all these big-time attorney friends in New York. He
13 was all about regulations and all about SEC and CFTC. I said,
14 Joe, this is your time. You go do what you have got to do.

15 Q What did you expect Joe Anile as the OIG president and
16 attorney would be doing?

17 A Well, I expected him to go get us counsel. I knew they
18 took all our money, they took all our assets. There was no
19 way to hire anyone. None of us had any money. So I needed
20 Joe to call in some of the favors he always told me he had out
21 there with all of his attorney friends in New York and try to
22 get us some sort of representation before they just run us
23 over with a bulldozer.

24 Q At any point did Mr. Anile help obtain counsel for you on
25 the CFTC matter?

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1 A Never. He promised phone call after phone call that he
2 was talking with attorneys and he was lining up attorneys for
3 everybody who was a defendant. He delivered nothing.

4 Q At any point did Mr. Anile assist in getting counsel for
5 you on this matter?

6 A No.

7 Q One of the things that you have talked about consistently
8 in your testimony and in a lot of discussions that you've had
9 with other people at OIG and Oasis Management, LLC, is how
10 strongly you feel about the importance of silver.

11 A Yes.

12 Q Why?

13 A Well, as I explained the other day, silver is real money.
14 It's -- like I said, the 1792 Coinage Act explains what a U.S.
15 dollar actually is. It's 371.25 grains of silver. The
16 dollars in your pocket say "Federal Reserve Note" just like a
17 promissory note. It's not money; it's debt. And silver
18 protects you against the depreciation of that wasting asset.

19 And so silver was extremely important to me because I
20 told everyone that I came in contact with since 2008 that the
21 crisis that occurred was never fixed and the next crisis will
22 be a dollar crisis. The dollar is going down in value, not
23 because of a pandemic, not because of an invasion of the
24 Ukraine. It's going down because the federal reserve prints
25 dollars without any regulation or without any constraints

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1 whatsoever. And every time those dollars are printed, the
2 value of your cash in your pocket, in your bank account goes
3 down in value.

4 Q As a result of this pretty strong conviction that you
5 have about the importance of silver, what kind of actions were
6 you taking with respect to what you call a silver position and
7 OIG?

8 A I mean, the physical silver or the --

9 Q First we're just going to talk about the silver position
10 itself.

11 A So the silver position, we were increasing our position
12 as we were getting an increasing amount of loans. So I wanted
13 to properly reflect it. My first goal was to slow down the
14 trading and recover the loss that had incurred in 2018. I
15 purchased it based upon its activity over the last few months.
16 I started buying it in November, I believe. And I fluctuated
17 in the amount we held depending on the price action for that
18 month.

19 Q When you decided to make any changes about the silver
20 position, either buying more or selling, how would you go
21 about doing that? Who would you contact to make that happen?

22 A Who would I contact to sell it?

23 Q To sell it or buy it.

24 A It was all my decisions but I would sell it on the ATC
25 platform.

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1 Q How would you get the money wired or received?

2 A No. So in other words, that position is just like a
3 currency position. It's on the platform. So the money would
4 be in the ATC account. I would use whatever was available in
5 the ATC account to hold the amount of silver that I wanted to
6 hold. If I needed to put more in, I would just send more
7 money over. If silver went up in value, every time it went up
8 in value, it would bring up the equity. So when the equity
9 would go up, I would then have to make a decision if I want to
10 take some off and trade it back and forth a little bit, but
11 it's just a process of back and forth depending on the price
12 action.

13 Q So when you said you would just put in a -- wire in a
14 little bit more money, where was that coming from?

15 A That would come from OIG's Mainstream account.

16 Q Who had access to the OIG Mainstream account?

17 A Mr. Anile.

18 Q So if you decided that you needed money wired in to be
19 able to purchase more silver to increase your silver position,
20 who would you contact to wire that money?

21 A Joe, Joe Anile.

22 MS. IRVIN: Your Honor, may I approach with Defendant
23 Exhibits?

24 BY MS. IRVIN:

25 Q Mr. DaCorta, please take a look at what has been marked

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1 as Defendant Exhibit 311, 312, and 313.

2 A I'm looking at them.

3 Q Do you recognize -- we'll go one at a time. Do you
4 recognize Exhibit 311?

5 A I do.

6 Q What is it?

7 A It's an email from me to Mr. Anile telling him that
8 the --

9 Q Hold on one second. This is an email. We will get to
10 what it says, but do you recognize it?

11 A Yes, I do.

12 Q Does it fairly and accurately represent the email that
13 you would have sent on that date?

14 A Yes, it does.

15 Q Now let's look at Defendant's Exhibit 312. Do you
16 recognize it?

17 A I do.

18 Q What is it?

19 A It's another email.

20 Q And does it fairly and accurately represent the email
21 that you sent on that day?

22 A Yes.

23 Q Looking at Exhibit Number 313, do you recognize it?

24 A I do.

25 Q What is it?

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1 A Another email.

2 Q And does it fairly and accurately represent the email you
3 sent that day?

4 A Yes, it does.

5 MS. IRVIN: Your Honor, we move to admit Defendant's
6 Exhibits 311, 312 and 313.

7 MR. MURRAY: May we have a moment, Your Honor?

8 No objection, Your Honor.

9 THE COURT: They are admitted.

10 (Defendant Exhibits 311, 312, 313 admitted.)

11 MS. IRVIN: Permission to publish Defendant's
12 Exhibit 311 on the Elmo.

13 BY MS. IRVIN:

14 Q So Mr. DaCorta, this is an email that was sent to you to
15 whom?

16 A It was from me to Mr. Anile.

17 Q What does the subject say?

18 A "ATC Wire."

19 Q Can you please read what the email says?

20 A It says, "Joe, silver has not moved at all overnight.
21 Let's send a wire to be safe. I do not know what you have at
22 Mainstream. Send as much as we can and still be comfortable
23 with the balance on hand. We will have more coming within a
24 week. Let me know how much you send so I can alert Dave it's
25 incoming. Mike."

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1 Q What does that mean? What are you telling Joe in this
2 email?

3 A I'm telling him I want to increase the capital in the
4 account at ATC in order to make sure that if silver has an
5 adverse move against us, we can hold the position at the size
6 it's at without selling any.

7 Q Why is it important that silver has not moved at all
8 overnight to your decision?

9 A It hasn't moved up or down. So it's still status quo.
10 So I just wanted to be safe that if the next move might be
11 down a little bit, I would have ample capital to hold it or
12 maybe even purchase more on a downdraft.

13 Q Is this email then just saying have that money available
14 but I may not use it?

15 A I'm saying send some, but I mean when you send money to
16 an omnibus account, it's being held as collateral. At the end
17 of the day whatever your transactions are, if they're positive
18 or negative, it just gets debited or credited from the
19 collateral account. So the money is never actually in the
20 trading account. It's just acting as collateral behind the
21 trading account. You produce the results, and then the
22 account is either debited or credited at the end of the day.

23 Q From this email, how would Mr. Anile know how much to
24 send over?

25 A I didn't know how much balance he had because he was the

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1 only one that had access to that account. So I didn't want --
2 I wanted him to send enough that I'm comfortable -- I wanted
3 him to hold back enough that we were comfortable because we
4 had certain models as to how much goes in and out on a monthly
5 basis, but I also wanted to make sure I had enough to hold
6 that position at that moment in time.

7 Q Lastly in the email, it says, let me know how much you
8 can send so I can alert Dave it's coming. What's that about?

9 A At that point in time I wasn't sure how much he was going
10 to decide to send. So once he decided to the amount, let me
11 know and I would call Dave Manoukian at ATC to provide him the
12 information to know how much is incoming.

13 Q Why would you have to contact Dave Manoukian directly
14 about that?

15 A I always did just to alert them that we are sending a
16 wire. Dave was basically -- he was the president of the
17 company, but he more or less took care of our account for us.
18 So anything we had in or out, anything we needed at ATC, Dave
19 was the point man.

20 Q Dave was the president of the company. Were there not
21 other people that worked below him that might have been able
22 to do the same thing for you?

23 A Yes, but because he was basically my counterpart, we
24 always spoke together.

25 Q Let's turn to Exhibit 312. What's the subject line in

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1 this email?

2 A "ATC Wire."

3 Q And what's the date?

4 A September 4, 2018.

5 Q Can you please read the email?

6 A "Joe, send the wire to ATC for a hundred thousand this
7 morning just for me to hold the silver for now. Thanks,
8 Mike."

9 Q Is there anything significant about this email or this
10 date where you can give us some context as to why you are
11 asking for a hundred-thousand dollar wire?

12 A I probably wanted to increase the amount of money I had
13 in that account just to possess silver. This was before we
14 started building the position in November of 2018. So this
15 would have been just in and out type of stuff.

16 Q Move now to Defense Exhibit 313. What's the subject
17 line?

18 A "FYI."

19 Q What's the date?

20 A March 5, 2019.

21 Q This was approximately one and a half months before
22 April 18, 2019 --

23 A Correct.

24 Q -- when Oasis is shut down, right?

25 What do you say in this email? Please read it.

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1 A I say, "Joe, markets are eerily quiet last few days. No
2 movement at all. Let's send an additional 500K down to ATC
3 today just so we have some dry powder. We are sitting
4 perfectly with silver, but just in case of a small dip on low
5 volume, I want to have ability to sit tight or add a few.
6 Thanks, Mike."

7 BY MS. IRVIN:

8 Q I want to take this in parts. The first sentence,
9 markets are eerily quiet the last few days, do you recall what
10 was going on at that time?

11 A You know, I don't think there was anything specifically
12 going on. It was just a very -- there are times in the market
13 where things just are not very active. And this was just one
14 of those times.

15 Q Two sentences later you say, let's send an additional
16 500K down to ATC today so we can have some dry powder. What
17 does that mean?

18 A I wanted to have additional capital available to purchase
19 more silver in the event it dipped a little bit.

20 Q The next sentence, what are you explaining is your
21 current position and what you think you are going to do if
22 there's a change?

23 A Right. So I said, we are sitting perfectly with silver
24 but just in case of a small dip on low volume, I want to have
25 the ability to sit tight or add a few. So at that point in

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1 time, we have a silver position. I feel like we bought it at
2 a good price over an extended period of time averaging in.
3 And if it dipped a little bit, I wanted to have the
4 opportunity to increase my position, because I had told my
5 traders that we were going to stay between 3 and 5 million
6 ounces if possible. I gave them some parameters as to where
7 we would lighten up and then what the next leg would be after
8 the first leg. So we had a strategy going forward for the
9 next six to nine months.

10 MS. IRVIN: Your Honor, may I approach the witness
11 with Defendant's Exhibit 17?

12 THE COURT: Yes.

13 BY MS. IRVIN:

14 Q Mr. DaCorta, what is this chart?

15 A That is a chart of the price of silver. It's a weekly
16 chart, I believe. And I can't see the time frames. I think
17 it goes from about March 2017 to about March of 2021 or so.

18 Q Are you looking at the date that's up here in the top
19 left-hand corner?

20 A That was -- yeah. January 1, 2017. The problem is that
21 the chart is wider. So you don't have January 1, 2017, on
22 this chart. It starts in March.

23 Q At the very, very small on the bottom, I'm going to zoom
24 in as much as I can. Are you able to see the dates on the
25 bottom of the chart?

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1 A Yes. It's March.

2 Q So it looks like it's starting in about --

3 A Starting sometime in February.

4 Q So starting sometime in February of 2017?

5 A Correct.

6 Q And I'm going to slide it over. Gives us this marker
7 right here of December 29, 2017.

8 A Correct.

9 Q And then we can see as we slide over, what do you see in
10 about the middle?

11 A Right.

12 Q 2018 to 2019; is that right?

13 A Correct.

14 Q And then so we can see how far it goes, how far does this
15 chart extend?

16 A Goes to June of 2021.

17 Q Let me zoom back out so we can see the entire chart.
18 What is this to a layperson who doesn't have experience in
19 trading silver, what is this chart showing me about silver in
20 your experience from March 2017 going forward to June 2021?

21 A Well, it is showing the entire amount of trading, the
22 price action on a weekly basis. Each bar is a week. They are
23 called candlesticks.

24 Q And we know it's called a candle chart. That's what it's
25 called up here?

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1 A Right.

2 Q So when you are referring to candles, these are the small
3 white and blue marks?

4 A Right. The candle, we call them wicks, the lines
5 protrude out of the body of the candle.

6 Q How would you describe the movement of silver from
7 February 2017 through -- let's go all the way to December of
8 2018?

9 A It's in a very, very tight range.

10 Q What does that mean?

11 A Extremely tight range. So there is very little
12 volatility. So it's trading within a very narrow price
13 action.

14 Q There are places along the graph where there is blue and
15 white?

16 A Right.

17 Q What does that signify when I see blue or when I see
18 white?

19 A Well, that depends on who made the chart because you
20 could fill in any colors you want with the computer, but it
21 seems to me that the blues are down days and the other color
22 is our up days.

23 Q Do you have a particular strategy that you would have on
24 days when silver was down?

25 A Well, there are strategies based upon different time

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1 frames. Obviously we were looking at a more long-term time
2 frame. We weren't looking at this as a day-to-day thing. So
3 that long, protruded straight line is showing me that the
4 price action is very, very tight. And the next -- at some
5 point in time you are going to have a breakout one way or the
6 other. Because it was silver and because my outlook on the
7 dollar thought it would lose value, my outlook on silver was
8 that it would increase value against the U.S. dollar.

9 Q If we go forward to about April of 2019, what's going on
10 with silver?

11 A It's holding. It's holding the pattern at that point.
12 It's between -- it's trading probably between 14 and 15 and
13 25, you know, from the extreme low to the extreme high, but
14 it's very contained within basically a dollar.

15 Q What can you -- how can you describe how silver changes
16 from about April, mid April of 2019 through a little bit
17 before let's say end of August 2019?

18 A Well, at that point silver had a rally of about almost
19 \$5.

20 Q What does that mean?

21 A It means our entire loss would have been wiped out. We
22 would have earned about 18 to \$20 million.

23 Q Explain what you mean with respect to the 3.8 million
24 ounces of silver that you were holding at the time that OIG
25 was closed. Explain using that amount how would that have

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1 affected that silver position if we move ahead just slightly
2 less than six months to August of 2019.

3 A So if you take silver topping out at \$20, you take
4 3.8 million ounces -- if you just round it up to four million
5 ounces, 4 times 5 is 20. The \$2 million in the account would
6 have increased to 22 million which would have wiped out our
7 entire trading loss.

8 Q Is that helpful?

9 A It would have been very helpful.

10 Q Let's move a little bit forward, and let's go to December
11 of 2019. Based on your understanding of where silver was in
12 December of 2019 and understanding we're also just talking
13 about static, right, we're assuming you're keeping the
14 3.8 million-ounce position, right?

15 A Right, which would not have happened in reality.

16 Q We'll get to that. Assuming we are in December, how
17 might that have assisted you holding that same position by the
18 time we reached December of 2019?

19 A We wouldn't have had much of an impact because it was
20 kind of straight across. So at that point in time we would
21 have earned all of our losses back. So the prudent thing to
22 do would have been to reduce the position, wait for a sell-off
23 and repurchase it at a lower price.

24 Q When you say reduce a position, to a layperson what are
25 you saying?

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1 A Reduce the position means if you earn \$20 million and you
2 wiped out your loss, why not take some of that position off.
3 You have now accomplished your goal. But I was still very,
4 very bullish on silver. I had told both Fred and Steve that
5 we were looking for \$28 to \$30 in the first leg. So we would
6 have probably -- not probably. We would have definitely
7 reduced that position from 3 million maybe down to a million.
8 There's no way to predict obviously, but if you look back at
9 our November through April inventories, they go from two and a
10 half million to 500,000 to one and a half million to two
11 million. So they are all over the place depending on price
12 action.

13 So here because my first goal was to recoup the
14 losses, I would have probably sold the position, recouped the
15 losses and then made a fresh decision afterwards.

16 Q I want to draw your attention specifically to this area
17 which looks like it's about March or right before March --

18 A Yes.

19 Q -- of 2020.

20 A Right.

21 Q What's going on with the silver position?

22 A So silver here sells off from about the area it was down
23 to probably about \$12. And I think it stayed there for a day.

24 Q If we consider that you were holding a 3.8 million-ounce
25 silver position April 18, 2019, what can we know or anticipate

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1 could have happened between then and this significant drop in
2 March of 2020?

3 A Well, as it came across the top there and kept the highs
4 for several months, you are going to take the position off
5 because, Number 1, it's not doing anything for you at that
6 moment. So you don't want to hold it. On top of that, you
7 have the fact that you have earned \$20 million and negated
8 your losses. So at that point in time you are going to take
9 most of it off, if not all. You are going to trade it small
10 until you see something happen. The sell-off would have been
11 the opportunity to go to a much higher level in the number of
12 ounces.

13 Q So am I correct in understanding your answer to mean you
14 would not have maintained a consistent 3.8 million-dollar
15 ounce position from basically April of 2019 consistently
16 through about March of 2020?

17 A No, because that's why you call it trading. When you
18 have that much of a profit and you wipe out your loss, which
19 was our initial and our main focus, you are going to take the
20 position off and then regroup.

21 Q Following this drop in March of 2020, how can you
22 describe what happens to silver between March of 2020 and
23 about July, August of 2020?

24 A That's just a complete rally that is amazing. I mean,
25 it's just a complete breakout and a run to the upside,

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1 sustained run to the upside that took it from \$12 to \$30.

2 Q Assuming just for this -- well, I will ask the question
3 differently.

4 If you had, as you testified, reduced the amount of
5 your silver position here because you had already made up
6 losses somewhere around here, based on your experience in
7 trading in silver, what would you have done during this
8 increase in the silver condition?

9 A Obviously when it dipped down like that, if you had
10 already sold your position and you are sitting there with all
11 the cash, you are going to -- I'm not saying you are going to
12 buy it at the bottom, but you are probably going to watch it
13 bottom out. As it starts to rally, if it got to a low of 12,
14 you might start buying at 12 and a half, \$13 on the way back
15 up. You might have bought a little bit on the way down.
16 There's so many variables it's impossible to predict, but the
17 bottom line is our strategy was to hold silver long term and
18 our target was \$28 to \$30. And we would have -- if we had the
19 opportunity, we would have purchased more than the
20 3.8 million ounces of silver when that dip occurred.

21 Q Finally, in looking at the rest of this graph, so roughly
22 from where we were in August of 2009 going forward to about
23 where this graph ends in June of 2021, how do you describe the
24 movement of silver across that time frame?

25 A So you had the big spike higher, and then once it spiked

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1 higher, it fell into a range. So the range was basically 22
2 to 28 since that time.

3 Q How does the silver position, how you intended the
4 silvers to work, how was it to support or assist OIG in its
5 overall business plan?

6 A Well, obviously the main thing was we recognized we had
7 loss in 2018. I wanted to change the process of the way we
8 were doing it and get back to it when the market changed, but
9 in the process I wanted to take some sort of corrective
10 action. To me the silver was the best action to take, and it
11 proved to be 100 percent correct.

12 Q With respect to the silver position, I know that we have
13 seen -- we have reviewed a couple of emails, do you recall
14 ever having a discussion with Dave Manoukian about any trading
15 losses and what your plan was for corrective action?

16 A Oh, yes. I mean, I spoke with Dave often. He loved to
17 trade also. So I told him what I was going to do is pretty
18 much slow down trading and sit tight with silver.

19 Q What did you mean by saying you would sit tight with
20 silver?

21 A Maintain a position. Maintain a position. I mean,
22 obviously you're not going to sit tight with an exact number
23 based on market conditions, but you're going to maintain a
24 position in silver until you at least reach a certain price
25 level that you are expecting.

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1 Q And how did you expect that silver position to assist
2 with the losses?

3 A I expected it to not only wipe it away but create a large
4 profit.

5 MS. IRVIN: Can I have a moment, Your Honor?

6 THE COURT: Yes.

7 BY MS. IRVIN:

8 Q Separate and apart from the silver position that you
9 hold, you held in OIG, you also had hard silver and gold that
10 we've heard testimony about. Can you please explain the
11 reasons why you purchased, OIG purchased, OM, LLC, purchased
12 hard silver and gold?

13 A Yes. Something happened on October 4, 2018, that alerted
14 me that I needed to -- I should, it would be a very prudent
15 thing to not only own silver on a platform but also own
16 physical gold and silver.

17 Q And what was that reason?

18 A A bureaucratic agency within the United States government
19 created what's called the Financial Accounting Standards
20 Authority Bureau. They passed -- it's called FASB. They
21 passed paper Number 56. That paper essentially gave the
22 United States government the right to withhold all financial
23 information from the public under national security reasons.
24 Between 1998 and 2015, there was \$21 trillion missing from the
25 federal budget. At the time people didn't believe it. A

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1 professor of economics from Michigan State University did a
2 study. He found that it was absolutely correct.

3 MR. MURRAY: Object, Your Honor. Hearsay.

4 THE COURT: Well, the question was why did you hold
5 the -- getting into the study is probably hearsay, but let's
6 see if we can just answer that question why the hard ore was
7 being held.

8 BY MS. IRVIN:

9 Q Maybe if you can just direct the -- what you understood
10 what was going on, sort of the conclusion that led you to take
11 the --

12 A Yes.

13 Q -- position that you took on hard gold and silver.

14 A So I came to understand, that was validated, that there
15 was \$21 trillion missing from the budget, 20 trillion from the
16 Department of Defense and one trillion from Housing and Urban
17 Development. In December of 2017, the Pentagon said they
18 would do an audit. And October 4 of 2018, FASB passed and
19 said everything is under national security. So at that point
20 in time, I thought that the U.S. dollar as a world reserve
21 currency would definitely be under threat.

22 Q And as a result of that understanding, what did you start
23 doing?

24 A I started buying large amounts of gold and silver.

25 Q When you purchased the large amounts of gold and silver,

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1 who was the purchaser? Where did the money come from to
2 purchase those assets?

3 A Those assets were the same assets that we purchased real
4 estate. It was OIG. It was either Oasis International Group
5 capital or Oasis Management capital. You're turning cash,
6 which is a money substitute, into real money. And so there is
7 really no difference because actually gold and Silver Eagles
8 are legal tender. So you are just cashing one type of money
9 substitute for another type of money.

10 Q Now, you mentioned both OIG and Oasis Management, LLC.
11 If OIG was the purchaser of the gold and silver, where was
12 that gold and silver kept?

13 A Anything purchased with an Oasis Management check, which
14 we saw many of, that was held in my house. Any wires that
15 were sent from OIG were held at Mr. Anile's house. So that
16 way we knew exactly the inventory of both companies.

17 Q I think on Friday you testified that you had purchased
18 silver as a teenager or a young person?

19 A Yes, I did.

20 Q And I think you testified that you kept that silver at a
21 safety deposit box in a bank; is that right?

22 A Correct.

23 Q Why did you make the decision to not put the gold and
24 silver for Oasis Management, LLC, in a bank safety deposit
25 box?

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1 A Because during the Obama administration, the banking
2 regulations would change. Anything in the safety deposit box
3 is owned by the bank. So if something happens to the bank,
4 you have no access and it's not yours. So that would become
5 part of the bank's.

6 Q Was the safest place for you to keep the gold and silver
7 in the closet in your house?

8 A No. But at the moment for a temporary solution it was
9 the best.

10 Q What was the longer term solution for where the gold and
11 silver was going to be kept?

12 A Well, there were two. Number 1, I had already purchased
13 a safe and had it installed at the Lacantera property that I
14 would be moving to in a few weeks, but also we were renovating
15 the entire upstairs of 444 Gulf of Mexico Drive, and that was
16 going to be our offices upstairs, and we planned on having a
17 vault installed or some sort of safe installed within the
18 building.

19 Q How far off were you from completing the construction on
20 the office building?

21 A Well, we completed the outside of the office building.
22 That was done and now we went inside. So we just had it torn
23 apart. So I'm sure when they raided it, the upstairs was a
24 complete mess, but we had just had everything torn out
25 upstairs. So it was just in the beginning stages.

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1 Q So plan wise about six months until there was a completed
2 office for you to be able to move the silver?

3 A At least, yeah.

4 Q Okay. One other piece of testimony that I wanted to
5 address is when Joe Paniagua was testifying, he of course was
6 talking about his experience in working on the back office.
7 And there were a number of questions having to do with
8 adjustments that he was making in the back office.

9 A Yes.

10 Q Can you explain what your understanding of those
11 adjustments were?

12 A Oh, I know exactly what they were. The back office,
13 Spotex, is essentially an electronic ledger. So if people --
14 let's say before electronics if people owe you money or lend
15 you money, you actually keep a ledger in a book, and you keep
16 track of every single person who loans you money, how much you
17 owe them if you are paying them interest. We had a set amount
18 of interest which was 12 percent, but then we also had the
19 25 percent of the transaction fees. So that's a very --
20 that's something you can't calculate by hand because we did
21 250 billion dollars worth of trades over the course of those
22 years. So that's something that has to be done
23 electronically. And the ATC website would take every trade
24 done and allocate the spreads as we designed them to whoever
25 was getting whatever their take was.

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1 So the back office was all Oasis International Group
2 accounts. The subaccounts were all Oasis's accounts, but what
3 we had to do if 100 people loan you money and it's all
4 different amounts and every single person is being allocated
5 spreads on a daily basis, the only way to keep that accurate
6 is to have that ledger in the back office that accounts for
7 each and every transaction every single day. At the end of
8 the month, your loan to me was a hundred thousand dollars. I
9 still owe you a hundred thousand dollars plus whatever that
10 spread was. So if you withdrew your interest, you now have
11 principal only back there. If we had a profit one month, it
12 had to be reduced. If we had a loss, it had to be put back.

13 So in other words, the only way to keep the integrity
14 of how much everybody's loan represented and how much interest
15 they were being allocated on a daily and monthly basis was the
16 end of the month that number had to be brought back to the
17 principal amount of their loan. The P&L shifted to our side,
18 whether it was profitable or whether it was a loss. That was
19 the company responsibility as we stated many times. But for
20 each person, in order for us to keep track of that loan, we
21 needed the actual amount we owed them, the principal amount,
22 plus any accrued interest, if they left it there, added
23 together to come up with the amount that we now had to put
24 into the PAMM account which then received all the spreads
25 based on the transaction fees. It was the only way to keep

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1 the integrity of the whole thing working.

2 Q The Spotex software that you were using, was that
3 software designed for a program like OIG?

4 A No, it wasn't. We had to adapt to it. That's why there
5 was a lot of confusion.

6 Q Are the adjustments that you just explained part of the
7 adapting that you were doing with respect to the Spotex
8 software?

9 A Absolutely.

10 Q Is it your understanding that the adjustments that
11 Mr. Paniagua was making was to ensure that the accounts were
12 precise?

13 A Exactly. That was the only purpose.

14 Q Was there any other reason for him to make those
15 adjustments?

16 A No.

17 Q Was he committing a fraud by making those adjustments?

18 A Absolutely not. We told everyone we are going to pay you
19 based upon your principal. If I can't keep track of your
20 principal, how can I pay you properly or how can I allocate
21 the amount of spreads we are earning in order to be able to
22 tell everyone this is how much interest you've earned every
23 single day. It's not possible to do if you don't have an
24 accounting process that's working accurately.

25 MS. IRVIN: Your Honor, may I have a moment?

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1 THE COURT: Yes.

2 BY MS. IRVIN:

3 Q Mr. DaCorta, you have been charged with some serious
4 felonies.

5 A Yes.

6 Q Conspiracy to commit mail and wire fraud with respect to
7 the way the government believes that you ran your businesses,
8 Oasis Management, LLC, and Oasis International Group. You
9 have been charged with improperly using funds from OIG to
10 purchase the home that you lived in. You have also been
11 charged with making a false statement on your 2017 taxes.

12 Please tell the jury whether you ever intended to
13 defraud the lenders who gave their money to Oasis and OIG.

14 A Never. I would never do that.

15 Q Why should the jury believe you?

16 A Because everything I've said here is the truth. All
17 those people I knew. The people who testified here, I knew
18 them personally, went out to dinner with them. We were
19 working around the clock to make this company successful, and
20 we were a few months away from turning it into a large
21 success. We were misunderstood, and we never had a chance to
22 speak. We never had a chance to hire an attorney to speak for
23 us. We were completely ambushed, divided, and conquered. And
24 it's really just an awful, awful situation.

25 MS. IRVIN: Thank you.

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1 No further questions, Your Honor.

2 THE COURT: Very well. Let's take our lunch break.

3 Can we come back at 1:45? Can we do that? I don't want to
4 squeeze you down too hard that you can't get a lunch. Is that
5 okay? I don't see anybody giving me a thumbs down. You are
6 allowed to thumbs down the judge if you want. Okay. 1:45.
7 Don't discuss the case. It's not over. We will be back right
8 after lunch.

9 (Lunch recess taken.)

10 THE COURT: All right, counsel, you may cross.

11 MR. MURRAY: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MR. MURRAY:

14 Q Good afternoon, Mr. DaCorta.

15 A Good afternoon.

16 Q Mr. DaCorta, you're from New York, and I'm from New
17 Jersey. And so what these fine Southern folks might not
18 understand is that we tend to speak quickly up North.

19 A We do.

20 Q So I'm going to do my best and I hope you'll do the same
21 so the court reporter doesn't kill us both.

22 A Sounds good.

23 Q Mr. DaCorta, would you agree with me that you present
24 well?

25 A I do.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q Charming even?

2 A That's in the eye of the beholder, I guess.

3 Q Fair. Well spoken?

4 A Again, in the eye of the beholder, but I would say yes.

5 Q Educated?

6 A Yes. To some degree. More than some, less than others.

7 Q I know we talked a little about your formal education
8 stopping early but certainly a ton of real-world education and
9 professional licenses, right?

10 A Yes, without a doubt.

11 Q And we talked on Friday and a little bit more today about
12 your experience in the financial markets, right?

13 A Correct.

14 Q And would you agree with me on Friday that the story you
15 told about your background is quite similar to the story that
16 we heard on a lot of the recordings that we have listened to
17 the last couple weeks?

18 A I would assume so, yes.

19 Q And although I know there are some parts that differ,
20 would you agree with me that the story that you tell about
21 Oasis's beginning is fairly consistent with what Joseph Anile
22 tells?

23 A I don't know exactly what Joseph Anile tells. I never
24 heard him kind of tell the story.

25 Q Didn't you hear him tell in Court?

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1 A You mean what he testified?

2 Q Yes, what he testified.

3 A Yes. I'm sorry.

4 Q Let's start with your background because that's where we
5 started last Friday. Now, we walked through several Wall
6 Street law firms that you worked at -- or I'm sorry, Wall
7 Street trading firms that you worked at, correct?

8 A Yes.

9 Q We talked a little bit about your sort time at Sterling
10 Foster, right?

11 A Yes.

12 Q And I think you were only there for about a year or so?

13 A Less than a year.

14 Q Less than a year. There's a movie that's made that's
15 inspired by the events of that fraud, right?

16 A I think there was.

17 Q And it's called "Boiler Room," I think?

18 A I think that was actually Stratton Oakmont, not Sterling
19 Foster.

20 Q And we talked about your professional licenses, right?

21 A Yes, we did.

22 Q And we talked a little bit about a beer company that you
23 started that didn't quite work out?

24 A Yes, we did.

25 Q And we talked about, did we not, you leaving that beer

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1 company and getting involved in oil trading commodities,
2 right?

3 A Time wise a little off. I was actually trading at Onsite
4 while I was operating the beer company.

5 Q Okay. And that's where -- correct me if I'm wrong, but
6 that's where you first sort of started hedging with currency
7 and you developed an interest in trading currency. Do I have
8 that right?

9 A Yes. It was very different at that time. It wasn't
10 forex. You had to actually use contracts. It was much more
11 difficult to put on a currency trade back in the 1998 time.

12 Q And then after that we started talking about ICT?

13 A Right.

14 Q And we talked about how you were the president and head
15 trader of that from 2002 until roughly 2009, right?

16 A 2008 we ceased trading operations and then finally
17 decided to no longer go with the firm by probably March of
18 2009.

19 Q And am I right in my recall that you ceased trading
20 operations as you described because there was a financial
21 crisis in 2008 and there were glitches of some kind in that it
22 created issues, and that's where we got into the whole NFA
23 audit thing, correct?

24 A When Lehman Brothers went down in 2008, that crisis
25 caused us to stop trading operations.

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1 Q And we moved on after that point. We talked a little bit
2 about your subsequent endeavors after ICT, right?

3 A Yes.

4 Q We talked about how you were unemployed for a year or two
5 after that, right?

6 A Yes.

7 Q And then we moved forward to talk about how you met Ray
8 Montie at Ambit Energy, right?

9 A Correct.

10 Q And then from meeting Montie it turns into an investment
11 club?

12 A That's correct.

13 Q And then from that investment club, you know, we started
14 talking about the early formation of Oasis International Group
15 with Joe Anile, right?

16 A Right. It was Sierra Partners first and then eventually
17 Oasis International Group.

18 Q So by the end of Friday would you agree with me that we
19 had gone through all of that, and we started talking about
20 Sierra Partners and the attempt at creating that hedge fund,
21 right?

22 A Yes.

23 Q And that's kind of where we left off Friday before the
24 weekend; is that fair?

25 A I will go with your memory better than mine at this

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1 point.

2 Q You would agree it's important to tell the truth under
3 oath, correct?

4 A Absolutely.

5 Q And it's also, as part of that oath that you take,
6 important to tell the whole truth; isn't that right?

7 A That is correct.

8 Q And would you agree with me that in order to tell the
9 whole truth, that it's important not to omit any material
10 information; is that right?

11 A When a question is asked it's full disclosure. I'm under
12 oath.

13 Q And you didn't do that on Friday, did you, Mr. DaCorta?

14 A I believe I did.

15 Q Because Friday we were way past ICT. I mean, we were
16 into Sierra Partners. We were into the formation of OIG, but
17 this morning we heard a lot more about ICT, didn't we?

18 A Yes, we did.

19 Q And we skipped back in time, and we started talking about
20 ICT again, right?

21 A Yes.

22 Q In other words, your story on Friday about ICT was not
23 complete; is that fair?

24 A I believe that it was complete to the point that I said
25 something that obviously allowed more questioning.

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1 Q Because on Friday you said that ICT failed because of the
2 2008 crisis and there was a glitch, correct?

3 A I didn't say there was a glitch. I said Icon Trading
4 Systems were shut off for a short period of time.

5 Q But today we learned a lot more about ICT; is that fair?

6 A Yes, we did.

7 Q We learned that there were indeed findings made by the
8 NFA in their audit; isn't that right?

9 A Absolutely, there were.

10 Q In fact, I'm publishing Exhibit 308 on the Elmo. We
11 learned that the NFA audit cited you with certain deficiencies
12 in connection with soliciting investors, right?

13 A Right.

14 Q And we also learned that ICT was cited with failing to
15 register certain people as associated persons, list branch
16 offices?

17 A Correct.

18 Q Have supervising APs working at those branch offices,
19 right?

20 A Correct.

21 Q Adopting and implementing promotional material
22 procedures, right?

23 A Correct.

24 Q And there were also deficiencies in developing and
25 implementing a business continuity and disaster recovery

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1 program for ethics training; isn't that right?

2 A That's what it says.

3 Q And so as we sit here today at 1:50, is it your testimony
4 now that the jury has heard the entire story about ICT?

5 A The ICT story is right there for everybody to see. The
6 agreement says that I denied these things. And I would be
7 more than happy to talk about anything that you want to ask me
8 about.

9 Q Let's do that then. Because isn't it also true,
10 Mr. DaCorta, that the premise of the ICT opportunity involved
11 floating a 12 percent return rate to investors?

12 A No. That's completely incorrect.

13 Q That's completely incorrect?

14 A Yes, it is.

15 Q But isn't it also true that there were roughly 500
16 accounts at ICT?

17 A I don't recall the number, but it's probably close.

18 Q And isn't it also true, Mr. DaCorta, that that
19 investigation by the NFA found that the glitch in some of
20 those investors' accounts had affected what they can see in
21 terms of their statements and their money's performance. Is
22 that also false?

23 A That came at the very end. So it would have been the
24 total -- pretty much almost a total loss of the account,
25 because when the system got shut off and we couldn't access

CROSS-EXAMINATION OF MICHAEL DACORTA

1 the system, by the time it came back on, we were sold out by
2 Icon Global Markets.

3 Q So your testimony to this jury is that as part of ICT you
4 did not offer a 12 percent return on forex trading?

5 A Not on forex trading. We -- if I can explain? Okay. So
6 there were two companies. There was the DaCorta Group, and
7 there was ICT. The DaCorta Group had bonds or loans that came
8 in that we paid 12 percent on. ICT, I was not allowed to take
9 any money. All the money from any customer at ICT went
10 directly to the clearing firm, because as a CTA you are not
11 allowed to accept funds into -- from your customers. The only
12 people who had any money with us were either family and
13 friends, very small amount, that were either loans or
14 preferred stockholders. And the DaCorta Group was a
15 completely separate company from International Currency
16 Traders.

17 Q We saw a part of your journal earlier in this trial;
18 isn't that right?

19 A We did.

20 Q And is it not true in that journal you wrote that you
21 wanted to build Oasis in the same image as you did ICT?

22 A I don't know if I used the word "image."

23 Q But am I generally right?

24 A Kind of, yes.

25 Q And you wanted money to be no issue. You put that in

CROSS-EXAMINATION OF MICHAEL DACORTA

1 your journal as well, right?

2 A Moving forward, create a successful company that money
3 becomes no issue.

4 Q Tremendously successful company, correct?

5 A Yes.

6 Q Mr. DaCorta, as important as it is to tell the truth and
7 the whole truth in here today, so too it is in business as
8 well. Wouldn't you agree with that?

9 A Yes.

10 Q You're a businessman, right?

11 A Yes, I am.

12 Q And as a businessman, if a businessman is selling
13 someone, let's say a car, and representing that that car runs,
14 it's important that that car truly runs, isn't it?

15 A I would think so, yes.

16 Q And if a businessman sells someone a car and says it's a
17 Ferrari, it's important that that car is not a Toyota with the
18 words Ferrari written over it in magic marker. Would you
19 agree with that?

20 A Yes.

21 Q And if a businessman sells someone a car and says it
22 runs, it's important that that car have an engine in it.
23 Would you agree with that?

24 A I would definitely agree with that.

25 Q And the same is true in finance, right?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A True in anything.

2 Q If you are selling derivatives, right, it's important
3 that you're telling the counterparty the truth about the risk
4 level of those derivatives, right, the paper that's inside
5 them; isn't that right?

6 A Sure.

7 Q And the same is true, is it not, when you are running a
8 business?

9 A Yes.

10 Q Whether they're investors or lenders, it doesn't really
11 matter. If you're doing business with another person, is it
12 not true that it's important to tell the whole truth about
13 that business opportunity?

14 A Yes, it is.

15 Q And whether they're investors or lenders whose notes rely
16 on the full faith and credit of your company, is it not
17 important that you fully inform them of the activities of that
18 company so that they can make an informed decision about what
19 they're actually doing?

20 A Yes.

21 Q So Mr. DaCorta, if you tell someone that you're a market
22 maker, it's very important that you actually be a market
23 maker, correct?

24 A Yes.

25 Q And if you tell an investor/lender that their money is

CROSS-EXAMINATION OF MICHAEL DACORTA

1 going to be put in banks overseas and held as collateral, it's
2 important that their money actually be in banks and held as
3 collateral and not be at risk directly in the market. Would
4 you agree with that?

5 A Well, anything as collateral is going to have some risk,
6 but yes.

7 Q And it's important that if you tell someone you're doing
8 business with that you are a market maker, that you are truly
9 a market maker and that you are not just trading on a retail
10 app on your phone. Would you agree with that statement?

11 A Yes, but I would like to explain that if I can.

12 Q I only asked you if you agreed with it.

13 THE COURT: Well, he is allowed to explain.

14 A Market making is a term, very misunderstood term because
15 of the changes that have happened over the last 20 or 30
16 years. I had a market making license, which is a Series 55.
17 I was a market maker in equities for many years.

18 When we made market in equities, it's very simple.
19 There's three levels of a machine; level one, level two, and
20 level three Nasdaq machine. Level one was a retail broker.
21 You just saw the highest bid and the lowest offer. Level two
22 you saw every bid and every offer. So that way if you had
23 50,000 shares to sell and the bid only had 10,000, you can
24 then go and see how many bids you had a hit to get your whole
25 50,000 executed, and you'd know an average price essentially

CROSS-EXAMINATION OF MICHAEL DACORTA

1 of what you'd get. Level three machine was an actual market
2 making machine. That's where I could enter my own bids and
3 offers and let the whole country, anyone on that machine, any
4 brokerage firm checking the prices, they could see that my
5 company is bidding for this many shares, offering that many
6 shares.

7 As time went on, we went to ECNs. Trading got much
8 more sophisticated. Volume flows got much heavier, and you
9 didn't have that manual type market making that we had back in
10 the '80s and '90s. So when I referred to market making when I
11 speak to our lenders, I'm -- first of all, I'm giving them an
12 opportunity to understand the concept from kind of 30,000 feet
13 up. It's a concept of what we are doing. We are bidding and
14 we are offering for currency pretty much at the same time
15 through an ECN.

16 I created a four-basis point spread. When I created
17 that four-basis point spread, what we did is we would go into
18 the market and we would bid where the four-basis points was on
19 the bottom and offer where it was at the top. At that point
20 in time, our offers and our bids are in the market. We are
21 not trading with ourselves. They are in the market. It's a
22 risk, and we now have those orders published. They're out
23 there for everyone to see. They can hit our bid. They can
24 take our offer.

25 When an execution takes place, that execution --

CROSS-EXAMINATION OF MICHAEL DACORTA

1 let's say someone takes my offer. If they take the offer, I
2 traded it with a third party. I now sold them something that
3 I had, whether it was euros, Japanese yen, whatever it was. I
4 sold them something. No guarantee I'm going to buy it at the
5 same price. So as we are trying to buy it lower and therefore
6 create the middle, but there are times when markets move and
7 you have to adjust your orders. So there are times you are
8 going to make money, capture the whole spread. There are
9 times you are going to lose money, but the concept of market
10 making where you are entering bids, entering offers and being
11 visible in the market place is really just a concept. There
12 is no really market maker -- anyone with a proprietary account
13 with their own capital that enters bids and offers into a
14 market and provides liquidity is in the concept of market
15 making. I wasn't trying to be --

16 MR. MURRAY: I'm going to object.

17 THE COURT: We are just going to do Q and A. So
18 let's have the Q and then we'll get the A.

19 BY MR. MURRAY:

20 Q Mr. DaCorta, we are going to get back into this in a
21 second, but you were here last week, correct?

22 A I was.

23 Q And you heard Matt Childers testify for the better part
24 of the morning, and you heard him testify based on four, five
25 different reasons as to why in no way, shape, or form was

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Oasis ever making markets. You heard that testimony, correct?

2 A I did.

3 Q Let me get back to what I was asking. Would you agree
4 that as a businessman if you are writing notes and those notes
5 are supposed to be underwritten by profits generated from
6 spread pay, then it's important that the company actually be
7 generating money from spread pay?

8 A Yes.

9 Q Just as a general business.

10 A Yes.

11 Q It's important, is it not, that the spread pay isn't just
12 the company overpaying for their trades and putting the money
13 back in their own pocket. That's important, right, if that's
14 the representation that's made?

15 A Yes.

16 Q And if you tell them that there's no fees, it's important
17 for a businessman to not be misrepresenting that there are no
18 fees, correct?

19 A That's correct.

20 Q And if a person, a businessman tells a potential investor
21 that the company is well secured, it's hedged, it's well
22 financed and it's diversified, that that actually be true,
23 right?

24 A Sure.

25 Q And it's important, is it not, that if the company then

CROSS-EXAMINATION OF MICHAEL DACORTA

1 goes and decides to take a risk with investor money on a
2 product that turns out to be a total dud, that it not do so
3 under the false banner of using company profits rather than
4 investor money. Would you agree with that?

5 A Whether it's profits or company money, it's company money
6 but, yes, I will agree.

7 Q So your testimony is once it goes into the company, it's
8 company money no matter what?

9 A That's what a loan is.

10 Q And would you agree, Mr. DaCorta, that it's important
11 that if a company says it's diversified, that that
12 diversification isn't a depreciating automobile that the
13 company's founder's daughter is driving to college purchased
14 by investor money?

15 A Yes, except can I explain something there?

16 THE COURT: You can explain. We just want to do the

17 Q and A. So, yes.

18 A There is some inaccuracies within it.

19 BY MR. MURRAY:

20 Q I'm simply asking you, Mr. DaCorta, is it important if a
21 businessman represents that a company is using its assets to
22 diversify itself, that those assets not be rapidly
23 depreciating assets that the company bought for the benefit of
24 its children?

25 A The company didn't buy those assets. Those assets -- the

CROSS-EXAMINATION OF MICHAEL DACORTA

1 cars were purchased by me personally.

2 Q Out of the Oasis Management account?

3 A Out of -- correct. When you work 18 hours a day, you are
4 entitled to some sort of pay.

5 Q With lender money, correct?

6 A Lender money is the company money for us to manage,
7 correct.

8 Q Would you also agree with me, Mr. DaCorta, that if a
9 company is taking catastrophic losses, massive losses in the
10 market, that it owes its investors information so that they
11 can make informed decisions about pulling out of that
12 investment?

13 A Yes. Well, I noticed you co-opted the "catastrophic"
14 from the CFTC complaint which says \$60 million. However, when
15 you only deposit \$20 million, I ask you and the CFTC how
16 exactly you lose 60 million if you're not actually earning
17 money to lose.

18 Q I didn't ask you about the CFTC, did I, Mr. DaCorta?
19 These things are important, right, because doing them gives
20 the counterparty the full information. Would you agree with
21 that?

22 A Can you repeat that?

23 Q All the things that I've asked you here today are
24 important because doing them in business gives the
25 counterparty the full information that they need to understand

CROSS-EXAMINATION OF MICHAEL DACORTA

1 the business opportunity; is that fair?

2 A Yes.

3 Q And regardless of whether they are investors or lenders
4 they deserve that; isn't that right?

5 A Sure.

6 Q Just like this jury deserved the whole answer about ICT
7 last Friday. Fair?

8 A Anything you ask me again I will answer with regards to
9 ICT. I have no problem with that.

10 Q Mr. DaCorta, I think you testified on Friday that you
11 found Mr. Anile again when you were looking into turning Oasis
12 into something larger than an investment club, right?

13 A Yes. That's when I reached out to him.

14 Q And he was out of work at the time, right?

15 A He told me he was working for Harris Beach.

16 Q I'm sorry?

17 A He told me he was working for a law firm called Harris
18 Beach, if I remember correctly.

19 Q And you testified that you asked him about the NFA
20 settlement agreement, right?

21 A I didn't ask him about it. When he came to my home, I
22 showed him the letter.

23 Q And you would agree that that letter makes it crystal
24 clear that you are never to register with the NFA again. We
25 can agree on that much, right?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A Absolutely.

2 Q And your testimony is that you found this attorney in Joe
3 Anile, and you showed him the letter, right?

4 A Yes, I did.

5 Q And he says, no, no, no, don't worry about this, it won't
6 be an issue. That's your testimony, right?

7 A Yes, it was.

8 Q And at that point you said, okay. Then we're good to go;
9 is that fair?

10 A Yes. Pretty much as long as he was going to structure
11 something that did not require me to become a member of the
12 NFA, I said that's fine.

13 Q And Mr. DaCorta, you were here for Mr. Anile's testimony,
14 correct?

15 A I was.

16 Q You heard him say that he was struggling at that time,
17 did you not?

18 A That's what he said here.

19 Q Correct?

20 A Correct.

21 Q I think he lost a house to Sandy?

22 A That was after he already came with us. So he already
23 had left Harris Beach. He came with us, and he did lose that
24 because I remember when that was happening.

25 Q But he was having some financial difficulties, wasn't he?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A That I didn't know personally, no, at the time.

2 Q And you were also here when he testified that that NFA
3 and futures stuff is not his particular area of expertise. He
4 said that, right?

5 A He said it here, yes.

6 Q He said it here. And you were aware that he was also not
7 a criminal attorney, correct?

8 A Oh, yes, absolutely.

9 Q But you claim that you nevertheless showed him this
10 document right here in Exhibit 308?

11 A That's correct. I showed him that.

12 Q And he said, don't worry about it. And you ran with that
13 advice. Is that a fair characterization?

14 A Yes. He said whatever we put together, it will not
15 violate this agreement.

16 Q And you testified that your understanding of that
17 agreement is that you just simply can't register anymore,
18 right?

19 A As a member of the NFA, yes.

20 Q Correct. Mr. DaCorta, the NFA is not a book club, is it?

21 A Excuse me?

22 Q It's not a book club or a social club of any kind, is it?

23 A No.

24 Q No. It's not like the Knights of Columbus?

25 A No.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q It's the National Futures Association, right?

2 A Yes, a private organization.

3 Q I want to talk a little bit about your background more.

4 You started trading when you were 15, correct?

5 A Or 16. I wouldn't call it trading. I would call it
6 investing at that point.

7 Q College scholarship even though you didn't finish?

8 A Correct.

9 Q Economic major?

10 A Yes.

11 Q Broker around the age of 21?

12 A Correct.

13 Q Passed the Series 7?

14 A Yes.

15 Q Not an easy test.

16 A No, it's not.

17 Q Let's talk about that. Let's go through some of it,
18 right? FINRA rules, they test that?

19 A They test -- well, at the time I took it, it wasn't
20 FINRA. It was Nasdaq.

21 Q It was a predecessor, but the same thing, right? SEC
22 rules, they test that?

23 A Yes, they do.

24 Q They test FINRA rules on networking arrangements between
25 members and financial institutions, right?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A Yes. Basically they touch a little bit of every
2 category, how to trade stocks, bonds, U.S. bonds, corporate
3 bonds, municipal bonds, options, regulations. There's a whole
4 bunch of different things on there.

5 Q It's a big test.

6 A 250 questions.

7 Q Internal Revenue Code, they test some topics in that?

8 A There were a couple of them.

9 Q Not a lot but a few; is that fair?

10 A There might have been a few. It was a long time ago.

11 Q See what else is in here. Do they test options trading
12 in there generally?

13 A Very rudimentary. And options principles, a more
14 in-depth test on options but they do put out some options on
15 there.

16 Q You had that license too?

17 A I had, yes.

18 Q All right. They tested. But just sticking on the topic
19 of Series 7, they test death securities, right?

20 A Yes.

21 Q Corporate bonds?

22 A Yes, they do.

23 Q Municipal bonds?

24 A Yes, they do.

25 Q How to register hedge funds and funded funds?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A That was not on the test when I took it because they
2 didn't exist then.

3 Q How about U.S. securities?

4 A Yes.

5 Q Treasury securities. You also have a Series 63 license,
6 right?

7 A Yes, I do. Well, again, I had all these licenses.

8 Q You passed it, right. And that test, also pretty
9 extensive; is that fair?

10 A I'm sorry. I missed one word.

11 Q That test is also pretty extensive; is that fair?

12 A No. That's a 50 question in and out. It was fairly
13 simple.

14 Q But it does test consumer funds and securities, right?

15 A Yes. It basically tests state rules and regulations and
16 sales practices.

17 Q Conflicts of interest?

18 A Yes.

19 Q Criminal activities?

20 A Yes.

21 Q Ethical issues?

22 A Yes.

23 Q Excessive trading loans to and from investors?

24 A I don't remember exactly, but I'll agree with you.

25 Q Can we publish Exhibit 100A at 12.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 You also mentioned again that you worked at Sterling
2 Foster, right?

3 A Yes.

4 Q You bounced around the street. You passed those exams
5 and then retook them after Beverage World, right, or some of
6 them. You renewed some licenses you said, right?

7 A Well, I had the 7, 63 and 4 prior to Beverage World. So
8 those three I had to retake after Beverage World, and I also
9 had to take the Series 24 to own my own firm.

10 Q By my count, correct me if I'm wrong, you had ten or so
11 different Wall Street firms that you went to over --

12 A It could be, sure.

13 Q You traded equities?

14 A Yes.

15 Q You traded commodities?

16 A Yes.

17 Q You traded securities?

18 A Yes.

19 Q You traded forex?

20 A Yes.

21 Q You started some companies. We talked about that, right?
22 You had a rigorous training program, did you not, at 44 Wall
23 Street on currency trading?

24 A Yes. That was before I decided to start my own firm.

25 Q You had 16 years of Wall Street experience, by my count,

CROSS-EXAMINATION OF MICHAEL DACORTA

1 and 20 years of experience before you started ICT. Does that
2 sound roughly accurate?

3 A ICT was 2002. So 20 would be 1982, so 16 years.

4 Q And up on the screen here I just published 100A. More of
5 the same, right? Series 4, you passed that?

6 A Yes.

7 Q You passed the Series 7?

8 A I did.

9 Q You passed the Series 8?

10 A No. I never took it. I would have passed it.

11 Q You passed the Series 24?

12 A Yes, I did.

13 Q And the Series 24, that's the principal securities
14 qualification exam that we talked about, right? You passed
15 the Series 55?

16 A Yes, that's correct.

17 Q And that's for equity trading?

18 A That's proprietary equity trading and market making.

19 Q And then through ICT you spent eight or nine years as a
20 registered CFTC, NFA member, correct?

21 A Series 3, correct.

22 Q And you passed the Series 3?

23 A Yes, I did.

24 Q And as part of the Series 3, that centers on futures
25 trading, right?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A Yes.

2 Q What did that test?

3 A What did it test?

4 Q Yeah.

5 A Your knowledge about commodity and futures contracts. At
6 that point in time, the CFTC had just taken over foreign
7 exchange regulatory, I guess, powers. So really there wasn't
8 much on the test about foreign exchange. It was really more
9 about commodities futures.

10 Q Commodities futures, margins, right? Margin trading?

11 A Well, anything to do with trading.

12 Q Anything to do with trading. It also tests regulations,
13 right?

14 A Yes. I'm sure there's some on there.

15 Q CFTC regulations?

16 A Sure.

17 Q NFA membership?

18 A Probably. Most likely, yes.

19 Q Equitable principles of trade, right? Does that sound
20 familiar?

21 A No, but I will agree with you.

22 Q Position trading requirements?

23 A Sure.

24 Q NFA disciplinary procedures?

25 A I'm sure. I mean, I don't remember.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q And you passed that, right?

2 A I did.

3 Q And nevertheless, Mr. DaCorta, despite all of this
4 extensive training and experience, your testimony to this jury
5 is that you thought that the NFA agreement simply meant that
6 you didn't have to register; is that correct?

7 A No, that's not correct.

8 Q Isn't that what you just said?

9 A I said I cannot register. I precluded myself from
10 registering by agreeing with them without admitting or denying
11 anything because I didn't think I was going to go back into
12 the business. However, I made sure that I was in compliance
13 with that agreement at all times through legal assistance.

14 Q And so you didn't think, am I right, that it had any
15 other effect outside of the fact that you were precluded from
16 registering?

17 A You have to explain that question a little better.

18 Q In other words, was your sole understanding of that
19 agreement that it precluded you from signing up as an NFA
20 member?

21 A From signing up as an NFA member and for trading for U.S.
22 citizens as customers in the context of CFTC statutes and
23 regulations.

24 Q Which is exactly what you ended up doing, is it not,
25 Mr. DaCorta?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A No, it is not.

2 Q You were here for Jennifer Sunu's testimony the other day
3 or two weeks ago at this point, were you not?

4 A The lady who worked 26 years for the NFA?

5 Q Correct.

6 A Yes, I was.

7 Q And you heard her testify that your agreement effectively
8 barred you from soliciting U.S. investors to trade their money
9 in forex. Did she not say that?

10 A She did.

11 Q And despite all this experience, Mr. DaCorta, your
12 testimony to this jury is that you asked Joe Anile about this
13 agreement, took his word for it and ran with it; is that
14 correct?

15 A Considering the experience Mr. Anile had at the time, I
16 absolutely took his advice.

17 Q Because the way you tell, Mr. DaCorta, the story of what
18 you were and were not allowed to do sort of makes this sound
19 like a Southwest Rewards program. Am I wrong? You just
20 didn't have to sign up for it?

21 A No, that's not correct. I don't agree with that.

22 Q You would agree, wouldn't you, Mr. DaCorta, that a
23 professional's advice is only as good as the information it's
24 relied upon; is that right? Is that fair?

25 A Sure.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q So if you gave a professional poor advice, you are going
2 to get a poor outcome?

3 A If I gave a professional poor advice?

4 Q Poor information, I'm sorry, you are going to get poor
5 advice in return. Garbage in, garbage out; is that fair?

6 A I guess in some instances.

7 Q So while we are on that topic, let's talk about your tax
8 return. Would you agree, Mr. DaCorta, that taxes are
9 important?

10 A Absolutely.

11 Q It's how the lights stay on here, right?

12 A No. They borrow the money for that.

13 Q Pays our boys and girls overseas, our troops, right?
14 Pays for Social Security, right?

15 A Again, that's unfunded liabilities of the U.S.
16 government. So they just print money to pay people for those
17 things. We don't collect enough taxes for that.

18 Q But if we don't collect taxes, those liabilities corrupt,
19 do they not?

20 A They do.

21 Q And so it purportedly pays for Medicare as well, correct?

22 A I'm sorry?

23 Q Taxes help fund Medicare programs as well, correct?

24 A Absolutely.

25 Q Medicaid programs as well?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A Well, that's another unfunded liability.

2 Q The highway we drove on to get here today, that's tax
3 dollars too, correct?

4 A Yeah. That's tax dollars of our grandchildren to pay
5 back the debt.

6 Q Leaving political views aside, it's fair to say,
7 Mr. DaCorta, would you not agree with me that as much as
8 everyone hates the IRS, tax dollars are what make American
9 federal government run?

10 A Yes.

11 Q And would you agree with the general proposition that
12 everyone is supposed to pay taxes on their income?

13 A I hundred percent absolutely agree with you.

14 Q Would you also agree, Mr. DaCorta, that if everyone in
15 this room just formed an LLC and lived out of that LLC and
16 didn't report any income because all of the expenses were
17 through the LLC, that government couldn't run, could it?

18 A That's kind of a very generalized question that doesn't
19 make sense. So if you can refine it a little bit, I will be
20 happy to answer it.

21 Q Let me rephrase. Isn't it true that if everyone in this
22 room formed a company --

23 A Correct.

24 Q -- and passed off all of their expenses through that
25 company and never reported any income, any personal income and

CROSS-EXAMINATION OF MICHAEL DACORTA

1 they were able to do that, wouldn't the government fail?

2 A Well, if they are legitimate expenses, then they pay the
3 taxes that are due. It shouldn't have any effect in an LLC
4 because everything flows back to personal liability.

5 Q Right. And there's a name for that, right? It's called
6 a disregarded entity?

7 A Correct.

8 Q And that's essentially what you did, is it not,
9 Mr. DaCorta?

10 A I think that's what it turned out to be, yes, after the
11 limited partnership was changed.

12 Q You created a company, several, right?

13 A Right.

14 Q And you lived through them, right?

15 A Lived through them? Oasis Management is the one I lived
16 through.

17 Q You were paying your daily personal expenses through
18 Oasis Management, were you not?

19 A Well, some of it was transferred to my personal bank.
20 And some of it was going from Oasis Management depending on
21 just timing issues, convenience, whatever it might be.

22 Q And that "it" was investor money which you say was loan
23 money that became Oasis's money the minute it went into the
24 Oasis account, right?

25 A Yes. I will agree with you.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q So let's take a look at your financial -- your 2017
2 taxes. And if we could publish Exhibit 555 at page 3. If we
3 go to line 22. And this is the total income you reported for
4 2017, is it not, Mr. DaCorta?

5 A I assume so, yes.

6 Q Can we go up a little bit to line 13. And that is a
7 total gain you reported before you offset all the costs you
8 brought up, isn't that right? Do you see the screen in front
9 of you, the 66,000 figure, that's the gain before you offset
10 it with the costs?

11 A That was the gain before the Full Spectrum writeoff,
12 correct.

13 Q Can we pull up Exhibit 583 at page 9, please. And just
14 to confirm that is your signature, correct?

15 A Yes, it is.

16 Q And if you go up to line item one there, that's a
17 negative number, correct?

18 A It is.

19 Q Negative 439,026?

20 A Yes, it is.

21 Q In fact, you got a thousand dollars back from the federal
22 government that year, right?

23 A I did. I think I paid a thousand dollars to get the
24 extension and they were giving it to me back. I'm not a
25 hundred percent sure where that thousand came from.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q Mr. DaCorta, you lived a pretty great lifestyle in 2017,
2 did you not?

3 A Yes, fairly nice. I definitely would agree.

4 Q You bought a Maserati?

5 A I did in the spring.

6 Q Could we publish Exhibit 321, please. That's the
7 Maserati purchase, right?

8 A Correct.

9 Q You don't contest that in any way, right?

10 A No, not at all.

11 Q In 2017 you paid for a lot of personal expenditures
12 through Oasis's accounts, did you not?

13 A I may have, sure.

14 Q Can we pull up Exhibit 2 at 2116. You spent \$4,488.61 at
15 Petland of Sarasota using Oasis's money; is that correct?

16 A That is correct.

17 Q Can we pull up Exhibit 302A, please. You were living in
18 this beautiful home, were you not?

19 A Yes, which was owned by Oasis International Group.

20 Q And you liked restaurants. You ate out a lot. We saw
21 some of those transactions last week?

22 A Sure.

23 Q Can we pull up Exhibit 2 at 2053. Flemings, \$685?

24 A That was actually a CMAP meeting. We had people from --
25 that we were trying to -- we had the CEO of CMAP and Larry

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Waldman that was introducing me to them. So that was a
2 business meeting.

3 Q How about Exhibit 22 at 2231. \$949 at Libby's Cafe bar?

4 A Yes. That had to be something to do with the business
5 also, because I know Libby's and I know why I went there. And
6 I don't spend \$949 when I go out with my wife.

7 Q Daiquiri Deck for \$108, was that also part of the
8 business?

9 A No. That was just a day at the beach.

10 Q That was just a day at the beach using Oasis funds,
11 correct?

12 A Using the funds that were earned -- that came into Oasis,
13 yes.

14 Q And those funds came from lenders, correct?

15 A Somehow some way they came --

16 Q Okay. How about Exhibit 348 at 2. You went to a nice
17 little trip to Disney World, right?

18 A No. I'm glad you asked me about this. This was actually
19 the hurricane that was coming into Sarasota. And we had a
20 place to go. So my family and I went to my son's house in
21 Lake Nona, but Mr. Anile had just moved down here and he had
22 no place to go, and it was supposed to be a direct hit, a
23 category four or five. So what happened was a friend of mine
24 by the name of Doug Clark had a contact at Disney. And the
25 only hotel room available at the time was this. And I told

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Joe, look, just take it and get out of here because it's
2 supposed to hit directly right over our -- basically right
3 over our house. So instead we went to Orlando, and the
4 hurricane diverted and hit Orlando. So it wasn't the greatest
5 idea.

6 Q So your testimony is that you took refuge from a
7 hurricane at Magic Kingdom?

8 A No. I took refuge at my son Andrew's house in Lake Nona.
9 Mr. Anile had no place to go because he had just moved here
10 and had no family here. So the only thing for us to do is to
11 find him a hotel room. There were no hotel rooms available
12 anywhere in the state pretty much. The only one we could find
13 was within Walt Disney World.

14 Q Were you similarly forced to go to Italy?

15 A No, I was not. That was a voluntary choice.

16 Q Can you pull up Exhibit 347, please. Church of Holy
17 Trinity, right? Spanish Steps?

18 A Yes.

19 Q Beautiful.

20 A Yes, it is.

21 Q You paid for it with Oasis money, correct?

22 A Paid for it with the money that I earned by working 18
23 hours a day at Oasis.

24 Q How about Exhibit 345. That's page 6, please.

25 Private jet?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A Yes.

2 Q \$27,412 from Sarasota to New York, right?

3 A Yes. We've seen this, yes.

4 Q Yes. And was that a business expense?

5 A What date was it?

6 Q It was July 2017.

7 A Yes, that was. We showed the before Friday and Monday
8 results. I went up there to meet one of the gentlemen that I
9 was in business with as far as Mirror Innovations.

10 Q Is that why you took your children?

11 A Well, we were going up for two days. The plane had five
12 or six seats in it. It cost the same amount whether it was me
13 going alone with and two pilots or if someone comes along. So
14 I told my family to come. Frank Duran did not come on that
15 trip. So it was just my family. They stayed one day with our
16 family. I did my business. We came home.

17 Q Quite a nice year, though. Is it not, Mr. DaCorta?

18 A Excuse me?

19 Q Quite a nice year you had in 2017, is it not?

20 A Wonderful.

21 Q Private jets, right? Trips to Europe, right? How much
22 did you report to the IRS again that year?

23 A On the return it shows \$66,000.

24 Q Does that seem like a \$66,000 a year lifestyle to you,
25 Mr. DaCorta?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A No, it does not.

2 Q You have to be an accountant to know that that is not a
3 \$66,000 a year lifestyle?

4 A So -- no, you don't.

5 Q But you always play by the rules. Isn't that what you
6 said earlier?

7 A I do. Always have.

8 Q I want to talk a little bit about Mr. Burling. I think
9 you testified that at a certain point you retained Mr. Burling
10 sometime around the holidays in 2017 into 2018; is that right?

11 A Yes. I said I don't remember the time. I don't know if
12 it was the holidays or not, but it was -- Mike Betros did my
13 '16 taxes. So it had to be sometime in the year 2017
14 obviously.

15 Q Prior to him you had D'Arcangelo & Company doing your
16 taxes, right?

17 A Yes. Mike Betros was a partner.

18 Q I think you testified, did you not, that you wanted to
19 give a local guy a shot at your taxes. You like to do that.

20 A I prefer doing business in the local area wherever I
21 live. And now that I was going to be here permanently, I
22 thought that was the smart thing to do.

23 Q But isn't it true, Mr. DaCorta, that when you moved down
24 here in 2015, 2016, and 2017, you stayed with the New York
25 firm, did you not?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A I don't think I moved down permanently until 2016. We
2 were renting a house in 2015, but I was going back and forth.
3 I'm not a hundred percent sure of the dates, but I was
4 definitely down here in 2016 because I know Mike did my last
5 tax return when I lived in Florida. And at that point in
6 time, I didn't have time to change or find a way to find
7 another CPA quickly. So I left it in Mike's hands. And then
8 once I was down here, got my feet on the ground and settled,
9 then I decided to hire a guy down here.

10 Q And that's when you found the local guy, Mr. Burling,
11 right?

12 A Correct.

13 Q But what you omitted from that story, Mr. DaCorta, is
14 that your former firm dropped you as a client because you
15 didn't provide them with the information that they wanted, did
16 you not?

17 A No. That's actually incorrect. They sent me a letter
18 stating that. However, what happened was they had asked me
19 for some information and I knew I was switching, so I told
20 them I'm not going to send you anything because I'm already
21 switching over because they were looking for information
22 from -- I forgot what it was, but now that I'm no longer going
23 to use them, there is no sense of going through all that
24 aggravation to send it.

25 Q But it's true that they withdrew from offering you

CROSS-EXAMINATION OF MICHAEL DACORTA

1 services; is that correct?

2 A They withdrew, but --

3 Q They withdrew because you didn't give them information
4 that they were requesting. Isn't that also true?

5 A Had nothing to do with income information. It had to do
6 with other information that -- I believe it was the bonds and
7 things, the notes and things like that. They needed
8 information that had nothing to do with my personal financial
9 issues or income. It had to do with company structure issues.
10 And at that point in time I knew I wasn't going to use them
11 anymore so I didn't bother doing it.

12 Q And the company structure issues are important, are they
13 not, because they could affect your personal tax liability,
14 correct?

15 A Yeah, but I was already switching accountants. So it was
16 just a waste of time.

17 Q And were you not switching accountants, Mr. DaCorta,
18 because you wanted to find someone who would ask less
19 questions about your taxes?

20 A No. You are 100 percent incorrect.

21 Q I want to talk a little bit about lenders. We call them
22 investors. You're calling them lenders, but we could agree
23 that we are talking about the same class of people, right,
24 Mr. DaCorta?

25 A Yes.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q And we've heard testimony from a few of them. We've
2 heard from Katter, right?

3 A Yes, you did.

4 Q Kihnke?

5 A Yes, you did.

6 Q Cheslow?

7 A Yes, you did.

8 Q Charles?

9 A Yes.

10 Q Mr. Chalhub?

11 A Yes.

12 Q And Mr. Howard?

13 A Yes.

14 Q And there were many, many more investor/lenders in Oasis,
15 correct?

16 A You will hear from a few of them in the coming days.

17 Q And there were hundreds more. Is that not right?

18 A Sure.

19 Q And could we at least agree, Mr. DaCorta, that those
20 hundreds of investors, that their understanding of Oasis was
21 that it was generally and primarily generating money from
22 forex trading; is that fair?

23 A No. The way they were earning -- the way we were
24 calculating their interest was through foreign exchange
25 trading but that the company was doing various other things

CROSS-EXAMINATION OF MICHAEL DACORTA

1 that had to do with their assets. So the income was being
2 calculated by our volume, but it wasn't the only thing we were
3 doing. That was just a way to calculate and figure out how to
4 pay people.

5 Q But you would agree with me, would you not, that you were
6 offering 12 percent returns on those notes, right?

7 A Not returns. We were offering interest.

8 Q You were offering 12 percent interest, right. And up to
9 25 and in some cases 31 percent, correct?

10 A No. 25 percent of the fees. In Mike Chalhub's case it
11 was 31.25 percent of the fees because no one brought him in so
12 I didn't have to pay a lending service agent because he was my
13 friend. So I gave him the extra quarter of a pip.

14 Q But you would agree with me, Mr. DaCorta, would you not,
15 that the economic driver that would allow you to honor those
16 terms was what you were doing as a trader; is that fair?

17 A The economic driver to calculate them, yes.

18 Q Because you testified I believe previously or perhaps it
19 was one of the recordings that the purpose of the real estate
20 wasn't to generate profits, right?

21 A The purpose of the real estate was to eventually generate
22 profits, but you are not going to trade real estate like you
23 trade foreign exchange. So it was to hold an asset other than
24 in cash and allow it to appreciate over time, therefore
25 burgeoning the company balance sheet.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q And so isn't it fair to say then that a 12 percent return
2 on a note is a good return year over year; is that fair?

3 A Yes, it is.

4 Q And 25 percent is pretty extraordinary, right?

5 A Yes, but we weren't promising 25 percent. We were
6 promising 25 percent of the transaction fees.

7 Q But it could get -- it could get that high, correct?

8 A It could.

9 Q And the reason for that had to do with what you were
10 doing in the forex market. Can we at least agree on that?

11 A Yes. It had to do with the number of transactions.

12 Q And so this was a forex opportunity run through a note
13 structure; is that fair?

14 A Yes.

15 Q And I mean your email signature for your emails had an
16 upward graph suggesting markets, did it not?

17 A Yes. On the Oasis Management side it did.

18 Q And these hundreds of investors who had that
19 understanding, that understanding came from you, right?

20 A It did, yes.

21 Q And they were told that Oasis could honor the terms of
22 those notes ultimately, right, because you were making money
23 off the spread, correct?

24 A That's the way we were calculating how much we were going
25 to pay them, correct.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q That's how you were making money, correct, spread pay?

2 A Yes. That's the revenue we were going to use to service
3 the note.

4 Q And you convinced people to engage in this opportunity,
5 right?

6 A I didn't try to convince anyone. I just gave the
7 information. When we did many of the calls, Ray always said
8 this is for information purposes. Listen to what we got. I
9 gave everybody a 30,000-foot overview of just that one part of
10 the business. And then I said ask more questions and read our
11 documents before you make any investment.

12 Q Mr. DaCorta, you didn't try to convince anyone. You
13 heard Anthony Charles testify that he went to seminars you
14 were running in New York about this opportunity, did you not?

15 A Yeah. I was requested to by Kevin Carrigan to do the
16 presentation.

17 Q So it's fair then to say that as you were running
18 seminars in hotels about this opportunity, that you were at
19 least in some way trying to convince people to invest in this
20 opportunity. Is that not right?

21 A The meeting was actually an Ambit meeting, that meeting
22 in the hotel. I never did a hotel meeting for Oasis.

23 Q And then is it not true that you did another meeting in a
24 restaurant that Mr. Charles testified about?

25 A A small meeting with Kevin and a few of his friends who

CROSS-EXAMINATION OF MICHAEL DACORTA

1 just wanted to understand the concept.

2 Q And then is it not true that you went to Mr. Charles'
3 house and sat in his living room and talked to his family
4 about the opportunity?

5 A Yes. Kevin asked me to go with him. He drove me there.
6 I met with Mr. Charles and his wife and explained what we were
7 doing.

8 Q And you did this over and over and over again, did you
9 not, with different people that contacted you such as Special
10 Agent Joe Stone who unbeknownst to you was working undercover?

11 A Yes. I answered his questions when he asked them.

12 Q Is it not true that you were holding conference calls?

13 A Yes, we were.

14 Q So you were selling the opportunity, were you not?

15 A I was presenting the opportunity, absolutely.

16 Q Mr. DaCorta, are you familiar with an individual named
17 Scamardella?

18 A Yes, I am.

19 Q He invested in Oasis too, right?

20 A Yes, he did.

21 Q And what you told him was fairly consistent with what you
22 told everybody else, right?

23 A I did.

24 Q But instead of investing cash, he deeded you his condo,
25 did he not?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A He did both actually.

2 Q And for that condo you credited him a million dollars I
3 think, correct, in the Oasis account?

4 A That is correct. I offered him to do it in a cash
5 transaction. He declined because he said it would be easier.
6 I then put him in touch with Joe Anile, and I said I'm not
7 sure if we can do it that way, but if we can you have to speak
8 to Joe. And they handled all the paperwork and completed the
9 transaction.

10 Q And Mr. DaCorta, I believe that condo, correct me if I'm
11 wrong, was the one you were testifying about on direct, was it
12 not, the one on Siesta Key beach?

13 A Right. 6300 Midnight Pass Road.

14 Q Publishing Defense Exhibit 68 on the Elmo, please.

15 And that's it, correct, Mr. DaCorta?

16 A It's a unit in that building, correct.

17 Q I know we can't see the inside from this appraisal, but
18 it's a beautiful condo, is it not?

19 A It's a two-bedroom condo. The view is beautiful. The
20 condo is kind of normal, but I mean the view is on the tenth
21 floor looking at the Gulf of Mexico so it's spectacular.

22 Q And after receiving that condo, you put it into an LLC;
23 is that right?

24 A It was purchased into an LLC. The LLC was owned by Oasis
25 International Group.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q Can we publish Exhibit 37, please.

2 And is this -- this is the article of incorporation
3 for that LLC that you put it in, correct?

4 A It seems that way, yes.

5 Q And it's your testimony, Mr. DaCorta, that that condo
6 then went into Oasis's real estate portfolio, right?

7 A Yes, it did. It was owned by Oasis International Group.

8 Q And in return Mr. Scamardella got a credit into his
9 account, correct?

10 A Yes. Instead of taking the cash, he just asked for the
11 credit, and he earned his spreads on that extra million
12 dollars.

13 Q Mr. DaCorta, you essentially stole this condo from
14 Mr. Scamardella, didn't you?

15 A No, I did not.

16 Q Let's explore that. You were here when Mr. Childers, a
17 forex expert, testified Thursday of last week, were you not?

18 A I was.

19 Q And you were here when he said that Oasis is not a market
20 maker, right?

21 A I was.

22 Q And you were here when he said Oasis was using a retail
23 trading app to conduct all of its trades in the data that he
24 reviewed?

25 A He did say that.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q And he said that you were not a market maker because of
2 positional biases that you were taking. You heard that,
3 right?

4 A Yes, I did.

5 Q And you heard that some of those positions had no
6 economic purpose whatsoever. That was his testimony, right?

7 A That was his testimony without knowing the details, yes.

8 Q And he also said that the spread pay that Oasis was
9 making was actually just Oasis marking up its own prices and
10 then taking that money and crediting themselves back. You
11 heard that testimony too, correct?

12 A Yes, I did.

13 Q And you heard him say that Oasis was not truly profiting
14 from that spread pay, correct?

15 A I heard that, yes.

16 Q And you heard him say that not one dollar of what, was it
17 \$22 million, ever went back out of ATC's trading account,
18 correct?

19 A Yes, that's correct.

20 Q He called your sales pitch untrue; is that fair?

21 A I don't remember that specifically, but I will take your
22 word for it.

23 Q He said it was deceptive, did he not?

24 A Yes.

25 Q He called your last-ditch silver trading position

CROSS-EXAMINATION OF MICHAEL DACORTA

1 reckless, did he not?

2 A That was his opinion, yes.

3 Q He said you were massively undercapitalized for that
4 position, did he not?

5 A Again his opinion, yes.

6 Q Is it still your testimony, Mr. DaCorta, that the credits
7 you gave Mr. Scamardella for that condo does not represent you
8 stealing that condo from him?

9 A Yes.

10 Q You testified Friday that you've been looking forward to
11 this day since the FBI came to your house; is that right?

12 A Yes, I was. I am.

13 Q And I think you said that they threatened to use a
14 sledgehammer?

15 A They did, directly to me.

16 Q Those were your exact words, correct, that they
17 threatened to use a sledgehammer?

18 A They said do you have any more silver or I will break
19 your F'ing walls down with the sledgehammer.

20 Q No one kicked in your door that day, correct,
21 Mr. DaCorta?

22 A You saw the video.

23 Q I think it speaks for itself. They knocked on the door,
24 correct?

25 A Oh, yes. They knocked on my door.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q They announced police with a search warrant. They
2 knocked loudly. That's fair, right?

3 A I guess.

4 Q Police with a search warrant, right?

5 A I heard that, yes.

6 Q During that encounter, is it fair to say that you were
7 pretty calm?

8 A I was shocked and just absolutely, you know -- I mean,
9 have you ever been faced with that? I mean, that's not
10 something that you stay calm in. I'm a person who stays
11 reserved and thinks things through, but I wouldn't say I was
12 calm, no.

13 Q It's emotional to have police in your house, is it not?

14 A I would think that's an obvious yes.

15 Q You weren't restrained though, right?

16 A Restrained?

17 Q Correct. You weren't handcuffed at any point, were you?

18 A I was not handcuffed. I was taken most of the time by
19 the shoulder or the arm and pointed in the direction I needed
20 to walk.

21 Q And you agreed to speak with agents, right?

22 A I did because I felt like there was a massive
23 misunderstanding and I thought they were there to understand
24 the truth, but that wasn't the truth. That actually wasn't
25 true.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q But you did speak with them, right?

2 A Yes, I did willingly.

3 Q And you willingly -- it was in the billiards room, right?

4 A Yes.

5 Q And after you spoke with them, you spoke with the
6 receiver in that same room, correct?

7 A I did.

8 Q And the receiver went through paperwork, right?

9 A I don't remember him going through much paperwork. In
10 between his phone calls that he was taking, the CFTC attorney
11 was asking questions, but there was questions going back and
12 forth. Either the CFTC attorney was asking questions or the
13 receiver.

14 Q And when you were talking to the agents -- so let's skip
15 back a second. When you were talking to the agents, you
16 talked about Oasis, right?

17 A Yes.

18 Q And isn't it true that you said that you were the trader
19 for the vast majority of Oasis's trading?

20 A Yes.

21 Q In fact, I think you said that today as well, correct?

22 A 100 percent true.

23 Q Isn't it also true that in that interview you said that
24 Gil Wilson is just an innocent kid that didn't do anything
25 wrong?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A That's absolutely correct.

2 Q And I believe you said the same thing about Mr. Montie as
3 well, correct?

4 A No. I just said Ray didn't know about all the details.

5 Q Isn't it also true, Mr. DaCorta, that in that interview
6 you said to agents that things got out of hand a little too
7 quickly?

8 A It was out of context with the way it was written.

9 Q Isn't it also true, though, that you said that Oasis did
10 not have a revenue stream?

11 A I don't remember exactly, but I know for a fact they
12 asked me where's the revenue stream into the checking account.
13 And I knew that we weren't taking the funds out of ATC. Our
14 revenue stream was the spreads, but we recycled it into the
15 trading account. There's nothing in any company business that
16 says you have to take money from one account and bring it to
17 the other account. Especially when you only put a small
18 portion of your money in the other account, you can operate
19 out of your operating account without ever taking money back
20 if you don't need to.

21 Q I appreciate that very long response, but I simply asked
22 you the question, they asked you about where the revenue was
23 and you said, I don't know; isn't that right?

24 A I don't know if that's actually the way it was -- I don't
25 think that was a hundred percent accurate because I knew we

CROSS-EXAMINATION OF MICHAEL DACORTA

1 had a revenue stream. So I wouldn't say that. But on the
2 other hand, it was very nerve-racking at the time. I may have
3 shrugged my shoulders and they wrote it down as "I don't
4 know."

5 Q And you also said, did you not, that you were sorry?

6 A The question asked was, are you sorry you had losses. So
7 I said, I'm a very competitive person. I was definitely sorry
8 about that. That's like asking a relief pitcher if he's sorry
9 he gave up a home run to lose the World Series in the bottom
10 of the ninth.

11 Q And as much as I appreciate the baseball analogy, isn't
12 it true, Mr. DaCorta, that we didn't hear all this a few hours
13 ago on your direct examination, correct? I don't believe you
14 ever said that, did you?

15 A Say what?

16 Q That you admitted that Oasis had no revenue?

17 A I didn't admit Oasis had no revenue.

18 Q You told agents that day in that interview that Oasis had
19 no revenue, did you not?

20 A No. They said, where's the revenue stream. I may have
21 shrugged because at that point they already told me they know
22 everything about Oasis. They knew about the ATC account.
23 They knew about the way we ran our business. So that was
24 obvious that they didn't understand it. And at that point in
25 time I wasn't about to explain something to people that didn't

CROSS-EXAMINATION OF MICHAEL DACORTA

1 want to understand the truth.

2 Q Because it's extremely complex to understand, right,
3 Mr. DaCorta?

4 A Not that it's complex. It's just if you don't want to
5 understand something, you have a preconceived notion, you're
6 not going to listen.

7 Q The same way that Mr. Childers doesn't understand, right?

8 A Mr. Childers understands. He has an opinion. He's an
9 expert with an opinion. I've been doing this 37 years. I
10 also have an opinion.

11 Q Mr. DaCorta, after building this \$100 million company,
12 your testimony earlier was that they accused you of running a
13 Ponzi scheme and you, quote, just shrugged your shoulders,
14 unquote. Isn't that what you said earlier today?

15 A I didn't say that. They accused me of running a Ponzi
16 scheme, and I just didn't answer at all.

17 Q You testified on direct that you shrugged your shoulders?

18 A Maybe I did.

19 Q But ultimately, Mr. DaCorta, your testimony is that
20 Special Agent Volp is lying, right?

21 A I don't think he's lying. I think a lot of things are
22 out of context. The way he wrote his notes are not accurate
23 or memorialized in a way that was in the spirit of the
24 conversation.

25 Q What about his testimony? Did he not say that you

CROSS-EXAMINATION OF MICHAEL DACORTA

1 admitted to running a Ponzi scheme at Oasis?

2 A No, he didn't say that. He said I did not admit to
3 running a Ponzi scheme.

4 Q Did he not say that you admitted that there was no
5 revenue coming out of Oasis?

6 A He said that I said, I don't know. He didn't say I
7 admitted that either.

8 Q Did he not say that you said things got out of hand too
9 quickly and you weren't sure how it got to this point?

10 A That was completely taken out of context.

11 Q You would agree, Mr. DaCorta, that people lie sometimes,
12 correct?

13 A Yes. Agent Stone testified to that fact.

14 Q But the nice thing about numbers is that they usually
15 don't lie; isn't that right?

16 A Sure.

17 Q Unless, of course, someone is manipulating those numbers,
18 right?

19 A Sure.

20 Q For example, Mr. DaCorta, if you had Joe Paniagua
21 manipulating the numbers behind the screens that investors are
22 seeing, then those numbers might not be accurate, correct?

23 A Yes, except he was not. You can beat that horse all day
24 long. He wasn't manipulating any numbers.

25 Q But you admitted on direct, did you not, that he was

CROSS-EXAMINATION OF MICHAEL DACORTA

1 changing the numbers, correct?

2 A He was doing exactly what the program required him to do.

3 Q At your direction, correct?

4 A At the overall business plan's direction, yes.

5 Q And he was changing those numbers to honor what the terms
6 of those promissory notes were ultimately. That's your
7 testimony, correct?

8 A Not to honor the terms. The fact of the matter is
9 those -- all those subaccounts were Oasis accounts. They
10 weren't client accounts. We needed to track each loan
11 separately in order to accurately calculate its interest. So
12 therefore at the end of each month, each loan, whether we had
13 a profit that month or a loss that month, we had to bring
14 those balances back to the correct principal balance in order
15 to then have everyone earn the correct interest the next
16 month.

17 Q And he was doing that at your direction, was he not?

18 A Absolutely. That's the right thing to do.

19 Q And Mr. DaCorta, in this trial you sat here and heard
20 multiple people testify that once money went into your trading
21 accounts, it never came back out, correct?

22 A Yes, that's correct.

23 Q Burt Wiand testified that money never came out of CHF --
24 CFH, correct?

25 A Yes, CFH.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q And that goes all the way back to 2011, 2012?

2 A No, 2013, '14, but that was a totally different program.
3 It had nothing to do with loans.

4 Q But the truth remains money never came back out, correct?

5 A I don't know exactly every transaction. We don't have
6 the records for that.

7 Q And you were here when Mr. Wiand also testified that
8 money never came back out of the CFT account, correct?

9 A Yes. That's been well established.

10 Q So you agree that money never came out of the account?

11 A Never had to.

12 Q And Special Agent Batsch also confirmed that, right?

13 A Yes.

14 Q And Mr. Childers, he wasn't wrong about that, right?

15 A No. He wasn't wrong about that. That's not an opinion.
16 That's a fact.

17 Q Is it fair then to say that once money went into your
18 trading accounts, Mr. DaCorta, that is essentially where money
19 went to die?

20 A That's not correct.

21 Q I want to walk through the cumulative balance in the ATC
22 account with you.

23 Can we publish Exhibit 425F?

24 Are you aware, Mr. DaCorta, that in December 2016 for
25 the ATC account, by the time you hit that month of December of

CROSS-EXAMINATION OF MICHAEL DACORTA

1 2016, you had a negative figure, a negative balance, a
2 negative account balance in your performance of \$1.65 million?

3 A Yes, but we had 2.2 million or something in spreads. So
4 we just -- those were customer accounts. We had the spreads.
5 I'm not sure how it all panned out, but we basically ended up
6 relatively even.

7 Q Spreads are counted on the sheet, is it not? This is the
8 exhibit Mr. Childers testified to the other day, isn't it?

9 A Let's see. The deposit was \$349,000. That's all there
10 is there.

11 Q That's the spread column, is it not?

12 A Say that again.

13 Q That's the spread column, is it not? Row nine? So let's
14 go back to December of 2016. Negative 1.651. You would agree
15 with that, right?

16 A Where are you seeing negative?

17 Q If you look at the bottom, the sum column in brackets,
18 you have to look at this bottom.

19 A Right.

20 Q Right? January 2017?

21 A January of 2017.

22 Q The next month, negative 1.5 million, right?

23 A Do we have the same screen up?

24 Q Do you see the sum column on the bottom right? It's very
25 small where the cursor is.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A The cursor is off the balance sheet. I can't see
2 anything.

3 Q Can you see my cursor on the screen, Mr. DaCorta?

4 A Yes, I can.

5 Q Can you see the number down here?

6 A Yes, I do.

7 Q Negative 1.5 million, right?

8 A It looks that way. It's very difficult to see right
9 here.

10 Q And then if we go over to March 2017, that number grows
11 to negative 1.8 million, correct?

12 A March 2017? Well, first of all, January 2017 was a new
13 program, so --

14 Q I'm just asking you, Mr. DaCorta, about the net profit
15 and loss in your accounts that includes the spread pay. In
16 March 2017, what is the number in that sum column?

17 A It's so small I just can't -- I really can't read it. It
18 looks like 1.6 or something.

19 Q Negative, correct?

20 A Right.

21 Q So let's move forward. Would you agree with me that that
22 number grew?

23 A That number -- excuse me?

24 Q In April of 2017, was that loss not \$2,131,000?

25 A I don't know. We phased out one account and started a

CROSS-EXAMINATION OF MICHAEL DACORTA

1 new account in 2017. So I don't think -- I don't know how he
2 did this, but I have never seen this before and I can't verify
3 the numbers to be accurate. We had an account by the
4 Number 50 or 52. That was specifically for customers. And
5 then we created a new account, 55, for lenders. The new
6 account started January of 2017. There was not a \$2 million
7 loss in January of 2017.

8 Q Mr. DaCorta, were you not here on Thursday when
9 Mr. Childers testified that this Exhibit, 425F, includes the
10 profit and loss for both of those accounts, the OB650 account
11 and the OB655 account?

12 A Okay. They are unrelated, though. So it's a little bit
13 confusing. You are comparing apples and oranges.

14 Q Well, apples or oranges regardless, by April of 2017 you
15 lost \$2.1 million. Do you have any reason to doubt that?

16 A Well, I would like to look over the numbers, but, I mean,
17 that could be.

18 Q Do you have any reason to doubt that by May you lost
19 \$1.8 million?

20 A Yes, because I know our 2017 numbers. And this doesn't
21 seem a hundred percent accurate to me.

22 Q And that by June 2017, you lost \$2.1 million. Is that
23 also not accurate?

24 A I don't know how he figured this. So I would have to
25 look at the numbers separately.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q Is it also not accurate then that by July of 2017 you
2 lost \$3.3 million?

3 A Again, you are comparing two different things. I know
4 our results for 2017. We lost \$10 million. We made
5 12 million in spreads. We netted 1.6 million. With the
6 rollovers and the brokerage fees to ATC, we were a little bit
7 positive, but it has nothing to do with the previous account.

8 Q You said you lost a lot of money in 2018, did you not?

9 A Yes.

10 Q You are more familiar with those numbers?

11 A Yes. 2017 was a clean break. Anyone who wanted to take
12 their money out, they took their money out, they were gone. A
13 lot of the trading money we used in 2015 and 2016 was our own
14 equity from our confidential private offering memorandum. So
15 from 2017 is when you start the new system.

16 Q So your testimony is that you were doing great --

17 A Not great.

18 Q -- in 2017, correct?

19 A 2017 we were holding our own. It was a brand new
20 program, and I thought overall at the end of the year we were
21 successful.

22 Q So the end of the year that year you were down
23 \$1.6 million. So that's a successful year?

24 A Positive \$1.6 million.

25 Q You're negative \$1.6 million.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A You're reading the wrong numbers. It's up to you.

2 Q What's the number in the bottom there in brackets?

3 A It doesn't matter. If you look at 2017 from January 2017
4 until December 2017, numbers would show 10 million in losses,
5 12 million in spreads, 1.6 million in profits.

6 Q Mr. DaCorta, you are more familiar with the 2018 numbers;
7 is that right?

8 A I'm familiar with the '17 and the '18 numbers.

9 Q Let's turn to '18. Is it not true that in January of
10 2018 this trading account was down \$6 million?

11 A No. It was down -- we lost \$4 million, I think.

12 Q You lost \$4 million that month, right?

13 A In January I think --

14 THE COURT: Now, hold on. We've got to take a pause
15 between the Q and A. We don't want to talk over each other.
16 All right.

17 BY MR. MURRAY:

18 Q You lost \$4 million in one month that month, correct?

19 A I think we had a loss of \$4 million.

20 Q In the next month you lost another \$4 million, right?

21 A I believe so.

22 Q And so cumulatively across this account you were down
23 \$10 million, were you not, end of February of 2018?

24 A No. You are confused again.

25 Q Fast forward to April of 2018. Were you not down

CROSS-EXAMINATION OF MICHAEL DACORTA

1 \$16 million by that time?

2 A When?

3 Q April of 2018.

4 A No. Our total loss at the end of 2018 was a little over
5 9 million in trading, 9 million in brokerage fees and
6 rollovers, for a total of \$18 million, which would have been
7 negated by the silver going up to \$20 a few months later.

8 Q So without getting into the silver because I didn't ask
9 you about that, your testimony to this jury is that that
10 number that sums up all the columns for the ATC trading
11 account data, which goes all the way back to 2015, that that
12 number of 17 -- well, now he's on July. Can you go back to
13 March? That that number of \$13 million is wrong, negative
14 13 million?

15 A It's adding a different account that was closed that's
16 already with the new account. So again, you are adding
17 everything together that's from two different programs when we
18 completely stopped one program. So if it's accurate, it's
19 accurate. All I know is that we were down \$18 million at the
20 time we were shut down, total, and that's why we took
21 corrective action and put the silver position on.

22 Q Let's start there. You said you were down \$18 million.
23 It was actually \$20 million, was it not?

24 A No. That's where you are making a mistake. The
25 20 million comes from the other account. The loan program was

CROSS-EXAMINATION OF MICHAEL DACORTA

1 down a little over 9 million with a little -- not over
2 9 million in fees and rollovers for a total of \$18 million.

3 Q All right, Mr. DaCorta. How much would you say you were
4 down in December of 2018?

5 A In December of 2018 we were down roughly \$18 million
6 total. 9 million in trading losses and 9 million in the
7 rollovers and the spreads.

8 Q That's what I have too. So I think we are finally on the
9 same page, okay? December of 2018 you're down \$18 million,
10 and that's the month you had the Christmas party you talked
11 about that we are all very familiar with, right?

12 A Yes, we are.

13 Q And is it not true that at that Christmas party I think
14 you said 95 percent of the people there were Oasis investors,
15 right?

16 A I would think so, yes.

17 Q So you have everyone in one room at that Christmas party
18 at the Ritz-Carlton in Sarasota, right?

19 A Correct.

20 Q And at no time, Mr. DaCorta, at no time did you tell
21 anyone that anything was wrong with Oasis; is that true?

22 A That is true, yes.

23 Q Ian Howard testified here at this trial last week, did he
24 not?

25 A Yes, he did.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q And he testified he saw you at a birthday party several
2 days before the search warrants in April of 2019?

3 A Yes, definitely.

4 Q And you saw him at that party?

5 A Yeah. I believe it was Aaron Ruskey's party.

6 Q He said that you said nothing was wrong with Oasis. You
7 never mentioned it; is that true?

8 A Yes, it is.

9 Q And Mr. DaCorta, isn't that also the case because you and
10 Mr. Anile agreed not to tell anybody about these massive,
11 massive losses in your trading account?

12 A Absolutely not.

13 Q In fact, Mr. DaCorta, weren't you still soliciting people
14 to invest in Oasis when you were down \$20 million in April of
15 2019?

16 A In April of 2019, we were down 18 million. And what we
17 were doing was we were continuing business operations. We had
18 our silver position. We had our real estate. We had our gold
19 and silver. We were continuing business operations the same
20 way Amazon does when they lost money 14 consecutive years
21 before turning a profit. Sometimes things don't work out in a
22 single year, but you pursue. You go through them and make
23 adjustments.

24 Q So that's a very long yes, right?

25 A What was the question?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q The question was, you were still taking Oasis investor
2 money when you were down \$18 to \$20 million in April of 2019,
3 correct?

4 A Yes, that's correct.

5 Q Can we publish Exhibit 2, please, at 2364.

6 This is one example of that, is it not?

7 A Yes, yes. 4/10/19.

8 Q The investment in Oasis of \$10,000?

9 A Yes, it is.

10 Q Mr. DaCorta, you just admitted on the stand that you
11 didn't tell anybody about these losses, correct?

12 A Yes.

13 Q But isn't it also true that over the years you were
14 saying the opposite?

15 A No. I was saying that we were earning and paying through
16 the spreads, and the P&L was the responsibility of the
17 company.

18 Q The spreads at Oasis was overpaying on each trade and
19 cycling the money back into their own account, correct?

20 A That's not an accurate depiction, but yes.

21 Q Let's go to Exhibit 202X on the split screen. And I want
22 to focus your attention first to the left, Mr. DaCorta. Is it
23 not true that in July of 2017, you lost \$1.1 million trading?

24 A Yes.

25 Q And is it also true that that month you sent an email

CROSS-EXAMINATION OF MICHAEL DACORTA

1 saying you didn't do a lot of trading in Italy, but everyone,
2 guess what? We're up .63 percent?

3 A That's for Oasis Management, that's correct.

4 Q And you sent this email, correct?

5 A I did.

6 Q And you heard testimony that Deb Cheslow was getting
7 these emails, right?

8 A Yes.

9 Q And there were other emails that the Katters were
10 getting?

11 A The Katters were in Oasis International Group.

12 Q Can we go to Exhibit 202X at 86, please?

13 A Would you like me explain the difference between the two
14 right there?

15 Q Sure.

16 A So Oasis Management is earning spreads from OIG the same
17 way any other person would earn spreads. So the Oasis
18 Management people were getting spreads. I had to take the
19 spreads as income into Oasis Management and then report them
20 as a gain for Oasis Management people because at that point
21 they may have still been limited partners at that time or
22 lenders, but that was their interest. That wasn't a profit
23 and loss situation.

24 Q In that same month you sent an email out. Did you not
25 send this email?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A Yeah, to Oasis Management.

2 Q Oasis Management telling them that you were up 1.3
3 percent, correct?

4 A Yes.

5 Q And you lost \$1.1 million that month, did you not?

6 A That's correct. You are correct that OIG lost in P&L and
7 you are correct that the Oasis Management people were up 1.83
8 in interest.

9 Q And the P&L includes the spreads because we saw that in
10 the chart that Mr. Childers walked us through, did we not?

11 A I'm not sure how he calculated it.

12 Q How about Exhibit 202X at 210. This is January 2018. In
13 January 2018, you lost \$4.7 million, did you not?

14 A Yes. That's what it shows.

15 Q Did you not also send an email out that month saying that
16 you wrapped up trading that month with a gain of 1.83 percent?

17 A For Oasis Management. Again, it's comparing apples and
18 oranges.

19 Q But didn't you testify yesterday that you were trying to
20 merge those apples and oranges actively, were you not?

21 A 2017 we were still far off because in 2019 we still
22 hadn't done it.

23 Q Then let's look at 2018. Can you pull up 202X at 13?

24 Same thing here, is it not? Month end result at
25 3.67 percent?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A January 2018, that's correct. Because you see the loss
2 was that much. That means our volume was so high because we
3 ended up doing a lot of trading. So therefore, the spreads
4 were paying those people, not the loss.

5 Q And those were the same spreads that Mr. Childers
6 testified about?

7 A Yes, they are.

8 Q And in February of 2018 -- could we pull up 202X at 20A?
9 Again, does it not say that you wrapped up the month with
10 2.36 percent for that month?

11 A That's the interest they earned, yes. The same way
12 everyone, the lenders, would have earned that much also.

13 Q And you lost \$4.3 million that month, did you not,
14 Mr. DaCorta?

15 A Right. That was Oasis International Group's problem.
16 And that's why we put the silver on to make that money back.

17 Q So your testimony to this jury is that what you were
18 referencing in that email is what was promised to them through
19 the loan agreement. Is that what you're saying?

20 A No. What I'm representing is the amount of spreads that
21 were generated are then calculated how much the money I loaned
22 to Oasis International Group through Oasis Management brought
23 back to -- that was owed back to Oasis Management and then
24 distributed among every lender.

25 Q Can we publish Exhibit 200H, please.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 This is from June 2018. Did you send this email,
2 Mr. DaCorta?

3 A Yes, I did. Oh, no. That says, to Mike DaCorta.

4 Q And it says from Mike DaCorta too.

5 A I'm sorry. Yes.

6 Q And this is announcing July bonus month for -- on
7 June 14, 2018, it's announcing July bonus month, right?

8 A Yes.

9 Q How did you perform in June 2018?

10 A June? I think we were down \$200,000.

11 Q And how about the month before that?

12 A 2018 I told you from right up front we had a terrible
13 year. I think we made \$2 million in December. Pretty much we
14 were down most of the year. I told the agents that also when
15 they came to my home.

16 Q Mr. DaCorta, did you not represent to potential investors
17 that you never had a losing month, that it always went up and
18 it never went down? Was that not part of the Oasis sales
19 pitch?

20 A That's part of the interest. I made it clear we don't
21 deal with P&L. We simply pay you interest based on the
22 transactions. It was my responsibility to make up the
23 difference.

24 Q I'm going to read you an excerpt from Exhibit 210ET.
25 Frank Duran and it -- I will publish it to the jury as well.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 And it, yeah. This makes it very unique because if
2 you think about it and, and, and, and the lender environment
3 you are in you never go negative. You always going plus. Not
4 a typical Wall Street investment. So you are never having
5 negative. You are always going plus. You're always -- every
6 month you're going to be plus, you know, never negative. And
7 so -- and you responded, right, did you not?

8 A Yes.

9 Q So you adopted that statement, did you not?

10 A Yes, I did, because it's true.

11 Q Can you pull up 425F1 again?

12 Mr. DaCorta, how could you possibly say that that
13 statement is true?

14 A The program was very specific. We made it very clear.
15 We would absorb the profit and loss. We would pay you on the
16 transactions. That's what we had to do. That's what we did.
17 Every withdrawal ever brought to us we made. We had 90
18 days -- if anything came in that we had to make any
19 adjustments, we had 90 days to fill that promise. We
20 fulfilled every single obligation.

21 Q Mr. DaCorta, you would agree, would you not, that you
22 lost money almost every single month in 2018 in that trading
23 account?

24 A Yes. I never disputed that.

25 Q You took catastrophic losses in that trading account

CROSS-EXAMINATION OF MICHAEL DACORTA

1 relative to how capitalized it was, did you not?

2 A Yes. I would agree to that.

3 Q And you were going around telling investors that you
4 never lose money, are you not?

5 A No. I'm telling them we do not -- what we do is we
6 simply pay you on the spreads. The P&L is our problem. If we
7 have a losing, if we have a profitable month, the losses are
8 ours, the profits are ours.

9 Q Mr. DaCorta, the spreads are included in the numbers on
10 that graph in front of you, are they not?

11 A You want me to explain how the spreads work?

12 Q I think we've heard a lot about how the spreads work,
13 Mr. DaCorta.

14 A Okay.

15 Q You would at least agree with me, would you not, that all
16 the trading money in the ATC account was lender money,
17 correct?

18 A It all came through the loan program, yes.

19 Q And you were here when Mr. Anile testified that he didn't
20 invest in Oasis because he thought it was a scam. That's what
21 he said, right?

22 A That's what he said, yes.

23 Q And you didn't have any of your own money in that
24 account, correct?

25 A I had -- whatever money I had earlier on I put into Oasis

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Management. And then from that point on, whatever I earned I
2 used or left behind because I didn't take the money out. So
3 as I was earning money, I left it behind.

4 Q You didn't have a lot of money to put your own skin in
5 the game early in 2010, did you?

6 A No.

7 Q And that's because you had declared bankruptcy, right?

8 A That's correct.

9 Q So you didn't really have a substantial amount of money
10 in that account, correct?

11 A In 2011, 2012, no. When we first got started, the reason
12 why we started in the first place was Ray was trying to help
13 me get back on my feet.

14 Q And so is it fair then to say, Mr. DaCorta, that you were
15 completely dependent on the lender investors to fund those
16 trading accounts?

17 A At that point, I mean, we could have ran with the assets
18 we had. We didn't need any more, but that was the business
19 plan. That was the program.

20 Q And isn't it true that you never sold any of the real
21 estate assets that Oasis held to recapitalize those accounts,
22 right?

23 A No. The only one we sold was to Vinny Raia.

24 Q In fact, you were living in one of those properties,
25 right?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A Which was going to be sold in the next few months.

2 Q And Mr. Anile and his parents were living in another one
3 of the properties, right?

4 A Yes, he was.

5 Q And there were other Oasis members living in those other
6 properties, right?

7 A Yes. Most of the properties were occupied by people who
8 worked for the firm in some capacity.

9 Q And your son was living in one of them, right?

10 A Yes, he was.

11 Q And no money ever left ATC. We have established that,
12 correct?

13 A Yes, we have established that.

14 Q And so, Mr. DaCorta, do I understand this correctly that
15 instead of -- when things were going poorly, instead of
16 recapitalizing that position when you were down \$18 million,
17 you basically just took a super risky silver position. Is
18 that not right?

19 A Well, it's not -- your characterization is not perfect.
20 It's a silver position being managed.

21 Q What if I called it a Hail Mary? Would that characterize
22 it correctly?

23 A No. Someone who doesn't understand the markets or the
24 silver.

25 Q Does Mr. Childers understand the markets?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A I'm sure he does.

2 Q He seemed pretty smart, did he not?

3 A Yes, he did.

4 Q In fact, he was doing some calculations on the stand just
5 in his head, wasn't he?

6 A Sure.

7 Q Multiplying, dividing, multiplying again pretty large
8 numbers?

9 A I think he did a fairly good job of that.

10 Q Mr. DaCorta, you couldn't predict the pandemic, correct?

11 A I don't think anybody could.

12 Q Would you agree with me then that by April of 2019, you
13 had lost \$18 to \$20 million in trading?

14 A 18 million, yes.

15 Q You had spent about \$8 to \$9 million on other ventures
16 outside of the trading account?

17 A You're including the real estate in that?

18 Q Yes.

19 A Yeah. I would say at least that much.

20 Q And personal expenses, correct?

21 A Sure.

22 Q And then at that point you assumed a silver position that
23 was so overleveraged you wouldn't have lasted even outside of
24 May 2019; isn't that right?

25 A No.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q Well, you were here when Mr. Childers testified that your
2 position would have been liquidated within May of 2019, were
3 you not?

4 A Mr. Childers is making a lot of assumptions without any
5 information.

6 Q Aren't you making assumptions by guessing that silver
7 would go up 12 months later and that would save the day for
8 Oasis?

9 A I'm making an educated guess based upon my experience.

10 Q And wasn't Mr. Childers making an educated guess when he
11 testified based on his experience?

12 A Sure.

13 Q And Mr. DaCorta, you would agree that had you held that
14 position and had it been liquidated, then the final \$2 million
15 in that ATC account, if they had called that margin, that
16 would disappear, would it not?

17 A If it was liquidated. However, it went to \$20 before it
18 went down, so.

19 Q And again at this time the other assets that Oasis had to
20 recapitalize that account was the houses that you were living
21 in, correct?

22 A All the real estate.

23 Q The real estate your child was living in, correct?

24 A All the real estate, all 11 properties.

25 Q The precious metals that you put in the closet, correct?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A Yes. I wouldn't be looking to liquidate them. That was
2 something I was holding for a very long time.

3 Q And you were present on Thursday when Mr. Childers called
4 that reckless, were you not?

5 A That's his opinion, yes.

6 Q And you heard him describe that as a poor hedge because
7 it's illiquid, correct?

8 A It wasn't being used as a hedge against the trading
9 account. It was being used against a hedge against the U.S.
10 dollar.

11 Q In fact, he did testify that using silver as a hedge
12 against the U.S. dollar or against any classic currency is
13 poor because of the correlation. Did you not hear him testify
14 to that?

15 A I did, but he's incorrect.

16 Q You also heard him testify that your entire platform,
17 your trading strategy was a combination of irrational and
18 reckless. You heard that?

19 A Yes, I did.

20 Q You heard him testify that the entire premise of this
21 opportunity was deceitful because spread pay that you
22 advertised is really just money going from investors back into
23 your own accounts?

24 A That was his opinion, yes.

25 Q And of course you've admitted here today that at no point

CROSS-EXAMINATION OF MICHAEL DACORTA

1 did you tell anyone about these trading losses on the screen,
2 correct?

3 A That's correct.

4 Q Let's take a look at what you did do instead.

5 Can we leave 425F1 up?

6 Mr. DaCorta, isn't it true that in March of 2017,
7 which is the same month that you lost another half a million
8 dollars and you were carrying a cumulative net loss of
9 \$1.8 million, you bought that Maserati we saw earlier?

10 A I guess, yeah, 2017.

11 Q I'm sorry?

12 A Yes.

13 Q And isn't it also true that in June of 2017 when you lost
14 \$374,000 and you were running a cumulative net loss of over
15 \$2 million, that you took a trip to Italy that month?

16 A If that was the month, maybe. I don't remember, but it
17 probably was, yes. I mean, I don't remember the month by
18 showing me a picture.

19 Q And isn't it also true that in July of 2017 when you lost
20 \$1.1 million, you take a private jet to fly to New York?

21 A July, that's correct.

22 Q And that's the one we saw earlier, right?

23 A Yes.

24 Q And then after losing a combined \$8.9 million in January
25 of 2018 and February of 2018, you purchased a condo at Vardon

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Terrace where your son lived; isn't it true?

2 A No. I purchased a condo for the company. And my son and
3 other people -- I purchased four, and different people from
4 the company lived there.

5 Q Including your son?

6 A Yes.

7 Q And would that be the same son you were paying an \$80,000
8 salary for one of the subcompanies?

9 A No.

10 Q That's a different son?

11 A That's the son that made \$17,000.

12 Q Isn't it also true, Mr. DaCorta, that that same month
13 after losing \$18.5 million in January of 2018 and February of
14 2018, you continued paying off your father's home equity line
15 with money that came from Oasis investors?

16 A I made several payments on my father's home equity line.

17 Q Using Oasis money?

18 A Yes.

19 Q Can we pull up Exhibit 2 at 1012?

20 Is that just one of many examples of you paying off
21 your father's home equity line payments using Oasis
22 invest/lender money?

23 A Yes.

24 Q And Mr. DaCorta, isn't it true that the next month after
25 losing \$9 million in March of 2018, you took yet another

CROSS-EXAMINATION OF MICHAEL DACORTA

1 private jet from Sarasota up to New York?

2 A It's possible, yes.

3 Q Will you publish Exhibit 345 at 11, please?

4 And that's an example of that, right, Mr. DaCorta?

5 A Yes.

6 Q And isn't it also true that the next month after that, in
7 April of 2018, you took your wife to the Grand Caymans, and
8 you spent \$14,000 at the Ritz-Carlton for your anniversary?

9 A I believe that's true.

10 Q And you paid with that from Oasis money that came from
11 Oasis accounts?

12 A Yes.

13 Q And then isn't it also true, Mr. DaCorta, that after a
14 few more months of mounting losses, you lost another half a
15 million dollars in 2018, you paid for your daughter's college
16 tuition to Rollins out of Oasis accounts?

17 A Yes. Basically it was room and board. She had a
18 scholarship, and she took out loans for the balance, and that
19 was the room and board.

20 Q And you paid for that with Oasis investor money, correct?
21 And the month after that in August 2018, isn't it true that
22 you took another private jet from Sarasota to New York and
23 back which cost \$16,000 each way?

24 A I don't know, but if it's there, yes.

25 Q Does that remind you?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A What was the date?

2 Q So this is --

3 A Yes.

4 Q -- exhibit 345, and that is August 2019.

5 A Yes.

6 Q And then in October of 2018, after losing another
7 \$684,000 in the market, you purchased Lacantera, did you not?

8 A Yes.

9 Q And is that the settlement document for that purchase?

10 A Yes. It's a company owned by Oasis Management.

11 Q And isn't it also true, Mr. DaCorta, that in November
12 2018, down cumulatively \$19 million at that point, you got a
13 quote for a \$50,000 aquarium for your home, your future home,
14 Lacantera?

15 A We got a quote, yes. We got one quote for the office and
16 one quote for the house.

17 Q And how much was the quote for the house, Mr. DaCorta?

18 A That was the lower one. The office was the larger one.

19 Q So the house was a \$50,000 aquarium, and the office was
20 the \$80,000 aquarium?

21 A Correct, except that I did research and found they
22 carried no value for resale. So we turned down both of the
23 projects.

24 Q Oh, that's why you turned it down? Not because you lost
25 \$20 million by then?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A The property was owned by the company, and we were
2 looking to improve it to a degree to be able to sell it later
3 at a future date for a much higher amount. These were very
4 high-end homes.

5 Q And Mr. DaCorta, isn't it true that around this time in
6 January of 2019, you started to buy precious metals?

7 A Yes.

8 Q Will you publish 301 at 1, please?

9 And sometimes you even bought them in your own name,
10 did you not?

11 A That was a mistake by the gentleman there. We always
12 bought it for Oasis Management or OIG.

13 Q What does that slip say?

14 A It says my name. That was one of the first ones we
15 purchased, I guess.

16 Q And isn't it true, Mr. DaCorta, that in February of 2019
17 after having lost yet another \$700,000, you paid off the home
18 that you were living in at Lost Key Place?

19 A Lost Key Place, the mortgage came due. We paid it off.
20 It was an asset wholly owned by Oasis International Group. So
21 it's basically just turning cash into a property. It's the
22 same owner. The company owns the cash. The company owns the
23 property.

24 Q And the company owns the cash because the company is
25 given the cash by investor/lenders, right?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A Correct.

2 Q And isn't it also true, Mr. DaCorta, that in March of
3 2019 after losing another one and a half million dollars, you
4 were invoiced \$50,000 for dining room columns, a new bar area,
5 and a renovated office inside your house?

6 A Yes.

7 Q And I'm publishing 302Q at 1.

8 Oasis money, correct?

9 A Oasis Management money to an Oasis Management property,
10 correct.

11 Q That came from investors like the Katters, correct?

12 A No, because they were in Oasis International Group.

13 Q And you moved money between the two. You already
14 admitted that on direct, did you not?

15 A Yes. I mean, when we earned money, we took it back, but
16 she invested in Oasis Management. This is Oasis Management
17 funds.

18 Q When you earned money on the spread, you took it back.
19 Is that what you mean by that?

20 A No. I did loan money to Oasis International Group. So
21 sometimes I took principal back.

22 Q Let's stick with that month, that same month that you
23 lost another \$1.5 million in March of 2018 -- 2019. I'm
24 sorry. You also spent \$150,000 in gold and silver precious
25 metals, correct?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A Yes.

2 Q And that is Exhibit 305 at 19. That's just one example,
3 right?

4 A Yes.

5 Q And Mr. DaCorta, that same month you continued to pay for
6 your LA Fitness membership out of the Oasis account. Isn't
7 that true?

8 A Oh, I think I had it linked to that account, yes.

9 Q Every month, right?

10 A Yes.

11 Q Because that's a business expense?

12 A No. That's up to the accountants to go line item and
13 tell me what's personal and what's business at the end of the
14 year.

15 Q Finally, Mr. DaCorta, I want to turn your attention to
16 April of 2019. I think you admitted by then we're on the same
17 page. You are down \$18 to \$20 million in the account,
18 correct?

19 A \$18 million, that's correct.

20 Q And that month you lost another \$540,000?

21 A In April?

22 Q Yes.

23 A April '19, that was the result of them liquidating our
24 silver position.

25 Q And part of those losses were also the positions that

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Mr. Childers testified about on Thursday, was it not?

2 A I don't think we had -- we had very small positions. We
3 only had the silver. So that's mainly from the silver.

4 Q But you were at certain points in 2018 and 2019 taking
5 positions that he testified made no economic sense, were you
6 not?

7 A Oh, yes. He testified to that. And we had positions
8 called straddles for a specific, but yes.

9 Q And he testified, did he not, that those straddles were
10 you betting on the same horse and against the same horse for
11 the same amount and basically generating nothing except
12 \$60,000 in overnight fees, correct?

13 A That happened during that time period, yes.

14 Q And I want to turn your attention to Exhibit 125. Isn't
15 it true, Mr. DaCorta, that that month in April 2019 when
16 you're down \$19 million, you spent Oasis money on a country
17 club membership at Longboat Key Country Club in the amount of
18 \$32,000?

19 A That's correct.

20 Q Because that also is company money. Is that your
21 testimony?

22 A Well, would you allow me to explain why we did it?

23 Q Sure.

24 A So they had no corporate account there. So what we did
25 was we ended up purchasing it this way. It had to be

CROSS-EXAMINATION OF MICHAEL DACORTA

1 purchased as an individual. They allowed us to have
2 discounted rooms for anyone coming to Oasis. They were
3 directly across the street from our office building. So
4 Longboat Key was literally right across the street. And at
5 the end of the year, we had the use of their facilities, which
6 if we wanted to have another holiday event, it would have cut
7 the event in half because we wouldn't have had to pay for the
8 room or anything like that. So there was economic benefits
9 for doing it. And there was also just from the standpoint of
10 having people come in, use the rooms right across the street
11 if they were visiting us if we were having any kind of
12 seminars at the office building.

13 Q Were those economic benefits the same economic benefits
14 that stem from you paying for your daughter's college tuition
15 using Oasis investor money?

16 A I used the money that I earned from working 18 hours a
17 day, yes.

18 Q And were they the same economic benefits that stem from
19 you buying your daughter a Range Rover with Oasis investor
20 money?

21 A I didn't buy her a Range Rover. That car was for us. I
22 eventually let her use it when she went to college in her
23 final year.

24 Q And your wife had one too, correct?

25 A We had one in the home also, yes.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q Mr. DaCorta, these promissory notes, they weren't worth
2 the paper they were written on, were they?

3 A We never failed one time to make any -- to meet -- any
4 request for money was made ahead of schedule.

5 Q Mr. DaCorta, you lied to the investors about being a
6 market maker, did you not?

7 A No. I explained it in a way that was conceptually
8 correct.

9 Q Mr. DaCorta --

10 THE COURT: Hold on. Q, pause, A.

11 A I explained it in a way that was conceptually correct.
12 I'm giving people who don't have the true understanding of the
13 differences between a proprietary account, trading for your
14 own account, and a market making account. They are very
15 similar. I'm just trying to give them an overview of what we
16 did. And the way I explained it is exactly what we did. So
17 whether I was wrong on the term, what I told them it was,
18 that's exactly what we were doing.

19 BY MR. MURRAY:

20 Q Mr. DaCorta, there was no hope that Oasis could have ever
21 honored the terms in these notes because Oasis had no
22 legitimate revenue stream; isn't that right?

23 A You're absolutely incorrect.

24 Q Investor money eventually paid the spread; isn't that
25 right?

CROSS-EXAMINATION OF MICHAEL DACORTA

1 A No, it is not. And if you will allow me to actually
2 explain how the spread works, I will be more than happy to do
3 it.

4 Q Sure.

5 A Okay. So when you are bidding and you are offering, you
6 are actually in the market. There's a third party executing
7 on either side. So to try and simplify it and not complicate
8 what we were doing, I will give you a very simple example.
9 You own a furniture store and someone loans you money to buy
10 inventory. And you owned a \$3,000 couch that was your cost.
11 You put it on the floor of your showroom. You offered it for
12 \$4,000. No one came in to bid for it. There were no buyers.
13 So you had to lower the price. You lower the price to \$3,000.
14 Nobody purchased it that day so you lowered it to 2,000. When
15 it was sold at 2,000, someone went to the register and they
16 rang the register. It counted as a sale. It's a sale and
17 it's revenue for the furniture store of \$2,000. You had an
18 obligation to pay the person on the loan the interest or any
19 other special arrangement you had with them. So if you told
20 them I'm going to pay you a flat rate of interest but every
21 time I sell a piece of furniture I'm going to give you a
22 hundred dollars. You sold it for \$2,000. You counted the
23 \$2,000 as revenue. You then paid a hundred dollars to that
24 person. You have \$1,900 left. What do you do with it? You
25 go back. You repurchase more furniture hoping to sell that

CROSS-EXAMINATION OF MICHAEL DACORTA

1 next piece of furniture for a profit. Regardless of whether
2 it's a profit or a loss, the sale is the revenue.

3 We segregated the four basis points way before we
4 started telling anyone when we signed the system. Those four
5 basis points, those four pips were specifically designed to be
6 revenue. Anything above it, anything below it is our problem.
7 So if we made more money than four pips, we were profitable.
8 If we lost more money, that was ours. But the four pips
9 itself was revenue. There's a difference between revenue and
10 profit and loss. When we were profitable, all profitable
11 months, where did the money come from? It came from the
12 market. It came from third parties. It didn't come from us.
13 So there's a very confusing issue here. I know it's difficult
14 to understand when you look at it because it's complicated,
15 but the simple fact is what I was telling people we were
16 doing, we were doing. We were counting that as revenue, and
17 that is revenue regardless if there's an expert that says it's
18 not revenue.

19 Q Mr. DaCorta, you were here when Chris Mitchell who helped
20 design the Spotex system testified?

21 A Yes.

22 Q And he showed the Spotex system where you put in the pips
23 to trade, right?

24 A That's correct.

25 Q And you were here when Joe Paniagua testified that he was

CROSS-EXAMINATION OF MICHAEL DACORTA

1 instructed by you to put pips into that system and apply it
2 over the trades, correct?

3 A Well, yes. So the way it's designed is you put the two
4 pips in. When I see it on my screen as the trader, I already
5 have the four basis point spread. Then I go into the market
6 and enter orders at that bid and at that offer. Those orders
7 are out into the market. Those are third parties executing
8 with me. I'm not trading with myself. If I make a profit,
9 the money is there. So if I lose the money, it's still
10 revenue. We still owe our obligations to our lenders. So we
11 still have to count it as revenue.

12 Q Mr. DaCorta, you were here with Mr. Childers explained to
13 the jury that every single trade you executed had a spread on
14 it, and that spread was Oasis intentionally overpaying for
15 each trade. Were you not here for that testimony?

16 A I heard his testimony, yes.

17 Q And you were here for that testimony when he also said
18 that every single time you executed a trade with that spread,
19 it was then put into a different accounting column, correct?

20 A That's correct.

21 Q And he also explained it in much simpler terms, did he
22 not?

23 A I'm not sure.

24 Q He explained that what you were doing at Oasis was the
25 same as going into a grocery store, asking for \$20 cash back,

CROSS-EXAMINATION OF MICHAEL DACORTA

1 taking that money, putting it in your bank account and saying
2 that you made that \$20. Was that not his testimony?

3 A That was his testimony, yes.

4 Q Mr. DaCorta, you and Mr. Anile had Oasis investors sign
5 risk disclosure agreements, did you not?

6 A Yes. Mr. Anile created that new system going into the
7 end of 2018.

8 Q And those agreements basically gave you, Oasis, the
9 ability to do whatever you wanted with the money. Is that a
10 fair characterization?

11 A Yes. I mean, we already had it for the previous
12 promissory note, but that one just specified the risk more
13 distinctively so that way people could read it. They had to
14 make a decision. They could either accept it or take their
15 money back.

16 Q So is it your testimony to this jury that these investors
17 of Oasis were knowingly agreeing to give you money so that you
18 could do whatever you wanted with it?

19 A We could manage the business in any way, shape, or form
20 that we wanted, yes.

21 Q Including paying for your kid's college tuition, correct?

22 A They loaned me money. They loaned our company money.
23 Our commitment to them was to keep that commitment to pay them
24 back when they asked for the funds to come back and to pay
25 them their interest every month.

CROSS-EXAMINATION OF MICHAEL DACORTA

1 Q But Mr. DaCorta, isn't that commitment only as good as
2 the full faith and credit of your company?

3 A Yes.

4 Q You are the victim here, correct, Mr. DaCorta?

5 A No. There's hundreds of victims here.

6 Q So you admit they're victims?

7 A Excuse me?

8 Q You admit that they're victims then?

9 A Yes, victims of government abuse.

10 Q But you also suggested that you were victimized by the
11 FBI when they searched your house, did you not?

12 A I believe you can call that being victimized. More for
13 my family than for myself. I could handle it.

14 MR. MURRAY: Your Honor, may I have a moment?

15 THE COURT: Yes.

16 BY MR. MURRAY:

17 Q Mr. DaCorta, you are aware that Joe Anile was convicted
18 and sentenced to ten years in prison in this case, correct?

19 A I am.

20 Q You are 57 years old, right?

21 A I am.

22 Q You would say just about anything to avoid being
23 convicted in this case, would you not?

24 A I'm telling the truth, and that's all that matters. I
25 know it's the truth. I know what's in my heart. God knows

CROSS-EXAMINATION OF MICHAEL DACORTA

1 what I'm saying is the truth. And if you don't believe me,
2 that's really not something I have to --

3 Q Mr. DaCorta, you are used to just saying just about
4 anything to get the outcome you want; isn't that right?

5 A No.

6 MR. MURRAY: I have no further questions, Your Honor.

7 THE COURT: Why don't we take our afternoon break,
8 and we are going to try to start here before 4:00 p.m. And if
9 you are okay, we will run until 5:30. If that's a hardship,
10 we will quit at 5:00. Just before 4:00 p.m. we will start
11 again. Thank you.

12 (Jury escorted out of the courtroom.)

13 MR. ALLEN: Just to update the Court, my Wednesday
14 witness is attempting to make a 5:35 flight tonight.

15 THE COURT: He's a good man, that witness.

16 MR. ALLEN: If he gets on it, we should be able to
17 finish our presentation tomorrow with our witnesses.

18 THE COURT: Good. Good. Why don't we plan on
19 talking about the jury instructions, I don't know, at noon? I
20 mean, we are not going to all rest by noon, are we?

21 MR. ALLEN: No, I don't think so.

22 THE COURT: So we'll do jury instructions at noon.
23 Now, if all the evidence is resolved and in by 2:00, we're
24 going to close. So good. Superb.

25 And I will say this much. I won't keep -- maybe I

REDIRECT EXAMINATION OF MICHAEL DACORTA

1 haven't said it before. There's a lot of spectators here.
2 This level of lawyering in this case is very high level. So
3 just for whatever it's worth. I don't always see that. I
4 promise. Thank you.

5 (Recess taken.)

6 THE COURT: Thank you, ladies and gentlemen.

7 So there is an outside chance, don't hold me to it,
8 outside chance you may have this case tomorrow for your
9 consideration, and if not I think certainly Wednesday.

10 Now, since we all baked this morning, it's probably
11 no solace but I found a couple nickels and dimes between the
12 couches in the judges' lounge. So I'm going to buy lunch
13 tomorrow. It ain't going to be great, but it will be edible,
14 like a Domino's or Jimmy Johns. And we will put out a little
15 menu and then we will make one of my lawyers over here go
16 fetch it for us because they are good. They do a lot of
17 things for me including getting jurors lunch. So I really
18 appreciate your patience. I know it's not easy.

19 Counsel, you have redirect.

20 **REDIRECT EXAMINATION**

21 BY MS. IRVIN:

22 Q We started Friday afternoon and then we started off again
23 this morning I think with the NFA agreement that you agreed
24 to?

25 A Yes.

REDIRECT EXAMINATION OF MICHAEL DACORTA

1 Q Why do you think it was important for the jury to see the
2 full agreement?

3 A Because if something is redacted, people wonder what's
4 there. So you are better off showing it to them up front.

5 Q In determining how best to stay in compliance with the
6 NFA agreement, you testified that you sought the legal advice
7 of Joe Anile and you also sought the advice of someone that
8 you knew at CitiFX. Why them? Why did you ask them about how
9 best to make sure that you could stay in compliance with the
10 NFA agreement?

11 A Well, CitiFX has one of the top --

12 MR. MURRAY: Your Honor, I'm sorry. Can we approach?

13 THE COURT: All right.

14 (Bench conference on the record with all counsel
15 present.)

16 THE COURT: So it's the hearsay objection?

17 MR. MURRAY: No, Your Honor. We object to the
18 question before that. And we'd ask for some kind of limiting
19 instruction. We had an agreement to redact that agreement,
20 pretrial agreement for that redaction. And she elicited a
21 question that make it sound like we were hiding the ball
22 intentionally.

23 THE COURT: Let me look at that. I'll clear that up.

24 MR. MURRAY: Thank you, Your Honor.

25 (End of bench conference.)

REDIRECT EXAMINATION OF MICHAEL DACORTA

1 THE COURT: Ladies and gentlemen, just as a matter of
2 clarification, on that, I will call it the letter, the NFA
3 letter, okay, sometimes we redact things, and the Court does
4 that -- it was actually Mr. Houston -- based on the rules of
5 evidence, and then it got unredacted. So you saw both
6 versions. It was me and Mr. Houston trying to figure it out.
7 It had nothing to do with what one side either way was dealing
8 with exhibits. So that one is on me anyway. So we now have
9 the unredacted version.

10 All right. Go ahead.

11 BY MS. IRVIN:

12 Q I don't know that I got an answer to my question. So I'm
13 just going to reask it. In your efforts to stay in compliance
14 with the NFA agreement, you testified on direct that you --
15 and also on cross that you sought Mr. Anile's legal advice.
16 On direct you said that you sought the advice of someone that
17 you knew and worked with at CitiFX. Why did you seek their
18 advice?

19 A Well, I sought CitiFX first. That was the first place we
20 were going to do business. And being in the industry my
21 entire career, the first place you go is the compliance
22 department of the firm you are going to do business through or
23 you work with. So it was just a knee-jerk reaction. The
24 first thing I would do is see who I was going to do the
25 business through and then speak with their compliance

REDIRECT EXAMINATION OF MICHAEL DACORTA

1 department.

2 Q In answering a number of your questions on cross, there
3 were some questions about Oasis generally. Can you explain
4 what the difference is, if any, between Oasis Management, LLC,
5 and Oasis International Group?

6 A Right. So the way it began was Oasis Management was sort
7 of the friend's and family club. Then we created Oasis
8 International Group. Once Oasis International Group was in
9 business, it first was taking customer accounts that were
10 non-U.S. to stay in compliance or ECPs to stay in compliance.
11 At that point in time, we were operating both. Oasis
12 Management was either through CitiFX or eventually using Oasis
13 International Group because now we own their own
14 broker-dealer. There was no reason to go through another
15 broker-dealer. Then we changed to the loan program, and I
16 started shifting the limited partnerships. I spoke to Joe
17 Anile, and I told him I wanted to mirror exactly what we are
18 doing at Oasis International Group so there's no discrepancy
19 between what everybody earns.

20 The difference is that Oasis International Group had
21 to take the deposits from Oasis Management. That account had
22 to be set up, and the spreads had to be allocated to that
23 account. Whatever was earned is interest for Oasis
24 Management, but to the members of Oasis Management it's profit
25 because anything I earned for Oasis Management is now profit

REDIRECT EXAMINATION OF MICHAEL DACORTA

1 to the people who are limited partners. So the reason why
2 there is a discrepancy between the email that says we're up
3 this much and what actually took place in the Oasis
4 International Group account is because the people being paid
5 the interest and the interest to Oasis Management is now
6 profit to the limited partner until we shifted it to -- every
7 year I made one step closer to making them exactly the same.
8 And then in 2019, they were going to be merged together. So
9 Oasis International Group would have owned Oasis Management.
10 It would have owned all the properties Oasis Management owned.
11 It would have owned Roar of the Lion. Everything would have
12 come under Oasis International Group. That was the plan. It
13 took a few years to get there, but that was the plan.

14 Q As part of your explanation, it sounds like you were
15 referring to when Mr. Murray had on the screen on the left
16 side a profit and loss graph for 2017 and 2018 on the left?

17 A Correct.

18 Q And then on the right he presented three or four emails
19 and then had them side by side; is that correct?

20 A That's correct.

21 Q And there seemed to be some maybe miscommunication. Can
22 you explain the profits and losses that were on that graph?
23 Am I correct in understanding that those profits and losses
24 were OIG's profits and losses?

25 MR. MURRAY: Objection. Leading.

REDIRECT EXAMINATION OF MICHAEL DACORTA

1 MS. IRVIN: I can correct it, Your Honor.

2 THE COURT: All right.

3 BY MS. IRVIN:

4 Q In the graphs that showed the profit and losses, which
5 entity's profits and losses were being demonstrated on that
6 graph?

7 A Those were representing the OIG corporate account.

8 Q In the various emails, I believe that there were maybe
9 three or four emails, those emails, do you recall what entity
10 you sent those emails from?

11 A Those were to Oasis Management participants, whether they
12 were limited partners or lenders depending on what year it
13 was.

14 Q That was not from an OIG -- not from an OIG email
15 account, correct?

16 A Correct.

17 Q You may have talked about this a little bit, but I want
18 to make sure it's clear because we're explaining the
19 difference between Oasis Management, LLC, and Oasis
20 International Group. Is there a difference between investors
21 and lenders in the programs that Oasis Management, LLC, ran at
22 one time and the programs that Oasis International Group ran
23 as loan programs in 2017 and 2018?

24 A Well, a loan program, you're typically called a lender
25 and you can invest as a lender. You can invest your money by

REDIRECT EXAMINATION OF MICHAEL DACORTA

1 making a loan. If you buy treasury bonds, you are making an
2 investment but you're loaning the government money. So we
3 call them lenders because we had a loan agreement and we
4 designated them as lenders. Oasis Management had limited
5 partners. So those were equity participants in the company.
6 They weren't customers. They weren't clients. They were
7 equity participants. They had a piece of the business.
8 Eventually we converted them over to loans. As Ms. Cheslow
9 explained, she had the option to take her money back or
10 convert over to a loan. The reason why I converted those over
11 to the loan was just to make it easier that every single
12 person had exactly the same program at that point, and then
13 eventually it would all be merged together and come under one
14 roof.

15 Q Mr. Murray asked you some questions about Mr. Charles
16 Anthony who was a lender in the program and talked about you
17 going to his house to discuss the OIG program. Did you make
18 yourself available to lenders to be able to discuss the
19 program?

20 A As many as I could. Whenever someone asked, whether it
21 be on the phone or in person, if I was available, I would
22 definitely make the effort to go see them.

23 Q You were also asked on cross about whether or not there
24 was any money coming out of the ATC trading account. Can you
25 explain what was going on with the ATC trading account and any

REDIRECT EXAMINATION OF MICHAEL DACORTA

1 money --

2 A Sure.

3 Q -- that would be coming in or out and why?

4 A So the money going in was basically collateral to trade.

5 20 million I think \$625,000 went in for the loan program.

6 However, all the spreads were recycled into the account. So

7 the reason why you see this \$60 million, well, it didn't come

8 out of the blue sky. It had to be created somewhere. So the

9 reason why you have all these losses and the losses exceed the

10 actual amount deposited is because the spreads are real. They

11 are going back into the account.

12 Q Mr. Murray also asked you questions about from where you

13 were getting funds to be able to pay for personal expenses.

14 And when he asked you that question, he said, was this from

15 Oasis money? Can you explain where the funds came from for

16 paying your personal bills and your family bills?

17 A So that would have -- all my expenses were paid out of

18 Oasis Management.

19 Q Why were they paid out of Oasis Management?

20 A Oasis Management was my company. We didn't merge them

21 yet. I was loaning money or doing business with Oasis

22 International Group, and I was earning the spreads on that

23 money the same way another lender would earn spreads.

24 Therefore, I was counting that as my revenue. And that's what

25 I was taking back into or at least utilizing as Oasis

REDIRECT EXAMINATION OF MICHAEL DACORTA

1 Management's funds.

2 Q When you were interviewed at your home after the agents
3 came to your house on April 18, 2019, that interview, do you
4 recall if that interview was recorded?

5 A It was not.

6 Q Mr. Murray asked you about a statement that he said was
7 in your interview that was not recorded where you said
8 something to the effect of, I'm sorry.

9 A That's correct.

10 Q Do you recall anything about the context in which you
11 made that statement?

12 A Yes, I do.

13 Q Can you explain?

14 A Sure. I was asked specifically, are you sorry you had
15 losses? I said, I am. No one wants to lose money in
16 anything, so.

17 Q There were also a number of questions about the
18 government's expert, Mr. Childers. One issue had to do with
19 Mr. Childers' definition or explanation of spread and how he
20 understood OIG relied on spread. Why do you disagree with
21 Mr. Childers' explanation of spread and how OIG used it?

22 A Well, again, I explained it with the furniture store. I
23 think that was a fairly simple outside of the industry type of
24 question -- type of answer. But the spread revenue is real,
25 because if it wasn't, you can't lose more than you put into

REDIRECT EXAMINATION OF MICHAEL DACORTA

1 the account. We only put in \$20,650,000. We had 2 million
2 remaining. We had 9 million in rollovers and the brokerage
3 fees. So when you do the math, the money had to come from
4 somewhere. It just didn't grow on trees.

5 Q It also sounded like you -- well, it didn't sound like.
6 You testified that you disagreed with Mr. Childers'
7 understanding of your silver position. Can you explain why
8 you disagree with his explanation about your silver position?

9 A Well, he is looking at it without any information. He is
10 looking at a screen that has a chart. He knows how much we
11 have at that moment, and he knows the prices to a certain
12 point. He has no information about how much capital we have
13 in reserve that we could utilize to hold the position. He has
14 no information as to what we would do when the silver position
15 went up \$20 million prior to it dropping.

16 The logical thing would be you're down 18 million.
17 You make 20 million. Maybe you take the position off,
18 regroup, watch it for a while, and then repurchase it on any
19 dip. So without good information, it's garbage in, garbage
20 out.

21 Q Mr. DaCorta, were you intending to deceive or cheat
22 investors and lenders out of their money?

23 A Excuse me?

24 Q Did you intend to deceive or cheat investors and lenders
25 out of their money?

REDIRECT EXAMINATION OF MICHAEL DACORTA

1 A Absolutely not. Oasis was built to be something that
2 people could rely on. We had lenders utilizing it for income
3 that they really needed, people with LSA agents. We delivered
4 on every withdrawal ever asked for. Oasis tried its best to
5 develop a company that was not only good to its lenders, good
6 to its employees, we tried to create an environment that
7 people loved to come to work, loved to be a part of everything
8 we were doing. We tried to lift people up.

9 Q Mr. Murray also asked and referred to your journal entry
10 in which you wrote about ICT. Do you remember that?

11 A Yes.

12 Q This has already admitted into evidences as Exhibit 87A.

13 May I have the Elmo?

14 Mr. DaCorta, do you recall when we reviewed this when
15 you testified on Friday?

16 A Yes.

17 Q Can you please read this page?

18 A My desire. My greatest desire is a result of my greatest
19 failure. In 2008, I suffered the loss of my business, ICT,
20 which caused great hardship to my family and all involved, as
21 well as myself. My desire is to rebuild a new business in the
22 same manner as I built ICT only this time use the lesson of
23 failure to catapult me to enormous success, so great that most
24 would believe to be impossible to achieve, a desire that money
25 for any purpose be of no issue. I desire to help as many

DIRECT EXAMINATION OF MARK BURLING

1 participants in ICT as possible and share the great riches of
2 success with all I come in contact with, then use capital and
3 all other resources to spread positive messages that free
4 people's minds and lifts all. I have no limits on my level of
5 success. I can achieve all I can image.

6 MS. IRVIN: Can I have a moment, Your Honor?

7 THE COURT: Yes.

8 MS. IRVIN: No further questions.

9 THE COURT: Thank you. You may step down. Let's
10 call your next witness, please.

11 MR. ALLEN: Your Honor, the defense would re-call
12 Mark Burling.

13 THE COURT: All right.

14 We will swear you in again, Mr. Burling.

15 THE COURTROOM DEPUTY: Please raise your right hand.

16 (Witness sworn.)

17 THE COURTROOM DEPUTY: Please state your name.

18 THE WITNESS: Mark Edward Burling.

19 THE COURTROOM DEPUTY: Thank you, sir. You may be
20 seated.

21 **MARK BURLING, CALLED BY THE DEFENSE, SWORN**

22 **DIRECT EXAMINATION**

23 BY MR. ROSENTHAL:

24 Q Good afternoon again, Mr. Burling.

25 A Good afternoon.

DIRECT EXAMINATION OF MARK BURLING

1 Q Sir, when you testified last week, if you recall, I
2 showed you a couple of documents that you were not able to
3 identify; is that correct?

4 A Yes, I remember.

5 Q Subsequent to that, have you had a chance to review the
6 documents that you did in fact provide pursuant to subpoena?

7 A Yes, I did.

8 Q You now having done so, do you now recall that those were
9 documents that you provided pursuant to subpoena?

10 A Yes, I do.

11 MR. ROSENTHAL: Your Honor, may I approach?

12 THE COURT: Yes, of course.

13 BY MR. ROSENTHAL:

14 Q Mr. Burling, I have handed you what was previously
15 identified as Defense Exhibit 166. And so after your review
16 of the documents that you provided pursuant to subpoena, do
17 you now recognize that document?

18 A I recognize it as having had that file in my possession,
19 yes.

20 Q Was that kept in your possession as part of your ordinary
21 business records?

22 A Yes.

23 Q And does this -- was this a document that was provided to
24 you in preparation for Mr. DaCorta's 2017 joint tax return?

25 A The primary document that I used was the worksheet that

DIRECT EXAMINATION OF MARK BURLING

1 we discussed earlier with the list of each individual partner,
2 their demographic information, their capital account balances
3 and allocations to them.

4 Q I understand, but was that document also in your
5 possession as you prepared Mr. DaCorta's 2017 tax return?

6 A Not initially, no.

7 Q At some point did it come into your possession?

8 A I don't recall exactly when I received it. I did not
9 look at the -- I could not find an email when I received the
10 documents.

11 Q Okay. But was it provided to you as you were involved in
12 the preparation of Mr. DaCorta's 2017 tax return?

13 A During that period of time, yes.

14 MR. ROSENTHAL: Your Honor, at this time I move
15 Defense Exhibit 166 into evidence.

16 MS. BEDKE: No objection.

17 THE COURT: It's admitted. Thank you.

18 (Defendant Exhibit 166 admitted.)

19 BY MR. ROSENTHAL:

20 Q And at this point if we could publish Government
21 Exhibit 504. Let's start with 505B.

22 Mr. Burling, what is on the screen is Government
23 Exhibit 505B that's been previously introduced. Referring
24 your attention first to the first entry, which is January 3,
25 2017, check paid to Michael DaCorta. If you could look at

DIRECT EXAMINATION OF MARK BURLING

1 Defense Exhibit 166, which was provided to you in preparation
2 for Mr. DaCorta's 2017 federal income tax return, is that
3 check on the spreadsheet, on your spreadsheet, your
4 Exhibit 166?

5 A The dates are the same and the amount is the same.

6 Q There is also a check on January 9 of 2017 for \$3,000.
7 Is that on Defense Exhibit 166, the spreadsheet that was in
8 your possession?

9 A Yes, it is.

10 Q If you could look at the third entry, January 26 of 2017,
11 a check paid to Michael DaCorta for \$2,000. Is that also on
12 Defense Exhibit 166?

13 A Yes, it is.

14 Q The next entry, February 13 of 2017, a check for \$5,000
15 to Mr. DaCorta, is that also on Defense Exhibit 166?

16 A Yes, it is.

17 Q The next entry on March 7 of 2017, a check for \$4,000 to
18 Mr. DaCorta, is that also on Defense Exhibit 177?

19 A Yes, it is.

20 Q As to the March 15, 2017, check to Mr. DaCorta for
21 \$3,000, is that also on Defense Exhibit 166?

22 A Yes, it is.

23 Q Check number -- or the next entry, March 20 of 2017, a
24 check for \$4,000, is that also on Defense Exhibit 166?

25 A Yes, it is.

DIRECT EXAMINATION OF MARK BURLING

1 Q The next entry, check number -- it doesn't have a check
2 number, but is there a March 22 or thereabout check for
3 \$20,000 on Defense Exhibit 166?

4 A No, there is not.

5 Q How about March 28 of 2017, check for \$2,500, is that on
6 your spreadsheet, Defense Exhibit 166?

7 A Yes, it is.

8 Q Go down to the check on May 8 of 2017 for \$3,000. Is
9 that on your spreadsheet that's Exhibit 166?

10 A Yes, it is.

11 Q But May 18 of 2017, the next check down for \$3,000 paid
12 to Mr. DaCorta, is that on Defense Exhibit 166?

13 A Yes, it is.

14 Q Bottom of the page, June 6 of 2017, a check for \$4,000 to
15 Mr. DaCorta, is that on Defense Exhibit 166?

16 A Yes, it is.

17 Q Go to the next page, please.

18 July 12 of 2017, a check for \$5,000 to Mr. DaCorta,
19 is that on Defense Exhibit 166?

20 A Yes, it is.

21 Q The account we were looking at that we have been talking
22 about, that's an Oasis Management account, correct?

23 A I cannot tell that from this.

24 Q What does it say after WF9302?

25 A It says, "Oasis Management."

DIRECT EXAMINATION OF MARK BURLING

1 Q The next check -- I'm sorry. The check for July 31 for
2 \$5,000 made to Mr. DaCorta, is that reflected on Defense
3 Exhibit 166?

4 A Yes, it is.

5 Q And August 1, a check to Mr. DaCorta for \$10,000, is that
6 on Defense Exhibit 166?

7 A Yes, it is.

8 Q And again we are talking about the spreadsheet that was
9 in your possession as you prepared the returns, correct?

10 A As I told you before, I could not verify when I received
11 this.

12 Q Next check, August 15 of 2017 for \$2,500 made to
13 Mr. DaCorta, is that on Defense Exhibit 166?

14 A Yes, it is.

15 Q August 28 of 2017, for \$3,000, was that on Defense
16 Exhibit 166?

17 A Yes, it is.

18 Q September 13 of 2007, a check for \$5,000 made out to
19 Mr. DaCorta or paid to Mr. DaCorta, is that on Defense
20 Exhibit 166?

21 A Yes, it is.

22 Q Check October 3 of 2017 for \$5,000 paid to Mr. DaCorta,
23 is that on your Defense Exhibit 166?

24 A Yes, it is.

25 Q Check October 16 of 2017 for \$3,500 to Mr. DaCorta, is

DIRECT EXAMINATION OF MARK BURLING

1 that on Defense Exhibit 166?

2 A Yes, it is.

3 Q A check paid October 31 of 2017 to Wilde Land Rover, is
4 that on Defense Exhibit 166?

5 A Yes, it is.

6 Q So that was information that had been provided to you at
7 some point in the past, correct?

8 A Yes.

9 Q None of this was concealed from you in any way?

10 A It was provided to me, but I already had the information
11 that I needed to prepare the partnership return.

12 Q I see. Well, you also prepared the personal return,
13 correct?

14 A Yes, I did.

15 Q The November 2, 2017, a check to Mr. DaCorta for \$3,500,
16 is that on Defense Exhibit 166?

17 A Please repeat which one you want.

18 Q I think it was on November 2 of 2017.

19 A No, it is not.

20 Q If we can see the last page. If we can bring up
21 Government Exhibit 505B previously admitted.

22 Mr. Burling, can you look at Government's
23 Exhibit 505B. And you see the first entry from January 17 of
24 2017 for \$4,200 made out to Lost Key Place?

25 A Yes, I do.

DIRECT EXAMINATION OF MARK BURLING

1 Q Are you familiar with Lost Key Place?

2 A Please repeat that. I did not hear your question.

3 Q I'm sorry. Were you familiar with 13318 Lost Key Place?

4 A That is where I met Mr. DaCorta.

5 Q And there is a check made out for \$4,200 to Lost Key
6 Place. Is that reflected on Defense Exhibit 166?

7 A Yes, it is.

8 Q Next below that, February 10 of 2017, a check for \$6,000
9 to Lost Key Place, is that on Defense Exhibit 166?

10 A Yes, it is.

11 Q Next entry, a check to Lost Key Place for \$4,000 on
12 March 20 of 2017, is that on Defense Exhibit 166?

13 A Yes, it is.

14 Q The entry below, that does not reflect it came out of the
15 Oasis account; is that correct?

16 A No, it doesn't. It looks like it's, from that
17 designation, Bank of America.

18 Q Below that, March 28 of 2017, a check for \$3,000 to Lost
19 Key Place, is that on Defense Exhibit 166?

20 A That was March 28?

21 Q To save time, there is -- appears there are five
22 succeeding checks for \$3,000 on various dates between March 28
23 and August 15. Are all five of those reflected on Defense
24 Exhibit 166?

25 A Yes, all five are listed.

CROSS-EXAMINATION OF MARK BURLING

1 Q The next entry, a check for \$1,250 to Lost Key Place on
2 September 18 of 2017, is that reflected on defense
3 Exhibit 166?

4 A Yes, it is there.

5 Q And the next two checks for 3,000 -- I'm sorry -- next
6 two checks for \$3,000 made out to or payable to Lost Key
7 Place, LLC, are those both on Defense Exhibit 166?

8 A Yes, they are.

9 Q And if we could publish Defense Exhibit 166, please.

10 Mr. Burling, this is a 26-page document, but would it
11 be fair to say that it is the checking account statements, the
12 checking account balance from the Oasis Management, LLC,
13 account for all of the year 2017?

14 A I would say that it represents it, but I can't confirm
15 that.

16 Q But nonetheless, this had been what had been supplied to
17 you, correct?

18 A At some point, yes.

19 MR. ROSENTHAL: Thank you, sir.

20 THE COURT: All right. Is there cross?

21 **CROSS-EXAMINATION**

22 BY MS. BEDKE:

23 Q Good afternoon, Mr. Burling.

24 A Good afternoon.

25 Q Why did you not need this Document 166?

CROSS-EXAMINATION OF MARK BURLING

1 A I had already prepared the partnership return, and it was
2 complete as far as I knew based on the information that was
3 provided to me by Mr. DaCorta.

4 Q Mr. Burling, are you familiar with something called IRS
5 Circular 230? I think I have that right.

6 A Yes.

7 Q What does that provide?

8 A That provides a set of rules for accountants and their
9 dealings with their clients.

10 Q And does it include a provision that says that the CPA or
11 accountant can rely on what the taxpayer tells him or her?

12 A Yes, it does.

13 Q Is that consistent with the terms of the engagement
14 letter that you used in your dealings with Mr. DaCorta?

15 A Yes, it does.

16 Q And did you tell him expressly that in preparing his
17 income tax returns you were going to rely on the information
18 he provided to you?

19 A That would have been in the initial meeting that I had
20 with him in November of 2017.

21 Q Speaking of that, did you know, Mr. Burling, that
22 Mr. DaCorta's prior CPA in New York, D'Arcangelo -- I think
23 I'm saying that correctly -- had actually withdrawn from the
24 engagement earlier that same month?

25 MR. ROSENTHAL: Objection, Your Honor. Assumes a

CROSS-EXAMINATION OF MARK BURLING

1 fact not in evidence.

2 THE COURT: Well, it's cross. So overruled.

3 A No, I did not.

4 BY MS. BEDKE:

5 Q Now, getting back to your engagement letter, because you
6 met with the defendant at the very end of November 2017; is
7 that correct?

8 A That's correct.

9 Q Wasn't it the week after Thanksgiving of that year?

10 A Yes, it was.

11 Q And you sent your engagement letter on or about January 3
12 of 2018, correct?

13 A That's correct.

14 Q And did the defendant sign that engagement letter and
15 return it to you?

16 A Yes, he did.

17 Q And after you prepared his 2017 U.S. individual tax
18 return, the Form 1040, did you send it to him in draft and ask
19 him to review it?

20 A Yes, I did send it to him in draft form.

21 Q And did you invite him to contact you if he had any
22 questions or concerns whatsoever about the preparation of the
23 return?

24 A Yes, I did.

25 Q And did the defendant ever take you up on that offer?

CROSS-EXAMINATION OF MARK BURLING

1 A No, he did not.

2 Q So you never met with the defendant to discuss the draft
3 2017 Form 1040 before it was filed?

4 A No, I did not.

5 Q Did you ever receive a phone call from the defendant
6 about the 2017 draft return before it was filed?

7 A Not that I recall.

8 Q So if the defendant said that he had in fact called you
9 and expressed sincere concern that the income numbers were not
10 right, would that be a false statement?

11 A Yes.

12 Q Instead didn't the defendant sign the draft on the E-file
13 authorization form?

14 A Yes, he did.

15 Q And isn't that the same form that says, "Penalties of
16 perjury"?

17 A Yes, it contains that language.

18 Q And after "penalties of perjury," it says in effect --
19 correct me if I'm wrong -- that the taxpayer signing the
20 document is attesting that all the information in the return
21 is true and correct; isn't that right?

22 A Yes, it does say that.

23 Q Did the defendant sign that form?

24 A Yes, he did.

25 Q Did he return it to you, Mr. Burling?

REDIRECT EXAMINATION OF MARK BURLING

1 A Yes, he did.

2 Q Is that why you filed the 2017 individual income tax
3 return the way you had prepared it?

4 A Yes, that's why.

5 MS. BEDKE: Nothing further.

6 THE COURT: Redirect, please.

7 **REDIRECT EXAMINATION**

8 BY MR. ROSENTHAL:

9 Q Mr. Burling, you indicated that you already had the
10 information that you needed to prepare the partnership return,
11 correct?

12 A That's correct.

13 Q In looking at what I showed you, Defense Exhibit 166,
14 does it reflect payments made to Mr. DaCorta during tax year
15 2017 from his company Oasis Management?

16 A That's what it appears to be, yes.

17 Q And was any of that -- did you include any of that in
18 your preparation for his 2017 tax return?

19 A For which tax return?

20 Q Personal tax return. I'm sorry.

21 A No, I did not.

22 Q You did not.

23 MR. ROSENTHAL: Thank you, sir.

24 THE COURT: All right. Well, thank you, sir. You
25 may step down. Good day.

DIRECT EXAMINATION OF WESLEY SANDERS

1 Let's call your next witness, please.

2 MR. ALLEN: Your Honor, the defense calls Wesley
3 Sanders.

4 THE COURT: Okay. Wesley Sanders, please.

5 THE COURTROOM DEPUTY: Please raise your right hand.
6 (Witness sworn.)

7 THE COURTROOM DEPUTY: Please state your name for the
8 record and spell your name.

9 THE WITNESS: Wesley Sanders, W-E-S-L-E-Y,
10 S-A-N-D-E-R-S.

11 **WESLEY SANDERS, CALLED BY THE DEFENSE, SWORN**

12 **DIRECT EXAMINATION**

13 BY MR. ALLEN:

14 Q Good afternoon, sir. So there is a microphone in front
15 of you. And these jurors are way over here. So it's
16 important that we speak up so they can hear you and the court
17 reporter can hear you. Okay?

18 A Got it.

19 Q And, sir, where do you reside?

20 A St. Petersburg, Florida.

21 Q What do you do for a living?

22 A I'm a real estate appraiser.

23 Q And do you -- where do you work?

24 A At Ancre Group Valuation in St. Pete.

25 Q Okay. How long have you been a real estate appraiser?

DIRECT EXAMINATION OF WESLEY SANDERS

1 A About 18 years.

2 Q And what is your educational background?

3 A I have a degree in economics, and then I started doing
4 brokerage and appraisal. I have taken over 50 appraisal and
5 real estate courses. I also did the advanced courses for the
6 MAI designation through the Appraisal Institute.

7 Q And, sir, do you do commercial appraisals?

8 A I do.

9 Q Do you do residential appraisals?

10 A I do not.

11 Q What's the difference between a commercial appraisal and
12 a residential appraisal?

13 A As far as the federal guidelines are concerned, they are
14 very similar, but the reporting is completely different;
15 whereas, a residential appraisal is more of a form report
16 using MLS, and we're using more of a narrative report because
17 each property is so unique.

18 Q And were you retained by my office to conduct a
19 commercial appraisal for a property located at 444 Gulf of
20 Mexico Drive in Longboat Key, Sarasota County, Florida?

21 A I was.

22 Q And did you conduct such an appraisal?

23 A I did.

24 Q And did you generate a report of your findings?

25 A Yes.

DIRECT EXAMINATION OF WESLEY SANDERS

1 Q I'm approaching the witness, for the record, with Defense
2 Exhibit 53.

3 Sir, could you look at Defense Exhibit 53, review it,
4 and tell me generally what it is?

5 A This is a copy of the appraisal report that I completed.

6 Q And is that a 76-page report?

7 A With the cover, yes.

8 Q And does that -- is Defense Exhibit 53 a fair and
9 accurate representation of the appraisal report you completed
10 for the commercial property at 444 Gulf of Mexico Drive,
11 Longboat Key, Sarasota County, Florida?

12 A It is.

13 MR. ALLEN: Your Honor, at this time we would move
14 into evidence Defense Exhibit 53.

15 MS. BEDKE: No objection.

16 THE COURT: Admitted.

17 (Defendant Exhibit 53 admitted.)

18 BY MR. ALLEN:

19 Q If we could publish Defense Exhibit 53 on the
20 TrialDirector, defense side, first page, please.

21 Is this the first page of your 76-page appraisal,
22 sir?

23 A This is.

24 Q And in the upper left-hand corner, is that the physical
25 address that you conducted the commercial appraisal on?

DIRECT EXAMINATION OF WESLEY SANDERS

1 A It is.

2 Q And is this a picture of the building that you appraised?

3 A It is.

4 Q Turning to the second page, pull out the second
5 paragraph, please.

6 Sir, could you read that into the record, please?

7 A "The subject property is located on the northeast side of
8 Gulf of Mexico Drive east of Channel Lane. Subject property
9 is an office condominium unit. The subject property is
10 identified by the Sarasota property appraiser's parcel
11 Number 0012043003. The subject property has 9,307 square feet
12 of usable land area, the footprint of the condo unit. The
13 subject property is more fully described in the body of this
14 report."

15 Q If we could turn to page 10 of Defense Exhibit 53.

16 Sir, what is the site analysis summary?

17 A That shows where the property is located within the
18 condominium development.

19 Q Is that a body of water that the property is sitting on?

20 A Yes. It fronts the Gulf of Mexico -- well, the
21 intracoastal.

22 Q If we could then turn to page 58 of the appraisal.

23 What's depicted on page 58?

24 A Those are exterior photos of the property.

25 Q If we could turn to the next page of this exhibit. What

DIRECT EXAMINATION OF WESLEY SANDERS

1 are we seeing here?

2 A Those are also exterior photos, and the building includes
3 two boat docks.

4 Q And if we could go to the next page.

5 A That's the parking lot surrounding the building and the
6 entryway from Gulf Drive.

7 Q If we could then turn back to the table of contents,
8 which is the fourth page of the exhibit. The next page,
9 please. Could you highlight that out?

10 Let's just go through these one at a time, sort of
11 your subheadings. What is the "Summary of Salient Facts and
12 Conclusions"? What's that part of your report?

13 A That's just stating some of the high-level information
14 with land area, some building area, just different facts about
15 the property as well as the dates of value.

16 Q And the "Scope of Work"?

17 A The scope of work talks about what we did and didn't do,
18 the intended use of the report, and within the federal
19 guidelines some of the information and sources that we used.

20 Q We already talked about the "Site Analysis," correct?

21 A Yes.

22 Q You have here "Improvements Analysis Summary." What does
23 that reference?

24 A That's referencing the square footage of the subject.

25 And then I also included some photographs from previous

DIRECT EXAMINATION OF WESLEY SANDERS

1 listings that we pulled online that we kind of used to make
2 the assumptions of the interior finish-out.

3 Q And then what is the "Sales Comparison Approach"? What
4 does that reference?

5 A That's where we used comparable sales from other office
6 buildings that have sold compared to this property, made
7 adjustments to come up with a value for an owner-user type
8 user that would pay a certain price for this property.

9 Q And the "Income Approach"?

10 A The income approach is to look at the building in the
11 eyes of an investor and what an investor would pay. So it
12 includes determining the market rent as well as finish-out
13 allowance to get a tenant in there and then what an investor
14 would pay if there were a tenant in the building.

15 Q Okay. And what about the "Final Reconciliation"? What
16 does that refer to?

17 A So that's when we take the values from the sales approach
18 and the income approach and we put weight on one or the other
19 or both depending on the property characteristics and who the
20 most likely buyer would be.

21 Q And the "Certification Statement," what does that
22 reference?

23 A That's a federal requirement for an appraisal. And it
24 basically says we don't have any interest in it, any bias in
25 the property, and it goes through a list of certifications

DIRECT EXAMINATION OF WESLEY SANDERS

1 that are required for federal mandates.

2 Q Because if you had an interest in the property, you may
3 be overappraising it and therefore it wouldn't be reliable?

4 A Correct, yeah. You have to state whether you have
5 performed any brokerage services on the property in the last
6 few years, any other appraisals or any other -- if you have
7 rented the property. Anything to do with the property you
8 have to say in the certification.

9 Q Next you have "Basic Assumptions and Limiting
10 Conditions." What did that reference?

11 A So that talks about different assumptions that we have to
12 make. For instance, one is we have to assume that it's ADA
13 compliant. There's a whole two pages of different assumptions
14 that we have to make on properties just because we don't have
15 building plans and we don't have particular information on the
16 property.

17 Q And the "Addenda"?

18 A So the addenda makes up the remaining items of the
19 report, the regional neighborhood.

20 Q What about the "Regional Analysis"? What is that looking
21 at?

22 A That's when we look at the Sarasota-Bradenton area and we
23 look at employment statistics, population statistics, and it
24 weighs in on whether the area is growing or shrinking or if
25 there is a demand for the property in the future.

DIRECT EXAMINATION OF WESLEY SANDERS

1 Q And the "Neighborhood Analysis"?

2 A Similar to the regional. We narrow down to the
3 neighborhood and do the same supply and demand analysis.

4 Q And the "Office Market Analysis"?

5 A In the office market office analysis, we look at rental
6 rates in the area as well as sales prices and cap rates which
7 are multipliers investors use to buy property. And we're
8 looking also at supply and demand specifically within the
9 office market.

10 Q And we've already discussed the "Subject Photographs."
11 That's what I just showed, correct?

12 A Yes.

13 Q And what are the "Sale Comparables"?

14 A So those are just write-ups of the sales we used.

15 Q Of the different properties you were looking at?

16 A Correct.

17 Q And then "Qualifications" are your qualifications?

18 A Correct.

19 Q If we could turn to what is page 19 of the report. Sir,
20 if we could pull out the graph chart there.

21 What are you showing us here?

22 A So this is part of the office market analysis. And what
23 we are looking at here, the green line and the blue line, the
24 green line is the average office price point over time, and
25 then a forecast. And you can see it's trending upward. The

DIRECT EXAMINATION OF WESLEY SANDERS

1 blue line is the Sarasota market specifically. So it's a
2 little flatter in 2016, 2017, and 2018. And then in 2019 it
3 starts to trend up also.

4 Q And both nationally and in the Sarasota market, you're
5 forecasting an upcrease in market value although nationally
6 greater than in Sarasota?

7 A Correct.

8 Q If we could then turn to the value conclusions on what
9 would be page 3 of the exhibit. If you could pull out the
10 value comparisons.

11 Are these your findings, sir?

12 A They are.

13 Q Is this showing us the value on 1/9/2022 and then also on
14 4/15/2019?

15 A It is.

16 Q What was your value for 4/15/2019 for this over 9,000
17 square foot commercial property?

18 A The value in 2019 was 2.1 million.

19 Q What was the value 1/9 of this year?

20 A 2.6 million.

21 Q I think my math is correct. That's about a half million
22 increase, 500,000?

23 A That's correct.

24 MR. ALLEN: No further questions.

25 THE COURT: Have we cross?

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 MS. BEDKE: No questions, Your Honor.

2 THE COURT: Thank you, sir. You may step down. Have
3 a good day.

4 Let's call that next witness, please.

5 MR. ALLEN: Yes, Your Honor. The defense would call
6 Mr. Harold McFarland.

7 THE COURT: All right. We will have Mr. McFarland.

8 THE COURTROOM DEPUTY: Sir, please raise your right
9 hand.

10 (Witness sworn.)

11 THE COURTROOM DEPUTY: Please state your name for the
12 record and spell your name.

13 THE WITNESS: Harold McFarland, H-A-R-O-L-D
14 M-C-F-A-R-L-A-N-D.

15 **HAROLD MCFARLAND, CALLED BY THE DEFENSE, SWORN**

16 **DIRECT EXAMINATION**

17 BY MR. ROSENTHAL:

18 Q Good afternoon, Mr. McFarland.

19 What do you do for a living, sir?

20 A I'm a certified public accountant.

21 Q Do you have any designations in addition to being a
22 certified public accountant?

23 A Yes. I'm a certified public accountant, a certified
24 management accountant, a certified fraud examiner. Probably
25 got a couple more I can't think of right now.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q Okay. And, sir, what's your educational background?

2 A I have a bachelor's degree in accounting and a master's
3 degree in accounting and have had several independent courses
4 from other universities including MIT and Stanford and the
5 like.

6 Q Where was your bachelor's degree in accounting from?

7 A The degree in accounting was from University of South
8 Florida.

9 Q And what year was that?

10 A 1990.

11 Q And your master's in accounting, what year was that?

12 A I believe that was 1991.

13 Q And how long have you been a certified public accountant?

14 A I became a certified public accountant in 1992.

15 Q And you have mentioned the term "certified management
16 accountant." How long have you been a certified management
17 accountant?

18 A I got that the following year in 1993.

19 Q What is a certified management accountant?

20 A A certified management accountant has additional training
21 and education in the areas of business management, analysis of
22 financial statements, determining what the economic factors
23 are that affect the business and that sort of thing. It's all
24 about managing at a high level, managing the company. It's
25 typically CEO-type training.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q And can you describe your career path since becoming a
2 certified public accountant?

3 A Well, I spent I believe two years on my own. And then I
4 joined with a partner, Rodney Schrock, and had a partnership
5 for a few years and then joined with the firm that I am with
6 now. I practiced tax and accounting for several years, but
7 now my work has evolved strictly into forensic accounting and
8 analysis.

9 Q And how long have you been with your present firm?

10 A I believe 27 years.

11 Q And you said that the nature of your current practice
12 involves forensic accounting. Can you tell us what forensic
13 accounting is?

14 A Forensic accounting basically goes in after the fact and
15 looks at all the accounting transactions and tries to
16 determine what really happened, what could have happened
17 better, the direction of the company and that sort of thing.
18 If there is anything that doesn't look right in the
19 financials, the forensic accountants are typically called in
20 to say we don't understand why this happened. Tell us why
21 this happened.

22 Q Now, you mentioned also earlier the term "certified fraud
23 examiner." Could you tell us what's required to become a
24 certified fraud examiner?

25 A A certified fraud examiner also needs additional

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 education. They get education in the area of -- a
2 considerable amount of the exam is based on law and law
3 definitions and how to read the law and that sort of thing.
4 And you get a lot more focus on understanding financial
5 transactions as they relate to fraud and embezzlement and
6 other things to understand what's happened in a company.

7 Q Now, are you involved in litigation support?

8 A I am.

9 Q Can you explain that?

10 A Litigation support is a little different from forensic
11 accounting in that the primary purpose is to provide attorneys
12 or judges with an understanding of complex subjects. So we
13 are there not to testify as an expert but to help them
14 understand what happened.

15 Q And what is -- are you also involved in accounting
16 database forensics? And if so, can you explain to us what
17 that is?

18 A Yeah. I do a lot -- because I also have a computer
19 background, I do a lot of database forensics. We will go in
20 and look at the accounting records and see if somebody has
21 been deleting records or moving records or changing
22 descriptions or changing amounts or that kind of thing. So
23 instead of relying on the accounting system to give us
24 information, we go behind it to the database to see what
25 really happened.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q Now, you mentioned your background in computers. Do you
2 have -- have you done work in cyber security?

3 A I do quite a bit of work in cyber security, yes.

4 Q What is your involvement with that?

5 A I both deal with cyber security prevention, I track
6 people around the world sometimes. I am a member of the FBI
7 InfraGard, which we look at terrorist activities. I'm with
8 the Secret Service Cyber Crimes Task Force and just in the
9 Cyber Crimes Division. So I do quite a bit of really
10 interesting stuff in that area.

11 Q And are you also a licensed private investigator?

12 A I am a licensed private investigator.

13 Q And do you have -- how is your work as a private
14 investigator limited, if at all?

15 A Well, I have a license as a private investigator. So I
16 can do anything they do, but my practice is limited strictly
17 to forensics and cyber security. I don't chase anybody. I'm
18 too old to run from anybody. I don't do any of that stuff.
19 It is just strictly cyber related.

20 Q Now, I may not have asked you previously, but where are
21 you based?

22 A Out of Sarasota.

23 Q And have you always been -- throughout your career have
24 you always been in Sarasota, the Sarasota area?

25 A Yes.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q Now, you mentioned that you were -- that you have had
2 various involvements with law enforcement, assisting law
3 enforcement. What was your first experience as a law
4 enforcement -- in law enforcement?

5 A My first experience with law enforcement was I was a
6 police officer many, many years ago in Ohio.

7 Q And do you belong to any professional associations?

8 A Yes, I do.

9 Q Could you please tell us?

10 A The American Institute of Certified Public Accountants,
11 the Florida Institute of Certified Public Accountants, the
12 Association of Certified Management Accountants, the Florida
13 Association of Private Investigators, the Florida Association
14 of Licensed Investigators, the National Association of
15 Licensed Investigators, and the Association of Certified Fraud
16 Examiners.

17 Q Have you had occasion to lecture to different
18 organizations on topics relating to your expertise?

19 A I have.

20 Q Can you tell us about that?

21 A Well, I have lectured locally for sometimes very small
22 groups who just had an interest in learning how these things
23 are done and protecting their business. And I have done
24 larger groups locally and statewide. The Florida Institute of
25 Certified Public Accountants, I presented for them. The

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 Community Association Institute, I presented for them locally
2 and at their national convention in Las Vegas. And I
3 presented even up to an international convention that had over
4 170 countries represented in Las Vegas for the Association of
5 Certified Fraud Examiners.

6 Q Now, you testified earlier your experience as a forensic
7 accountant. Have you had occasions to qualify as an expert
8 witness in forensic accounting?

9 A I have.

10 Q And have you qualified as an expert witness in any other
11 areas?

12 A Yes, in cyber security and in valuations.

13 Q How many times have you qualified as an expert in
14 forensic accounting let's say over the last ten years?

15 A I don't know that I can separate how many times forensic
16 versus cyber versus valuation, but probably 25 to 30 times I
17 have been qualified as an expert in the last ten years.

18 Q And have you in fact testified in court as a forensic
19 accountant?

20 A I have.

21 Q And have you testified in out-of-court proceedings as an
22 expert in forensic accounting?

23 A I have.

24 Q Now, were you retained by our office to conduct a
25 forensic review in this case?

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 A I was.

2 Q And for how long a period have you worked on -- have you
3 been involved in working on this case?

4 A Gee, it's been so long I don't remember when I came in on
5 it, quite honestly. It's been well over a year.

6 Q And is this something you would typically do as part of
7 your practice?

8 A Yes, it is.

9 Q And are you being compensated for your services?

10 A Yes, I am.

11 Q And what is your hourly rate of compensation?

12 A My governmental rate, which is 170.

13 Q And did you review any materials to conduct a forensic
14 examination in this case?

15 A Yeah. I reviewed all the items that were provided to me
16 including multiple bank statements, all the asset information,
17 precious metals and residences and that sort of thing. All
18 the trading records were provided. There were so many things
19 provided.

20 Q Well, did you review the bank records for all the
21 relevant entities?

22 A Yes, I did.

23 Q And did that include the ATC omnibus online trading
24 account?

25 A Yes, it did.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q Did you conduct an examination -- we'll come back to
2 this -- relevant to or relating to the assets owned by Oasis
3 Management or Oasis International Group?

4 A I did.

5 Q Did you also conduct a review of information that's
6 relating to precious metals and the cost of them at various
7 times?

8 A Yes, I did.

9 Q And what other -- what other areas did you research?

10 A I researched the general market conditions and the
11 specific economic conditions of forex trading and the market,
12 stock market and currency markets in general.

13 Q Did you do research into real estate areas?

14 A Into real estate what?

15 Q Into the real estate areas?

16 A Yes, I did.

17 Q Now, did you review the Oasis entities themselves?

18 A I did.

19 Q Which ones?

20 A Oasis Management, Oasis International Group, Oasis
21 Belize, Oasis Nevis. I think I'm forgetting one.

22 Q There was some discussions earlier in the trial about the
23 terms "equity financing" and "debt financing." First of all,
24 are you familiar with both of those terms?

25 A Yes, I am.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q And let's start with equity financing. Can you give us a
2 professional explanation of what equity financing is?

3 A Equity financing is basically when a business basically
4 gets funds from investors, that in exchange for those funds it
5 gives them an ownership interest in the business and typically
6 the ability to have some management say within the business.
7 So as the business does well, they profit well. And as the
8 business does not do well, they all get their share of losses.

9 Q And can you give us some common examples of equity
10 financing?

11 A Probably the most common examples would be stock
12 ownership. If you buy stock in a company, then you get a
13 right to vote. And if the stock goes up, your stock goes up
14 and you get to participate in the benefits. Then of course
15 partnerships is probably the other most common one. As a
16 partner, you have a right to know your percentage share of the
17 business.

18 Q Now, using that method of financing, how is profit and
19 risk apportioned?

20 A In a corporation, profit and risk -- profit and loss are
21 assigned to the individuals based on how much their stock
22 ownership is. If you own 50 percent, you get 50 percent of
23 the profit or 50 percent of the loss. It's basically whatever
24 you own. A partnership has more flexibility. You can make
25 other arrangements. So it's determined by the partnership

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 agreement, but you do participate in losses and profits to the
2 extent that the partnership agreement allows.

3 Q Now, you indicated you were familiar with the term "debt
4 financing"?

5 A Yes.

6 Q And can you give us a professional explanation for debt
7 financing?

8 A Debt financing is when the business basically gets their
9 fund sources from debts, from people providing money to them.
10 They get typically a note, promissory note of some type that
11 has a stated interest rate, although it can change. It is
12 whatever the agreement, the promissory note agreement is. And
13 they have no ownership interest and no management control or
14 anything else. As long as the note is being satisfied, they
15 are in agreement with the note contract.

16 Q How does that compare with equity financing?

17 A Basically, like I said, you have no ownership interest.
18 So if the company does really well, you are just getting back
19 your loan plus the interest of whatever was contracted. And
20 you don't have to risk anything with losses because it's still
21 the note. You also don't get any management say.

22 Q So is the -- what is the advantage to the investor in a
23 lending situation?

24 A It tends to be a much safer position. They don't have
25 the risk. Also they don't get the return if it does extremely

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 well.

2 Q So in that sense, does that protect the lender against
3 loss?

4 A As long as the company is meeting the note obligation,
5 they are protected. And if the company has a hard time and
6 needs to go to a bank for more financing, it don't matter as
7 long as they are getting their payments according to the note.

8 Q Did Oasis use equity financing, Oasis Management use
9 equity financing?

10 A They did until 2017.

11 Q And after 2017 what method of financing did Oasis
12 Management use?

13 A They converted everything to debt financing.

14 Q With respect to Oasis International Group, what method of
15 financing did they use?

16 A Oasis International?

17 Q Yes.

18 A They used debt also.

19 Q Now, are you familiar with the term "fiduciary trading"?

20 A I am.

21 Q In the context of a company involved in trading, how
22 would you define fiduciary trading?

23 A In fiduciary trading, the company that's doing the
24 trading is trading the other person's money. They are a
25 fiduciary. They are responsible for what happens with that

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1 money. Any gains are the person whose money they're handling.
2 Any losses are also that person's losses. The equity trader
3 typically makes his money solely on commissions. He doesn't
4 get anything off the sales as far as if the prices went up.
5 He just gets his commission.

6 Q Now, was Oasis engaged in fiduciary trading?

7 A No, they were not.

8 Q And did they hold themselves out as being engaged in
9 fiduciary trading?

10 A I saw nothing that would indicate they did.

11 Q Now, did you have occasion to review the promissory notes
12 and the risk disclosures?

13 A I reviewed a sample of the promissory notes, that's
14 correct, and the risk disclosure.

15 Q Now, Mr. McFarland, what is a hard money lender?

16 A A hard money lender basically gives you cash, hard money,
17 cash.

18 Q And would you -- how would you characterize the lenders
19 in this particular case?

20 A They were hard money lenders. They provided funds.

21 Q Now, you said that you had reviewed the promissory note
22 and loan agreement; is that correct?

23 A That's correct.

24 Q We will use the Elmo, please.

25 Mr. McFarland, I'm going to show you what's been

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 marked as -- or what's been introduced previously as Defense
2 Exhibit 2.

3 Can I have just a moment, Your Honor? I'm looking
4 for a clean copy if I can.

5 I'm showing you Government's Exhibit 205A.

6 Mr. McFarland, I'm calling your attention to -- if we could
7 bring up Paragraph 3, "Use of Funds."

8 A Thank you for enlarging it, whoever did that.

9 Q Mr. McFarland, are you familiar with Paragraph 3, "Use of
10 Funds"?

11 A Yeah.

12 Q Okay. And is that -- did you read that as part of your
13 forensic examination in this case?

14 A Yes, I did.

15 Q Now, with respect to Paragraph 3, and I know it's been
16 read several times during the course of this trial, but is
17 there anything in Paragraph 3 that restricts Oasis to forex
18 trading?

19 A No, there's not.

20 Q How would you characterize Paragraph 3?

21 A I would say that Oasis has considerable leeway in how
22 they want to invest the loan proceeds.

23 Q Are there any specific activities that Oasis is permitted
24 pursuant to Paragraph 3?

25 A It does specify they are able to purchase or sell foreign

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1 exchange products, securities, commodities, exchange or
2 off-exchange products, business assets, liabilities, purchase
3 or sale of real estate, or any other purpose including general
4 company use, company payment or loans to company affiliates,
5 et cetera.

6 Q Thank you. Now, did you -- you had said earlier that you
7 had reviewed the trading records?

8 A That's correct.

9 Q Now, is it correct that Oasis suffered trading losses
10 during the early part of 2018?

11 A Yes, they did.

12 Q And how would you characterize those losses?

13 A They were substantial.

14 Q And was there a particular period where they were the
15 most substantial?

16 A Yes. The first quarter of 2018. I believe they lost
17 12 million in those three months.

18 Q Now, can you speak of what 2018 generally was like as an
19 investment year?

20 A Can I refer to my notes for specifics?

21 Q Sure.

22 A It was not a good year looking at economic forecasters
23 and that sort of thing. And to cite sources, CNN Business
24 said 2018 was the worst year for stocks in ten years. CNBC
25 said again the S&P fell more than 6 percent, worst in the

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 decade. Yahoo Finance, stock market was the worst since 2008.

2 It was not a good year for stocks and the market in general.

3 Q Was there anything you are aware of that may have had a
4 particular effect on the forex market?

5 A Well, there's a couple things. When the stocks go down,
6 fewer people, fewer foreign investors are trying to buy the
7 American dollar, buy into stocks. So the demand goes down.
8 When the demand goes down, the exchange rate goes down. And I
9 did see that the dollar index for that time period went from
10 \$1.01 in May of 2017 to 87 cents on average for the first four
11 months of 2018.

12 Q Now, after -- after Oasis incurred these losses, did you
13 notice or did your review of the records reflect any
14 corrective action that was taken?

15 A I would consider it corrective actions, yes.

16 Q Well, first of all, did their pace of trading, did it
17 increase, decrease, or remain the same?

18 A They slowed down their trading significantly.

19 Q Would you consider that to be a corrective action?

20 A I definitely would. You're trading a lot and losing.
21 Slow down.

22 Q And what else did you observe from your review that would
23 constitute corrective action?

24 A They moved a lot of the money to more stable assets. If
25 the market is really volatile, that's a common strategy is to

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 move it to more stable things such as real estate and precious
2 metals and the like.

3 Q Let's break those two down. In terms of real estate, was
4 Oasis involved in real estate purchases before they incurred
5 the losses in the early part of 2018?

6 A Yes, they were.

7 Q And did that continue after they incurred the losses in
8 2018?

9 A Yes.

10 Q Were they involved in precious metals before the losses
11 that were incurred in 2018?

12 A Yes.

13 Q And did that continue after they incurred the losses in
14 the early part of 2018?

15 A Yes.

16 Q Specifically did you become familiar with the silver
17 position that Oasis had taken?

18 A Yes.

19 Q And when did they take that position?

20 A The first part of 2018 after it started falling.

21 Q Okay.

22 A It was towards the latter part of 2018.

23 Q And can you describe the position they took?

24 A Okay. They took a forward position, which basically
25 means that they don't own the actual gold -- silver in this

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 case, I'm sorry. They don't own the actual silver. As silver
2 prices go up, they get the increase in the silver price based
3 on what that base was that they bought even though they don't
4 own the base. They get the increases, or if it goes down they
5 have to pay the difference, the decreases.

6 Q And did you review what had happened with that silver
7 position?

8 A Yes. It went up.

9 Q And did there -- let's say somebody had -- assuming that
10 they had sold that silver position on September 24 of 2019,
11 what would the end result have been?

12 A On September 24, the part that they were allowed to have,
13 the gain only, was just under \$20 million.

14 Q And would that have erased the trading losses from the
15 early part of 2018?

16 A Yes, it would have.

17 Q Now, did it go up even further after September 24 of
18 2019?

19 A It did for a little bit.

20 Q And had they sold September 24 of 2019, could they have
21 then repurchased at a later point?

22 A Sure.

23 Q Was there a drop after September 24 of 2019?

24 A There was a pretty huge drop, yes.

25 Q So if they had gotten out of the market at that time and

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1 repurchased, would they have been able to repurchase at a
2 lower price?

3 A Yes.

4 Q Publishing Defense Exhibit 17.

5 THE COURT: All right. We will break now for the
6 day. Ladies and gentlemen, don't pack your lunch tomorrow.
7 We've got it. See you at 8:30.

8 Please don't think about the case, look anything up,
9 talk about anything.

10 Mr. McFarland, we will see you back here at 8:25.

11 Thank you. Good day, everyone.

12 (Proceedings concluded at 5:30 p.m.)

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DIRECT EXAMINATION OF HAROLD MCFARLAND

1 UNITED STATES DISTRICT COURT)
2 MIDDLE DISTRICT OF FLORIDA)

3
4 **REPORTER TRANSCRIPT CERTIFICATE**

5 I, Tracey Aurelio, Official Court Reporter for the United
6 States District Court, Middle District of Florida, certify,
7 pursuant to Section 753, Title 28, United States Code, that
8 the foregoing is a true and correct transcription of the
9 stenographic notes taken by the undersigned in the
10 above-entitled matter (Pages 1 through 307 inclusive) and that
11 the transcript page format is in conformance with the
12 regulations of the Judicial Conference of the United States of
13 America.

14 /s Tracey Aurelio

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Tracey Aurelio, RMR, RDR, CRR
Official Court Reporter
United States District Court
Middle District of Florida
Tampa Division
Date: September 4, 2022

EXHIBIT D

**CFTC RESPONSE IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT BY
DEFENDANT MICHAEL J. DaCORTA**

**DECLARATION OF ELSIE ROBINSON
PURSUANT TO 28 U.S.C. § 1746**

I, Elsie Robinson, hereby make the following declaration based upon my personal knowledge:

I. INTRODUCTION

1. I am over 21 years of age and am legally fit and qualified to testify in a court of law.

2. I hold a Bachelor of Arts degree and I am a Certified Fraud Examiner.

3. I am employed as a Futures Trading Investigator by the Division of Enforcement (Division) of the Commodity Futures Trading Commission (Commission), located at 4900 Main Street, Suite 500, Kansas City, Missouri 64112.

4. I have been assigned to the Division as a Futures Trading Investigator since joining the Commission in April 2015. As a Futures Trading Investigator, my responsibilities include investigating potential violations of the Commodity Exchange Act (Act), 7 U.S.C. §§ 1-26 (2012) and the regulations promulgated thereunder. I also routinely analyze customer account documents, review trading documentation, analyze bank records, trace the flow of funds, review registration information, perform investigative searches in databases such as Thomson Reuters CLEAR (“CLEAR”), and conduct and participate in investigative interviews.

5. From 2006 to 2015, I was employed by the United States Attorney’s Office (USAO) for the Western District of Missouri as a financial analyst, responsible for performing investigations and analyses of accounting, economic, and financial issues involving individuals and business organizations. While employed at the USAO, my duties

included, but were not limited to, reviewing financial and management operations of commercial, industrial, municipal and corporate organizations; examining financial statements, accounting records and operational records; researching individuals and business' backgrounds; researching applicable regulatory and legal standards and requirements; interviewing witnesses and targets of investigation; reviewing correspondence, including e-mail and audio recordings; examining depositions and legal filings; and performing analyses of the information gathered.

6. During my tenure at the USAO, I worked on a number of different matters including: (1) reviewing and analyzing bank records, property records, and corporate documents, analyzing money flow, conducting witness interviews and participating in search and seizure warrants in a large software piracy investigation; (2) reviewing and analyzing business records, recorded conference calls, bank records, and trading records, interviewing witnesses and targets; testifying at trial and sentencing as to financial analyses and loss amounts, and preparing a restitution order in connection with a securities fraud scheme involving thousands of victims and which resulted in the conviction of 14 defendants; (3) reviewing business records and money flow in investigations of federal funding fraud and embezzlement; (4) reviewing land and financial transactions involved in mortgage fraud investigations; (5) reviewing audio records, publicly available land records, insurance and financial documents as to an arson for insurance fraud scheme.

7. I have personal knowledge of facts stated herein, and if called to testify, I could and would competently testify to the same.

II. MATERIALS REVIEWED

8. As part of my investigatory responsibilities for this matter, I performed a search of relevant databases and reviewed various documents obtained by the Division in the course of its investigation, including the following:

- a. Records obtained through the Thomson Reuters CLEAR database relating to Michael J. DaCorta (DaCorta), Joseph S. Anile, II (Anile), Raymond P. Montie, III (Montie), John J. Haas (Haas), and Francisco “Frank” Duran (Duran).
- b. Public records obtained from Secretaries of State regarding the entity registrations, and amendments thereto of Oasis Management, LLC (OM), Oasis International Group Ltd. (OIG), Satellite Holdings Company (Satellite), Fundadministration, Inc. (FI), Mainstream Fund Services, Inc. (Mainstream), Bowling Green Capital Management, LLC (Bowling Green), Lagoon Investments, Inc. (Lagoon), Roar of the Lion Fitness, LLC (Roar of the Lion), 444 Gulf of Mexico Drive, LLC (444), 4064 Founders Club Drive, LLC (4064 Founders Club), 6922 Lacantera Circle, LLC (6922 Lacantera), 13318 Lost Key Place, LLC (13318 Lost Key), and 4Oaks LLC (4Oaks). True and correct copies of these records are attached here to as **Exhibit A**.
- c. Records obtained from the Cayman Islands Monetary Authority (“CIMA”). True and correct copies of these records are attached hereto as **Exhibit B**.

- d. Records obtained through the CFTC's April 25, 2018, April 30, 2018, August 23, 2018, and March 11, 2019 surveys of all U.S.-based Retail and Foreign Exchange Dealers (RFEDS) and Futures Commission Merchants (FCMS).
- e. Materials provided to the Commission by individuals who heard solicitations for the Oasis Pools by Defendants. True and correct copies of certain of these materials are attached here to as **Exhibit C**.
- f. Bank records for accounts listed in the following table. True and correct copies of account opening documents for OM, Satellite Holdings, FI, Mainstream, Bowling Green, Lagoon, Roar of the Lion, 444, 4064 Founders Club, 6922 Lacantera, 13318 Lost Key, and 4Oaks accounts are attached hereto as **Exhibit D**.
- g.

<u>Institution</u>	<u>Account Holder</u>	<u>Account Number</u>	<u>Time period reviewed</u>
TD Bank	RPM 7 LLC	xxx-xxx6068	3/24/16 - 2/28/19
TD Bank	RPM 7 LLC	xxx-xxx1952	6/15/18 - 2/28/19
TD Bank	Diamond BOA LLC dba Kevin Johnson Reptiles	xxx-xxx0306	7/14/17 - 2/12/19
Bank of America	Oasis Investments DN LP	xxxxxxxx5246	3/20/18 - 5/14/18
Bank of America	Fundadministration Inc F/B/O Oasis Global FX S.A.	xxxxxxxx9550	12/21/16 - 5/31/17
Bank of America	Fundadministration Inc FBO Oasis Global (Nevis) Limited	xxxxxxxx9631	12/22/16 - 5/31/17
Bank of America	Fundadministration Inc	xxxxxxxx8346	10/7/13 - 5/31/17
Investors Bank	MCN Management Advisors, Inc. Grand Central Opportunities FundLP	xxxxxx3580	10/2/18 - 12/13/18
Wells Fargo Bank	Oasis Management, LLC	xxxxxxx0980	11/23/11 - 1/31/17
Wells Fargo Bank	444 Gulf of Mexico Drive LLC	xxxxxx3887	11/23/11 - 8/31/18
Wells Fargo Bank	Oasis Management, LLC	xxxxxx3967	1/9/18 - 3/7/19
Wells Fargo Bank	Oasis Management, LLC	xxxxxx9302	11/23/11 - 3/8/19
Wells Fargo Bank	4064 Founders Club Drive LLC	xxxxxx1807	12/1/17 - 4/11/18
Wells Fargo Bank	4064 Founders Club Drive LLC	xxxxxx3975	12/1/17 - 3/8/19
Wells Fargo Bank	13318 Lost Key Place LLC	xxxxxx2850	4/12/16 - 3/6/19
Wells Fargo Bank	Full Spectrum Wellness LLC	xxxxxx4429	2/17/16 - 10/9/18
Wells Fargo Bank	Full Spectrum Wellness LLC	xxxxxx4437	2/17/16 - 10/9/18
Wells Fargo Bank	6922 Lacantera Circle, LLC	xxxxxx2805	10/9/18 - 2/28/19
Wells Fargo Bank	Satellite Holdings Company	xxxxxx5347	11/18/14 - 3/8/19
Wells Fargo Bank	Satellite Holdings Company	xxxxxx8808	11/18/14 - 2/28/19
Wells Fargo Bank	Vintage Property Management LLC	xxxxxx0808	1/12/18 - 3/6/19
Wells Fargo Bank	Vintage Property Management LLC	xxxxxx8537	1/12/18 - 2/28/19
Wells Fargo Bank	Roar of the Lion Fitness, LLC	xxxxxx1396	11/24/17 - 2/13/19
Wells Fargo Bank	4Oaks LLC	xxxxxx2572	1/14/19 - 2/28/19
People's United Bank	MCN Management Advisors, Inc.	xxxxxx9210	1/17/17 - 8/31/18
People's United Bank	MCN Management Advisors, Inc.	xxxxxx1840	12/22/16 - 8/31/18
TD Bank	Nicolaous Asset Group Inc	xxxxxx6634	8/1/12 - 1/16/15
Capital One Bank NA	Bowling Green Capital Management Corp	xxxxxxxx7485	7/1/11 - 1/31/19
Regions Bank	Lagoon Investments Inc.	xxxxx1522	5/1/15 - 12/31/18
Citibank, N.A.	Fundadministration Inc	xxxxxx0764	4/1/17 - 3/13/19
Citibank, N.A.	Mainstream Fund Services Inc	xxxxxx3008	12/12/17 - 3/13/19
Citibank, N.A.	Mainstream Fund Services Inc	xxxxxx5606	2/1/17 - 3/13/19
Citibank, N.A.	Mainstream Fund Services Inc	xxxxxx1174	6/6/18 - 3/5/19

h. Forex trading records, including trading account statements, account opening documents, and communications for the accounts in the following table. True and correct copies of account opening documents for these accounts are attached hereto as **Exhibit E**.

<u>Institution</u>	<u>Account Holder</u>	<u>Account Number</u>	<u>Time period reviewed</u>
ATC Brokers	Oasis Global FX Limited	XXX0050	6/16/15 - 2/7/17
ATC Brokers	Oasis Global FX, S.A.	XXX0055	1/7/17 - 4/2/19

III. ENTITY REGISTRATIONS FOR DEFENDANTS AND RELIEF DEFENDANTS

9. Records from the Business Division of the State of Wyoming’s Secretary of State’s office show that OM is a Limited Liability Company filed on November 7, 2011. Initially, the company was organized by David DeLoach with a mailing address of c/o CORP 95, LLC 32565B Golden Lantern St. Ste 140, Dana Point, CA 92629 and the principal address of the limited liability company of c/o CORP 95, 210 Nichols Ave., Casper, WY 82601. D’arcy DeLoach is listed as the President. On June 18, 2012, the registered agent organization name changed from Corp 95 to Vista Management Services, Inc. On October 23, 2012 the mailing address for OM was changed to 31878 Del Obispo #118-331 c/o Vista Mgmt, SJC, CA 92675 and the principal address for OM to 318 McMicken, Rawlins, WY 92301. As of March 7, 2019, public records show the registration as active and in good standing. Ex. A, pgs. 1-5.

10. During the investigation, a signature card obtained from Wells Fargo Bank for accounts in the name of OM, opened on November 22, 2011, listing the company’s Articles

of Organization filed in the State of Wyoming on November 7, 2011 and referencing the document filing number was 2011-000611144. The signature card lists Michael DaCorta as the authorized signer and lists the mailing address for OM as 15 Pac Drive, Poughkeepsie, NY 12020. Michael DaCorta's residence address listed on the signature card is the same as the mailing address for OM. Ex. D, pgs. 1-4.

11. Records obtained from CIMA include a Certificate of Incorporation for OIG as an exempted incorporated company, dated March 1, 2013. OIG filed an Amended and Restated memorandum and Articles of Association on June 24, 2013. In a CIMA database internet search conducted on March 8, 2019, OIG is listed as an active company. Ex. B, pg. 35.

12. An OIG Corporate Structure chart obtained from CIMA describes OIG as "Wholly-Owned Special Purpose Single Asset Entities (Real Estate, Medical Technologies, M&A (Corporate Acquisitions)) – World-Wide (Predominantly US)." The same OIG Corporate Structure chart lists OIG officers as follows: Anile is President; DaCorta is CEO, Chief Investment officer, and Marketing & Creditor Relations; and Anile, DaCorta and Montie are on the Board of Directors. Joe Paniagua is listed as Compliance Officer and Money Laundering Reporting Officer, as well as Operations. Ex. B, pgs. 33-34.

13. Public records from the Office of the Secretary of State, State of South Dakota show that Satellite Holdings incorporated as a Domestic Business on October 15, 2014. The Articles of Incorporation list the address for Satellite Holdings as 110 E. Center St., Ste. 2053, Madison, SD 57042. Satellite Holdings' 2015 annual report list John J. Haas as a Director. Ex. A, pgs. 6-11.

14. During the investigation, a signature card obtained from Wells Fargo Bank for accounts in the name of Satellite Holdings, opened on November 17, 2014, list Haas as the Director/President. The signature card lists Satellite's address as 110 E. Center St., Ste 2053, Madison, SD 57042. Ex. D, pgs. 5-17.

15. Public records from the Division of Corporations, New York State Department of State's office, describes FI as an entity having its initial filing on November 4, 1999 with an address of 4175 Veterans Memorial Highway, Suite 204, Ronkonkoma, NY 11779. The current entity name for FI is Mainstream. The name change occurred on October 3, 2017 and the address remains the same. The Chief Executive officer for FI and Mainstream is listed as Denise DePaola. Ex. A, pgs. 14-15.

16. Public records from the Division of Corporations, New York State Department of State's office, describes Mainstream as an entity with its initial filing on November 4, 1999 with an address of 4175 Veterans Memorial Highway, Suite 204, Ronkonkoma, NY 11779. The filing information indicates that at the time of filing, the name of the entity was FI and it did not change to Mainstream until October 3, 2017. Ex. A, pgs. 16-17.

17. Public records from the Division of Corporations, New York State Department of State's office, describes Bowling Green as an entity initially formed on June 27, 2007. No registered agent was listed at the time of formation. However, the entity information is listed as Attention: Joseph S. Anile II, 26 Ludlam Avenue, Bayville, NY 11709. On August 11, 2009, a bank account ending in 7485 was opened at Capital One Bank for Bowling Green Capital Management Corp by Anile and MaryAnn E. Anile (M.Anile). Ex. A, pgs. 18-19; Ex. D, pg. 54.

18. Public records from the Office of the Secretary of State, State of South Dakota, show that Lagoon was initially formed on May 27, 2014. On May 29, 2015, an application by foreign corporation for authorization to transact business in Florida was filed with the Division of Corporations, State of Florida by Anile. DaCorta and Anile were listed as directors and officers of the business at that time. On May 19, 2015, a bank account ending in 1522 was opened at Regions Bank for Lagoon Investments Inc. by DaCorta and Anile. Ex. A, pgs. 20-32; Ex. D, pgs. 55-62.

19. Public records from the Division of Corporations, State of Florida, show that Roar of the Lion Fitness, LLC was initially formed on September 28, 2017 and listed Andrew DaCorta (“A. DaCorta”) as the authorized person to manage the LLC. On November 24, 2017, a bank account ending 1396 was opened at Wells Fargo Bank by Michael DaCorta and Andrew DaCorta. Ex. A, pgs. 33-34; Ex. D, pgs. 63-68.

20. Public records from the Division of Corporations, State of Florida, show that 444 was initially formed on October 20, 2017. DaCorta was the registered agent and OIG was listed as the authorized entity to manage the LLC. On January 9, 2018, a bank account ending 3967 was opened at Wells Fargo Bank for 444 by DaCorta and Anile. Ex. A, pgs. 35-36; Ex. D, pgs. 69-73.

21. Public records from the Division of Corporations, State of Florida, show that 4064 Founders was initially formed on September 25, 2017 under the name of 4046 Founders Club Drive, LLC. On November 14, 2017, the entity’s name was changed from 4046 Founders Club Drive, LLC to 4064 Founders Club Drive, LLC. Anile was the registered agent and authorized representative. On December 6, 2017, bank accounts ending

3975 and 1807 were opened at Wells Fargo Bank for 4064 Founders Club Drive, LLC by Anile and M. Anile. Ex. A, pgs. 37-41; Ex. D, pgs. 74-78.

22. Public records from the Division of Corporations, State of Florida, show that 6922 Lacantera was initially formed on September 14, 2018. DaCorta was the registered agent and OIG was listed as the authorized entity to manage the LLC. On October 9, 2018, a bank account ending 2805 was opened at Wells Fargo Bank for 6922 Lacantera Circle, LLC by DaCorta. Ex. A, pgs. 42-43; Ex. D, pgs. 79-83.

23. Public records from the Division of Corporations, State of Florida, show that 13318 Lost Key Place, LLC was initially formed on March 14, 2016. DaCorta was the registered agent and Oasis International Group, Ltd. Grand Cayman, was listed as the authorized entity to manage the LLC. On April 12, 2016, a bank account ending 2850 was opened at Wells Fargo Bank for 13318 Lost Key Place, LLC by DaCorta. Ex. A, pgs. 44-45; Ex. D, pgs. 84-87.

24. Public records from the Division of Corporations, State of Florida show that 4Oaks LLC was initially formed on January 7, 2019 by Anile as the registered agent and authorized person to manage the LLC. On January 14, 2019, a bank account ending 2572 was opened at Wells Fargo for 4Oaks LLC by Anile and M. Anile. See Ex. A, pgs. 46-47; Ex. D, pgs. 88-92.

IV. U.S. TRADING ACCOUNTS

25. During the investigation, the Commission conducted a survey of U.S. RFEDS and FCMS to determine whether certain individuals and entities held forex or futures trading accounts in the United States. The searches included the following entities and individuals:

OIG, OM, Satellite Holdings, DaCorta, Anile, Montie, Duran, and Haas. I reviewed the survey results, which revealed no accounts were held in the U.S. by such individuals and/or entities.

V. FOREIGN FOREX TRADING ANALYSIS

26. As part of my duties in this matter I reviewed and analyzed account records held by Oasis Global FX Limited (OGFXL) account XXX0050 and Oasis Global FX, S.A. (OGFXS) account XXX0055 at ATC Brokers Ltd., United Kingdom.

27. On April 13, 2015 a corporate account application was completed by Anile for OGFXL. The address listed for OGFXL was 21 Brownston Street, Wanaka, New Zealand 9305. OGFXL was registered as a NZ Limited Company with the Companies Office, New Zealand. Anile was listed as Vice President and DaCorta was listed as President of OGFXL. OGFXL was 100% owned by OIG, Cayman Islands. OIG's principal shareholders are Anile, DaCorta and Montie. DaCorta was identified as the trader of this account. Ex. E, pgs. 1-12.

28. The account was open between June 16, 2015 and February 7, 2017; however, active trading only occurred through December 12, 2016. During that time OGFXL wired \$1,649,831.51 to ATC Brokers. Of that amount, \$349,831.51 came from their Choice Bank account in Belize ending 4622, and the remaining \$1,300,000 came through FI's Wells Fargo Bank, N.A. London acct ending 0957. Throughout the life of the account a total net loss of \$1,653,805.33 was incurred trading forex pairs. The account incurred fees of \$355,959.23 and debit adjustments to the account of \$17,086.78. No withdrawals were made from the account. The account was closed on February 7, 2017.

29. On December 28, 2016 a corporate account application was completed by Anile for OGFXS. The address listed for OGFXS was 35 Barrack Road, Belize City, Belize 00000. OGFXS was registered with the Business Companies Office, Belize and had become OGFXS when its name was changed from Oasis Global (Belize), S.A. on August 29, 2016. Anile is listed as President of OGFXS. OGFXS is 100% owned by Anile. DaCorta was listed as the Chief Investment Officer. Anile indicated on the application that another person would trade the account and the password to the account included the name "Mike D." Ex. E., pgs. 13-19.

30. The account was created on January 7, 2017 and records were received through November 29, 2018. Between January 18, 2017 and November 30, 2018, OGFXS wired \$19,625,000.00 to ATC Brokers. Of that amount, \$1,725,000.00 came from a Bank of America account ending 9550, in the name of Fundadministration Inc F/B/O Oasis Global FX S.A., and the remaining \$17,900,000.00 came from Citibank account ending 0764 in the name of Fundadministration Inc./Mainstream Fund Services. Between January 7, 2017 and November 29, 2018, there was a total loss of approximately \$60 million in the account. Trading returns in 2017 were -45% and in 2018 were -96%. No withdrawals were made from the account. As of November 30, 2018, this account had a balance of approximately \$750,000.

31. The forex transactions in these two accounts were on a leveraged basis and did not result in delivery within two days or otherwise create an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively,

in connection with their line of business. The trades in the ATC accounts were leveraged 100:1.

32. New records were received from ATC Brokers during the preparation of this declaration. I am in the process of reviewing and analyzing those documents. Upon initial review of trading activity, it appears that as of April 2, 2019, there was a balance in the trading account of \$2,045,921.65.

33. From my review of banking and trading activity, it does not appear that Defendants have traded forex in any other accounts between April 15, 2014 and the present.

VI. SOLICITATIONS

34. On March 5, 2019, I participated in an interview the Division conducted of a financial advisor located in Wisconsin ("Person 1"). Person 1 stated the following:

- a. Person 1 participated in a conference call with his client and Defendant Ray Montie III in January 2019. Person 1's client was a prospective pool participant in Oasis;
- b. Montie represented on the conference call that Oasis was a privately held company in the Cayman Islands that invested in forex;
- c. Montie further stated that Oasis divided the returns it earned trading forex with pool participants who loaned Oasis money, and that interest was deposited into pool participants' accounts on a daily basis;
- d. Montie also stated that any pool participant who brought other pool participants into Oasis would receive a portion of the interest their referral earned from the Oasis Pools;

- e. Montie said that Oasis had never had a down day trading forex; and
- f. Montie told Person 1 and his client there were no income or net worth requirements for investing in Oasis.

35. Person 1 received documents from his client that were received from an Oasis pool participant. Those documents include an Oasis Loan Account Summary, a Promissory Note and Loan Agreement, and a summary of the Oasis Leadership Team. Ex. C.

36. During my work on this investigation, I also reviewed documents and recordings provided to the Commission by a person who Defendants believed was a prospective pool participant (“Person 2”). I learned the following from reviewing the documents provided by Person 2:

- a. Frank Duran has an email account at OIG, which is fduran@oasisig.com;
- b. In February 2019, Oasis, by and through Duran using this email address, provided Person 2 with wiring instructions to a bank account at Citibank, N.A. (“Citibank”), which ends in -0764. The email was titled “FW: wire instructions pdf.” and the beneficiary was designated as Relief Defendant Mainstream Fund Services, Inc., with a reference to “f/b/o Oasis International Group, Ltd.,”
- c. That same day, Oasis, by and through Duran using this email address, provided Person 2 with a “sample” promissory note dated June 29, 2018. The attachment is entitled “PROMISSORY NOTE AND LOAN AGREEMENT” and the maker of the note is “Oasis International Group, Ltd.” The note states that the payee would receive the greater of interest calculated at 12% per year or 25% of the Transaction Fees, which were defined as “the fees charged by OIG upon the Loan Amount in its ordinary course of business through a proprietary trading account” of OIG. The Promissory Note is signed by Michael J. DaCorta, who was identified as OIG’s Chief Executive Officer and the note is dated June 29, 2018;
- d. In March 2019, OIG, by and through Duran using this email address, provided Person 2 with a link at website address, <https://www.oasisigltd.com>, so he could open an account. When Person 2 clicked on the link there were two

documents to review: a “Promissory Note and Loan Agreement” and “Agreement and Risk Disclosures;” and

- e. The “Agreement and Risk Disclosures” document, states, among other things, that:
 - i. OIG provides no collateral to the pool participants in connection with any money loaned to OIG;
 - ii. OIG can use the funds loaned to it by pool participants for any purpose whatsoever and can transfer the funds to other OIG accounts; and
 - iii. OIG can invest the money loaned to it by the pool participants in forex or spot metals trading, which the Agreement and Risk Disclosures noted is highly speculative and suitable only for certain investors.

37. On or about March 20, 2019, I listened to a recorded in-person conversation that occurred in early 2019 between a couple who resided in Florida and had invested in the Oasis pools and Person 2, during which the Oasis pool participants stated the following:

- a. Montie travels from New Hampshire to Florida to work with Oasis;
- b. they invested their IRA and savings in the Oasis Pools;
- c. they are making about \$4,500 a month from Oasis because of all of the people they have referred to Oasis;
- d. they have not heard of any risk of investing with Oasis;
- e. the only time Oasis lost money was about seven years ago when they were just getting started and only Montie’s money was lost;
- f. someone invested \$950,000 in Oasis without being referred, so Montie gave them the referral and they are getting 25% of what the \$950,000 pool participant earns every month;
- g. Oasis is investing in foreign currency “forex” overseas and they do not think Oasis does anything else with their money;
- h. Michael DaCorta is OIG’s trader and “the brains,” but they had never talked with him;

- i. Oasis used to be set up so that OIG was for big investors and OM was for smaller investors;
- j. in 2018, they combined OIG and OM into one company “under one umbrella;”
- k. Oasis pool participants get 25% referral fees;
- l. they can log in to their OIG account online and see what they’ve made in referrals and they like to log in every day;
- m. pool participants would receive a minimum return of 12% a year;
- n. they have not had a bad month with OIG;
- o. they know one OIG pool participant who said she made \$17,000 in one month;
- p. John Haas handles retirement accounts for Oasis; and
- q. they did not know why Oasis calls their investment a loan and even though investors are called lenders, they are really just investors.

38. On or about March 20, 2019, I listened to a recorded telephone call that occurred in early 2019 between Person 2 and Defendant Montie, during which Montie stated the following:

- a. he started Oasis eight years ago after meeting Defendant DaCorta in Poughkeepsie, New York;
- b. he gave DaCorta \$25,000 of his money to trade in October 2011 and within approximately seventy days, DaCorta had turned Montie’s \$25,000 into \$37,000 trading forex;
- c. in January 2012, Montie decided to reach out to friends and family and DaCorta started trading their money (approximately \$81,000);
- d. in seven years, Oasis has grown to having \$130 million under management;
- e. Oasis earned 22% returns in 2017 and 21% returns in 2018;
- f. Oasis averages a 1% monthly return and has never had a losing month;

- g. Oasis is a “lot less risk than the stock market;”
- h. Montie has all of his friends and family involved in Oasis and “everyone is doing extremely well;”
- i. pool participants’ funds are used only to trade forex;
- j. Oasis bought a broker-dealer license from Belize; and
- k. DaCorta can explain everything.

39. On or about March 21, 2019, I listened to a recorded in-person conversation at Oasis’s offices in Longboat Key in early 2019 between Person 2 and Defendant Duran. Person 2 indicated he was interested in investing in the Oasis Pools. In response, Duran stated the following:

- a. he has been involved with Oasis for about a year and a half;
- b. he wanted to help raise capital, help with Oasis’s day-to-day operations because DaCorta was “really busy with trading,” and “stay close” to his investment with OIG;
- c. he gets money wired to his accounts every day at 7:30 p.m.;
- d. Joseph Anile and Raymond Montie are DaCorta’s partners;
- e. after the 2008 financial meltdown, DaCorta returned his investors’ money and told them he could not generate the kind of returns he had in the past;
- f. Anile got Oasis’s licenses in Belize and the Cayman Islands and Oasis does its banking “through the U.K.;
- g. DaCorta is “buying [forex] wholesale and selling [it] retail;”
- h. Oasis gives its investors a 90 day perpetual note so it does not have to register it as a security because “that changes the game;”
- i. it is pretty simple for an Oasis pool participant to get money out and it takes three to four days;

- j. returns are “instant” and are put into Oasis pool participants’ accounts every day at 7:30 p.m.;
- k. the 1% per month return is guaranteed, and even if Oasis does less, it will make up the difference;
- l. Duran has never seen a losing month and Oasis closed out 2018 at almost 21% returns;
- m. Oasis is making so much money that they can pay all of the pool participants and their expenses from trading profits;
- n. when Oasis makes more than 12% a year, it pays 25% of these additional returns back to pool participants and 75% of these additional returns go “to the house,” to pay Oasis’ expenses, fees, salaries, referral fees, and to purchase real estate;
- o. Oasis could not lose money unless there was a bigger problem in the financial markets and people were going to the supermarkets with shotguns;
- p. Oasis’s trades are cleared by a third party on a third party platform so there’s “no opportunity for fraud;”
- q. DaCorta developed Oasis to preserve his own family wealth and is “a very ethical guy;”
- r. Oasis has two other traders, one in New York and one in Tampa, and they work with DaCorta in three shifts, 24 hours a day; and
- s. Oasis is buying real estate, including the Oasis office building and houses for Duran, DaCorta, and Anile.

40. On or about March 18, 2019, I listened to a recorded in-person conversation at Oasis’s offices in Longboat Key in March 2019 between Person 2 and Defendant Duran. Person 2 explained he was interested in investing a large sum in the Oasis Pools. In response, Defendant Duran stated the following:

- a. when pool participants invest money in the Oasis Pools, their funds will be “at play” trading forex immediately;

- b. the Oasis Pools paid a minimum 12% annual return from forex trading, but pool participants could earn extra if the Oasis Pools made a higher return trading forex;
- c. the Oasis Pools made a 21% return trading forex in 2018, and all pool participants earned more than 12% in 2018;
- d. the Oasis Pools have never had a losing year, and pool participants could never lose money trading in the Oasis Pools;
- e. pool participants have the option to withdraw their trading profits immediately or the profits automatically get rolled into their principal investment;
- f. the Oasis Pools' trading returns were wired to pool participants' accounts at 7:30 p.m. daily, Monday through Friday;
- g. pool participants are called lenders to avoid investment in the Oasis Pools being called a security;
- h. DaCorta was not earning a big salary from Oasis or the Oasis Pools because he makes what he trades and "we all eat from the same pot;"
- i. all Oasis fees and expenses are paid from the Oasis "house" side and not from pool participants' investments in the Oasis Pools; and
- j. pool participants' funds would be used only to trade forex and would not be used to invest in real estate, though \$15 to \$16 million of real estate owned by Oasis is collateral for the pool participants' promissory notes.

41. On March 27, 2019, I listened to a recorded telephone conversation that occurred in March 2019 between Person 2 and Defendant Duran. During this conversation, Duran, in response to Person 2's concerns about Oasis's "Agreement and Risk Disclosures" document, assured him that:

- a. the document was not binding and by clicking "agree," a prospective Oasis pool participant was "only acknowledging that you've read it; you're not agreeing to it;"
- b. his funds would only be used for trading forex;
- c. his funds would not be used to purchase real estate;

- d. his capital will “never depreciate.”
- e. he would receive a guaranteed 12% annual return even if the Oasis Pools did not earn that much, because OIG makes up the difference;
- f. pool participants’ returns were from forex trading profits;
- g. Oasis paid fees, salaries, and expenses and purchased real estate and precious metal from “house” money, which was 75% of any returns the Oasis Pools made above 12%;
- h. Oasis purchased real estate and precious metals to shore up its strength and protect investors;
- i. Oasis owned enough gold that even if the economy turned down, no one would miss a beat; and
- j. Duran’s investment in Oasis, “a good chunk of my net worth,” which he made over two years ago, was doing very well.

42. On April 8, 2019 I listened to a recorded telephone conversation between Person 2 and Defendants Duran and DaCorta that occurred in April 2019 during which DaCorta stated the following:

- a. DaCorta is Oasis’s principal and signs the loan agreements with Oasis pool participants;
- b. new Oasis pool participants are approved by “Deb or Joe Paniagua;”
- c. new Oasis pool participants are approved once the pool participant sends the money and Joe Paniagua “will see that and approves your status;”
- d. new Oasis pool participants’ notes and other documents “will be automatically be uploaded into our system...it’s called the back office;”
- e. accounts can’t be activated until Oasis receives funds from pool participants;
- f. Joe Anile “gets all of the wires, he checks the bank accounts and lets Joe Paniauga know” that a new Oasis pool participant is approved;

- g. “some lawyer” drafted the Oasis risk disclosures and “we have to throw every possible thing that can go wrong, even though 99% of the things [in it] we don’t do;”
- h. Oasis is not invested in real estate to generate Oasis investor income;
- i. Oasis paid full price for the real estate and there are no mortgages on the properties;
- j. Oasis has “some hard assets, some physical gold and silver....versus just having a lot of cash at various banks,” and that Oasis has “a lot of free cash flow and put it back into the platform, so there’s a large buffer between lender capital and company capital;”
- k. Oasis’ gold and silver is “safety to protect capital in a currency situation...so the value of our assets doesn’t go below what the currency might be devalued;”
- l. Oasis’s clearing firm is in London;
- m. Oasis has “developed a system...just capturing the spread, just the difference between the bid and the offer, in it for seconds only, [it’s] not based on P&L anymore, the lenders are making their interest on the number of transactions we capture. We capture the spread; we’re not going to be in a negative position. The lender is being paid on that;”
- n. Oasis pool participants’ funds “are secured by anything we have, real estate, there is excess cash, we have more cash each month;”
- o. Oasis pool participants’ “money is going to forex trading;”
- p. if the banks close, or currency collapses: “you would not lose your buying power because of the assets that are underlying in the physical side. Gold and silver would jump by the amount of the devaluation of the dollar;”
- q. “we have formulas for a certain amount of gold and real estate. Gold and silver and real estate would go through the roof if the currency devaluates – this is in the event of absolute collapse of the banking system. We have enough assets outside of the banking system that should offset any potential problem outside of the banking system;”
- r. Oasis pool participants can withdraw their principal at any time, they just need the request in writing;

- s. Oasis has never made an Oasis pool participant wait 90 days for a principal withdrawal;
- t. Oasis guaranteed a 1% minimum monthly return and Oasis is “giving you 25% of the transaction, the capture and we’re taking the other 75%,” and
- u. Oasis does not “take any of the money, but we’re using your money to do the transactions....Oasis is still earning the difference between the total spread captured. We’re making money off of your money and it comes from the Oasis money.”

43. On April 10, 2019, I participated in a telephone interview of a person (“Person 3”), a resident of Maryland, who was approached in late 2018 by a full-time employee of Oasis about investing in the Oasis Pools. This Oasis employee told Person 3 the following:

- a. Person 3 could earn a guaranteed minimum of 12% annually with Oasis;
- b. Oasis earned 26% returns in 2017 and 21% returns in 2018 through trading forex; and
- c. there was no risk investing in Oasis.

VII. ANALYSIS OF BANK ACCOUNTS

OM Accounts

44. I reviewed and analyzed account records for Wells Fargo account number xxxxxx9302 opened in the name of OM (OM account 9302). The OM account 9302 was opened on November 23, 2011 by DaCorta and remains open. Ex. D, pgs. 1-4. Between April 15, 2014 and the March 8, 2019, the total deposits to the OM account 9302 were \$24,816,451.35 and total withdrawals from the account were \$22,189,540.43. As of February 28, 2019, this account had a balance of \$2,736,828.57

45. The following is a detailed summary of the **deposit activity** in OM account 9302 during the time period above:

- a. pool funds deposited to the account totaled \$24,138,396.74;
- b. pool funds above includes \$11,621.40 from DaCorta and \$30,000 from Montie that may have been funds given to them by others for investment in the Oasis Pools;
- c. many pool fund deposits had references such as “investment”, “for Oasis fund”, “currency trading investment”, “Oasis Management”, “purpose: investment account”, “loan”;
- d. wires and checks deposited into this account were written to: Oasis Management LLC;
- e. pool funds were deposited to this account as early as November 25, 2011;
- f. Duran sent wires totaling \$30,000 to this account, with reference “Loan Repayment to Oasis Attn: Mike DaCorta”;
- g. there are deposits of \$98,500 from an unknown source;
- h. there are transfers of \$456,661.88 into the account from Fundadministration/Mainstream fund accounts;
- i. there are transfers of \$5,555 into the account from a foreign Oasis bank account in Belize¹;
- j. there are transfers of \$74,804.00 from the other OM account (3887) ;

¹ It appears this account is open.

- k. there are transfers of \$696.87 to close DaCorta's personal business accounts (unrelated to forex trading);
- l. there are \$3,575.00 in transfer credits related to real estate expenses;
- m. there are \$3,177.40 in transfer credits related to real estate purchased; and
- n. there are \$5,084.36 in transfers related to items returned unrelated to forex trading.

46. Attached as **Exhibit F** is a detailed summary of the **withdrawal activity** in OM account 9302 during the time period above.

47. I reviewed and analyzed account records for Wells Fargo account number xxxxxx3887 opened in the name of OM (OM account 3887). The OM account 3887 was opened on November 23, 2011 by DaCorta and remains open. Ex. D, pgs. 1-4. Between April 15, 2014 and the August 31, 2018, the total deposits to the OM account 3887 were \$75,200.36 and total withdrawals from the account were \$74,687.32. As of February 28, 2019, this account had a balance of \$605.29.

48. The following is a detailed summary of the **deposit activity** in OM account 3887 during the time period above:

- a. pool funds deposited to the account totaled \$70,000.00;
- b. pool funds deposited referenced "Oasis" and "account of";
- c. wires and checks deposited into this account were written to: Oasis Management, LLC
- d. there was \$0.36 interest earned; and
- e. there was \$5,200.00 transferred from other OM account (9302).

49. The following is a detailed summary of the **withdrawal activity** in OM account 3887 during the time period above:

<u>Use of Pool Funds</u>	<u>Sub-category</u>	<u>Total Amount</u>	<u>Comments</u>
PERSONAL EXPENSES	Personal payments-DaCorta	\$1,487.32	cash/checks; transfers to personal bank/credit card accounts
	MISAPPROPRIATED TOTAL	\$1,487.32	
TRANSFERS TO OTHER ACCOUNTS	Oasis	\$73,200.00	
	WITHDRAWALS TOTAL	\$74,687.32	

Satellite Holdings’s Accounts

50. I reviewed and analyzed account records for Wells Fargo Bank account number xxxxxx5347 opened in the name of Satellite Holdings (SH account 5347). The SH account 5347 was opened on November 17, 2014 by Haas. Ex. D, pgs. 5-18. Between November 17, 2014 and the March 8, 2019, the total deposits to the SH account 5347 were \$15,145,866.41 and total withdrawals from the account were \$14,721,173.12. As of February 28, 2019, this account had a balance of \$243,711.97.

51. The following is a detailed summary of the **deposit activity** in SH account 5347 during the time period above:

- a. pool funds deposited to the account totaled \$14,368,770.83;
- b. many pool funds deposits had references such as “Oasis”, “Oasis fund”, “Oasis note”, “initial investment”, “loan-12% APR pending contract promissory note”;

- c. a large number of the pool funds deposited to the account came from a trust company, referencing “custodian for benefit of” with account numbers, which appear to be IRA accounts;
- d. checks and wires deposited into this account were directed to: Satellite Holdings Company
- e. there were \$138,835.00 in credits to the account from an unknown source;
- f. there were transfers of \$593,742.96 from Fundadministration/Mainstream Fund Services accounts;
- g. there were \$8,350.40 in transfers from another Satellite Holdings account;
- h. Haas deposited \$36,100.00 in checks;
- i. there was a \$22.22 tax refund check;
- j. there was \$45.00 in credits for bank fees.

52. Attached as **Exhibit G** is a detailed summary of the **withdrawal activity** in SH account 5347 during the time period above.

53. I reviewed and analyzed account records for Wells Fargo account number xxxxxx8808 opened in the name of Satellite Holdings (SH account 8808). The SH account 8808 was opened on November 17, 2014 by Haas. Ex. D, pgs. 5-18. Between November 17, 2014 and the February 28, 2019, the total deposits to the SH account 8808 were \$14,000.09 and total withdrawals from the account were \$13,500.40. As of February 28, 2019, this account had a balance of \$500.39.

54. The following is a detailed summary of the **deposit activity** in SH account 8808 during the time period above:

- a. pool funds to the account totaled \$5,000.00;
- b. pool funds referenced “investment”;
- c. \$500 in cash was deposited upon the account opening;
- d. there were \$8,500 in transfers from another Satellite Holdings account;
- e. there was \$0.79 in interest earned.

55. The following is a detailed summary of the **withdrawal activity** in SH account 8808 during the time period above:

<i>Use of Pool Funds</i>	<i>Sub-category</i>	<i>Sub-total</i>	<i>Total Amount</i>	<i>Comments</i>
PERSONAL EXPENSES	Personal payments-Haas	\$5,000.00	\$5,000.00	Cash/checks
	MISAPPROPRIATED TOTAL		\$5,000.00	
TRANSFERS TO OTHER ACCOUNTS	Satellite Holdings		\$8,500.40	
	WITHDRAWALS TOTAL		\$13,500.40	

Fundadministration/Mainstream Fund Services’s Accounts

56. I reviewed and analyzed account records for Citibank account number xxxxxx0764 opened in the name of Fundadministration (FI account 0764). The FI account 0764 was opened on February 3, 2017 by Denise M. DePaola and Michael M. Nolan. Ex. D, pgs. 52-53. Between February 3, 2017 and March 13, 2019, the total deposits to the FI account 0764 were \$53,200,745.56 and total withdrawals from the account were \$48,278,826.55. As of February 28, 2019, this account had a balance of \$6,572,388.07.

57. The following is a detailed summary of the **deposit activity** in FI account 0764 during the time period above:

- a. pool funds to the account totaled \$33,358,480.00;

- b. pool funds above includes \$60,000 from Montie that may have been funds given to him by others for investment in the Oasis Pools;
- c. for example, many pool fund deposits had references such as “FBO Oasis IG”, “investment”, “setting up new account”, “Oasis International Group, Ltd”;
- d. wires and checks deposited into this account were directed to: Fundadministration Inc. or Mainstream Fund Services Inc.
- e. there were \$129,627.66 in credits from an unknown source;
- f. there was \$40,000 from loan financing;
- g. there were transfers of \$115,506.90 from other Fundadministration/Mainstream Fund Services accounts;
- h. there were \$25,000.00 in transfer credits related to real estate expenses;
- i. there were transfers of \$10,198,889.82 from OM accounts;
- j. there were transfers of \$9,318,135.00 from Satellite Holdings accounts;
- k. there were \$10,000.00 in transfers related to returns unrelated to forex trading;
- l. there were \$5,106.18 in credits for bank fees.

58. Attached as **Exhibit H** is a detailed summary of the **withdrawal activity** in FI account 0764 during the time period above.

59. I reviewed and analyzed account records for Bank of America account number xxxxxxxx8346 opened in the name of Fundadministration (FI account 8346). The FI account 0764 was opened on October 7, 2013 by William Spector. Ex. D, pgs. 19-33. Between April 15, 2014 and May 31, 2017, the total deposits to the FI account 8346 were \$6,756,293.92 and

total withdrawals from the account were \$6,767,361.51. The account was closed May 31, 2017.

60. The following is a detailed summary of the **deposit activity** in FI account 8346 during the time period above:

- a. pool funds to the account totaled \$1,733,168.64;
- b. pool funds above includes \$432,500.00 from Montie and \$5,000 from Haas that may have been funds given to Montie and Haas, by others for investment in the Oasis Pools;
- c. many pool fund deposits had references such as “For OIG”, “investment/NOTE”, “OIG International Group”, “OIG Stock”;
- d. pool funds were deposited to this account as early as December 31, 2013;
- e. there was \$1,036.61 deposited an unknown source;
- f. there was \$257,500.00 transferred from other Fundadministration/Mainstream accounts in the United States;
- g. there was \$580,924.61 transferred from other Fundadministration/Mainstream foreign accounts;
- h. there was \$89,889.06 transferred from an Oasis foreign bank account in Belize;
- i. there was \$913,000.00 transferred from OM accounts; and
- j. there was \$3,180,775.00 transferred from Satellite Holdings accounts.

61. Attached as **Exhibit I** is a detailed summary of the **withdrawal activity** in FI account 8346 during the time period above.

62. I reviewed and analyzed account records for Bank of America account number xxxxxxxx9631 opened in the name of Fundadministration FBO Oasis Global (Nevis) S.A. (FI account 9631). The FI account 9631 was opened on December 21, 2016 by Nicholas Neri and closed on May 31, 2017. Ex. D, pgs. 34-40. Between December 21, 2016 and May 31, 2017, the total deposits to the FI account 9631 were \$1,819,550.00 and total withdrawals from the account were \$1,819,550.00.

63. The following is a detailed summary of the **deposit activity** in FI account 9631 during the time period above:

- a. pool funds to the account totaled \$1,443,000.00;
- b. many investor funds deposits had references such as “FBO Oasis Global (Nevis) Limited”, “Investment income fbo Oasis Global/(Nevis) Limited”;
- c. there were transfers of \$326,500.00 from other Fundadministration/Mainstream accounts;
- d. there were transfers of \$50,050.00 from Satellite Holdings Company accounts.

64. The following is a detailed summary of the **withdrawal activity** in FI account 9631 during the time period above:

<u><i>Use of Pool Funds</i></u>	<u><i>Sub-category</i></u>	<u><i>Total Amount</i></u>	<u><i>Comments</i></u>
PONZI PAYMENTS		\$341,900.00	Many of the Ponzi payments had references such as "Re Oasis Global Nevis Ltd."; "Re Oasis Global withdrawal"
	MISAPPROPRIATED TOTAL	\$341,900.00	
TRANSFERS TO OTHER ACCOUNTS	Fundadministration/ Mainstream Fund	\$1,477,650.00	
	WITHDRAWALS TOTAL	\$1,819,550.00	

65. The following is a summary of pool funds that were deposited to the above described accounts:

<i>Account</i>	<i>Pool Funds Received</i>
OM Accounts at Bank #1 (as of February 28, 2019)	\$24,208,396.74
Satellite Holdings Accounts at Bank #1 (as of March 8, 2019)	\$14,373,770.83
Fundadministration/Mainstream Accounts at Bank #1 and Bank #5 (as of March 8, 2019)	\$36,534,648.64
Total Pool Funds Received	\$75,116,816.21

The following is a summary of the misappropriated pool funds:

<i>Use of Pool Funds</i>	<i>Amount</i>
Ponzi Payments	\$28,944,355.27
Real estate purchases and maintenance or improvements to real estate including, but not limited to, the Oasis office building and residences for Defendants DaCorta, Anile, and Duran. This category includes transfers to Relief Defendants 444 Gulf of Mexico, 4064 Founders Club, 6922 Lacantera, and 13318 Lost Key Place.	\$7,803,932.04
Personal expenses, including but not limited to, private plane charters, exotic vacations, sports tickets, pet supplies, loans to family members, and college and study abroad tuition.	\$6,981,839.06
Non-forex business expenses and business ventures owned by Defendants, including but not limited to, transfers to Relief Defendants Bowling Green, Roar of the Lion, Lagoon, and 4Oaks.	\$3,332,861.44
Vehicle purchases, including a Maserati and Land Rover for DaCorta.	\$111,463.82
Total	\$47,174,451.63

Relief Defendant Accounts

66. I reviewed and analyzed account records for Capital One account number xxxxxxxxxxx7485 opened in the name of Bowling Green Capital Management Corp. (“Bowling Green account”). The Bowling Green account was opened on August 11, 2009 by Anile. It remained open as of January 28, 2019. The following is a detailed summary of deposit activity in the Bowling Green account from April 15, 2014 through January 31, 2019 :

<i>Depositors</i>	<i>Amount</i>
Misc. returns on merchandise/services	\$19,229.82
Fundadministration/Mainstream Fund	\$2,149,901.44
Commonwealth Network (an Anile-owned company funded by pool funds)	\$12,025.00
Total Deposits	\$2,181,156.26

67. I reviewed and analyzed account records for Regions Bank account number xxxxx1522 opened in the name of Lagoon (“Lagoon account”). The Lagoon account was opened on May 1, 2015 by DaCorta and Anile. It remained open as of December 31, 2018. The following is a detailed summary of deposit activity in the Lagoon account during the time period above:

<i>Depositors</i>	<i>Amount</i>
Fundadministration/Mainstream Fund	\$25,000.00
LWR Main Street LLC (possible direct deposit of pool funds)	\$3,038.83
Millennium Trust Company LLC (direct deposit of pool funds)	\$290,000.00
Total Deposits	\$318,038.83

68. I reviewed and analyzed account records for Wells Fargo account number xxxxxx1396 opened in the name of Roar of the Lion (Roar of the Lion account). The Roar

of the Lion account was opened on November 24, 2017 by DaCorta and A. DaCorta. It remained open as of February 11, 2019. The following is a detailed summary of deposit activity in the Roar of the Lion Fitness Account during the time period above:

<i>Depositors</i>	<i>Amount</i>
Cash	\$200.00
Full Spectrum Wellness (a DaCorta-owned company funded by pool funds)	\$2,500.00
OM	\$67,500.00
Misc. credit/rewards	\$541.47
Paypal	\$777.41
Total Deposits	\$71,518.88

69. I reviewed and analyzed account records for Wells Fargo account number xxxxxx3967 opened in the name of 444 (444 account). The 444 account was opened on January 1, 2018 by DaCorta and Anile. It remained open as of February 28, 2019. The following is a detailed summary of deposit activity in the 444 Account during the time period above:

<i>Depositors</i>	<i>Amount</i>
Cash	\$60.00
Fundadministration/Mainstream Fund	\$715,000.00
Credits/returns on merchandise/services	\$20,992.47
Unknown source (possible direct deposit of pool funds)	\$97,287.50
Full Spectrum Wellness LLC (a DaCorta-owned company funded by pool funds)	\$696.87
OM	\$100.00
Total Deposits	\$834,136.84

70. I reviewed and analyzed account records for Wells Fargo bank accounts xxxxxx1807 and xxxxxx3975) opened in the name of 4064 Founders Club Drive LLC (4064 Founders Accounts). Anile opened the 4064 Founders Accounts on December 1, 2017. The 4064 Founders Account xxxx1807 is closed and only received one cash deposit of \$30.00.

The 4064 Founders Account xxxxxx3975 was opened on December 1, 2017 by Anile. It remained open as of February 28, 2019. The following is a detailed summary of deposit activity in the 4064 Founders Account xxxxxx3975 during the time period above:

<i>Depositors</i>	<i>Amount</i>
Cash	\$60.00
Fundadministration/Mainstream Fund	\$590,000.00
Credits/returns on merchandise/services	\$2,913.87
Total Deposits	\$592,973.87

71. I reviewed and analyzed account records for Wells Fargo Bank acct xxxxxx2805 opened in the name of 6922 Lacantera (“6922 Lancantera account”). The 6922 Lacantera account was opened on October 9, 2018 by DaCorta. It remained open as of February 28, 2019. The following is a detailed summary of deposit activity in the 6922 Lacantera account during the time period above:

<i>Depositors</i>	<i>Amount</i>
Cash/credits	\$304.50
OM	\$212,750.00
Total Deposits	\$213,054.50

72. I reviewed and analyzed account records for Wells Fargo Bank account xxxxxx2850 opened in the name of 13318 Lost Key Place LLC (“13318 Lost Key account”). The 13318 Lost Key account was opened on April 12, 2016 by DaCorta. It remained open as of March 7, 2019. The following is a detailed summary of deposit activity in the 13318 Lost Key account during the time period above:

<i>Depositors</i>	<i>Amount</i>
Cash	\$6,200.00
Full Spectrum Wellness, LLC (a DaCorta-owned company that was funded by pool funds)	\$3,000.00
Fundadministration/Mainstream Fund	\$87,469.23
OM	\$168,650.00
Total Deposits	\$265,319.23

73. I reviewed and analyzed account records for Wells Fargo Bank account xxxxxx2572 opened in the name of 4Oaks LLC (“4Oaks account”). The 4Oaks account was opened on January 14, 2019 by Anile. It remained open as of February 28, 2019. The following is a detailed summary of deposit activity in the 4Oaks Account during the time period above:

<i>Depositors</i>	<i>Amount</i>
Cash	\$50.00
Mainstream Fund Services Inc.	\$177,500.00
Total Deposits	\$177,550.00

73. I reviewed and analyzed account records for Citibank account xxxxxx1174 opened in the name of Mainstream Fund Services Inc. (Mainstream acct 1174). The only source of funds to the account was a \$57,720 bank transfer to the account from Mainstream acct 5606. The account remained open as of March 5, 2019 with a balance of \$57,819.65.

74. I reviewed and analyzed account records for Citibank account xxxxxx5606 opened in the name of Mainstream Funds Services Inc. (Mainstream acct 5606). The Mainstream acct 5606 was opened on January 18, 2017 by Denise DePaola and Michael Nolan. It remained open as of March 13, 2019 with a balance of \$550,148.47. The following

is a detailed summary of the deposit activity Mainstream acct 5606 during the time period above:

<i>Depositors</i>	<i>Amount</i>
Transfers from Fundadministration 0764 acct.	\$232,585.31
Transfers/wires from other Fundadministration/Mainstream Fund Services accts	\$2,863,526.45
Various entities relating to other clients of Fundadministration/Mainstream	\$5,308,960.00
Total Deposits	\$8,405,071.76

An additional \$20,529.17 may have been transferred from FI acct 0764 to Mainstream acct 5606; however, current documents I received are insufficient to confirm this.

I declare under the penalty of perjury that the foregoing is true and correct.



_____ Elsie Robinson

Executed on this 14th day of April, 2019 in Tampa, Florida.

EXHIBIT E

**CFTC RESPONSE IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT BY
DEFENDANT MICHAEL J. DaCORTA**

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)
) 8:19-cr-605-WFJ-CPT-1
 PLAINTIFF,) Tampa
) April 26, 2022
 v.) 9:01 a.m.
)
 MICHAEL J. DACORTA,)
)
 DEFENDANT.)

DAY 7
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

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I N D E X

JOSEPH ANILE

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CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

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(Proceedings commenced at 9:01 a.m.)

THE COURT: Thank you, ladies and gentlemen.

All right, Ms. Irvin. You are still on cross.

MS. IRVIN: Thank you, Judge.

CROSS-EXAMINATION

BY MS. IRVIN:

Q When we left off yesterday afternoon, I had asked you about your position at OIG and whether or not you were an attorney. And I was getting a document before we went to recess. So I'm going to bring you a document for your review.

MS. IRVIN: Your Honor, may I approach?

Thank you.

BY MS. IRVIN:

Q If you could please review that document and let me know when you are ready. You don't have to review it in full right away. Just really the front page. Do you recognize this document?

A Yes.

Q Without telling me the contents of the document, what kind of a document is it?

A A memoranda.

Q Is there a date on there? Is there a date on that memorandum?

A November 13, 2017.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q And who is the memorandum from?

2 A From me.

3 Q And how does it list your name?

4 A Joseph S. Anile, II, Esquire.

5 MS. IRVIN: Your Honor, at this time I would move
6 into evidence Defense Exhibit 150.

7 THE COURT: D150 is admitted.

8 (Defendant Exhibit 150 admitted.)

9 MS. IRVIN: May we publish using the Elmo?

10 BY MS. IRVIN:

11 Q Mr. Anile, I want to direct your attention to the top of
12 the page. What letterhead is listed at the top of this
13 memorandum?

14 A Oasis International Group Limited.

15 Q And underneath in the top right corner of the front page
16 where it says "Draft," whose name is listed underneath?

17 A Mine.

18 Q And it's listed as what? Could you read it, please?

19 A Joseph S. Anile, II, Esquire.

20 Q What does Esquire mean?

21 A It's an honorific title. It is a suffix meaning you have
22 received the juris doctorate.

23 Q You mean you have received a juris doctorate?

24 A I believe, yeah.

25 Q And that means you are an attorney, correct?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q If you could please turn to page 2 of the document. In
3 very small writing at the very bottom of page 2 there are some
4 initials J.S.A. Those are your initials, correct?

5 A That is correct.

6 Q And even smaller type at the very bottom, can you please
7 read what this says?

8 A Confidential and privileged, attorney-client
9 communication.

10 Q Let's turn to page 1. What's listed in the subject line
11 of this memoranda?

12 A "Accusation of ECN."

13 Q I believe yesterday you testified as to Mr. DaCorta's
14 interest in trying to acquire an ECN for OIG; is that correct?

15 A That is correct.

16 Q And the ECN you were referring to was Spotex?

17 A That's correct.

18 Q If you could please turn back to page 2. And there is a
19 section in the second half of this document which states
20 "Potential Structure." Do you see that?

21 A Yes.

22 Q And in that section, can you please read what the first
23 paragraph says?

24 A One. If the parties enter into an NDA, subsequent due
25 diligence will provide OIG with pertinent information about

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 the current capital structure of Spotex, including potential
2 and existing liabilities.

3 Q What is an NDA?

4 A A nondisclosure agreement.

5 Q So this particular section appears to be the place where,
6 as the attorney for OIG, you are providing legal analysis
7 about the potential structure that you anticipate should be
8 for this relationship between OIG and Spotex should it happen?

9 A Perhaps. I probably would have hired counsel to do that,
10 but yes.

11 Q So you may have hired counsel to do that, but this is a
12 memo that you drafted, correct?

13 A That is correct.

14 Q I would also like you to -- just to make sure that we are
15 clear about this, and there is some numbering that's off. But
16 if you see under Number 10 and then we look at Paragraph 7
17 that's listed underneath it, what does that sentence say?

18 A Which one am I reading?

19 Q You are reading Number 7. It's listed 8, 9, 10 and 7.
20 What does 7 say?

21 A OIG is considering an acquisition of all or part of the
22 assets or interest of its current ECN, Spotex, LLC.

23 Q So that then is the goal of, at least at that time in
24 2017, OIG is to find some -- is to see if they can acquire
25 some sort of ownership in Spotex, correct?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A That's correct.

2 Q And the reason for that is listed on page 1, which is the
3 background.

4 And if I can direct you to Paragraph 2. Could you
5 please read what Paragraph 2 says?

6 A OIG currently executes approximately \$750 million of
7 daily foreign exchange trading volume through its ECN, Spotex,
8 LLC.

9 Q And then if you could go down and read Paragraph 4,
10 "Recent transactions."

11 A Recent transactions for the acquisition of ECNs indicate
12 an increase in ECN market value from \$7.1 million per billion
13 of daily volume to \$27.2 million.

14 Q If you could also please read Paragraph 5.

15 A Based on recent transactions, OIG currently enhances its
16 ECN's value over \$20 million. However, OIG will increase its
17 ECN's value up to nearly \$80 million through 2018.

18 Q This is your legal analysis of how OIG might be able to
19 benefit from a relationship with Spotex should that happen,
20 correct?

21 A No.

22 Q This is written by you?

23 A Yes.

24 Q And it has your name in the front -- in the "From"
25 section?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q It has your initials on the second page?

3 A It does.

4 Q It is written by you?

5 A Yes.

6 Q As an attorney?

7 A Yes.

8 Q With the name "Esquire" at the end?

9 A That is not indicative of being an attorney as acting as
10 one. It is only an honorific title.

11 Q It's only a what? I'm sorry.

12 A Honorific.

13 Q It's honorific --

14 THE COURT: Hold on now. Q, pause, A. We are
15 walking on top of each other.

16 THE WITNESS: I'm sorry.

17 THE COURT: Go ahead.

18 BY MS. IRVIN:

19 Q It's an honorific that means you're an attorney.

20 A Yes.

21 Q And it's one that you chose to include on this
22 memorandum, correct?

23 A I sometimes choose to use it, sometimes I don't. Just
24 like I sometimes use the name Joseph and sometimes I don't. I
25 use Joe.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q So --

2 A If I may explain the paragraphs that you made me read
3 that you think are legal.

4 Q If you can hold on to that --

5 THE COURT: No. He wanted to explain. Go ahead.

6 A Those are each business issues. And the information was
7 provided to me by Mr. DaCorta and to him through
8 Mr. Manoukian. They provided me with an article or series of
9 articles, business articles. These were not legal issues at
10 all.

11 BY MS. IRVIN:

12 Q In compiling -- so I can understand. In compiling this
13 memorandum for OIG, you included information that you received
14 from Spotex President Dave Manoukian?

15 A Yes.

16 Q You included information that you received from Michael
17 DaCorta?

18 A Yes.

19 Q And your own knowledge of OIG, correct?

20 A No. Michael was informing me as to the amount of volume
21 he was anticipating, et cetera, and why he thought the company
22 would have value if it acquired an ECN.

23 Q So none of the information that's provided in this
24 memorandum from Joseph S. Anile, II, Esquire, is information
25 that you knew yourself?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A I don't see any legal conclusions here that are drawn.
2 These are all business issues.

3 Q These are all business issues. You're saying they are
4 not legal issues. Is there a reason why you are adamant that
5 you should not be considered the attorney at OIG?

6 A Yes.

7 Q And what are those reasons?

8 A The simple reason is because at all times I explained to
9 Michael and he agreed that I would never act as attorney or
10 counsel of Oasis. That's why we always hired outside counsel
11 for all projects.

12 Q Do you recall that you testified at your sentencing
13 hearing on November 18, 2020?

14 A Yes.

15 Q And that sentencing was before Federal District Court
16 Judge Mary S. Scriven?

17 A Yes.

18 Q Do you recall letting Judge Scriven know that you were in
19 fact working for Mr. DaCorta late in 2012 as an attorney?

20 A I did, yes.

21 Q And that you were working as an attorney in an effort to
22 create a hedge fund?

23 A No. That's a misstatement. I was working as an attorney
24 with respect to the Belizean application. The hedge fund was
25 done by Brian Rabbino.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Do you also recall testifying under oath and telling
2 Judge Scriven that you also worked for Michael DaCorta in 2013
3 as an attorney for a company called Oasis?

4 A I don't recall, no.

5 Q Would reviewing your transcript help refresh your
6 recollection of your statements?

7 A If you wish.

8 MR. ALLEN: Your Honor, may I approach the witness?

9 THE COURT: She asked if that would refresh your
10 recollection.

11 THE WITNESS: I will look at it.

12 BY MS. IRVIN:

13 Q Could you please look at page 1 of the document I just
14 handed you.

15 A Yes.

16 Q On page 1 of that document, do you recognize what this
17 is?

18 A Yes.

19 Q And what is it?

20 A It is a transcript of my sentencing hearing before the
21 Honorable Mary S. Scriven.

22 Q Could you please turn to page 4 of the document I just
23 handed to you.

24 A 4?

25 Q Yes, sir.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Is that the page that you turned to? I'm sorry.

2 Q No, sir. Page 4 and page 5.

3 A Got it.

4 Q At the bottom of page 4 starting at line 25, do you see
5 where it says "Courtroom Deputy"?

6 A Yes.

7 Q And do you see where it says, "Mr. Anile, please raise
8 your right hand"?

9 A Yes.

10 Q And then continuing on page 5, do you see where it says,
11 "Do you solemnly swear or affirm under penalty of perjury that
12 the statements you give in these proceedings will be the
13 truth, the whole truth, and nothing but the truth"?

14 A I do.

15 Q And where it says, "The Defendant," how did you answer?

16 A "I do."

17 Q If you could please now turn to page 41.

18 A Yes.

19 Q I'm going to direct your attention to line 8 where it
20 says "The Defendant."

21 A Yes.

22 Q And it begins with, "Yes, Your Honor." Can you please
23 read the first sentence?

24 MS. BEDKE: Objection, Your Honor. I thought this
25 was to refresh recollection.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 THE COURT: Right.

2 MS. IRVIN: Pardon me, Your Honor.

3 BY MS. IRVIN:

4 Q Can you please read the sentence to yourself.

5 A Yes.

6 Q Can you read actually the rest of that paragraph so the
7 paragraph that begins at line 8.

8 MS. BEDKE: Objection to the procedure, Your Honor.

9 THE COURT: Right. That's not how you refresh
10 recollection. Did that refresh your recollection? If you
11 want to impeach with that transcript, then you would say, do
12 you recall making this statement?

13 MS. IRVIN: Yes, Your Honor. What I was trying to do
14 was direct him to a larger portion of this to help refresh his
15 recollection.

16 THE COURT: All right.

17 BY MS. IRVIN:

18 Q Mr. Anile, if you could please read lines 8 through 18
19 and see if that refreshes your recollection.

20 A Yes, Your Honor.

21 MS. IRVIN: To yourself.

22 THE COURT: I was confused.

23 MS. IRVIN: My fault.

24 A Yes.

25 BY MS. IRVIN:

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q After having reviewed this, you would agree that you
2 testified under oath at your sentencing hearing that you were
3 working as an attorney for Michael DaCorta in late 2012,
4 correct?

5 A No. The word "originally" says that that's how I
6 started. And then there was later a misstatement, an actual
7 misstatement. As you are aware, I did not do due diligence of
8 Mr. DaCorta.

9 Q We are focusing now on your role at OIG and the
10 statements that you made under oath at your sentencing
11 hearing.

12 A Okay. OIG was not formed until 2013. In late 2012, I
13 originally was approached to be an attorney. I was probably
14 just speaking very quickly and that's why this is a
15 misstatement.

16 Q So the transcript is not correct is what you're saying?

17 A It has -- it is and it isn't. It's not -- it's not fully
18 complete.

19 Q At the time that you were speaking to Judge Scriven --

20 A Yes.

21 Q -- you were under oath?

22 A Absolutely.

23 Q You are at the sentencing hearing where you are getting
24 ready to be sentenced.

25 A That is correct.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Following your plea of guilty to three counts, correct?

2 A That is correct.

3 Q So the statements that you are making at this sentencing
4 hearing matter, don't they?

5 A Absolutely.

6 Q And telling the truth matters, doesn't it?

7 A Yes.

8 Q Especially at your own sentencing hearing.

9 A There's a difference between telling a lie and a
10 misstatement. A misstatement is just a jumble of facts at a
11 time. You are talking here specifically as to timing. I say
12 here 2012. Oasis wasn't formed until 2013. I say here that I
13 joined originally. That was the original intention when
14 Mr. DaCorta hired me, but that was as to the Belizean entity,
15 not the hedge fund. And I later say here that I did the due
16 diligence. I did not. I made a misstatement. I did not
17 intentionally lie to the Court. If the judge had thought so,
18 they would have brought perjury charges.

19 Q Let's break this down into parts. The first question I
20 asked you before I handed you the sentencing transcript is if
21 you agreed with me that you acted as an attorney for Michael
22 DaCorta in late 2012 in trying to initiate a hedge fund. Do
23 you remember that I asked you that question?

24 A I do. I recall that.

25 Q And you said, no, I did not act as an attorney?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A That's correct.

2 Q And in refreshing your recollection and looking at the
3 transcript, wouldn't you agree that you said you were an
4 attorney for him in late 2012 working on a hedge fund?

5 A Originally. The word "originally," in my opinion, what
6 it meant was I was originally approached by Mr. DaCorta to do
7 the Belizean thing. When he then asked me to do the hedge
8 fund, I agreed to do it. But then he asked me to be a member
9 subsequently at which point I said I cannot be a member, a
10 principal and officer or director, as I stated on the record,
11 unless I was in fact not acting as an attorney.

12 Q Would you agree with me that the statement says you
13 joined as an attorney in 2012?

14 A I'm sorry?

15 Q Would you agree with me that the transcript states that
16 you joined as an attorney, referring to your work in late 2012
17 with Mr. DaCorta?

18 A I joined as an attorney in late 2012 to help Mr. DaCorta
19 with the Belizean entity. That is correct.

20 Q Thank you. Would you agree that the transcript shows
21 that you also helped Mr. DaCorta as an attorney in 2013 at a
22 company called Oasis?

23 A I would not agree with that, no.

24 Q That is not what the transcript presents?

25 A That's not the way I interpret it. If you like, I can

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 tell you what it means. I helped.

2 Q Hold on one second. There is not a question.

3 A Okay.

4 Q I just want to make sure I understand. You disagree that
5 the transcript of your sentencing hearing shows that you
6 stated that you were an attorney for Oasis?

7 A I disagree with that interpretation of it, yes.

8 Q Does it say in the transcript that you helped him as an
9 attorney on line 16?

10 A It does.

11 Q Does it say on line 17 that you said he asked me to join
12 him in 2013?

13 A That is correct.

14 Q In the company that we formed called Oasis?

15 A That is correct.

16 Q All right.

17 A And --

18 Q Thank you, sir.

19 THE COURT: He is allowed to complete his answer. Go
20 ahead.

21 A The word "help," I helped him as an attorney referring of
22 course to the Belizean entity with which I helped him. And he
23 asked me to join him because we discussed doing the hedge fund
24 in 2013 in the company that was formed for Oasis. So when the
25 hedge fund then failed, didn't work out, he asked me to stay

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 on and join Oasis. That's when I joined him in that company.
2 This has no reference to the fact that I'm an attorney in that
3 company.

4 BY MS. IRVIN:

5 Q Again I get back to the question of why are you so
6 adamant that you were not providing legal services as an
7 attorney for OIG?

8 A Because I am trying to state clearly my agreements and
9 statements with Mr. DaCorta. That's all.

10 Q In your role at OIG, however it is that you defined it,
11 what were you getting paid for if it was not for legal work?

12 A I was a businessman at that point. I did -- I worked
13 with Michael on daily issues, anything that would arise. I
14 would help with anything that came up. I had vast experience
15 as a business person, and that's what he was hiring me for, to
16 work with him. Otherwise, I wouldn't have done it.

17 Q In your vast experience as a businessman, what is it that
18 you brought to the table that we haven't talked about, because
19 the information you provided thus far has been about your
20 legal experience, not about any business experience you have.

21 A On several occasions in my employment background I also
22 worked directly for my clients as an officer or director and
23 not as an attorney.

24 Q And for the work that you provided at OIG, that work you
25 are saying did not include legal work; is that correct?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A That's correct.

2 Q It included compliance work, correct?

3 A No. At that stage it was probably Butch Lyle who was
4 doing compliance and oversight. I was supposed to oversee
5 Butch to some extent. And I said that I would try because I
6 do have a background in compliance and oversight, but I did
7 not.

8 Q So really the only thing you were doing for OIG was
9 bringing some business experience, vast business experience
10 that you have to the table?

11 A Yes. And then hopefully the potential to bring him
12 contacts and stuff like that.

13 Q So no compliance?

14 A At that stage, no, I was not doing compliance.

15 Q At any stage were you doing compliance?

16 A Butch was replaced by Frankie, and then Frankie by Joe.

17 Q So when you are speaking about -- pardon me. When you
18 are speaking about compliance, are you speaking about the back
19 office?

20 A Yes.

21 Q You're not -- when I use the terms "compliance," I'm
22 referring to compliance with regulatory authorities, which you
23 have experience in that, correct?

24 A Yes, I do.

25 Q And your understanding of when I use the word

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 "compliance" sounds like you're talking about the back office.

2 A Oh, if you're referring to any legal compliance,
3 initially the compliance was done by Brian Rabbino in the case
4 of the hedge fund.

5 Q Who contacted -- pardon me.

6 A And then by Jack Drohan of Drohan & Lee in the case of
7 the registered investment advisor together with Maples and
8 Calder in the Caymans and Ford Sumner in New Zealand.

9 Q So you have listed a number of different law firms. And
10 your testimony is that each of those law firms were the ones
11 that provided any compliance assistance for OIG?

12 A Yes.

13 Q And you were not involved in any way with that compliance
14 assistance?

15 A I would work with them. They would tell me what
16 documents to execute and how to do them based on their advice.
17 They were in the jurisdictions of the countries that they
18 represented, yes.

19 Q And you didn't draft any of those documents?

20 A Oh, sure, I did. At the suggestion of counsel I did what
21 I was told to do, yeah.

22 Q You did what you were told to do by the counsel that you
23 hired?

24 A Yes.

25 Q So that would fall into the category of hiring other

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 attorneys to do compliance work?

2 A No. The attorneys were doing the work. In the case of
3 Brian Rabbino, they were hired through a colleague of mine.
4 In the case of Drohan & Lee, they were hired through Michael
5 and I believe a colleague of his. The choice wasn't mine
6 exclusively.

7 Q You had no role in the back office, correct?

8 A That's correct.

9 Q The back office was in the beginning initiated by someone
10 named Matt Cozzolino?

11 A I don't believe that's correct.

12 Q Do you recall that your brother, Frank Anile, worked on
13 the back office very early on in OIG's beginnings?

14 A I don't recall.

15 Q I believe on direct you testified that your brother,
16 Frank Anile, worked on the back office especially at the
17 beginning?

18 A Frankie started when Butch, not Matt Cozzolino. Butch
19 had left after Matt. Matt had already left, I think. And to
20 my recollection, Brian had already left. And then Butch was
21 no longer going to work with Oasis. He was going to only
22 continue with Oasis Management, Michael's company, and that's
23 when Frankie became involved, I believe.

24 Q So your brother, Frank Anile, did work on the back
25 office?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q And he worked with Joe Paniagua in continuing the
3 development of that back office?

4 A That's correct.

5 Q Until your brother passed away, correct?

6 A That is correct.

7 Q And through April 18 of 2019, Joseph Paniagua was the
8 person who was tasked with operating the back office, correct?

9 A That is correct.

10 Q We talked a little bit about your sentencing hearing.
11 That was a difficult day for you?

12 A I'm sorry?

13 Q That was a difficult day for you, your sentencing
14 hearing?

15 A Yes.

16 Q It was after some time that you had pled guilty via a
17 plea agreement with the government?

18 A I believe approximately 13 months, I'm guessing.

19 Q There was a long time that passed between the time that
20 you entered your plea of guilty and when you were sentenced,
21 correct?

22 A I believe I had a lot of physical issues in between which
23 caused -- yes. There was a delay.

24 Q Absolutely. And you testified yesterday about some of
25 those health issues. COVID was also going on. I mean, it may

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 still be going on, but COVID was really at its height at the
2 time as well, correct?

3 A I was sentenced in November of 2020. I think COVID
4 was -- I think it came about in late '19, early '20 and then
5 it was kind of peaking. There were no court hearings like
6 this. My sentence hearing was done over Zoom.

7 Q Correct, and that's exactly what I was going to get to.
8 So you had multiple reasons for this delay. On the one hand
9 there was COVID, right?

10 A Yes.

11 Q You had your own health concerns that had to do with your
12 heart?

13 A Yes.

14 Q And other issues that you discussed with us yesterday.
15 Those were additional reasons why your sentencing hearing was
16 delayed, right?

17 A I believe so.

18 Q You were also actively cooperating with the government in
19 their case against Mr. DaCorta, correct?

20 A Yes.

21 Q And the purpose of cooperating with the government is to
22 be able to benefit yourself, right?

23 A That was originally the idea.

24 Q So you have a plea agreement?

25 A Excuse me?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q You have a plea agreement?

2 A I do.

3 Q And in that plea agreement there is probably a three-page
4 section that discusses something that's called substantial
5 assistance.

6 A Yes.

7 Q And that's a legal way of saying I'm cooperating with the
8 government?

9 A Yes.

10 Q And you cooperate with the government by meeting with
11 them several times, providing them documents. You meet with
12 them to be able to prepare for a trial like today?

13 A That was more recent. Originally without the plea
14 agreement, without even the proffer agreement I began working
15 immediately with the receiver to try and locate assets and
16 figure out what was going on so that we could, you know, help
17 the victims, the actual victims.

18 Q We will get to that. But in the lead-up to your
19 sentencing, your concern was the sentence you were going to
20 get from Judge Scriven, correct?

21 A That is correct.

22 Q And part of the discussion that happened during that
23 sentencing hearing was that after she sentenced you, she knew
24 that you were continuing to cooperate in the case against
25 Michael DaCorta, correct?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q And in exchange for whatever cooperation you provide, the
3 government will file a motion potentially asking the Court to
4 give you a lesser sentence?

5 A May I speak to this?

6 Q First answer my question.

7 A Yes.

8 Q Okay. And what sentence did you get?

9 A Ten years.

10 Q That is a lengthy sentence, correct?

11 A Yes.

12 Q You have very serious health issues.

13 A Yes.

14 Q And those health issues we learned yesterday are becoming
15 more serious, correct?

16 A Yes.

17 Q In fact, you have a potential diagnosis of early onset
18 Alzheimer's?

19 A Yes.

20 Q And that's a tough thing for you to deal with at the same
21 time that you are looking at a ten-year sentence, right?

22 A No. I'm working with the Bureau of Prisons right now to
23 go to a facility that accommodates my issues.

24 Q But it's fair to say that dealing with those sort of
25 medical issues are much easier to deal with when you are at

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 home.

2 A It would be nice, yes.

3 Q When you are with your family. And your wife doesn't
4 want you to go to prison.

5 A I would hope not.

6 Q And your kids don't want you to go to prison.

7 A No.

8 Q And especially with the kind of health issues that you
9 are currently confronting, right?

10 A If I go to the proper facility, we have discussed it will
11 be fine. If not, of course not.

12 Q All those things come into account as you are cooperating
13 with the government?

14 A Yes. May I now discuss the benefits since you raised the
15 issue?

16 Q Certainly.

17 A Okay. There were three benefits that the government
18 included in my plea agreement. The first benefit, which is --
19 and all benefits are at their sole discretion. So these are
20 not absolute -- was that at the sentence, my sentencing, they
21 would ask the judge to use the United States guidelines for
22 sentencing and they would give me a three-point downward
23 departure.

24 Q That was for your acceptance of guilt, your acceptance of
25 your plea of guilty?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Right. The judge did use the sentencing guidelines. My
2 report created 138 points. So the three-point downward
3 departure brought me down to about 135. So basically I went
4 from an 8 or 9 to 14-year sentence to a 7 to 12-year sentence.
5 So that was the government benefit that I did receive. The
6 government did do that for me.

7 The other two possible benefits was that at the
8 sentence hearing the government would give me a letter called
9 a 5K letter. In the 5K letter the government would say what a
10 wonderful person I am and how much I've helped them and I've
11 provided the substantial assistance, in which case the judge,
12 in the judge's sole discretion -- the judge doesn't have to do
13 any of these things. So if the government in its sole
14 discretion decides to do it and says, Judge, can you help him
15 out. And when I asked for the 5K letter, it was refused.
16 They said one would not be forthcoming. So I did not receive
17 the benefit of that letter.

18 And last, as to the motion to which you referred, the
19 government is allowed to after, within one year of my
20 sentencing, bring a motion, which would do the same thing as a
21 5K letter. They can say, listen, Joe's been great. And
22 that's called a Rule 35(b) motion, but I was sentenced, as you
23 said, on November 18, 2020. One year from that on
24 November 18, 2021, I never received the Rule 35(b) motion.

25 Q Let me stop you right there.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A So as of right now, the only benefit I received was a
2 three-point downward departure which brought me into the same
3 zone, just slightly less. And I'm grateful for that. And I
4 think ten years is extreme in any case, and I don't want to go
5 into that but that's quite frankly what I believe. So I have
6 a ten-year sentence and I'm sitting here, and I will go to
7 jail for ten years. I'm prepared to go to jail for ten years
8 despite my health issues. I know you pointed them out.

9 The only problem I have is that because of the health
10 issues, I asked to go to a proper facility. Specifically,
11 they have hospitals where they take care of inmates. I have
12 been working with the Bureau of Prisons to get to the right
13 facility designated for me. And that is the issue that I now
14 have in front of me.

15 Q So when you are in front of Judge Scriven, A.U.S.A. Bedke
16 noted that she was not filing a 5K1.1 motion on your behalf
17 because you had not completed your assistance, correct?

18 A I don't recall how it happened. I just know that my
19 attorney asked for a letter and they said one would not be
20 forthcoming. That I do recall.

21 Q It's your understanding that even though more than one
22 year has passed, you are still eligible to get a Rule 35(b)
23 motion reduction.

24 A That is not my understanding. I'm not entitled to it. I
25 don't know how that works.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q To be clear, you are also not a criminal defense
2 attorney, correct?

3 A Oh, absolutely.

4 Q And you have not had experience practicing in this
5 district?

6 A I have no experience whatsoever with this.

7 Q So you are not aware that there is an option for the U.S.
8 Attorney's Office to file a Rule 35(b) motion outside of the
9 one-year period?

10 A I did not know that. I only know what I read in my
11 agreement.

12 Q And you are aware that a Rule 35 motion can be filed
13 after you have completed your testimony in this case?

14 A I'm not aware of that, no.

15 Q And a Rule 35(b) motion, just so we are making it clear
16 to the jury, is an opportunity for you to get a lesser
17 sentence than the ten years you are currently looking at,
18 correct?

19 A It would be the same as the letter. And once again, the
20 judge can do whatever the judge chooses to do. In the first
21 instance, the government doesn't have to do it. It's in their
22 sole discretion. And in the second instance, the judge
23 doesn't have to listen to it. It's in their sole discretion.
24 So this is very iffy stuff to me.

25 Q I'm sure it is. I'm sure it is. Ten years is a lot of

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 time.

2 I'm going to take you back to April 18, 2019, which
3 was the day that law enforcement showed up at your house. You
4 testified yesterday the agents came to your house at about
5 7:00 a.m.?

6 A Yes. It was early in the morning, 6:00, 7:00 a.m. I
7 don't recall.

8 Q You heard a loud knock at your door?

9 A Banging at the door, yes.

10 Q You heard banging at your door. You answered the door?

11 A I did.

12 Q And agents were at the door with their guns drawn?

13 A I don't recall. I don't think so. I didn't look. I
14 saw -- one agent was in front of me presenting a warrant to
15 me. I looked down, and he then asked me to step outside, I
16 believe, as I recall. That's --

17 Q This is the day when federal agents show up at your
18 house. Is this the first time federal agents had ever shown
19 up at your house?

20 A Yes.

21 Q So I imagine this is a day you are not going to forget?

22 A To the contrary. It is so overwhelming and confusing,
23 this is a day you would absolutely want to forget.

24 Q So you might want to forget it, but I imagine there are
25 things that you remember about what happened that day. For

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 example, you testified that they seized all of your documents
2 in your house.

3 A No, not all. Documents related to whatever they thought
4 was important, yeah.

5 Q You testified that they seized computers?

6 A Computers, yes.

7 Q Electronic equipment?

8 A Yes.

9 Q Your cell phone?

10 A My cell phones, yes.

11 Q Which meant it was virtually impossible for you to
12 contact people outside of your home?

13 A Yes. And they seized my wife's cell phone too.

14 Q And although you didn't have your personal cell phone and
15 your wife didn't have her cell phone, you were able to contact
16 an attorney that day on April 18, 2019, correct?

17 A I don't know if it was that day or the following day. I
18 had available to me two things as it turns out. First, I had
19 my home phone, a landline which is part of the television
20 package. And second, my daughter who was living in
21 California, she was a California resident at the time was
22 visiting me. April 18 was my birthday. So the raid occurred
23 on my birthday. And apparently she traveled in for my
24 birthday -- I forget that -- and the FBI grabbed her and they
25 wouldn't let her come see me until that night. So I may have

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 had access to her cell phone when she finally was allowed to
2 come see me.

3 Q And whether it was on April 18 or April 19, you were able
4 to make a phone call to an attorney in New York; is that
5 correct?

6 A I tried to call different attorneys all over the place,
7 yes.

8 Q At some point you were able to speak to an attorney; is
9 that right?

10 A That's correct.

11 Q And that attorney gave you some advice, correct?

12 A Yes.

13 Q And you testified yesterday that among the advice that he
14 gave you was to make sure you took notes if you had
15 conversations with anyone associated with this search and
16 seizure, correct?

17 A That's correct.

18 Q And again he told you to write those notes down, right?

19 A Well, he just said take notes, yes.

20 Q Take notes. And you thought a better way to be able to
21 take notes is to audio record it?

22 A Yes, I did.

23 Q And why is that?

24 A Well, taking notes is complicated, but the real thing was
25 the agents had said certain things to me. And the only

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 other -- and I believe them to be true, but I wanted to -- I
2 did not think this was a criminal case. At that stage I
3 thought it was simply a regulatory case of the Commodity
4 Futures Trading Commission. And I was trying to figure out a
5 way basically to get out of it and just see what was really
6 going on.

7 Q You chose audio recording?

8 A Yes.

9 Q Any conversations that you had because they would most
10 accurately record those conversations, correct?

11 A Yes. They would be most complete.

12 Q What you said, correct?

13 A That's correct.

14 Q What the person on the other line said. And not just the
15 words, right? Also the tone of whatever was said by each
16 person?

17 A I assume so.

18 Q Because if you took notes, you wouldn't be able to
19 describe what the tone of the person was when they were
20 answering a question, for example?

21 A That's correct.

22 Q So having an audio recording, at least from your
23 perspective, was the best way for you to be able to capture
24 the conversations that you were having, right?

25 A Yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q And so over the course of that weekend, and again this
2 was Good Friday and Easter weekend in 2019, correct?

3 A I believe the 18th was a Wednesday. So it was around
4 Thursday. It was Easter weekend, yes.

5 Q So beginning at some point around April 19 into Easter
6 weekend, you initiated phone calls with a number of people,
7 correct?

8 A That is correct.

9 Q And separate and apart from attorneys -- we are not going
10 to talk about those phone calls -- some of those phone calls
11 were with John Caliendo?

12 A The accountant, yes.

13 Q And John Caliendo was your personal accountant first; is
14 that right?

15 A That is correct.

16 Q So he is somebody who had prepared your taxes for you in
17 the past?

18 A My personal.

19 Q Your personal taxes?

20 A And entities that I had owned over the years, yes.

21 Q So you had a longstanding relationship with John
22 Caliendo?

23 A Yes.

24 Q More than ten years?

25 A Yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q And John Caliendo also prepared your 2017 taxes?

2 A Yes.

3 Q And that is the tax account for which you entered a plea
4 of guilty and you were sentenced in front of Judge Scriven?

5 A That's correct.

6 Q But importantly, you have had a professional relationship
7 with John Caliendo for more than ten years?

8 A Yes.

9 Q You also made phone calls to a gentleman who we have
10 talked about, Joseph Paniagua?

11 A Yes.

12 Q And you have known Joseph Paniagua for more than ten
13 years?

14 A Yes.

15 Q He is a friend of the family?

16 A Yes.

17 Q He is someone that you and your brother have been friends
18 with his family for some years?

19 A Yes.

20 Q And as you testified to, he operated the back office for
21 OIG?

22 A Yes.

23 Q You also made phone calls to Michael DaCorta?

24 A Yes.

25 Q And you made approximately eight phone calls to Michael

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 DaCorta that weekend, give or take?

2 A Yes.

3 Q You called someone named Steven Dribusch?

4 A Yes.

5 Q You called Ray Montie?

6 A Yeah.

7 Q And Ray Montie by this time in 2019 you had known for

8 almost seven or eight years?

9 A Yes.

10 Q He's your partner in OIG?

11 A Yes.

12 Q Someone that your brother, Frank, was involved with at

13 least in the business perspective at Ambit when he was doing

14 work with Ambit?

15 A Very briefly, yes.

16 Q But again, somebody that you had a professional

17 relationship with for at least seven years?

18 A That I have known for at least seven years.

19 Q You also called a gentleman named Burt Wiand. And he is

20 the receiver in the civil case that you referred to, correct?

21 A Yes.

22 Q And you made one phone call to him. And the purpose of

23 these phone calls, you testified yesterday, was that you were

24 going on a fishing expedition?

25 A Yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q You wanted to gather information to see what was going
2 on?

3 A Uh-huh.

4 MS. IRVIN: Your Honor, may I approach?

5 Your Honor, may I approach sidebar?

6 THE COURT: Yes.

7 (Bench conference on the record with all counsel
8 present.)

9 MS. IRVIN: The audios that we are going to present
10 are the recorded phone calls that happened over that weekend
11 that he has testified to. He has had an opportunity to be
12 able to review them last night.

13 (Court reporter asked for clarification.)

14 MS. IRVIN: The recorded phone calls that we are
15 referring to are the ones that he testified to. Among those
16 phone calls are eight phone calls to Michael DaCorta. And I
17 believe that the government has an objection.

18 MS. BEDKE: The government does object to those
19 particular calls with the defendant, Your Honor, as hearsay.
20 I understand from speaking with Ms. Irvin that the purpose for
21 offering these calls is to show that Mr. Anile was providing
22 legal advice to the various persons involved. And you can
23 clearly get that drift if you would interpret them that way
24 from listening to the calls with Mr. Paniagua, Mr. Caliendo,
25 and so forth. The government sees no need for them to

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 publish.

2 In addition, the calls to Mr. DaCorta, if they want
3 to publish those calls or Mr. DaCorta wants to testify about
4 them, of course he is free to do so and subject himself to
5 cross-examination.

6 THE COURT: In these calls, does this witness on the
7 stand suggest everything is fine? What's this all about?

8 MS. BEDKE: Yes.

9 THE COURT: That's a prior inconsistent statement.
10 And I know he said it was all phony-baloney, but here he says
11 it's a Ponzi scheme. So on these calls he is intimating
12 something different.

13 MS. BEDKE: That's correct, Your Honor.

14 THE COURT: So it seems to me that's a prior
15 inconsistent statement. So I'm going to permit them to play
16 these calls.

17 MS. IRVIN: Thank you, Your Honor.

18 (End of bench conference.)

19 MS. IRVIN: Your Honor, may I approach the witness?

20 THE COURT: Yes.

21 BY MS. IRVIN:

22 Q Mr. Anile, do you recognize the CD I just handed to you?

23 A Yes.

24 Q And did you have the opportunity to listen to the calls
25 on that CD?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q And are the audio calls on that CD those calls that we
3 just reviewed as those that you recorded with various OIG
4 people?

5 A Yes.

6 Q Including John Caliendo?

7 A Yes.

8 Q Joe Paniagua?

9 A Yes.

10 Q Michael DaCorta?

11 A Yes.

12 Q Steven Dribusch?

13 A Yes.

14 Q And also Ray Montie?

15 A Yes.

16 Q And Burt Wiand?

17 A Yes.

18 Q And as far as your recollection, these calls took place
19 sometime between 4/18/2019 and in the subsequent four to five
20 days afterwards?

21 A That's correct.

22 MS. IRVIN: Your Honor, we move into evidence the
23 following exhibits: 172, 173, 175, 176, 177, 178, 179, 180,
24 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192,
25 193, 194, and 195.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 THE COURT: All right. Well, they are admitted as
2 impeachment. Whether they are substantive evidence we can
3 decide later, but they are admitted for impeachment, and you
4 may inquire and publish them with this witness on the stand.

5 MS. IRVIN: Yes, Your Honor.

6 (Defendant Exhibits 172, 173, 175-195 admitted.)

7 BY MS. IRVIN:

8 Q Now, all of these calls are not necessarily in order of
9 time; is that correct?

10 A Yes. I don't know that. I mean, they have all different
11 dates.

12 Q So there may be times when we are listening to these
13 phone calls that there may be a phone call that happens either
14 slightly before or slightly after the other phone calls; is
15 that correct?

16 A That's correct.

17 MS. IRVIN: Your Honor, if we could please publish
18 Exhibit 172. And if the courtroom deputy would please move it
19 to the laptop.

20 (Audio played.)

21 THE COURT: Can you hear that?

22 (Audio played.)

23 BY MS. IRVIN:

24 Q Mr. Anile, who is it that you are speaking to in this
25 call?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A John Caliendo, the accountant.

2 MS. IRVIN: If you can please hit play.

3 (Audio played.)

4 BY MS. IRVIN:

5 Q Mr. Anile, you were able to hear the entire call?

6 A Most.

7 Q Now, you previously testified you thought that when the
8 agents showed up at your house on April 18, 2019, that it was
9 just a CFTC matter; is that correct?

10 A That's what the papers said, yes.

11 Q And in this phone call with Mr. Caliendo, you told him
12 that you knew it was a criminal case.

13 A That probably was pointed out to me by the attorney in
14 that conversation regarding taking the notes. I don't recall,
15 so.

16 Q And timing wise, you can't tell what day this is that you
17 had this phone call with Mr. Caliendo?

18 A April -- whatever it said at the end. I don't. With
19 respect to the other calls, I don't know, no.

20 Q And previously you also testified that you said that this
21 was a Ponzi scheme?

22 A Yes.

23 Q And in this phone call, you told Mr. Caliendo, I can't
24 believe that that's true. I can't believe he, meaning Michael
25 DaCorta, confessed, correct?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q Okay. Let's move to the second phone call. That would
3 be Exhibit 173. And before we publish it, you initiated each
4 of those calls; is that correct?

5 A I don't recall. I think so.

6 Q If somebody called you and you wanted to record it, would
7 you ask them to wait and then start the recording, if you
8 remember?

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

10 Q If we could please publish 172.

11 (Audio played.)

12 Q Mr. Anile, this call was also with John Caliendo,
13 correct?

14 A That's correct.

15 Q And it sounded like it was on Easter Sunday?

16 A That's correct.

17 Q You previously testified that you were not practicing as
18 an attorney with OIG. And yet in this phone call we hear you
19 telling him you will have all the attorneys together. What
20 did you mean by that?

21 A At that stage I was getting different advice from
22 different attorneys with whom I spoke. And they were
23 suggesting that we should hire an attorney for like the
24 company. There were different defendants. I was getting all
25 different advice. So I was just repeating bad information

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 basically.

2 Q In that particular conversation, you are saying get in
3 touch with me, I'll have all the attorneys, correct?

4 A I don't know if that's what I said.

5 Q If we could please publish 175.

6 (Audio played.)

7 Q Mr. Anile, this is also a call with John Caliendo?

8 A Yes.

9 Q And you mentioned someone named Gerard. That's Gerard
10 Marrone who was your attorney at the time?

11 A No. I didn't retain him at that point, but he was one of
12 the attorneys I was bouncing ideas off of.

13 Q As a part of your goal here with this phone call with
14 John Caliendo, you had asked him to prepare documents for you?

15 A Yes.

16 Q And those documents had to do with Bowling Green Capital
17 which was one of your LLCs?

18 A My personal company.

19 Q In addition to that, you asked John Caliendo to meet with
20 Mr. Marrone, the attorney?

21 A Yes.

22 Q If we can please publish -- we are going to move on to a
23 different set of phone calls. If we can please publish 176.

24 (Audio played.)

25 Q Mr. Anile, please continue with the rest of the

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 recording. Do you recognize the voice on that call --

2 A Yes.

3 Q -- other than your voice?

4 A Joe Paniagua.

5 Q Who was the other caller on that recording?

6 A Joseph Paniagua.

7 Q Thank you.

8 (Audio played.)

9 Q Mr. Anile, what was the noise that we heard at the end of
10 that recording?

11 A A parrot.

12 Q In this recording, you are speaking to Joe Paniagua. And
13 one of the things that you tell him is -- excuse me. You
14 previously testified that you thought that this was a civil
15 matter, but in this phone call you referred to it as a
16 criminal matter, correct?

17 A Depending upon the timing of the phone calls and with
18 whom I was speaking in the background, I was being given
19 different information, so yes.

20 Q And the different information that you are referring to
21 is the information that you were receiving from phone calls
22 that you were making to a variety of attorneys?

23 A Yes.

24 Q And those attorneys were attorneys that you were seeking
25 to hire or retain for your own representation in whatever case

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 was going to go forward?

2 A That's correct.

3 Q And also for attorneys for OIG as well, correct?

4 A No. At one point I was -- I thought that I would be able
5 to help others get attorneys. I didn't know how it worked.

6 And I thought we would hire one for the whole company and they
7 would represent everybody. But when I was told that's not the
8 case, that changed over time.

9 Q In this phone call you do mention "our lawyers," correct?

10 A I was referring to myself and my family, our lawyers.

11 Q When you were using the term "our," you were referring to
12 a lawyer that would represent you and your wife and your
13 children?

14 A Yeah, my family.

15 Q And why would your family need lawyers?

16 A My son's car was seized. In addition, there were
17 questions that they, regarding my children, that they asked
18 me, the FBI, and I didn't know -- you didn't know where this
19 was going.

20 Q In this phone call when you are speaking to Joe Paniagua,
21 you are telling him that the "our" lawyers that you are
22 referring to are lawyers to represent you, your wife, and your
23 children?

24 A Yeah. I was using like the royal we, yeah.

25 Q There's also a lot of conversation about numbers and

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 loss. And you previously testified that Michael DaCorta told
2 you that there was a \$4 million loss. Do you remember that
3 testimony?

4 A Yes.

5 Q But in this phone call you did not tell Joe Paniagua
6 about that 4 million loss statement that you said you heard
7 from Michael DaCorta, correct?

8 A That's correct.

9 MS. IRVIN: If we could please publish 190.

10 (Audio played.)

11 BY MS. IRVIN:

12 Q Mr. Anile, this again is a phone call with Joe Paniagua?

13 A Yes.

14 Q Before we talk about the call, you previously testified
15 that on April 18, 2019, the agents talked to you for a long
16 time.

17 A Yes.

18 Q And you gave statements on that day?

19 A Yes.

20 Q And you began cooperating with the government on that
21 day, correct?

22 A From thereafter. I don't think it was that day, no.

23 Q And timing wise, it's unclear exactly which day this
24 phone call took place, right?

25 A I'm sorry?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Timing wise, we can't tell from this phone call what
2 exact day this phone call took place, correct?

3 A That's correct.

4 Q But it did take place around five days -- around the five
5 days after April 18 of 2019, correct?

6 A Within that period it would have to have taken place.

7 Q Part of the conversation is you talking about getting
8 attorneys, telling them not to have substantive conversations
9 with other people at OIG --

10 A That's correct.

11 Q -- without having their attorney present, not having
12 substantive conversations with lenders without having their
13 attorney present. And you were having a conversation with
14 John Caliendo without an attorney present -- excuse me -- with
15 Joe Paniagua without having an attorney present, correct?

16 A Yes.

17 Q And that's true for all of these phone calls. There is
18 no attorney representing you on these phone calls that you
19 have recorded, correct?

20 A Right. As I learned from the attorneys with whom you
21 spoke about these rules, I apparently broke a lot of rules in
22 doing all of this. I didn't know you weren't allowed to speak
23 to the co-defendants. I didn't know that you weren't allowed
24 to discuss substantive issues. As I spoke with each different
25 attorney -- I was calling all kinds of attorneys -- they would

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 say don't do this, don't do that, and I would report that
2 back.

3 Q So your testimony is that this was a work in progress and
4 you were learning how best to manage conversations having to
5 do with this criminal case?

6 A No. I was still trying to see what was going on and see
7 what I could gather and figure out a way out of this, yeah.

8 Q For purposes of helping your own case?

9 A Yes.

10 MS. IRVIN: If we could please publish 177.

11 Publish 191, please.

12 (Audio played.)

13 MS. IRVIN: Your Honor, I think that's the same one
14 we just listened to.

15 THE COURT: It sounded familiar.

16 (Audio played.)

17 BY MS. IRVIN:

18 Q Mr. Anile, in this recording, you are asking Joe Paniagua
19 to provide you with passwords for OIG websites, correct?

20 A That's correct.

21 Q And you refer to the fact that you need to get -- that
22 they are looking for these passwords. Who are the "they"?

23 A I believe it was Burt Wiand had reached out for me.

24 Q Burt Wiand is a receiver?

25 A Yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q So you are calling Joe Paniagua and asking him for the
2 passwords for the OIG websites that you don't have?

3 A That's correct.

4 Q And in this phone call you don't tell him that they are
5 for Burt Wiand, correct?

6 A That's correct.

7 Q You do state, though, that this is so that the attorneys
8 can see what you're saying. And that's why you asked him for
9 his personal email; is that correct?

10 A No. I wanted him to send them -- you could probably find
11 the chain on this somewhere -- to Burt. And when I say
12 "they," "they" refers to the government, they want them. Why
13 would anybody else want them? And they would be going to
14 whoever they are, their attorneys. Burt is an attorney, by
15 the way.

16 Q The other person that might want them is Gerard Marrone
17 who is your attorney, correct?

18 A He would want that information? No.

19 Q It wouldn't be helpful for you with respect to defending
20 yourself in your case?

21 A Would what be helpful, ma'am?

22 Q Pardon me. The information that you were seeking from
23 Joe Paniagua, you asked him to email these attorneys, correct?

24 A The passwords, correct.

25 Q In this phone call, you don't identify who these

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 attorneys are, correct?

2 A Correct.

3 Q The purpose of sending the information to the attorneys
4 is to help yourself in your case; is that correct?

5 A In this instance, no.

6 MS. IRVIN: May we please publish 193?

7 (Audio played.)

8 BY MS. IRVIN:

9 Q At this point in the conversation that you had with Joe
10 Paniagua, it appears you are telling him that you think this
11 is still a CFTC matter; is that correct?

12 A It was. Apparently there was a hearing scheduled before
13 the CFTC regarding the seizures.

14 Q But at the time this conversation is taking place, you
15 are explaining to Joe Paniagua that you don't think it's a
16 criminal matter at this point, correct?

17 A I don't know what point this is. My understanding of
18 that conversation that we just heard was that I was referring
19 specifically to a hearing regarding the seizures.

20 Q With respect to the conversation, you also asked Joe
21 Paniagua to contact John Paniagua who is his brother?

22 A Okay.

23 Q Is that correct as far as you can recall?

24 A Okay.

25 Q And when you asked Joe to contact his brother, John

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Paniagua, it was to assist you in getting accounting
2 information to help you in your case, correct?

3 A That's incorrect.

4 Q And that you were going to provide that --

5 A John Paniagua is not an accountant.

6 Q Let me reask the question.

7 A Uh-huh.

8 Q In the phone call, you asked Joe Paniagua to contact his
9 brother, John Paniagua?

10 A No.

11 Q You do not?

12 A I asked Joe Paniagua to contact John, John Caliendo.

13 Q John Caliendo?

14 A John Caliendo is the accountant.

15 Q And you had had previous conversations with John
16 Caliendo, correct?

17 A Yes.

18 Q You had already talked to John Caliendo and told him to
19 gather documents for you?

20 A And said what? I'm sorry.

21 Q To gather documents for you. For example, your Bowling
22 Green documents?

23 A Yes.

24 Q In order that he could provide them to Gerard Marrone?

25 A Yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q And that's a criminal defense attorney?

2 A Yes.

3 Q And even though at the time of this phone call you are
4 also letting Joe Paniagua know that you wanted John Caliendo
5 to provide documents to Gerard Marrone?

6 A I'm assuming they are the same documents. I'm not sure
7 what you're referring to.

8 Q Gerard Marrone is a criminal defense attorney, correct?

9 A Gerard was not yet my attorney. I didn't retain him, but
10 he is a criminal defense attorney.

11 Q And he would not have been able to assist you if this was
12 just a CFTC matter, correct?

13 A Gerard was unfamiliar with CFTC matters. And he was not
14 assisting me, that's correct, with the seizures.

15 Q So the only reason for you to be giving these various
16 documents, gathering these various documents and giving them
17 to Gerard Marrone was because you were preparing for this case
18 to become a criminal matter, correct?

19 A At this stage I didn't know. Perhaps what I was trying
20 to do was to familiarize Gerard with the concept of the money
21 flows to my companies.

22 Q But there really wasn't a reason to get a criminal
23 attorney at this time, right?

24 A I don't know. I mean, I was receiving information from
25 different people.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Michael DaCorta did not tell you that this was a Ponzi
2 scheme.

3 A Well, he did originally, yes.

4 Q You mentioned that in your phone calls --

5 A No.

6 Q -- with Joe Paniagua?

7 A Of course not.

8 Q You mentioned that in your phone calls with your
9 accountant, John Caliendo?

10 A Absolutely not.

11 Q Okay.

12 A And of course I didn't do that. Why? Not only was I
13 recording the conversations. You may recall on direct I said
14 I believed the FBI was recording them. I am extremely guarded
15 in these conversations. I was outright lying in some
16 instances.

17 Q You were extremely guarded in these conversations?

18 A Absolutely.

19 Q With respect to that, is there any time you told John
20 Caliendo that you were recording these conversations?

21 A No.

22 Q Was there any point -- and we haven't finished listening
23 to Joe Paniagua's calls yet. Was there any point where you
24 told Joe Paniagua that you were recording these conversations?

25 A No.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q So if anything, the people who were not being guarded
2 were John Caliendo and Joe Paniagua and anyone else you were
3 calling because they didn't know they were being recorded,
4 correct?

5 A I assumed that in their cases, John and Joe, that they
6 were not being guarded.

7 Q If anything, the guarding that you were doing was to
8 protect yourself, correct?

9 A Yes.

10 Q Okay.

11 MS. IRVIN: May we please publish 194.

12 (Audio played.)

13 BY MS. IRVIN:

14 Q Mr. Anile, again this is a phone call with Joe Paniagua?

15 A Yes.

16 Q You have not told him that this phone call is recorded?

17 A Yes.

18 Q It appear that this phone call happens about a week after
19 Easter?

20 A Yes.

21 Q It appears that Gerard Marrone is representing you at
22 this time?

23 A Yes.

24 Q And he is planning a flight to come to Florida to meet
25 with you?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q You've asked Joe Paniagua to get with John Caliendo in
3 order to meet with Gerard Marrone when he comes to Florida,
4 correct?

5 A Prior to him coming to Florida, I believe, yes.

6 Q So you wanted them to actually talk to him before he came
7 down to Florida?

8 A Yes.

9 Q And Gerard Marrone was not representing Mr. Paniagua?

10 A That's correct.

11 Q He was not representing John Caliendo?

12 A That's correct.

13 Q He was not representing Oasis?

14 A That's correct.

15 Q He was only representing you?

16 A Yes.

17 Q And during this time, again this is a week after Easter,
18 you are continuing to cooperate with the government, correct?

19 A Gerard Marrone was discussing something with the
20 government. That's why he was coming down.

21 Q In a previous phone call, maybe one or two before this
22 one, it appears that -- you would agree with me that Joe
23 Paniagua was seeking legal advice about what to do with
24 respect to the civil hearing or the seizure hearing that was
25 being held the following week, correct?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A I don't believe that's correct. I don't know if Joe had
2 anything seized.

3 Q When you were talking to him, he was asking you what
4 should Michael do, correct?

5 A Yes.

6 Q In the course of asking those questions, he was asking
7 what should any of them do generally about getting an
8 attorney, correct?

9 A Well, everyone had to have their own attorneys. I
10 responded, yes.

11 Q And at that time it was still a CFTC matter, correct?

12 A Depends on when the conversation was.

13 Q But at some point in time it was just a CFTC matter?

14 A Yes.

15 Q When it's a civil matter, that means that a particular
16 person is not entitled to counsel for that hearing, right?

17 A That's correct.

18 Q And do you recall in the conversation that you mentioned
19 that you were going to represent yourself pro se, correct?

20 A Yes. I was advised to do so, yes.

21 Q You were advised by an attorney to just represent
22 yourself at that hearing?

23 A Yes.

24 Q And you were also advising in the phone call that you
25 thought that's what everyone else should do as well?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A No.

2 Q Okay.

3 A I made that decision because I had no funds is what I
4 said and because I had no access to funds. My money was
5 seized, that that is what I had to do. And if anyone else had
6 to do the same thing, it would be because they have no money.

7 Q In this situation at OIG, you were the only attorney
8 working for the company, correct?

9 A I was the only attorney that worked at Oasis, yes.

10 Q So it wouldn't surprise you that people would be calling
11 you and asking for your legal advice whether with respect to a
12 civil matter or a criminal matter since you were the only
13 attorney that they knew in their business?

14 A Perhaps.

15 MS. IRVIN: May we publish -- may I have a moment,
16 Your Honor?

17 Your Honor, there are two more calls in this series
18 and they are both very short. May we publish 195.

19 (Audio played.)

20 BY MS. IRVIN:

21 Q Mr. Anile, were you able to hear in this conversation
22 that you will have lawyers' names and numbers hopefully lined
23 up for everyone today?

24 A Yes.

25 Q And you never got lawyers' names and numbers lined up for

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 other people, did you?

2 A No. I was speaking with so many different lawyers that I
3 had a bunch of names that I was going to refer. I spoke with
4 them, and people would hire their own lawyer accordingly. And
5 Gerard said that was not appropriate at a later time. So I
6 did not do that. And I think Burt Wiand instead referred some
7 attorneys like to Joe and some other people, if I'm not
8 mistaken at that point.

9 Q So even though you said I'm going to get lawyers' names
10 and numbers lined up for everybody, you never did that; is
11 that correct?

12 A That is correct.

13 MS. IRVIN: May we publish 196, please.

14 (Audio played.)

15 BY MS. IRVIN:

16 Q Mr. Anile, this is a call with Burt Wiand, correct?

17 A That's correct.

18 Q And in this phone call you let him know that you are
19 interviewing attorneys for yourself?

20 A Yeah. I was just trying to stall on this call. I didn't
21 have access to an attorney that would be able to deal with the
22 receiver's case. So I was just buying time, and I was mixing
23 up information just to stall in answering him.

24 Q So you lied to the receiver?

25 A Yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q And you lied to him because you didn't just have limited
2 resources; you had no resources.

3 A That's correct.

4 Q In that phone call he asked you about Butch Lyles. Do
5 you recall that?

6 A Yes.

7 Q It sounds like you hesitated for a moment before you
8 answered, right?

9 A Yes.

10 Q But then you pretty quickly said, oh, it's a guy who
11 works with Michael DaCorta, right?

12 A Yes.

13 Q So you are actually not following your own advice to wait
14 to have an attorney on the line with you before you talk to
15 anyone, right?

16 A That's correct.

17 MS. IRVIN: May we publish 185, and 186 directly
18 after it.

19 THE COURT: Why don't we take our morning break. We
20 will start back up before quarter after 11:00 as best we can.
21 So let's just take a quick break, and we will run until about
22 12:30. Please don't discuss the case or consult outside
23 sources.

24 Thanks so much, everybody.

25 (Recess taken.)

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 THE COURT: All right, counsel.

2 MS. IRVIN: Yes, Your Honor. I need to correct the
3 record. When I was introducing the exhibits, I missed
4 Exhibit 189 that was part of the series. So that is also on
5 that same recorded CD that we have that we provided to
6 Mr. Anile. So if we can admit Exhibit 189.

7 THE COURT: 189 will be treated as the others,
8 offered for impeachment, and we will discuss whether it is
9 substantively admissible later. Thank you.

10 MS. IRVIN: Thank you.

11 (Defendant Exhibit 189 admitted.)

12 MS. IRVIN: May we please publish 185, and 186
13 directly after that.

14 (Audio played.)

15 BY MS. IRVIN:

16 Q Mr. Anile, in both of these conversations, who is the
17 caller that you have made a phone call to?

18 A Steven Dribusch.

19 Q And who is that?

20 A A trader who worked with Michael.

21 Q When you made that first recording, it sounded like it
22 went to voicemail, correct?

23 A Yes.

24 Q And you announced that the day was Monday, the 22nd of
25 April. Do you recall that?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q In the second conversation, this appears to also be one
3 that you initiated?

4 A Yes.

5 Q In this phone call you are speaking again about
6 attorneys?

7 A Yes.

8 Q You are saying that you are going to be working with
9 attorneys today?

10 A Yes.

11 Q It's unclear who those attorneys are based on this phone
12 call, correct?

13 A Yes.

14 Q You give advice to Mr. Dribusch that he shouldn't be
15 having substantive conversations with anyone?

16 A Yes.

17 Q He shouldn't be talking to Michael DaCorta?

18 A Yes.

19 Q And that's legal advice that you are giving him, correct?

20 A I was repeating what I was told. So if it is legal, yes.

21 Q You were repeating advice that were told by attorneys
22 that you had contacted to represent yourself?

23 A That said, no one -- no parties among the defense or
24 others should speak with each other about substantive issues,
25 yeah.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q By the Monday after Easter, are you now only focused on a
2 criminal matter and representation for yourself?

3 A I don't know. And then when I said "your attorney," I
4 was referring also to his attorney. I was just talking
5 really.

6 Q At this point on Monday after Easter, you are not focused
7 on assisting anyone at OIG with getting representation for the
8 civil matter, correct?

9 A I was still talking to attorneys. So, no, I was not -- I
10 didn't recommend any, I think. At the end I only recommended
11 one, but that didn't even work.

12 Q Out of the phone calls that you made, the only successful
13 retained lawyer that you got was to represent yourself in the
14 criminal matter that you were facing?

15 A That's correct.

16 MS. IRVIN: May we please publish 187.

17 (Audio played.)

18 BY MS. IRVIN:

19 Q Mr. Anile, who is this phone call with?

20 A Raymond Montie.

21 Q And who is Raymond Montie?

22 A Raymond is the other principal, officer, and director of
23 OIG.

24 Q When you were speaking to Montie, he tells you all of his
25 assets have been frozen?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q That's OIG assets as well as other business assets that
3 he has, correct?

4 A As I understood it, yes.

5 Q He calls you because he is your business partner at OIG,
6 correct? You're a lawyer.

7 A Yes.

8 Q He is looking for advice?

9 A I think he just wants to know what was going on, yes. I
10 don't know if it was advice.

11 Q He does ask you, should I talk to these people? What
12 people -- he does ask you that question first, correct, should
13 I talk to these people?

14 A I'm sorry. You would have to play that again.

15 MS. IRVIN: Your Honor, may I have a moment?

16 (Audio played.)

17 BY MS. IRVIN:

18 Q The rest of that statement was --

19 A Can you let one more second play? I don't know what
20 people he is referring to. Either the people he was talking
21 to, his attorneys or about the seizures again.

22 Q We can replay that.

23 (Audio played.)

24 Q So you were able to hear that Mr. Montie asked you,
25 should I be talking to these people, correct?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A That's correct.

2 Q And what people was he referring to when he says "these
3 people"?

4 A I believe he is referring to the people who seized his
5 assets.

6 Q In that answer that you gave, you said, no, you should
7 not talk to these people, you should get a lawyer, right?

8 A I believe so, yes.

9 Q Is that legal advice?

10 A It's just advice, yes.

11 Q You previously testified that you thought this was a
12 Ponzi scheme, correct?

13 A Yes.

14 Q But in this phone call with Ray Montie who is your OIG
15 business partner, you said, I get my numbers from Joe and
16 Michael, and the numbers are always good, correct?

17 A Yes.

18 Q You also stated that you didn't think that Michael
19 confessed, correct?

20 A Yes.

21 Q At the end of this phone call you are updating Mr. Montie
22 about your efforts to gather various documents through Joe
23 Paniagua and John Caliendo for the receivers. Do you recall
24 that part of the conversation?

25 A Yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q You didn't tell Joe Paniagua to just contact the receiver
2 himself, did you?

3 A In our conversation with Joe, he mentioned to me that he
4 was compiling a report. And if you recall, I think I said in
5 that conversation that's the reports we all want to see. So
6 he was compiling reports regarding -- I don't know if he did.
7 I never saw them -- but reports regarding the actual lenders,
8 the names and the actual amounts, that sort of thing, yeah.

9 Q When he said he was compiling those reports, you said get
10 those to the receiver right away, right?

11 A Well, I would hope so, yeah.

12 Q You didn't tell him that, did you?

13 A Tell who that?

14 Q You did not tell Joe Paniagua that once he completed
15 those reports, he himself should give those reports over to
16 the receiver?

17 A I don't recall what I said to Joe in that case.

18 Q In those conversations with Joe Paniagua, didn't you ask
19 him to prepare those reports and give them to you?

20 A I wanted to see them, sure, but the receiver had asked
21 for them also at the same time.

22 Q With respect to the documents that you had asked John
23 Caliendo to also gather and prepare, you didn't tell John
24 Caliendo give those documents and reports directly to the
25 receiver, did you?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Please repeat that question.

2 Q Sure. I will break it down. You had had conversations
3 with John Caliendo. And we heard some of those conversations,
4 right?

5 A Yes.

6 Q In those conversation you asked John Caliendo to prepare
7 documents, gather reports, and get them ready for you to
8 review, correct?

9 A Yes.

10 Q And get them ready for Gerard Marrone, your attorney, to
11 review?

12 A Yes.

13 Q At no point did you tell him to give those to the
14 receiver, did you?

15 A No, I did not.

16 Q You had made yourself the point person on this gathering
17 of information for the receiver, correct?

18 A No. He was talking to them separately. I wanted the
19 information for myself.

20 Q You wanted the information to benefit yourself, correct?

21 A Well, I wanted to see what was going on, yes.

22 Q But you wanted also to be the person that provided that
23 information to the receiver, Mr. Wiand, correct?

24 A No. I think he was talking to them separately at this
25 point.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q You don't have any independent knowledge that they were
2 providing that documentation directly to Mr. Wiand, do you?

3 A Joe mentioned in his conversation that he was doing so.

4 Q But I think you just testified that you never saw the
5 report, correct?

6 A Ultimately I have never seen any of the reports, no.

7 MS. IRVIN: If you could please publish 187. I'm
8 sorry. If you could please publish 188.

9 THE COURT: 188?

10 MS. IRVIN: Yes, sir.

11 (Audio played.)

12 BY MS. IRVIN:

13 Q Mr. Anile, this conversation that you have with
14 Mr. Montie really focuses just on the advice that you are
15 giving him not to have substantive conversations with anybody
16 involved in OIG, correct?

17 A As I said in the conversation, it's not really advice.
18 I'm just passing along what I was told.

19 Q So you are passing along advice as something that you
20 were told from attorneys?

21 A Uh-huh.

22 Q And that advice attorney to attorney to business partner
23 was don't have substantive conversations with people at OIG?

24 A I'm sorry. I didn't understand the question. Attorney
25 to attorney?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Sure. So you said attorneys you spoke to told you -- and
2 you're an attorney -- and then you told your business partner,
3 Ray Montie, don't have substantive conversations with people
4 at OIG, correct?

5 A That's what I was informed, yes.

6 Q And you are also telling Mr. Montie that he should not
7 have those conversations unless he had an attorney present,
8 correct?

9 A Yes. Whatever I repeated, yes.

10 Q This conversation, there was not an attorney present in
11 this conversation other than you, correct?

12 A Yes, that's correct.

13 MS. IRVIN: Can we please publish 189.

14 (Audio played.)

15 MS. IRVIN: You can pause it.

16 BY MS. IRVIN:

17 Q Mr. Anile, were you able to hear Ray Montie's question
18 that he received from someone named Deb?

19 A No.

20 Q I will replay it for you.

21 A Thank you.

22 (Audio played.)

23 Q Mr. Anile, were you able to hear his question?

24 A Why don't you just tell me what you think it says. I
25 will make sure that's what I heard.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Were you able to hear his question, that aspect of the
2 recording?

3 A Yes.

4 Q In that recording, Mr. Montie is relating to you a
5 question that he has received from someone named Deb. Who is
6 Deb?

7 A I believe he is referring to someone that worked with
8 Michael. Deborah Cheslow.

9 Q And who is Deborah Cheslow?

10 A I forget. I think she was -- she was going to do
11 marketing or -- I know she worked over at the office.

12 Q So she is an employee at OIG?

13 A Yes.

14 Q And her question was, are they going to get a corporate
15 lawyer; is that correct?

16 A Yes. He said, in other words, did you get one for the
17 company the way I understood it, yes.

18 Q So Deb asked this question of Ray. And Ray is a
19 principal at OIG?

20 A Uh-huh.

21 Q And Ray asked this question of you?

22 A Uh-huh.

23 Q And you are a principal at OIG?

24 A Uh-huh.

25 Q And also a lawyer?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Uh-huh.

2 Q And that's the reason why Deb and Ray are asking this
3 question of you, correct?

4 A I don't know why they are asking me that, but I just
5 answered it the way I understood it, yeah.

6 MS. IRVIN: If we can play the rest.

7 (Audio played.)

8 BY MS. IRVIN:

9 Q Mr. Anile, as we could tell from this conversation with
10 Ray Montie, this is a conversation that happened on Easter
11 Sunday, correct?

12 A Yes.

13 Q You testified yesterday that Easter night you called back
14 an attorney that you had spoken to earlier either that week or
15 earlier that day. Do you recall that?

16 A Yes.

17 Q This is the same attorney that gave you the advice to
18 take notes if you were having any sort of conversation related
19 to OIG, correct?

20 A That's correct.

21 Q And when you called that attorney Easter night, you told
22 him that you had recorded a number of conversations with other
23 people who work at OIG, correct?

24 A No. I don't think I discussed the recordings until later
25 on. Oh, yes. I don't recall. I think I didn't.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Do you recall that you testified yesterday that when you
2 spoke to the attorney on Easter night, the attorney yelled at
3 you?

4 A Yes.

5 Q And the attorney was yelling at you because you had told
6 him that you had recorded some of these conversations?

7 A That's correct.

8 Q He also told you that you were possibly obstructing or
9 interfering with a government investigation. Do you recall
10 that?

11 A An ongoing government investigation. Yes, those were his
12 words.

13 Q We heard a couple phone calls before this last phone call
14 with Mr. Montie. And you would agree that those phone calls
15 happened after Easter Sunday, correct?

16 A Yes. In fact, the one that we listened to just before
17 this with Mr. Montie occurred later that evening. So this one
18 must have occurred early in the day on Easter.

19 Q But Easter night the attorney that you contacted gave you
20 advice that the recordings that you had been doing may be
21 obstructing or interfering with a government investigation,
22 correct?

23 A I believe so, yes.

24 Q And yet you continued to record those phone calls that
25 you were having with OIG employees for a couple days later?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A I don't think that the advice was that the recordings
2 were problematic so much as it was the interference and
3 talking about substantive issues.

4 Q So you had a lengthy conversation with this attorney
5 about --

6 A It wasn't lengthy. This was an attorney who ultimately
7 did not represent me at all.

8 Q But he did yell at you because he was --

9 A Yes.

10 Q -- concerned about --

11 (People speaking at the same time. Court reporter asked
12 for clarification.)

13 Q He did yell at you according to your testimony, correct?

14 A Yes.

15 Q It appeared he was yelling at you because he was
16 concerned that you were obstructing a government
17 investigation; is that correct?

18 A Yes.

19 Q Did he also tell you that by recording these phone calls
20 without telling the person on the other line that they were
21 recorded, that you were also violating Florida law?

22 A I was never told that, no.

23 Q You are not aware that there is a Florida statute that
24 makes it illegal for any person to record a phone call without
25 first letting the other person on the phone call know that

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 they are being recorded?

2 A No. I'm not aware of that. I'm a New York state
3 attorney. In the state of New York it is a one-party consent
4 jurisdiction, meaning that as long as one party to the
5 conversation consents to being recorded, they can be recorded.

6 Q At the time that you were recording these conversations,
7 you were at your home in Florida, correct?

8 A Yes.

9 Q As an attorney, you need to ensure that you understand
10 the law in whatever jurisdiction that you are in, correct?

11 A That is correct.

12 Q At the time that you made those phone calls, you did not
13 take the time to see if by recording those phone calls you
14 were violating Florida law, did you?

15 A I did not know that. And the attorneys with whom I spoke
16 with were all, don't forget, New York attorneys. So they
17 didn't know it either probably.

18 MS. IRVIN: May we please publish 177.

19 (Audio played.)

20 BY MS. IRVIN:

21 Q Mr. Anile, who is the other person on this call?

22 A Michael DaCorta.

23 Q When you called Mr. DaCorta, you didn't tell him you were
24 recording this conversation, did you?

25 A I did not.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q This conversation dealt with substantive issues having to
2 do with the CFTC case that was pending, correct?

3 A That's correct.

4 Q No attorney was on this phone call as you had advised
5 other people that you spoke to other than yourself, correct?

6 A I had not advised anyone at this stage about that, but
7 that's correct.

8 Q This is still very early on is what you're saying?

9 A This is the 19th it said, yes.

10 Q You previously testified that Mr. DaCorta had told you
11 that this was a Ponzi scheme, correct?

12 A Yes.

13 Q In this conversation, you don't ask Michael DaCorta, hey,
14 what about this Ponzi scheme, correct?

15 A Correct.

16 Q You never used the word "fraud"?

17 A Did I use the word? I don't believe in this
18 conversation, no.

19 Q You didn't use the word "Ponzi"?

20 A Ponzi? I may have used it in reference to the government
21 saying that it was a Ponzi or a \$35 million Ponzi or something
22 like that.

23 Q You didn't agree that it was a Ponzi scheme in this phone
24 call?

25 A In this phone call, no.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Michael DaCorta's relationship with you at this time is
2 as the principal, one of the principals at OIG, correct?

3 A Yeah.

4 Q And he is calling you because you are a second principal
5 at OIG?

6 A That's correct.

7 Q And he is calling you because you're a lawyer.

8 A Okay.

9 Q It sounds like early on in this phone call he is also
10 looking for attorneys to represent "us," correct?

11 A I'm not sure of that.

12 Q Just from your own recollection, do you recall him saying
13 that he was looking for attorneys for us, meaning Oasis?

14 A I don't know what he was thinking.

15 Q That's all right.

16 May we please publish 178.

17 (Audio played.)

18 Q Mr. Anile, this appears to be a phone call very early on
19 after --

20 A It's immediately following the other call we just
21 listened to.

22 Q Let me just finish that sentence. This appears to be
23 very early on after the agents show up to both your house and
24 Mr. DaCorta's house, correct?

25 A That's correct.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Because you are talking about all the things that have
2 been seized from your house, correct?

3 A Yes.

4 Q And a number of computers and so forth?

5 A Yes.

6 Q I previously asked you whether you were the person who
7 always initiated the phone calls that you were recording.
8 Were there, it appears, times that you recorded phone calls
9 when someone was calling you?

10 A I don't recall.

11 Q Okay.

12 MS. IRVIN: If we could please publish 179.

13 (Audio played.)

14 BY MS. IRVIN:

15 Q Mr. Anile, you testified previously that this was a Ponzi
16 scheme, correct?

17 A Yes.

18 Q But in the statement that you just made to Mr. DaCorta on
19 this recorded phone call, you stated that Michael and Joe
20 Paniagua always gave you the reports, and the numbers on the
21 reports were always consistent with the assets; is that
22 correct?

23 A Yes.

24 (Audio played.)

25 MS. IRVIN: May we publish 182.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 (Audio played.)

2 BY MS. IRVIN:

3 Q Mr. Anile, at the beginning of this call you initially
4 stated to Mr. DaCorta that you thought that an attorney could
5 represent everyone, correct?

6 A Yes.

7 Q And you went on to say that possibly each person may need
8 to get their own attorney as well, correct?

9 A I'm sorry?

10 Q You said that possibly each person may need to get their
11 own attorney?

12 A Yeah, I was just guessing. I knew nothing about it.

13 Q In referring to everyone, are you referring to everyone
14 who is employed in Oasis?

15 A Yes. In other words, I thought you can get a corporate
16 attorney that would just represent everyone.

17 Q You also noted that you needed accountants to look at the
18 data, correct?

19 A Yes.

20 Q And that that is really the key here is looking at the
21 data?

22 A Yes.

23 Q And Joe Paniagua was working on those reports?

24 A He was preparing them for the receiver, yeah.

25 MS. IRVIN: I just have one more call, Your Honor.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 THE COURT: Why don't we break for lunch. We will
2 try to get back here just right at, if we can, 1:30, please.

3 Thank you very much, ladies and gentlemen.

4 (Lunch recess taken.)

5 THE COURT: All right, counsel.

6 MS. IRVIN: Thank you, Judge.

7 THE COURT: Thank you.

8 MS. IRVIN: Your Honor, we have one more call to
9 publish. That's Exhibit 183.

10 (Audio played.)

11 BY MS. IRVIN:

12 Q Mr. Anile, again this was a recorded call with your
13 business partner, Michael DaCorta, correct?

14 A Correct.

15 Q In the beginning of this phone call, you walk him through
16 the procedures of what will happen at the next hearing that's
17 supposed to take place on April 29, correct?

18 A That was my understanding at the time, but it was
19 incorrect, yes.

20 Q You explained to him your understanding at the time of
21 what you thought was going to happen at the April 29 hearing
22 with respect to the seizures?

23 A Yes. I thought that the government gives us free
24 attorneys at this point.

25 Q And that was an April 29 hearing that had to do with the

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 CFTC civil case; is that correct?

2 A That's correct.

3 Q You tell him again in this phone call that you and he are
4 not supposed to be having substantive conversations, correct?

5 A That's correct.

6 Q But you continue to have substantive conversations about
7 what's going on in your cases, correct?

8 A I don't know if we speak about facts but talking about
9 the seizures, I guess. I don't know.

10 Q You tell him again that the attorneys should be doing the
11 talking for all of you?

12 A When the government appointed -- that's what I was
13 referring to. The government appointed attorneys and then
14 they talk to each other, yeah.

15 Q But on this call it's only you and Mr. DaCorta. There is
16 no other attorney other than you on this phone call, correct?

17 A That's correct.

18 Q In all of these phone calls, whether with John Caliendo,
19 Joe Paniagua, Steven Dribusch, Ray Montie, Michael DaCorta,
20 you had a precise purpose for recording all of these phone
21 calls, correct?

22 A Precise, no.

23 Q In your words, you said you were going on a fishing
24 expedition, right?

25 A Yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q A fishing expedition allowed you to know what OIG people
2 knew about what was going on, right?

3 A What was said to the government, yes.

4 Q What OIG people were saying to the government?

5 A What anyone was saying to the government, yes.

6 Q That allowed you to gather information about what OIG
7 people were saying to the government, correct?

8 A I wanted to verify whether or not Mr. DaCorta confessed
9 or not and made those statements.

10 Q You learned that he did not confess, correct?

11 A Excuse me?

12 Q You learned that he did not confess, correct?

13 A Absolutely not. It was verified that he confessed to me.

14 Q By the agent?

15 A When the agent said to me, Michael said it was a scam, a
16 Ponzi scheme, and you knew and you agreed not to tell anybody
17 else, I knew right away that the only other person who knew
18 that was Michael.

19 Q And you believed that agent?

20 A Since everybody -- yes, I did believe the agent, yeah.

21 Q That agent you thought was telling you the truth?

22 A Yes.

23 Q If this is a fishing expedition, why did you counsel each
24 of these people not to talk to the government?

25 A Well, at different stages I was just talking about what

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 was going on and to protect themselves basically. So I was
2 repeating to them what I was being told.

3 Q But isn't it a fact that your goal was to make sure that
4 each of these people were not cooperating with the government?

5 A Oh, not at all. I wanted the numbers to come out. So I
6 wanted Joe Paniagua to prepare the reports for the government,
7 et cetera, and John Caliendo as well.

8 Q During this entire time that you were having these
9 recorded conversations, you were already cooperating with the
10 government, correct?

11 A No. Not during this period, no.

12 Q On April 18, 2019, you made a statement to retired
13 Special Agent Stone, correct?

14 A On that day, yes.

15 Q And in that statement you began your cooperation with the
16 government, did you not?

17 A I don't believe so, no.

18 Q You contacted Attorney Marrone within a couple days?

19 A Within several days, yes.

20 Q And in that time he then contacted the government's
21 attorneys to let them know that you wanted to cooperate?

22 A I think it was about a week or so later, yes. A week
23 after that period.

24 Q And the second time that you met with the government and
25 with agents was on May 2 of 2019?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A May 2? Yes.

2 Q Yes. And the third time that you met with the agents, or
3 at least one agent, retired Special Agent Stone, was on May 14
4 of 2019?

5 A Perhaps. I don't recall the date.

6 Q Do you recall if at that meeting that's when you gave
7 Special Agent Stone the thumb drive that contained the
8 recorded calls that we just listened to?

9 A That's correct.

10 Q I just want to go through some of your direct testimony
11 and just follow up on a few things with you, okay? One of the
12 things that you testified to was that broker-dealers often use
13 what are called white label services; is that correct?

14 A Yes.

15 Q And those are services, for example, that are provided by
16 companies like Spotex?

17 A I would have said like ATC Brokers, but yeah.

18 Q So ATC Brokers would have been the sample that you would
19 give of a service that provides what you called white label
20 services; is that right?

21 A That was my understanding, yes.

22 Q And you also testified that many firms do this; is that
23 right?

24 A That's my understanding, yes.

25 Q And by "do this," you mean many firms use white label

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 services?

2 A Yeah.

3 Q Like ATC?

4 A Yes.

5 Q You also testified to the beginnings of OIG, and as it
6 began to grow, that there were some changes that took place
7 early on. For example, that you changed from using CFH to
8 ATC; is that correct?

9 A I don't know if we were growing at that stage. I know
10 that Michael was having a conflict with CFH.

11 Q Is it your understanding that Michael wasn't happy with
12 the service that CFH was providing at that time?

13 A That's what he told me.

14 Q And for that reason OIG switched to using ATC; is that
15 correct?

16 A Yes.

17 Q That was because he was working very hard to bring in
18 accounts?

19 A Yes.

20 Q And you testified that he was upset with the clearing
21 firm and he wanted to make sure that they were working as hard
22 as they could to bring in accounts, correct?

23 A Please repeat that.

24 Q Sure. You testified that he was upset with the clearing
25 firm, CFH, wasn't satisfied with their work?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Right.

2 Q You switched to ATC?

3 A Yes.

4 Q And the reason he switched was because, in your words, he
5 was working very hard to bring in accounts?

6 A That's what he told me, yes.

7 Q You testified that's what he told me on -- you just
8 testified that that's what he told you, but on direct you
9 testified that that's what you saw, that's what you witnessed.
10 Did you see him working hard?

11 A Yes.

12 Q Now, there are two conversations that you also focused on
13 during your direct testimony. One had to do with a
14 conversation that you said you had with your brother, Frank.

15 A Yes.

16 Q And in that conversation you said Frank told you that he
17 thought that Mr. DaCorta had falsified a customer statement.

18 A Not that he thought. Frank was instructed by Mr. DaCorta
19 to falsify a customer statement.

20 Q And your brother is deceased?

21 A Yes.

22 Q So he is not here to be able to tell us in his own words
23 what happened?

24 A That's correct. But he told me what happened, and I
25 reported it.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q This was not recorded?

2 A No.

3 Q No one else was there to witness this conversation?

4 A No.

5 Q You also mentioned that you had a conversation with
6 Mr. DaCorta in which the two of you were walking and he told
7 you that there was \$4 million in losses, correct?

8 A That is correct.

9 Q And you mentioned that he was telling you this when you
10 all were going for a walk?

11 A That's correct.

12 Q And it was just you and Mr. DaCorta, correct?

13 A That's correct.

14 Q And this is not a recorded conversation?

15 A It was not recorded.

16 Q And no one else was around?

17 A No one was around.

18 Q On direct you were asked by the government about ATC
19 Brokers and their white label service. And there was some
20 amount of questioning that focused on having a physical
21 office. With respect to Oasis Global FX Belize, was it
22 required for you to have a physical office in Belize?

23 A During the period prior to the government's intervention,
24 no. However, later in that year I think it was, so I had just
25 begun discussions with our counsel in Belize to provide us

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 with offices there, yeah. Whatever was required we were going
2 to have to comply with.

3 Q So, for example, once you learned that there was a change
4 in the law, you and OIG took steps to make sure that you
5 maintained compliance with the law in Belize at the time,
6 correct?

7 A We would have. The counsel in Belize had advised us to
8 do certain things. And when they sent me the documents, I
9 looked at them but subsequently we ceased operations.

10 Q There are also some questions about why Oasis would have
11 their company domiciled offshore. And you responded it's
12 easier to do, it's easier for any company. Why is it easier
13 for any company to have their offices or their incorporation
14 domiciled offshore?

15 A My understanding is capital requirements. If you do --
16 for example, if you wanted to do something domestically, you
17 would have to have a lot of reserve capital for your
18 operations.

19 Q In your experience in working in business and in finance,
20 has it been your experience that there are many companies and
21 corporations that choose to domicile outside of the United
22 States?

23 A Yes.

24 Q Before you decided to bring John Caliendo on as the
25 accountant to audit the books of Oasis, wouldn't you agree

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 that there was already an ongoing conversation between you,
2 Joe Paniagua, and Mr. DaCorta about hiring a CFO?

3 A I don't recall.

4 MS. IRVIN: Your Honor, may I approach?

5 I'm approaching with what's already been introduced
6 as Government Exhibit 210D.

7 BY MS. IRVIN:

8 Q Mr. Anile, this has already been admitted into evidence,
9 but do you recognize it?

10 A Yes.

11 Q And what do you recognize it as? What is it?

12 A A promissory note and loan agreement.

13 Q What's the date on the top left corner of the promissory
14 note and loan agreement?

15 A March 15, 2019.

16 Q This is a promissory note that you created and drafted
17 for OIG, correct?

18 A Yes.

19 Q If you turn to -- if I can have your attention to
20 Paragraph 1 titled "Interest," what was your -- was your
21 understanding of this promissory note that any lender would
22 receive either 12 percent in interest every year or 25 percent
23 of the transaction fees? Is that your understanding of this
24 promissory note?

25 A Yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q And in this promissory note, it refers to lenders; is
2 that correct?

3 A I'm sorry. The first two lenders?

4 Q Does it refer to lenders? In other words, this is a loan
5 agreement, correct?

6 A That's correct.

7 Q If you could please turn to page 4. What's the title of
8 page 4?

9 A "Agreement and Risk Disclosures."

10 Q You testified on direct that you drafted this agreement
11 and risk disclosure, correct?

12 A Correct.

13 Q And you also noted that you created what you called a
14 legalese paragraph. You know which paragraph you were
15 referring to?

16 A Say that again. Which paragraph?

17 Q Yes, sir. You said that you created a legalese
18 paragraph?

19 A Yes.

20 Q Which one was that?

21 A I believe it's Paragraph 3.

22 Q Paragraph 3 is entitled "Use of Funds," correct?

23 A Yes.

24 Q And it lists all the variety of ways that the lender is
25 allowing and agreeing for their funds to be used; is that

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 correct?

2 A Yes.

3 Q And included in those uses of the loan are, for example,
4 the sale of foreign exchange products, correct?

5 A Yes.

6 Q The security or commodities?

7 A Yes.

8 Q Exchange or off-exchange products?

9 A Yes.

10 Q The purchase or sale of any businesses, assets, or
11 liabilities?

12 A Yes.

13 Q The purchase or sale of any real estate, correct?

14 A Yes.

15 Q Or for any other purpose including any general company
16 use or payment?

17 A Yes.

18 Q Any company payment or loans to any company affiliate?

19 A Yes.

20 Q Officer, employee, or third party?

21 A Yes.

22 Q Any company indebtedness or other company obligations,
23 correct?

24 A That's correct.

25 Q I believe you testified, I don't think people will sign

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 this. It's egregious at best?

2 A That's correct.

3 Q Why would it be egregious to tell the lender all the ways
4 that you intend to use their money?

5 A Well, if you present this to an average investor and you
6 say that I will ask you to sign an unsecured note where you
7 will loan me money and I can do anything I want with it, there
8 has to be a reason that the lender would agree to do that.

9 Q These were not being presented to average investors.
10 They were being presented to possible lenders.

11 A Possible?

12 Q Lenders. They were loaning their money.

13 A Well, I assume an investor who wants to make money from
14 it, yes.

15 Q The lender is going to read this document, correct?

16 A Yes.

17 Q And in reading this document, isn't it demonstrating to
18 the lender all of the ways that the company intends to use its
19 money?

20 A Possibly.

21 Q And how it -- well, not possibly. You wrote this,
22 correct?

23 A Yes. Possibly, yeah.

24 Q Would you agree that Paragraph 3, "Use of Funds," sets
25 out all of the ways that the Oasis International Group can use

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 lenders' money?

2 A Perhaps, yeah.

3 Q But this is the agreement and risk disclosure that you
4 drafted, correct?

5 A Correct.

6 Q And in exchange for the understanding that that's how the
7 lenders' money can be used by OIG, the lender also knows that
8 he or she is going to get at least 12 percent in interest
9 every year based on that loan, correct?

10 A That or the greater of the other number that we
11 discussed, yes.

12 Q And would you agree that that's a greater percentage that
13 that lender could earn than if that person put their money in
14 a bank account?

15 A Yes.

16 Q Or a three-month CD?

17 A Yes.

18 Q When this agreement was created, you would agree it
19 superseded any other agreement that a lender may have had with
20 OIG prior to this agreement, correct?

21 A Yes.

22 Q On direct testimony you talked about a number of
23 businesses that OIG was involved in. For example, you talked
24 about Mirror Images [sic]?

25 A Yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q And you explained that this was a product where you would
2 be able to put an advertisement on a mirror, for example, in
3 men's or women's bathrooms?

4 A Yes.

5 Q And the point of this transaction that you were trying to
6 have with the company is that OIG would have had 51 percent of
7 Mirror Images. They would have had the equity, 51 percent in
8 that company?

9 A Mirror Innovations, yes, I believe so.

10 Q Mirror Innovations. And you also testified it never came
11 to fruition because OIG was closed on April 18 --

12 A That is correct.

13 Q -- 2019, correct?

14 A Yes.

15 Q Some of the business opportunities that OIG sought were
16 not just in the United States. They were also outside of the
17 United States, correct?

18 A Yes.

19 Q And those were business opportunities that you could
20 create based on your prior experience working as a businessman
21 in the financial community, correct?

22 A Yes.

23 Q You testified to one of those examples being a trip that
24 you took to China?

25 A Yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q Even though it didn't turn into a business opportunity
2 for OIG, it was an example of the efforts that OIG was making
3 to create other business opportunities, correct?

4 A Yes.

5 Q Did you travel to other countries in your experience
6 before coming to OIG in trying to develop business
7 opportunities for your clients or for your firm?

8 A Yes.

9 Q And did you -- I believe you testified you went
10 internationally, for example, to Asia; is that correct?

11 A Yes.

12 Q Latin America?

13 A No.

14 Q Russia?

15 A Yes.

16 Q And in traveling to Russia, it's true that you met
17 Vladimir Putin?

18 A Yes.

19 Q And you received a piece of jewelry that was inscribed
20 from him?

21 A Yes.

22 Q And that was something that you talked about a great deal
23 with other people, correct?

24 A When questioned about it because it was an unusual piece,
25 yes.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Q And it was a watch?

2 A Yes.

3 Q And what did it say?

4 A From the president, something -- it's a Russian
5 inscription. Everyone in the room received one. It wasn't
6 just me, but yes.

7 Q And how many people were in the room?

8 A About a dozen or so.

9 Q But you would agree that's a rare gift to receive,
10 something from somebody who is the head of another country?

11 A Yes.

12 Q In any event, you had this kind of experience to be able
13 to bring business opportunities, if you could, to OIG, right?

14 A Yes.

15 Q And the goal was to make sure that OIG was successful?

16 A Yes.

17 Q Now, just to be clear, this example that we gave about
18 Mr. Putin happened before you were a part of OIG, correct?

19 A Twenty years ago.

20 Q Part of your testimony today when we were talking about
21 lawyers and who you were looking for attorneys for, you
22 mentioned that you were actually looking for attorneys for
23 yourself and your family, correct?

24 A Yes.

25 Q And you were concerned because some of the assets that

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 had been seized belonged to family members other than you,
2 correct?

3 A Yes.

4 Q Mr. Anile, I have given you a copy of what's been marked
5 as Exhibit 153. Admittedly it's very small. Are you able to
6 see it?

7 A I'm sorry. I really can't make this out.

8 Q If I can direct your attention to the very top line, are
9 you able to see where it says "Business Name?" It's actually
10 the second line at the top.

11 A Yes.

12 Q And next to "Business Name," are you able to see what it
13 says?

14 A Bowling Green Capital Management Corp.

15 Q To the left of that it has listed a date. Are you able
16 to see that date?

17 A August 1, 2009.

18 Q Bowling Green Capital Management Corp. is your LLC,
19 correct?

20 A No. This is not Bowling Green Capital Corp. This is a
21 different company.

22 Q Bowling Green Capital Management Corp. --

23 A This was not the entity which I used to be paid. This is
24 a different entity.

25 Q I will move on.

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 MS. IRVIN: Your Honor, may I approach?

2 BY MS. IRVIN:

3 Q Mr. Anile, do you recognize this document.

4 A Excuse me?

5 Q Do you recognize this document?

6 A Yes.

7 Q And what is it?

8 A A Wells Fargo banking statement for my 4064 Founders Club
9 Drive account.

10 Q What are the dates listed on this checking account
11 statement?

12 A Period November 1, 2018, to November 30, '18.

13 MS. IRVIN: Your Honor, we ask to admit Exhibit 155
14 into evidence.

15 MS. BEDKE: No objection.

16 THE COURT: Admitted.

17 (Defendant Exhibit 155 admitted.)

18 BY MS. IRVIN:

19 Q Mr. Anile, I'm going to take you through a couple of
20 these pages, and I will also have it listed on the overhead.
21 Four lines down, are you able to see where it has the date
22 11/2?

23 A Yes.

24 Q Next to that are you able to see where -- are you able to
25 see that this is a wire?

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 A Yes.

2 Q Where is that wire coming from?

3 A Mainstream Fund Services.

4 Q And what is the amount that is being credited to your
5 account?

6 A \$15,000.

7 Q What is that for?

8 A I don't recall.

9 Q What would be the reason that you would be receiving any
10 money from the Mainstream Fund account?

11 A Into this account for costs related to the property
12 located at 4064.

13 Q So this account that you are referring to deals solely
14 with 4064 Founders Club Drive?

15 A That's correct.

16 Q So that means that anything that was associated with 4064
17 Founders Club Drive should be what are the debits in this
18 account, correct?

19 A That's correct.

20 Q So, for example, Frontier online E bill, that's the third
21 line on November 1 for \$260.73, would you agree that that's
22 probably for the phone or Internet that was provided for
23 Founders?

24 A That's correct.

25 Q But if we look to some of the other purchases that are

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 listed on here, I would note, for example, on 11/2 there are
2 two checks, one for 145 and one for 225. Looking at this you
3 don't know what those checks are for, correct?

4 A That's correct.

5 Q Underneath that on 11/5 is a purchase at a Walgreens
6 store. Any reason why a purchase at Walgreens for \$232 would
7 be related to some need from Founders Club Drive?

8 A I have no idea.

9 Q Please turn to the second page. I apologize. There is a
10 second deposit that I want to address on page 1 for 11/7. Do
11 you see that there is another wire transfer --

12 A Yes.

13 Q -- on 11/7, and that's for \$17,500?

14 A That's correct.

15 Q And what is that for?

16 A I have no idea.

17 Q Again this is a statement that is only for one month,
18 November 1 of 2018, to November 30, 2018, correct?

19 A That is correct.

20 Q Would you agree that this \$15,000 statement -- or excuse
21 me -- \$15,000 deposit was for -- what you believe to be was
22 salary that you earned or that you were owed from OIG?

23 A No, not in connection with the 4064 account. That would
24 have gone into Bowling Green Capital Corp.

25 Q This is a wire that you would have had go into this

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Founders Club account because you were the only signatory to
2 the Mainstream account, correct?

3 A That's correct, yes.

4 Q And that's the same thing for the \$17,500 credit as well.
5 That would have been a wire that you would have sent to
6 yourself from the Mainstream account, correct?

7 A Yes.

8 Q You can now turn to page 2. Eight days later on
9 November 9 -- excuse me -- November 13, there's an additional
10 wire for \$20,000 deposited into this account by you, correct?

11 A That's correct.

12 Q And what was that for?

13 A I have no idea.

14 Q Look at the very top line where it says "11/8,
15 Northwestern MU Request." It shows the name Maryann E. Anile.
16 Do you see that?

17 A Yes.

18 Q And it shows a debit for \$1,448.31, correct?

19 A That's correct.

20 Q What is that for?

21 A Northwestern Mutual is an insurance company. I have no
22 idea what it's related to.

23 Q Who is Maryann Anile?

24 A My wife.

25 Q There is a Northwestern debit that is coming out of the

CROSS-EXAMINATION OF JOSEPH SALVATORE ANILE, II

1 Founders Club bank account; is that correct?

2 A That's correct.

3 Q Please turn to page 5 of the document. On 11/27 do you
4 see the wire transfer from the Mainstream account here?

5 A Yes.

6 Q It is for \$32,500?

7 A Yes.

8 Q And that's a wire that you made from the Mainstream Fund
9 to this account?

10 A Yes.

11 Q And what was the purpose of that?

12 A I do not know.

13 Q Again, the Mainstream account, the Mainstream Fund
14 account that we are referring to, you were the only signatory
15 to that Mainstream Fund account, correct?

16 A I wasn't exactly a signatory. I was the one who always
17 communicated with Mike Nolan.

18 Q You were the only one who had authority to be able to
19 wire funds out of the Mainstream account, correct?

20 A Michael had authority but he didn't use it, yes.

21 Q So therefore, you were the only one who wired money out
22 of the Mainstream Fund account in 2018, correct?

23 A Yes.

24 Q Who had access other than you to this Wells Fargo
25 Business Choice checking account?

REDIRECT EXAMINATION OF JOSEPH S. ANILE, II

1 A Maryann, my wife.

2 Q Mr. Anile, your wife, Maryann Anile, was not an employee
3 of OIG; is that correct?

4 A Correct.

5 Q And just to reiterate your earlier testimony today, you
6 have no expectation of getting any kind of credit for your
7 testimony towards your sentence today by your testimony?

8 A Contractually that's correct.

9 MS. IRVIN: Thank you.

10 No further questions, Your Honor.

11 THE COURT: All right. Redirect, please.

12 **REDIRECT EXAMINATION**

13 BY MS. BEDKE:

14 Q Mr. Anile, did you get a lot of money out of OIG at the
15 lenders' expense?

16 A Yes.

17 Q Did you live in a lovely house?

18 A Yes.

19 Q At the lenders' expense?

20 A Yes.

21 Q Did you drive a Maserati and then a Ferrari at the
22 lenders' expense?

23 A Yes.

24 Q And did your family members drive Mercedes and other nice
25 vehicles?

REDIRECT EXAMINATION OF JOSEPH S. ANILE, II

1 A Yes.

2 Q At the lenders' expense?

3 A Yes.

4 Q Who else did?

5 A Who else did in my family?

6 Q Who else lived a lavish lifestyle at the lenders'
7 expense?

8 A Mr. DaCorta and his family.

9 Q Ms. Irvin asked you some questions about the businesses
10 that OIG used lender money to try and pursue. Do you recall
11 those questions?

12 A (Witness nods head.)

13 Q Did any of those business interests, those endeavors,
14 generate any money back into OIG for the benefit of the
15 lenders?

16 A No.

17 Q Did any of the real estate into which lender money was
18 placed generate any money back to the OIG account for the
19 lenders' benefit?

20 A No.

21 Q Did any of the silver positions that the defendant took
22 generate any money that landed back in the OIG account for the
23 lenders' benefit?

24 A No.

25 Q So is it true that this conversation about other

REDIRECT EXAMINATION OF JOSEPH S. ANILE, II

1 investments making up the principal, was that an empty
2 promise?

3 A Yes.

4 Q Did you ever tell the lenders it was an empty promise?

5 A No.

6 Q Did the defendant ever tell the lenders it was an empty
7 promise?

8 A No.

9 Q Ms. Irvin also asked you some questions about why this
10 operation was domiciled offshore. Do you recall those
11 questions?

12 A Yes.

13 Q And whose idea was that in this case?

14 A Ms. DaCorta and Mr. Drohan.

15 Q You were also asked about two conversations that you had
16 with the defendant. Do you recall that line of questioning?

17 A Please repeat that. I'm sorry.

18 Q Ms. Irvin asked you two questions. Let me rephrase.

19 Ms. Irvin asked you about two conversations that you had with
20 the defendant. Do you recall that?

21 A Yes.

22 Q One was a conversation that you had with your brother,
23 Frank Anile, correct?

24 A (Witness nods head.)

25 Q Did that lead you to address the defendant about the

REDIRECT EXAMINATION OF JOSEPH S. ANILE, II

1 issue?

2 A Yes.

3 Q And what did you tell the defendant?

4 A I told him that he altered, intentionally altered a
5 client's statement and that he shouldn't have.

6 Q And what did he say?

7 A He agreed, and he said he wouldn't do it anymore.

8 Q And you were asked about the conversation you had with
9 the defendant concerning the \$4 million gap. Do you recall
10 that?

11 A Yes.

12 Q When was that conversation, to the best of your
13 recollection?

14 A February 17.

15 Q And did you and the defendant agree not to tell anyone
16 about that gap?

17 A Yes.

18 Q But there was another conversation about a gap, correct?

19 A We didn't call the second one a gap. That was just a
20 conversation.

21 Q What did the defendant call it?

22 A He didn't call it anything. The seven and a half to \$15
23 million one?

24 Q Yes, sir. What was it called?

25 A We didn't -- we didn't title that.

REDIRECT EXAMINATION OF JOSEPH S. ANILE, II

1 Q Well, it was seven and a half to \$15 million in losses;
2 is that right?

3 A That's correct.

4 Q That resulted from what?

5 A Mr. DaCorta's trading.

6 Q Is that what he told you?

7 A Yes.

8 Q Did you tell anyone about it?

9 A No.

10 Q Why?

11 A We agreed that we would try and have it verified and
12 figure out exactly what was missing. That was just way too
13 large of a gap between the numbers in my opinion.

14 Q So you agreed to keep the lenders in the dark?

15 A Yes.

16 Q There were a lot of questions about these recorded calls,
17 correct?

18 A Yes.

19 Q Who decided to make those recorded calls after the
20 search, the searches that occurred on April 18 of 2019?

21 A Who decided to make the recorded calls?

22 Q Yes, sir.

23 A I did.

24 Q Did the government ask you to make those recorded calls?

25 A No.

REDIRECT EXAMINATION OF JOSEPH S. ANILE, II

1 Q Did the government direct you to make those recorded
2 calls?

3 A No.

4 Q Did the government know that you were making the recorded
5 calls when you did so?

6 A No.

7 Q Were you cooperating with the government at that time?

8 A No.

9 Q Why did you make the calls?

10 A Trying to ascertain my position, figure out what was
11 going on and see who was saying what to whom.

12 Q Were you truthful in your conversations on those recorded
13 calls?

14 A No.

15 Q Why?

16 A Well, I was testing the water to see who was saying what.
17 And I wanted to verify whether or not Mr. DaCorta confessed to
18 the government, that sort of thing.

19 Q In those calls, did you ever hear the defendant say he
20 did not do anything wrong?

21 A He said that, yes, in the calls.

22 Q What did he say?

23 A He did not do anything wrong.

24 Q Did he say he didn't do anything wrong or that he didn't
25 confess?

REDIRECT EXAMINATION OF JOSEPH S. ANILE, II

1 A Well, he didn't confess.

2 Q Did he ever say he didn't do anything wrong?

3 A I don't recall.

4 Q During one of the calls, I believe it was Exhibit 179,
5 you said John Caliendo has been on the job three or four
6 months. Do you recall that?

7 A Yes.

8 Q Why was John Caliendo on the job at that time?

9 A To audit the books, figure out what was going on.

10 Q What precipitated John Caliendo being called in to do the
11 job?

12 A The conversation in the early fall of '18.

13 Q Which conversation?

14 A That I had with Michael regarding the seven and a half to
15 \$15 million loss.

16 Q Now, did you meet with law enforcement after these
17 recorded calls had been made?

18 A Yes.

19 Q Now, this is excluding the time that you were interviewed
20 on the day of the search, correct?

21 A Yes.

22 Q You met again. And was that on or about May 2 of 2019?

23 A Yes.

24 Q And approximately how long then after the calls did you
25 have that meeting?

REDIRECT EXAMINATION OF JOSEPH S. ANILE, II

1 A About five, six days after the calls had all ended, yeah.

2 Q Are you familiar with the term "proffer letter"?

3 A Yes.

4 Q What is a proffer letter?

5 A It was an agreement that was executed between the
6 government and I regarding certain terms and conditions
7 pursuant to which I would confess to the government if I had
8 any information to say. And I think the vernacular used by
9 the government is you become a queen for the day. You can say
10 whatever you want freely. The information that I provide
11 cannot be used against me. However, the government can use
12 information independently obtained by them in connection with
13 charging the crimes.

14 Q And did you meet with the government on May 2, 2019,
15 pursuant to a proffer letter?

16 A Yes, I did.

17 Q Did you confess?

18 A Yes, I did.

19 Q Is that when you told law enforcement about these calls
20 that you had made, the recorded calls?

21 A Yes.

22 Q And was it after that proffer session that you began to
23 cooperate?

24 A That's correct.

25 Q And ultimately did you plead guilty?

REDIRECT EXAMINATION OF JOSEPH S. ANILE, II

1 A Yes.

2 Q Approximately when?

3 A I think it was October of that year.

4 Q 2019?

5 A Yes. Maybe September. Maybe August.

6 Q Late summer or early fall?

7 A Late summer or early fall the same year, yes.

8 Q What did you plead guilty to?

9 A Conspiracy, money laundering, filing a false tax return.

10 Q Pardon me? What was the last one?

11 A Filing a false tax return.

12 Q Did you plead guilty pursuant to a plea agreement with
13 the government?

14 A Yes.

15 Q Did you agree pursuant to that plea agreement to
16 cooperate with the government in its ongoing investigation?

17 A Yes.

18 Q What does that mean to you? What were you required to
19 do?

20 A I have to cooperate. I have to provide information. I
21 have to, if called upon to testify, I have to do it truthfully
22 and honestly. I have to not only be forthcoming, the
23 information hopefully is reliable. The nature -- depending
24 upon the nature and extent of the information and its
25 timeliness and usefulness to the government, the government

REDIRECT EXAMINATION OF JOSEPH S. ANILE, II

1 would consider perhaps helping me.

2 Q Do you understand, Mr. Anile, that the government may
3 file a Rule 35 motion on your behalf notwithstanding the fact
4 that it's been more than a year since you were sentenced --

5 A I was told that today.

6 Q Pardon me -- if the government deems it appropriate to do
7 so?

8 A I was informed that today. I do not know. Contractually
9 it does not say that, but I was informed by defense counsel
10 that I was.

11 Q Do you hope that the government will file a Rule 35
12 motion on your behalf?

13 A If it's possible, absolutely.

14 Q Why?

15 A I did everything I could in my power to help the
16 government, to actually help the victims, the people who lost
17 their money. That's why I started cooperating in the first
18 place. If the government sees fit to help me, I'd appreciate
19 it.

20 Q If the government does file a motion on your behalf, is
21 the Court bound to follow the government's recommendation?

22 A No.

23 Q What happens if you are not 100 percent truthful?

24 A The agreement -- the agreements that I have signed with
25 the government are voided with respect to the government but

REDIRECT EXAMINATION OF JOSEPH S. ANILE, II

1 not with respect to me. I will be automatically charged with
2 perjury and obstruction. Additional enhancements for the
3 charges and other charges for things that may have occurred
4 will be added to them. I will still be bound to the
5 agreement, however. And the charges to which I pled guilty
6 will stand. I am not entitled to an appeal. That's pretty
7 much what I recall.

8 Q So Mr. Anile, is there any incentive whatsoever for you
9 to be untruthful in your testimony?

10 A To the contrary. No, there is no incentive whatsoever.

11 Q Has your testimony during this case in this courtroom
12 been truthful?

13 A Absolutely.

14 MS. BEDKE: Nothing further.

15 THE COURT: All right. Well, thank you very much.

16 Do we need to take a moment to get the next witness
17 in here?

18 MS. BEDKE: That would be help helpful, Your Honor.

19 THE COURT: We are going to take about a five-minute
20 break, just quick five-minute break. We will come back at 35
21 after. Thank you.

22 (Recess taken.)

23 THE COURT: Let's swear him in.

24 THE COURTROOM DEPUTY: Can you raise your right hand.

25 (Witness sworn.)

DIRECT EXAMINATION OF ANTHONY CHARLES

1 THE COURTROOM DEPUTY: Can you state your name for
2 the record.

3 THE WITNESS: Anthony Charles.

4 (Jury escorted into the courtroom.)

5 THE COURT: Counsel, we have another witness?

6 MR. MURRAY: Yes, Your Honor. The United States
7 calls Anthony Charles.

8 THE COURT: Yes, sir.

9 MR. MURRAY: Thank you, Your Honor.

10 **ANTHONY CHARLES, CALLED BY THE GOVERNMENT, SWORN**

11 **DIRECT EXAMINATION**

12 BY MR. MURRAY:

13 Q Good afternoon, Mr. Charles. If you could lean in a
14 little bit. The microphone is actually the horizontal bar
15 there.

16 A Thank you.

17 Q You can have a seat.

18 A Oh, sure.

19 Q Mr. Charles, how old are you?

20 A Fifty-seven.

21 Q And I detect an accent. Where were you raised?

22 A Ireland.

23 Q I'm sorry?

24 A I was born in England, but I was raised in Ireland.

25 Q And at a certain point, did you come over to the United

DIRECT EXAMINATION OF ANTHONY CHARLES

1 States?

2 A In 1993 I immigrated to the U.S.

3 Q And tell us about what you did when you first immigrated
4 to the United States. What was your job when you first came
5 here?

6 A I got into the carpenter's union. I was a carpenter in
7 Europe before I came here. And I got into the carpenter's
8 union. That was primarily my job, yes. I did a number of
9 different construction projects. I built homes for myself. I
10 was a carpenter, always a carpenter.

11 Q And did you eventually gain legal status in the United
12 States?

13 A I came here with legal status.

14 Q If you could, is it possible to get a little bit closer?

15 Thank you.

16 A Yes. I came here to the United States with legal status.

17 Q And did you naturalize at some point?

18 A Yes. Yes. I got a Donnelly visa when I went to the U.S.

19 Q Did you remain in the industry, in the carpentry industry
20 for your job?

21 A Yes, I did.

22 Q And so how long have you done that for?

23 A A total of 37 years.

24 Q And where do you currently live?

25 A Yonkers, Westchester, New York.

DIRECT EXAMINATION OF ANTHONY CHARLES

1 Q How long have you lived there?

2 A Thirteen years.

3 Q Are you married?

4 A Yes, I am.

5 Q Do you have children?

6 A Yes, I do.

7 Q How old are your children?

8 A I have a 10-year-old boy, a 13-year-old girl, and a
9 16-year-old girl.

10 Q Are you currently employed?

11 A Retired.

12 Q Why did you retire?

13 A I have herniated discs in my lower back.

14 Q Mr. Charles, are you familiar with a company or
15 investment opportunity called Oasis?

16 A Yes, I am.

17 Q Are you familiar with an individual named Michael
18 DaCorta?

19 A Yes, I am.

20 Q Is he here in the courtroom today?

21 A Yes, he is.

22 Q How did you first become familiar with Mr. DaCorta?

23 A I was introduced to Ambit Energy by a gentleman by the
24 name of Michael Moran. He's also an Irish guy I got to know,
25 close to where I live, and then he introduced me where to pay

DIRECT EXAMINATION OF ANTHONY CHARLES

1 our utility bills at, and he suggested that if I were to
2 switch power companies into Ambit Energy, it would be the way
3 to go. So I did.

4 He also came to me then later on. He approached me
5 about a presentation that was going to take place with the
6 Oasis group and would I sit in on it, hear what they have to
7 say.

8 Q And where was that presentation being held?

9 A It was in a hotel, in the conference room of a hotel in
10 Yonkers.

11 Q Did you go?

12 A I did, yes.

13 Q Approximately how many people would you say were there?

14 A Twenty to 30.

15 Q Who was there from Oasis that you recall, if anyone?

16 A Well, at the first point it was just Michael Moran that I
17 knew. I later got to know Mr. DaCorta. He was doing the
18 presentation. I got to know a gentleman by the name of Kevin
19 Kerrigan. I was introduced to those three individuals.

20 Q And you mentioned that Mr. DaCorta was doing a
21 presentation. What was that presentation about?

22 A Oasis, how it works, how revenue is generated.

23 Q And what did Mr. DaCorta say during that presentation
24 about the Oasis opportunity?

25 A As I recall, there was a screen, a projector screen. It

DIRECT EXAMINATION OF ANTHONY CHARLES

1 was a tiered system. If you invested a small amount, there
2 was a 12 percent return guaranteed. How the investments
3 worked, I was a little skeptical initially. How the
4 investments, the safeguards that were in place with Oasis in
5 the event of something going wrong, that it was diversified.
6 It wasn't just in currencies. They had precious metals. They
7 had properties, and it was spread out. Primarily the revenue
8 was generated by currency exchange.

9 Q And so how would you characterize the discussions about
10 the risk involved in the investment opportunity? What was
11 said about the risks?

12 A The risk factor -- and I asked this question many times.
13 I was told, the words were -- I asked what could go wrong.
14 And it was explained that if the world stops trading
15 currencies or we go into World War III, that was the only way
16 this could go negative.

17 Q And you mentioned there was some discussion at the
18 seminar about how the investments were secured. What was
19 explained about how they were secured?

20 A They were also backed by precious metals, gold, silver,
21 and properties.

22 Q Was there any -- did Mr. DaCorta say anything about where
23 those properties are or were?

24 A I believe there were some in the Cayman Islands, in
25 Florida.

DIRECT EXAMINATION OF ANTHONY CHARLES

1 Q How would you characterize Mr. DaCorta's pitch?

2 A Very well presented, confident speaker. He seemed to
3 know what it was he was dealing with. I asked what I
4 considered difficult questions. He gave me all the right
5 answers. He was very well presented.

6 Q Was he convincing?

7 A Absolutely.

8 Q Now, did you have a chance to speak with him one on one
9 at the seminar in the hotel?

10 A Not at that point. I did later at a second meeting.

11 Q Now, after the seminar presentation, did you invest at
12 that point?

13 A No. I was still a little on the fence about -- I've gone
14 to many presentations, seminars, and I was still on the fence.
15 I wasn't convinced that it was -- it was too good to be true.
16 It was a really convincing story.

17 Q So after the hotel seminar, did you go to any other Oasis
18 events or presentations?

19 A Yes. The same gentleman, Michael Moran, approached me.
20 And he said, listen, we're going to do another presentation at
21 a different location. Do you want to come? I says
22 absolutely. I wanted a second opinion. There were a lot of
23 gray areas. I wanted to direct questions.

24 Q And how long after the hotel presentation was that second
25 meeting?

DIRECT EXAMINATION OF ANTHONY CHARLES

1 A I would say about a month later.

2 Q And where was that it?

3 A It was in a restaurant, bar/restaurant called the
4 Rambling House in Bronx, New York, on Katonah Avenue.

5 Q Can you tell the jury what you encountered when you
6 walked in to the second meeting?

7 A Yes. There were approximately -- there were folding
8 chairs set out. There was a projector screen set up. It was
9 quite similar to the first presentation in the Regency Hotel.
10 This time I seen some gentlemen that I was familiar with that
11 were also Irish immigrants, construction workers, Michael
12 Moran the person who introduced me. I seen some familiar
13 faces at the second restaurant.

14 Q Did Mr. DaCorta speak at that meeting as well?

15 A Yes, he did.

16 Q Did you have a chance to ask him questions at that
17 meeting?

18 A Yes, I did.

19 Q What did he say?

20 A Again, I asked questions, what could go wrong? He
21 mentioned that there was 12 percent guaranteed. He surrounded
22 himself with really competent people that knows the industry.
23 He did say he had worked on Wall Street and has experience in
24 how the system works. He sold me on the fact that every time
25 his currency was transferred, whether it went up or down,

DIRECT EXAMINATION OF ANTHONY CHARLES

1 there was a bip or a blip [sic] on the currency. It was a
2 very small percentage, but every time it was traded, there was
3 a commission, a small commission take. And that transfer
4 could happen 8, 12 times a day, and this is how the revenue is
5 generated. And again I asked that question, what could go
6 wrong? And he says nothing could go wrong except people stop
7 trading currencies.

8 Q You mentioned earlier that you had some skepticism
9 initially. Did you ask Mr. DaCorta anything about why other
10 investment firms hadn't figured out this "bip" process to make
11 money?

12 A Yes, I did. That was one of the -- if it sounded so
13 good, why isn't somebody else doing it.

14 Q And what did he say?

15 A He said that the big banks, that most of the profits are
16 being eaten up with corporate executives, midtown Manhattan
17 offices, with their financial advisors, that this is where the
18 commissions are being wasted, that it's better to go direct
19 and cutting out the middleman.

20 Q At that meeting, did you meet anyone else that you kept
21 in touch with after the meeting?

22 A Yes, I did.

23 Q Who was that?

24 A That was Kevin Kerrigan.

25 Q I'm showing you what's already in evidence as Government

DIRECT EXAMINATION OF ANTHONY CHARLES

1 Exhibit 341A, page 8. Do you recognize anyone in this
2 photograph on the screen in front of you?

3 A Yes.

4 Q And who do you recognize?

5 A That's Kevin Kerrigan all the way over on the right with
6 a lady's arm around his shoulder.

7 Q I'm sorry. What's he wearing?

8 A He's wearing a gray jacket. Some lady's got her arm
9 around his shoulder.

10 Q Mr. Charles, after this second meeting, did you decide to
11 invest at that time?

12 A Yes, I did, a small amount. I thought this is, you know,
13 is really good, but I went in with a small investment, yes.

14 Q And roughly how much money was that?

15 A \$10,000.

16 Q How did you structure that investment? Where did you
17 send the money to?

18 A It went through -- Kevin Kerrigan, I believe, transferred
19 it over to Oasis.

20 Q And why did you send the money to Oasis through Kevin
21 Kerrigan?

22 A I was told that there was a tier structure where if it's
23 a smaller amount it pays off 12 percent dividends guaranteed.
24 And once you meet -- if you introduce new people and their
25 amount goes up to or exceeds 100,000, you cut out the middle

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1 management which was Kevin Kerrigan.

2 Q Now, after you sent this money, did you receive any
3 paperwork back from Oasis?

4 A Yes, I did.

5 Q What kind of paperwork?

6 A It was confirmation that the deposit was made.

7 Q Did you receive a promissory note?

8 A No, I did not.

9 Q Did you read every letter of the paperwork that you
10 received back?

11 A No, I did not.

12 Q Why?

13 A My life was in a little bit of turmoil at the time. My
14 wife had just lost a baby. I was holding down three jobs, and
15 I probably read the first page, maybe browsed half of the
16 second page, but I didn't go through them all. I'm a
17 construction worker, and I just read probably the first page
18 and half of the second.

19 Q What did you understand at that time the basic terms of
20 the agreement to be?

21 A That I was guaranteed a 12 percent return on my
22 investment.

23 Q Is that why you ultimately invested?

24 A Yes.

25 Q If you didn't read every letter of that paperwork you

DIRECT EXAMINATION OF ANTHONY CHARLES

1 received back, where did your understanding of the investment
2 opportunity come from?

3 A Sorry. Repeat that question.

4 Q If you did not read every letter of the paperwork, where
5 did your understanding or who gave you your understanding of
6 the investment opportunity? Where did that come from?

7 A It was explained at the seminar.

8 Q Mr. Charles, did you keep in touch with Kevin Kerrigan
9 after this first investment?

10 A Yes, I did.

11 Q Did you monitor that investment over time?

12 A Yes, I did.

13 Q How did it appear to be doing?

14 A It was performing at the rate I was guaranteed. I was
15 getting my dividend. It was performing on target.

16 Q Did you receive any statements from Oasis?

17 A Yes, I did.

18 Q I'm showing you what's been marked as Government Exhibit
19 204C. Do you recognize what I have handed you?

20 A Yes.

21 Q And generally without getting into what it says on the
22 paper, generally what have I handed you?

23 A It's a statement showing the profits that were being
24 generated on my investment.

25 Q And is it a fair and accurate representation of

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1 statements you received from Oasis?

2 A Yes, it is.

3 MR. MURRAY: Your Honor, at this time the government
4 would move for admission of Government's Exhibit 204C.

5 MR. ROSENTHAL: No objection.

6 THE COURT: Admitted.

7 (Government Exhibit 204C admitted.)

8 MR. MURRAY: Can we publish page 3 of 204C?

9 BY MR. MURRAY:

10 Q Mr. Charles, if we could start -- if you can look on your
11 screen, and we can start with the top of this document. What
12 is Kerrigan Management, Inc.?

13 A It was Kevin Carrigan's company. I was an investor so I
14 went through him. This was why I was only getting the
15 12 percent. It was a tiered system, and I had to funnel my
16 10,000 through Kerrigan Management.

17 Q And so how, if at all, does this relate to the structure
18 of the investment that you described earlier?

19 A Repeat it, please.

20 Q Does this reflect the way that your investment in Oasis
21 was structured?

22 A Yes. That's what I was expecting, yes.

23 Q I want to look at the amount here. Well, first, could
24 you read under Kerrigan Management, Inc., can you read what
25 that says in the blue rectangle?

DIRECT EXAMINATION OF ANTHONY CHARLES

1 A "Monthly Interest Statement, December 2014, Limited
2 Partner, Anthony Charles."

3 Q What's under that amount?

4 A It's 10,000 shares. The amount is 10,000 U.S. dollars,
5 and the effective date is August 1, 2014.

6 Q And below that on the right-hand column, what are those
7 numbers?

8 A I took it as the revenue I was generating, the 100 profit
9 that I was generating on my \$10,000 investment.

10 Q If we go to page 2. So this one is from October 2014,
11 but is this essentially the same thing but from a different
12 month?

13 A That is correct, yes.

14 Q And, Mr. Charles, are these the type of statements that
15 you would get that informed your understanding that your
16 investment was performing over time?

17 A Yes. We were on target.

18 Q And that continued forward over the months, correct?

19 A Yes.

20 Q In terms of the statements?

21 A Correct, it did.

22 Q Did you ever meet with Mr. DaCorta again after the
23 restaurant meeting?

24 A Yes, we did.

25 Q What was the purpose of your meeting with him after the

DIRECT EXAMINATION OF ANTHONY CHARLES

1 restaurant meeting?

2 A Kerrigan Investments, I would meet with Kevin Kerrigan
3 occasionally once every three months. We would have a dinner,
4 a bite to eat, and we would just go over the performance. He
5 was encouraging me to go in as a -- instead of a limited
6 partner, I could become like him, that he was gaining
7 20 percent because he had introduced and he had met the
8 100,000 quota and why didn't I want to do this for myself.

9 Q So you wanted to invest more money potentially?

10 A Yes. Where I was getting a higher return, yes.

11 Q So why did you want to speak with Mr. DaCorta?

12 A It was the advice from my wife. She wanted really a
13 second opinion because we were getting into this a lot deeper.
14 I had asked Kevin at my wife's request, you know, I would like
15 to sit down and talk with the person in charge.

16 Q And did you have an opportunity to do that?

17 A Yes, we did.

18 Q Where did that happen?

19 A It happened at my home in Yonkers.

20 Q I want you to tell us about that. Starting at the
21 beginning when Mr. DaCorta arrived, how did he get to your
22 house?

23 A Came to the front door. He was together with Kevin
24 Kerrigan.

25 Q Did he drive? Did he arrive in a car?

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1 A Yes.

2 Q What kind of car; do you recall?

3 A I don't recall. It was a nice car. I don't recall the
4 type.

5 Q What was he wearing?

6 A He was wearing a colored golf shirt. He was well
7 presented. Again, he was suntanned for some reason, clean,
8 and just impressive looking.

9 Q And where within your home did you have this meeting?

10 A We went to the kitchen. I've got an island in the
11 kitchen. So Kevin Kerrigan and Michael DaCorta stayed on the
12 outside of the island. My wife asked if they would like
13 coffee. So we made a couple, two cups of coffee, and we sat
14 down and started to talk.

15 Q How long did you speak for in total?

16 A Twenty -- no. Sorry. Thirty minutes. Thirty, 40
17 minutes.

18 Q What was the topic of your discussion generally speaking?

19 A Initially it was small-talk. My wife -- so there was the
20 two Oasis individuals on one side of the counter. My wife and
21 I sat on the other side of the counter. My wife had a lot of
22 questions that I had already gone through, but I wanted my
23 wife to hear it from Michael DaCorta.

24 Q What, if anything, did Mr. DaCorta say about his
25 background?

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1 A He had experience working on Wall Street for a number of
2 years.

3 Q Did he indicate why left Wall Street?

4 A He seen an opportunity to do it on his own, to understand
5 how the markets work. He seen this opportunity to do it for
6 himself.

7 Q What, if anything, did Mr. DaCorta say about this larger
8 amount that you were considering investing? How was that
9 explained to you? How did that work?

10 A Again, it would have been cutting Kerrigan Management out
11 of it, and I would be going right in as a manager. I would be
12 cutting out the commission. He explained that Kerrigan
13 Management were taking that 8 percent difference between 12
14 and 20 percent. I would be now getting 20 percent on my
15 investments, but it had to be a minimum of 100,000.

16 Q Of how much?

17 A One hundred.

18 Q At any point did you discuss companies that were offshore
19 with respect to Oasis?

20 A Yes.

21 Q And what did Mr. DaCorta say about that?

22 A He said that he had -- he was running the business from,
23 I think it was the Cayman Islands. And the reason for that
24 was there were too many restrictions within the United States,
25 and he had more flexibility and tax advantages of setting up

DIRECT EXAMINATION OF ANTHONY CHARLES

1 in the Cayman Islands.

2 Q And at any point did Mr. DaCorta say that he was
3 effectively banned through a settlement with the National
4 Futures Association from soliciting U.S. investors?

5 A No. If he had of, I would have terminated that.

6 Q He never said that?

7 A No.

8 Q What, if anything, did he say about taxes? Did you
9 discuss taxes?

10 A We did, yes.

11 Q And what did Mr. DaCorta say about that?

12 A One of the advantages of operating from the Cayman
13 Islands, that tax reports would not be submitted to the U.S.
14 authorities. I as a European citizen could pay taxes in
15 Ireland, the United Kingdom, or not at all. That's up to you,
16 but the fact -- the positive sales pitch was the fact that it
17 was being operated outside the United States, that the U.S.
18 does not have tax implications.

19 Q Tax implications for you or for Oasis?

20 A For Oasis.

21 Q Did you discuss your investment goals during that
22 meeting?

23 A Yes, I did.

24 Q And what did you explain your investment goals to be?

25 A I had looked back and I had seen that on paper my

DIRECT EXAMINATION OF ANTHONY CHARLES

1 investments on the 12 percent as a limited partner, they were
2 performing as I expected. This is probably three years later.
3 And on paper I was getting statements that it was. So I had a
4 little bit more confidence in Oasis. And I was -- after
5 selling a property, I wanted to increase my investment to get
6 that 20 percent return.

7 Q And what was the intended use of your money?

8 A I had a two-year-old. My child, I had a two-year-old boy
9 at the time, and it's his college education. And Lucah, my
10 son, was in the house at the time. And I explained this is
11 going to be college tuition for my son when he comes to age.
12 And I did explain that I probably was not going to touch these
13 funds until my son was 18 years old. I wouldn't need access.

14 Q And that was discussed during the meeting?

15 A Yes.

16 Q Did Mr. DaCorta show you anything during that meeting,
17 any materials?

18 A I think he went over the numbers. This is when he's 18
19 years old, so 16 years at 20 percent. By the time Lucah, my
20 son, would be 18 years old, this is the number. It was
21 1.2 million. He says do you think that will be enough? And
22 he says, by the way, that's compound interest as well on top
23 of that. He ran the numbers.

24 Q Was anything else discussed during the meeting as it
25 pertains to Oasis?

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1 A My wife asked quite a few questions, how secure it was.
2 These were questions that I had already asked at the earlier
3 meetings.

4 Q And what did Mr. DaCorta say in response to those
5 questions?

6 A Said, you know what -- similar to the answers he gave
7 me -- worst thing can happen is people stop trading
8 currencies. It doesn't matter whether the currency goes up or
9 down. It's a small percentage and it can't go wrong.

10 Q What did you understand "can't go wrong" to mean?

11 A It was guaranteed.

12 Q Did you decide to invest more money over the 10,000 you
13 had invested after this meeting?

14 A Yes, I did.

15 Q How much?

16 A I needed to meet that goal of 100,000.

17 Q I'm showing you what's been marked as Government
18 Exhibit 204A. Do you recognize what I have handed you?

19 A Yes, I do.

20 Q And what is it?

21 A That was where -- that's my bank account ending with
22 7365.

23 Q Is it a fair and accurate representation of your bank
24 account, of a screen from your bank account?

25 A Yes. This is the wire transfer of the funds, yes.

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1 MR. MURRAY: Your Honor, the government would move
2 into evidence Exhibit 204A.

3 MR. ROSENTHAL: No objection.

4 THE COURT: Admitted.

5 (Government Exhibit 204A admitted.)

6 MR. MURRAY: If we could publish that, please.

7 BY MR. MURRAY:

8 Q And Mr. Charles, if you just take us through this. The
9 checking account ending in 7365, whose checking account is
10 that?

11 A That's my checking account with Chase Bank.

12 Q And to the left of that, where is this wire going to?

13 A Oasis International Group Limited.

14 Q And what's the amount?

15 A It's \$100,000.

16 Q And what's the date on that transfer?

17 A 12/1/2017.

18 Q If we could publish, please, 204E which is an excerpt
19 from Exhibit 9A, and it's already in evidence. If we could
20 highlight the first line there.

21 And can you please just read that across,
22 Mr. Charles?

23 A "December 1, funds transfer. Wire from Anthony Charles
24 or Sandra Feeney Charles on December 1, \$100,000."

25 Q And who is Sandra N. Feeney? Who is that?

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1 A That's my wife.

2 Q And Mr. Charles, that \$100,000, was that your money?

3 A Yes, of course.

4 Q Where did it come from within your family or your estate?

5 A From the sale of a property.

6 Q Why did you decide to invest the second time?

7 A I started to realize that in the United States there are
8 opportunities. It's about having your money working for you
9 instead of you working hard for your money, that there were
10 opportunities here. It's the American dream. This is how
11 finance works. You make proper investments. And I had to
12 look back at the previous three years where the Oasis was
13 performing on target on the dividends. And I thought to
14 myself as an immigrant, these funds are going to be here for
15 my children. They won't have to struggle. I was doing three
16 jobs. I was working with the carpenter's union. I was doing
17 renovations for myself, and I was working for a second
18 construction company. And I thought at this stage in my life
19 it's time to back off working and these are solid investments,
20 and this is a legacy for my children that they won't have to
21 struggle.

22 Q How many hours a week did you work when you first came to
23 the United States?

24 A I was working 40 hours a week with the union. And then I
25 was doing my side jobs, I'd say Saturdays and Sundays.

DIRECT EXAMINATION OF ANTHONY CHARLES

1 Q How many jobs did you have total?

2 A I had three jobs.

3 Q Mr. Charles, after you made that \$100,000 wire in
4 December of 2017, as far as you are aware, how is your
5 investment doing?

6 A It was performing. Yes, it was performing well.

7 Q Did you continue to keep tabs on it?

8 A Yes, I did.

9 Q How did you do that?

10 A There was a portal that we downloaded where we were
11 getting reports from what was called the back office.

12 Q I'm handing you what's been marked for identification
13 purposes as Government Exhibit 204D. Do you recognize what I
14 have handed you?

15 A Yes, I do.

16 Q And what is it?

17 A It's instructions how to access my investments through a
18 portal with Oasis.

19 Q Is it an email?

20 A Yes, it is.

21 Q And is it a fair and accurate representation of an email
22 you received from Oasis?

23 A Yes, it is.

24 MR. MURRAY: Your Honor, the government would move
25 for the admission of Government Exhibit 204D.

DIRECT EXAMINATION OF ANTHONY CHARLES

1 MR. ROSENTHAL: No objection.

2 THE COURT: Admitted.

3 (Government Exhibit 204D admitted.)

4 BY MR. MURRAY:

5 Q And do you recognize any of those emails addresses on the
6 top that's been highlighted on the screen?

7 A Yes, I do.

8 Q And whose are they?

9 A I think Joseph was the person of contact. We had a
10 conversation on the phone as to how to access the portal. And
11 I do notice that that's my wife's handwriting, those numbers
12 that were scribbled at the top right-hand corner.

13 Q Is that your wife's email address there?

14 A Yes, it is.

15 Q Whose email address is nycharley2@yahoo.com?

16 A That's mine. And sandrafeeneycharles@gmail, that's my
17 wife's.

18 Q Did you provide this record to the government at some
19 point?

20 A Yes, I did.

21 Q Mr. Charles, when you made that second investment, did
22 you receive a promissory note for any paperwork back from
23 Oasis for that investment?

24 A Not that I recall.

25 Q When you made that second investment, what were you

DIRECT EXAMINATION OF ANTHONY CHARLES

1 relying on for your understanding of the Oasis opportunity?

2 A I was relying on the reports and the statements coming
3 from the back office.

4 Q And so after that second investment, what was the total
5 amount you had invested, principal, in Oasis?

6 A It totaled 100,000.

7 Q Did you ever take any of the returns indicated on those
8 statements out of Oasis?

9 A No, I did not.

10 Q Why not?

11 A Because it was performing. I was impressed. If it's not
12 broken, don't fix it. It was performing on target.

13 Q So what was your understanding of what was happening with
14 those returns that are indicated on those statements?

15 A That I was generating my 20 percent, and it may have gone
16 above that. But as Michael had said, if it does go above
17 that, it's guaranteed 20 percent. I was happy as it was
18 performing on target.

19 Q Did you ever consider investing even more money above the
20 \$100,000?

21 A Yes, I did and was.

22 Q Tell us about that.

23 A I had set -- I was starting to feel more confident with
24 it. It was performing well on paper. It was way
25 outperforming. I have other investments with JPMorgan, mutual

DIRECT EXAMINATION OF ANTHONY CHARLES

1 funds that were not performing anywhere close to these. I had
2 built a second house, and I was in the process of selling that
3 and transferring those funds into Oasis.

4 Q Did you eventually make any more investments?

5 A No. Oasis stopped trading. I got a call from Kevin
6 Kerrigan who was really my contact to say that the federal
7 government has stopped trading, moved in on Oasis, and it
8 doesn't look good.

9 Q And is that why you didn't reinvest more money?

10 A The property was not sold at this point. It was in the
11 process of being sold. I was going to go in a lot deeper.
12 The proceeds of that property, that's what I had intended, but
13 in the meantime the feds stopped Oasis from trading.

14 Q Mr. Charles, has this impacted your life?

15 A Yes.

16 Q How?

17 A I had no intentions of my son going to public school. I
18 wanted him to get a good education. Financially I'm not in a
19 position right now to do that. I came to this country. I
20 struggled. I want my next generation to succeed and have that
21 American dream.

22 As a result of what's happened, financially I'm
23 impacted, put me back years. And in ways I'm grateful in the
24 fact that I didn't introduce other family members to it
25 because I can live with what has happened. I put it down to

DIRECT EXAMINATION OF ANTHONY CHARLES

1 experience. It was a bad experience. Had I done it to
2 somebody else, a family member, which we were encouraged to do
3 to take in members and set myself up as Kevin Kerrigan had and
4 I would also be generating extra revenue. I can live with
5 what has happened. Unfortunately, my kids will suffer through
6 education, that I can't send them to the schools that they
7 need to go, that they want to go.

8 Q Has it impacted your wife in any way?

9 A Yes.

10 Q How?

11 A She's had to go back to work. She was a stay-at-home
12 mom. Now she has had to go back to work.

13 Q You mentioned other individuals. Did you ever encourage
14 other individuals to invest in Oasis?

15 A Yes, I did.

16 Q Who?

17 A My brother, for one, and another colleague who he has a
18 construction company. I spoke it over with them and I
19 explained how the money was generated. It's just currency.
20 As long as currency is just moving and transferred, it's a
21 really sound, secure investment and is performing on target
22 with me. Fortunately my brother didn't have the money to get
23 in. And that was a blessing when I look back.

24 MR. MURRAY: No further questions, Your Honor.

25 THE COURT: All right. Cross, please.

CROSS-EXAMINATION OF ANTHONY CHARLES

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CROSS-EXAMINATION

BY MR. ROSENTHAL:

Q Good afternoon, Mr. Charles.

A Good afternoon.

Q Sir, you indicated that you spent your working life in the construction industry?

A That's correct.

Q And what was your last position in the construction industry before you retired?

A A carpenter.

Q You had indicated you are now retired; is that correct?

A That is correct, yes.

Q And when did you retire?

A 2020.

Q I'm sorry?

A 2020.

Q 2020, all right. So you were already retired as of September 22 of 2021?

A Yes.

Q Now, as I understand your testimony, you only met Mr. DaCorta or you came in contact with Mr. DaCorta three times, correct?

A Yes.

Q And the first two would have been back in 2014?

A That's right.

CROSS-EXAMINATION OF ANTHONY CHARLES

1 Q And these were not one-on-one meetings, correct?

2 A No. The initial two were group meetings.

3 Q You listened to presentations?

4 A Correct.

5 Q It was only after the second one that you decided that
6 you wish to invest?

7 A That's right.

8 Q From 2014 to 2017, would it be correct to say that your
9 point of contact was Kevin Kerrigan?

10 A Yes, that's right.

11 Q And it was your belief that Mr. Kerrigan was receiving a
12 commission?

13 A Yes, that's right.

14 Q And you also -- and Mr. Kerrigan was the individual that
15 was encouraging you to make the commitment the second time,
16 correct?

17 A To increase my investment, yes.

18 Q And Mr. Kerrigan was the individual that set up the
19 meeting with Mr. DaCorta in 2017, correct?

20 A That's right, yes.

21 Q And it was Mr. Kerrigan that was encouraging you to make
22 an additional commitment, correct?

23 A Yes.

24 Q And Mr. Kerrigan was the individual that brought
25 Mr. DaCorta to your home, correct, in 2017?

CROSS-EXAMINATION OF ANTHONY CHARLES

1 A He would have been. Yes, that's right.

2 Q Now, you said that you had originally come in contact
3 with Mr. DaCorta at an Ambit Energy meeting or an Ambit Energy
4 presentation?

5 A I don't recall was it Ambit Energy or was it through --
6 yes, I think it was, as far as I recall.

7 Q And was Ambit Energy something you were looking to become
8 involved with?

9 A Not really, no. You know what, if you save 1 percent or
10 you had some sort of -- I talked to myself. If it's 1 percent
11 it's better in my pocket than somebody else's. And I was also
12 doing -- Michael Moran was the person who introduced me to
13 Ambit Energy. I was doing him a favor. If it means
14 transferring my electricity bill to Ambit Energy and I save a
15 couple bucks, that's fine.

16 Q So your -- although you didn't -- did you ever get
17 involved with Ambit Energy?

18 A No, but I did transfer my bills over to Ambit Energy.

19 Q But your purpose in going there was to earn a little bit
20 of extra money, correct?

21 A At that stage in my life I had wanted to -- I have worked
22 damn hard all my life, and I was in a transition. I wanted my
23 investments to start working for me so I could retire.

24 Q And so you invested the original \$10,000 with Oasis,
25 correct?

CROSS-EXAMINATION OF ANTHONY CHARLES

1 A That's right, yes.

2 Q And you said that you received some kind of paperwork
3 back?

4 A Back from?

5 Q When you first invested the \$10,000.

6 A Yes, I did.

7 Q And that was a -- I think you had told, you had said in
8 cross-examination [sic] that you didn't really read that
9 paperwork for various reasons?

10 A That's right.

11 Q And do you recall if -- do you recall what the paperwork
12 was? If you don't, it's fine.

13 A It was an acknowledgement that the funds had been
14 transferred.

15 Q Would it be safe to say that wasn't something you kept
16 over the years, that paperwork?

17 A I don't -- I may have it in the attic, in my house
18 somewhere, but I don't recall where it is.

19 Q It's not something you produced to the government here?

20 A No.

21 Q And do you recall if the original paperwork you received
22 was basically from Kerrigan Management or was it from Oasis,
23 if you remember?

24 A I don't recall.

25 Q So it may have been from Kerrigan Management?

CROSS-EXAMINATION OF ANTHONY CHARLES

1 A Like I said, I don't recall.

2 Q And basically the returns you were getting, according to
3 the document received, was just a hundred dollars per month
4 basically?

5 A That's correct.

6 Q And that would have been your 12 percent?

7 A Yes. Twelve months at 100 per month, yes.

8 Q So the statements that you were getting from 2014 forward
9 until 2017, all of those statements were from Kerrigan
10 Management, correct?

11 A Yes.

12 Q You weren't getting statements from Oasis, correct?

13 A Not at that point, no.

14 Q And you didn't have any contact after that with
15 Mr. DaCorta until 2017, correct?

16 A Until 2017, that's correct.

17 Q Did you ever listen to conference calls that were set up
18 by Oasis?

19 A I think I did.

20 Q And do you remember would that have been on one occasion
21 or more than one occasion?

22 A On one occasion.

23 Q And do you remember generally when that would have been
24 with respect to the time you initially invested?

25 A When I had met Kevin Kerrigan on one occasion for lunch,

CROSS-EXAMINATION OF ANTHONY CHARLES

1 he had his iPad with him, and he showed me. He logged in to
2 his portal and he showed me his statements as to where his
3 investments -- how his investments were performing from the
4 back office. He logged in in front of me. He was encouraging
5 me to get in other people. I was impressed with the
6 performance.

7 Q And so when you listened to the one conference call you
8 listened to, would that have been about the time that you made
9 your second financial commitment?

10 A It was prior to making my second.

11 Q And what was -- in the conference call, was the structure
12 of the company laid out for you?

13 A Yes, it was.

14 Q Was there any reference to the company attorney?

15 A Say that again, please.

16 Q Was there any reference to who did the legal work for
17 Oasis?

18 A Other than he had a team. It was mentioned that there
19 was a competent team running the Oasis Management. It might
20 have been Mr. Haas or Hase.

21 Q Did you ever hear the name of Joe Anile, Joseph Anile?

22 A Yes, I have heard that name somewhere.

23 Q And do you know when you heard that name?

24 A No, I don't recall, but it's familiar.

25 Q So you don't recall whether Mr. Anile had been identified

CROSS-EXAMINATION OF ANTHONY CHARLES

1 as the attorney for Oasis?

2 A I don't recall.

3 Q Now, the only one-on-one meeting with Mr. DaCorta would
4 have been before you made your second commitment at the end of
5 2017, correct?

6 A Ask that question again, please.

7 Q Your only face-to-face meeting with Mr. DaCorta -- I'm
8 sorry -- one-on-one meeting would have been before you made
9 your investment in 2017, correct, or you made your loan in
10 2017?

11 A Yes, yes. In my home, yes.

12 Q And that was the only time that you sat down face to face
13 with Mr. DaCorta?

14 A Other than at the meetings where it was a group meeting.

15 Q Right. This was the only one-on-one?

16 A It was the only one-on-one, yes.

17 Q And Mr. DaCorta advised you that the way that Oasis earns
18 its funds is it takes a small amount of commission on each
19 transaction, correct?

20 A That's right.

21 Q I think you used the term "blip"?

22 A Yes, that's right.

23 Q And do you recall -- now, this was not a concept you were
24 familiar with, was it?

25 A No, but it did make sense. It was explained.

CROSS-EXAMINATION OF ANTHONY CHARLES

1 Q Do you recall if the word "spread" was used?

2 A Yes, I do.

3 Q So Mr. DaCorta used the word "spread" with you in this
4 meeting, correct?

5 A Yes.

6 Q And you asked -- I think you commented that, well, if
7 this is so easy, why don't the big companies use it or the big
8 banks use it?

9 A Yes.

10 Q Do you know that they don't?

11 A Say that again, please.

12 Q Do you know that they don't?

13 A I know that they don't, yes.

14 Q You know that they do not?

15 A The big banks don't do this type of trading.

16 Q You know that -- how is it you know that?

17 A Are you asking me that question? Do I know?

18 Q Let me start over again. You said that in a
19 conversation with Mr. DaCorta about the -- that if this is
20 such a good strategy, why don't the big banks do it, correct?

21 A Yes.

22 Q My question to you is, do you know for sure that big
23 banks don't do this?

24 A I don't know either way.

25 Q Now, when you made the -- you had indicated that when you

CROSS-EXAMINATION OF ANTHONY CHARLES

1 made the second investment, the larger investment or the
2 larger loan, that you don't recall if you received any
3 paperwork?

4 A I did recall, yeah. I did get some paperwork, yes.

5 Q Okay. That would have been a promissory note?

6 A The term "promissory note" keeps coming out. I honestly
7 don't know what a promissory note is.

8 Q Do you remember receiving a document that said
9 "Promissory Note and Loan Agreement"?

10 A I don't recall seeing a document called "Promissory
11 Note." It may have been in that pile. Like I said, I read
12 the first page and half of the second.

13 Q I'm talking now about the paperwork you would have
14 received the second time, not the first time.

15 A Yes. I understand.

16 Q You said you don't remember what paperwork it was that
17 you received?

18 A I don't know if there was a promissory note. I don't
19 know what a promissory note looks like. Is it a legal
20 document? A certificate? I don't know.

21 Q Well, did you receive a document back that was signed by
22 somebody with Oasis?

23 A Yes, I believe I did.

24 Q And as you sit here today, you don't recall what that
25 document was?

CROSS-EXAMINATION OF ANTHONY CHARLES

1 A It's an acknowledgment, an acknowledgment that there was
2 a hundred thousand invested with Oasis.

3 Q You have signed other contracts in your life, haven't
4 you?

5 A Yes, I have.

6 Q You purchased properties?

7 A Yes.

8 Q Purchased your home?

9 A Yes, sir.

10 Q You say you have other investments as well?

11 A Yes.

12 Q Correct?

13 A Yes.

14 Q You have rental properties?

15 A Yes.

16 Q And in each of those arrangements you would have signed a
17 contract?

18 A Yes.

19 Q You also mentioned that you had gone to the portal, the
20 back office portal, correct?

21 A My wife has, yes.

22 Q And you have not?

23 A Beg your pardon?

24 Q You have not gone to it yourself?

25 A I'm pretty illiterate on computers. My wife does that.

CROSS-EXAMINATION OF ANTHONY CHARLES

1 Q Did you ever look at what your wife had brought up?

2 A On the screen I did, yes, when she had access to it.

3 Q So you had seen what was on, what came up on the screen?

4 A Yes, I had.

5 Q And since you have been involved in contracts in the
6 past, would it be fair to say that you read the documents that
7 were on the screen?

8 A Yes.

9 Q Now, you made the statement that you have been told that
10 you were guaranteed 20 percent?

11 A Right.

12 Q Isn't it correct that the document that you received said
13 that there was a minimum 12 percent guaranteed or 25 percent
14 of the transaction fee?

15 A I don't recall. I would have to see the document.

16 Q And, Mr. Charles, you have met with agents by telephone
17 back in September 22 of 2021, correct? You had a telephone
18 conference with two agents that were involved in this case?

19 A On what date?

20 Q September 22 of 2021.

21 A I don't know what I was doing on a particular day in
22 2021.

23 Q Okay. Well, do you remember -- I'm sorry. Go ahead.

24 A Where is this leading? I know that I did have a
25 conversation to try and gain access to the portal, to see how

CROSS-EXAMINATION OF ANTHONY CHARLES

1 to download the portal to see how my investments were
2 performing.

3 Q Okay, but I will come back to that. But what I'm asking
4 about now is, isn't it correct that you had a telephone
5 conference on September 22 of 2021 with two law enforcement
6 investigators in this case?

7 A What date is that again?

8 Q September 22 of 2021. And I'm not asking if you recall
9 the exact date, but do you recall having a telephone
10 conversation with two law enforcement officers that were
11 involved in the investigation in this case?

12 A I don't recall.

13 MR. ROSENTHAL: Your Honor, may I approach the
14 witness?

15 THE COURT: Of course.

16 BY MR. ROSENTHAL:

17 Q And I'm going to show you a document, sir, that reports
18 to be a memorandum. I want to ask you if that refreshes your
19 recollection as to whether you spoke to agents by phone on
20 September 22 of 2021. Just look at the top.

21 A Okay. Thank you.

22 Q Does that refresh your recollection that you did in fact
23 have a telephone conference with two agents investigating this
24 case on the date that I mentioned?

25 A I remember having a conversation with one agent. I don't

CROSS-EXAMINATION OF ANTHONY CHARLES

1 know how I would have conversations with two agents at the
2 same time.

3 Q Was the conversation you had, whether it was one person
4 or two people talking at the same time, do you recall having a
5 conversation with an -- does that refresh your recollection?

6 A Yes, I do. I remember it. Yes, I do recall speaking
7 with an agent.

8 Q Do you remember in that interview talking about your
9 understanding of your latest investment or latest loan with
10 Oasis?

11 A Yes. That would make sense.

12 Q And isn't it correct that in that statement what you told
13 the agent is that you were guaranteed 12 percent as opposed to
14 20 percent?

15 A On the initial investment.

16 Q I'm talking about the second one.

17 A No. I was always led to believe that was 20 percent once
18 you met that 100,000 investment. You increased it from 12
19 from 10,000 to 100.

20 Q In the document that you signed, did it say anything
21 about 20 percent with respect to your second loan with Oasis?

22 A What documents are you referring to?

23 Q The promissory note loan agreement, the acknowledgment as
24 you called it.

25 A Did it say anything about guaranteeing 20 percent?

CROSS-EXAMINATION OF ANTHONY CHARLES

1 Q Yes.

2 A I would have to have a look at that document. I don't
3 recall.

4 Q All right. But isn't it correct that what you told the
5 agent or agents that you spoke to on the phone is that the
6 investment was a no-risk situation with a guaranteed
7 12 percent interest?

8 A 12 percent would be on the 10,000.

9 Q I'm talking about the 100,000.

10 A No, no. It would be my belief it was increased. The
11 higher the investment, the better the return.

12 Q If I were to show you the same interview, would that help
13 you remember whether or not that was what you told the agents
14 on the phone?

15 A Yes, please. Show me.

16 MR. ROSENTHAL: Your Honor, may I approach?

17 THE COURT: Yes.

18 BY MR. ROSENTHAL:

19 Q And Mr. Charles, could you read Paragraph 4?

20 THE COURT: The question is whether this refreshes
21 his recollection.

22 BY MR. ROSENTHAL:

23 Q Mr. Charles, does the document I have provided you
24 refresh your recollection as to the contents of your interview
25 with the agent you spoke with on the phone?

CROSS-EXAMINATION OF ANTHONY CHARLES

1 A Yes.

2 Q And if you could specifically turn to Paragraph 4 of the
3 agreement, which I think is actually on the back page, starts
4 on the front page and goes to the back page, if you could read
5 that for me, please.

6 MR. MURRAY: Objection.

7 THE COURT: He needs to testify from his
8 recollection, not from the report. So just, you know, it
9 refreshes his recollection. So just put the question to him.

10 BY MR. ROSENTHAL:

11 Q If you can read paragraph 4 to yourself and tell me
12 whether -- or tell us whether that refreshes your recollection
13 as to what you had actually said to the agents. It starts I
14 believe on the first page and continues on the back.

15 A Yes. What was your question, sir?

16 Q Isn't it correct that what you told the agent or agents
17 that you spoke to on the phone was that the guaranteed
18 interest was 12 percent, not 20 percent?

19 A I wouldn't have consciously said that because I knew that
20 I had to meet that 100,000 threshold in order to gain my
21 20 percent. That's the whole purpose I topped it up, if you
22 like, or increased my investment. If I did say that, that was
23 not how I understood it as being if I did say it to the agent
24 that it was 12 percent. I was getting 12 percent on my
25 smaller investment.

CROSS-EXAMINATION OF ANTHONY CHARLES

1 Q Is there any reason you would have to believe that you
2 got a different contract than anybody, than any other lender
3 in the case received?

4 A No. Most of my explanations I was getting from reports
5 that the higher the investment or if I could invite other
6 investors in, I could step up the ladder to be similar to
7 Kerrigan.

8 Q Now, you said Kerrigan told you that he was actually
9 making 20 percent?

10 A That is right, yes.

11 Q Is it possible that that was the source of your belief
12 that you were going to get 20 percent?

13 A I was told at the meeting in my house that if I went in
14 with the higher amounts, this is when both Kerrigan and
15 Michael DaCorta was at my house, that 100,000 would guarantee
16 me 20 percent.

17 MR. ROSENTHAL: May I have just a moment, Your Honor?

18 BY MR. ROSENTHAL:

19 Q Mr. Charles, let me -- are you sure that the agreement
20 you were given didn't say up to 25 percent of the transaction
21 fees or 12 percent, whichever was greater?

22 MR. MURRAY: Objection. Asked and answered, Your
23 Honor.

24 THE COURT: Overruled.

25 A I don't recall.

CROSS-EXAMINATION OF ANTHONY CHARLES

1 BY MR. ROSENTHAL:

2 Q Okay. Very well.

3 All right. You did say, sir, that you were aware
4 that in addition to forex trading or foreign exchange currency
5 trading that Oasis was also involved in real estate?

6 A Yes.

7 Q And was also involved in precious metals?

8 A That is correct.

9 Q So you were aware that there was a diversification?

10 A I think the word that was used was a balanced portfolio.
11 Yes, a spread.

12 Q Balanced portfolio or diversification?

13 A Right.

14 Q Now, your discussion with Mr. DaCorta with respect to the
15 Cayman Islands, is it fair to say that you have your own tax
16 preparer?

17 A Yes, I do.

18 Q And somebody that has rental properties, it would be wise
19 to have somebody do your taxes for you?

20 A Absolutely, yes.

21 Q Now, Mr. DaCorta never told you that any monies you
22 received from Oasis would be tax-free income, did he?

23 A He didn't say tax-free. I think he used -- he said you
24 are an Irish citizen. You can declare your taxes in Ireland,
25 you can declare them in the United States but that Oasis would

CROSS-EXAMINATION OF ANTHONY CHARLES

1 not be reporting to the IRS in the United States. So the
2 beauty of this, if you've got European citizenship, that you
3 can pay your taxes in the United Kingdom, et cetera. He made
4 a point that he did not submit financial information to the
5 U.S. authorities.

6 Q But that did not mean that you weren't responsible for
7 paying whatever taxes there were, be it in Ireland or England
8 or the United States?

9 A Say that again, please.

10 Q That didn't mean that you were not responsible for paying
11 the taxes, whether it was in England or Ireland or the United
12 States?

13 MR. MURRAY: Objection. Speculation. Calls for
14 speculation for what was meant by the statement.

15 THE COURT: Overruled.

16 A The tax implications -- run that by me again. Let me see
17 where this is going.

18 BY MR. ROSENTHAL:

19 Q Mr. DaCorta never told you that you didn't have to pay
20 taxes on any money that you may receive from Oasis, did he?

21 A No. He didn't say -- he did say that revenue had not to
22 do with the United States, that this was the beauty of having
23 it offshore in the Cayman Islands.

24 Q But before you would be willing to rely on that, you
25 would have wanted to talk to your own tax preparer, correct?

CROSS-EXAMINATION OF ANTHONY CHARLES

1 A That would be the logical thing to do.

2 Q And there was never any indication that that is not what
3 you should do?

4 A That was not what I should do?

5 Q Did anybody tell you not to do that?

6 A Not to speak to an accountant?

7 Q Correct.

8 A Nobody told me not to speak to an accountant.

9 Q Now, going back to the questions that I had asked about
10 the portal --

11 MR. ROSENTHAL: Your Honor, may I approach the
12 witness?

13 BY MR. ROSENTHAL:

14 Q Mr. Charles, I'm showing you what's been marked as
15 Defense Exhibit 306, and I want to ask you if you recognize
16 that.

17 A I recognize my wife's email address, name, and my phone
18 number, my wife's email address, my point of contact at Oasis,
19 Michael Kerrigan. I don't recognize the document, but I
20 recognize the information that's on the document.

21 Q Do you recognize -- did you do the registration for the
22 portal or did your wife do the registration for the portal?

23 A My wife did.

24 Q Is there a signature on 306?

25 A On which page?

REDIRECT EXAMINATION OF ANTHONY CHARLES

1 MR. ROSENTHAL: May I approach, Your Honor?

2 BY MR. ROSENTHAL:

3 Q 306 for identification, do you recognize the signature?

4 A Yes.

5 Q And do you recognize that as being your signature?

6 A Yes.

7 Q So does this fairly and accurately depict the information
8 that you and your wife provided to Oasis in order to set up an
9 account on the Oasis portal?

10 A I assume so.

11 Q Well, in looking at it, do you question the -- is there
12 any reason to believe that's not the information you provided?

13 A No.

14 Q As you are sitting here, is that the information that
15 would have been provided to establish the portal?

16 A I assume so. It was my wife that did this.

17 MR. ROSENTHAL: Your Honor, I'd move 306 into
18 evidence.

19 MR. MURRAY: Object, Your Honor. Improper
20 authentication. He doesn't remember the record.

21 THE COURT: Sustained.

22 MR. ROSENTHAL: No further questions, Your Honor.

23 THE COURT: Redirect?

24 **REDIRECT EXAMINATION**

25 BY MR. MURRAY:

REDIRECT EXAMINATION OF ANTHONY CHARLES

1 Q Mr. Charles, when you sent that initial \$10,000 to Kevin
2 Kerrigan Management, where did you understand that money to be
3 going?

4 A Oasis.

5 Q You testified I believe on direct and on cross that you
6 didn't read in detail the acknowledgments that were sent back
7 from Oasis. Why not?

8 A Run that by me again, please.

9 Q You testified that you didn't read every word of the
10 paperwork that came back from Oasis. How come?

11 A I was extremely busy work wise. My wife and I -- around
12 about that time I think my wife had a miscarriage. I would
13 have glanced at the first page, second page possibly. It's
14 just -- it's probably incorrect of me to do. It's like when I
15 buy property, I read the first and second page maybe. I trust
16 it's a legal document. I don't go through every page of every
17 contract. It's -- I don't know anybody that actually does
18 other than a lawyer. I glance through it. I was confident by
19 speaking to others that were involved in the Oasis investments
20 that they weren't going to lead me down the wrong path. I was
21 confident that -- there was nothing -- in my opinion, there
22 was nothing sketchy about it at that point.

23 Q We had some discussion about the 20 percent level. I
24 think you referred to it as a level. Where did your
25 understanding of how that worked come from?

REDIRECT EXAMINATION OF ANTHONY CHARLES

1 A It was explained at the presentation.

2 Q By whom?

3 A Mr. DaCorta.

4 Q Mr. Charles, counsel has shown you I think two different
5 reports written by law enforcement officers. Did you write
6 those reports?

7 A No.

8 Q Have you ever seen those before?

9 A No.

10 Q Mr. Charles, have you been in touch with Kevin Kerrigan
11 since Oasis was shut down?

12 A Yes.

13 Q Before it was shut down, how would you characterize his
14 financial situation?

15 A Successful, mentioned he had a number of dry cleaning
16 businesses. He seemed to be leading me and providing -- you
17 know, he was affluent. He had it together. He had experience
18 in his own business. He was also experienced with Ambit
19 Energy.

20 Q How old is he now roughly?

21 A I haven't seen him. Sixty-eight.

22 Q Are you familiar with what he is doing for work now?

23 MR. ROSENTHAL: Objection. Hearsay.

24 A He's driving a taxi.

25 THE COURT: Well, he didn't ask for an out-of-court

REDIRECT EXAMINATION OF ANTHONY CHARLES

1 statement. So overruled.

2 BY MR. MURRAY:

3 Q I'm sorry. What is he doing for work now?

4 A He's driving a taxi.

5 Q Mr. Charles, when you invested in Oasis, did you intend
6 for your money to be used on a country club membership for the
7 defendant's wife?

8 A Absolutely not.

9 Q Did you intend for your investment to be used to buy the
10 defendant's wife a Range Rover?

11 A No. I would not have invested.

12 Q Was the Range Rover for the defendant's daughter part of
13 the balanced portfolio as you understood it?

14 A No.

15 MR. ROSENTHAL: Objection. Outside the scope.

16 THE COURT: Give it to me again?

17 MR. ROSENTHAL: Outside the scope.

18 MR. MURRAY: Directly within the scope, Your Honor.

19 THE COURT: It's overruled.

20 BY MR. MURRAY:

21 Q Did you understand or did you intend your money to be
22 used to fund Mr. DaCorta's children's business ventures?

23 A Absolutely not.

24 Q Did you intend for it to buy condos for the defendant's
25 children?

REDIRECT EXAMINATION OF ANTHONY CHARLES

1 A No.

2 Q Did you intend for that money to be used to buy Florida
3 mansions for the defendant and other principals of Oasis?

4 A No. I would be furious if I thought that's where it was
5 going.

6 Q Did you intend for your investment money to be used to
7 pay for Maseratis and Ferraris for the defendant and other
8 principals of Oasis?

9 A Absolutely not. I would be disgraced if I thought that's
10 where it was going.

11 Q Were trips to Europe part of the balanced portfolio of
12 Oasis as you understood it?

13 A Absolutely not.

14 Q Did you intend for your money to pay for a funeral for
15 someone named Frank Anile?

16 A No.

17 Q Do you know anyone named Frank Anile?

18 A Frank Anile?

19 Q Have you ever met a person named Frank Anile?

20 A How is it spelled?

21 Q Anile, F-R-A-N-K, A-N-I-L-E.

22 A I have never met him.

23 MR. MURRAY: No further questions, Your Honor.

24 THE COURT: Thank you, sir. You may step down.

25 Let's call your next witness, please.

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 MS. BEDKE: The government calls Joseph Paniagua.

2 THE COURTROOM DEPUTY: Please raise your right hand.

3 (Witness sworn.)

4 THE COURTROOM DEPUTY: Can you state your full name
5 for the record.

6 THE WITNESS: Joseph Paniagua.

7 THE COURTROOM DEPUTY: Thank you.

8 **JOSEPH PANIAGUA, CALLED BY THE GOVERNMENT, SWORN**

9 **DIRECT EXAMINATION**

10 BY MS. BEDKE:

11 Q Good afternoon, sir. Could you please state your name
12 for the record.

13 A Joseph Paniagua.

14 Q How old are you, Mr. Paniagua?

15 A Fifty-nine.

16 Q How far did you go in school?

17 A A couple masters.

18 Q Could you tell the jury a little bit more about your
19 education?

20 A I have a -- so I have a degree in engineering and a
21 bachelor's degree in business. Then I got a master's in
22 general business and a master's in finance.

23 Q And when did you achieve your master's degrees?

24 A Let's see. 1989 was my first master's. And 1999 was my
25 second master's from Post.

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 Q Would you briefly describe your employment history?

2 A Sure. I started off in Grumman Aerospace, worked there
3 about nine years. They were merged with Northrup. So I ended
4 up staying and working for a company called Gilbert
5 Manufacturing Company, manufacturing, stamping, molding. I
6 was there until about 2002, 2003. Then I went off into
7 business consulting. In 2008, it was rough times between '08
8 and probably 2012, 2014, something like that.

9 Q What kind of business consulting were you doing during
10 those years?

11 A Generally projects. I got into a little bit of what they
12 called incubators at the colleges. They would help start-ups.
13 And so I would come in and advise them on the operations piece
14 of it.

15 Q Was this steady work?

16 A No.

17 Q Are you familiar with an individual named Frank Anile?

18 A Yes.

19 Q How?

20 A So Frank Anile I met -- I was heavily involved with youth
21 sports coaching football, basketball and baseball. And I met
22 Frank on the football fields, and we coached for many, many
23 years together. And his brother, Joe Anile, came in with his
24 family and they started -- the kids were in the youth programs
25 as well.

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 Q Did you have children in the programs?

2 A Yes. I have five boys.

3 Q Is that how you got to know both Frank and Joseph Anile?

4 A Yes. Frank more. I was with him every day. Joe I would
5 see once in a while on the fields.

6 Q Have you ever met an individual by the name of Michael
7 DaCorta?

8 A Yes.

9 Q How did you meet Mr. DaCorta?

10 A So the first time I met Mr. DaCorta was in a diner in
11 like summer, maybe June of 2012, along with Ray Montie, John
12 Caliendo, Joe Anile, and Frank Anile, and it was in reference
13 to Ambit Energy, doing some sales for Ambit Energy.

14 Q What was the purpose of this meeting in the diner?

15 A It was for us to get involved with Ambit Energy and to
16 sell power or gas.

17 Q Did you listen to the presentation?

18 A Yes. It wasn't a presentation. It was just they were
19 talking, like Mike and Ray were talking about the program.

20 Q Did you decide to get involved?

21 A No. There was no future in that, not on Long Island.

22 Q Was there any other discussion during the meeting?

23 A Somewhere towards the very end as we were breaking up and
24 getting ready to go, Ray and Mr. Montie and Mr. Anile and
25 Mr. DaCorta were talking about what they were doing with Oasis

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 or currency trading.

2 Q What did the defendant say he was doing with currency
3 trading?

4 A Just overheard them talking about -- I don't know if they
5 were going to set up a company or they were setting something
6 up or he was trading.

7 Q So was this just something you overheard?

8 A Yes. Something I overheard, yeah.

9 Q Did you have any further contact with the defendant
10 regarding Oasis in 2012?

11 A Not with Oasis, no.

12 Q At some point did you become more familiar with Oasis?

13 A Yes. I believe Frank somehow -- I can't remember the
14 actual time frame, but, yes, sometime in 2014 he became
15 involved with Oasis, and he was putting some spreadsheets
16 together and he needed help with the formulas.

17 Q Who was putting spreadsheets together?

18 A Mr. Frank Anile.

19 Q And what were the spreadsheets? Who were they for?

20 A I guess for Mr. Joe Anile and for Mr. Mike DaCorta.

21 Q Were they Oasis related?

22 A Must have been. I didn't know they were Oasis at that
23 time. He just asked me to come in and help them with the
24 formulas.

25 Q Did you help Frank Anile?

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 A Yes.

2 Q What did you do?

3 A Helped him set up the formulas on the spreadsheet.

4 Q So did you have occasion to view these spreadsheets at
5 that time?

6 A They had no real data in there. It just had the
7 nomenclature on the left-hand side, but it was just trying to
8 set up formulas on certain areas for additions,
9 multiplication, for that particular column. There weren't any
10 real data yet when I was helping them set up.

11 Q Were you able to help Frank Anile put these spreadsheets
12 together and the formulas in place?

13 A Yes.

14 Q And over what period of time did you provide this
15 assistance?

16 A Probably on and off 2014 into a little bit into 2015 on
17 and off. It wasn't like once a week. It was probably once
18 every month or something he would ask me, I think I screwed up
19 the formulas again, can you help me.

20 Q And what kind of work were you doing during this time?

21 A Again, consulting. Got into small, little businesses,
22 start-ups. I would help them, but nothing longevity. It was
23 more operations, teaching them how to set up the operations.

24 Q How would you describe the state of your financial
25 affairs during this period?

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 A Rough.

2 Q What do you mean?

3 A Yeah. My wife was working full-time, but it was hard
4 with the five boys to make ends meet.

5 Q At some point did you become even more involved with
6 Oasis?

7 A Yes. So Frank Anile took ill I believe late 2015. I
8 think it was before, but late 2015, and he passed away in
9 early February of 2016. And about three weeks later, Mr. Joe
10 Anile called me and asked me if I would be interested in
11 coming on board with Oasis.

12 Q And coming on board to do what?

13 A Take Frank's place to do quite a few things. Help set up
14 the new accounts in the Spotex, in the Spotex, ATC Spotex
15 website, as well as the reports, to continue the reports that
16 he was doing.

17 Q That who was doing?

18 A Mr. Frank Anile was doing.

19 Q And was this an attractive opportunity?

20 A At the time it was something.

21 Q Were you going to be compensated for this work?

22 A Yes.

23 Q And how much were you going to make?

24 A Initially for the first year I was making about 5,000 a
25 month.

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 Q Did that continue?

2 A Yes. It continued through 2019, April of 2019.

3 Q What was your salary?

4 A The salary was 5,000, and then it was bumped up to
5 10,000, and then about \$11,000 a month in the last year.

6 Q Were there any other benefits to working in this
7 position?

8 A If I brought some sales in, I got a little bit of
9 commission, but I was excited because it was growing. So I
10 was a part of that growth.

11 Q How did you find out it was growing? Who told you that?

12 A No. I was experiencing it through the three and a half
13 years I was working, yeah.

14 Q Were you ever provided with a house paid for by Oasis to
15 live in?

16 A No.

17 Q Did Oasis ever provide you with a vehicle?

18 A No.

19 Q Did Oasis ever provide any of your family members with a
20 home or a vehicle?

21 A No.

22 Q Did you have any ongoing relationship with Mr. Frank
23 Anile or his family?

24 A Just on football fields.

25 Q Did you receive any compensation that was intended to

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 benefit Mr. Frank Anile's survivors?

2 A No.

3 Q When Joe Anile asked you to come on board, did he provide
4 you with any training or transition?

5 A No. He just gave me a stick, a USB stick. There was
6 stuff that Frank had put on it. He said, here, take it and,
7 you know, maybe call Dave Manoukian and he can help you run
8 through the Spotex website. Dave Manoukian is the president
9 of ATC Brokers and, slash, Spotex I guess to make it easy.

10 Q Was that the sum total of the training you received?

11 A That was the sum total.

12 Q Did you call Dave Manoukian?

13 A Yes.

14 Q And did you speak with him?

15 A Yes.

16 Q Did you learn what you needed to do through contacts with
17 Mr. Manoukian?

18 A Yes. And it was really feet to the fire. Just got to
19 do -- so I would start the client accounts, and then I would
20 forget and call him up and say, listen, walk me through this
21 again. That happened the first couple of times during a month
22 period.

23 Q But you figured it out?

24 A Yeah.

25 Q Would you describe for the jury what your duties were?

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 A So customer service would be one, customer service
2 involving the ATC website. So anytime anyone else had a
3 question about the trading aspect or the finance aspect, Mike
4 had told me to send them to Mike. So that's what I would do.
5 Those were few and far between.

6 Q Mike who?

7 A I'm sorry. Mr. Mike DaCorta.

8 Q So when someone would have a question about the website,
9 what were you to do?

10 A I would try to handle it. If I couldn't handle it, I
11 would call up Dave just to get the -- but it was just pretty
12 much setting up the applications. So from 2016 when I hopped
13 on board through early part of 2017, Oasis was running the
14 investor program where the investors would fill out a whole
15 application form. I would send that form over to Mr. Anile
16 for his approval. Once it's approved, then I would set up the
17 client account and it would get funded, and they can actually
18 see their own account in Spotex.

19 Q Let's break that down just a little bit. How did the
20 investors receive the application packet?

21 A I would email it to them. So I had the forms from
22 Mr. Anile in that stick, and then I would send them out the
23 appropriate forms.

24 Q How would you find out that there was an investor to whom
25 you needed to send application materials?

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 A Initially they may have been probably contacting
2 Mr. DaCorta or Mr. Anile. And they would come and tell me,
3 oh, this person is interested, just email him the application
4 package.

5 Q Is that what you would do then?

6 A Yes.

7 Q And then would the application materials once completed
8 come back to you?

9 A Yes.

10 Q And what would you do with them once you received them?

11 A I would just look at them and make sure everything was
12 filled out properly. Then I would send it over to Joe,
13 Mr. Anile, for his approval.

14 Q And assuming Mr. Anile, Joe Anile approved, what was the
15 next step in the process?

16 A I would go back and create the client account in the
17 Spotex system.

18 Q How would you do that?

19 A I would go into the Spotex system and click create client
20 and then type in all the personal information, the name,
21 address. And then in the same client account in a different
22 tab would be the funds, you know, how much they were sending
23 in.

24 Q What was the Spotex website? Who controlled that?

25 A Can you be a little more clear? It was ATC -- or Spotex

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 had the website, but I put in the information. I'm not quite
2 sure I understand.

3 Q Was the Spotex website something that Oasis owned and
4 provided?

5 A No. It was ATC is who we dealt with. And I think ATC
6 then dealt with Spotex.

7 Q Once you received the application material from an
8 investor and created an account, what was the next step?

9 A The next step would be to link their account into the
10 trading, the actual trading platform. You would link it. The
11 link happened at the end of closing on the trading day, which
12 is 5:00.

13 Q Now, how would you find out, Mr. Paniagua, when an
14 investor had actually transmitted funds to Oasis?

15 A I would get an email from Mr. Anile saying, oh, the funds
16 came in, open this account up, you know, link it up and
17 activate it.

18 Q So do I understand you to say that once Mr. Anile told
19 you the investor's funds had been received, you would activate
20 this account?

21 A Yes.

22 Q And what happened after that?

23 A I would then email the link to the customer, link and the
24 password. And then they would access it, and they could
25 actually see in the Spotex their information.

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 Q So could an investor see his or her own account?

2 A Yes.

3 Q Could the investor, if you know, access any of the
4 trading data?

5 A It was right there in -- oh, the actual trading data, I
6 don't think so, no. It was just their account.

7 Q Did you have access to see all the trading data?

8 A The trading data was on the ATC website. I never got
9 involved with really looking at it.

10 Q Were you able to see it if you wanted to look at it?

11 A Yes.

12 Q But that was different from what the investors could see;
13 is that correct?

14 A Right.

15 Q Other than setting up accounts in the manner you have
16 described, did you have any other duties in the customer
17 service area?

18 A You know, if there was a complaint. But remember, in
19 2017 we didn't have a lot of accounts. So there wasn't a lot
20 of customer service going on other than putting the clients
21 in.

22 Q Roughly how many clients were there?

23 A I think off the top there might have been 40 or 50 in
24 Oasis International Group.

25 Q Do you remember any of the names of the account holders

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 during that period?

2 A My brother, John Paniagua. I don't remember off the top
3 of my head. I would have to look at it.

4 Q How did your brother, John Paniagua, become an investor?

5 A He was -- I had mentioned it to him in probably 2013 on
6 the football field. And then he went over and I believe he
7 spoke to Frank and Joe. And then he ended up vetting them
8 out, according to my brother. And he said, yeah, he was
9 interested in putting funds in for Mike to trade on.

10 Q Did you receive any commission because your brother
11 became an investor?

12 A A little bit, yeah.

13 Q Did you, Mr. Paniagua, ever put any money in Oasis?

14 A No. I didn't have enough.

15 Q Were you putting in all this data and activating accounts
16 manually or --

17 A All the data input was manually.

18 Q What if an investor elected to receive monthly interest
19 payments? Did you handle that?

20 A The physical cash and all that? No, but I'm not -- we
21 are still talking about the old program or the new program?

22 Q The old program.

23 A The old program, I think it was -- I don't know. I don't
24 know. I don't think the people that had the funds in there
25 ever requested a withdrawal.

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 Q Did you have any reporting obligations?

2 A Yes.

3 Q To whom?

4 A Well, Mr. Anile asked me to pick up where Frank left off
5 with all the reporting, all the spreadsheets that he was
6 doing. And I picked up where he left off. And I would send
7 it to Mr. DaCorta and Mr. Anile every night that we traded.

8 Q Every single night that they would trade?

9 A Yes.

10 Q When would you do that?

11 A Right at the time of closing, around 5:00.

12 Q And what kind of information did this daily report
13 include?

14 A It had the big PAMM account, which is -- for the old
15 program, there's all the subaccounts that were in there from
16 the investors. Then it had, I believe they called it a back
17 office bank account or something. I couldn't make heads or
18 tails of it. Then they had the actual trading account that
19 Mr. DaCorta traded from for Oasis.

20 Q Are those the portions of the Spotex website that you
21 drew upon to create a daily report?

22 A Yes.

23 Q And what was the purpose, if you know, of preparing this
24 daily report?

25 A I don't know the actual purpose. Joe had requested it,

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 that I send a copy to him and to Mr. DaCorta.

2 Q How would you describe it in general terms? Was it every
3 detail? Was it a summary? Was it something else?

4 A It was extensive showing details just from the big PAMM
5 account. Yeah, it was extensive.

6 Q Did you ever have access to the OIG bank account record?

7 A No.

8 Q Are you familiar with the name Fund Administration?

9 A Yes.

10 Q How?

11 A Through Joe Anile. When we got -- not so much the first
12 program, but when we got into the loan program, he would send
13 me the emails saying funds came in through Fund Administration
14 in this amount, please create the client.

15 Q Are you familiar with the name Mainstream Fund Services?

16 A Yes. I believe Mainstream bought out Fund Administration
17 maybe sometime in 2018.

18 Q So did you receive any emails referencing Mainstream?

19 A I didn't get any like email directed saying, hey, Fund
20 Administration is now Mainstream. I would see when Joe would
21 send me an email saying a hundred thousand came in from
22 Mainstream for this client's name.

23 Q Why did you need to receive that information?

24 A To create the loan account. I needed to know the name
25 and the funds that came in.

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 Q Mr. Paniagua, did you have an account on the Spotex
2 system?

3 A In the commission account, in the ID account, yes.

4 Q Why is that?

5 A I was collecting some commission from a couple people I
6 brought in.

7 Q That included from your brother's investment?

8 A Yes.

9 Q Did you have any account that was associated with your
10 salary for working at Oasis?

11 A No.

12 Q How did you receive your compensation from the company
13 for your work?

14 A Mr. Anile would just wire transfer the funds at the
15 beginning of the month.

16 Q Where did those funds go? Did they go into a personal
17 account?

18 A Yes.

19 Q Or did you have them in the name of any other entity?

20 A It went to Elysium -- into Cactus Capital was the first,
21 and then everything was switched over to Elysium International
22 Group.

23 Q What is Cactus Capital?

24 A That's an entity I had set up originally when I was doing
25 all the business consulting. So I had those funds come in

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 there.

2 Q So is that where you had your paycheck in effect --

3 A Just the paycheck, yeah.

4 Q -- wired to the Cactus Capital account?

5 A Yes.

6 Q And later you said that changed?

7 A Yeah. I ended up just putting everything together in

8 Elysium. It was just easier for tax purposes.

9 Q Elysium what?

10 A Elysium International Group, LLC.

11 Q What was Elysium International Group?

12 A The LLC was actually formed in Florida.

13 Q Now moving into 2017, at some point did the Oasis model

14 change?

15 A Yes.

16 Q How?

17 A It became a loan program or a lenders program where Oasis

18 collected funds from lenders. Well, the lenders loaned funds

19 to Oasis in exchange for interest. So it would be either

20 1 percent minimum interest on a monthly basis or 25 percent of

21 the transaction fees, which is one pip of a spread.

22 Q Did this --

23 A That was what they received for the month.

24 Q Did this change in the model have any impact on your

25 work?

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 A Yes.

2 Q How?

3 A Because I ended up creating manual loan statements. And
4 that was okay to do in the beginning when there were 20, 30,
5 40, 50 lenders. But then as soon as more lenders were coming
6 on, I couldn't keep up.

7 Q And can you account for why more lenders were coming on?

8 A I don't know. I don't know.

9 Q When you say you couldn't keep up, can you tell the jury
10 why?

11 A Yeah. Just to manually input data from, you know, into
12 the Spotex system. And from there I had to go in and create
13 the loan account, one spreadsheet for each lender. You know,
14 I could do 30, 40, 50 in a day maybe. Then once they got up
15 to a high number, it was just too hard to do manually.

16 Q And when you say a high number, what are we talking?

17 A Probably when I asked for help there and got -- I'll tell
18 you what. They were probably maybe over a hundred when I
19 started asking for help.

20 Q When you say a hundred, are you referring to --

21 A I'm sorry. A hundred lenders.

22 Q Did the number increase from there?

23 A Yes.

24 Q How much?

25 A Well, I think it went as high as 700, 750.

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 Q Were you the only one doing this work at the time?

2 A Yes, but I did have -- it was streamlined a little bit.

3 Sometime in maybe June of 2018 my brother, John Paniagua, put

4 together sort of a program where, you know, I can actually

5 do -- copy all the changes on the spreadsheet, and then he

6 could upload it into the system and it would do the system.

7 And then the lender can actually go in. We would send them

8 the link and the password, and they go in and see what they

9 had, you know, a loan statement.

10 Q All right. Let me back up just a little bit. So prior

11 to the system your brother put into place, how were you

12 generating the loan statements?

13 A Manually.

14 Q I would like to show you what's been admitted into

15 evidence as Exhibit 202T.

16 A Okay.

17 Q And we will just enlarge the top. Can you see it there

18 on the monitor?

19 A Yes, I can see it.

20 Q Do you recognize this exhibit?

21 A Yes. Those are the loan statements I put together.

22 Q And could you explain for the jury what's depicted in

23 this first table on the top of Exhibit 202T?

24 A So as of, let's see, the end of April, April 30, 2018,

25 this account had \$185,000 in total loans. It had made

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 interest of \$10,000. Well, \$10,018.24. So that's the summary
2 of what they had, what this account had the first three
3 months.

4 Q Mr. Paniagua, did you calculate the numbers that appear
5 on the interest line?

6 A Yes. So the 12 percent is a straight calculation of
7 1 percent. The minimum is 1 percent a month. So you would
8 take -- for example, can I use April 18? There was the
9 beginning balance of \$192,996.59. And where it says the
10 12 percent annum, that was \$1,903.53 for the 1 percent.

11 Q Let me ask you to pause there for just a moment. So
12 does -- do I understand that your calculation you just
13 described is based exclusively on the amount of the lender's
14 principal balance at the beginning of the month?

15 A Yes.

16 Q Does it have anything at all to do with trading losses or
17 gains?

18 A No.

19 Q What about with the line in the table that says "Interest
20 Calculated at 25 Percent Transaction Fees"?

21 A Yes.

22 Q Did you calculate that?

23 A No. That's the one pip spread that they would get for
24 the use of their loans that Oasis paid out. The program is
25 whichever one is greater, the 25 percent transaction fees,

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1 which is one pip, or the 12 percent annum or 1 percent a
2 month. And whichever one is greater, if you look down to
3 where it says "Additional Loans," would be then added to the
4 principal balance.

5 Q Where did you get that number to put it in the table?

6 A That came from Spotex.

7 Q And so in this particular example in Column 3 that's
8 headed "April 18," which of the two interests amounts were
9 added to the lender's balance?

10 A The 25 percent transaction fees at \$2,021.

11 Q And that is because?

12 A It's greater than the \$1,900.

13 Q And that brought the lender's total balance or ending
14 balance of April 2018 to what?

15 A \$195,018.24.

16 Q Did you do this for every one of the lenders every month?

17 A Yeah.

18 Q Did you do all this work manually?

19 A Yes. In the beginning, yes.

20 Q Before we talk about the change in the platform, I want
21 to ask you about your daily reports under the loan program.

22 A Under the loan program, okay.

23 Q Did you continue to prepare daily reports?

24 A Yes.

25 Q And how did you do that?

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1 A The same as I always did before. Just going into the
2 Spotex system and marking the numbers down that was done for
3 the day. Always done at the end of closing, which was 5:00.

4 Q Who did you provide them to?

5 A To Mike DaCorta and Joe Anile.

6 Q Did you ever go into the Spotex website and change any
7 numbers?

8 A Can you be a little more specific, because I added
9 deposits in the website, withdrawals, and then adjustments.

10 Q All right. Let's talk about each one of those in turn.
11 You said you would add deposits?

12 A So if a lender had funds already in and they wanted to
13 add more funds, as soon as Joe Anile told me the funds came
14 in, I would go in and just add that amount that corresponded.

15 Q And where would you add it?

16 A Into the client account, into the client's portfolio.

17 Q Did each of the clients have a separate account --

18 A Yes.

19 Q -- on the Spotex website?

20 A Yes.

21 Q And were those accounts subaccounts to a larger account?

22 A For the loan program?

23 Q Yes, sir.

24 A Yeah. So the funds that came in were put into the big
25 PAMM account, of which for -- it was our internal coding. We

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1 created the subaccounts. Everyone had the principal in there
2 had the right proportion in at all times.

3 Q So each individual lender had a subaccount --

4 A Yes.

5 Q -- under the big PAMM account?

6 A Yes.

7 Q And the PAMM account belongs to who?

8 A Oasis International Group.

9 Q So if an investor made an initial deposit or increased
10 the amount of their loan, you would enter that into the system
11 in their subcontract account?

12 A Yes.

13 Q What if a lender made a withdrawal?

14 A So the withdrawal -- can I just add a little bit more?

15 Q Yes.

16 A So the spreads came in -- so the only way the lender can
17 collect the spread is if there is another account called the
18 IB account, and the spreads would go into an IB account. So
19 that IB account would be related to the client account. So
20 now the spreads are here. And the spreads then would get
21 withdrawn from the IB account and deposited into the client
22 account. Or if the lender requested those spreads to be
23 withdrawn, they would send in a withdrawal form.

24 So there are two types of withdrawals. I just want
25 to add a little bit more. The IB account withdrawal, so they

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1 can actually send a paper in and say, hey -- I'm picking the
2 number 5,000 -- I want to withdraw this at the month's end.
3 So that's one. And the other one is if the actual client
4 needed to pull out more than what the spreads were for the
5 month, they would then have to go to a client account and
6 request those funds to be withdrawn.

7 Q And would that be a withdrawal of principal?

8 A Right.

9 Q And would you act on those requests?

10 A Yes.

11 Q How would you do that?

12 A Well, they would have to send in a withdrawal request
13 form. And then I would have it all ready. And then as long
14 as everything all corresponded, the bank information and all
15 that, because we were wiring the funds out from what I
16 understand from Joe, Mr. Joe Anile. So the withdrawal would
17 come in. And I would send it over to Joe, and Joe would take
18 care of that other half of him sending the fund through
19 Mainstream, I guess.

20 Q So if a withdrawal request came in, were you able to
21 approve it and act on it on your own?

22 A No. I mean, I can approve it but only in the system.
23 Then the paperwork would go to Joe, and it was Joe who
24 actually did the physical from his checkbook, from Mainstream
25 to send the funds out.

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1 Q And do you know how Mr. Anile did that?

2 A I mean, other than maybe emailing his counterpart, I'm
3 not sure what the actual mechanism he used to request the fund
4 withdrawal.

5 Q Were you involved in that part of the process?

6 A No.

7 Q Now, you mentioned something you referred to as the
8 spread?

9 A Yes.

10 Q What do you mean by that?

11 A From what I understand, the best as I understand --

12 Q Let me ask you to pause.

13 A Okay.

14 Q What is your understanding based on?

15 A Well, conversation with Mr. DaCorta and then with
16 Mr. Dave Manoukian.

17 Q What did Mr. DaCorta tell you the spread is?

18 A The spread is it gets actually built into the trading
19 price. So when he sees a trading price on his platform, it
20 already has the spreads in there. The way it worked, it was
21 two spreads to open a trade and two spreads to close it. So
22 sort of like a fee.

23 Q Two spreads?

24 A Two pips. I'm sorry. Two pips to open a trade and then
25 two pips to close a trade.

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1 Q I believe you just said that it was built into the
2 transaction?

3 A Trading price.

4 Q Can you give an example?

5 A That's where I'm not too clear on. I don't want to
6 confuse you because I don't know it really well.

7 Q So am I -- did I understand you clearly that you
8 characterized it as a transaction fee?

9 A I would think it's a fee, the fact that the spreads
10 were -- that was collected by the Oasis Global FX which is the
11 broker-dealer, Oasis owned.

12 Q Who is paying the fee?

13 A I'm not sure. Part of the trading price. I don't know
14 how the mechanics work there. I don't know who is paying the
15 fee there, who is collecting it. I think ultimately -- I
16 don't know. I really can't say for sure-sure. I don't want
17 to conjecture.

18 Q You said at some point you no longer had to manually
19 prepare these loan statements like Exhibit 202T. How did that
20 change in process happen?

21 A It allowed -- so the first part of this, I would call it
22 the precursor to the Amazon Web Services, the AWS, and that
23 was taking the loan statement and putting it through the web
24 where they can actually access it and see their account as the
25 loan statement.

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1 Q And then there was a subsequent development?

2 A Yes. And then --

3 Q Who did you talk to about getting this change
4 implemented?

5 A The second piece?

6 Q Yes, sir.

7 A The second piece. So the AWS, Mr. Anile came to me and
8 said, hey, listen, we want everything up in the Cloud. We
9 want them to be able to access it and do withdrawals. And so
10 that was in the fall of 2018. I spoke to my brother. He said
11 he was willing to do it with his partner. And it wasn't a
12 full-time gig. They were doing it part-time. So they
13 produced this through the Amazon Web Services we call now the
14 AWS. And it probably went live, I'm going to say sometime in
15 late January, early February.

16 Q So what did the Amazon Web Services online portal
17 actually show investors or lenders?

18 A Well, their actual statements would look identical. They
19 would look the same because it was built on top of the
20 original just for the statements, but then a lot of other
21 features were added into the Amazon Web Services.

22 Q So when you say it's the same, did it show the same
23 information as we just saw in Exhibit 202T?

24 A The same information, yes.

25 Q So did it show the amount of the lender's initial

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1 principal investment or loan?

2 A Yes.

3 Q Did it show the amount of interest they had earned each
4 month?

5 A Yes. In fact, in the upgrade to the precursor to the AWS
6 and then the AWS used it, it actually did it on a daily basis.

7 Q Did what?

8 A It showed all the information on a daily basis how much
9 spread they made for the month. The 1 percent -- I mean, for
10 the day, the 1 percent and then a 1 percent total, if I recall
11 correctly, and then the one pip or 25 percent transaction fees
12 for the day and then the cumulative month total and then the
13 ending balance. It showed that on a daily basis.

14 Q So did the balances as reflected on the AWS online portal
15 go up and down overtime?

16 A The balances, no. The balances stayed the same until the
17 end of the month.

18 Q Why is that?

19 A Because we didn't know what was going to be greater, the
20 1 percent or the 25 percent transaction fees. And so at the
21 end of the month, whichever one was greater it was then added
22 to the principal.

23 Q Okay. So did the balances as reflected on those
24 statements on the AWS portal go up and down month to month
25 depending on what activity happened?

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1 A No. It only went up because the interest accumulated
2 assuming they were rolling over the spreads into their
3 principal balance at the month's end.

4 Q Did any of those lender statements ever show any decline
5 in the amount of money in their accounts?

6 A Only if they withdrew their client funds, their
7 principal.

8 Q Now, Mr. Paniagua, at some point in or about 2018, did
9 you notice anything on the Spotex website in the trading data
10 that caused you concern?

11 A In the reporting?

12 Q Yes.

13 A So I had seen that our carrying costs were pretty high.
14 The P&L was -- the open trades that Oasis was carrying I think
15 we were paying -- I forget what the amount was, but it was
16 high. And I had told Joe that it was high. And he said, no
17 problem, I'll talk to Mike. And sure enough in the next
18 couple weeks, you know, on a daily basis he was unwinding, you
19 know, closing those open trades. So as a consequence, the
20 open P&L went up, closed P&L went up a lot.

21 Q Let's break that down a little bit. You said you were
22 looking on the Spotex website and you saw the P&L. What are
23 you referring to?

24 A To the PAMM account P&L.

25 Q What does P&L stand for?

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1 A I'm sorry. Profit and loss from each trade.

2 Q So does the profit and loss that you are referring to as
3 P&L refer to the trading results, the results of the forex
4 trading?

5 A Yes.

6 Q And so you said -- can you tell me the next step? You
7 said the P&L, and then you talked about carrying costs; is
8 that right?

9 A Right. So swaps or rollover is a term for if you have an
10 open trade, you carry it overnight, you are either going to
11 collect interest or you are going to pay out interest. And in
12 this case there was a lot of payout in interest.

13 Q When you say a lot of payout, what are you talking about?

14 A I think at one point it may have been 30,000 a month --
15 I'm sorry -- 30,000 a day.

16 Q \$30,000 a day?

17 A Yes.

18 Q To showed positions open?

19 A Yeah. There was a lot of trades that were open.

20 Q And why did that prompt you to talk to Mr. Anile?

21 A Because he had asked me if I see anything that he should
22 know about, although he looks at the reports, so I just -- I
23 just told him about it.

24 Q Why did it cause you concern?

25 A Just because the carrying costs was costing us a lot of

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1 money.

2 Q Do you know which positions they were that were being
3 held open that were so costly?

4 A No. I mean, it was -- you're talking about, I don't
5 know, hundreds of trades that were open.

6 Q So I believe you said you told Mr. Anile about these
7 carrying costs. And then what happened?

8 A And then evidently he must have spoken to Mike, and Mike
9 started closing off the open positions.

10 Q Were you party to any conversation between Mr. Anile and
11 the defendant on that topic?

12 A No.

13 Q Then what makes you say they must have talked?

14 A Well, because you could see the open P&L was shrinking
15 and the carrying cost was shrinking.

16 Q Where did you see that?

17 A In those reports. In the Spotex website or the reports I
18 was producing from the Spotex website.

19 Q Now, I'm going back to you talked about in your duties
20 you handled in the Spotex website deposits, withdrawals --

21 A Yes.

22 Q -- and something you called adjustments?

23 A Yes.

24 Q What do you mean by adjustments?

25 A Adjustments. So for the loan program, in order for the

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1 loan program to work, the principal balance has to be either
2 brought up or brought down to what it was at the beginning of
3 the month before the spreads were added back in. It kept the
4 proportion the same for all the accounts so that -- and then
5 if someone came in, joining in the middle of the month, it
6 didn't skew -- if, let's say for example the beginning balance
7 was a million dollars, and then somewhere in the middle of the
8 month -- I'm picking a number here, like 500,000. So if
9 someone came in with 500,000 in the middle of the month, they
10 actually ended up getting a bigger percentage. So we had to
11 equalize and bring everybody back. At the end of that month,
12 we would -- I would take the beginning balance, subtract it
13 from the ending balance. And that difference would be added,
14 adjusted back into their respective accounts.

15 Q Now, you just told us that the loan statements that were
16 on the AWS portal only showed increases in value, correct?

17 A Yes.

18 Q Was there some other place in the Spotex website that
19 showed declines in value?

20 A In the PAMM account.

21 Q In the PAMM account?

22 A Yes, and the trading account. It would show up in the
23 trading account too.

24 Q So would you explain how losses would show up in the PAMM
25 account as a result of trading?

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1 A Explain the losses?

2 Q Yes.

3 A I guess when Mike closed accounts out, the value of the
4 trade was lower than when he opened them.

5 Q Okay. Let me ask it this way. On a given day if the
6 foreign currency trading resulted in a hundred thousand
7 dollars in profit, would that profit show up in the PAMM
8 subaccounts that belonged to the lenders?

9 A Yes, it should show up. It should show up in that PAMM
10 account, but remember it's a loan program. And the funds are
11 loans to Oasis. So it's different. The P&L was just Oasis,
12 belonged to Oasis itself.

13 Q Did the Spotex website allocate that gain across all the
14 lender accounts?

15 A Yes. I believe so.

16 Q If instead of gain the trading in foreign currency
17 resulted in losses in a given day, did the Spotex website
18 automatically allocate all those losses across all the
19 subaccounts?

20 A Yes.

21 Q So sometimes -- am I correct that sometimes the lender
22 subaccounts would show losses because of losses in trading,
23 and sometimes they might show gains because of gains in
24 trading?

25 A Yes. Fair statement.

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1 Q And so is that what required you to make an adjustment?

2 A Yes, to bring it back to the original balance in the
3 beginning of the month.

4 Q All right. So hypothetically if a given lender's
5 subaccount in the PAMM account showed a hundred thousand
6 dollars in trading losses, what adjustment would you make?

7 A If it was a loss, probably an addition of a hundred
8 thousand to bring it up to the original principal balance for
9 the month.

10 Q How would you do that?

11 A I would input the number in the client account.

12 Q How did you calculate what number to add to the client
13 account?

14 A It would be, you take the beginning balance of the month
15 in the Spotex system and you take the ending balance, and the
16 difference of that is what would get -- assuming it's a loss,
17 you would add it back into the account to make it what it was
18 at the beginning of the month.

19 Q So erase the losses?

20 A No. To bring the principal back up -- well, it's to
21 bring the principal back up to the original balance so that
22 everyone had the same proportion.

23 Q But would that make the loss that was previous reflected
24 in the account go away?

25 A No.

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1 Q Where would it go?

2 A It would be reflected in the PAMM account for Oasis.

3 Q So it would be on Oasis's books but not reflected in the
4 individual lender's account; is that right?

5 A Yes.

6 Q So even though the Spotex website allocated all the
7 losses across all the lenders' accounts, you would add those
8 numbers back in so that they wouldn't appear in the lenders'
9 accounts; is that correct?

10 A So it wouldn't appear on the lenders' accounts?

11 Q Yes.

12 A Are you talking about the loan statements?

13 Q Yes. No. Sorry. Let me ask it a different way.

14 A Okay.

15 Q You just said that you would see what was the amount of
16 the loss in the lender's account that resulted from the
17 trading, correct?

18 A Yes.

19 Q And you would add that amount back in to bring it up to
20 the amount of the lender's original principal investment or
21 whatever was the investment as of the last month?

22 A Right.

23 Q What about brokerage fees? Were there any brokerage fees
24 allocated by the Spotex website across all the lenders'
25 accounts?

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1 A The broker fees was actually in the omnibus or trading
2 account that went to ATC.

3 Q Were those brokerage fees charged by ATC allocated across
4 the lenders' accounts in the PAMM account?

5 A I don't recall seeing it in the PAMM account, but it was
6 charged in the omnibus account from ATC.

7 Q What about carrying costs? Were those also charged?

8 A Swaps were in both.

9 Q Did your adjustments that you made to lender accounts
10 when necessary include adding back any amount of brokerage
11 fees or carrying amounts that were charged to the lender's
12 account?

13 A I believe the net equity included that, yes.

14 Q And so after making those adjustments to the PAMM
15 account, would the numbers in the PAMM account match what went
16 out in the loan statements made available via the AWS online
17 portal?

18 A Yes. Yes.

19 MS. BEDKE: Mr. Houston, has Exhibit 403 been
20 admitted? I just want to confirm.

21 THE COURTROOM DEPUTY: Yes.

22 MS. BEDKE: Thank you.

23 BY MS. BEDKE:

24 Q By the way, Mr. Paniagua, who instructed you to make
25 these adjustments?

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1 A Mr. DaCorta.

2 Q I would like to publish what's been admitted as
3 Exhibit 403.

4 THE COURT: For the record, we are going to try to
5 run until 5:15 if we can all hold on.

6 BY MS. BEDKE:

7 Q This is Exhibit 403. So Mr. Paniagua, we are looking at
8 what's been previously admitted as Exhibit 403. This is the
9 Katters' account statement summary. What is the account
10 number on this particular account?

11 A The account number is the client account.

12 Q What is the number of this particular account?

13 A 16055310.

14 Q All right. And that's on Spotex Printouts-00056.

15 And Mr. Paniagua, I'm just referring to what we call
16 the Bates stamp number on the far left-hand corner just to
17 identify the page.

18 Now, is this an example of a statement for a
19 subaccount?

20 A A statement for the subaccount?

21 Q Is this a subaccount if it's a lender account?

22 A Yes. Well, it's a subaccount, yes.

23 Q I want to have you turn your attention to page 3 of this
24 exhibit. It's Bates stamp Spotex Printouts-00058. On the
25 bottom half of the page.

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1 Let's zoom in on starting with account activity and
2 effective date, if you would, Mr. Howland. Thank you.

3 Now, do you see the very first line there?

4 A Yes.

5 Q And what does that reflect?

6 A Deposit was made of \$100,000 on February 20 of 2018.

7 Q What is the next line on this statement?

8 A Next line shows brokerage.

9 Q And what is the number associated with brokerage?

10 A Minus \$36.34 on February 1.

11 Q I'm sorry. Minus what?

12 A \$36.34.

13 Q \$36.34?

14 A Right. For the brokerage fee.

15 Q And who charges the brokerage fee?

16 A This is from the subaccount. I don't -- I don't know
17 this brokerage fee. I don't know if it's partialized from the
18 actual ATC fee because I don't think anyone else makes a
19 brokerage fee. I don't know off the top of my head.

20 Q All right. What about the next line, "Settlement"?

21 A Maybe the settlement of the trade. I'm not familiar with
22 settlement.

23 Q You are not sure what that is?

24 A Yeah, the settlement. I don't know if it's P&L for trade
25 date.

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1 Q All right. Then there's another brokerage fee of some
2 sort on the next line?

3 A That's February 22, yeah.

4 Q And then the next line says "SwapP&L," correct?

5 A Yes.

6 Q That's the type of item on the document?

7 A Yes. The swaps is the carrying cost for the open trade.

8 Q And what's the carrying cost for the open trade reflected
9 here?

10 A In this one it's minus \$113.68 on February 21.

11 Q So that's a charge, correct?

12 A Allocated, yes.

13 Q Or an expense; is that right?

14 A Expense, yes.

15 Q Let's turn to the next page of this exhibit. It's Bates
16 stamp Spotex Printouts-00059. And I want to have you direct
17 your attention to the bottom half of the page. We will zoom
18 in, make it a little larger.

19 Now, there's another entry there in the highlighted
20 portion about halfway down the page for "SwapP&L," correct?

21 A Yes.

22 Q And it's another expense, \$150.97; is that right?

23 A Yes. On February 28, yes.

24 Q And there is another brokerage fee for \$35.05; is that
25 right?

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1 A Yes.

2 Q And then another settlement expense, but you're not sure
3 what that is; is that right?

4 A Yes.

5 Q Then what is the next entry?

6 A Oh, beginning of the month, that was the adjustment made
7 to bring the original principal balance -- bring it up to the
8 original principal balance for February 1.

9 Q And how did this adjustment get made?

10 A That would be inputted by me.

11 Q By you?

12 A Yeah.

13 Q And what's the number here?

14 A \$5,235.99.

15 Q How did you determine that was the amount of the
16 adjustment you should put in?

17 A Because I took the beginning balance of February 1, saw
18 the ending balance of February 28, or 29th depending, and then
19 subtracted. And then that difference I added back in to bring
20 it up to the original balance to the beginning of the month of
21 February, the ending balance.

22 Q So whatever expenses or charges had been allocated to
23 this account were offset by the amount of the adjustment you
24 added?

25 A Yes.

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1 Q And you did that at the direction of whom?

2 A Mr. DaCorta.

3 Q Let's turn forward to page 8 of this exhibit. It bears
4 Bates stamp Spotex Printouts-00063. And I want you to look
5 just at the top couple of lines. The second line is another
6 adjustment; is that right?

7 A Yes.

8 Q What's the amount of the adjustment on this occasion?

9 A \$13,276.50.

10 Q So is that the amount that you added to this account to
11 bring it up to the amount of the original loan plus any
12 interest reflected on the statements?

13 A Right. Easier said, it's just April 1. So it would be
14 bringing it up to the March 1 beginning balance.

15 Q So did you make these adjustments to every single
16 lender's account at the first of every month?

17 A Yes.

18 Q Let's look at page -- I believe it's 52 of this exhibit.
19 It's the next to last page. It's Bates stamped Spotex
20 Printouts-00106. And I want to zoom in and enlarge the bottom
21 half of the page.

22 Mr. Paniagua, what is this section of the statement
23 titled?

24 A "Account Summary as of Wednesday, March 23."

25 Q And what is the first line of this summary?

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1 A Of 2022. The first line of the summary?

2 Q Yes.

3 A That's the account number, 16055310.

4 Q And what's the next line?

5 A Currency in U.S. dollars.

6 Q What about the beginning balance?

7 A It shows zero.

8 Q What about deposits?

9 A \$125,306.59.

10 Q What does that represent?

11 A Since it was zero beginning balance, it would be -- I
12 don't know what the original principal deposit was because the
13 deposit may have included -- no. Must have deposited
14 \$125,306.59 because it was a zero beginning balance.

15 Q Let's go back for a second to page 3, Spotex
16 Printouts-00058. What was the original amount of the deposit?

17 A Is this the same account? \$100,000.

18 Q So if we go back to the account summary, do you know what
19 that \$125,306.59 entry reflects?

20 A I'm not sure. I believe the deposit -- this is a summary
21 piece. If it started out with a hundred thousand dollars,
22 then there must have been \$25,000 of -- \$25,306.59 of interest
23 made.

24 Q Applied to the account under the loan program?

25 A Yes.

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1 Q What does it say there on the withdrawal line?

2 A Zero dollars.

3 Q What does it say on the adjustment line?

4 A The adjustment of \$45,366.18.

5 Q And what does that adjustment line represent?

6 A The adjustments I needed to make over the course of this
7 account to bring it back to the original principal balance for
8 each of those respective months.

9 Q What about the last line?

10 A The last line is the profit and loss that the trades had.

11 Q Pardon me?

12 A The profit and loss on the trades.

13 Q On the foreign currency trades?

14 A Yes.

15 Q And what's the amount reflected there?

16 A Minus \$40,151.57.

17 Q So did the Spotex website allocate over the term of this
18 account statement a total of \$40,151.57 in trading losses to
19 this account?

20 A Yes.

21 Q Did you make this adjustment at the direction of the
22 defendant to bring it back up to the loan amount initially
23 deposited plus the interest promised?

24 A Yes.

25 Q I have handed you what have been marked for

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 identification as Government Exhibits 90B3, 90B4, and 90B5.

2 A Yes.

3 Q Do you recognize those exhibits?

4 A Yes. I have seen them before. They are the reports.

5 Yes, the reports.

6 Q And how do you recognize them?

7 A Well, when it was opened up for me, I saw them, and

8 they're just copies of all the reports I had done.

9 Q What kind of reports?

10 A The report I needed to do to go to Frank. You're talking

11 about the PAMM account and really the master, the omnibus

12 account, the trading account.

13 Q Did you make any notation on these disks when you looked

14 at them?

15 A Yes. Well, you mean signing off on it?

16 Q Yes, sir.

17 A Yes.

18 Q What did you do?

19 A I initialed and dated confirming.

20 Q Are those the disks that you opened up and viewed the

21 data so that you know what's on them?

22 A Yes.

23 MS. BEDKE: Your Honor, the government would move for

24 admission of Exhibits 90B3, the 90B4, and 90B5.

25 MR. ALLEN: No objection, Your Honor.

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 THE COURT: Admitted.

2 (Government Exhibits 90B3, 90B4, 90B5 admitted.)

3 BY MS. BEDKE:

4 Q Let's publish 90B3.

5 Mr. Paniagua, would you tell the jurors what we are
6 looking at here?

7 A So this is the Oasis omnibus account, the trading
8 account. We have the beginning of the day balance. If we
9 take, for example, 12/29/17, the beginning of the day balance
10 is the ending of the day balance on 12/28/17. So it's
11 \$7,559,909.06.

12 Q You are looking at lines 94 and 95; is that correct?

13 A Yes.

14 Q What's reflected there in line 96?

15 A The operating P&L in the omnibus account.

16 Q What does that mean?

17 A That's the P&L from the trading of that day.

18 Q Did you say something?

19 A I'm sorry?

20 Q Did you say something else?

21 A No, no.

22 Q Let's drop down to line 102. What is that section of the
23 omnibus account statement?

24 A Any deposits, withdrawals, adjustments or fees done for
25 those days in the omnibus account, the trading account.

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 Q And what does it reflect was the profit or loss on the
2 trades?

3 A The profit and loss on the trades for 12/28 was minus
4 \$268,913.92.

5 Q That's on what date?

6 A That's on 12/28.

7 Q Of what year?

8 A 2017.

9 Q Were there brokerage fees incurred on that date?

10 A Yes.

11 Q How much?

12 A Of \$11,427.77.

13 Q Were there carrying costs?

14 A Yes.

15 Q How much?

16 A There is a pen. Is that 64,000? I can't -- okay. Good.

17 Thank you. \$64,013.10.

18 Q All right. And then there is a line there for spread,
19 correct?

20 A Yes.

21 Q What's that?

22 A \$106,128.69.

23 Q And so at the end of the day, the balance in the account
24 is what?

25 A Ending balance of \$7,559,909.06.

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 Q And what about the next day, 12/29/2017? Are there any
2 new deposits?

3 A No.

4 Q Any withdrawals?

5 A No.

6 Q Any adjustments here?

7 A No.

8 Q What about trading profits or loss?

9 A There is a loss of \$380,781.75.

10 Q Were there any brokerage fees incurred on this date?

11 A Yes.

12 Q How much?

13 A \$8,972.62.

14 Q And were there any rollover carrying costs?

15 A Yes.

16 Q How much?

17 A \$5,565.72.

18 Q Was there any spread?

19 A Yes. A spread of \$107,129.24.

20 Q The ending balance on that date was what?

21 A \$7,271,718.21.

22 Q Did you prepare this data together in a daily report for
23 every single day of trading?

24 A Yes.

25 Q And then was there kind of an end year report reflected

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 in column --

2 A IK?

3 Q Thank you.

4 A Yes.

5 Q And what does it reflect as to profits and losses due to
6 trading at year end 2017?

7 A A loss of \$10,440,369.75.

8 Q Were there brokerage fees incurred?

9 A Yes. \$1,226,415.49.

10 Q And do you know who charged the brokerage fees?

11 A Yes. That's ATC.

12 Q ATC Brokers?

13 A ATC Brokers, yeah.

14 Q Were there carrying costs for the year?

15 A For the year, yes. A loss of \$448,515.13.

16 Q And was there spread reflected?

17 A Yes. \$12,130,145.37.

18 Q And so at the end, where -- so is the account in a
19 negative posture at the end of the year?

20 A It looks like a break even.

21 Q How do you calculate that?

22 A I was just adding up the trade profit and loss and the
23 brokerage fees and the rollover interest, and then you add it
24 to the spread.

25 Q Where does the spread come from?

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 A From the trades.

2 Q And who pays --

3 A On the volume, the volume of trades.

4 Q Who pays the spread?

5 A I believe it's a fee that -- well, it would be the Oasis
6 account. Oasis would pay that fee.

7 Q Was it built into the trades?

8 A It was built into the trading price.

9 Q And was there any location that you saw that this spread
10 resulted in dollars that were credited to Oasis?

11 A That were credited to Oasis?

12 Q Yes.

13 A If you can scroll up. Keep going. Up, the next section
14 up. Okay. This is not the actual breakdown. In the PAMM
15 account -- so what would happen is the spreads went into Oasis
16 Global FX in the IB account. And then the spreads at the end
17 of the month -- let me backtrack just a little bit.

18 The spreads were automatically allocated to the
19 lenders and the brokerage, and then the balance went into
20 Oasis Global FX in the IB account. And then that got
21 transferred to the Oasis International Group account in the
22 PAMM.

23 Q If the spreads were built into the trades as you said,
24 then who pays the spread on an open position; do you know?

25 A It's the same, right? It's two pips to open a trade and

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 two pips to close a trade.

2 Q So if it's two pips to open a trade, can you give an
3 example of how that's built into the trade?

4 A I don't know how to explain that. I don't know.

5 Q Did you understand what the spread number was?

6 A Where it actually came from? Just other than, you know,
7 two pips when they opened the trade and two pips when they
8 closed the trade, and it was built into the trading price is
9 about the most I know of it.

10 Q And your understanding was based on what?

11 A Just Mr. DaCorta explaining it to me.

12 Q Do you know where the two pips and two pips is even real
13 dollars?

14 A Yes. I thought they were dollars. I'm sorry. Can you
15 repeat the question?

16 Q Do you know whether that represents real dollars that
17 went back to OIG?

18 A Yes. It's in the trading account.

19 Q Did you ever see it go back into the bank account?

20 A No. There was no withdrawals done in the trading
21 account.

22 Q There were never any withdrawals from the trading
23 account?

24 A Right.

25 Q For the entire time that you were monitoring and

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 preparing these daily reports?

2 A Right.

3 Q So none of these trades resulted in a transfer of funds
4 back into the OIG account?

5 MR. ALLEN: Objection. Asked three times now.

6 THE COURT: Overruled.

7 BY MS. BEDKE:

8 Q Is that correct?

9 A I'm sorry?

10 Q So during the entire time that you were preparing these
11 daily reports --

12 A Yes.

13 Q -- you never saw a withdrawal from the trading account
14 back into the OIG account at Mainstream?

15 A Right.

16 Q Do you know how much money was left in the ATC account on
17 April 18 of 2019?

18 A If I recall, maybe 2 million, a little over 2 million.

19 Q And how much money did you see that got transferred into
20 the trading account during the time that you were preparing
21 the daily reports?

22 A I believe it was 20 million deposits into the trading
23 account.

24 Q So you saw roughly \$20 million come in. You never saw
25 any money go back out; is that right?

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 A Right.

2 Q And after April 18 of 2019, you think there was how much
3 left in that account?

4 A A little over 2 million, if I recall.

5 Q How do you know?

6 A I remember I had it on the report. I remember looking at
7 it when we closed out.

8 Q Let's take a look at --

9 THE COURT: Right now we will break. Ladies and
10 gentlemen, I appreciate you being willing to come in a little
11 earlier tomorrow. So let's all of us get here ready to roll
12 at 8:20 and for sure get rolling well before 8:30.

13 So thank you again very much. Please have a safe
14 evening.

15 (Jury escorted out of the courtroom.)

16 THE COURT: We are going to try to run tomorrow until
17 six. And then super briefly we can talk about that 803 thing
18 at the end of the day tomorrow. Does that work?

19 MR. ALLEN: Yes, Your Honor.

20 MS. BEDKE: Yes, Your Honor.

21 MR. ALLEN: We have two more cases.

22 THE COURT: You want to hand up a copy tomorrow or
23 just give me --

24 MR. ALLEN: I can hand it to you now if you would
25 like.

DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 THE COURT: Great. If you all have others, in the
2 morning -- I'm not asking for others, but I wouldn't preclude
3 you from providing same.

4 MS. BEDKE: Your Honor, may Mr. Paniagua step down,
5 and should he be back here in court by 8:20?

6 THE COURT: If you would, sir. Thank you. I
7 appreciate it.

8 Just whatever you have, give it to Mr. Houston.
9 Thanks.

10 (Proceedings concluded at 5:15 p.m.)

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DIRECT EXAMINATION OF JOSEPH PANIAGUA

1 UNITED STATES DISTRICT COURT)
2 MIDDLE DISTRICT OF FLORIDA)

3
4 **REPORTER TRANSCRIPT CERTIFICATE**

5 I, Tracey Aurelio, Official Court Reporter for the United
6 States District Court, Middle District of Florida, certify,
7 pursuant to Section 753, Title 28, United States Code, that
8 the foregoing is a true and correct transcription of the
9 stenographic notes taken by the undersigned in the
10 above-entitled matter (Pages 1 through 217 inclusive) and that
11 the transcript page format is in conformance with the
12 regulations of the Judicial Conference of the United States of
13 America.

14 /s Tracey Aurelio

15 _____
16 Tracey Aurelio, RMR, RDR, CRR
17 Official Court Reporter
18 United States District Court
19 Middle District of Florida
20 Tampa Division
21 Date: September 3, 2022
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23
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EXHIBIT F

**CFTC RESPONSE IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT BY
DEFENDANT MICHAEL J. DaCORTA**

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)
) 8:19-cr-605-WFJ-CPT-1
 PLAINTIFF,) Tampa
) May 3, 2022
 v.) 8:35 a.m.
)
 MICHAEL J. DACORTA,)
)
 DEFENDANT.)

DAY 12
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

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DIRECT EXAMINATION OF HAROLD MCFARLAND

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(Proceedings commenced at 8:35 a.m.)

THE COURT: Good morning. Counsel, you were on direct, I think.

HAROLD MCFARLAND, CALLED BY THE DEFENSE, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. ROSENTHAL:

Q Good morning, Mr. McFarland.

A Good morning.

Q I think when we left off yesterday, we were talking about the corrective action that Oasis took following the losses, the trading losses in the early part of 2018. And I believe that when we concluded that I was in the process of reviewing Defense Exhibit 17 with you, if we can bring that up.

Mr. McFarland, you recognize the document in front of you as related to the prices of silver between 2017 and it looks like June of 2021?

A That's correct.

Q Now, when did the silver position that Oasis took that we were talking about yesterday, when was that taken? When was that initially taken?

A When they initially got into the silver position?

Q That particular silver position.

A It was in 2018, the best I recall.

Q You don't recall the specific date?

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 A I do not.

2 Q And if they had held -- if you would look at Exhibit 17,
3 basically does it show the price of silver basically holding
4 steady until it looks like May or June of 2019, correct?

5 A I forgot your question.

6 Q What does the chart show as to what was going on with the
7 price of silver generally up until June of 2019?

8 A It was going up and down but staying predominantly
9 somewhat stable.

10 Q And what happened beginning in June of 2019?

11 A It started climbing.

12 Q And how long did that climb continue?

13 A Until about late February in 2020.

14 Q And did there come a time when there was a significant
15 drop?

16 A Yes, sir.

17 Q And when was that?

18 A March of 2020.

19 Q Now, if the silver position had been -- we talked about
20 this a bit yesterday. If the silver position had been sold in
21 say February or early March of -- or February of 2020, what
22 would the value of the silver position had been?

23 A In February of 2020?

24 Q Yes.

25 A I can't tell for sure on this chart, but I believe 13,000

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 or so, almost 15,000.

2 Q I'm sorry. The value of the silver position?

3 A The silver position, yes, in 2020. The one I testified
4 yesterday was September of 2019, which is almost 20 million.

5 Q So if they had gotten out in September of 2019, they
6 would have realized almost \$20 million?

7 A Yes, sir.

8 Q And if they had gotten out before the significant
9 decrease in March of 2020, would that have been the same?

10 A If they had gotten out, yeah, they would still have the
11 20 million.

12 Q Now, there was some testimony yesterday or earlier in the
13 trial with respect to the cost of maintaining the silver
14 position. What would have been the cost to Oasis if they had
15 maintained the silver position up until the date you testified
16 to yesterday?

17 A If they maintained it up through the end of September,
18 and it's kind of hard to say, but it would have been somewhere
19 between 300 and 500,000.

20 Q Would that -- did Oasis have the resources to have
21 maintained the silver position for that period of time?

22 A Yes.

23 Q Now, there was some discussion earlier in the trial about
24 the account potentially being liquidated. What would have
25 been required for the account to have been liquidated?

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 A Well, if the silver price dropped enough, to protect
2 their interests the people who hold the silver would have
3 required it to be liquidated.

4 Q Would they have -- if the silver position had been sold
5 before there was a drop in the silver, would they have been in
6 that position?

7 A They would not.

8 Q Are you familiar with the amount that the receiver sold
9 the silver position for? Are you familiar with the amount,
10 what the value is of the silver position at the time it was
11 closed?

12 A Yes. The silver position at the time, April 19, was
13 1,558,000.

14 Q If Oasis had been left undisturbed, they would have
15 realized -- they could have potentially realized the
16 \$20 million on the silver position?

17 A That's correct.

18 Q Now, you said that they would have had to have gotten out
19 before the value of silver went down. If they had gotten back
20 in after the drop, did there come a time when that silver
21 position would have been significantly more valuable?

22 A That's the dream of every investor, buy low, sell high,
23 so yes.

24 Q Right. And ultimately if they had held the silver
25 position into 2021, what would the top value have been?

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 A The top value would have been 56,506,000.

2 Q And as of what date?

3 A As of August 6, 2020.

4 MR. ROSENTHAL: May I approach the witness, Your
5 Honor?

6 THE COURT: Yes.

7 BY MR. ROSENTHAL:

8 Q Mr. McFarland, I just handed you Defense Exhibit 84 for
9 identification. Do you recognize that as a document you have
10 seen before?

11 A I do.

12 Q And is that -- does that document fairly depict what the
13 value would have been of Oasis' silver position at various
14 points in time?

15 A Yes, but that's -- the 56,506,000, that's the value of
16 the 3.8 million ounces. When it was down low, typically most
17 investors, that would be the time when they would purchase
18 more than that. So that's basically the minimum, I would view
19 it as.

20 Q But does that, the document that I just showed you, does
21 that depict what the value of the 3.8 million ounces would
22 have been at various points in time?

23 A That's correct, the 3.8 million ounces.

24 Q Did you confirm the numbers that were on the chart?

25 A Yes, I did.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 MR. ROSENTHAL: Your Honor, at this time I move
2 Defense Exhibit 84 into evidence.

3 MR. MURRAY: No objection, Your Honor.

4 THE COURT: All right. It's admitted.

5 (Defendant Exhibit 84 admitted.)

6 MR. ROSENTHAL: I believe I'm going to have to use
7 the Elmo.

8 Permission to publish 84, Your Honor.

9 THE COURT: Of course.

10 BY MR. ROSENTHAL:

11 Q And Mr. McFarland, does this Exhibit 84 depict what the
12 value of the silver position would have been at various times?

13 A Yes.

14 Q And what would it have been on December 31 of 2019?

15 A 11,248,000.

16 Q What about June 30 of 2020?

17 A 12,540,000.

18 Q And if it had been able to be held until August 6 of
19 2020, what would the value have been?

20 A 56,506,000.

21 Q And if I could -- the period you talked about, September
22 of 2019 -- and Mr. McFarland, could you make a mark where the
23 September 2019 date would have been and what the value would
24 have been?

25 Retrieving Defense Exhibit 84. So the part, the spot

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 where you marked with a pen would have been the value in
2 September of 2019?

3 A That's correct.

4 Q So if they had just been able to hold onto the position
5 for a few months past the time that they were shut down, is
6 that when the value would have been \$19 million?

7 A That's correct.

8 Q Now, more generally, Mr. McFarland, there was testimony
9 earlier in the trial with respect to whether or not precious
10 metals would be considered a good hedge.

11 A Okay.

12 Q In your experience, would -- is precious metals
13 considered to be a good hedge against certain market factors?

14 A Generally precious metals are considered a good hedge
15 against market volatility and against inflation.

16 Q And silver in particular, let's say that if somebody had
17 predicted in April of 2019 silver was going to skyrocket
18 before the end of 2019, would that have been a correct
19 prediction?

20 A In my opinion, yes.

21 Q Well, what happened to the value of silver between April
22 of 2019 and the end of 2019?

23 A It went up I'd say about 17 times.

24 Q Seventeen times?

25 A Yeah.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q Would you consider that to be skyrocketing?

2 A Any time you can more than double in a period like that,
3 I would consider skyrocketing, yes.

4 Q And if somebody were to be of that belief, would it have
5 been a prudent business decision to invest in silver?

6 A In my opinion, yes.

7 Q And in this case, would Oasis investing in a silver
8 position, would that have helped to secure the lenders?

9 A Yes, it would.

10 Q And why would that be?

11 A Because it did go up substantially.

12 Q Now, did the assets of Oasis serve to benefit the
13 lenders?

14 A Sorry. I didn't hear.

15 Q All right. I will move on.

16 Would the purchases of the -- would taking the silver
17 position be consistent with company stability?

18 A Yes, it would.

19 Q And would it show an effort to maintain a successful
20 business?

21 A In my opinion, yes.

22 Q Now, if someone had predicted in 2018 or 2019 that the
23 United States was heading for an inflationary cycle, would
24 that prediction have been correct?

25 A Yes.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q And is that what we find ourselves in today?

2 A Yes, it is.

3 Q And are there people that believe that that has been
4 coming for some time?

5 A Yes.

6 Q Now, there was a -- in terms of additional corrective
7 action, I think you mentioned yesterday that Oasis became more
8 involved in real estate after its losses in 2018; is that
9 correct?

10 A That's correct.

11 Q Had they been invested in real estate prior to the losses
12 in 2018?

13 A Yes, they had.

14 Q But did that continue after the 2018 losses?

15 A Yes, it did.

16 MR. ROSENTHAL: May I approach the witness, Your
17 Honor?

18 THE COURT: Yes.

19 BY MR. ROSENTHAL:

20 Q Mr. McFarland, I'm showing you what's been marked Defense
21 Exhibit 66, 67, 68 -- and make sure I didn't miss any -- 69 --
22 I'm perfectly capable of doing that -- 70, 71, 72, 73, 74, and
23 78.

24 A I do not have 72. You went from 74 to 78, and I have 75
25 and 76 also.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q I'm sorry. Which are the ones I mentioned that you are
2 missing?

3 A Seventy-two.

4 Q Well, let's start with what you do have. Look at Defense
5 Exhibit 66 for identification. Generally what does this chart
6 reflect?

7 A This chart reflects the values of 4064 Founders Club
8 Drive property at three points in time.

9 Q And do you recognize these numbers to be accurate?

10 A I do.

11 Q And based upon what?

12 A Based upon appraisals that were provided to me.

13 Q Professional appraisals that you reviewed?

14 A That's correct.

15 Q So with respect to Defense Exhibit 66, does it depict the
16 values of 4064 Founders Club at various periods of time?

17 A That's correct. Three points.

18 MR. ROSENTHAL: Your Honor, at this point I'd move
19 Defense Exhibit 66 into evidence.

20 MR. MURRAY: No objection, Your Honor.

21 THE COURT: Sixty-six is admitted.

22 (Defendant Exhibit 66 admitted.)

23 MR. ROSENTHAL: And if we could publish Defense
24 Exhibit 66.

25 BY MR. ROSENTHAL:

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q And with respect to 4064 Founders Club Drive, what was
2 the purchase price of that property?

3 A \$1,775,000.

4 Q And what was the date of the purchase?

5 A December 21, 2017.

6 Q And what was the appraisal at the time that the receiver
7 took control of Oasis?

8 A 1,400,000.

9 Q If Oasis had been left undisturbed, what would the value
10 of that property have been on January 30 of 2022?

11 A \$2,450,000.

12 Q With respect to Defense Exhibit 67, does this provide the
13 same information with respect to 6300 Midnight Pass on Siesta
14 Key?

15 A Yes, it does.

16 Q And does it accurately depict the values of Midnight
17 Pass, the 6300 Midnight Pass property on various dates?

18 A Yes, sir. Three dates.

19 MR. ROSENTHAL: At this point I would move Defense
20 Exhibit 67 into evidence.

21 MR. MURRAY: No objection.

22 THE COURT: Admitted.

23 (Defendant Exhibit 67 admitted.)

24 MR. ROSENTHAL: If we could publish Defense
25 Exhibit 67.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 BY MR. ROSENTHAL:

2 Q Now, was this the property that Oasis acquired in
3 exchange for a trading position?

4 A I believe that's correct, yes.

5 Q And what was the amount of trading position that Oasis
6 received?

7 A I don't recall.

8 Q Well, what's reflected as the purchase value?

9 A \$1 million.

10 Q And what was the value at the time the appraiser took --
11 or I'm sorry -- at the time that the receiver took control of
12 Oasis?

13 A Still \$1 million.

14 Q If Oasis had been left undisturbed, what would the value
15 have been as of January 30, 2022?

16 A 1,300,000.

17 Q If you could look at Defense Exhibit 68 for
18 identification, does this provide the same information with
19 respect to 6922 Lacantera Circle in Bradenton?

20 A Yes, it does.

21 Q And does it provide the value of this property on
22 different dates?

23 A Yes, sir.

24 Q And does it fairly and accurately depict the values of
25 these properties on the different dates?

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1 A Yes, it does.

2 MR. ROSENTHAL: Your Honor, at this time I move
3 Defense Exhibit 68 into evidence.

4 MR. MURRAY: No objection.

5 THE COURT: Admitted.

6 (Defendant Exhibit 68 admitted.)

7 MR. ROSENTHAL: Permission to publish 68.

8 BY MR. ROSENTHAL:

9 Q So Mr. McFarland, what does the -- what's reflected as
10 the purchase price on the Lacantera property?

11 A 2,125,000.

12 Q What was it worth when the receiver took control over
13 Oasis?

14 A 2,125,000.

15 Q And if Oasis had been left undisturbed, what would the
16 value had been as of January of 2022?

17 A 3 million.

18 Q As a general matter, what do renovations do to the value
19 of property?

20 A As a general rule, renovations will increase the value of
21 a piece of property.

22 Q Do you have Defense Exhibit 68 in front of you? I'm
23 sorry. Do you have Defense Exhibit 69 in front of you?

24 A Yes.

25 Q And does Defense Exhibit 69 provide the same information

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 with respect to the Desert Glen property?

2 A Desert Ridge Glen, yes.

3 Q And does that provide the value of the property as of
4 different dates?

5 A Yes, it does.

6 MR. ROSENTHAL: Your Honor, at this time I would move
7 Defense Exhibit 69 into evidence.

8 MR. MURRAY: No objection.

9 THE COURT: Admitted.

10 MR. ROSENTHAL: If we could publish Defense
11 Exhibit 69.

12 BY MR. ROSENTHAL:

13 Q So what is reflected as to the purchase value of this
14 particular piece of property?

15 A 575,000.

16 Q And that was on December 21 of 2017?

17 A Yes.

18 Q And by the time the receiver took control of Oasis, to
19 what extent had that increased?

20 A By just short of 400,000. It increased to 925,000.

21 Q And that was simply over a period of a few months?

22 A A year and a few months.

23 Q So would that suggest that Oasis had bought this property
24 at a very good purchase price?

25 A Yes, it would.

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1 Q And if Oasis had been left undisturbed, what would the
2 value of this property had been as of January 30 of 2022?

3 A 1,225,000.

4 Q So it would have doubled in value essentially?

5 A Eventually, yes.

6 Q With respect to -- do you have Exhibit 70 in front of
7 you?

8 A Yes, I do.

9 Q Does that provide the same information with respect to
10 13318 Lost Key Place?

11 A Yes, it does.

12 Q How were these numbers arrived at?

13 A I'm sorry. I have some bronchitis. I couldn't hear you
14 because I was coughing.

15 Q Does Exhibit 70 fairly and accurately depict the values
16 of the Lost Key Place property at various times?

17 A Yes, it does.

18 Q And was this the home that Mr. DaCorta was occupying?

19 A Yes, it is.

20 MR. ROSENTHAL: At this time I would like to
21 introduce Defense Exhibit 70.

22 MR. MURRAY: No objection, Your Honor.

23 THE COURT: Admitted.

24 (Defendant Exhibit 70 admitted.)

25 MR. ROSENTHAL: And if we could publish Defense

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 Exhibit 70.

2 BY MR. ROSENTHAL:

3 Q Mr. McFarland, what was the purchase price of the Lost
4 Key Place property?

5 A \$1 million.

6 Q And what was it appraised at as of April 1 of 2019?

7 A 1,000,200.

8 Q And if Oasis had been left undisturbed, what would the
9 value had been on January 30 of 2022?

10 A 1,900,000.

11 Q So with respect to Exhibit 70, basically the property had
12 almost doubled in value between the time Oasis acquired it and
13 what the value would have been earlier this year?

14 A Almost doubled, yes.

15 Q Now, you have Defense Exhibit 71 in front of you?

16 A I do.

17 Q What property does this relate to?

18 A 17006 Vardon Terrace, Number 106.

19 Q And was this -- when was this property purchased?

20 A It doesn't have a date on there, but to the best of my
21 recollection, it was after April 2018.

22 Q And does this -- does Exhibit 71 depict the value of the
23 16804 Vardon Terrace, Number 106 at various times?

24 A It does.

25 MR. ROSENTHAL: Your Honor, at this time I would

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 introduce Defense Exhibit 71.

2 MR. MURRAY: No objection.

3 THE COURT: Admitted.

4 (Defendant Exhibit 71 admitted.)

5 MR. ROSENTHAL: If we can publish Defense Exhibit 71.

6 BY MR. ROSENTHAL:

7 Q Mr. McFarland, what's reflected as the purchase price for
8 the Vardon Terrace, for 16804 Vardon Terrace?

9 A 187,000.

10 Q And what was its value as of January 30 of 2022?

11 A 399,000.

12 Q I think you had said earlier you did not have 72 in front
13 of you?

14 A I do not.

15 MR. ROSENTHAL: May I approach, Your Honor?

16 THE COURT: Yes.

17 BY MR. ROSENTHAL:

18 Q I'm showing you Defense Exhibit 72. What property does
19 this relate to?

20 A 17006 Vardon Terrace, Number 108.

21 Q And what does it reflect -- and does it fairly and
22 accurately depict the numbers as you obtained them off the
23 professional appraisals?

24 A Yes, it does.

25 Q And what does it reflect as to the purchase price in the

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 January 30, 2022, appraised value?

2 Permission to publish, Your Honor. I'm sorry.

3 A Purchase price was 190,000. Appraisal at January 30,
4 2022, was 425.

5 Q Do you have Defense Exhibit 73 in front of you?

6 A I do.

7 Q Does that reflect the same information with respect to
8 16804 Vardon Terrace, Number 307?

9 A Yes, it does.

10 Q And do these -- are these numbers accurate based upon
11 your review of the appraisals?

12 A Yes, they are.

13 MR. ROSENTHAL: Move Defense Exhibit 73 into
14 evidence.

15 MR. MURRAY: No objection.

16 THE COURT: Admitted.

17 (Defendant Exhibit 73 admitted.)

18 MR. ROSENTHAL: Permission to publish Exhibit 73.

19 BY MR. ROSENTHAL:

20 Q Mr. McFarland, what does it reflect as the purchase value
21 of the Vardon Terrace property?

22 A Did you say the purchase value?

23 Q Yes.

24 A 187,000.

25 Q And what was the value at the time the receiver took

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 control of Oasis?

2 A 195,000.

3 Q What would the value had been if Oasis had been left
4 undisturbed?

5 A 399,000.

6 Q Basically more than doubled in price?

7 A More than doubled.

8 Q And do you have Defense Exhibit 74 in front of you?

9 A I do.

10 Q And does this have the same information with respect to
11 17006 Vardon Terrace, Number 105?

12 A Yes, it does.

13 Q And what does it reflect as to the purchase value?

14 A Purchased at 182,499.

15 Q And what was the -- what's reflected -- Your Honor, at
16 this time I move 74 into evidence.

17 MR. MURRAY: No objection.

18 THE COURT: Admitted.

19 (Defendant Exhibit 74 admitted.)

20 BY MR. ROSENTHAL:

21 Q What does it reflect as to the purchase date of this
22 property?

23 A It doesn't have a purchase date there, but it was after
24 April 2018.

25 Q Publishing 74. Does it have the purchase date at the

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 top?

2 A Yes, it does.

3 Q What's the purchase date?

4 A 8/28/18.

5 Q Mr. McFarland, were all of the Vardon Terrace properties
6 purchased in 2018?

7 A Yes.

8 Q And what does it reflect as the purchase price?

9 A 182,499.

10 Q What does it reflect as the appraised value at the time
11 the receiver took possession of Oasis?

12 A 195,000.

13 Q And if still in possession -- if Oasis still owned the
14 property today, as of today or as of January 30 of this year,
15 what would the appraised value had been?

16 A 399,000.

17 Q Mr. McFarland, do you have Defense Exhibit 78 in front of
18 you?

19 A Yes, I do.

20 Q And does that reflect the same information with respect
21 to 444 Gulf of Mexico Drive, Number 3, at Longboat Key,
22 Florida?

23 A Yes, it does.

24 Q And is that -- are the numbers reflected on 78 true and
25 correct based upon your review of the appraisals?

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1 A Yes.

2 MR. ROSENTHAL: Your Honor, at this time I move
3 Defense Exhibit 78 into evidence.

4 MR. MURRAY: No objection.

5 THE COURT: Admitted.

6 (Defendant Exhibit 78 admitted.)

7 MR. ROSENTHAL: Permission to publish Defense
8 Exhibit 78.

9 BY MR. ROSENTHAL:

10 Q Mr. McFarland, is this the office building that was owned
11 by Oasis?

12 A Yes.

13 Q And what does it reflect as to the purchase price?

14 A 1,750,000.

15 Q What does it reflect as to the appraised value at the
16 time the receiver took possession?

17 A 2,100,000.

18 Q What would that be worth as of January 30 of 2022 if
19 Oasis had been left undisturbed?

20 A 2,600,000.

21 Q Mr. McFarland, in addition to the properties that I just
22 showed you, was there also a lot that had been purchased by
23 Oasis?

24 A I'm sorry?

25 Q Was there also an unimproved lot that had been purchased

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 by Oasis?

2 A Yes.

3 Q And was there also a residence that would be considered
4 more of a working class residence?

5 A Yes.

6 Q Would the residential properties that we talked about at
7 the beginning, the Founders Club, the Lost Key Place,
8 Lacantera, would those be considered more high-end residential
9 properties?

10 A I would think so, yes.

11 Q The Vardon Terrace condominiums, would those be
12 considered to be more middle class properties?

13 MR. MURRAY: Objection.

14 A I would say that, yes.

15 THE COURT: Overruled.

16 MR. ROSENTHAL: I'm sorry?

17 THE COURT: Go ahead. I overruled the objection.

18 BY MR. ROSENTHAL:

19 Q So would it be fair to say that Oasis owned properties of
20 different tiers in terms of values?

21 A Yes.

22 Q Now, did you have occasion to review a chart that
23 contained the summary, a sum total of all the residential
24 properties that had been owned by Oasis?

25 A Yes, I did.

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1 Q Do you have Defense Exhibit 76 in front of you?

2 A Seventy-six? Yes, sir.

3 Q Okay. And does Exhibit 76 reflect the information as to
4 all the properties that were owned by Oasis?

5 A Yes, it does.

6 Q And is that based upon two things: One, your review of
7 the appraisals; and, Number 2, just the addition?

8 A Yes. It's the review of the appraisals, and then I
9 basically added them all together.

10 MR. ROSENTHAL: Your Honor, at this time I move
11 Defense Exhibit 76 into evidence.

12 MR. MURRAY: No objection.

13 THE COURT: All right.

14 (Defendant Exhibit 76 admitted.)

15 BY MR. ROSENTHAL:

16 Q If we could publish Defense Exhibit 76. Mr. McFarland,
17 what is reflected as to the purchase price of the Oasis
18 properties?

19 A 9,246,499.

20 Q And does it indicate what the appraised value of the
21 properties were on April 1 of 2019?

22 A It does.

23 Q And what does that show?

24 A 10,100,000.

25 Q And what does it show the total appraised value as of

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 January 30, 2022?

2 A 14,882,000.

3 Q So we would be talking from purchase to it still held by
4 Oasis a profit of over \$5 million?

5 A That's correct.

6 Q And do you have an opinion as to whether or not the
7 purchase of these properties promoted the stability of Oasis?

8 A Yes.

9 Q And what would that opinion be?

10 A Real estate has traditionally been a very good investment
11 because it steadily increases.

12 Q And would that -- in the context of Oasis, did this
13 promote the stability of the company, the purchase of the real
14 estate?

15 A Yes. It's a stable investment.

16 Q Now, were any of the properties that we just went through
17 ever placed in individual names?

18 A Not that I'm aware of.

19 Q Okay. They were all held by the company?

20 A Yes.

21 Q If we can go back to the -- if I can go back to gold and
22 silver. Are you aware of physical gold and silver that Oasis
23 had owned?

24 A Yes.

25 Q And what was -- based upon your review, what was the

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 purchase price of all of the gold and silver in possession of
2 Oasis?

3 A I don't know that I had that number, but it's around
4 660,000.

5 Q Do you know what it was sold by the receiver for?

6 A I do not.

7 Q Do you know what it would be worth today?

8 A The same amount today. It would be worth 1,177,000.

9 Q If we can go back to the properties for just one second.

10 MR. ROSENTHAL: If I may approach the witness, Your
11 Honor.

12 THE COURT: Yes.

13 BY MR. ROSENTHAL:

14 Q I'm showing you Exhibits 53, Defense Exhibit 53, 64, 65,
15 63 -- 56, 57, 58, 59, 60, 61, 62, 63, 64, and 65. Are these
16 the appraisals that you reviewed in the charts that we just --
17 confirming the charts that we just went through?

18 A Yes, they are.

19 Q Now, Mr. McFarland, would investing, seeking to invest in
20 other companies be considered potentially a prudent investment
21 by Oasis?

22 A Potentially, yes.

23 Q If there was evidence that Oasis had sought to acquire
24 other companies or sought to invest in other companies and
25 then hired someone that was actually one of their investors to

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 do due diligence, would that have been prudent business
2 decisions?

3 A It would have been prudent to do due diligence on them,
4 yes.

5 Q Would that be consistent with attempting to build a
6 successful business?

7 A Yes, it would.

8 Q Now, did you have occasion to calculate overall assets of
9 Oasis at different periods of time?

10 A I did.

11 Q Now, at the time the receiver took possession of Oasis,
12 what was the amount that Oasis had in bank accounts?

13 A Bank accounts? 10,500,000.

14 Q And you testified earlier that the properties were worth
15 about \$10 million, correct?

16 A 10,100,000.

17 Q And the physical gold and silver as of that time, I think
18 you said that you didn't recall what the exact amount was?

19 A I didn't recall what it was purchased for. At that time
20 it was worth 710.

21 Q And was there also physical cash that was in possession
22 of Oasis?

23 A Yes, there was.

24 Q How much was that?

25 A Approximately 175,000.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q So not to ask you to do more addition, what would the
2 overall value of the assets of Oasis have been as of that
3 time?

4 A 23,038,000.

5 Q Now, if Oasis had been left undisturbed, were you able to
6 calculate potentially what the value of their assets would
7 have been?

8 A If Oasis were left undisturbed, the total value would be
9 in my opinion about 46,729,000. By saying "left undisturbed,"
10 I'm assuming that the silver position was closed out at that
11 20 million based on interviews and the like, that his intent
12 was to recover the 20 million that he had lost.

13 Q And the figure you used doesn't account for the
14 possibility of reinvesting in an additional silver position?

15 A He could have reinvested when it was lower, and this
16 would be substantially higher.

17 Q And had that been done, that could have resulted in the
18 56 million that you spoke of earlier?

19 A Yes. It would have pushed this up another 36 million to
20 around 82 million.

21 Q But your calculation did not take that into
22 consideration?

23 A It did not.

24 Q And in terms of -- so you were looking at \$20 million as
25 the value of silver?

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 A That's correct, of the silver position.

2 Q And what about physical silver?

3 A Physical silver was 1,177,277.

4 Q That would be what it would be worth today?

5 A Yes.

6 Q And what would -- your earlier testimony is the
7 properties would have pushed up against \$15 million?

8 A Yes.

9 Q And the -- obviously we don't know what the money in the
10 bank would be today, but what would the money in the bank have
11 been -- the money in the bank at the time was 10.5 million?

12 A Yes, and I assume the same amount.

13 Q That's how you arrived at the figure of 46 million?

14 A Yes.

15 Q And would that be conservative considering that you don't
16 know the amount of silver they would have had at this time?

17 A That's correct.

18 Q Now, looking at these numbers, are you able to state an
19 opinion as to whether Mr. DaCorta was attempting to build a
20 successful business?

21 A I didn't understand all of that.

22 Q Okay. Looking at these numbers as well as looking at
23 your examination of all the records that you reviewed in this
24 case, do you have an opinion as to whether or not Mr. DaCorta
25 was attempting to build a successful business?

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 A In my opinion he was attempting to build a successful
2 business, yes.

3 Q Now, Mr. McFarland, was there ever a period of time where
4 Oasis would have been unable to satisfy a demand for a lender
5 within 90 days?

6 A Assuming that they closed out the silver position at
7 20 million, no.

8 Q Were there any occasions that you became aware of in your
9 examination where Oasis had not been able to satisfy a request
10 from a lender within 90 says?

11 A In all the records that I reviewed, when a request was
12 made it was fulfilled within the 90 days, yes.

13 Q What would have happened if all -- if there was a demand
14 for all of the outstanding loans at the same time, what would
15 happen then?

16 A If everybody wanted their loans paid at the same time,
17 they would not have had sufficient assets to do that.

18 Q Would a typical bank have the ability to absorb all of
19 the requests for or to satisfy all the requests for their
20 deposits on any given day?

21 A Typically they do not.

22 Q But they would -- they would get bailed out by the FDIC?

23 A Yes.

24 Q What would happen to a typical business if there was a
25 demand for -- if all of its lenders demanded their money back

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 on the same day?

2 A Well, if the business is highly leveraged with a lot of
3 loans, then typically they would not be able to meet that
4 demand either.

5 Q Now, was Oasis generating sufficient income on a regular
6 basis to be able to satisfy any demands that were made at any
7 given time?

8 A They would generate sufficient revenue, yes.

9 Q Now, you stated the opinion that Mr. DaCorta was
10 attempting to build a successful business. I want to ask you
11 about your valuation, your examination as it relates to
12 Mr. Anile.

13 A Okay.

14 Q Did you -- in reviewing the records with respect to
15 Mr. Anile, did you prepare or did you confirm the numbers in a
16 chart that reflects the amount of money that Mr. Anile took
17 out of the business at different periods of time?

18 A I confirmed the numbers in the chart that he took out
19 both for himself and for the residence where he was living and
20 for his related entities.

21 Q And would the records that resulted in the compilation of
22 this chart be considered voluminous?

23 A Yes, they were.

24 MR. ROSENTHAL: Your Honor, at this point -- may I
25 approach the witness?

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1 THE COURT: Of course.

2 BY MR. ROSENTHAL:

3 Q Mr. McFarland, do you recognize Defense Exhibit 86?

4 A Yes, I do.

5 Q Is that the chart you were speaking about earlier that
6 dealt with the amount of money that Mr. Anile took out of
7 Oasis?

8 A Yes, sir.

9 Q Now, what was --

10 MR. ROSENTHAL: At this time, Your Honor, I would
11 introduce Defense Exhibit 86.

12 MR. MURRAY: Objection. May we approach, Your Honor?

13 THE COURT: Sure.

14 (Bench conference on the record.)

15 THE COURT: Go ahead.

16 MR. MURRAY: We object to the descriptions in these
17 columns. There is no foundation. They are argumentative.

18 THE COURT: Let me see. So the description says,
19 "DaCorta in control of Anile payments." It says, "Payments to
20 Bowling Green." So you object to the headers?

21 MR. MURRAY: Yes, Your Honor.

22 MR. ROSENTHAL: Which one?

23 MR. MURRAY: These are argumentative. This one and
24 then the second page, the header.

25 THE COURT: Let's block the headers off of it. You

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 don't need that, do you?

2 MR. ROSENTHAL: I would elicit the testimony in any
3 event.

4 THE COURT: Well, don't make it argumentive, but
5 surely you can use these charts without the headers because I
6 don't believe for a minute that Anile was completely in
7 control of the checkbook. I believe your guy was. So Anile
8 was his right arm. That's what I believe. So let's just see
9 if we can utilize this chart. If it's publishable, then block
10 that out.

11 MR. MURRAY: Can you establish these without hearsay?
12 Is that what you are trying to elicit?

13 MR. ROSENTHAL: I think it would be based on Anile's
14 earlier testimony.

15 THE COURT: Well, Mr. DaCorta did testify that Anile
16 was in charge of the one checkbook. Just see if you can block
17 that header out.

18 (End of bench conference.)

19 MR. ROSENTHAL: Your Honor, at this point I would
20 move 86 into evidence.

21 THE COURT: With the notation at sidebar, okay, yes,
22 admitted.

23 (Defendant Exhibit 86 admitted.)

24 MR. ROSENTHAL: And permission to publish?

25 THE COURT: All right.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 BY MR. ROSENTHAL:

2 Q So Mr. McFarland, what were the different entities to
3 which Mr. Anile received payment?

4 A Bowling Green, 4064 Founders Club Drive, 4Oaks, and I
5 don't know how to pronounce that. It looks like Zhue Xu, or
6 something like that.

7 Q So in the early days in 2012, what payments did Mr. Anile
8 receive?

9 A He received \$60,000 to Bowling Green.

10 Q And did that -- what was the source of that?

11 A It came from Oasis Management.

12 Q And that was \$10,000 a month?

13 A Yes. \$20,000 in one month, but he skipped the one
14 before, so it's 10,000 a month.

15 Q And if we go to 2013, what were the payments made to
16 Bowling Green?

17 A It was again approximately 10,000 a month with a little
18 more on occasion.

19 Q If we can go to 2014, were there any significant changes
20 to the amount of money that was being paid to Mr. Anile or to
21 an Anile-related entity?

22 A Payments to Bowling Green went up to 243,000 from
23 basically approximately 120. So it more than doubled.

24 Q And do you know what entity made these payments to
25 Bowling Green?

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1 A The best I recall, my records, that would have been
2 from -- that's from Oasis International.

3 Q So as of 2014, Mr. Anile's payments are no longer coming
4 from Oasis Management?

5 A That's correct.

6 Q And the numbers significantly increased?

7 A That's correct.

8 Q 2015, what were the numbers -- what was the amount of
9 money that Mr. Anile received that went to Bowling Green?

10 A Bowling Green received \$270,395.79.

11 Q And then what happens when we get to 2016?

12 A It went up substantially, payments to Bowling Green, for
13 461,818.

14 Q And was that -- were you able to ascertain the source of
15 payments?

16 A They were all from Oasis International Group.

17 Q If we could look to June of 2016, how much money did
18 Mr. Anile take out that month from Oasis International Group?

19 A That month 75,500.

20 Q And going to 2017, how much money did Mr. Anile take out
21 in that year?

22 MR. MURRAY: Object to form of the question, Your
23 Honor.

24 THE COURT: Well, right. You asked the month, and
25 then you said the year. So let's redo that.

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 BY MR. ROSENTHAL:

2 Q So 2017 total for the year, how much did Mr. Anile take
3 out?

4 MR. MURRAY: Again, Your Honor, to the name. No
5 foundation.

6 THE COURT: Well, overruled.

7 A 740,000 was paid to Bowling Green, and 20,000 was paid to
8 4064 Founders Club Drive.

9 BY MR. ROSENTHAL:

10 Q Now, do you know if that was the residence that, the
11 4064 Founders Club Drive, was where Mr. Anile was living?

12 A Yes.

13 Q And the 740,000 was in addition to that?

14 A Yes.

15 Q I will call your attention to the month of August of
16 2017. Just in that one month, how much had been paid to
17 Bowling Green?

18 A 132,500.

19 Q That was from Oasis International Group?

20 A Yes, it was.

21 Q Other than April when it appeared -- 2017 -- when it
22 appears that nothing came out, did -- what was the lowest
23 month in terms of the amount of money that Mr. Anile --

24 A The lowest month would have been February with 22,500.

25 Q And did he take the same amounts in September, October,

DIRECT EXAMINATION OF HAROLD MCFARLAND

1 and December?

2 MR. MURRAY: Objection. Assumes a fact not in
3 evidence as to the taker.

4 THE COURT: Well, all right. That's overruled. Just
5 explain from where to where.

6 BY MR. ROSENTHAL:

7 Q In terms of the payments from Oasis International Group
8 to Bowling Green Capital, was it the same amount for
9 September, October, and December of 2017?

10 A The same amount was paid for those three months, 95,000.

11 Q In addition to that, were there payments to Founders
12 Club, the Founders Club, LLC?

13 A There was.

14 Q Were there any changes to what Oasis International Group
15 was paying to Anile-associated entities in 2018?

16 A In 2018, the payments to Bowling Green were 427,500. The
17 payments to Founders Club Drive were 450,000.

18 Q Now, would that, the payments to Founders Club Drive,
19 LLC, would those appear to be greater than what would be
20 required for the upkeep on that particular residence?

21 A In my opinion, probably so.

22 Q And if we can move to 2019, at that point it appears that
23 the payments to Bowling Green stopped in January of 2019?

24 A That's correct.

25 Q And did Mr. Anile move to a different entity called the

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1 4Oaks?

2 A That's correct.

3 Q And how much was paid to -- if you go month by month, how
4 much was paid to 4Oaks for January, February, and March?

5 A 195,000.

6 Q Just for those three months?

7 A That's correct.

8 Q With respect to the Founders Club Drive, LLC, what
9 amounts were paid from January, February, March, and April?

10 A 190,000.

11 Q And would that be considered more than would be necessary
12 for the upkeep for that residence for a period of four months?

13 A I would expect it to be, yes.

14 Q Mr. McFarland, during -- did you look at the Mainstream
15 account, bank account as part of your valuation examination?

16 A I did.

17 Q And during the periods of time the Mainstream account was
18 in operation, who was the person that had control of the bank
19 account?

20 A The person who authorized all the movements of the money
21 was Joe Anile.

22 MR. ROSENTHAL: Can I have just a moment, Your Honor?

23 BY MR. ROSENTHAL:

24 Q One more brief question before I do that. There was
25 testimony that Oasis Management was domiciled in Wyoming?

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1 A Yes.

2 Q Is that unusual?

3 A No, it's not. People often domicile corporations in
4 other states for various reasons. One of the reasons Wyoming
5 is popular is because they have no corporate income tax, and
6 they don't share shareholder and officer information.

7 Q And in that respect, is that a role that Delaware
8 traditionally played?

9 A Delaware used to be the most common places for
10 corporations to domicile themselves for privacy reasons. Now
11 they do Wyoming, Hawaii, several others.

12 MR. ROSENTHAL: Just one moment, Your Honor.

13 No further questions, Your Honor.

14 THE COURT: Cross-examination, please.

15 **CROSS-EXAMINATION**

16 BY MR. MURRAY:

17 Q Good morning, Mr. McFarland.

18 A Good morning, sir.

19 Q Mr. McFarland, you are a CPA; is that correct?

20 A That is correct.

21 Q You are not a professional stock trader?

22 A I am not.

23 Q You never traded on the New York Stock Exchange. Do I
24 have that right?

25 A That's correct.

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 Q You never traded forex professionally?

2 A I have never traded forex.

3 Q You have never traded commodities professionally?

4 A I have not.

5 Q You never traded equities professionally?

6 A I have not.

7 Q You never traded forex on a retail platform call MT4,
8 correct?

9 A I have not.

10 Q You never worked at the CFTC?

11 A I have not.

12 Q You never worked at FINRA?

13 A I have not.

14 Q You never worked at the NFA?

15 A I have not.

16 Q You never worked in any kind of regulatory capacity
17 regarding forex or securities; is that right?

18 A That would be correct.

19 Q You never worked as a market maker at a private trading
20 house?

21 A I have not.

22 Q You never used the Spotex platform to trade
23 professionally, correct?

24 A I have not.

25 Q You don't have your Series 7?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A I do not.

2 Q You do not have your Series 63?

3 A I do not.

4 Q You do not have your Series 3?

5 A I do not.

6 Q You are not an appraiser?

7 A I am not.

8 Q You're not a realtor?

9 A I am not.

10 Q And you're not in private equity either, correct?

11 A I am not.

12 Q You are an accountant, correct?

13 A Yes, sir.

14 Q Mr. McFarland, you're paid to render your testimony on
15 behalf of the defendant; is that right?

16 A I'm paid to render my testimony as an expert, not
17 particularly shaded to either position.

18 Q But you were called by the defense in this case, were you
19 not?

20 A I was hired by the defense, that is correct.

21 Q You were hired by the defense and they are paying you,
22 correct?

23 A That is correct.

24 Q And how much are they paying you?

25 A \$170 an hour is my governmental rate.

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 Q My understanding is that the total you were paid to come
2 here today to testify was \$27,500; is that correct?

3 A I don't believe so. I think it's about 25,000.

4 Q Plus an additional 2,500 you're owed, correct?

5 A I really don't keep track of that. I have an office
6 manager for that.

7 Q Why don't we split the baby and say roughly 26,000. Does
8 that sound right?

9 A That could be, yes.

10 Q That's a good amount of change, wouldn't you agree?

11 A I'm sorry?

12 Q That's a good amount of money, wouldn't you agree?

13 A It's reasonable but not close to what I usually get. My
14 normal rates are over twice that.

15 Q Because you've done work in this case, correct?

16 A I have done work in this case.

17 Q You've reviewed a lot of the materials in order to
18 prepare for your testimony here today, correct?

19 A Yes, I have.

20 Q Let's talk about that a little bit. Have you reviewed
21 the trading data in this case?

22 A I have.

23 Q But you're not a trader, correct?

24 A I am not.

25 Q And again, you don't have any experience with the Spotex

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 system, right?

2 A I have no experience as a trader in the Spotex system,
3 yes.

4 Q And that's what I meant. Thank you. You have reviewed
5 bank account records, right?

6 A Yes, I have.

7 Q And you have reviewed materials regarding the defendant's
8 background. Is that also correct?

9 A Yes.

10 Q Are you aware that the defendant had a Series 3 license
11 before he started Oasis?

12 MR. ROSENTHAL: Objection. Beyond the scope.

13 THE COURT: Overruled.

14 A Yes.

15 BY MR. MURRAY:

16 Q Are you aware that that test extensively tests CFTC and
17 NFA regulations?

18 A I'm sorry. I didn't hear well.

19 Q I'm sorry. Are you aware that that test, the Series 3,
20 extensively tests CFTC and NFA rules and regulations?

21 A Yes, it does.

22 Q Are you aware that that testing includes NFA rules
23 regarding associated persons?

24 A Yes, it does.

25 Q Commodity pool operators?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A Yes.

2 Q Commodity trading advisors?

3 A Yes.

4 Q Introducing broker rules and regulations?

5 A Yes.

6 Q Exemptions from registration to the NFA?

7 A Yes.

8 Q NFA membership rules and regulations?

9 A Yes.

10 Q Now, part the materials you reviewed include
11 representations by the defendant that he was a market maker;
12 is that correct?

13 A I believe that's correct, yes.

14 Q And there were representations in materials reviewed that
15 he was making money off the spread pay; is that right?

16 A Yes.

17 Q And there were also representations by the defendant in
18 those materials that the defendant and Oasis was investing in
19 real estate properties with the profits of Oasis and not
20 directly with investor money. Do you recall those
21 representations?

22 A I do not.

23 Q Do you recall representations that Oasis was offering a
24 12 percent return a year with no risk unless World War III or
25 the financial system collapsed. Do you recall that?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A I recall that they were offering 12 percent and
2 indicating minimal risk, yes.

3 Q And when you said it indicated -- you laughed. So did
4 you hear those recordings or not?

5 A World War III, I don't recall seeing that.

6 Q But something to that effect, correct?

7 A They were pretty much guaranteeing, yeah, 12 percent.

8 Q And do you recall representations being made that the
9 interest and principal on those notes were being funded by
10 trading forex; is that fair?

11 A I don't recall.

12 Q Do you recall representations made to investor/lenders
13 that the assets were sufficient to guarantee those notes that
14 they were floating? Do you recall those representations from
15 the materials?

16 A I believe I did read that, yes.

17 Q You mentioned, Mr. McFarland, that you reviewed the
18 trading performance. So I take it that you could confirm that
19 not one single dollar ever traveled from the ATC account back
20 into Oasis' bank accounts; is that right?

21 A Into which Oasis?

22 Q Either one.

23 A There were minor transfers back from OIG to Oasis
24 Management.

25 Q Because --

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A They were small.

2 Q -- the defendant testified yesterday that not a single
3 dollar ever left.

4 A The best I recall, I recall seeing an occasional amount
5 back. In the scheme of things, it was very small.

6 THE COURT: The question was, from the ATC account
7 back, not from the Oasis account. I think we got a little
8 confused.

9 BY MR. MURRAY:

10 Q I'm sorry. The ATC trading account, no money ever left
11 that account and went back into the other accounts, correct?

12 A That would be correct, from the trading account. From
13 OIG it did but not from ATC, you are correct.

14 Q And in other words, Mr. McFarland, the spread pay
15 generated in the ATC trading account, that just circled around
16 and around and around and around in that account, correct?

17 A That's correct.

18 Q That money never actually left the ATC trading account,
19 correct?

20 A That's correct.

21 Q So it just circled around and around and around the drain
22 until it was either lost in the market, which is ultimately
23 what happened, correct?

24 A Yes.

25 Q I asked you about a series of representations that you

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 reviewed in the materials. Is it your testimony here today
2 that those representations were true?

3 A What representations?

4 Q Well, how about the one that Oasis was a market maker?

5 A I would say yes.

6 Q You would say yes based on your extensive experience in
7 the markets?

8 A Not in the market.

9 Q Have you ever worked as a market maker?

10 A I have not.

11 Q Have you ever worked as a regulator regulating market
12 makers?

13 A I have not.

14 Q What about the representation that this was a risk-free
15 investment that would never fail unless there was a world war,
16 was that true based on your review of the materials?

17 A There is no such thing as a totally risk-free investment.

18 Q And so is it your testimony that representation was
19 false, Mr. McFarland? Is it your testimony then that that
20 representation made to lenders by the defendant over and over
21 and over again in the materials you reviewed, in the phone
22 calls you reviewed, that that representation was false?

23 A There was always minimal risk. To say there was no risk,
24 there is risk in living.

25 Q But is that what the defendant told the investors?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A From what I saw, I believe he said there was no risk.

2 Q You believe that he said there was no risk, correct?

3 A I believe that's correct.

4 Q So that representation is false, correct?

5 A Yes, because there's always risk.

6 Q You testified late yesterday about hard money lenders,
7 correct?

8 A Yes.

9 Q And I think you said that you viewed the Oasis investors
10 as hard money lenders, right?

11 A That's correct.

12 Q Mr. McFarland, normally hard money lenders lended things
13 like real estate, right?

14 A They can lend to anything.

15 Q They are pretty sophisticated usually in terms of their
16 risk calculations, are they not?

17 A Typically they are.

18 Q They make calculated decisions based on risk and the
19 party they are lending to; is that fair?

20 A They typically do some sort of due diligence before they
21 turn loose of their money.

22 Q You have to, right, because hard money lending can be
23 risky?

24 A Sure.

25 Q Isn't it true that hard money lenders don't usually ban

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 together and dance around sculptures of currency at Christmas
2 parties at the Ritz. Does that sound like people involved in
3 the business of money lending to you, hard money lending?

4 A I wouldn't know what they do because I don't have that
5 kind of money myself.

6 Q What about a wounded veteran from Iraq who invested his
7 whole life savings of \$100,000, does that sound like someone
8 involved in the hard money lending business to you?

9 MR. ROSENTHAL: Objection. Beyond the scope of
10 cross -- or direct.

11 THE COURT: Overruled.

12 BY MR. MURRAY:

13 Q Someone you normally see in this business?

14 A Any time you lend actual money, it's typically considered
15 a hard money lender.

16 Q But is the character I just proposed to you, is that
17 someone you would typically see in the hard money lending
18 business?

19 A Not as somebody who does it as a business, but there are
20 a lot of individuals who do.

21 Q Mr. McFarland, it's fair to say, isn't it, that Oasis,
22 even though there was Oasis Management and Oasis International
23 Group, that this was running as one entity essentially. Is
24 that not fair to say?

25 A I think they kept their accounting records separate, so

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 there was some overlap.

2 Q Okay. So they kept their accounting separate, but from a
3 business perspective is it fair to say that the same guy was
4 on the top running the thing?

5 A No. OIG had three owners that were running it, and then
6 management had Mr. DaCorta.

7 Q And Mr. DaCorta was running the management, correct?

8 A Yes, he was.

9 Q And he was in charge of the trading, right?

10 A That's my understanding.

11 Q And did you review any pictures of the Christmas parties
12 as part of the materials?

13 A Yes, I did.

14 Q You did?

15 A Yes.

16 Q Did the -- was there a separate ice sculpture for Oasis
17 Management and OIG, or was there just one ice sculpture?

18 MR. ROSENTHAL: Objection. Argumentive.

19 THE COURT: Overruled.

20 A I have no idea.

21 BY MR. MURRAY:

22 Q You don't recall?

23 A Not a specific, I don't.

24 Q Mr. McFarland, you arrived here yesterday; is that right?

25 A That's correct.

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 Q So you haven't been here for the last three weeks like
2 the rest of us have, right?

3 A That's correct.

4 Q And despite all the materials you reviewed to render your
5 opinion, you haven't really viewed any of the evidence
6 presented in this case, correct?

7 A I have been -- I have received some charts and odds and
8 ends that the government has presented.

9 Q But nothing that the jury would be able to consider other
10 than what we have discussed here today, correct?

11 A Oh, absolutely, that's correct.

12 Q Because you weren't here for the testimony the last two
13 weeks, right?

14 A I was not.

15 Q And so in forming your decision and your opinions today,
16 you weren't here this week to hear from Chris Mitchell, the
17 cofounder of Spotex, correct?

18 A That's correct.

19 Q And you didn't hear him testify about how his program
20 works in terms of putting in pips that could apply to each
21 trade?

22 A No, I was not.

23 Q I'm sorry?

24 A I didn't hear that, yes.

25 Q And you weren't here to hear the testimony of Joe

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 Paniagua who testified that the defendant instructed him to
2 makes adjustments in the accounts. You didn't hear that,
3 correct?

4 A I did not.

5 Q And you didn't hear the testimony from Joe Paniagua that
6 he was to build pips into each and every trade through that
7 system so that every single trade would have pips applied to
8 it. You didn't hear that testimony, right?

9 A I did not.

10 Q And you also weren't here for the testimony of Matthew
11 Childers, correct?

12 A That's correct.

13 Q And you weren't here to hear him testify about he is also
14 a CPA. You didn't hear that, right?

15 A I did not.

16 Q And you didn't hear his testimony about his extensive
17 private sector experience, right?

18 A I did not.

19 Q And you did not hear his testimony about his extensive
20 regulatory experience particularly in the forex markets?

21 A I did not.

22 Q And you didn't hear him testify about how he actually
23 worked for a market maker in a private trading house, correct?

24 A I did not.

25 Q And you did not hear him testify and explain to this jury

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 about how in Oasis' case the spread pay was basically just
2 Oasis increasing the prices they were paying for each trade
3 and then putting the money back into a different accounting
4 column, correct?

5 A That's correct.

6 Q And you didn't hear him testify that ultimately Oasis and
7 thus the investors were paying for that spread pay, correct?

8 A That's correct.

9 Q And you didn't hear him testify because you weren't here
10 that Oasis' trading pattern was incredibly speculative and
11 that the trading patterns were reckless and undercapitalized,
12 correct?

13 A That's correct.

14 Q And I take it, Mr. McFarland, because you weren't here,
15 you also didn't hear Patti Katter testify that the defendant
16 told her to disregard the risk disclosure legalities in the
17 risk disclosure agreement, correct?

18 A That's correct.

19 Q And you didn't hear her testify that the defendant never
20 disclosed the NFA settlement to her, correct?

21 A That's correct.

22 Q And you didn't hear her testify that she was duped by
23 constant emails claiming returns that were not true?

24 A That's correct.

25 Q You didn't hear from Matthew Kihnke either, correct?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A That's correct.

2 Q You didn't hear Matthew Kihnke say the defendant said
3 there was no risk in the investment?

4 A That's correct.

5 Q And you didn't hear from Matthew Kihnke the defendant
6 said that the money was going to be held in accounts offshore
7 and never traded, correct?

8 A That's correct.

9 Q And you didn't hear anything from him about how the
10 defendant pressured him to sign a lengthy and confusing
11 document after he had already invested \$7 million in Oasis,
12 correct?

13 A That's correct.

14 Q And you didn't hear a thing from him either about how the
15 defendant never disclosed his NFA settlement, correct?

16 A That's correct.

17 Q And I take it, Mr. McFarland, that you also didn't hear
18 any of the testimony of Anthony Charles then, correct?

19 MR. ROSENTHAL: I'm going to object at this point.
20 He already said he hasn't heard the testimony.

21 THE COURT: Overruled.

22 A That's correct.

23 BY MR. MURRAY:

24 Q And you didn't hear Anthony Charles testify that the
25 defendant went into his home to sell Oasis?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A That's correct.

2 Q And you didn't hear him testify that the defendant said
3 that there was no risk to -- let me rephrase. I'm sorry.

4 You didn't hear him testify that the defendant said
5 that there was no risk to this investment unless World War III
6 occurred?

7 A That's correct.

8 Q And you also wouldn't have heard from a man named Michael
9 Chalhub, correct?

10 A That's correct.

11 Q You didn't hear Chalhub testify the defendant never
12 disclosed the NFA agreement, that the money would be held in
13 safe and collateral accounts and would not be traded, right?

14 A That's correct.

15 Q In other words, Mr. McFarland, you haven't based your
16 opinion here today on any of the evidence presented in this
17 trial because you haven't been here, right?

18 A I haven't based it on any of the testimony in this trial,
19 that's correct.

20 Q Do you think any of the evidence presented in this trial
21 that I have just summarized for you might have changed your
22 opinions at all?

23 A I don't know without examining it.

24 Q You testified on direct examination that you saw nothing
25 indicating that Oasis handled itself and held itself out as a

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 fiduciary trader, did you not?

2 A That's correct.

3 Q Could any of the testimony that I just summarized for you
4 have possibly changed your opinion in that regard?

5 A Again I don't know because I don't know the details of
6 the testimony.

7 Q And ultimately, the decision in this case is for the jury
8 and not you, correct?

9 A That's correct.

10 MR. MURRAY: Can we publish Exhibit 245L and go to
11 page 2. Or I'm sorry. 425L.

12 BY MR. MURRAY:

13 Q Mr. McFarland, are you familiar with what a straddle
14 long, straddle short position is?

15 A Yes.

16 Q That indicates one, correct?

17 A Yes.

18 Q And you are betting for and against the same currency in
19 that kind of position, correct?

20 A Yes, you are.

21 Q And you were not here earlier last week when Mr. Childers
22 testified that there is no economic reason to have a position
23 like this, correct?

24 A I was not here.

25 Q And a position like this incurs extraordinary fees and

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 costs, correct?

2 A It does incur fees and costs, yes.

3 Q Are you aware that this type of trading was banned by the
4 NFA?

5 A Actually, I'm not.

6 Q And that's because you are not in that industry, correct?

7 A That's correct.

8 Q Now, despite the fact, Mr. McFarland, that you are not in
9 that industry, you have testified here today that the silver
10 was going to go up and was going to erase all the trading
11 losses. Is that a fair characterization of your testimony?

12 A I testified that it did go up, that he believed it would.

13 Q I'm sorry. Can you say that again?

14 A I testified that it did in fact go up and that he
15 believed that it would go up.

16 Q You thought he believed it would go up because that's
17 what he told you, correct?

18 A Yes.

19 Q And that's what he told you in preparation for you to
20 come and testify on his behalf today?

21 A Yes.

22 Q Now, I think counsel asked you earlier this morning if
23 you remembered when he took the silver position to begin with,
24 right?

25 A Yes.

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 Q And you said you didn't recall that?

2 A I do not recall.

3 Q And that's somewhat an important detail, is it not,
4 Mr. McFarland, because fees are generated to hold those
5 positions, correct?

6 A Yes.

7 Q Can you predict the future?

8 A Absolutely not.

9 Q Do you think that the defendant can predict the future?

10 A I know there are a lot of people who believe they can.
11 It's a big industry.

12 Q Fair enough, Mr. McFarland.

13 Mr. McFarland, are you familiar with the Chicago
14 Mercantile Exchange capital requirements to hold a position
15 like that?

16 A I'm not familiar with that specific requirement.

17 Q So if I asked you what they were in April of 2019, you
18 would not know?

19 A I'm sorry?

20 Q If I asked you what the CME capital requirements were to
21 hold that position in April of 2019, you would not know the
22 answer to that, correct?

23 A I would not know the answer to that.

24 Q But you nevertheless testified that precious metals are a
25 good hedge against inflation and market volatility, correct?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A Yes, I did.

2 Q But you have never traded silver, right?

3 A I have not.

4 Q You have never traded silver professionally on the CME?

5 A Nope.

6 Q Are you aware, Mr. McFarland, that Oasis would not have
7 been able to keep that capitalization, that silver requirement
8 sufficiently capitalized, as capitalized, beyond May of 2019?

9 A Let me look.

10 Q Sure.

11 A Wrong pile.

12 Given that silver had went up and the like, I believe
13 they would have been able to maintain it past May.

14 Q Can I ask what you are looking at there?

15 A It's the chart of the ups and downs of the silver.

16 Q You are just looking at the silver, the price of silver
17 chart?

18 A Yes.

19 Q And in your head you have decided that they would have
20 been able to maintain it; is that right?

21 A Pretty much.

22 MR. MURRAY: Publishing Exhibit 425H.

23 BY MR. MURRAY:

24 Q You haven't seen this, Mr. McFarland. So I'm sorry to
25 catch you offguard with this, but is it not true that this

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 chart shows that ATC would have called that margin in May of
2 2019 because they weren't sufficiently capitalized to hold
3 that position?

4 A I have not seen that chart.

5 Q Do you have any reason to dispute that?

6 A I have -- it doesn't look quite right to me at that date
7 and time.

8 Q And you would agree with me that there are fees
9 associated with holding these positions, right?

10 A Absolutely.

11 Q And sometimes they are big fees, right?

12 A Oh, yeah.

13 Q And would you agree with me, Mr. McFarland, that May of
14 2019 in finance terms is a long way away from September of
15 2019 especially if you're paying fees to hold those positions?

16 A It's a distance away. And he would have been paying
17 fees, absolutely.

18 Q And he had about 2 million in the account in order to
19 hold that capitalization at that time, right?

20 A He did.

21 Q In other words, is it not true that he would have had to
22 recapitalize to hold that position?

23 A I believe he would have, yes.

24 Q And I think we talked a little bit about some of the
25 options we would have had today, right?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A Yes.

2 Q We talked about real estate, right?

3 A Yes.

4 Q But it's a little bit difficult to recapitalize quickly
5 in that type of environment when you are living in the real
6 estate that you are trying to recapitalize the account with?

7 A If it's the property that he is living in, I would say
8 probably.

9 Q Because you have got to sell it, right?

10 A Or get a loan against it.

11 Q Or get a loan against it. And either of those takes some
12 time, right?

13 A Typically.

14 Q And in trading, you would agree with me even though you
15 are not a trader yourself, but wouldn't you agree with me that
16 trading forex especially, the markets move quickly?

17 A Especially in forex they do.

18 Q Twenty-four hour sites, right?

19 A Yes.

20 Q Margin calls like that?

21 A Yes.

22 Q Liquidations like that?

23 A Yes.

24 Q It's a bit of a Hail Mary, is it not, Mr. McFarland, to
25 opine that this trading position which was capitalized with

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 the last \$2 million that Oasis had on hand was going to
2 somehow save the day and save everyone at Oasis. Would you
3 agree with that?

4 A The best I recall, I testified that there was another
5 2 million in management that they could have loaned to them,
6 and there was 6 million in Mainstream that could have been
7 loaned to ATC. So they had other sources that could be
8 immediate.

9 Q So 6 million, 2 million, and 2 million. So what does
10 that total?

11 A 10 million.

12 Q I guess you weren't here last week when Mr. Childers
13 testified that the CME would have required \$15 million to hold
14 that kind of position at that time?

15 A I was not here.

16 Q And isn't it also true, Mr. McFarland, that if the price
17 of silver dipped, which again we can't predict, correct?

18 A Cannot predict.

19 Q If the price of silver dipped, that that margin
20 capitalization might have required even more than 15 million?

21 A Absolutely.

22 Q And if that had happened, then more Oasis money would
23 have been flushed down the drain because ATC would have
24 liquidated and called the margin; isn't that true?

25 A Yes.

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 Q You didn't like my football analogy.

2 A Your what?

3 Q You didn't like my football analogy.

4 A Hail Mary?

5 Q Yeah. Let me try another one. Isn't it true that we are
6 Monday morning quarterbacking here?

7 A We do have the advantage of hindsight, yes.

8 Q Because if we knew what was going to happen, then we
9 could have avoided it, right?

10 A Absolutely.

11 Q And if we knew the winning Powerball numbers, then Oasis,
12 Mr. DaCorta could have played those, correct?

13 A In theory.

14 Q In theory he could have played the Florida Lottery,
15 right? And if he knew the numbers, he would have won, right?

16 A Sure.

17 Q Supposedly, hopefully. And if he won, then he could have
18 recapitalized and paid back all the Oasis investors, right?

19 A Sure.

20 Q I want to talk a little bit about this chart here. This
21 is Defense -- can I get the Elmo back, please?

22 This is Defense Exhibit 77.

23 MR. ROSENTHAL: Objection. That's not in evidence.

24 MR. ALLEN: We did not introduce that.

25 MR. MURRAY: Seventy-six is though, right?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 MR. ALLEN: Let me see. Yes.

2 MR. MURRAY: Go to 76.

3 BY MR. MURRAY:

4 Q Mr. McFarland, this number here, this \$10 million number,
5 that's the appraised value, correct?

6 A Yes.

7 Q And so that doesn't include any mortgages that would have
8 been outstanding on the properties, right?

9 A That's correct.

10 Q And am I right then if I were to say that if you included
11 those liabilities that were on the properties, the total value
12 of the properties as of April 2019 was about \$6 million?

13 A I don't know. I don't know what the mortgages were. I
14 looked at the property appraiser's office and there were no
15 mortgages filed.

16 Q Don't you think that would have been important to your
17 analysis of whether they were capitalized, sufficiently
18 available for capitalization?

19 A Generally when you do a mortgage, almost no exceptions
20 you file -- to protect your interest, you file it with the
21 county property office. I did check those records. There
22 were no mortgages.

23 Q I want to talk a little bit about -- Mr. McFarland, did
24 you know that that's because all the properties were seller
25 financed?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A That could be.

2 Q And people usually seller finance properties because they
3 can't get traditional loans sometimes, right?

4 A It could be that. It could be a myriad of other reasons.

5 Q And people struggle sometimes to get traditional
6 financing because they struggle to show any revenue or
7 profits, correct?

8 A My experience with seller financing is that typically the
9 seller does it because they are going to get 10 percent or
10 something when the banks are only doing 2 and 3 percent. They
11 do it for their advantage.

12 Q Why does the buyer do it?

13 A Why does the buyer do it? Typically they will get a
14 little less than what they have to pay for a traditional
15 mortgage.

16 Q And sometimes they do it because they can't get approved
17 for a traditional mortgage, correct?

18 A I would assume so. That could be.

19 Q And sometimes that happens because they can't show
20 income, right?

21 A The banks all have their own reasons for why they do
22 that, insufficient income, too much debt. There's a lot of
23 reasons.

24 Q In the case of a company trying to get a mortgage, it
25 would be -- instead of using the word "income," we would be

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 using revenue and profits, right? That what they would have
2 to show the financial institution?

3 A I don't know what the financial institutions require, but
4 my experience has been that that's correct.

5 Q And I think, Mr. McFarland, you had testified that in
6 March or April of 2019, had all of the Oasis lenders called
7 their notes, Oasis would not have been able to meet that
8 obligation, right?

9 A If everybody had called, they would not have been able to
10 meet the obligation, that's correct.

11 Q And that is because, is it not, they were insanely
12 undercapitalized relative to the obligations that they had
13 outstanding on those notes?

14 A I don't know what you qualify as insanely
15 undercapitalized. They did not have enough capital to do that
16 as is traditional in most lending businesses.

17 Q Well --

18 A Bank and everything else, too.

19 Q How about this? Were they not obligated to the tune of
20 \$88 million on the outstanding notes?

21 A I don't know that I agree with that number. I did see
22 that number, but I looked at the sources for that and their
23 calculations. I don't believe that would be correct.

24 Q And you weren't here when Joe Paniagua testified to that?

25 A I was not.

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 Q And he testified that number was \$88 million.

2 A I did get the government exhibit to how he got to that
3 number, and I disagreed with it.

4 Q It's not hard to get to that number. Don't you just add
5 up all the principal amounts that were given plus compounding
6 interest on the notes?

7 A Yes, it would be, except that he did not include a lot of
8 the payments that were made. They were not listed. I can
9 give you examples from 2017 if you'd like.

10 Q I think it would be more helpful -- do you have a general
11 number in mind of the outstanding obligations?

12 A It's hard to give an exact number because some of the
13 deposits were not listed and they held that too. We don't
14 know what the source is. Some of the things were not -- at a
15 minimum, I would say it's 56.

16 Q \$56 million?

17 A To 68 or so.

18 Q So 56 to \$68 million?

19 A Yes.

20 Q And isn't it true then, Mr. McFarland, that Oasis had on
21 hand 6 million in properties after mortgages?

22 A I can't confirm that but they had property.

23 Q \$2 million in the Oasis Management account?

24 A Yes.

25 Q \$6 million in the OIG account?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A Yes.

2 Q And I think you testified roughly 660,000 in gold and
3 silver, right, physical gold and silver?

4 A Yeah.

5 Q And so that is roughly \$15, \$16 million, right?

6 A Plus the 2 million in ATC.

7 Q Right. It's 14 plus the 2 million in ATC. So that's
8 like 16-ish?

9 A Yeah.

10 Q Roughly on the same page?

11 A Based on your assumption of the mortgages and everything,
12 at 4/1, like I said, my total is 23 if there are mortgages.

13 Q Okay. And so 50, \$60 million in obligations. And we
14 have 16 or so million dollars in assets, right, total assets?

15 A Somewhere between 16 and 23 in assets.

16 Q And I think you testified that that's not a problem
17 because banks never have enough capital to avoid a total cap
18 run of the bank, right?

19 A Well, that's one example, yes.

20 Q Mr. McFarland, do bankers that work at Bank of America,
21 do they usually take money from Bank of America and pay for
22 their children's college tuitions with banking money?

23 A I would hope not.

24 Q That's a crime, is it not?

25 A In their case, yes.

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 Q Do they normally take that money and pay off their
2 parents' home equity lines?

3 A A bank is a fiduciary. So, no, they can't.

4 Q And banks are usually FDIC insured, right?

5 A Yes.

6 Q And so the analogy between Oasis and a bank is not really
7 a great one, is it, Mr. McFarland?

8 A Perhaps a better analysis would be like a company that
9 does research and development. They get loans. They spend it
10 on research and development and then determine that the
11 project is unfeasible and everything is gone, but everything
12 is gone.

13 Q Can we pull up Exhibit 500A?

14 I just want to walk through -- and I understand,
15 Mr. McFarland, you might disagree with some of these numbers,
16 but I want to generally walk through sort of the bottom line
17 of what was left as of April 2019, okay? So is it not true
18 that on this exhibit, there were 27 or so million dollars paid
19 back to lenders?

20 A I would say that's the minimum amount. We don't know,
21 like I say, what some of the transfers were, whether they were
22 to lenders or other expenses, et cetera. Some of them we were
23 not able to run down.

24 Q Was it difficult to ascertain that because the expenses
25 were a combination of business and personal expenses in the

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 Oasis accounts?

2 A There were some business and personal expenses, yes.

3 Q So that makes it pretty hard to audit then, does it not,
4 based on your auditing experience?

5 A It can be.

6 Q We don't know where the money is going, right?

7 A Yep.

8 Q But you testified that you didn't see anything wrong with
9 the way this business was being run and it seemed to be
10 legitimate to you, did you not?

11 A I did not testify to that.

12 Q I'm sorry. What did you say?

13 A I testified that he appeared to be trying to make a
14 successful business.

15 Q And there didn't appear to be irregularities?

16 A I didn't testify that there weren't irregularities. It
17 depends on how you define irregularities. For example,
18 payments to Mr. DaCorta could have been in exchange for
19 services. Could they have been done a different way is more
20 to your point.

21 Q Understood. So you may disagree with this number of
22 27 million, but roughly there were payments made forward to
23 investors that took their money out, right?

24 A Yes, there were. Everybody who requested money got
25 theirs, and there were interest payments.

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 Q And then \$22 million went into the ATC trading account,
2 right?

3 A I believe that was correct.

4 Q And no money came back out, correct?

5 A That's correct.

6 Q And there was \$2 million left, right?

7 A Yes.

8 Q And there were certain monies to payments and staff of
9 Oasis and passive Oasis members, right?

10 A Yes.

11 Q And then there was \$9.6 million made to properties that
12 some of the Oasis principals were living in and other real
13 estate, right?

14 A That sounds about right, yes.

15 Q And then of course there is the \$2 million for the office
16 building?

17 A Yes.

18 Q So by my math, Mr. McFarland, and correct me if I'm
19 wrong, we have anywhere from 60 to \$80 million in outstanding
20 liabilities and perhaps 14 to \$16 million left, right?

21 A That would be approximately correct.

22 Q You would agree, would you not, Mr. McFarland, that a
23 promissory note is only as good as the full faith and credit
24 of the company underwriting that note, right?

25 A Promissory note, the company's obligation is to pay it

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 when it's due.

2 Q Right. And so --

3 A Much as their ability.

4 Q And so if the company doesn't have any money to pay the
5 note, the note is worthless, right?

6 A The note defaults.

7 Q And if I came to you, Mr. McFarland, and I said, hey, my
8 company has \$88 million in outstanding obligations, we have
9 \$16 million left, but don't worry, I've got this great silver
10 position and it's going to skyrocket any day now, would you
11 give me a hundred thousand dollars?

12 A I don't have a hundred thousand.

13 Q Well, you have 27,000 now, right? Would you give me
14 \$27,000?

15 A Not without a lot of additional research, due process.

16 Q Because that matters, right?

17 A It would to me.

18 Q It matters what I'm saying about my company?

19 A Yes. I would use that as a base before researching.

20 Q It matters that I'm not lying about how my company makes
21 its money, right?

22 A That's why I would do the due process, to find out.

23 Q And so I think it's fair to say then if I was lying to
24 you about the primary purpose of how my company makes money,
25 then you wouldn't invest, right?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A If I determined that that was the case, I probably would
2 not personally.

3 Q And if I was lying to you about how my company generated
4 money, you wouldn't invest?

5 A If I determined that you were, that would be correct.

6 Q And would you invest, Mr. McFarland, if I came to you and
7 I said, I would like \$27,000. I'm going to float you this
8 note, and I'm going to go to Vegas and put it on a roulette
9 table and I have no other capitalization to pay the note.
10 Would you take my note?

11 A Personally I probably would not.

12 Q What if I came to you and said I'm running a business, I
13 have got \$88 million in outstanding obligations, I've got
14 60 million in assets, and I'm going to take the money you give
15 me for this note and I'm going to pay my daughter's college
16 tuition. Would you invest that?

17 A Personally probably not.

18 Q But it would be important to you, would it not, the
19 things that I'm saying to you about what my business does?

20 A Yes, it would.

21 Q And you would agree with me, would you not,
22 Mr. McFarland, that as a certified fraud examiner, if there
23 are representations made that lay on top of the terms of this
24 note, verbal representations, that that's important, is it
25 not?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A Yes.

2 Q When you are examining fraud, it's important that there
3 are not cross representations made on top of legal mumbo-jumbo
4 and documents, right?

5 A That's correct.

6 Q And you see that often in frauds, do you not?

7 A I see that often in frauds, and I see it unfortunately
8 often in regular business.

9 Q Mr. McFarland, do you agree with the defendant when he
10 says that once lenders give him the money and hits the Oasis
11 account, he can do whatever he wants with it because it's his
12 money? Do you agree with that proposition?

13 A I don't know that I would say whatever, but he had broad
14 authority to do a lot.

15 Q So if he went to Daiquiri Deck and spent it drinking,
16 would you agree with that?

17 A Well, part of your issue here is what they call
18 fungibility of money. Once you put dollars into a bank
19 account, you can't say -- if 15 people put money into a bank
20 account, I can't say the money from this one is what I spent
21 for this, the money from this one I spent for this. It's a
22 group.

23 Q Right. And it's fungible, but it becomes less fungible
24 when there is less money in the account, is it not?

25 A I don't think there is any recognition of that in fraud

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 examination. It's just all fungible.

2 Q Well, what about if I had no money in my account and I
3 take a hundred dollars of yours and I put it in my account and
4 then I go spend a hundred dollars a Daiquiri Deck? Is it
5 pretty clear I just spent your hundred?

6 A Since there was no commingling with anybody else's, yes.

7 Q If I had \$50 in the account, right, and I took a hundred
8 and went and spent a hundred, then it's at least clear that I
9 spent 50 at Daiquiri Deck, correct, of your money?

10 A Some of it had to be, yes.

11 MR. MURRAY: Can you publish Exhibit 210D at 7?

12 BY MR. MURRAY:

13 Q You testified about this paragraph yesterday, right,
14 Mr. McFarland?

15 A Yes. It appears to be the same paragraph.

16 Q And remind me because I don't want to mischaracterize
17 your testimony, what did you say yesterday about this?

18 A I said basically that it gave him a lot of flexibility in
19 how to use the loan proceeds.

20 Q And it does, right? It says you can do whatever you want
21 with it, right?

22 A It doesn't say "whatever you want," but it's pretty
23 much -- it's pretty open.

24 Q "For any purpose whatsoever." That sounds pretty broad
25 to this lawyer, does it not?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A That's pretty broad, yes.

2 Q But you would agree as a certified fraud examiner,
3 Mr. McFarland, that if someone is given that document but then
4 told verbally don't worry about this, this is just legal
5 mumbo-jumbo that our attorneys made us do, that would affect
6 your analysis as a certified fraud examiner, would it not?

7 A As a certified fraud examiner, typically we look strictly
8 at the document because contract law supersedes verbal.

9 Q But you looked at this case -- you looked at oral
10 recordings, did you not?

11 A Transcripts of them, yes.

12 Q Transcripts of them. So wouldn't it be significant if
13 you were trying to determine a fraud whether there are cross
14 representations being made between oral representations not to
15 worry about it and then the boilerplate language underneath in
16 the legal documents? Is that not significant to you as a
17 fraud examiner?

18 A That's a point that we need to take into consideration,
19 yes, absolutely.

20 Q And, Mr. McFarland, if investors weren't shown this
21 document at all or were pressured to sign it without fully
22 understanding what it was, that would be something you would
23 take into consideration as well, would it not?

24 A If they were not shown the document at all, that would be
25 absolutely significant. As far as pressured, that's hard to

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 determine because pretty much everybody knows you better read
2 what you're going to sign.

3 Q Well, let me ask you some questions about that. Are you
4 familiar with the term contract of adhesion since you talked
5 about contract law?

6 A Vaguely, yes.

7 Q And is it not correct that a contract of adhesion is
8 basically a really fancy way of saying that a contract is sort
9 of pressured on somebody that's so long and complex that they
10 don't really understand it, like a cell phone bill or cell
11 phone contract?

12 MR. ROSENTHAL: Objecting. He's asking the witness
13 to make a conclusion of law, and also outside the scope of
14 direct.

15 THE COURT: Go ahead and ask the question. Overruled
16 right now.

17 A I would agree that there are contracts that are very
18 difficult to understand for the average person.

19 BY MR. MURRAY:

20 Q Right. You to go Verizon and they're like these are the
21 terms of your cell phone contract, right?

22 A I ask questions, but not everybody does.

23 Q Do you read every word?

24 A Pretty much. They get frustrated with me.

25 Q But you would agree with me that most people don't read

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 every word, right?

2 A I would agree that most people do not.

3 Q When most people are closing on their homes, they don't
4 sit there and read every closing document, right?

5 A I can't say what most people do, but I would expect there
6 are a lot that don't.

7 Q Mr. McFarland, do you have any children or grandchildren?

8 A I do.

9 Q Would you have allowed them to invest in Oasis?

10 MR. ROSENTHAL: Objection.

11 THE COURT: Legal grounds?

12 MR. ROSENTHAL: Argumentive.

13 THE COURT: Overruled.

14 A At this point in time, yeah, I don't know. At the time
15 it was coming up and people were being paid, I would have
16 investigated it before allowing them to.

17 BY MR. MURRAY:

18 Q What about knowing what you know now? Now that you have
19 looked under the hood, would you have let them invest in
20 Oasis?

21 A I don't know that I would with my children or
22 grandchildren, but a lot of that is because of their financial
23 status. I do have clients who are investors who would
24 probably consider it.

25 Q Would you have invested?

CROSS-EXAMINATION OF HAROLD MCFARLAND

1 A Would I have? I don't have that kind of money, no.

2 Q Would you have invested \$10,000?

3 A Personally, I doubt it.

4 Q Mr. McFarland, have you ever in all your time and
5 experience as an accountant, as a certified fraud examiner,
6 have you ever heard of a legitimate investment opportunity
7 that generates 12 percent a year guaranteed all the way up to
8 31 percent and carries no risk whatsoever unless there is a
9 world war? Have you ever heard of that and seen it to be a
10 true thing?

11 A Again, reference to world war, that makes that very
12 difficult, but I have seen investments at 12 percent, an IRA
13 that were good and worked out. But when you say there is no
14 risk, my belief and my opinion is there is nothing that is
15 without risk.

16 Q And so if someone were to go to an investor/lender and
17 tell them there was no risk in this investment unless there is
18 nuclear war or the financial institution shuts down, that
19 would be a lie, would it not?

20 A There is always risk, yes.

21 Q And so that would be a lie, correct?

22 A In my opinion, yes.

23 MR. MURRAY: No further questions, Your Honor.

24 THE COURT: Well, we will have a little redirect, but
25 let's take our morning break now, please. So why don't we try

REDIRECT EXAMINATION OF HAROLD MCFARLAND

1 and get back here at five minutes 'til the hour. So that
2 would be 10:55. Please don't discuss the case or look at
3 outside materials. 10:55. Thank you.

4 (Jury escorted out of the courtroom.)

5 THE COURT: Quick question. We are having lunch
6 brought to them. So that means I'm going to shorten the lunch
7 time a little bit because it will be here when they're done at
8 12:30 with the morning.

9 Do we think we are going to get to closings today?

10 MR. ALLEN: Your Honor, I can tell you that we have
11 three witnesses left to call. They are all -- two of them are
12 lenders. One of them is a lender and the individual who did
13 the coding for the AWS back office, John Paniagua. You heard
14 some testimony of him. If the government is going to spend an
15 extraordinary amount of time relitigating the case in
16 cross-examination, it's going to take longer. I don't think
17 that my directs are going to be more than an hour and a half.

18 THE COURT: I'm just curious. So at lunch then be
19 prepared to discuss these jury instructions. There were
20 several that y'all filed. We can talk about those as well.

21 Thanks.

22 (Recess taken.)

23 THE COURT: Counsel, you have redirect?

24 **REDIRECT EXAMINATION**

25 BY MR. ROSENTHAL:

REDIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q Mr. McFarland, in cases you are involved in, do you
2 typically sit in on the entire trial?

3 A Typically I do not.

4 Q The government asked you about certain testimony from
5 their perspective that they believe that you had missed by not
6 sitting in on the entire trial. Do you recall those
7 questions?

8 A Yes.

9 Q So you were not here when Joe Paniagua testified?

10 A I was not.

11 Q So you did not hear Joe Paniagua testify when asked about
12 the chart that the government keeps using that he said that he
13 would do his best but he couldn't promise that it would be
14 accurate?

15 A I was not here.

16 Q And you were also not here when -- or were you here when
17 Joe Paniagua also testified that he was never asked to alter a
18 lender's account?

19 MR. MURRAY: Objection. Leading.

20 THE COURT: All right. Let's restate it nonleading.

21 MR. MURRAY: And a mischaracterization of testimony.

22 THE COURT: Ladies and gentlemen, what I say, what
23 the lawyers say is not evidence, as you know. I already said
24 that. So you will recall the evidence, but let's rephrase
25 that as nonleading.

REDIRECT EXAMINATION OF HAROLD MCFARLAND

1 BY MR. ROSENTHAL:

2 Q Were you able to hear what Mr. Paniagua said with respect
3 to whether he was asked at any time to alter a lender's
4 account?

5 A I did not hear it, no.

6 Q Because you were not here for the entire trial, did you
7 hear the testimony of Mr. DaCorta?

8 A I did not.

9 Q So you did not hear Mr. DaCorta being questioned about
10 the events that led him to be here today?

11 A That's correct.

12 Q Because you were not here, did you hear him being cross
13 examined by the government?

14 A No, I did not.

15 Q And did you hear his responses to the cross-examination
16 questions by the government?

17 A No.

18 Q You had indicated that you were not here for any part of
19 the trial testimony. So did you hear the testimony of
20 Mr. Childers?

21 A I did not.

22 Q Did you hear the testimony -- did you hear the testimony
23 of Mr. Childers with respect to whether or not he was aware of
24 any additional Oasis assets?

25 A I did not.

REDIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q So you do not know what his answer was with respect to
2 that?

3 A I do not.

4 Q Were you here for the testimony that related to what was
5 required of a lender in order to set up their client portal?

6 A I was not.

7 Q And are you aware of what is required of a lender to set
8 up a client portal?

9 A I am not.

10 Q Do you know if they were required to acknowledge that
11 they had read the risk disclosure before setting up their
12 client portal?

13 A It is my understanding they were, yes.

14 Q Now, just briefly with the hours that you put into this
15 case, you said that it's \$170 an hour; is that correct?

16 A Yes.

17 Q Can you estimate how many documents you had to review in
18 order to be familiar with the allegations in this case?

19 A Well, when I did a directory search on the number of
20 files, I have over 71,000 files, some of them a page long,
21 some of them hundreds of pages.

22 Q And did you also have to spend time trying to explain
23 things to lawyers that are not accountants?

24 A Yes, I do.

25 Q Was that time-consuming as well?

REDIRECT EXAMINATION OF HAROLD MCFARLAND

1 A Yes, it was.

2 Q Now, Mr. Murray had asked you about the businesses that
3 you have not been in over the course of your career. And I
4 think he mentioned stock trading?

5 A That's correct.

6 Q Have you been involved in investigations or examinations
7 of businesses that did involve stock trading?

8 A I have.

9 Q He asked you concerning your involvement with real
10 estate.

11 A Yes.

12 Q And you indicated you have never been in real estate?

13 A That's correct.

14 Q Have you been involved in evaluations or investigations
15 relating to cases that did involve real estate?

16 A Yes, I have.

17 Q Do you believe that you have sufficient knowledge of the
18 types of businesses that were involved in this case to be able
19 to render the opinions that you have?

20 A I do.

21 Q Mr. Murray asked you questions about what had occurred in
22 May of 2019 and suggested that the silver position in question
23 would have been liquidated at that time. Do you recall those
24 questions?

25 A Yes.

REDIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q Who was in control of Oasis in May of 2019?

2 A Oasis International Group or ATC?

3 Q Let's start -- I'm talking about May of 2019. And let's
4 talk all of the Oasis entities.

5 A Well, Mike DaCorta and Joe Anile.

6 Q When did the receiver --

7 A May of 2019. I'm sorry. The receiver was in charge.

8 Q And we will use the sports analogy that this is sort of
9 like canceling the game at halftime?

10 MR. MURRAY: Objection. Leading.

11 THE COURT: Overruled.

12 A I think that would be an appropriate analogy.

13 BY MR. ROSENTHAL:

14 Q Now, there was questions asked of you with respect to the
15 effect of mortgages. Are you familiar with any mortgages that
16 Oasis or any of the Oasis entities were using?

17 A Mortgages they had created? At least one.

18 Q Well, were you familiar with the mortgage that had been
19 on the Lost Key Place property?

20 A Yes.

21 Q Was that a traditional mortgage or was that a short-term
22 mortgage?

23 A I'm sorry. I forget how long it was.

24 Q Well, was it your -- was it seller financing?

25 A My understanding it was seller financing, yes.

REDIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q Was it your understanding that it was or was not in
2 existence at the time that the receiver took over Oasis?

3 A It was not in existence at that time.

4 Q Why was it not in existence at that time?

5 A There was an agreement between the person who held the
6 mortgage and Mr. DaCorta that he would basically cancel the
7 mortgage in exchange for Mr. DaCorta giving him a position in
8 the company, a loan in the same amount within Oasis.

9 Q Mr. McFarland, I'm talking about the Lost Key Place
10 property. The Lost Key Place property, do you recall who had
11 originally owned the Lost Key Place property?

12 A Actually I don't recall.

13 Q Okay. Were you aware of whether there was any existing
14 mortgages at the time that the receiver came in?

15 A I don't recall.

16 Q Do you remember if there was one on the Lacantera
17 property?

18 A Actually, I believe it had not been paid off yet.

19 Q Was that a seller financing, if you remember?

20 A I didn't see the mortgage note itself. So I don't know.

21 Q So you don't know whether that was also a -- whether that
22 was a short-term or a conventional mortgage?

23 A Having not read the note, I can't testify to that.

24 Q Mr. Murray kept using the figure over \$80 million in
25 outstanding notes. What -- do you agree with that number?

REDIRECT EXAMINATION OF HAROLD MCFARLAND

1 A No, I do not.

2 Q Do you know what the amount of the loans were that had
3 come in since the start of the loan program?

4 A I believe I might have that number. Actually, I don't
5 have that number in front of me.

6 Q And do you recall generally what the amount was?

7 A I do not. The only thing I can say is the total that
8 came in less the payments to principal that went out I
9 calculated to be about 56.

10 Q Now, is it correct that there was a clean break when the
11 loan program started with respect to earlier investors?

12 A I'm sorry. With respect to?

13 Q It was probably a badly worded question. Let me start
14 again.

15 Were you familiar with what happened with respect to
16 the investors who had come into Oasis prior to the beginning
17 of the 2017 loan program?

18 A Yes.

19 Q And what happened with them?

20 A Some of them, they were bought out. And others converted
21 their investment interest into notes.

22 Q So unless they converted their interest into notes, were
23 all of the prior investments extinguished at the time that the
24 loan program began?

25 A All the priors were converted to loan programs, yes.

REDIRECT EXAMINATION OF HAROLD MCFARLAND

1 Q So there shouldn't have been any outstanding debt with
2 respect to investors prior to the initiation of the loan
3 program?

4 A That's correct.

5 Q So any obligation thereafter with respect to investors or
6 lenders would have come through the loan program?

7 MR. MURRAY: Objection. Leading.

8 THE COURT: Sustained.

9 BY MR. ROSENTHAL:

10 Q Would there have been any remaining obligations to
11 investors after the loan program was initiated or after the
12 loan program began?

13 A You are asking to initial equity investors?

14 Q Yes.

15 A Yes. There is no obligation.

16 Q So Mr. McFarland, you had offered an opinion that
17 Mr. DaCorta was attempting to build a successful business.
18 And let me ask you about some factors that -- and I want to
19 ask you if these had any impact on -- or this would have any
20 impact on that conclusion.

21 Purchasing of real estate as an investment.

22 MR. MURRAY: Objection. Scope of cross.

23 THE COURT: Well, it may not be -- overruled on that
24 grounds, but we don't want to get cumulative and just repeat
25 our direct.

REDIRECT EXAMINATION OF HAROLD MCFARLAND

1 MR. ROSENTHAL: I understand.

2 THE COURT: Go ahead.

3 BY MR. ROSENTHAL:

4 Q You can answer.

5 A Yeah. I think that would be prudent and good standard
6 business policy.

7 Q What about hiring competent people to staff Oasis?

8 MR. MURRAY: Objection. Leading.

9 THE COURT: Overruled.

10 A Yeah, hiring competent people to do the jobs that need to
11 be done is standard business practice.

12 BY MR. ROSENTHAL:

13 Q Did you ever -- did you ever meet or speak with Deb
14 Cheslow?

15 A I did not.

16 Q And did you ever meet or speak with Joe Paniagua?

17 A No.

18 Q Did you ever meet or speak with John Paniagua?

19 A I did not.

20 Q Would diversification of Oasis' portfolio be considered a
21 factor that would support the conclusion that Mr. DaCorta was
22 attempting to build a successful business?

23 A Diversification is always an important factor when you
24 are dealing with investments and risk and stuff. The more
25 diversification you have, the less risk you have.

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1 MR. ROSENTHAL: That's all the questions I have, sir.

2 THE COURT: Thank you, sir. You may step down. Good
3 day.

4 Call your next witness, please.

5 MR. ALLEN: Your Honor, we would call Jason McKee.

6 THE COURTROOM DEPUTY: Please raise your right hand.

7 (Witness sworn.)

8 THE COURTROOM DEPUTY: State your full name.

9 THE WITNESS: Jason Eugene McKee.

10 THE COURTROOM DEPUTY: Thank you. Please be seated.

11 **JASON MCKEE, CALLED BY THE DEFENSE, SWORN**

12 **DIRECT EXAMINATION**

13 BY MR. ALLEN:

14 Q Good morning, sir.

15 A Good morning.

16 Q So there is a microphone there. It's important that you
17 speak up so that the jurors over here can hear you and the
18 court reporter can pick you up. If you can wait for me to
19 finish my question completely before you give your answer so
20 the court reporter is happier with me at the end of the day,
21 okay?

22 A Sounds great.

23 Q Mr. McKee, where do you live?

24 A In the big city of Elkhart, Illinois.

25 Q And where is that in relationship to actual big cities in

DIRECT EXAMINATION OF JASON MCKEE

1 Illinois?

2 A I'm two hours south of St. Louis. It's a town of a
3 thousand people.

4 Q Have you spent the majority of your life in that area?

5 A Entire life. Related to everybody there.

6 Q And what is your educational background?

7 A I had normal high school, and then out of high school I
8 went into the military. And once I come out of the military,
9 I was in a trade. I'm an electrician by trade. That's what I
10 do. I work construction.

11 Q What branch of military did you serve in?

12 A I was in the United States Army. And I spent nine years
13 in the Illinois National Guard.

14 Q And what years were you in the Army?

15 A I was actually a combat medic. When I got out, I was a
16 staff sergeant. Combat medic is what I did the whole time I
17 was in.

18 Q Did you -- during your tour, did you see combat?

19 A No, I did not. I was actually in between desert
20 conflicts. I'm 48 years old. So I was in between the Desert
21 Storm and then the war in Afghanistan.

22 Q Are you married?

23 A I am. This is my wife back there in the back, Rachel.
24 We have been married for a couple years. Yes, so happily
25 married.

DIRECT EXAMINATION OF JASON MCKEE

1 Q Well, you're under oath. So it's a good thing you said
2 that.

3 A Yeah, it is a good thing.

4 Q Do you have any children?

5 A No children.

6 Q And, sir, what type of work do you do?

7 A I'm an electrician. So once I turned into an
8 apprentice -- whenever I had gotten back out of my boot camp
9 and my training period for the military, I went to an
10 apprentice school. I joined the military actually to pay for
11 college and then ended up not going to college. School of
12 hard knocks all the way.

13 So then once I did the apprenticeship, there's always
14 on-the-job training. And then I worked in that profession up
15 to 23 years. And then recently I actually -- I have a little
16 bit of real estate, rental properties and stuff that over the
17 years I rehabbed. So I've just kind of -- I worked solely in
18 construction in that now. I just kind of maintenance all my
19 own properties.

20 Q At some point in time, were you involved with a company
21 called Ambit Energy?

22 A I was.

23 Q So hold on. So what is Ambit Energy?

24 A It was a direct selling company. We sold electricity to
25 customers. The company was actually kind of the part of my

DIRECT EXAMINATION OF JASON MCKEE

1 life where I quit being an electrician and started working for
2 me because I really learned about business and about personal
3 development and how to succeed on my own versus having to be
4 an employee.

5 Q And when were you affiliated with Ambit Energy?

6 A Actually I still am to this day, but it started back in
7 '90s or -- I think 2020. Wait a second. No. It would have
8 been 2017. I think I started then, yeah.

9 Q 2017?

10 A Yeah. I have not done anything really with the company
11 much since the past three years, but I still have customers
12 and stuff that call me, and I still take care of all my
13 customers.

14 Q And at some point did you become familiar with a company
15 by the name of Oasis International Group?

16 A I did.

17 Q And can you tell the jury how you initially became aware
18 of a company called Oasis International Group?

19 A So through Ambit, me being from Illinois you go to a lot
20 of conferences and stuff like that. And all my friends are --
21 a lot of them had already put money into Oasis. And just
22 through general conversation, you know, people talking about
23 how they're successful and what's going on here and what's
24 going on there and what different parts of business to be
25 successful in and stuff like that, and so I asked about it,

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1 and that's how I inquired about it.

2 Q Okay. And what was your initial understanding from the
3 initial information about Oasis International Group? What was
4 your initial understanding?

5 A First I was clueless.

6 Q Okay.

7 A But after -- what happened was after I spoke with one of
8 my good friends -- we had spoke about it. He had already had
9 money involved in it. And I knew several of my other friends
10 who had worked on Wall Street in the past, and so I just
11 started calling them up and different people that I knew that
12 we had spoke to who had money in. I started calling them and
13 just kind of asking them about what exactly it was.

14 Q Without getting into what anybody specifically told you,
15 what was your general knowledge after having those
16 conversations as to what Oasis International Group was about?

17 A It was a diversified company that you could put your
18 money into that had a good return. And you basically loaned
19 the company your money, and you would get good return from
20 that.

21 Q Based on those initial conversations -- let me back up.

22 When you say "a diversified company," what did you
23 understand that -- what did you mean by that word?

24 A That they had investments in -- they were doing forex
25 trading. They had real estate. They had gold and silver.

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1 And they were looking into buying into different businesses
2 and companies.

3 Q Like equity financing and companies?

4 A I'm not sure what you mean by equity financing.

5 Q Okay. But putting money -- like investing in other
6 companies?

7 A Yes, sir.

8 Q And based on the initial sort of conversations with
9 individuals who had already been in, what did you do next in
10 relationship to Oasis International Group?

11 A Well, I personally before I put my money in, I started
12 doing research on Mike, trying to find out --

13 Q Hold on. When you say Mike, Mike who?

14 A Mike DaCorta.

15 Q So go ahead.

16 A So whenever -- I called some of my friends. Like I said,
17 I had some that worked on Wall Street. I talked to them
18 about -- this industry was something that I knew nothing about
19 when it came to forex trading and different types of companies
20 like this. I didn't have a clue about it. So I was asking
21 them how they felt about it. And I figured if they worked on
22 Wall Street, they probably had a little bit of an inside on
23 the industry.

24 One of my friends told me that --

25 MR. CHEE: Objection. Hearsay.

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1 THE COURT: Sustained.

2 BY MR. ALLEN:

3 Q Without getting into what you were specifically told,
4 what was your understanding based on the global investigation
5 you had done?

6 A Well, we didn't find anything negative on Mike DaCorta.
7 And from what everybody told me, I felt real confident on
8 putting my money in.

9 Q What was the next step you took in relationship to Oasis
10 International Group? Did you talk with any of the principals?
11 Did you --

12 A Yes.

13 Q -- talk with Mr. DaCorta?

14 A I talked to Mr. DaCorta specifically, and I also talked
15 to Ray Montie.

16 Q And Ray Montie, was he affiliated with Ambit Energy?

17 A He was affiliated with Ambit and a friend.

18 Q Was Mr. DaCorta affiliated with Ambit Energy?

19 A Yes, he was at one time.

20 Q And let's talk about your conversation with Mr. DaCorta.
21 Do you recall where that took place, your initial
22 conversation?

23 A The initial conversation, I talked to him on the phone.

24 Q Let's talk about that phone conversation. I assume the
25 purpose of that conversation was to learn more about this

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1 investment opportunity?

2 A Most definitely.

3 Q And you had indicated earlier that you understood it
4 would be a loan, correct?

5 A Yes.

6 MR. CHEE: Leading question. Objection.

7 THE COURT: Sustained. Don't lead.

8 BY MR. ALLEN:

9 Q What did you understand the opportunity to be before you
10 talked to Mr. DaCorta?

11 A Your monies would be loaned to the company on a
12 promissory note. And from that, you would be given 12 percent
13 annual interest or 25 percent of the transaction fees that the
14 company generated.

15 Q So let's talk about the phone conversation you had with
16 Mr. DaCorta. Do you recall approximately what year that was?

17 A It was at the end of 2018.

18 Q And you had this phone conversation before you actually
19 loaned any money to Oasis International Group?

20 A Yes, I did.

21 Q And based on your conversation with Mr. DaCorta, what was
22 your understanding as to the opportunity with OIG?

23 A That they were going to -- that they were putting a
24 portion of the money into a trading account. They were buying
25 real estate. They were buying precious metals. They were

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1 investing in other companies. That's how I understood it.

2 And I'm not a financial guy. So whenever my Edward Jones guy
3 always told me to be diversified, Mike was diversified.

4 Mr. DaCorta was diversified. Oasis was diversified. So
5 therefore I had a little bit of comfort there.

6 Q Was your understanding of what OIG was going to be using
7 your loan money for different from the first conversation you
8 had with this group of people than what you had with
9 Mr. DaCorta, or are they the same?

10 A They were all the same.

11 Q Did you subsequently have any other conversations with
12 Mr. DaCorta prior to -- did you eventually participate as a
13 lender to OIG?

14 A At first I went to a Christmas party in 2018 before I put
15 any money in.

16 Q Okay.

17 A Where I could actually physically shake hands and get a
18 personal read of the people.

19 Q And where was this Christmas party?

20 A Sarasota, Florida.

21 Q And do you recall what establishment it took place at?

22 A I think it was at the Ritz-Carlton.

23 Q And how many people were at this holiday party; do you
24 recall roughly?

25 A Several hundred.

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1 Q And what was the purpose of the Christmas party from your
2 understanding?

3 A Well, it was just a time to -- as a thank you for being
4 part of the company.

5 Q For the lenders?

6 A Yes.

7 Q But you were not a lender at --

8 A At that time I was not a lender.

9 Q Were there other people that you met at the holiday party
10 in 2018 that were similarly situated to you, they had not
11 become lenders yet?

12 A Possibly a couple, but I think most people there were
13 lenders.

14 Q What individuals who were affiliated with Oasis
15 International Group did you interact with at this holiday
16 party, if any?

17 A Say that question again.

18 Q Sure. Did you interact with anybody from Oasis
19 International Group, not lenders but principals or employees
20 at this holiday party?

21 A Oh, yeah.

22 Q And who were they?

23 A I spoke with and talked with Mr. DaCorta. I talked with
24 Mr. Montie. I talked with several people who were office
25 staff that was there. I actually sat at the table with one of

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1 the traders. I can't remember what his name was. He sat at
2 the same table with me, so yes.

3 Q Did you ever go to any other holiday parties?

4 A I did. I went back to the 2019 one as well.

5 Q OIG was closed in April of 2019. Is it possible you have
6 your dates mistaken? You went to '17 and '18?

7 A Yeah. '18, I'm sorry. It's 2017, 2018. Yes, that is
8 correct.

9 Q So let's regroup here a little bit. So we are at the '17
10 holiday party.

11 A That's prior to me putting my money in.

12 Q And you interacted with Mr. DaCorta?

13 A Yes.

14 Q And did you say Mr. Anile?

15 A I seen Mr. Anile there, but I didn't really speak to him
16 much. He wasn't very personable.

17 Q And Mr. Montie?

18 A Yes.

19 Q Was there another name? I may have missed it.

20 A It was just some of the other office staff that was
21 there.

22 Q Do you remember somebody by the name of Deborah Cheslow?

23 A Yes, I know Deborah Cheslow.

24 Q Do you know somebody by the name of John?

25 A I know John Paniagua, but he was not at that Christmas

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1 party from what I can remember.

2 Q And what was your understanding of Mr. Anile's role at
3 Oasis International Group?

4 A He was the company attorney.

5 Q He was the attorney?

6 A Yes.

7 Q Did you ever -- did that understanding ever change at any
8 point in time that you were affiliated with -- I mean, that
9 you were involved with Oasis International?

10 A Never.

11 Q Did you ever learn from anybody whether it be a lender,
12 whether it be a principal, whether it be an employee of OIG
13 that Mr. Anile was anything other than the attorney for Oasis
14 International Group?

15 A That's all he was.

16 Q And did you speak with Mr. DaCorta about the investment
17 opportunity when you were at Oasis International Group?

18 A Yeah.

19 Q And what was your understanding following that
20 conversation with Mr. DaCorta as to what this loan opportunity
21 was?

22 A Once again, it was always the same. It was really
23 looking forward -- actually they had -- with some of the
24 companies -- I was always big into fitness, and Mr. DaCorta's
25 big into fitness as well. And they were doing the protein and

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1 stuff like that. And I actually bought some of the product,
2 and it worked very well. And so we talked about a lot of
3 stuff when it dealt with other business opportunities with the
4 company, what they were looking into.

5 Q I am showing you what's already been admitted into
6 evidence as Defense Exhibit 152. If we could use the Elmo
7 here. Is this what you are talking about?

8 A Yeah. I still got some in my cabinet.

9 Q And tell the jury a little bit more about this product
10 and what you understood about it.

11 A Okay. So the big container is the -- wait a second.
12 That's the preworkout. The biggest container you see there is
13 the preworkout stuff that kind of gets you amped up before you
14 go in to work out. And then the creatine powder, I always
15 took that, yes, that with the preworkout. And then there's
16 also a bigger jug of the actual protein. And I took that,
17 drank it after every single workout I had.

18 Q And you found it to be effective?

19 A Yeah. It was a really good product actually.

20 Q What was your understanding about this business regarding
21 the protein stuff?

22 A That that is just another part of the diversification of
23 the company to bring in revenues for the company as far as our
24 investment goes.

25 Q You had indicated that you were led to believe that a

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1 portion of the money would be used with forex?

2 A That's correct.

3 Q And what was the other portion to be used for as you
4 understood it?

5 A For absolutely everything else, the real estate, going
6 into other companies.

7 Q Including this company --

8 A Yeah, Roar of the Lion.

9 Q Okay.

10 A Yeah. There was another company too. I can't remember
11 what it was that they were talking about at the time that they
12 were going into another deal with. And then the precious
13 metals.

14 Q What was your understanding about the precious metals?

15 A That they were actually buying physical in-hand precious
16 metals, plus had some as far as on their trading positions.

17 Q So after your meeting with Mr. DaCorta in 2017 at the
18 holiday party, did you ultimately end up loaning money to
19 Oasis International Group?

20 A I did.

21 Q And how much did you end up loaning?

22 A \$323,000.

23 Q Wow. Where did that come from?

24 A That come from working as an electrician, saving my
25 money. As part of -- once you quit working for the electrical

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1 union, you can withdraw your money from their pension plan,
2 and I did that.

3 Q And did you -- were you provided any loan documents?

4 A Yes. I signed a promissory note.

5 Q And what was your recollection as to the terms of that
6 promissory note?

7 A That I was loaning them the money. And as a loan to
8 them, they were going to pay me back 12 percent yearly
9 interest or 25 percent of the transaction fees, whatever was
10 greater.

11 Q What was your understanding about this transaction fee?
12 What was your understanding that that would be? What was
13 that?

14 A My understanding is that they were on the spread fees
15 that were generated. If they were higher amounts than just
16 the 12 percent, the company actually rewarded us greater than,
17 off the spread fees.

18 Q And after you loaned this 300 and some thousand dollars
19 to Oasis International Group, were you provided the ability to
20 know how much interest you were making on the principal you
21 had loaned?

22 A Yeah.

23 Q Tell the jury about that.

24 A So actually every single night I could get on to my
25 website. I had to log in, username, log in, and I could get

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1 on the computer and access what the daily generations were on
2 a daily basis. They showed what the activities were for the
3 days.

4 Q Were you able to see what Oasis International Group was
5 doing in the trading or just what your interest was?

6 A No trading.

7 Q Did you expect to see what they were doing in the
8 trading?

9 A Wouldn't have made sense if they did.

10 Q I understand that. But was that your expectation that
11 you would know how they were doing in the trading, or did you
12 have some other expectation?

13 A I loaned them the money to make money. Whatever they did
14 is what they did. I loaned them the money.

15 Q Meaning your principal and interest returned? Is that a
16 yes?

17 A Yes.

18 Q At any time prior to Oasis International Group being
19 taken over by the receiver in April of 2019, did you actually
20 withdraw any money from either your principal or interest?

21 A I withdrew \$33,000.

22 Q Was that interest or principal or both?

23 A Well, it would have had to have been interest.

24 Q And did you ever have any issues getting that interest?

25 A Not at all.

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1 Q Did you ever have any problems with your loan or the
2 interest prior to April 18 of 2019?

3 A Never an issue.

4 Q You indicated that you were able to log on. Did the
5 logon system change between 2017 and 2019 for you?

6 A It did change.

7 Q Let's talk about the first, the early on login. Can you
8 describe for the jury how that took place, if you recall?

9 A The login was different because the formatting was
10 different, and then the formatting evolved. Like the
11 formatting got more user friendly and better. That's how it
12 went is the formatting and the user friendliness of it got
13 easier.

14 Q Your understanding as to -- well, did you have an
15 understanding about how the transaction fee was being
16 generated?

17 A The transaction fee from the spreads?

18 Q Yeah, for what spreads were. What was your
19 understanding?

20 A Before this I had no clue what a spread was, but then
21 from -- once again, I know that there's pips out there, and I
22 know that we were getting a quarter of a pip, and I don't know
23 what a pip is. Don't even know what the definition of a pip
24 is, but that's -- I guess in their trade talk, that is part of
25 a process that is throughout the market, and that's how

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1 brokers make their money is from pips.

2 Q And did it matter to you how the money was being made?

3 A Say that again.

4 Q Did it matter to you how that was taking place?

5 A No.

6 Q What mattered to you?

7 A Return on my money. That's what mattered to me is I

8 wanted the return on my money.

9 Q Do you ever recall Mr. DaCorta or anybody else
10 representing to you that they were market makers?

11 A Market making, yes.

12 Q What was your understanding -- was that term defined for
13 you by Mr. DaCorta or others at Oasis International Group?

14 A It was -- from my understanding it was from their
15 broker-dealer license that they had.

16 Q If you learned that market maker is actually a large bank
17 that provides liquidity to a trading platform versus a
18 broker-dealer that makes money, a retail broker-dealer that
19 makes money, would that have made any difference to you?

20 MR. CHEE: Your Honor, I object to the question.

21 THE COURT: What's the legal grounds?

22 MR. CHEE: Counsel testifying.

23 THE COURT: Overruled.

24 A Would you repeat the question, please?

25 BY MR. ALLEN:

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1 Q Sure. If you had learned -- you indicated that you were
2 told that a market maker was the spread that the broker-dealer
3 makes with the trading. If you learned that the technical
4 definition of market maker is a large bank that provides
5 liquidity to a marketplace, would that have made any
6 difference to you receiving one or the other definition of
7 market maker?

8 A It's meaningless.

9 Q Because what was important to you?

10 A I loaned the company my money, and I was trying to have a
11 better future for me and my wife. So I wanted -- 12 percent
12 on \$300,000 is a pretty nice return.

13 Q You indicated --

14 MR. ALLEN: If I can have a moment, Your Honor.

15 THE COURT: Yes.

16 BY MR. ALLEN:

17 Q I'm showing you what's already been introduced. You
18 indicated you had done some background check on Mr. DaCorta?

19 A Yes.

20 Q And you didn't find anything at all, correct?

21 A Nothing.

22 Q And that was similar to what other people had done?

23 A That's exactly right.

24 Q I'm showing you what's already been admitted into
25 evidence as Defense Exhibit 308, which is an agreement between

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1 Mr. DaCorta and the National Futures Association. Have you
2 seen this before?

3 A Yes.

4 Q Was it something that I provided to you before your
5 testimony?

6 A Yes.

7 Q Have you had a chance to fully read what's included in
8 Defense Exhibit 308, the agreement between Mr. DaCorta and the
9 National Futures Association?

10 A Yes, I have read it.

11 Q Can you read the paragraph right here? The second
12 paragraph, the big one.

13 A Read the whole thing starting with, "Whereas"?

14 Q Yes.

15 A "Whereas in 2009, NFA conducted an audit of International
16 Currency Traders, Ltd., ICT, a forex commodity trading
17 advisor, CTA, NFA member. The audit cited the firm and its
18 principal, Michael DaCorta, with certain deficiencies in
19 connection with their solicitations of investors to make loans
20 to ICT and/or DaCorta and purchase stock in a company owned
21 and operated by DaCorta. In addition, the audit also cited
22 ICT with failing to register certain individuals as associated
23 persons, list certain branch offices, supervise APs working at
24 the branch offices, adopt and implement promotional material
25 procedures, or develop and implement a business continuity and

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1 disaster recovery program or adequate ethics training program.
2 ICT and DaCorta denied many of the findings in NFA's audit
3 report, especially those relating to their solicitations of
4 loans and stock purchases from investors."

5 Q Can you read the very last paragraph?

6 A Starting, "In consideration"?

7 Q Please.

8 A "In consideration of NFA's agreement, ICT, without
9 admitting or denying the findings in NFA's audit, hereby
10 agrees to withdraw from NFA membership and not reapply for
11 registration as an NFA member, or act as a principal of an NFA
12 member at any time in the future; and DaCorta, without
13 admitting or denying the findings in NFA's audit, hereby
14 agrees to withdraw from NFA association membership and as a
15 principal of ICT and not reapply for registration as an NFA
16 member or associate, or act as a principal of an NFA member.
17 At any time in the future ICT and DaCorta agree that in the
18 event they were to breach this agreement by applying for
19 registration as an NFA member or associate or acting as a
20 principal of the NFA member, then their breach of this
21 agreement shall constitute sole good cause for: One, denying
22 their application for registration as an NFA member or an
23 associate; two, denying the application for registration as an
24 NFA member of any firm of which either of them is a principal;
25 and/or three, revoking the registration of any NFA member of

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1 which either of them is a principal."

2 Q Did Mr. DaCorta tell you about this settlement agreement
3 he had with the NFA prior to you loaning his company \$300,000?

4 A No.

5 Q If Mr. DaCorta had told you about this settlement
6 agreement, would have that affected your decision to loan his
7 company money in any way?

8 A No.

9 Q Why not?

10 A First off, I don't even know what the NFA is. And I
11 don't know if it was even pertinent to what he is doing now,
12 is something he needs.

13 Q If I told you that the NFA was a regulatory agency that
14 regulated individuals who were trading in forex for their
15 clients' money or even pooling a whole bunch of clients' money
16 and trading for them in a fiduciary fashion, would that have
17 made a difference?

18 A Restate that question.

19 Q Sure. You indicated that you don't think this would have
20 made any difference because you didn't know what the NFA was.
21 Okay? So if I told you that the NFA was a regulatory agency
22 that regulated individuals who were trading commodities which
23 includes currencies for individual clients, would this
24 settlement agreement have made a difference to you in loaning
25 your money to Oasis International Group?

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1 A No, because I loaned the company my money. I didn't care
2 what they did with it, and I didn't care about that license.

3 Q Were you under the impression from your conversations
4 with Mr. DaCorta or with anybody else at OIG that Mr. DaCorta
5 would be trading your money for profit and loss for you?

6 MR. CHEE: Objection. Hearsay.

7 THE COURT: Overruled.

8 A He was trading for himself or for Oasis. Oasis was
9 trading for Oasis.

10 BY MR. ALLEN:

11 Q And what was your understanding of who would get the
12 profits or losses of that trading versus 1 percent on your
13 loan?

14 A I was under a loan agreement. I didn't care about the
15 profit and losses because he had made a commitment to me with
16 a loan. I loaned him my money, and he was paying me back
17 interest that he owed me on the loan. So that had never been
18 jeopardized or never been a part where it was a problem. Any
19 time -- I know hundreds of people who had loaned money to this
20 company, and nobody had ever had a problem getting their money
21 back or nobody had ever filed a complaint or anything saying
22 that they called up Oasis and asked for the money, and nobody
23 ever said that, well, they said we couldn't get our money this
24 time. Nobody ever said that. So it was -- I was under the
25 loan agreement. And so their profits and losses, that was

DIRECT EXAMINATION OF JASON MCKEE

1 Oasis' problem, not mine.

2 Q If you were told that the principal and interest on your
3 loan would be returned to you through the proceeds of selling
4 real estate, would have that mattered to you?

5 A Once again, it didn't matter. I wanted my promissory
6 note, the -- I wanted the terms and conditions of my
7 promissory note met, period. That's what I wanted. I wanted
8 the 12 percent or 25 percent, whatever was greater.

9 Q If you learned that the spread that was being generated
10 on the trading platform which was determining whether you got
11 the 1 percent per month or greater depending on the terms of
12 your agreement was being created through money that you and
13 others had loaned and was not coming from some other source,
14 would have that made a difference to you?

15 A Once again, I loaned him my money wanting to -- with the
16 history that they had of paying everybody back and knowing
17 some of the folks who had money in, that wasn't an issue for
18 me. I wanted the terms of my contract to be completed.

19 Q If you learned that the money, your money that was being
20 loaned and other people's money that was being loaned was used
21 in addition to the real estate, in addition to hard gold and
22 silver and in addition to investing in companies like Roar of
23 the Lion was also used by Mr. DaCorta to make his car payment,
24 would that have made a difference to you?

25 A I would say probably most corporations in the country pay

DIRECT EXAMINATION OF JASON MCKEE

1 for their CEO's cars and houses. So what would be any
2 different with this?

3 Q Would it have made a difference to you to learn that
4 Mr. DaCorta and others were residing in some of the properties
5 that they were purchasing with the lenders' money?

6 A No. Once again, corporations all over the world do that
7 every single day.

8 Q Would it have made a difference to you if you learned
9 that Mr. DaCorta helped subsidize his daughter's college
10 education by paying the room and board part of it with some of
11 the money that was being loaned to Oasis International Group?

12 A Once again, as the CEO of Oasis and in the contract of
13 my -- that I signed, the promissory note, it was very, very
14 clear that they could use the money for just about anything
15 that they wanted to. And I signed it.

16 Q Do you think you are responsible for what you agreed to
17 in a written document?

18 A That's the purpose, right?

19 Q Do you think people shouldn't be held responsible if they
20 chose not to read a written document they signed?

21 A That's shame on them.

22 Q If you learned that that holiday party you went to in
23 2017 cost \$130,000 and the money that others were lending paid
24 for that, would have that changed your decision to loan money
25 to Oasis International Group?

DIRECT EXAMINATION OF JASON MCKEE

1 A Once again, that was as a -- as corporate America,
2 companies do that stuff all the time for stockholders, for
3 people who are involved in the companies and stuff like that.
4 So, no, it was absolutely nothing out of the ordinary that you
5 would expect from typical corporation behavior from my
6 perspective. It was all fine.

7 Q Did you end up referring others to this lending
8 opportunity?

9 A I did.

10 Q Who else did you refer?

11 A Several of my family members, friends. I referred
12 several people because of the success that my account was
13 having.

14 Q And did you receive any type of extra interest by doing
15 that?

16 A Yes. There was additional interest that was added to my
17 account.

18 Q Can you explain to the jury how that worked? I think
19 they called them lender service agents?

20 A Yes. Whenever somebody else had put in money -- so my
21 mom put in \$10,000. She is a school bus driver, and that was
22 an annuity for my mom. So we put her \$10,000 in there. And
23 from that, I had received an additional interest because she
24 put in her \$10,000 as a fee, as additional interest into my
25 account from her doing that, and then also from an uncle of

DIRECT EXAMINATION OF JASON MCKEE

1 mine and from several of my friends.

2 Q Have you received any of your money back other than what
3 you with withdrew?

4 A Besides what I withdrew, not a penny.

5 Q Have your friends and families that you referred received
6 any of their money back?

7 A Not a penny.

8 Q Who do you think is responsible for you not receiving
9 your money or your friends and family not receiving their
10 money back?

11 MR. CHEE: Objection, Your Honor.

12 THE COURT: Let's approach, please.

13 (Bench conference on the record.)

14 THE COURT: I don't understand his qualifications for
15 saying who is responsible.

16 MR. ALLEN: It's his opinion.

17 THE COURT: He is not an expert. So why are you
18 eliciting an opinion from him?

19 MR. ALLEN: For the same reason the government
20 elicited opinions from their lenders that they blame
21 Mr. DaCorta. He's not blaming Mr. DaCorta.

22 THE COURT: All right. And what's your objection?

23 MR. CHEE: Foundation, speculation. He basically
24 said that he had no understanding whatsoever of the internal
25 operations of this company.

DIRECT EXAMINATION OF JASON MCKEE

1 THE COURT: All right. Mr. Allen had a good point.
2 You did elicit from these victims that it's all Michael's
3 fault. And he's going to elicit that's it's all, I guess,
4 Burt Wiand's fault.

5 MR. CHEE: There is another issue, Your Honor, if I
6 may.

7 THE COURT: Yes.

8 MR. CHEE: That is objectionable. It's not relevant,
9 Your Honor, whatever Burt Wiand did. He came in after the
10 events of this case.

11 THE COURT: I think it's offered to rebut your
12 witnesses that say this disaster was caused by DaCorta. So
13 I'm going to permit it.

14 (End of bench conference.)

15 THE COURT: All right. We will try to keep going
16 until lunch gets here or 12:30, whichever comes first.

17 Go ahead.

18 MR. ALLEN: Yes, sir.

19 BY MR. ALLEN:

20 Q In your opinion, why do you believe neither you nor your
21 friends and family have received their money back?

22 A Because of government intervention.

23 Q How so?

24 A First off, by bringing on this case. I always ask the
25 question, why didn't they just come into the office to Oasis

DIRECT EXAMINATION OF JASON MCKEE

1 headquarters? Why didn't they come in and close down the
2 books and say, hey, why don't we do an audit because we need
3 to understand what you guys are doing. And from what we find
4 here, then we'll make a judgment whether or not there is a
5 crime being committed, but they didn't do that. They come in
6 and just shut them down, said it was a Ponzi scheme, took all
7 the money. And now the only person I know that's benefited
8 from it was the receiver who has charged us millions and
9 millions of our own money. And actually they accused
10 Mr. DaCorta of living the high life, but it appears that they
11 have charged now more money than Mr. DaCorta paid himself. So
12 I don't know who is living the high life, but I know I haven't
13 received one dollar of my money.

14 Q If you learned that in 2018 Oasis International Group was
15 losing a significant amount of money, millions of dollars --

16 A Uh-huh.

17 Q -- on the trading of forex in 2018, would have you wanted
18 Mr. DaCorta to tell you about those trading losses?

19 A I don't find it -- with only a portion of the money going
20 into the trading account, the company is still solvent. No, I
21 didn't -- I don't require him to do that because that's his
22 business. And he is taking care of his business, and he is
23 continuing to fulfill his duty to me.

24 Q If you learned that maybe the company wasn't solvent
25 enough to cover all of the outstanding loan obligations, would

DIRECT EXAMINATION OF JASON MCKEE

1 have you wanted Mr. DaCorta to tell you that, hey, Mr. McKee,
2 we are suffering some significant deficits in our trading?
3 Would you have wanted him to tell you that?

4 A Did the trading deficits break the company?

5 Q No, sir.

6 MR. CHEE: Your Honor, I have to object.

7 THE COURT: Overruled. You can't ask questions.

8 Just answer.

9 Put the Q again.

10 MR. ALLEN: Sure.

11 BY MR. ALLEN:

12 Q If the company had not become insolvent but didn't have
13 enough assets to cover every outstanding loan if everybody
14 asked for their loan to be repaid on the same day so that they
15 were all due in 90 days, would have you wanted Mr. DaCorta to
16 tell you that at the 2018 holiday party you were at?

17 A No, because it would cause mass panic amongst everybody.
18 Why are they so -- why do they never want to run on a bank?
19 The bank can't give you all your money back either. So why
20 they keep from telling everybody that is to keep from mass
21 hysteria so all the public don't go crazy and break their
22 financial system.

23 Q What would you have wanted Mr. DaCorta to do if he wasn't
24 telling you at the 2018 holiday party?

25 A Well --

CROSS-EXAMINATION OF JASON MCKEE

1 Q Regarding the company's finances.

2 A The definition of insanity is continuing to do the same
3 thing over and over. I hope the path that he was walking on
4 was walking -- he had to jump off of it and start rerouting
5 what's going on so the same objective isn't happening every
6 single time, so insanity isn't happening. So hopefully he was
7 changing his trading model if that was the case.

8 MR. ALLEN: May I have a moment, Your Honor?

9 THE COURT: Sure.

10 MR. ALLEN: No further questions, Your Honor.

11 THE COURT: All right. Cross-examination, please.

12 And ladies and gentlemen, just to let you know, the
13 receivership is under supervision of one of my colleagues.
14 This is all randomly assigned. It was randomly assigned to
15 the United States District Judge in this building and is being
16 handled appropriately pursuant to the law, but I don't have
17 it. Another judge does.

18 **CROSS-EXAMINATION**

19 BY MR. CHEE:

20 Q Good afternoon, sir.

21 A How are you doing?

22 Q I'd just like to thank you for your honorable service to
23 this country.

24 A Thank you.

25 Q Sir, on direct examination you told Mr. Allen that you

CROSS-EXAMINATION OF JASON MCKEE

1 would have preferred if at the outset an audit would have been
2 done on Oasis' books and records. Isn't that correct, sir?

3 A That is correct.

4 Q Are you aware, sir, that in fact a government entity, the
5 CFTC, did such an audit?

6 A Not aware of it.

7 Q And, sir, you are not aware of the CFTC's findings in
8 this case, are you?

9 A I read their complaint.

10 Q And the CFTC is the Commodity Futures Trading Commission;
11 is that correct, sir?

12 A That is correct.

13 Q And the CFTC's audit, sir, you are not aware that they
14 determined that Oasis had an \$88 million deficit?

15 MR. ALLEN: Objection, Your Honor. Objection, Your
16 Honor. He said he wasn't aware.

17 THE COURT: You asked his opinion.

18 So ladies and gentlemen, that will be overruled. On
19 cross-examination of course we test the metes and bounds of
20 the testimony. So I if say it's raining, he can say, well,
21 isn't it true it's dry as a bone outside. So that's all we
22 are doing is on cross. These questions are not offered for
23 substantive evidence. It's cross-examination of the metes and
24 bounds of the opinion that was rendered.

25 Go ahead.

CROSS-EXAMINATION OF JASON MCKEE

1 BY MR. CHEE:

2 Q And I will ask that question again, sir. You are not
3 aware that the CFTC did in fact do an audit and found an
4 \$88 million deficit upon an inspection and an examination of
5 all of Oasis' books and records. You're not aware of that,
6 are you, sir?

7 A No, I'm not.

8 Q And you're also not aware that according to the CFTC's
9 audit of all the books and records of Oasis, that Oasis only
10 had approximately \$17 million in assets. You are not aware of
11 that, are you, sir?

12 A I'm not.

13 Q And you are also not aware then that the CFTC's audit of
14 all the books and records --

15 THE COURT: We have tested the metes and bounds. He
16 is not aware of their audit. So let's move on. Otherwise,
17 it's just put for the question. He is not aware of the CFTC
18 audit. Go ahead.

19 BY MR. CHEE:

20 Q Are you aware of a \$17 million -- \$70 million gap in
21 Oasis' books and records?

22 A No. I'm sure it's been brought out in this court the
23 documentation of exactly where it was at.

24 MR. CHEE: Thank you, sir. No further questions.

25 THE COURT: Any redirect?

REDIRECT EXAMINATION OF JASON MCKEE

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REDIRECT EXAMINATION

BY MR. ALLEN:

Q What was your main concern?

A Return on my money.

Q Did you ever not get your money back prior to the receiver taking over the matter?

A Me nor anybody else that I have ever spoke to, which is hundreds of people who have loaned money to this company.

MR. ALLEN: No further questions. Thank you.

THE COURT: Thank you. You may go. Thank you. Or stay if you wish.

Let's call your next witness, please.

MR. ALLEN: Yes, Your Honor. We would call Kevin Johnson, please.

THE COURT: All right. Thank you.

THE COURTROOM DEPUTY: Please raise your right hand.

(Witness sworn.)

THE COURTROOM DEPUTY: Can you state your full name for the record.

THE WITNESS: Kevin Johnson.

THE COURTROOM DEPUTY: Thank you. Please be seated in the witness stand.

MR. ALLEN: Your Honor, it appears Mr. McKee has stayed in the courtroom. We were not planning on recalling him.

DIRECT EXAMINATION OF KEVIN JOHNSON

1 THE COURT: Like anybody else that's not a witness,
2 he may be present if he cares to, of course. He is welcome.

3 MR. ALLEN: Thank you, Your Honor.

4 **KEVIN JOHNSON, CALLED BY THE DEFENSE, SWORN**

5 **DIRECT EXAMINATION**

6 BY MR. ALLEN:

7 Q Mr. Johnson, I'm not sure if you stated your full name or
8 not. Can you state your full name for the record, please?

9 A Kevin Johnson.

10 Q And Mr. Johnson, where do you reside?

11 A 205 Appletree Lane, Clarks Summit, South Abington,
12 Pennsylvania.

13 Q So you have a pretty good Pennsylvania accent.

14 A New York, Pennsylvania.

15 Q So it's just important that you kind of slow down with
16 your answers so the jurors -- we can all, us from the South,
17 we can all make it out and so the court reporter can hear
18 everything that you're saying, okay? And there's a microphone
19 there. You are speaking loud enough now, but just speak loud
20 enough so everybody way over here can hear you, okay?

21 A Sure.

22 Q What was the name of the town in Pennsylvania?

23 A South Abington.

24 Q Can you give us some reference where that's located next
25 to, I don't know, a larger town in Pennsylvania?

DIRECT EXAMINATION OF KEVIN JOHNSON

1 A Twenty minutes from Scranton, Pennsylvania.

2 Q That's where they did the show "The Office"?

3 A I believe they -- from what I heard, they filmed an
4 episode there, yeah.

5 Q And how long have you lived there in that part of
6 Pennsylvania?

7 A I have been in Pennsylvania now for close to four years.

8 Q And how old are you?

9 A Forty-five.

10 Q So nearly all your life?

11 A No. Pennsylvania four years.

12 Q I thought you said 40. I apologize.

13 A I grew up in New York, yeah.

14 Q Was the majority of your life in New York before you
15 relocated to Pennsylvania?

16 A Yes. I was born in Queens and then raised in Suffolk
17 County, Long Island.

18 Q Are you married?

19 A I am.

20 Q And how long have you been married?

21 A Three years this coming -- this month.

22 Q Do you have any children?

23 A Yes, a two-and-a-half-year-old daughter.

24 Q And what do you do for a living?

25 A Variety of things. I'm a breeder of rare and exotic

DIRECT EXAMINATION OF KEVIN JOHNSON

1 reptiles, snakes specifically. I do a little bit of part-time
2 contracting work, ex-realtor that I'm kind of getting back
3 into.

4 Q What type of contract work do you do?

5 A Sheetrock work, plumbing work, building decks, anything
6 really.

7 Q And how far did you go in school?

8 A Graduated high school, and I went to college for one year
9 before I left and then started a different business.

10 Q And give us a little more understanding of the snake
11 breeding that you do. How does that work? I mean, I know how
12 snakes breed but more generally as a business model?

13 A I get this pretty often, as you can imagine. When I was
14 a kid, I used to always have an interest in animals in
15 general, reptiles specifically. When I turned 18, I inherited
16 a little bit of money from my father passing away when I was a
17 kid. And I saw an opportunity to invest in some pretty rare
18 animals that had never been in existence before, purchased
19 them for 20-something thousand dollars. And it turned into a
20 very profitable thing for me.

21 So throughout my last 20-plus years, I didn't always
22 breed snakes as a full-time business, but on and off I did in
23 between different careers in real estate and different things.
24 And I have just always had a passion for animals and reptiles.
25 And just like people who breed dogs and horses, there is an

DIRECT EXAMINATION OF KEVIN JOHNSON

1 opportunity to make money with certain types of reptiles as
2 well.

3 Q Does that require any special licensing?

4 A No, not for the animals that I deal with.

5 Q And can one make a decent living breeding snakes?

6 A Yes. You can make six figures a year.

7 Q And at some point, did you become familiar with an
8 investment opportunity through a company called Oasis
9 International Group?

10 A Yes, I did.

11 Q And do you recall approximately when that happened, like
12 the year? I don't need the months, but are we talking --

13 A I'm guesstimating around 2017.

14 Q And how did you first become familiar with Oasis
15 International Group?

16 A Through my friend, Ray Montie.

17 Q We have heard testimony that Mr. Montie was affiliated
18 with Ambit Energy. Were you also affiliated Ambit Energy?

19 A I was a consultant with Ambit Energy. I didn't put a lot
20 of time into that business but I was a consultant and had met
21 a lot of people in the business and in Ray's network of
22 people.

23 Q You indicated that you were friends with Mr. Montie. Did
24 that friendship predate Ambit Energy?

25 A It did, yeah. I've been friends with Ray since probably

DIRECT EXAMINATION OF KEVIN JOHNSON

1 the mid 1990s.

2 Q And how did you come into contact with Mr. Montie in the
3 1990s?

4 A One of my childhood friends, my buddy Charlie, he met Ray
5 Montie at a local pizzeria in Hauppauge, New York,
6 Branchinelli's. And we -- well, Charlie knew the owners of
7 the pizzeria at that point. And the guy Marco who owned the
8 place said, that's my buddy Ray. You should talk to him.
9 He's a successful guy. Charlie introduced me to him. Ray was
10 involved with a different network marketing company at that
11 point, and Charlie introduced me to Ray. I went to a meeting
12 for a different communications company, and that's how I got
13 involved with, you know, my first business with Ray and how I
14 became friends with Ray from there on.

15 Q Have you continued to be in business with Mr. Montie
16 throughout the years?

17 A In business meetings like with Ambit and --

18 Q Anything.

19 A Network marketing companies?

20 Q Or any type of company.

21 A On and off throughout the years. Not consistently.

22 Q So your first introduction to Oasis International Group
23 was through a conversation you had with Mr. Montie?

24 A Correct, yeah.

25 Q Without getting into what Mr. Montie told you, what was

DIRECT EXAMINATION OF KEVIN JOHNSON

1 your understanding as to what OIG was about based on those
2 initial meetings with Mr. Montie?

3 A Basically an opportunity to put money into an investment
4 that was going to be diverse in many ways and probably a
5 better return on my money than putting it into a checking
6 account. I was under the impression that the company was not
7 just generating money from, you know, trading but also from
8 real estate investments, from silver, gold, and I'm sure other
9 things that were going on.

10 Q Had you ever invested prior to this meeting with
11 Mr. Montie in anything?

12 A Yes.

13 Q Let's talk about your prior investments. What type of
14 things have you invested in prior to learning about Oasis
15 International Group?

16 A I invested into a cellular phone store company with a
17 friend of mine, put money in that and became a partner in that
18 back in the early 2000s I believe it was.

19 Q You said you put some money into a cell phone company?

20 A A storefront. Two of them, actually.

21 Q Were you a part owner?

22 A I was, yes.

23 Q And you shared in the profit and losses of that cell
24 phone company as an owner, part owner?

25 A I did.

DIRECT EXAMINATION OF KEVIN JOHNSON

1 Q What other type of investments had you been involved in
2 prior to this meeting with Mr. Montie?

3 A Primarily I would say snake purchases, snake investments,
4 yeah. For the most part I was never really big into -- I
5 might have bought one stock over my whole life. And I was not
6 big into that. I was more entrepreneurial.

7 Q Is the goal in investing in snakes to buy them at one
8 price and sell them at a higher price?

9 A That's generally the goal, yeah. Generally to buy
10 animals that are first of its kind, animals that you may find
11 in a pet shop but due to their colors and patterns the value
12 is way more. And it takes generally a lot longer for them to
13 become affordable to the average person in a pet shop. So
14 private hobbyists like myself would have a home-based business
15 of some sense or do it in a different way, but that's the
16 overall goal, yeah.

17 Q Was the matter that you learned about from Mr. Montie,
18 was it similar or dissimilar to the cell phone opportunity?

19 A I would say different. One is a traditional business,
20 and this was more of an investment.

21 Q And what was your understanding from that initial meeting
22 as to how the investment would work?

23 A I would invest whatever I wanted to invest. And there
24 would be -- I don't know if it was monthly or annual but a
25 minimum of 12 percent return with the possibility of a larger

DIRECT EXAMINATION OF KEVIN JOHNSON

1 upside as well.

2 Q You had indicated that you had previously purchased a
3 stock?

4 A Yeah.

5 Q And when one buys a stock, it is either going to go up or
6 go down.

7 A Correct.

8 Q Was the investment opportunity that you learned about
9 through your conversations with Mr. Montie like that or was it
10 something different than like buying a stock?

11 A Different. Yes, very different.

12 Q And how was it different?

13 A Because my eggs weren't all in one basket. It was
14 diversified among many revenue streams or opportunities like I
15 mentioned earlier with silver, real estate, and whatever else
16 was generating money.

17 Q And your recollection was a 12 percent return or a
18 potential for greater?

19 A Yeah. I believe the promissory note was a minimum of
20 12 percent return annually.

21 Q Do you recall how the greater than 12 percent would come
22 about, if possible?

23 A I think it was based on more earnings, I guess would be
24 the best way to sum it up.

25 Q Do you recall hearing the term "transaction fee" or

DIRECT EXAMINATION OF KEVIN JOHNSON

1 "spread"?

2 A I did, yes.

3 Q What was your understanding about transaction fee or
4 spread?

5 A In my head, I kind of related that to what I did in my
6 real estate career because I was a real estate agent in
7 New York for probably close to ten years. And in the real
8 estate world, I performed a transaction for either the people
9 I was listing the house for, or if I was working with a buyer
10 I would be the middleman. I performed a service, and I would
11 get a commission for what I did. So in my head that's kind of
12 how I perceived the transaction fee or spread. If they are
13 the same, I'm not even sure, but that's how I perceived it.

14 Q So what you were learning was that OIG was like the
15 equivalent of a broker in a real estate thing, but they're a
16 broker regarding what?

17 A Yeah, that's kind of how I formulated it in my head,
18 yeah. Kind of the way my brokerage firm and real estate
19 company was operating, I guess, where I would make money off
20 of things like that.

21 Q Off the transaction?

22 A Correct, yeah.

23 Q Not tied to profit and loss. Just a transaction fee?

24 MR. CHEE: Objection. Leading.

25 THE COURT: Sustained.

DIRECT EXAMINATION OF KEVIN JOHNSON

1 BY MR. ALLEN:

2 Q Was it going to be tied to profit and loss trading or to
3 a transaction fee or to something else?

4 A I believe it was tied to everything. Like I said, I was
5 just a lender to the company who lent my money with a
6 promissory note, that I would receive a minimum of 12 percent
7 with a possibility of a greater upside. And there was many
8 avenues of revenue stream is the best I could sum it up I
9 think.

10 Q And after your initial meeting with Mr. Montie, did you
11 follow up with anybody else about this loan opportunity?

12 A I did, yeah. I mentioned it to a few people, yes.

13 Q Who did you follow up with?

14 A I mentioned it to at the time my fiancée who is now my
15 wife.

16 Q What's her name?

17 A Her name is Christy.

18 Q What was her maiden name?

19 A Last name was Leong, L-E-O-N-G.

20 Q So then you and your future wife have a conversation?

21 A Yeah.

22 Q And what did she do for a living at the time?

23 A She worked for Aetna doing data analysis, great with
24 numbers, actually did her own investing in her spare time with
25 stocks and all those things that I wasn't involved with, but

DIRECT EXAMINATION OF KEVIN JOHNSON

1 she worked for Aetna.

2 Q And after this conversation with your soon-to-be wife,
3 future wife, what did you do next, if anything, in
4 relationship to this Oasis International Group lending
5 opportunity?

6 A Well, after I spoke to her about it initially, I had -- I
7 believe I got her on the phone for one of the calls that she
8 could listen to just to get a little more clarity because I
9 wasn't the best at explaining it. So I would get her on the
10 phone. I know at one time, at least one time, she had spoke
11 to Michael on the phone personally, but aside from that there
12 were times where she just listened to a general call to
13 understand the concept. And her coming from an investment
14 industry and having that mindset, it made perfect sense to
15 her.

16 Q And when you say a call, are you talking about conference
17 calls that were being put on --

18 A Yeah.

19 Q Hold on.

20 A Sorry.

21 Q That's okay. I'm not trying to be rude, but we can't
22 talk over each other.

23 So by conference call, are you referring to call-ins
24 that were being organized by Mr. Montie and other principals
25 of Oasis International Group?

DIRECT EXAMINATION OF KEVIN JOHNSON

1 A Correct. Every so often, I guess every week, two weeks,
2 three weeks, whenever there was a need for a call, there would
3 be an open conference call where people could call in and kind
4 of listen to what the company was doing and what the
5 opportunity was. And after she heard that and I guess thought
6 about it, she invested some money.

7 Q And did she end up loaning money to Oasis International
8 Group?

9 A Yes. She initially -- if I remember correctly, she
10 initially loaned 17,000, but then I mentioned we were engaged
11 to be married. She was living in California at the time. I
12 was in New York. She had sold her house in California, and
13 she did very well on that. And she took a very large portion
14 of that and put that into Oasis as well. So it was well up
15 into the high six figures.

16 Q And did you separate and apart from your future wife loan
17 any money?

18 A Yeah. I loaned 15,000 was my investment.

19 Q Did you -- other than the conversations with
20 Mr. DaCorta -- I'm sorry -- the conversations with Mr. Montie
21 and your wife listening to the conference calls, did you have
22 any conversations with anybody else with Oasis International
23 Group prior to you or your future wife loaning money to OIG?

24 A I believe myself and my wife before she put the second
25 round of money in, which was a way larger sum, she had spoke

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1 to Gil at the office.

2 Q Would that be Gil Wilson?

3 A Gil Wilson, yes. I know she spoke to Mike again at the
4 office at least once.

5 Q I'm sorry. To who?

6 A Mike DaCorta.

7 Q Okay.

8 A So, yeah, there was other people that she had spoke to,
9 and I believe I might have been on the phone also. Probably a
10 speaker phone call, yeah.

11 Q Let's talk about the conversations with Mr. Wilson first.
12 Were there any questions asked by you or your wife that
13 Mr. Wilson refused to answer?

14 A Absolutely not.

15 Q Let's talk about the conversation between you and your
16 wife and Mr. DaCorta. Were there ever any questions about the
17 investment opportunity that you or your wife asked Mr. DaCorta
18 that he did not answer?

19 A Absolutely no. Very transparent.

20 Q And based on your give and take with Mr. DaCorta and with
21 Mr. Wilson, did your understanding of the lending opportunity
22 change in any way from your initial conversations with
23 Mr. Montie?

24 A No. They did not change, no.

25 Q You indicated that you understood throughout your

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1 conversations with Mr. Montie, your conversations with
2 Mr. Wilson and your conversations with Mr. DaCorta that OIG
3 was a diversified company. And I think you indicated that
4 included real estate, gold and silver. Did it include
5 anything else?

6 A From my initial understanding, that was the majority of
7 the investment. Yeah, that's my initial understanding. Gold
8 and silver, real estate, yeah.

9 Q You indicated that you previously worked in the real
10 estate industry?

11 A I did, yes.

12 Q Did it give you any concern that the money you were being
13 loaned was going to be used to purchase real estate?

14 A Not at all. Made me more confident.

15 Q Why is that?

16 A Real estate is usually a very solid investment in most
17 cases.

18 Q What about any concerns about the portion of the money
19 you loaning being used to buy gold and silver? Any concerns
20 about that?

21 A Not at all. Something I do myself. So it made me
22 comfortable.

23 Q You buy gold and silver?

24 A A little bit, yeah.

25 Q Why?

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1 A Just seems to be more stable. And I think it will stand
2 the test of time maybe more than the dollar.

3 Q Without getting into deep dark secrets, where do you keep
4 your gold and silver generally?

5 A In my home.

6 Q Not in a safety deposit box?

7 A No, not yet. We are looking into that.

8 Q And I don't want to know where. Did you ever come to
9 learn from your conversations with Mr. Montie or Mr. DaCorta
10 or Mr. Wilson or anybody else affiliated with Oasis
11 International Group that some of the money that you were
12 loaning might be used to invest in startup companies?

13 A I did hear that, actually yes. Now that you mention it,
14 I did hear that.

15 Q What was your understanding about that?

16 A I wasn't opposed to it. Like I mentioned earlier,
17 diversifying -- that was the initial reason why I wanted to
18 invest, because of diversity. And I did hear that. I just
19 forgot to mention that earlier.

20 Q What was your understanding on the money that you were
21 loaning and your wife were loaning about your ability to
22 withdraw interest? What was your understanding?

23 A Whenever -- basically whenever money was needed, if I
24 needed money or my wife needed money, we would submit a form
25 to request that money. And there was a time frame in which it

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1 could be returned to us, given back to us. And we did do
2 that. I did it and my wife did it at least two to three times
3 each. And the return came back always faster than what the
4 promissory note had said.

5 Q Did you ever have any problems getting you or your
6 monies -- you or your wife's, future wife's money returned?

7 A No. No. Like I mentioned, it was quicker than what was
8 initially promised.

9 Q Had you ever heard of any other lenders having issues
10 getting their interest or principal returned?

11 A No, no, I never have. I remember one person who I met
12 through Ambit who at some point, I don't know what the
13 reasoning was --

14 MR. CHEE: Objection, Your Honor. Hearsay.

15 THE COURT: Well, I didn't -- we really didn't get
16 the answer out. Why don't you put the question again. Go
17 ahead.

18 BY MR. ALLEN:

19 Q Did it ever come to you, any knowledge that anybody else
20 who had loaned money had never gotten either their principal
21 or interest returned when they asked for it?

22 A That never came to my attention, no.

23 THE COURT: We are going to break now for lunch. So
24 the food is here. Ladies and gentlemen, the deal with the
25 food though is since it's here, we are taking a little shorter

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1 break, and that moves matters along.

2 So why don't we meet back here, if you can, at five
3 minutes after the hour, at 1:05, and we will keep going with
4 the direct examination of Mr. Johnson.

5 Thanks so much.

6 (Jury escorted out of the courtroom.)

7 THE COURT: Can we talk about these instructions
8 maybe just very briefly -- I assume we will have an afternoon
9 break also. Can we meet back here at five 'til and start
10 nipping on them? There aren't many in dispute.

11 MR. ALLEN: Yes, Your Honor.

12 THE COURT: Will that work?

13 MS. BEDKE: Yes, Your Honor.

14 THE COURT: Mr. Johnson, we've got to break, but
15 you've got to be back at five after.

16 Thank you.

17 (Lunch recess taken.)

18 THE COURT: On the record. So let's look at -- and I
19 handed it out yesterday morning -- let's look through
20 pages 1 through 13. So we are focusing on 1 through 13 in the
21 big package. On page 3 I deleted that line in the third
22 paragraph, "A defendant does not have to testify. And if the
23 defendant chose not to testify, you can't consider that." So
24 I deleted that.

25 And then I deleted the typo on page 13 where it says,

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1 "I will not define." It's, "I will now define."

2 So tell me pages 1 through 13 any objections.

3 MS. BEDKE: I just need a moment, Your Honor. I
4 think we only have one copy.

5 THE COURT: You have one copy. Usually there is just
6 one person that's handling these. Maybe you're a committee.
7 They were handed out yesterday morning.

8 MR. ALLEN: Your Honor, on page 11, which is the
9 conspiracy to commit wire fraud, in our proposed instruction,
10 which is our page 24 of 44 of the docket sheet, Docket 140, we
11 asked that the Court add at the very end of that instruction,
12 "To prove the defendant is guilty of conspiracy, the
13 government has to prove that the defendant had wrongful
14 intent. You may not just assume that the defendant had
15 wrongful intent because he committed a certain act. The
16 defendant's state of mind must be established by the evidence
17 or from the inferences you draw from the evidence.
18 Furthermore, to establish a conspiratorial agreement, the
19 government must demonstrate that the conspirators possess at
20 least a degree of criminal intent necessary for the
21 substantive offense itself. As indicated above, the defendant
22 is not charged with the offense of mail fraud or wire fraud."
23 You already have that part. So just that paragraph
24 on Docket 140, page 24, the highlighted -- I mean, the
25 italicized section.

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1 THE COURT: Where did that come from? Where did the
2 italics come from?

3 MR. ALLEN: Footnote 2, United States v. Gibson
4 Company.

5 THE COURT: That's where it came from?

6 MR. ALLEN: Yes, Your Honor.

7 THE COURT: And otherwise this is the standard plus
8 the italics?

9 MR. ALLEN: Yes, Your Honor.

10 THE COURT: What says the government on those
11 italics?

12 MS. BEDKE: Your Honor, I apologize sincerely. I
13 don't think I'm looking at the right document.

14 MR. ALLEN: Let me show you.

15 MS. BEDKE: I have the defendant's -- Your Honor, I
16 would object to the italicized language. It is not part of
17 the pattern. It's not necessary.

18 THE COURT: All right. And Mr. Allen, this is the
19 pattern, and you want the italics added which are not part of
20 the pattern, correct?

21 MR. ALLEN: Yes, please.

22 THE COURT: That's denied.

23 Any other objections on pages 1 through 13?

24 MS. BEDKE: Your Honor, if I'm looking at the right
25 package, I think that Instruction 2.2 on page 3 refers to when

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1 the defendant does not testify.

2 THE COURT: You weren't listening. About three
3 minutes ago I said I deleted that.

4 MS. BEDKE: Oh, I'm sorry.

5 THE COURT: No problem.

6 MR. ALLEN: No other requests, Your Honor.

7 THE COURT: The substantive instructions, pages 14
8 through 17, I understand those are substantive pattern
9 instructions. Any objection?

10 MR. ALLEN: No objection, Your Honor.

11 MS. BEDKE: No objection.

12 THE COURT: Middle District conjunctive charge.
13 Mr. Allen, they always put that in there.

14 MR. ALLEN: I always object. It always stays in, but
15 I want to be consistent so I object.

16 THE COURT: I'll leave it in. I don't like it
17 either, but I'll leave it in. I never frankly to this day
18 don't understand that concept, but whatever.

19 All right. Nineteen, the money laundering charge?

20 MS. BEDKE: No objection.

21 MR. ALLEN: No objection.

22 THE COURT: So we are through 20 then. Twenty-one,
23 the elements of what I call tax perjury.

24 MR. HARDY: Yes, Your Honor. We in our Document 140
25 at page 34 have an italicized section. For the record, we are

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1 asking at the end of the standard instruction that the Court
2 add, "The defendant is charged only with making a false
3 statement on line 22 of his 2017 joint personal tax return.
4 There are no charges that relate to any other tax year, nor
5 are there any additional allegations with respect to any other
6 entry on the 2017 joint personal tax return other than the
7 entry on line 22."

8 THE COURT: And what's wrong with that, government?

9 MS. BEDKE: It's not necessary, Your Honor. The 2017
10 individual return is the only one that's been charged. That's
11 the only one the government is going to argue about, and it's
12 not necessary.

13 MR. ALLEN: We're just concerned that the jurors may
14 focus on other parts of the tax return he's not been charged
15 with.

16 THE COURT: Are the partnership returns in evidence?

17 MS. BEDKE: Yes, for 2016 and 2017. And that's
18 because, as you know, Your Honor, Mr. Burling testified that
19 the '16 numbers -- the '16, '17 numbers came over into the
20 individual return. They flowed through.

21 THE COURT: So at the beginning of this -- and what
22 count is this? Three?

23 MR. ALLEN: It is Count 3.

24 THE COURT: At the beginning I'm going to say, "As to
25 Count 3, which charge involves the 2017" -- wouldn't that be a

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1 Form 1040?

2 MS. BEDKE: Yes, sir.

3 THE COURT: "Form 1040." I'm going to leave it at
4 that. That gives Mr. Allen about half of what he wanted or a
5 portion of it.

6 MR. ALLEN: I guess I half object.

7 THE COURT: Sure. You object. I got it, but that
8 focuses them at the beginning as to Count 3 which charge
9 involves the 2017 Form 1040. At least that focuses them.
10 They don't start thinking about the partnership.

11 MR. ALLEN: I think our concern is more than line 22
12 even if you're focused on the 2017 return.

13 THE COURT: I don't fault you for that. I don't see
14 any indication the government is suggesting that other stuff
15 on there is false. It's simply you should have declared this
16 as income X, Y, and Z.

17 I don't know where our CSO is to see how the jury is
18 doing. There you are. You're hiding down there.

19 So that takes us through page 22. Now, the next
20 issue is the good faith instruction which I intend to give,
21 but it seems like you supplemented it, Mr. Allen, with the
22 thing you filed last night.

23 MR. ALLEN: That's correct, Your Honor.

24 THE COURT: So you'd prefer that one?

25 MR. ALLEN: Yes, Your Honor.

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1 THE COURT: And have you seen the supplement which is
2 defendant's supplemental Number 4, government?

3 MS. BEDKE: I'm just looking at it now, Your Honor.

4 THE COURT: I'm going to include that for now, and
5 then all can complain about it later. There is a typo in it,
6 you stinker, in that first paragraph. You say, "If you find
7 the defendant provided the relevant information to," the
8 preposition "to" you missed, "to his tax preparer," correct?
9 Is that right? "If you find the defendant provided the
10 relevant information."

11 MR. ALLEN: Yes, Your Honor, "to" should be in there.

12 THE COURT: So that's coming in unless the
13 government -- we will hear from you at the break about this,
14 but they put it on. I think it's part of the defense case
15 obviously. We had Burling on the stand twice. So we're
16 through that.

17 Let's get the witness on the stand, please.

18 (Jury escorted into the courtroom.)

19 THE COURT: Let's continue, please.

20 BY MR. ALLEN:

21 Q Mr. Johnson, I apologize because I'm not sure I remember
22 where I left off, and it was only an hour ago, but let's pick
23 up where I think I left off.

24 You were able to withdraw any interest that you ever
25 asked for, correct?

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1 A Correct, yes.

2 Q Did you ever attempt to withdraw principal?

3 A Yes.

4 Q Were you able to withdraw your principal?

5 A Yes. We were, yes.

6 Q Did you have an occasion to attend a holiday party at
7 Oasis International Group?

8 A Yes, I did.

9 Q Do you recall how many parties you attended if it was
10 more than one?

11 A I believe it was two of them that I went to.

12 Q And was the first one in 2017 and the second one in 2018?

13 A That sounds correct.

14 Q What was the purpose of attending the 2017 holiday party
15 from your perspective?

16 A Just an invite to socialize with other company members
17 and investors. Basically kind of like what I did with my real
18 estate company when I was working at a big company. They had
19 a holiday gathering every year.

20 Q And when you did that for your real estate company's
21 customers, did people who worked at the real estate agency
22 also attend?

23 A Yeah. I would say it was probably 50/50.

24 Q And who paid for that?

25 A The brokers of my real estate company paid for that.

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1 Q Did you feel the holiday party in -- what was your
2 impression of the holiday party in 2017?

3 A It was a very nice party.

4 Q Would it trouble you to learn that Oasis International
5 Group used lender funds to pay for that holiday party?

6 A No. It wouldn't, no.

7 Q What if it was \$130,000?

8 A From the looks of it, it looks like it could have been
9 more, yeah.

10 Q Did you interact with Mr. DaCorta or any other principals
11 at the 2017 holiday party?

12 A Well, I believe I was sitting at the table with my
13 friend, Ray, so we --

14 Q Meaning Ray Montie?

15 A Ray Montie, yes. We talked throughout the night. I
16 talked to Mike a few times throughout the night. I believe I
17 was up on the dance floor with him and other people at the
18 same time. We chatted a little bit. I was introduced to Joe
19 Anile for the first time, very brief, hello type thing, no
20 real conversation.

21 Q What was your understanding as to Mr. Anile's role at
22 Oasis International Group?

23 A My understanding was he was the attorney, legal counsel
24 for the company.

25 Q Did you ever learn that he held some other role at OIG?

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1 A Not that I can remember, no.

2 Q And you said you met with Mike, meaning Mr. DaCorta?

3 A Yes, Mr. DaCorta.

4 Q Did you and Mr. DaCorta at the 2017 holiday party have
5 any discussions about the nature of the loans you and your
6 wife had provided?

7 A No. No. There was no business talk, to the best of my
8 ability, at that party.

9 Q Was there any discussions with you and Mr. DaCorta about
10 what they were using your loan money and other lenders' money
11 for at that point in time in 2017, if you recall?

12 A No.

13 Q So you went to the 2017 holiday party. You went to the
14 2018 holiday party. There's literally a year between those
15 two. During from December 2017 until December of 2018, did
16 you have any communications with Mr. DaCorta or other
17 principals at OIG related to your loan or the interest or
18 anything to do with your investment?

19 A Related to that, only when I needed to withdraw money,
20 occasionally I would reach out to Mike or text him.

21 THE COURT: We have to take one break. I got a call
22 I have to make. It's very unusual. So it's from another
23 judge, so hold on. Let's all take a stretch break. I'm going
24 to step out over here and make this quick call.

25 (Brief recess taken.)

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1 THE COURT: I guess because there is a Roe v. Wade
2 abortion ruling coming out, they think there are going to be
3 some protestors, but they won't bother us. Plus, they will be
4 long gone by the time we're done. Sorry about that. If I get
5 these calls, I've got to do it.

6 All right, sir.

7 BY MR. ALLEN:

8 Q I think I was asking from the end of the first Christmas
9 party in December of 2017 until the second Christmas party or
10 holiday party in December of 2018 whether there were any
11 communications. And I think you were explaining about some of
12 the withdrawals.

13 A Correct, yeah. There was a couple times occasionally
14 that I would call Mike and give him a heads up or text him and
15 give him a heads up, let him know if we wanted to withdraw
16 some money or Christy wanted to call and talk to him about
17 something. And there was another conversation or two
18 conversations but not pertaining to the investment.

19 Q At some time did you attend and informational retreat
20 with Mr. DaCorta and other principals of OIG?

21 A I did, yes, in Sarasota, yeah.

22 Q Was that after the 2018 party, after the 2017 party or
23 before the 2017 party or do you recall?

24 A I've got to be honest. I don't recall when it was, what
25 the time frame was. My memory is kind of -- not a hundred

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1 percent positive.

2 Q What was the purpose of that retreat as you understood
3 it?

4 A It was more of kind of like an open door informational
5 type thing where we could have a weekend where some of the
6 people who were interested in learning more and having a
7 bigger discussion with Mike, learning -- seeing the building
8 they bought, learning more about the day-to-day activities of
9 the company, meet some of the people who are I guess working
10 in the office face to face rather than just talking to them on
11 the phone like Gil Wilson I mentioned earlier.

12 Q Did you ever refer others to the Oasis loan investment
13 opportunity?

14 A Other than my wife, I did, yes, two others.

15 Q Were you getting extra interest on your loan for doing
16 that?

17 A Yeah. I don't know if you referred to it as interest or
18 a referral fee or commission. I don't know how you phrase it,
19 but there was some sort of commission, I guess you call it.

20 Q How many individuals were at this retreat that you
21 recall?

22 A Twenty-five or so, give or take.

23 Q Did you ask any questions about the lending opportunity,
24 the nature of it, if you recall?

25 A I don't think I personally asked any questions during

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1 that weekend.

2 Q Did others ask questions?

3 A They did, yes.

4 Q Did Mr. DaCorta and others at OIG answer those questions?

5 A They did, yes.

6 Q Were the questions and answers satisfying any concerns
7 that you may have?

8 A Definitely, yeah.

9 Q Did you at any time hear that OIG was acting as a market
10 maker?

11 A I heard that word, yeah.

12 Q What was explained to you by Mr. DaCorta or others at OIG
13 as to what they meant by market maker?

14 A I don't know if I can phrase it properly, but basically I
15 think the summary of it was setting the market so that they
16 could generate a spread, I think. I'm not sure if I'm saying
17 it correctly. I'm not sure how to exactly phrase it.

18 Q Do you recall them telling you that they were a large
19 bank providing liquidity to the market, in other words
20 providing the actual currencies that were being traded?

21 A Providing the actual currencies?

22 Q Yeah. That they had all of this currency that they owned
23 that they were providing to a marketplace to trade?

24 A When you say "currency," are you talking about like --

25 Q They owned all the francs or yen or euro that was being

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1 provided to a marketplace for trading?

2 A No. I don't think so, no.

3 Q Your recollection is that they were setting the market to
4 earn spreads?

5 A Yes.

6 MR. CHEE: Objection, Your Honor. It's a leading
7 question.

8 THE COURT: What's the legal grounds?

9 MR. CHEE: Leading, Your Honor.

10 THE COURT: Sustained.

11 BY MR. ALLEN:

12 Q Was your understanding of what they meant by market maker
13 to include anything other than earning spread revenue on
14 trading?

15 A No.

16 Q Was it their explanation of market making that you relied
17 upon in making your decision to loan money or was it some
18 other definition of market maker?

19 A The reason I loaned money is because, like I mentioned
20 earlier, it was a very diverse situation and not just based on
21 one type of way to generate income.

22 Q When you made this loan, what was your primary objective
23 for you?

24 A Put a little nest egg away and let it grow and hopefully
25 one day it would be worth quite a bit.

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1 Q And were you concerned how OIG was going to be able to
2 repay your principal and interest?

3 A No. I wasn't, no.

4 Q If you learned that the spread revenue that was being
5 generated to determine whether you were getting the 1 percent
6 per month or higher interest was being funded through lenders'
7 money, in other words, the spread and the interest you are
8 getting is part and parcel from loan money, would have that
9 affected your decision to loan money to OIG?

10 A Would it have affected it? No.

11 Q Why?

12 A Because of diversity in the different investments that
13 were going on. And I knew it was a very involved operation
14 that was generating money from many different sources. So my
15 biggest concern was that I knew that I would get what was
16 promised back to me in my promissory note, that there was a
17 bigger picture with this investment rather than just what was
18 based on the trading.

19 Q Did Mr. DaCorta ever tell you prior to loaning your money
20 or your wife loaning her money that on August 9 of 2010, he
21 had entered a settlement agreement with the National Futures
22 Association?

23 MR. CHEE: Objection, Your Honor. Form of the
24 question is leading. Hearsay.

25 THE COURT: Well, it's not leading. All right.

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1 Well, hearsay is sustained.

2 BY MR. ALLEN:

3 Q Did you ever learn from Mr. DaCorta or anybody else
4 affiliated with Oasis International Group that Mr. DaCorta had
5 entered a settlement agreement with the National Futures
6 Association in August of 2010?

7 A No, I had not.

8 Q I'm showing you what's already been introduced into
9 evidence as Defense Exhibit 308. Sir, do you recognize what
10 is Defense Exhibit 308?

11 A Yes.

12 Q Is this something that I showed you prior to you coming
13 to court to testify?

14 A Yes, it is.

15 Q And did you have an opportunity to fully read 308?

16 A I did read it, yes.

17 Q If you could read the second full paragraph, please.

18 A "Whereas, in 2009 NFA conducted an audit of International
19 Currency Traders, Ltd., a forex commodity trading advisor,
20 CTA, NFA member. The audit cited the firm as its principal,
21 Michael DaCorta, with certain deficiencies in connection with
22 their solicitations of investors to make loans to ICT and/or
23 DaCorta and purchase stock in a company owned and operated by
24 DaCorta. In addition, the audit also cited ICT with failing
25 to register certain individuals as associated persons, list

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1 certain branches, offices, supervisors, APs working at the
2 branch offices, adopt and implement promotional material,
3 procedures, or develop and implement a business continually
4 and disaster recovery program or adequate ethics training
5 program. ICT and DaCorta denied many of the findings in NFA's
6 audit report, especially those relating to their solicitations
7 of loans and stock purchases from investors."

8 Q And if you could read the last paragraph of Defense
9 Exhibit 308 which begins, "In consideration of."

10 A "In consideration of NFA's agreement, ICT, without
11 admitting or denying the findings in NFA's audit, hereby agree
12 to withdraw NFA membership and not reapply for registration as
13 an NFA member or act as a principal of an NFA member at any
14 time in the future. And DaCorta, without admitting or denying
15 the findings in NFA's audit hereby agrees to withdraw from NFA
16 associate membership and as a principal of ICT and not reapply
17 for registration as an NFA member or associate, or act as a
18 principal of an NFA member at any time in the future. ICT and
19 DaCorta further agree that in any event they were to breach
20 this agreement by applying for registration as an NFA member
21 or associate or acting as a principal of an NFA member, then
22 their breach of this agreement" -- I'm not sure if I'm reading
23 that word correctly. "Then their breach of this agreement
24 shall constitute sole good cause for, one, denying their
25 application for registration as an NFA member or associate;

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1 two, denying the application for registration as an NFA member
2 of any firm which either of them is principal; and/or, three,
3 revoking the registration of any NFA member of which either of
4 them is a principal."

5 Q If I told you that by the terms of this agreement
6 Mr. DaCorta could not trade a U.S. citizen's money as a
7 fiduciary generating profit and loss for that U.S. citizen,
8 okay, understanding that with the NFA what this agreement
9 means, that the NFA is a regulatory agency, if Mr. DaCorta or
10 anybody else at OIG had told you about this prior to you or
11 your wife loaning money to OIG, would have you or your wife
12 still loaned the money?

13 A I believe we would have based on diversity of the company
14 and my wife having quite a background in trading in different
15 investments. That was the main reason for our investment was
16 diversity of the company.

17 Q So you attended the 2018 holiday party?

18 A Yes.

19 Q If the money that was being loaned to OIG -- you remember
20 seeing ice sculptures there, right?

21 A I did, yes.

22 Q And people carving food, right?

23 A Yes.

24 Q And there was a band, right, dancing, maybe a Santa
25 Claus. If you learned that OIG was using some of the money

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1 that was being loaned to them to fund those ice sculptures,
2 that Santa Claus, that musical band, would have that caused
3 you to not loan the money that you loaned to OIG?

4 A No. It would not, no.

5 Q Why not?

6 A Once again, the diversity in the company and being in
7 business myself, I have seen how businesses use money for many
8 different types of things in business. And that's really my
9 reasoning for it.

10 Q If you learned that Mr. DaCorta paid himself money that
11 was being loaned to OIG to purchase -- to pay loans on
12 vehicles, to pay for his daughter's room and board at college
13 that wasn't being covered by her scholarship, to go on a
14 vacation with his wife of 34 years, to own a Maserati, to fund
15 business-related private jet trips, four of them, would have
16 that affected your decision to loan money to OIG?

17 A No. I was aware of some of that stuff. I believe I saw
18 the Maserati when I was in Sarasota. I believe I had heard
19 that Mike was on a vacation with his family. So I was aware
20 of probably half of those things that you mentioned.

21 Q If you learned that in 2018 Oasis International Group was
22 suffering significant, millions of dollars worth of trading
23 losses in the forex marketplace, would have you expected
24 Mr. DaCorta to tell you about that at the 2018 holiday party?

25 A Not necessarily. If that was the only stream of revenue,

DIRECT EXAMINATION OF KEVIN JOHNSON

1 then I would probably say maybe I would expect it, yeah. But
2 if that wasn't the only stream of revenue, then I wouldn't see
3 why it would be necessary.

4 Q Would that be the case even if the only stream of revenue
5 was being generated in part through the lenders' money or
6 funded through the lenders' money?

7 A Can you ask the question again?

8 Q Sure. Would you have the same answer if you learned that
9 the only other revenue stream, because the properties hadn't
10 been sold or anything, was being generated from the spread
11 revenue but the spread revenue was coming from the lenders'
12 money as opposed to from some third party?

13 A Right.

14 Q Would that change your answer?

15 A No, it wouldn't, due to the diversity of things.

16 Q Did you and your wife have the opportunity to follow your
17 principal and your interest growth through a login system?

18 A We did, yes.

19 Q Did the login system change at any time?

20 A Yeah. There was a point where there was definitely on
21 upgrade from a 1.0 to 2.0 system. It was a way more advanced
22 way to look at things.

23 Q Okay. And let's start with the first unadvanced system.

24 A Okay. If I can remember.

25 Q When you logged on to that, do you recall what you were

DIRECT EXAMINATION OF KEVIN JOHNSON

1 able to see?

2 A I'm a little foggy on this because my wife looked at it
3 more than I did. If I remember correctly, it was either a
4 weekly or a monthly information. And then as it got advanced,
5 it became more of a daily availability.

6 Q Was what you were seeing on either showing you the profit
7 and loss trading? Was it showing you the interest and your
8 principal, or was it showing you something else, if you
9 recall?

10 A I've got to be honest. I can't answer that with real
11 confidence.

12 Q Okay. I'm showing what's already been introduced into
13 evidence as Defense Exhibit 230. Do you recognize your name
14 on this?

15 A I do, yes.

16 Q Is that your email address?

17 A Yes.

18 Q Do you recall what your IB account number was?

19 A That looks correct.

20 Q Turning to Bates stamp AWS-00902 of Defense Exhibit 230,
21 do you recognize that signature?

22 A Yep, that's my signature.

23 Q Do you recall what Defense Exhibit 230 is? It's
24 entitled, "Lender/LSA Summary Details."

25 A Yes. I recognize it, yes.

DIRECT EXAMINATION OF KEVIN JOHNSON

1 Q What do you recognize it as?

2 A All the information that I created, my username, my phone
3 number, my user ID, my email. Just general information.

4 Q That you would have provided to open your online portal?

5 A Correct, yeah.

6 Q I'm showing you what's already in evidence as Defense
7 Exhibit 263. Does this look familiar to you?

8 A It looks familiar, yes.

9 Q And what does it look familiar to you to be?

10 A The initial amount of money that I deposited, which was
11 10,000, and then I increased it to 15,000.

12 Q Referring to the starting balance?

13 A Yes.

14 Q Is 263 -- I apologize. I was showing you the wrong --

15 I apologize, Your Honor. My assistant was trying to
16 catch me in a mistake.

17 Does 263 reflect what you were seeing when you would
18 log on the portal?

19 A Looks familiar, yes.

20 MR. ALLEN: May I approach the witness?

21 THE COURT: Yes.

22 BY MR. ALLEN:

23 Q Why don't you look through all the pages to refresh your
24 memory.

25 THE COURT: Let's see if we can get a question.

DIRECT EXAMINATION OF KEVIN JOHNSON

1 BY MR. ALLEN:

2 Q Have you had -- I'm not going to drill you on it. Have
3 you been able to review it sufficiently enough to get a fair
4 understanding?

5 A I have a general idea, yeah.

6 Q And what does that exhibit represent?

7 A Overall summary of the daily activity of the trades
8 associated with my account, withdrawals, spreads, deposits,
9 things pertaining to the business's daily activity of trading,
10 I assume.

11 Q Well, does it show OIG's trading activity or does it show
12 the daily interest that you are getting?

13 A It shows the daily interest.

14 Q Were you expecting to see anything other than your daily
15 interest when you would log in to follow your loan and the
16 interest you were earning?

17 A No. As an investor that's really all I care about.

18 Q Were you and Mr. Montie involved in some sort of reptile
19 business that's become the subject of the receivership's
20 attempt to claw back money?

21 MR. CHEE: Objection, relevance.

22 MR. ALLEN: Sidebar?

23 THE COURT: Go ahead. Overruled.

24 BY MR. ALLEN:

25 Q Just yes or no.

CROSS-EXAMINATION OF KEVIN JOHNSON

1 A Yes.

2 Q Is your involvement in that clawback activity by the
3 receiver in any way affecting your truthful testimony here
4 today?

5 A No.

6 MR. ALLEN: If I can have a moment, Your Honor.

7 THE COURT: Yes.

8 MR. ALLEN: No further questions, Your Honor.

9 THE COURT: Let's have some cross-examination,
10 please.

11 **CROSS-EXAMINATION**

12 BY MR. CHEE:

13 Q How are you this afternoon, sir?

14 A Good. Yourself?

15 Q Well. Thank you for asking.

16 Sir, on direct examination you had testified that you
17 had never bought one single stock in your life; isn't that
18 right?

19 A I believe I said I had bought one stock in my life.

20 Q Oh, you only bought one stock?

21 A Yeah.

22 Q Now, on direct examination you also testified, sir, that
23 you received a promissory note in return for the loan you made
24 to Oasis; is that right?

25 A Correct.

CROSS-EXAMINATION OF KEVIN JOHNSON

1 Q Now, you would agree with me, sir, that the value of that
2 promissory note is intrinsically tied to the value of the
3 company; isn't that right?

4 A In some aspects I guess so, yeah.

5 Q Well, in one aspect, let's look at it this way, that if
6 the company that you've received a promissory note from didn't
7 have the capital in its bank account to pay you back, that
8 promissory note would be essentially worthless; isn't that
9 right, sir?

10 A If there was no other avenue to repay me?

11 Q Yes, no other avenue. It would be worthless. It would
12 worthless as a piece of paper.

13 A If there was no silver or real estate or anything else,
14 then possibly.

15 Q Possibly, okay. You mentioned that you have a business
16 selling snakes, right?

17 A Yes.

18 Q Breeding snakes?

19 A Correct.

20 Q Okay. Now, as a business owner, how would you -- would
21 you raise money for your business by making misrepresentations
22 to your clients?

23 A Of course not.

24 Q And do you think that it's wrong to do so?

25 A Yes.

CROSS-EXAMINATION OF KEVIN JOHNSON

1 Q Now, you also mentioned on direct examination that you
2 did real estate in New York; isn't that correct, sir?

3 A Yes.

4 Q So in that circumstance, isn't it true that if you are in
5 a real estate transaction, it's the seller that pays the
6 commission, right?

7 A In most situations.

8 Q Most situations.

9 A Not always.

10 Q But what if I told you, sir, that in this situation that
11 the broker himself was paying himself commission at closing,
12 would that make much financial sense to you in calling it a
13 profit?

14 A In the real estate world, that wouldn't make sense to me.
15 But in this world which I'm not really part of, I don't know
16 if that makes sense or not.

17 Q You mentioned that part of your decision to invest in
18 Oasis was the assertion, the representation that it was
19 diversified; isn't that right?

20 A Correct.

21 Q By diversified, you indicated that there was real estate
22 and gold and silver, right?

23 A Correct, and business investments.

24 Q Business investments?

25 A Right.

CROSS-EXAMINATION OF KEVIN JOHNSON

1 Q Now, Mr. DaCorta never told you that he was flipping
2 houses on the real estate market to generate profit, was he?

3 A I was aware of that, yeah. I was aware of somebody who
4 actually lived in one of the buildings or places they bought.

5 Q You are aware of all of the properties that are involved
6 here, the officers of Oasis were actually living in those
7 houses. They weren't flipping them, right?

8 A I'm aware of somebody who was living in the house who was
9 not an officer.

10 Q But the economic engine driving Oasis was forex trades;
11 isn't that right, sir?

12 A I don't know.

13 Q You don't know what exactly produced the interest or at
14 least that was told to you the interest or the spreads?

15 A I wasn't part of the daily activity. You know, I just
16 lent me money and assumed that over the course of the
17 diversity of the company, that's how I would generate money.

18 Q But you were told that forex was an integral part of the
19 Oasis economic or supposed economic engine that would drive
20 profits and make you money, right?

21 A It was one of the ingredients, yes.

22 Q Were you also aware that the silver and gold that you
23 testified to earlier was actually found in a paint bucket in
24 the defendant's home on Lost Key Place?

25 A I remember reading something about silver and gold being

CROSS-EXAMINATION OF KEVIN JOHNSON

1 in Mr. DaCorta's property. I don't recall hearing it was in a
2 paint bucket, but it sounds familiar.

3 Q Now, you really didn't understand what spread pay was,
4 correct, before you invested in Oasis?

5 A Not a hundred percent thoroughly, no. It's not my forte.

6 Q Right. Now sitting here today, if you were aware --
7 well, let me ask that again.

8 If you were aware at the time that you made your
9 investment that spread pay was not in fact profit at all, it
10 was fake, and that you in fact were paying for the spread pay,
11 would you have still invested in Oasis?

12 A I don't know that to be true, so I don't know how I could
13 answer that.

14 Q Well, let's just say that suppose you learned at the time
15 you made your investment that you in fact were paying for
16 those extra pips on the trades, that Oasis was marking up the
17 trades and you were paying for that difference and that it
18 wasn't profit at all. It was actually your money being
19 recycled to you. Would that have made a difference, sir, in
20 your analysis and decision to invest?

21 A Well, like I said, based on the diversity of everything,
22 if I knew that then, it would not have made a difference, no,
23 based on everything.

24 Q You also testified, sir, on direct examination that the
25 defendant was transparent with you in 2018 and 2019, isn't

CROSS-EXAMINATION OF KEVIN JOHNSON

1 that correct, when you met with him?

2 A Transparent at the Christmas parties you mean or meeting
3 in Sarasota?

4 Q Let's just say in general. I think you characterized him
5 as transparent.

6 A Correct.

7 Q Is it transparent of the defendant to not tell you about
8 a 20 to \$22 million loss in the trading account?

9 A Well, with me not knowing the daily activity of the
10 overall company's business, not just the trading itself but
11 everything, it may or may not be important to say that.

12 Q Would you characterize someone as transparent if they
13 told you -- if they didn't tell you that not a single penny
14 came back from his forex trading account?

15 A Could you ask me that question one more time?

16 Q Would you characterize somebody as transparent if they
17 concealed from you the fact that no trading profits came back
18 from the trading account, that your money was in that account
19 used to trade?

20 A It's hard for me to answer that. If that was the only
21 investment that my money was being put in and that was the
22 only thing that was part of the investment, then, yes,
23 possibly. But from everything that I am under the impression
24 of, I don't know if that would be totally something that would
25 have to be told to me. I mean, like I said, my investment,

CROSS-EXAMINATION OF KEVIN JOHNSON

1 whenever I needed money, I asked for it. And the same thing
2 with my wife, and there were no issues.

3 Q You hadn't heard about the NFA until today, had you, sir?

4 A Correct.

5 Q So you didn't know that the NFA stood for the National
6 Futures Association, right?

7 A That's correct.

8 Q And that the NFA, part of its responsibilities is to
9 ensure protection for investors. Did you know that before
10 coming today?

11 A I'm not aware of NFA. It's not my --

12 Q Okay. So on direct examination you testified that it
13 wouldn't have made a difference to you if the defendant told
14 you that he was banned from trading in forex by the National
15 Futures Association; is that right?

16 A I believe that's what I said, yeah.

17 Q Do you think you would characterize somebody as
18 transparent if they concealed the fact that they were banned
19 in trading forex by the National Futures Association?

20 A Well, I did a little due diligence when I was making my
21 investment, and none of that came up to me. So I would
22 imagine if it was that damning, I would be able to find it
23 myself. So the importance of it I guess was not that great.

24 Q But you just said that that was something that you would
25 consider to be pretty damning, right, had you found it?

CROSS-EXAMINATION OF KEVIN JOHNSON

1 A If I had found something, possibly, yeah.

2 Q Now, you mentioned you went to the holiday parties, the
3 Christmas parties in Sarasota in 2017 and 2018, right?

4 A Yes.

5 Q Would it concern you, sir, that had you known Oasis was
6 sustaining stunning and staggering losses at the time they
7 were hosting a Christmas party, would that be something of
8 concern to you?

9 A I would have asked more questions.

10 Q I'm sorry. Could you repeat your answer?

11 A I would have asked more questions.

12 Q Because that kind of information would have prompted an
13 inquiry by yourself; isn't that correct, sir?

14 A I would have wanted to know more, yeah.

15 Q Had you known that there were stunning and staggering
16 losses sustained by Oasis in the year prior to hosting that
17 Christmas party in Sarasota?

18 A Are you asking me if I knew that?

19 Q Well, had you known that, had you known about those
20 stunning and staggering losses sustained by Oasis, that would
21 have prompted you to ask more questions, right?

22 A I would have asked more questions, yeah.

23 Q At the Christmas party the defendant didn't tell you that
24 he lost \$20 million in his trading account, did he?

25 A No. There was no discussion of business at the party.

CROSS-EXAMINATION OF KEVIN JOHNSON

1 Q He didn't tell you that out of the \$88 million he had in
2 Oasis, only \$16 million remained?

3 A No. There was no discussion of it.

4 Q In your discussion with the defendant about market
5 making, you never heard that term prior to the defendant
6 telling you about it, right?

7 A I can't -- I can't say I never heard it, but it was
8 something that I was not familiar with. I might have heard it
9 once many years ago, but I'm not familiar with it at all.

10 Q But it was something that was important to you that
11 factored into your decision to give Mr. DaCorta, the
12 defendant, and Oasis \$15,000 of your hard-earned money then,
13 right?

14 A The market maker aspect you are saying?

15 Q Yes.

16 A No, it was not. It was the diversity of everything, of
17 all the investments is what wanted me to diversify into
18 different things.

19 Q If you knew that the defendant's description of market
20 making and his supposed market-making activities was a total
21 lie, would you then have still invested in Oasis with your
22 \$15,000?

23 A Well, I don't know it to be a lie. I can't honestly
24 answer that if I don't know it to be a lie or not.

25 Q It would have concerned you, sir, to learn at the time

CROSS-EXAMINATION OF KEVIN JOHNSON

1 that you made the investments that the whole idea of spread
2 was fictitious and fake; would it not have done so, sir?

3 A Could you ask me that again, please?

4 Q Sure. If at the time or let's just say before you made
5 your \$15,000 investment in Oasis if you learned that this
6 whole spread pay business was a total fabrication, a
7 bookkeeping entry, not real and in fact your own money being
8 recycled to you, would that have been something that would
9 have factored into your analysis or decision to invest in
10 Oasis?

11 A No. I think Mr. Allen asked me that. And based on the
12 diversity of everything, it wouldn't have factored.

13 Q So getting your own money back and the defendant calling
14 it profit would not have concerned you at all?

15 A Once again, based on the fact that I don't know the ins
16 and outs of that type of business, I was simply just lending
17 my money to an investment company that was going to be
18 diversified. And I never had a problem with ever getting
19 money. I had no reason to be concerned with anything.

20 MR. CHEE: If I may have access to the Elmo, please.

21 BY MR. CHEE:

22 Q I would like to re-publish Defense Exhibit 230.
23 Mr. Johnson, there is your lender summary detail, correct --

24 A Yes.

25 Q -- that Mr. Allen showed you on direct examination,

CROSS-EXAMINATION OF KEVIN JOHNSON

1 right?

2 A Yes, correct.

3 Q I'm going to turn to the Bates stamp page 000901. I
4 would just like to read your net worth on the screen there.

5 Do you see that?

6 A I do, yeah.

7 Q Your net worth isn't \$0, is it?

8 A I hope not.

9 Q Did anybody at Oasis contact you and try to get that
10 fixed?

11 A No. I never -- you know, I don't remember ever seeing
12 that, to be honest. I mean, I see what it says, but I didn't
13 pay much attention to the net worth and knowing my net worth
14 wasn't zero.

15 Q When you used the word "transparent," that means to get
16 all the information, right?

17 A Yeah.

18 Q I'm sorry. Go ahead.

19 A Be forthright about whatever is important, I guess.

20 Q Forthright, not holding critical information back?

21 A Yeah.

22 Q Not lying?

23 A Correct.

24 Q Not saying things to get people to invest in their
25 company?

REDIRECT EXAMINATION OF KEVIN JOHNSON

1 A Correct.

2 MR. CHEE: Thank you, sir.

3 THE COURT: All right. Redirect, please.

4 MR. ALLEN: Thank you, Your Honor.

5 **REDIRECT EXAMINATION**

6 BY MR. ALLEN:

7 Q Mr. Johnson?

8 A Yes.

9 Q If Mr. DaCorta came to you at the holiday party in 2018
10 and said this year we suffered some trading losses but I'm
11 going to change my strategy and I'm going to take a long
12 position on silver which I believe will reverse those trading
13 losses, what would you have thought about that?

14 A I would have -- based on my initial confidence of
15 investing money to begin with, I would have probably thought
16 it was a good idea. I personally invest in silver. So I
17 would have agreed with that.

18 Q If Mr. DaCorta came to you and said, Mr. Johnson, 2018
19 has not been a good year, but I'm going to take a loan to pay
20 you back your principal and interest, would you have had a
21 problem with that?

22 A No. It happened in my real estate company. So I have
23 gone through that already.

24 MR. ALLEN: No further questions.

25 THE COURT: All right. Well, thank you very much,

DIRECT EXAMINATION OF JOHN PANIAGUA

1 Mr. Johnson. You may step down.

2 Let's call your next witness, please.

3 MR. ALLEN: Your Honor, the defense would call John
4 Paniagua.

5 THE COURT: All right. John Paniagua. Thank you.

6 (Witness sworn.)

7 THE COURTROOM DEPUTY: Can you state your full name
8 for the record.

9 THE WITNESS: John Paniagua.

10 THE COURTROOM DEPUTY: Thank you. Please be seated
11 at the witness stand.

12 **JOHN PANIAGUA, CALLED BY THE DEFENSE, SWORN**

13 **DIRECT EXAMINATION**

14 BY MR. ALLEN:

15 Q Mr. Paniagua, how are you today?

16 A Okay.

17 Q Do you have a brother?

18 A Yes, Joseph.

19 Q Joseph Paniagua?

20 A Joseph Paniagua.

21 Q Mr. Paniagua, how old are you?

22 A Sixty.

23 Q So the jurors are way over here. There is a microphone
24 there in front of you, and there is a court reporter over
25 there taking everything down. If you could speak up a little

DIRECT EXAMINATION OF JOHN PANIAGUA

1 bit --

2 A Sure.

3 Q -- so everybody can hear you.

4 A Okay.

5 Q So how old are you?

6 A Sixty.

7 Q And where do you live?

8 A Rego Park, Queens, 9805, 63rd Row, Apartment 16E.

9 Q And what is your educational background?

10 A Engineering. I have a Ph.D. in engineering, University
11 of Stoney Brook. Master's from Colombia, and a bachelor's
12 from New York Institute of Technology.

13 Q And a Ph.D. from where?

14 A Stoney Brook University, University of Stoney Brook.

15 Q And what is your Ph.D. in?

16 A Mechanical engineering.

17 Q Any other degrees?

18 A Master's in mechanical engineering from Columbia
19 University. And a bachelor's in engineering and aerospace
20 from New York Institute of Technology.

21 Q Would you prefer that I refer to you as doctor?

22 A That's fine.

23 Q Dr. Paniagua, have you received any other training other
24 than your educational background?

25 A I have a certification in -- I'm a professional risk

DIRECT EXAMINATION OF JOHN PANIAGUA

1 management in finance.

2 Q Professional business management in finance?

3 A Professional risk management.

4 Q Oh, risk management?

5 A Yes, sir.

6 Q Let's talk about that. What is professional risk
7 management about?

8 A It's a certification where -- that you get educated on
9 and you have to pass exams for risk management in finance,
10 covering major fields, different financial instruments,
11 looking at risks across different assets, and finance,
12 including stocks, bonds, currency.

13 Q Okay.

14 A And real estate, life insurance.

15 Q What type of work do you do?

16 A Right now I'm work -- currently I'm working in a private
17 equity firm, KKR, in New York City.

18 Q And what does this private equity firm do?

19 A What they do is they raise capital using risk management
20 techniques, and they do investments across major lines of
21 business, including insurance, real estate companies. They
22 buy, they restructure companies, take companies public.

23 Q So is your current employment buying an ownership
24 interest in companies?

25 A Yes.

DIRECT EXAMINATION OF JOHN PANIAGUA

1 Q What type of companies?

2 A It could be anything from -- they raise funds for
3 anything from biomedical, telecommunications, real estate,
4 technology firms.

5 Q And when they purchase ownership in these different
6 companies, do they -- will they eventually share in the
7 profits of the companies?

8 A Yes, they do. Yes.

9 Q Will they -- hopefully not, but would they also share in
10 the losses of the companies?

11 A Private equities firms, the way they work is it's almost
12 like a venture capital funds where they invest in -- could be
13 X number of companies. Some of them turn out to be much more
14 profitable than others. Usually what they do is they wait.
15 There is a time dimension to this until they put enough effort
16 into turnaround and then the company becomes profitable, and
17 then they sell out.

18 Q Did you previously work for the New York Stock Exchange?

19 A Yes.

20 Q Tell the jury about that work experience.

21 A I started at the New York Stock Exchange as a consultant
22 in the year 2004. And I became a full-time employee in 2007,
23 and I was working in regulation technology. So my -- I grew
24 to the point where I became manager of building the
25 surveillances that monitor the markets for any illegal trading

DIRECT EXAMINATION OF JOHN PANIAGUA

1 activity, any trade anomalies.

2 Q Did you -- do you have any expertise in computer code
3 writing, software development, that type of stuff?

4 A Besides being a manager, I started out in software
5 writing. And to this day, I still -- I write programs by
6 using languages like JAVA and Microsoft C language.

7 Q Prior to 2014, had you ever invested in the stock market?

8 A Yes.

9 Q Tell the jury about the process that somebody goes
10 through to invest in the stock market.

11 A Well, when I started working, usually they put you into a
12 401(k), but what I also did besides that, I would take that
13 money that's taken from your salary, pretax and they put it
14 into your 401(k), but I also started investing my own private
15 money into individual stocks. I started doing that prior to
16 2014.

17 Q And when you purchased these stocks, I assume that was as
18 an investment opportunity?

19 A Yes.

20 Q Was there any risk involved in doing that?

21 A In the stock market there is always risk if your timeline
22 is very short, you know, but if you keep doing this over a
23 long period of time, your investments -- and depending on the
24 companies. If you don't diversify among the companies that
25 you invest in, usually diversify to minimize the risk, but

DIRECT EXAMINATION OF JOHN PANIAGUA

1 otherwise you have to do your due diligence. So you have to
2 look at the company's fundamentals, and then you assess the
3 risk, and then hopefully you decide I will invest with this
4 company.

5 Q At some point, did you become aware of a company by the
6 name of Oasis International Group?

7 A Yes.

8 Q And how did you become aware of this company?

9 A Through my brother, Joseph Paniagua.

10 Q Without getting into what your brother specifically told
11 you, what was your understanding based on your conversations
12 with your brother what OIG was or was about?

13 A In 2014, it was -- they were doing forex trading.

14 Q And did you know what forex trading was?

15 A Not really, not at that time.

16 Q Okay. And what was your understanding -- did you talk --
17 did you eventually invest in Oasis International Group back in
18 2014?

19 A Yes, I did.

20 Q Other than the conversations with your brother about OIG,
21 did you have any conversations with anybody else associated
22 with OIG prior to investing?

23 A No.

24 Q What was your understanding about OIG from your brother
25 other than they were trading in forex?

DIRECT EXAMINATION OF JOHN PANIAGUA

1 A That was it. It was mostly I invested with them because
2 I trusted my brother.

3 Q Okay. And how much did you initially invest; do you
4 recall?

5 A It was a hundred thousand.

6 Q And what was the source of this hundred thousand dollars
7 that you invested?

8 A My own money, salary.

9 Q It was just money you had earned from work --

10 A Yes, correct.

11 Q Let me finish so she can get it down right. So it was
12 money you had earned working on the New York Stock Exchange?

13 A Yes.

14 Q And did you realize any profits or losses or both?

15 A From where?

16 Q From your \$100,000 investment in 2014?

17 A It grew to 212,000 by 2018.

18 Q By when?

19 A By 2018.

20 Q And at some point in time, did the structure of your
21 investment change?

22 A Yeah. The new program my brother told me about had
23 rolled out, and it became a loan program.

24 Q Could you speak up a little bit, please?

25 A I'm sorry. So, yeah, by then the program had changed and

DIRECT EXAMINATION OF JOHN PANIAGUA

1 it became a loan program. So essentially I took the money and
2 I rolled it over and it became a loan to Oasis.

3 Q When you initially invested in forex through OIG in 2014,
4 were you told there was no risk?

5 A No. There was risk.

6 Q What risk was there?

7 A Foreign currency movements against -- you know, from
8 doing the trading. My understanding is when you do forex
9 trading there is a trading pair. You go long, short, and
10 depending which pair you are, there could be movements against
11 you. You could make or lose money.

12 Q Okay. And then you said it switched to a loan in 2017?

13 A 2018.

14 Q 2018. Were you given the option to get your money out as
15 opposed to switching over to a loan?

16 A Yes.

17 Q And what did you decide to do when given that option?

18 A I rolled it over. So loaned it out.

19 Q And what was -- other than talking to your brother about
20 the loan, did you talk to anybody else at OIG before you
21 rolled it over?

22 A No.

23 Q What was your understanding about how the loan would
24 work?

25 A You would loan them money. And based on how much, you

DIRECT EXAMINATION OF JOHN PANIAGUA

1 get a certain percentage, which was a minimum of 1 percent or
2 25 percent of the spread they were capturing.

3 Q Were you told that there was no risk in loaning money to
4 OIG?

5 A I mean, there is always risk in loaning money.

6 Q And what is that risk?

7 A That they can't pay it back.

8 Q Did you employ your knowledge in risk management prior to
9 making a determination to loan a significant amount of money
10 to Oasis International Group?

11 A Yes.

12 Q And explain to the jury that risk management analysis
13 that you went through.

14 A Well, you never put all your money -- you always
15 diversify. So when you loan them money, certain percentage
16 went to trading, right? Not a hundred percent but a certain
17 percent went into that trading, and the rest in other assets.
18 Before OIG was shut town, what those other assets were I never
19 knew, but I do know only a small percentage went to trading.
20 After it was shut down and then I saw the receiver reports, I
21 started looking at what were those other assets. My sense was
22 it was definitely the right move because it was well
23 diversified. It looks like they had invested in properties
24 and real estate. It looks like there was a commodity, silver,
25 and in small companies. So from a diversification point of

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1 view, it was sound strategy.

2 Q This investing in small companies, is that the same thing
3 that you are currently doing with your current employer?

4 A Yes. KKR specializes in investing in small companies,
5 investing in big companies. They do their financial analysis,
6 and they determine based on that whether or not to proceed.

7 Q Did you at any time ever withdraw any of your principal
8 or interest once you voluntarily switched over to the loan
9 program? You need to answer out loud.

10 A No. Sorry. No.

11 Q Based on your understanding of the agreement you had
12 entered, did you have the right to withdraw your interest?

13 A Yes.

14 Q You just elected not to?

15 A Correct. Yes.

16 Q Based on your understanding of the loan agreement that
17 you entered, did you have the right to withdraw your
18 principal?

19 A Yes.

20 Q Do you recall based on the terms of your agreement
21 whether you had to give any notice to withdraw your principal
22 and, if so, how much?

23 A That I don't remember because I never had any intention
24 of withdrawing it. Just let it build out over time.

25 Q When did you first become aware that you would not be

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1 able to withdraw your interest or principal?

2 A When it ceased operations.

3 Q In April of 2019?

4 A Correct.

5 Q Did you at some point get hired by OIG to do some
6 services for them?

7 A Yes.

8 Q And what were those services?

9 A It was to build a reporting system.

10 Q I'm sorry?

11 A It was to build a reporting system.

12 Q Okay. What type of reporting system?

13 A The reporting system was to allow the users, what I call
14 users, the clients, the lenders, to be able to go in and they
15 could see their accounts in Oasis.

16 Q And can you explain to the jury in the least technical
17 way how you went about doing that?

18 A I remembered we were reviewing two options. One was to
19 build out the computers, what's called a data center. And the
20 other was to use a cloud, Amazon Web Services. The cheaper
21 and quicker time to market solution was to use Amazon. So
22 what we did was we built a program that pulls the data from
23 the trading system, right, and the data that it pulled was the
24 spreads. And then it was added to the balance on a daily
25 basis and then presented -- the user can log in and it was

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1 presented as a report. They could see how they are doing on a
2 daily basis.

3 Q And where was the data coming from?

4 A Spotex, ATC/Spotex trading system.

5 MR. ALLEN: May I approach the witness?

6 THE COURT: Of course.

7 BY MR. ALLEN:

8 Q I hand you what's been marked as Defense Exhibit 4.

9 A Okay.

10 Q Do you recognize what Defense Exhibit 4 is?

11 A Yes.

12 Q What is Defense Exhibit 4?

13 A It's my drawing of the application architecture.

14 Q Okay. Does it fairly and accurately represent your
15 drawing of the architecture for creating the Oasis back
16 office?

17 A Yes.

18 MR. ALLEN: Your Honor, at this time I would move
19 into evidence Defense Exhibit 4.

20 THE COURT: Admitted.

21 MR. CHEE: No objection, Your Honor.

22 (Defendant Exhibit 4 admitted.)

23 MR. ALLEN: If we could publish that on the Trial
24 Director, please. If we could pull out the diagram to make it
25 a little more visible.

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1 BY MR. ALLEN:

2 Q Okay. I see up here in the upper left-hand corner
3 ATC/Spotex database. So what is that?

4 A That's the trading system. It represents on the diagram
5 their database or data source. It's a trading source. And
6 then I was pulling the spreads from that source.

7 Q Do you know what an ECN is?

8 A Electronic communications network.

9 Q What does an ECN do?

10 A It's a system that takes fees, data feeds from other
11 sources that provides liquidity, what they call quotes. So
12 orders come into the ECN system, and then they do trading
13 there. They're able to trade.

14 Q So was -- in this picture here in the upper left-hand
15 corner, was ATC or Spotex the ECN or was it something else?

16 A That was part of the ECN. It's a part of it.

17 Q Okay. And providing the liquidity, is that meaning
18 providing the currencies that are going to be traded?

19 A Yes, from outside, from external sources.

20 Q So it's the software that says there is this currency
21 available to be traded?

22 A Well, not particularly -- I mean, this one here is kind
23 of like the -- at the end of the day, I imagine these were the
24 spreads that they calculated at the end of the day. Trading
25 goes on through the day, and then at the end of the day they

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1 do -- like at the stock exchange it's like post trade. And
2 then they store all the results of the trading throughout the
3 day. And there they do the calculations of the spreads.

4 Q So then your arrow is going both ways, points down to
5 ATC/Spotex server, web service provider. What is that?

6 A That's just a machine that -- it's their server. The way
7 these systems are designed, you have the data sitting
8 somewhere. You have the machine that pulls the data out when
9 you request it from their machine. So it's just a conduit.

10 Q And then that goes down and up to ATC/Spotex web service?

11 A Yeah. That's the interface. That's what I have to
12 connect to. So what you see above the dotted line, that's
13 their infrastructure. They are components, but then below it
14 is the program that I wrote that pulls the data through that
15 interface from Spotex.

16 Q What is this down here that I just put the cursor on?

17 A That's a program I wrote. It's a batch program. It runs
18 on a nightly basis at the end of trading and it pulls the
19 spreads.

20 Q And what is the purpose of pulling the spreads?

21 A To show it to the client later when it gets stored in the
22 back office database. The client can log in and see how they
23 do for the day, what their balances are.

24 Q Is that because the loan that you had entered and other
25 people had entered, the interest was going to be 1 percent or

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1 higher based on the spread?

2 MR. CHEE: Object to the leading question.

3 THE COURT: Sustained.

4 BY MR. ALLEN:

5 Q What was your understanding of how the interest would be
6 determined as a lender who loaned several hundred thousand
7 dollars to OIG?

8 A It was either they were going to give 25 percent of the
9 spreads or 1 percent. The higher of both.

10 Q Was the software you were writing for OIG designed in
11 relationship to your understanding of how the spread was going
12 to be allocated?

13 A I'm not sure about the question.

14 Q I'm not sure about the question either. So was the
15 software you were writing designed to facilitate a lender's
16 ability to see whether they were getting the 1 percent or the
17 greater based on the spread that was being generated?

18 A Yes.

19 Q And so where does that then go to?

20 A That would be in the Oasis database.

21 Q Okay. Where is that located?

22 A At the bottom. Those calculations went in there.

23 Q Is that like a server or something?

24 A That one is actually databases inside Amazon.

25 Q What role was Amazon playing?

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1 A Think of a database as just a data storage. And Amazon
2 provided an environment that you can rent, you could pay for
3 so you don't have to buy the computers. You rent their
4 servers. And here in this instance this database was on
5 Amazon. We rented it.

6 Q And then you have a long arrow. It goes up to that?

7 A Again, every database, in order to get data out of the
8 data storage, you need a machine. It pulls the data out like
9 a conduit. When that happens, the application pulls the data
10 out and then shows the individual here your results.

11 Q Okay. And then you have it going up to the web server.
12 What's that?

13 A That's where your web pages are served to you, through a
14 web server.

15 Q So I think you just testified everything below the dotted
16 line is OIG's side and everything above is Spotex/ATC?

17 A On the left side, everything above on the left side,
18 everything above the line, that's ATC. Everything above the
19 line Internet and all that, that's the web. That's somebody
20 accessing Amazon.

21 Q Okay. So after web server, you go up to account summary
22 view page?

23 A That's the web page that displays the results.

24 Q Is that what a lender would see when they logged on?

25 A They would see their page. And they would enter their

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1 username and password and get into the system.

2 Q And that's the next box, the logging into the system?

3 A Yes.

4 Q You wrote the software?

5 A Yes.

6 Q And why didn't you write the software in a way to show
7 the lender what the daily profit and loss trading was for OIG?

8 A The requirements for this application was just to pull
9 the spreads added to the balances on a daily basis.

10 Q Was there anything about your loan that was tied to the
11 profit and loss trading of OIG?

12 A I have no idea.

13 Q Well, you entered the loan agreement --

14 A Right.

15 Q -- correct? And it was 1 percent or 25 percent of the
16 spread.

17 A Correct?

18 MR. CHEE: Object to the leading question, Your
19 Honor.

20 MR. ALLEN: I didn't ask the question.

21 THE COURT: Let's get it out. We'll see.

22 BY MR. ALLEN:

23 Q Did you have any understanding that that spread was tied
24 to profit and loss trading?

25 A Yes. I mean, the spread is -- my understanding of the

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1 spreads was just whatever came from that trading system.
2 Using the application API from Spotex, I was to pull the
3 values that came from this field into the reporting system.
4 So if there was trading going on, right, there would be --
5 that value should be greater than zero. Something is going
6 on. So there were spreads in there. That would get pulled.

7 Q Was your loan tied -- best on your knowledge, was your
8 loan tied to anything other than the spread?

9 A As far as I know, no. It was all based on the spread.

10 Q As a lender to OIG -- we're at the lender stage -- what
11 was your main concern about your principal and your interest
12 when you were loaning money to OIG, if any?

13 A As long as I was receiving interest on the loan, that was
14 my main concern.

15 Q To your knowledge, were you ever not receiving interest
16 on your loan?

17 A No. As far as since the system went up and I saw the
18 spreads, there were always spreads coming in daily.

19 Q In addition to writing the software to transmit the
20 spread to the lender log-in accounts, did you write any
21 software to help facilitate a lender creating a log-in
22 account?

23 A No. Other than the initial boarding -- there was an
24 initial boarding application, if that's what you're referring
25 to.

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1 Q Yes, to set up the application process.

2 A Yes.

3 Q I'm showing you -- if we can take it off the Trial
4 Director. I'm showing you what's been already admitted into
5 evidence. If we could move to the Elmo -- or not. I
6 apologize. If we could pull up on the Trial Director what's
7 already in evidence at Defense Exhibit 6.

8 Do you recognize what Defense Exhibit 6 is?

9 A Yes.

10 Q And what is it?

11 A Registration steps for the users.

12 Q If you could turn to the Bates stamp Oasis-00020 to Step
13 17. Sir, what is Step 17 directing the applicant to do?

14 A To sign, to read first any disclosures that are there and
15 sign.

16 Q And do you recall what the agreement in the disclosure
17 document was?

18 A In detail I can't remember. I do know there were risk
19 disclosures, and you couldn't proceed any further without
20 having to -- I think there was a link down there. Yeah, right
21 there, the link. And then once you did that, then you sign
22 and click the submit button.

23 Q So you couldn't proceed forward without clicking that you
24 had reviewed the agreement and risk disclosure?

25 A Yes.

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1 Q And then you would sign as if you are signing on the
2 note?

3 A Yes. That was the requirements that came to me for the
4 design of the application.

5 Q And did the computer software keep track of every time
6 somebody signed indicating they had reviewed and read the risk
7 disclosure?

8 A Yes. When you hit submit, the application would take all
9 the data and save it in the database to store.

10 MR. ALLEN: Approaching the witness with Defense
11 Exhibit 7A.

12 BY MR. ALLEN:

13 Q Sir, if you could look at 7A, please.

14 A Yes.

15 Q Do you know what 7A is?

16 A It's the database. It's the table and the database.

17 Q What database?

18 A The Oasis back office.

19 Q And does 7A fairly and accurately reflect the Oasis back
20 office database?

21 A Yes.

22 MR. ALLEN: Your Honor, at this time we would move
23 into evidence Defense Exhibit 7A.

24 MR. CHEE: Your Honor, I think slightly more
25 authentication is needed on this 338-page document.

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1 THE COURT: All right. Well, why don't you do that.

2 BY MR. ALLEN:

3 Q Do you know where 7A originated from?

4 A The design of the database, of the application
5 requirements that were handed to me.

6 Q Did you generate 7A and provide it to me, my office?

7 A I don't remember.

8 Q Do you recognize 7A? Take your time.

9 A Sorry. What was the question again?

10 Q Do you recognize 7A?

11 A 7A, yes.

12 Q Okay. And how do you recognize it?

13 A Because it's the database. It looks like it's the output
14 of a table in the database.

15 Q And the database that you wrote?

16 A Yes.

17 Q In and around the time that you created the OIG AWS
18 login --

19 A Yes.

20 Q -- account?

21 A Yes. It's part of the design.

22 Q And did you not meet with the U.S. Attorney's Office on
23 numerous occasions about that database?

24 A Yes.

25 Q Did you not explain to the U.S. Attorney's Office how the

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1 database worked?

2 A Yes.

3 MR. ALLEN: Your Honor, at this time --

4 THE COURT: All right. 7A is admitted.

5 MR. ALLEN: Thank you.

6 (Defendant Exhibit 7A admitted.)

7 BY MR. ALLEN:

8 Q If we could publish 7A which is being published on the
9 screen.

10 Sir, this left-hand column, if we could pull out a
11 little bit of it. What is all that?

12 A That's the data interpretation of a signature. So when
13 it's stored in the database, right, it looks like some sort of
14 encoding of the signature.

15 Q So when somebody signs on the application process at Step
16 17 of how to open an application, the database saves the
17 signature as a whole bunch of letters?

18 A Correct.

19 Q And numbers, I guess?

20 A Yes.

21 Q And does it then associate the signature with a lender?

22 A Yes. If you look at every column over here, there is
23 data that's particular to a lender.

24 Q If we could then just start scrolling through this
25 300-some-page document. So every time we see this squiggly

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1 means a lender signed that they had reviewed the risk
2 disclosure and clicked that they understood it?

3 A Yes.

4 MR. ALLEN: Let the record reflect that we are
5 scrolling through the pages showing the squiggly lines which
6 represent signatures of the lenders.

7 BY MR. ALLEN:

8 Q Would it be fair to say that every lender represented in
9 7A has data collected that they signed indicating that they
10 had reviewed and understood the risk disclosure?

11 A Yes.

12 Q And that would be including yourself when you owned your
13 own trading account, correct?

14 A Yes. If I look for my account, you see a signature
15 associated with it.

16 Q If we could turn to page 5 of that exhibit, and if we
17 could pull out the lender on page 5.

18 Who is this lender? The name, is that Michael
19 Chalhub?

20 A Yes.

21 Q And there's squiggly that he had signed?

22 A Yes.

23 Q If we could turn to page 7 and pull out that lender's
24 name. And who is that?

25 A That's me.

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1 Q Okay. And you have your little squiggly that you had
2 signed as well?

3 A Yes.

4 Q If we could go to page 23. Pull out that lender's name.

5 Is that Matt Kihnke?

6 A Yes.

7 Q With the data collected that he had signed?

8 A Yes.

9 Q If we could go to page 42. And who is that lender when
10 she pulls it out for you? Is that Kevin Johnson?

11 A Yes.

12 Q If we could go to page 43. If we could pull out that
13 lender. And that is a Sandra Feeney-Charles?

14 A Yes.

15 Q If we could go to page 48. Pull out that lender's name.

16 That's Ian Howard, right?

17 A Yes.

18 Q Page 57. And who is that lender when she pulls it out?

19 I'm sorry. Fifty-one. That's Deborah Cheslow?

20 A Yes.

21 Q Page 54, Patti Katter?

22 A Yes.

23 Q Page 108. Jason McKee. Sorry. Doris McKee?

24 A Yes.

25 Q Page 1 through 9. Kevin Johnson?

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1 A Yes.

2 Q As I understand your testimony so far, you never had any
3 conversations with Mr. DaCorta prior to investing -- lending
4 money to OIG?

5 A No.

6 Q Just conversations with your brother?

7 A Yes.

8 Q If you had been told by your brother or Mr. DaCorta or
9 anybody else at OIG that in August of 2010 Mr. DaCorta had
10 entered a settlement agreement with the National Futures
11 Association, do you know what the National Futures Association
12 is?

13 A I'm aware of them.

14 Q I'm sorry?

15 A I'm aware of them.

16 Q That's the organization that regulates individuals who
17 are trading for U.S. citizens in commodities?

18 A I don't know about commodities. I know National Futures
19 Association. The only thing I know about them is derivatives
20 from the New York Stock Exchange. Before we merged with ICE,
21 as part of our merger we had to sell off part of the futures
22 that we had. But that's my knowledge with them, of what they
23 are. That's it.

24 Q If Mr. DaCorta had told you -- well, let me strike that.

25 Publishing what's already in evidence as Defense

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1 Exhibit 308. If we can turn on the Elmo, please.

2 Sir, have you seen this agreement between Mr. DaCorta
3 and the National Futures Association?

4 A No.

5 MR. ALLEN: I'm going to approach the witness.

6 THE COURT: Let's don't read it because the last two
7 witnesses read it.

8 MR. ALLEN: I'm letting him refresh his memory and
9 look at it.

10 BY MR. ALLEN:

11 Q Can you read Exhibit 308 to yourself?

12 Have you had a chance to review it?

13 A Yes.

14 Q I want to go back to your 2014 investment. Who was that
15 money being -- was that invested to a company, you
16 individually; do you recall?

17 A The only think I recall is it went through Elysium
18 International.

19 Q What is Elysium International?

20 A I believe it was a company, my brother's company that was
21 set up where I would send the funds through there.

22 Q Was Elysium a company that Mr. DaCorta owned and
23 operated?

24 A Not that I know of, no.

25 Q But your loan in 2017 or 2018 was through Oasis

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1 International Group?

2 A Yes.

3 Q And let's focus on that. You have had an opportunity to
4 read Defense Exhibit 308?

5 A Yes.

6 Q If you had been advised of Defense Exhibit 308 prior to
7 loaning money to OIG, would you have still loaned the money to
8 OIG?

9 A Yes.

10 Q Why?

11 A Because again, it is a risk assessment I made on the loan
12 to OIG. A certain percentage went to trade trading. The rest
13 was going to be collateralized elsewhere.

14 Q So the fact that Mr. DaCorta had agreed to not be a
15 member of the NFA in '09 wouldn't have affected your decision
16 to loan money?

17 A No, because the investments were elsewhere. It was
18 diversified.

19 Q The fact that Mr. DaCorta without admitting any
20 wrongdoing agreed to not in essence trade individual client
21 money as a fiduciary in forex trading wouldn't have affect
22 your decision to loan money to OIG?

23 THE COURT: Would you do me a favor? I think that
24 paper is over the top of your mic. Pull that off. Now, you
25 shook your head. You have to speak because she can't take

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1 that down so. What was your answer there?

2 THE WITNESS: It was, "No."

3 BY MR. ALLEN:

4 Q If you learned that the money, that part of the money you
5 were loaning to OIG as part of this loan agreement in 2018 was
6 going to be used to purchase eleven investment properties,
7 would have that affected your decision to loan money to OIG?

8 A Yes, I mean, because it's an investment. It's
9 diversifying. It's not just forex trading. It's other
10 avenues.

11 Q What if you learned that Mr. DaCorta and his family was
12 going to live in one of those investment properties? Would
13 that have affected your decision to loan money to OIG?

14 A No, it doesn't affect it.

15 Q What if you learned that other principals of OIG or
16 employees of OIG were going to reside in some of these
17 investment properties? Would that have affected your
18 decision?

19 A No.

20 Q Did you attend either the 2017 or the 2018 holiday
21 parties put on by Oasis International Group?

22 A Yes. I went to the 2018.

23 Q Were there ice sculptures?

24 A I don't remember. That I don't remember.

25 Q Was there a band?

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1 A I don't remember that either.

2 Q Was there good food?

3 A Yes.

4 Q Was there an open bar?

5 A Yes.

6 Q Would it have affected your decision to loan money to OIG
7 if you learned that some of the money that was being loaned by
8 you and others was used to pay for the food and the drinks and
9 the meal?

10 A No.

11 Q Why not?

12 A Because as long as I get -- it's a contract. As long as
13 I get the return that I expect, how a fund brought -- I
14 consider like a fund could be like a bank. It could be like
15 another private equity institution. When you give them money,
16 how they run the business, whether they have to -- how they
17 run the business is theirs. Whether they need to do
18 marketing, whether they need to, you know, spend money to
19 achieve whatever the goals, how they run their business is
20 theirs. As long as I get what I've been told, I get the
21 return, you know, and I can get my money back if I ever pulled
22 it out, that was my only concern.

23 Q If OIG ended up taking a loan to pay you back your
24 principal and interest, would that have affected your decision
25 to loan them money?

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1 A No.

2 Q Why not?

3 A Again, how they decide to run their business or how they
4 decide, that's their prerogative.

5 Q What if the spread revenue that was being generated on
6 their trading platform because they were suffering losses was
7 being generated by them paying themselves a fee, would that
8 have affected your decision to loan them money?

9 A No.

10 Q What if you learned that Mr. DaCorta subsidized his
11 daughter's college room and board with some of the money that
12 was being loaned by you or others with OIG?

13 A No.

14 Q What if you learned that Mr. DaCorta and his wife of 34
15 years went on a vacation to Italy and the money that paid for
16 that derived at some point from money that was being loaned to
17 OIG?

18 A No.

19 Q Did you anticipate when you loaned money to OIG that
20 Mr. DaCorta and the other employees and principals of OIG were
21 going to work for free?

22 A I had no idea what they were going to do. Again, the
23 money, they decided what they need for the business, for the
24 fund. As long as they met me contractually what I had signed
25 up for, that's all I was concerned with.

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1 Q What about if you learned that Mr. DaCorta on four
2 occasions used a private jet for business/family purposes?
3 Would that have affected your decision to loan money to OIG?

4 A No.

5 Q What if you learned that Mr. DaCorta paid car payments on
6 multiple vehicles with the money that was being loaned to OIG
7 from your money and other lenders' money?

8 A No.

9 MR. ALLEN: If I could have a moment. No further
10 questions, Your Honor.

11 THE COURT: We are going to take our afternoon break.
12 We will meet back here at 3:15. Please don't discuss the
13 case. We will see you at 3:15. Thank you.

14 (Jury escorted out of the courtroom.)

15 THE COURT: Take a look at those. On the defense
16 supplements, Number 4 I accepted and put in as we discussed.
17 Number 4 is the good faith reliance on tax advice. The other
18 supplements, the first one is -- hold on. Let me get it.

19 MS. BEDKE: Your Honor, I apologize for interrupting.

20 THE COURT: You can step out, thank you.

21 MS. BEDKE: Your Honor, with respect to Number 4 --

22 THE COURT: Let me do these first.

23 MS. BEDKE: I'm sorry.

24 THE COURT: You are talking about Number 4 being the
25 good faith advice of counsel.

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1 MS. BEDKE: Yes, Your Honor.

2 THE COURT: We discussed it previously, but I didn't
3 give you a chance to discuss it. Just hold on.

4 MS. BEDKE: Yes.

5 THE COURT: So Number 1 I'm not giving. It says he's
6 not on trial for this, he's not on trial for that. I don't
7 think anybody is arguing that. I don't think the "pool" word
8 was used hardly -- you used it more than they did. I'm not
9 giving Number 1.

10 MR. ALLEN: If they argue it in closing, will the
11 Court reconsider?

12 THE COURT: Sure. Sure. Now, there's nothing wrong
13 with them showing the proper way to trade pool commodities,
14 which is what they did. And the inference is that Mr. DaCorta
15 didn't do that pursuant to Count 1. But if they get into he's
16 violating this, that, and the other, you may get an
17 instruction reminding the jury what he's charged with.

18 MR. ALLEN: Thank you, sir.

19 THE COURT: But they are allowed to argue that his
20 structure was illegal, okay, because there's a strong
21 inference here that he was trading a pool. Don't use the word
22 "pool." Trading for domestic forex people when he was barred
23 from doing so, they can argue that. Okay? How could they
24 not?

25 MR. ALLEN: Well, because they didn't allege it in

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1 the indictment as one of the fraudulent activities and
2 therefore to construct --

3 THE COURT: It's a scheme or artifice to defraud. So
4 I'm not sure they didn't come close to saying that. But
5 anyway, if they get all over that, then maybe you will get an
6 instruction.

7 The puffing, I'm not giving puffing. There's no
8 allegation of puffing here. No one says that Mr. DaCorta was
9 puffing. To the contrary.

10 You want to make a record on that?

11 MR. ALLEN: I do, Your Honor. I think the issue of
12 calling yourself a market maker when you are not the technical
13 definition of market maker would fall under the concept of
14 puffing. I suspect the government is going to spend a lot of
15 time in their closing that he said he was a market maker and
16 he wasn't. What the evidence shows is he defined what he
17 meant by market maker.

18 THE COURT: Only in his cross-examination did he
19 define that.

20 MR. ALLEN: Yes, Your Honor.

21 THE COURT: You opened all over market making. Wait
22 a minute. You basically said that all the money was coming
23 from spread pay. That seemed to have morphed into something
24 halfway through it. And now it kind of morphed into
25 variegated investments, whatever the word is.

DIRECT EXAMINATION OF JOHN PANIAGUA

1 MR. ALLEN: The government introduced an audio
2 exhibit where Mr. DaCorta is talking about market making. We
3 have also introduced an exhibit about him talking about market
4 making, but in both occasions he defines what he meant by
5 market making.

6 THE COURT: On those exhibits?

7 MR. ALLEN: Yes, in the audio.

8 THE COURT: Then why do you need an instruction on
9 puffery?

10 MR. ALLEN: Because the government called an expert
11 witness that says he's not a market maker. We believe that
12 him saying he is a market maker, not meeting their expert's
13 definition, meets the concept of puffery or sales talk. And
14 we believe pursuant to the Eleventh Circuit cases that we
15 cited in our proposal --

16 THE COURT: And I don't think this is a puffery case.
17 I decline to give that instruction.

18 MR. ALLEN: Yes, sir.

19 THE COURT: You are fully preserved. I haven't heard
20 anybody saying, well, isn't it true he was really exaggerating
21 or isn't this like saying this is a mint car and a little old
22 lady drove it to school every day or whatever. To the
23 contrary. Mr. DaCorta testified that he is a straight
24 shooter, he always follows by the rules. He didn't suggest in
25 any way, shape, or form that he ever exaggerated. Just to the

DIRECT EXAMINATION OF JOHN PANIAGUA

1 contrary by my recollection.

2 Your final instruction, I will give a defense
3 instruction, okay? I think I'm required to. I think you're
4 entitled to one. This is not it because this is me using your
5 lingo about striving, intent to succeed, striving, all that.
6 And I already gave a defense instruction. We are going to
7 talk about it in a minute, the good faith tax defense. So if
8 you want one, just write one. And it will go something like
9 this. The defense suggests, colon, it is Mr. DaCorta's
10 defense that X, Y, Z, he was striving to succeed. I will give
11 a defense instruction but not this one, which comes from my
12 mouth rather than couched as a defense. I know it says theory
13 of defense. I'm not blaming you, but it needs to say that
14 expressly. I will give a defense beyond the good faith tax
15 which only goes to Count 3.

16 MR. ALLEN: We are writing it as we speak.

17 THE COURT: We will talk about that in a minute.

18 Tell me about the good faith tax instruction. You
19 object to that, counsel? It's 22 or 23.

20 MS. BEDKE: Your Honor, I certainly agree with the
21 Court that they have put evidence on primarily through
22 Mr. DaCorta himself that he purports to have relied in good
23 faith on Mr. Burling's guidance. I just object to their
24 version of the instruction. I would much prefer the form
25 instruction, Your Honor.

DIRECT EXAMINATION OF JOHN PANIAGUA

1 THE COURT: Is there an Eleventh Circuit form
2 instruction?

3 MS. BEDKE: Yes, Your Honor. I believe --

4 THE COURT: Do you have a copy of that?

5 MS. BEDKE: I have.

6 THE COURT: Did you tender it as part of your packet?

7 MS. BEDKE: I don't recall honestly if I did, Your
8 Honor. I was probably waiting to see what they were going to
9 do, but it is S9.

10 THE COURT: Can you hand it to me?

11 MS. BEDKE: Yes, sir.

12 THE COURT: Now, I will look at that as I'm
13 multitasking. What are we going to do? We are going to cross
14 this gentleman, and then where are we? Are we going to close?

15 MR. ALLEN: Your Honor, we are going to close.

16 THE COURT: How much time do you think you need?

17 MR. ALLEN: For the cross?

18 THE COURT: No. For closing.

19 MS. BEDKE: Your Honor, I would ask for an hour and a
20 half so I have time for rebuttal.

21 THE COURT: How much do you need?

22 MR. ALLEN: Ms. Irvin is doing it. She stepped out.
23 I can get an answer quickly.

24 THE COURT: I'm thinking 80 minutes. That's kind of
25 what I was thinking. That's a long time, both sides 80

DIRECT EXAMINATION OF JOHN PANIAGUA

1 minutes. That's a long time.

2 MS. BEDKE: I'll do my level best, Your Honor.

3 THE COURT: Ninety minutes, okay, both sides.

4 MS. BEDKE: I'm not looking to go longer than
5 necessary, Your Honor.

6 THE COURT: Then that will probably take us to the
7 end of the day. And then I'm going to offer them dinner if
8 they want to stay. Let's hope they say no. But if they do, I
9 mean, I know it is the most important thing in Mr. DaCorta's
10 life, so we want to be careful about not pushing them. But by
11 the same token, we've had them now for 13, 14 days of their
12 lives.

13 MR. ALLEN: They took more than us.

14 THE COURT: They're stinkers. Everybody is bad.

15 The good faith is a complete defense to Count 3
16 since -- well, to every count. No. I'm going to give the
17 government's. I think it's talking about tax returns.

18 MR. ALLEN: You are going to give the government's.

19 THE COURT: I'm sorry. The defense's. I'm giving
20 the defense's tax good faith instruction as they requested it.

21 MS. BEDKE: Your Honor, then I would only ask that
22 you -- I know it is a joint return, but there has really been
23 no conversation about Carolyn DaCorta other than her name is
24 on it.

25 THE COURT: Where?

DIRECT EXAMINATION OF JOHN PANIAGUA

1 MS. BEDKE: It says in sentence one that defendant
2 relied on the advice of his tax preparer in submitting his
3 joint 2017 federal income tax return.

4 MR. ALLEN: That's what it is.

5 THE COURT: Are they going to acquit or hang
6 Mr. DaCorta on that word?

7 MS. BEDKE: I would hope not, Your Honor.

8 THE COURT: Then by hang, I don't mean hang like hang
9 at dawn. I mean deadlock. It's fine.

10 Okay. So what I'm waiting for then is a standard --
11 Eleventh Circuit says I have to give one. I would give one
12 anyway. Judge Nimmons made me find the case law on that once.
13 Mr. DaCorta or, you know, whatever -- it's the defense because
14 most of these instructions frankly are the theory of the case
15 of the government. So you get that. Just don't argue. State
16 striving -- you can put that language in there, whatever
17 that's -- I'm not adopting it. I'm stating your theory of
18 defense.

19 All right. You want to take a break?

20 MR. ROSENTHAL: One more brief matter. I was advised
21 that I had not moved Defense Exhibit 72 into evidence this
22 morning when I was questioning Mr. McFarland. I believe I
23 published it. I may not have, but I would go ahead and
24 formally move it into evidence.

25 THE COURT: It's admitted. And without getting real

CROSS-EXAMINATION OF JOHN PANIAGUA

1 weird, that was a clinic on tax defense. Thank you. It's
2 admitted. Of course if there is any follow-up, we forgot to
3 do this, do that, of course I'm very flexible.

4 (Defendant Exhibit 72 admitted.)

5 THE COURT: So your Rule 29, depending where we are,
6 it's preserved. I will take it before the end of the day, but
7 we might not take it immediately upon close, your Rule 29
8 motion.

9 MR. ALLEN: Yes, sir. And all other motions are
10 renewed.

11 THE COURT: Totally preserved, very much so.

12 MR. ALLEN: Thank you, Your Honor.

13 MR. MURRAY: Your Honor, we have a redacted copy of
14 the superceding indictment.

15 THE COURT: What's redacted? I do have a clean copy.

16 MR. MURRAY: The forfeiture section and foreperson's
17 name.

18 THE COURT: Thank you. If you'd give that to
19 Mr. Houston.

20 (Recess taken.)

21 THE COURT: Thank you. Counsel, you may.

22 **CROSS-EXAMINATION**

23 BY MR. CHEE:

24 Q Good afternoon, Doctor. How are you today?

25 A I'm good.

CROSS-EXAMINATION OF JOHN PANIAGUA

1 Q Dr. Paniagua, you have a quite extensive technical and
2 engineering background, right?

3 A Yes.

4 Q I myself am trained in engineering. So I'm hoping we can
5 speak the same language during this examination. So let's get
6 started. You were paid by Oasis, correct?

7 A Correct.

8 Q To do the interfacing between Spotex and Amazon Web
9 Services, correct?

10 A Yes.

11 Q So when I use the word "interface," that really means to
12 have two platforms talk to each other, right?

13 A Yes.

14 Q So data is being transferred from one side to the other,
15 right?

16 A Yes.

17 Q And you were paid about, let's say maybe around \$170,000
18 for your work interfacing the Spotex back office and AWS. Is
19 that more or less accurate?

20 A I don't remember 170. The numbers -- I would have to
21 check. Like 130, whatever.

22 Q We can agree on \$130,000. That's a lot of money, isn't
23 it?

24 A Yeah.

25 Q So right off the bat I want to show you again Defense

CROSS-EXAMINATION OF JOHN PANIAGUA

1 Exhibit 4. If I may republish using the Elmo device.

2 So Dr. Paniagua, you agree with me that this is a
3 high-level architecture overview of the interface that you
4 were charged with creating or designing, correct?

5 A Correct.

6 Q Now, these little arrows here, do you see these arrows?
7 Some of them are two-headed arrows, and some of them are
8 one-headed arrows. Do you see that there? You can see that
9 right, sir?

10 A Yes.

11 Q That's not money, right, Dr. Paniagua? That's not money
12 moving between these two areas, the boxes?

13 A I don't know what you mean by "money."

14 Q Cash. Is that cash that's being transferred back and
15 forth here, or is that data?

16 A That's data.

17 Q That's data. Okay. So there is not money going between
18 ATC/Spotex and the Spotex server, right?

19 A No.

20 Q And then this little dash line here, right, is this the
21 interface between Spotex on top, Amazon AWS on the bottom?

22 A Not totally correct. Spotex is more like the three
23 components on the left. ATC/Spotex database, ATC/Spotex
24 server, and ATC/Spotex web server. That's Spotex.

25 Q Well, you would agree with me, sir, that Spotex doesn't

CROSS-EXAMINATION OF JOHN PANIAGUA

1 actually handle any money, right?

2 A No.

3 Q Spotex handles data. They record the trades, right?

4 A Whatever is in their database. My knowledge of Spotex is
5 only pulling -- I was given a certain interface specification,
6 right, and it was for me to pull the spreads based on that
7 specification.

8 Q As far as you know, Spotex is not a bank, right, like TD
9 Bank? It's not a bank, right? You don't deposit money there?

10 A That I don't know.

11 Q Now, sir, Doctor, you testified on direct examination
12 that you work for a company called KKR; isn't that right?

13 A Yes, correct.

14 Q KKR is a large, very large private equity trading
15 company, right?

16 A Trading? I would say private equity.

17 Q A private equity company, but it's very large, correct?

18 A Yes.

19 Q It employs over a thousand people?

20 A Yes.

21 Q It does more than -- well, it has done billions of
22 dollars of trades over the years?

23 A Billions of dollars in investments.

24 Q Investments. It's traded on the New York Stock Exchange.
25 Isn't that correct, Doctor?

CROSS-EXAMINATION OF JOHN PANIAGUA

1 A Yes. Stock symbol, yes.

2 Q And I'm sorry. Go ahead.

3 A The stock symbol -- the company has stock, issues stock.

4 So it is publicly traded on the New York Stock Exchange.

5 Q It's got about 20 offices throughout the world?

6 A Yes.

7 Q Multiple countries?

8 A Yes.

9 Q It's very, very different from Oasis, right?

10 A Yes.

11 Q Which was one person behind the trades, correct?

12 A Through Oasis?

13 Q Yes, sir.

14 A As far as my knowledge, yes.

15 Q And that one person behind the trades is the defendant,

16 correct?

17 A Yes.

18 Q Using a retail trading application that you can download

19 onto your phone; is that right?

20 A I'm not familiar with that piece.

21 Q Well, there are many points of distinction between Oasis

22 and KKR. You would agree with me on that point, Doctor,

23 wouldn't you?

24 A Yes.

25 Q Now, you have an advanced engineering background, right?

CROSS-EXAMINATION OF JOHN PANIAGUA

1 A Yes.

2 Q Mechanical engineering, right?

3 A Yes.

4 Q Master's and doctorate degrees?

5 A Yes.

6 Q You would agree with me that a risk assessment is very
7 much like an equation, right?

8 A Well, equation -- yeah, you can look at it that way. I
9 mean, you break up -- when you do a risk assessment, you look
10 at each component, you know, when you are looking at
11 diversified areas.

12 Q Exactly. You look at each component. And engineers like
13 ourselves, we try to be very analytical, right?

14 A Yes.

15 Q So going back to my analogy of an equation, you would
16 have variables, right?

17 A Yes.

18 Q Variables can change?

19 A Yes.

20 Q You have constants?

21 A Yes.

22 Q Constants don't change?

23 A Correct.

24 Q So if we were to look at a risk assessment equation, you
25 would have constants and variables presumably?

CROSS-EXAMINATION OF JOHN PANIAGUA

1 A Or you could have all variables.

2 Q You could have a lot of variables?

3 A I'm sorry?

4 Q You could have a lot of variables?

5 A Yes.

6 Q It would be a pretty complicated equation.

7 A Yes.

8 Q So you testified on direct examination that you learned
9 about Oasis through your brother, Joseph Paniagua, right?

10 A Yes.

11 Q And, Doctor, you said that Joseph Paniagua was working in
12 the company prior to you getting involved?

13 A Yes.

14 Q And Joseph Paniagua worked with the defendant, right?

15 A Yes.

16 Q He took direction from the defendant?

17 A Yes.

18 Q He also worked with a guy named -- an individual named
19 Dave Manoukian at ATC; isn't that right?

20 A Yes.

21 Q And Joseph Paniagua's job was to apply what's called
22 adjustments to the Spotex back office, right?

23 MR. ALLEN: Objection. Outside the scope of direct.

24 THE COURT: Overruled.

25 BY MR. CHEE:

CROSS-EXAMINATION OF JOHN PANIAGUA

1 Q Joseph Paniagua's job was to apply adjustments to the
2 Spotex back office; isn't that right?

3 A Yes.

4 Q And he would do so at the direction of the defendant?

5 A That I don't know. That I don't know.

6 Q So he did them by himself, or did he just make the
7 adjustments up on the fly?

8 A I wrote a program that does those adjustments. And it
9 was based on something that was within Spotex that was then
10 compared to the balance that was originally put in by the
11 lenders, and it would make the adjustments to bring the
12 balance, you know, the net equity in the platform back into
13 the original balance.

14 Q Yes, Doctor, I'm getting there, but I want to take a few
15 steps before we get to your specific role. Is that okay?

16 A Sure.

17 Q So Joseph Paniagua was making the adjustments to
18 individual accounts at the direction of the defendant?

19 A I don't know if he made it at the direction of the
20 defendant or it was his responsibility. I don't know that.

21 Q Yes, Doctor. So it was his responsibility?

22 A Yes.

23 Q There came a time where there were a lot of investors,
24 many, many, many investors, and it became burdensome for
25 Joseph Paniagua to do that on a daily basis. There were just

CROSS-EXAMINATION OF JOHN PANIAGUA

1 too many adjustments; is that correct?

2 A Correct.

3 Q And that's where you came in, right?

4 A Well, that's when he asked me to write a program that can
5 automate that, running it at the end of the month, yes.

6 Q So the program that you developed or designed, it did a
7 few things. And one of the things that it did was it
8 automated -- or let me just say it automated all of the
9 adjustments bringing it into the Spotex side, right?

10 A The way the program worked is based on the specification
11 it looked at a value that was within Spotex. It compared it
12 to the original balance that the lender has, all right, and if
13 it's negative, it applies -- it adds a positive adjustment.
14 If it's positive, it adds a negative adjustment. I had gone
15 over that with the district attorney earlier. I remember we
16 stepped through the code, and it's right there.

17 Q So after you designed the code, Joseph Paniagua no longer
18 needed to add up everything and do that manually, correct?

19 A Correct.

20 Q That was all brought into the -- it was automated and
21 brought into the Spotex side?

22 A Correct.

23 Q And applied automatically to each account, right?

24 A Yes. At the end of the month, yes.

25 Q And Joseph Paniagua testified before you did, and he said

CROSS-EXAMINATION OF JOHN PANIAGUA

1 that he made those adjustments to make negative accounts
2 positive; isn't that right?

3 A Again, I'm not sure what he alluded to there. I can tell
4 you the program, the way it worked is it went into Spotex,
5 pulled a value, compared it to the original loan balance, and
6 it made the adjustment to bring it back in line.

7 Q So it made the adjustments to make a negative account
8 positive?

9 A Based on what was inside Spotex.

10 Q Right. And then the other component of your program was
11 to transfer data from Spotex to this platform called AWS,
12 right?

13 A Correct.

14 Q And the data that you transferred was the spread pay
15 data, correct?

16 A Yes.

17 Q And you did that because the parameters of your work came
18 from the defendant, correct?

19 A The requirements came from my brother.

20 Q And where did those come from?

21 A It was from Joe Anile.

22 Q So Joe Anile worked at Oasis, right?

23 A Yes.

24 Q And your program brought in the spread pay to the Amazon
25 Web Services portal, right?

CROSS-EXAMINATION OF JOHN PANIAGUA

1 A Yes.

2 Q So that investors could log into AWS and see the spread
3 pay, correct?

4 A Correct, on a daily basis.

5 Q And you didn't bring in any other data into Amazon Web
6 Services, did you?

7 A That was the only data. And then there was a calculation
8 that was made to compare the 1 percent versus whatever the
9 spread amount was.

10 Q So you didn't bring in the trading losses, correct, that
11 were underlying the spread pay or connected to the spread pay;
12 is that right?

13 A All it was is a specification. It didn't have nothing to
14 do with what was happening inside, just the spreads that were
15 generated that day.

16 Q So the only thing that a user could see when logging into
17 Amazon Web Services was the spread, right?

18 A Yes.

19 Q They couldn't see the losses on their trades, right?

20 A Nope.

21 Q Would that be an important piece of information to look
22 at in your opinion?

23 A In my opinion for me, no.

24 Q For you, no. But if you were doing a risk assessment,
25 right, would you -- it would make sense, would you agree with

CROSS-EXAMINATION OF JOHN PANIAGUA

1 me, Doctor, to know the performance of the underlying trades?

2 A To me I look at -- my opinion is I look at the overall
3 solution.

4 Q But that would be a variable, would it not, Doctor?

5 A Yes. It would be one of four.

6 Q You never had any access to the books and records of
7 Oasis, did you?

8 A No.

9 Q You never knew about the profitability or losses of the
10 company, correct?

11 A No.

12 Q You never actually even saw any trading losses or any
13 trading data, right?

14 A No.

15 Q If I were to tell you today or you were to learn that
16 spread pay was totally fictitious, a false allocation of
17 profit, would that be a factor in your risk assessment
18 decision?

19 A Overall risk? The overall risk, again I compare it to
20 the three elements that I mentioned before, the real estate,
21 the position on silver, and investments in small companies.

22 Q Wait a minute. You testified on direct examination that
23 the only thing that Joseph Paniagua told you that Oasis was
24 doing was trading in forex; isn't that right?

25 A Only 25 percent of my money that went in, the loan that

CROSS-EXAMINATION OF JOHN PANIAGUA

1 went in, 25 percent of whatever that number was, it wasn't the
2 full, went in there, and then the rest was allocated
3 elsewhere.

4 Q I recall that on direct examination you said that the
5 only thing that Joseph Paniagua told you about Oasis was that
6 it was trading forex and that was it; isn't that correct?

7 A That was in 2014. 2018 the new loan program was
8 different.

9 Q Well, let's go back to 2014 then when you are told that
10 the only thing they are doing is trading forex because that's
11 what your brother told you?

12 A Yes.

13 Q So if you were to know that -- if you were to have an
14 understanding that the spread pay was totally false and fake,
15 would that have affected your risk analysis decision in
16 investing in Oasis?

17 A Then I would have seen that in statements that I got.
18 You know, I would have seen that my balance didn't go to
19 212,000, whatever that number was. So I never bothered to
20 look.

21 Q Now, you also testified that you made a risk assessment
22 again later on, after 2014 based on you said the additional
23 variables, correct?

24 A Yes.

25 Q Additional factors?

CROSS-EXAMINATION OF JOHN PANIAGUA

1 A Yes.

2 Q You had no idea at that time about what sort of companies
3 the defendant was managing, where the silver was located. How
4 were you able to make a risk assessment based on such limited
5 data?

6 A Without that. That was trust. I trusted my brother.

7 Q You trusted your brother?

8 A Not all of it went into forex. It was only a certain
9 percentage went in, and the rest went elsewhere.

10 Q Would you agree with me that the total amount of Oasis's
11 liabilities is a factor or variable -- actually, let me
12 rephrase that.

13 Would you agree with me that Oasis's total
14 liabilities is a variable in your risk assessment calculation?

15 A Correct. It depends on moments in time.

16 Q Would you also agree with me that Oasis's assets are a
17 variable in your risk assessment equation?

18 A Yes.

19 Q So if I were to tell you right now that Oasis had
20 \$80 million in liabilities and \$16 million in assets, would
21 that affect your decision to invest in Oasis?

22 A Depends. It depends because, for example, you can use
23 companies as an analogy. I use analogies. Some companies are
24 not profitable in the beginning. And based on time and the
25 management and leadership, you can grow the company and become

CROSS-EXAMINATION OF JOHN PANIAGUA

1 profitable. So a lot of times, you know, in the beginning,
2 especially Amazon in the beginning, you know, especially when
3 the Internet boom crashed in late '90s, early 2000s, would
4 people have invested in Amazon or keep investing in it?

5 Q Dr. Paniagua, if I were to give you a promissory note
6 here and now and promised to pay you 12 percent on your
7 investment, which was quite substantial, and I also told you
8 that my company had \$80 million in liabilities and only
9 \$16 million of assets, would you agree with me that the
10 promissory note that I'm giving you is essentially worthless?

11 A I would do my due diligence and explore further.

12 Q Speaking of due diligence, were you able to do any due
13 diligence on Oasis before you made the investment?

14 A Which investment?

15 Q Let's say your first investment.

16 A No, because I trusted my brother.

17 Q How about the second investment?

18 A Well, that one, again based on what my brother had told
19 me that this time that all of it was going into trading, then
20 I knew the risk was minimized as compared to before.

21 Q Now, in your due diligence investigation, you didn't come
22 up with an agreement with the National Futures Association
23 that effectively banned the defendant from trading in forex,
24 did you?

25 A No.

CROSS-EXAMINATION OF JOHN PANIAGUA

1 Q Would that be a variable in your risk assessment decision
2 to invest in Oasis?

3 A Again, depends on the overall. I look at it and I say,
4 okay, I look to see where they are investing. Where are they
5 looking at? All right. And I saw, again with the receiver's
6 report I saw it was real estate, it was commodities, and it
7 was small companies.

8 Q But you would agree with me it would be a variable of
9 perhaps a larger equation, correct?

10 A Yes.

11 Q So we've agreed that the ban of the defendant of trading
12 in forex is a variable, correct?

13 A Correct.

14 Q We've also agreed that the -- excuse me.

15 We've also agreed that the liabilities and assets of
16 Oasis would be a variable, correct?

17 A Correct.

18 Q And you would also agree with me that another variable
19 would be whether or not the actual trades are profitable,
20 right?

21 A Correct.

22 Q Those are all variables that could factor into your
23 decision whether to invest in Oasis?

24 A Do what you can with the information you have at the
25 time, and then you make the assessment.

CROSS-EXAMINATION OF JOHN PANIAGUA

1 Q Now, you were aware that a person named Duran said to
2 investors that there's no need to actually read --

3 MR. ALLEN: Objection. Outside the scope of direct.

4 THE COURT: Sustained.

5 BY MR. CHEE:

6 Q Dr. Paniagua, you have never met Michael Chalhub, have
7 you?

8 A I'm sorry. Who?

9 Q You have never met Michael Chalhub?

10 A No.

11 Q The gentleman that Mr. Allen asked you about that was on
12 the spreadsheet that you had?

13 A No.

14 Q So you don't know that he was told that his money would
15 never be traded, right?

16 MR. ALLEN: Objection. Outside the scope of direct.

17 THE COURT: Sustained.

18 BY MR. CHEE:

19 Q You don't know Patti Katter, do you?

20 MR. ALLEN: Same objection.

21 THE COURT: Well, you can answer the question. Do
22 you know Patti Katter?

23 THE WITNESS: No.

24 THE COURT: Let's ask the next question.

25 BY MR. CHEE:

CROSS-EXAMINATION OF JOHN PANIAGUA

1 Q You don't know Matt Kihnke, do you?

2 A I met him briefly at that Christmas dinner.

3 Q But you don't know any of the representations made to
4 those people by the defendant, do you?

5 A No.

6 Q I want you to add another variable to the risk equation.
7 I want you to assume right now that there is a \$70 million
8 gap, okay, in the -- as a difference between the liabilities
9 owed by Oasis and the assets that they have, okay? So keeping
10 that as a constant, I want you to add these variables. So
11 let's talk about whether the spread was fake, okay? If that
12 was true, would that affect your decision whether to invest in
13 Oasis?

14 A You are asking me to assume everything that you are
15 saying is correct.

16 Q Yes.

17 A And you are asking me to come up with numbers. The
18 assessment is based on what you are saying. Again, I need --
19 I need to look deeper. I need to look under the cover.

20 Q You need to look under the hood of the car so to speak?

21 A Correct.

22 Q Assuming --

23 A You're asking me to take on faith what you're stating
24 right now.

25 Q Well, let's just take it one step at a time. So if the

CROSS-EXAMINATION OF JOHN PANIAGUA

1 spread was fake, would that be a variable in your decision to
2 invest? I'm simply asking if it's a variable.

3 A I would say no.

4 Q So the supposed profits that you would be getting from
5 the company, if those were fake and had no economic basis,
6 that would be not a variable to consider in your risk analysis
7 equation?

8 A You can consider it. You can consider it. But again you
9 look at the other pieces to it aggregated in the whole.

10 Again, you could have a private equity firm invest in five
11 companies. Four of them failed and the fifth one is a home
12 run and it more than covers the investment. That's the nature
13 of the beast.

14 Q What about if Oasis had no revenue stream whatsoever?
15 Would that be a variable in your decision to invest in this
16 company?

17 A Depends on what they're investing in. I will give you a
18 perfect example. Real estate, new development, okay? So a
19 lot of times you have the sponsors and need to raise capital
20 because they are doing a new development. As an investor I
21 put money in. I'm not going to get any returns for four or
22 five years until the development is completed. You
23 understand? And then when they sell it, then you get your
24 distributions after a period of time.

25 So like I said, based on points and time you may not

CROSS-EXAMINATION OF JOHN PANIAGUA

1 make money in the beginning, but if you allow time, like with
2 any investment and it could be risky, time does cure a lot of
3 these issues. It could become very profitable. For example,
4 the real estate. I have seen the real estate in Florida.
5 It's very, very hot now. I suspect that the investments Oasis
6 made in the real estate have gone up in value. The silver
7 position, I took a look at it April 15 when it was shut down.
8 It was like \$14, \$15 an ounce, and it peaked at \$28 two years
9 later. So with investments you need to add time to it because
10 time is what makes an investment, can make an investment less
11 risky. Again, you need to have good management. You need to
12 have good leadership in making the company grow, but you have
13 to give it a chance. I wouldn't invest -- would you invest
14 money in the stock market right now?

15 Q Doctor, I really appreciate your answer, but it really
16 wasn't the answer to my question. So let me reask it again.
17 If there is no revenue stream from the forex trading that the
18 defendant is supposedly making, would that be a variable in
19 your decision whether to provide monies to Oasis? It's a
20 simple question, Doctor.

21 A No.

22 Q If the defendant was spending lavishly while taking
23 staggering losses in the forex trading market, would that be a
24 variable in your decision to invest in Oasis?

25 A The answer is no. I can give you an example.

CROSS-EXAMINATION OF JOHN PANIAGUA

1 Q I appreciate, you know, your desire to give an example.

2 MR. ALLEN: Objection. Argumentive.

3 THE COURT: All right. Well, if you need to explain
4 your answer, you're permitted to.

5 A Okay. I will give you an example, KKR. In the late
6 '80s, early '90s, they did the leverage buyout of Nabisco.
7 There was a CEO, Ross Johnson, who was known for flying the
8 business jets on company's money all over the world. In fact,
9 he even took his dog. There is a famous instance where he
10 took his German shepherd and he used the executive jet for
11 that one purpose in time.

12 To me, I look at it as parts. Private equity funds,
13 they do charge asset management fees for their services to be
14 able to build. You have to give them a chance to build the
15 company, build and make it grow.

16 BY MR. CHEE:

17 Q If you learned that the defendant had lied about his
18 ability to be a market maker, would that be something that you
19 would like to consider in your risk assessment in determining
20 whether to invest in Oasis?

21 A No. Again, I will say it again, because on the forex
22 side it was one piece of other pieces. The analogy I use, I
23 can invest in four or five different areas. If one of them
24 for whatever reason doesn't generate revenue, I focus on the
25 others. It's diversification.

CROSS-EXAMINATION OF JOHN PANIAGUA

1 Q Are you done, Doctor? I didn't want to cut you off.

2 If you learned that not a single cent, not a single
3 penny was coming back from the Oasis trading account that the
4 defendant was using to make trades, would you consider that to
5 be a variable in your risk assessment equation?

6 A No.

7 Q If you learned that interest payments, that you were
8 guaranteed the 12 percent interest payments, if you learned
9 that those payments were funded as Ponzi-style payments from
10 other investors, would that be a variable in your risk
11 assessment equation?

12 A No.

13 Q You testified earlier that you had no idea what the real
14 estate assets were or where the silver positions were located
15 for the defendant; is that correct?

16 A Correct.

17 Q And yet you are still able to make a risk assessment with
18 that gap in your knowledge?

19 A Yes. I trusted my brother.

20 Q Just a few more questions, Doctor. I appreciate your
21 time this afternoon.

22 A No problem.

23 Q You mentioned trust in your brother, and I understand
24 what you're saying there, but as a man of a hard engineering
25 background of numbers, is trust in a person an appropriate

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 factor in your business?

2 A Actually, yes. Yes, it is. It's a very big factor
3 especially when you network. I can give you an example. Like
4 multifamily investments I have been doing, trust is a big
5 factor.

6 Q So you would agree with me then trust between the
7 defendant and people that he knew was an important factor in
8 their decision as well to invest in Oasis?

9 A My trust was with my brother. And if my brother trusted
10 the defendant, so be it. But my trust was with my brother.

11 Q Let me just ask you one last question. The program that
12 you developed to interface between AWS and Spotex, that didn't
13 actually verify any of the numbers coming out of Spotex,
14 correct?

15 A Can you clarify "verify"?

16 Q Your programming didn't look back into bank accounts or
17 financing of Oasis?

18 A No, no, no. All it did was pull the spreads, all right,
19 and then adjusted the balances on a daily basis.

20 Q You just pulled in the data and you sent it somewhere
21 else essentially?

22 A Correct, for consumption.

23 MR. CHEE: Thank you very much for your time, Doctor.

24 THE COURT: Redirect, please.

25 **REDIRECT EXAMINATION**

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 BY MR. ALLEN:

2 Q Mr. Paniagua, the \$130,000 that you got paid to do the
3 technical work to create the AWS login portal --

4 A Yes.

5 Q -- is that a common fee for that type of work?

6 A I was charging \$125 an hour. So whatever the hours, and
7 it was many, many hours, and it came out to that amount.

8 Q And what did you do with the 130,000 that you got?

9 A I put it back -- I put it back into the loan.

10 Q Did you --

11 A I loaned it again.

12 Q Did you write a software to deceive yourself?

13 A No.

14 Q The first time you invested that your brother
15 recommended, do you recall?

16 A Yes.

17 Q That wasn't with Mr. DaCorta. It was through a company
18 that started with an A? Alice --

19 A Elysium.

20 Q And I believe you testified on direct examination
21 Mr. DaCorta wasn't associated with Elysium?

22 A Not that I know of, no.

23 Q You worked on the New York Stock Exchange?

24 A Yes.

25 Q For companies that were trading stocks?

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 A Yes.

2 Q When a company is trading stocks on the New York Stock
3 Exchange and the stock goes up in value, does the company take
4 the money out of the stock exchange and send it all the way
5 back to the investor, or do they pay the investor out of their
6 operating bank account?

7 A I'm not sure what you mean.

8 Q Okay. So somebody buys a stock.

9 A Correct.

10 Q It goes up in value. The stockholder decides to cash out
11 of the stock. When they cash out of the stock, does the money
12 come all the way back from the trading platform, or does the
13 company that made the trade pay the customer back out of their
14 operating bank account, if you know?

15 A That mechanism I don't know. I do know that -- that I'm
16 not sure of, all right. I do know that they cleared the
17 trades. So when you trade, everything goes through a
18 clearinghouse, okay, and the trades are settled there. And
19 then I guess the broker or whoever you traded through, you get
20 the proceeds from the clearinghouse that clears the trades.
21 You know, the proceeds go back through the broker back to the
22 client.

23 Q Okay. The government asked you on cross-examination
24 about your software not showing money transferring, correct?

25 A Correct.

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 Q Is it because it's only capturing the transaction, not a
2 bank account tracking money?

3 A It only captures the data, whatever the value -- whatever
4 those numbers are for the spreads.

5 Q And do you have any reason to believe that they were not
6 real currencies being traded?

7 A I have no reason to believe that there was no trade -- if
8 there was -- if there is any shenanigans going on, it would be
9 inside Spotex.

10 Q Do you have any reason to believe that Spotex was
11 involved in shenanigans?

12 A No.

13 Q Do you have any reason to believe that trades were not
14 actually cleared?

15 A No. They had to be cleared.

16 Q How do you know that?

17 A Because otherwise Spotex wouldn't be able to trade
18 because you are required a prime broker to clear your trades.
19 As far as I knew, Spotex had a clearinghouse.

20 Q Mr. Chee asked you if you knew Ms. Katter, if you knew
21 Mr. Kihnke, if you knew Mr. Johnson, if you knew the
22 individuals that I had showed you on your -- on the data
23 collection. Do you remember that?

24 A Yes.

25 Q And you indicated you don't know those people, correct?

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 A I'm sorry?

2 Q You indicated you don't know those individuals.

3 A Nope.

4 Q But you do know based on the data collected by the
5 computer software that they all must have clicked that they
6 read the risk disclosure, indicated that they understood it
7 and signed, correct?

8 A Yes.

9 MR. ALLEN: No further questions.

10 THE COURT: All right. Thank you, sir. You may step
11 down.

12 Let's call that next witness, please.

13 MR. ALLEN: Your Honor, the defense rests.

14 THE COURT: All right. Anything else from the
15 government?

16 MS. BEDKE: No, Your Honor.

17 THE COURT: All right. Ladies and gentlemen, thank
18 you. You have the entire case. The evidence is now closed.

19 Okay. Schedule wise, let's just talk for a minute.

20 Normally I wouldn't lay this all out, but y'all have been a
21 super jury. So we can run -- so to get the closings done and
22 my instructions on the law is going to take about three hours,
23 and we could have dinner here at 7:00 if you wanted to go and
24 then deliberate. Or we can do the government's first closing
25 at about two-thirds of the defense closing and then break,

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 which would be about 6:00, and then come back in the morning.

2 So you want to do that, break at 6:00? It's been a long day.

3 So what we're going to do, let's take just the
4 shortest little comfort break. So the government has the
5 burden of proof. So they get the opening closing, then the
6 defense goes, and then they get a brief rebuttal. So we will
7 take the government's opening closing. We'll take about
8 two-thirds of the defense closing, and we'll break for the
9 night and then get it fresh in the morning. Will that work
10 for everybody?

11 Let's take just as quick as we can. Try to get back
12 here at five after. Thank you.

13 (Recess taken.)

14 THE COURT: Ladies and gentlemen, thanks again for
15 your close attention. What the judges say and what the
16 lawyers aren't evidence, but the lawyers are allowed to argue
17 their case. And we are going to recognize the government for
18 what's called their first opening, and then we will ask the
19 defense to give us about two-thirds of their opening, and then
20 will break for the night. And then tomorrow morning we will
21 take the last, the last third of the defense closing, the
22 government's rebuttal. And then I will instruct you on the
23 law, and you should have this case fairly early in the morning
24 tomorrow.

25 All right. Government, we will hear from you now.

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1 MS. BEDKE: Thank you, Your Honor.

2 CLOSING ARGUMENT ON BEHALF OF

3 COUNSEL FOR THE GOVERNMENT

4 MS. BEDKE: Good afternoon, ladies and gentlemen.

5 My name again is Rachelle Desvaux Bedke, and I have
6 the privilege of serving as an Assistant United States
7 Attorney here in the Middle District of Florida. This is my
8 opportunity to say on behalf of the United States thank you
9 for your patience, for your kind attention throughout the
10 course of this proceeding.

11 It's also the government's opportunity to comment to
12 you about the evidence that has been admitted during the
13 course of this trial. But before I do that, I would like to
14 take just a couple of minutes to address some housekeeping
15 issues.

16 Now, once you have heard all the closing arguments
17 and the Court's instruction on the law, you all will be
18 excused to the jury room to deliberate and hopefully render a
19 verdict in this case. All of the evidence that has been
20 admitted during the course of the proceeding will go back to
21 the jury room with you. We want to make sure that if you have
22 any question or you feel the need to consult any of that
23 documentary or electronic evidence, that you know where to
24 find it. So while you will get the evidence, you will not get
25 this table. So let me just explain that there is a method to

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 the madness, if you will.

2 The first part of the government's exhibit list
3 numbers 1 through 99, and not all the numbers are used, refers
4 to what I will call in general terms infrastructure. That
5 includes all of the corporation records, right, for OIG, for
6 Oasis Management, for all of the stand-alone LLCs incorporated
7 to purchase the properties and so forth. It also includes all
8 the bank records, so all of those CDs that you saw me provide
9 to Agent Batsch at the outset of his testimony. It includes
10 records of the Fund Administration and Mainstream Services
11 account, ATC applications and agreements, Mr. Joseph
12 Paniagua's spreadsheets, and Mr. John Paniagua's new back
13 office documentation.

14 The 100 series relates to the regulators that you
15 heard from, Deborah Oremland and Jennifer Sunu from the NFA.

16 The 200 series refers to the victim records. That is
17 all of the records related to the investments of Patti Katter,
18 Matthew Kihnke, Anthony Charles, and so forth. Those
19 documents are going to be in the 200 series of exhibits.

20 The 300 series of exhibits refers to the evidence,
21 both photos and documents that were acquired during the
22 searches. It also includes documents regarding all of the
23 expenditures. So documents relating, for example, to the
24 purchases of the Lost Key residence, Lacantera, Founders Club,
25 Maserati, Ferraris and so forth. All of that documentation

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1 about the expenditure of funds is in the 300 series.

2 The 400 series, those are the documents that relate
3 to the Spotex trading platform. So that includes documents
4 and demonstrative videos that Mr. Mitchell testified about.
5 It also includes documents and diagrams that Mr. Childers
6 testified about.

7 And finally, the 500 series of exhibits speaks to the
8 financial summaries, that is Agent Batsch's information
9 analysis of all the relevant banking account records and also
10 all of the records related to Count 3. That is the tax count.
11 So the certified copies of the individual and partnership tax
12 returns are in that section as well as the documents about
13 Mr. Burling and his relationship with Mr. DaCorta.

14 So if you want to find anything, you will have all of
15 that evidence at your disposal. And we just wanted to give
16 you a little guidance as to where to find it.

17 Now, in this case the defendant has been charged with
18 three federal felony offenses. Count 1 charges him with
19 conspiracy to commit wire fraud and mail fraud. And it is the
20 government's burden of proof to establish the following two
21 elements to prove that charge: First, that two or more
22 persons in some way or manner agreed to try to accomplish a
23 common and unlawful plan to commit wire fraud or mail fraud,
24 as charged in the superseding indictment, and that the
25 defendant knew of the unlawful purpose of the plan and

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1 willfully joined in it.

2 Now, you know from Joseph Anile's testimony that he
3 and the defendant had a common and unlawful plan. Mr. Anile
4 told you from the outset he did not invest any money in Oasis.
5 He did not recommend anyone to Oasis because he knew it was a
6 scam. You also know from his testimony and from the
7 defendant's testimony that the defendant discussed with him
8 certain CFTC and NFA rules as well as the investors that they
9 were targeting for purposes of this operation. You know that
10 the Oasis entities were funded with investor money. That's
11 clear from both the testimony of Mr. Anile and Mr. DaCorta.
12 They both knew that fact. You also know that it was the
13 investor money that was used to pay everything. That was the
14 money that was used to transfer to ATC, and before that for a
15 brief period to CFH for trading in forex currency. It was the
16 money that was used to cover operating expenses associated
17 with this operation. It was the money that was used to pay
18 purported interest to the victims and withdrawals of
19 principals when those were requested. It was also the money
20 that the conspirators used to fund their lavish lifestyles.

21 Now, remember Mr. DaCorta did not have any meaningful
22 money to invest in Oasis at the outset of this venture. The
23 testimony is clear that he filed for bankruptcy in about 2010.
24 And that is why one of the things he asked Mr. Anile to do was
25 to help him secure a license to trade in Belize. You'll

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1 recall from documents 80B and 80C that the defendant said he
2 was statutorily disqualified from securing this license in
3 Belize because he had filed for bankruptcy and that Mr. Anile
4 wrote a letter challenging the Belizean authority's decision
5 so that Mr. DaCorta could get that license, and it was denied.
6 That's in the documentation. And so when Oasis got off the
7 ground, the money that came into it from the very first
8 offering, the Reg D offering all the way through the entire
9 period relevant to this case came from investors. That was
10 the only money that ever came in.

11 You also know, and both Mr. Anile and the defendant
12 testified unequivocally that no money ever came back from ATC.
13 Now, they both knew the unlawful purpose of the plan.
14 Mr. Anile testified as much. You also know from the evidence
15 which establishes beyond a reasonable doubt that the defendant
16 also knew the unlawful purpose of the plan.

17 One of the ways you know that is because you heard
18 the testimony of Deborah Oremland of FINRA. Ms. Oremland
19 testified to you and shared with you the defendant's CRD which
20 showed all of his education, all of the challenging
21 examinations specific to this industry he was required to take
22 and to pass and that he passed in some instances on two
23 occasions. You saw years of work history. And you heard from
24 the defendant himself when he testified that he was a very
25 educated, very experienced trader.

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1 You also know in addition to the CRD and the exams
2 and history that it reflects that the defendant took and
3 passed the Series 3. That was not reflected on the CRD
4 because rather than being related to equity trading, it
5 relates to commodities and futures trading right under the
6 bailiwick of the FDC and NFA. The defendant told you just
7 yesterday that he took and passed the Series 3 and that that
8 exam related to, among other topics, futures trading,
9 commodity and futures contracts, CFTC and NFA rules and
10 regulations, and NFA disciplinary proceedings. That by the
11 way, the CRD is Exhibit 100A.

12 Now, the defendant certainly knew about his NFA
13 settlement. And there's been a lot of talk about that
14 document, Exhibit 111 initially and I believe 308, the
15 unredacted version of that settlement agreement. And you know
16 from the testimony that the defendant was effectively banned
17 from soliciting U.S. residents to engage in forex trading or
18 for trading on behalf of U.S. residents, that is forex. And
19 you also know from Deborah Cheslow's testimony, among others,
20 including that giant spreadsheet that she created when she was
21 trying to get a handle on all of the accounts near the end of
22 this operation, that is Exhibit 202AA, that virtually every
23 single client of Oasis was a U.S. resident, right, in
24 contravention of the defendant's settlement with the NFA.

25 You will recall too that the defendant mentioned

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1 ECPs. And Mr. Anile testified that during the course of their
2 dealings with Oasis, the defendant came to him and said we
3 need to target ECPs. And he described them as super
4 accredited investors who had more income, more investment
5 experience, more sophistication such that they were able to
6 bear greater risk. Now, that doesn't sound like someone who
7 doesn't know what he's doing. The defendant was part of these
8 conversations and he testified about what it meant to be an
9 ECP and that those were the people there were looking for
10 during his testimony to you.

11 Now, you know, members of the jury, because you heard
12 directly from, among others, Anthony Charles, Patti Katter,
13 even Michael Chalhub that they were not ECPs. Certainly
14 Mrs. Katter, she was one of the handful of people who actually
15 filled out the financial data on that application for the new
16 AWS online portal and even reported her income or net worth.
17 I believe, although you should rely on your own recollections
18 or refer to the documents, she reported about \$32,000 in
19 income. I may be off a little there, and \$500,000 of net
20 worth, but you also know from her testimony that her net worth
21 was primarily based on her residence. She said if we sold our
22 residence we would have that. And they didn't buy it. It was
23 a gift to them by Homes for Heros, right. That is not an ECP,
24 nor is Mr. Charles who testified about being an immigrant from
25 Ireland, a construction worker who worked three jobs in order

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1 to save money to fund his son's college education.

2 Members of the jury, those are not ECPs. And even if
3 they were, they are still U.S. residents, which means the
4 defendant cannot solicit them to engage in forex trading nor
5 can he trade on their behalf because that would be in
6 contravention of his agreement, the one that he entered in
7 voluntarily with the NFA.

8 The government would submit that those ECP forms
9 where they ask for the net income and the assets is just
10 window dressing. Clearly there was no effort on behalf of
11 Oasis to make sure that that part of the application was
12 completed because almost none of them were of those we saw
13 here in court. And if it wasn't completed, then there is no
14 information for the defendant or anybody else at Oasis to even
15 determine whether they were ECPs.

16 As I said, the documentary evidence substantiates
17 that the testimony that you heard, that the Oasis accounts
18 were funded with victim dollars. You will recall all the
19 wires, from among others, Ms. Katter. This is Exhibit 200D;
20 Ms. Cheslow, 200R; Mr. Charles, 204E, among others. And you
21 also saw through Mr. Anile some of the Mainstream Fund
22 Services cash reconciliation reports that he received from
23 Mainstream Fund, and he said for a time Mr. DaCorta also got
24 these. And that is at 9B and I believe 9C as well. So
25 clearly that was the money coming in, and there is no

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1 testimony or documentary evidence to show that there was any
2 other money that came in to fund the Oasis accounts.

3 The documentary evidence also shows that a portion of
4 that money, probably roughly 20 or \$22 million -- and I'm
5 looking here at Exhibit 501 of Agent Batsch -- was used to
6 transfer to ATC for forex trading. None of the money came
7 back from ATC. That is beyond dispute, members of the jury.
8 You heard that not only from Mr. Anile. You heard it from Joe
9 Paniagua. You heard it from Mr. Childers. You heard it from
10 Mr. Wiand, the receiver. You heard it from Agent Batsch. You
11 even heard it from the defendant. No money ever came back. I
12 should add Mr. McFarland as well. He testified to that just
13 this morning.

14 Mr. Anile also testified to you that he and the
15 defendant agreed not to disclose the trading losses. He
16 testified, among other things, that in or about August of
17 2018, the defendant came to him and told him that there was
18 7.5 to \$15 million in trading losses. And Mr. Anile said that
19 sounds like a Ponzi scheme, and he said the defendant
20 responded, yes, it does. Notwithstanding that fact, they
21 agreed they were not going to disclose it. And the evidence
22 is clear that no one else knew about it at that time.
23 Notwithstanding that, you know that the trading losses
24 continued to climb. And this exhibit, 425F, is just one of
25 the diagrams that displays the tremendous trading losses

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1 particularly in 2018. And these are losses that the defendant
2 himself told you it was a terrible year in 2018 and the losses
3 were growing until about the end of the year when they were
4 roughly, according to the defendant's own account, about
5 \$18 million.

6 The evidence establishes beyond a reasonable doubt
7 that notwithstanding those massive trading losses, the
8 defendant and Mr. Anile continued with their extravagant
9 spending. Mr. Anile bought a Ferrari. Mr. DaCorta purchased
10 the residence at Lacantera. Mr. DaCorta also made the final
11 payment. He paid off the Lost Key Place residence. And that,
12 members of the jury, was in February of 2019, \$653,000. And
13 that is evidenced in Exhibit 306A2 and the satisfaction of
14 mortgage that resulted from that payment is Exhibit 306B.

15 And of course you all know that they threw an
16 incredible holiday party to mark the end of 2018. And neither
17 defendant nor Mr. Anile told any of the investors all gathered
18 there about the massive trading losses. Why, members of the
19 jury? Because they wanted to prevent a run on the bank having
20 all of the investors ask to withdraw their money at the same
21 time.

22 Even Mr. McKee who testified earlier today, I think
23 he said it would have created mass hysteria. And
24 Mr. McFarland acknowledged that there wouldn't be enough money
25 to pay all the investors back if they all requested their

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1 principal investments and earnings at the same time.

2 Now, the conspiracy charged in Count 1 alleges two,
3 what we call objects. The count says that the defendant and
4 co-conspirators conspired to violate or commit -- pardon me --
5 wire fraud and/or mail fraud. So I'd like to take a moment to
6 just tell you what the government has the burden of proving
7 with respect to those two objects of the conspiracy charged.

8 To establish a wire fraud, the government must prove
9 beyond a reasonable doubt that the defendant knowingly devised
10 or participated in a scheme to defraud or to obtain money or
11 property by using false pretenses, representations, or
12 promises.

13 Two, that the false pretenses, representations, or
14 promises were about a material fact.

15 Three, that the defendant acted with the intent to
16 defraud. And you will find this language in the jury
17 instructions that you will have when you go back to the jury
18 room.

19 And finally, that the defendant transmitted or caused
20 to be transmitted by wire some communication in interstate
21 commerce to help carry out the scheme to defraud.

22 Now, there is absolutely no dispute that there were
23 wires used during the course of the Oasis operation. There
24 were investment funds that were wired, by among others
25 Mr. Charles here. There were promissory notes that were

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1 emailed by Mr. Paniagua to Mrs. Katter and to others once
2 their payments were received. There were emails. You recall
3 Deborah Cheslow testified that early on she received about a
4 weekly email from the defendant kind of reporting on that
5 week's performance. And there's a big exhibit, it's 202X,
6 that includes a compilation of all of those, and those were
7 transmitted via email. Those are wires.

8 In addition, they wired out via email loan
9 statements. And Mr. Kihnke, among others, testified about
10 receiving loan statements via email during the earlier days.
11 That is until the AWS online portal was created by John
12 Paniagua, and then everybody just logs in to the website which
13 of course is provided courtesy of wires. So there is no
14 question that we have wires here that were used to
15 perpetuate -- perpetrate, pardon me, this scheme.

16 Mail fraud, the elements of mail fraud are
17 comparable. Let me go over them with you briefly. The
18 government must prove, one, that the defendant knowingly
19 devised or participated in a scheme to defraud someone, or to
20 obtain money or property using false or fraudulent pretenses,
21 representations, or promises.

22 Two, that the false or fraudulent pretenses,
23 representation, or promises were about a material fact.

24 Three, the defendant intended to defraud someone.

25 And finally, four, the defendant used the United

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1 States Postal Service by mailing or causing to be mailed or
2 used a private commercial interstate carrier by depositing
3 with that carrier -- that would be like a FedEx or UPS, for
4 example -- to help carry out the scheme to defraud.

5 In particular, you heard from Deborah Cheslow that
6 early on she mailed her checks. And I would refer you in
7 particular to Exhibit 202C which is her email I believe to
8 John Haas during the very early days when she said the check
9 and the W-9 are in the mail. And you also saw her initial
10 check, 570, that's Exhibit 202D. And later when she invested
11 additional funds, you saw Exhibit 202F1 wherein Mr. DaCorta
12 said, Deb, just simply mail out a check made to Oasis, LLC,
13 and mail it to the Lost Key residence. And Ms. Cheslow
14 testified that she did exactly that, and here is the check.
15 It's Exhibit 202F2. So there is no dispute about the fact
16 that there were wires, there were mailings.

17 Now, focusing on the other elements of mail fraud and
18 wire fraud, I want to talk to you a little bit about the
19 fraudulent pretenses, representations, and promises.

20 There were also, the government alleges, there was
21 also a material omission, a very material omission. Now, with
22 respect to fraudulent representations, you heard from all of
23 the victim investors as well as on the conference call
24 recording that was offered by Ms. Cheslow. She testified that
25 she recorded it. You also heard the undercover agent, Agent

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1 Stone's recordings of the interaction he had first with
2 Mr. Duran, one of the defendant's sales agents, and the
3 defendant himself.

4 And in all of those recordings and conversations and
5 presentations, you heard a number of fraudulent
6 representations, including that there were no fees and
7 commissions associated with this investment; that the
8 investors were guaranteed 12 percent interest minimum; that
9 there was never a losing month on forex trades; that the
10 interest and principal were funded by trading activity; that
11 there were other assets sufficient to cover the principal
12 investments and this was a safe and no-risk proposition.

13 Recall in particular Agent Stone testified that the
14 defendant and -- well, this was the recording that Deb Cheslow
15 offered. This was the recording at 202U. You also heard the
16 undercover agent's recording that as Exhibit 210E. Agent
17 Stone testified that both Frank Duran and the defendant told
18 him that his money wasn't going into real estate. They told
19 him he didn't have to worry about the risk disclosure. That
20 was just something the lawyers required them to do and that
21 99 percent of that stuff would never happen. They also told
22 him that he was guaranteed the 12 percent at a minimum and
23 that this was a no-risk proposition.

24 You heard comparable representations reported by
25 Patti Katter. Mrs. Katter told you that she and her husband,

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1 Kenneth Katter, and the defendant were close personal friends
2 and they lived in the same general neighborhood. They trusted
3 the defendant, and that's why they invested. She said the
4 defendant knew about their personal circumstances, about her
5 husband's injuries and that the defendant assured them that
6 this was no risk. When she asked about the risk disclosure,
7 she testified to you he said don't worry about those
8 legalities. If anything happens, if there's an emergency I
9 will take care of you. She said that the NFA settlement was
10 never disclosed to them, and they invested their life savings.
11 She was comforted even after making the investment, even
12 though she said she was very nervous and hesitant at the
13 outset, by the emails reporting the performance, by the loan
14 statements that she received, and by the other assurances
15 provided to her by the defendant.

16 You heard something comparable from Matthew Kihnke.
17 The defendant told him his money was going to sit safely in a
18 bank account or bank accounts around the world as collateral,
19 that it was never going to be traded, and that's why there was
20 no risk in investing his money. He said when he asked the
21 defendant why the operation, why the entities were offshore
22 that the defendant told him, oh, because it's too costly,
23 there's too much red tape or something to that effect to be
24 operating in the United States. The defendant never disclosed
25 the NFA settlement which banned him from doing this kind of

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1 trading on behalf of U.S. residents.

2 Mr. Kihnke said he wasn't granted any access to
3 financial details. And based upon his memory, he was
4 pressured to sign this lengthy, unknown document later in
5 time, about the time the program switched from supposed
6 investments to supposed loans. Now, we don't know if that was
7 the risk disclosure because Mr. Kihnke doesn't know, but it
8 certainly would coincide with the time.

9 Members of the jury, you also heard from Anthony
10 Charles. Mr. Charles said he attended three different
11 presentations. And he was persuaded in particular when the
12 defendant came to his home and sat in his living room and
13 talked to him and his wife and met, if my memory serves, their
14 two-year-old, and that the defendant knew because Mr. Charles
15 told him this is the money I'm setting aside to send my son to
16 college, that this was the American dream as far as he was
17 concerned. He had worked three jobs in construction to save
18 this nest egg to make a better life for his child, for his
19 children. And he was assured that this was no risk. And he
20 was never told about the NFA settlement.

21 You also heard from Mr. Chalhub. Mr. Chalhub, a
22 neighbor and close friend of the defendant's, he said he
23 trusted the defendant because of that friendship and was also
24 told like Mr. Kihnke that his money would sit in a collateral
25 account and that it would never be traded and therefore it was

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1 not at risk. The NFA settlement was never disclosed to him.
2 He also told you he performed some due diligence on some of
3 the businesses that Oasis talked about investing in and that,
4 if my memory serves again, he did not recommend any of them
5 and that none of those investments were made.

6 You heard from Mr. Ian Howard, another personal
7 friend who spent a lot of time with the defendant. Now, he
8 understood that his money was going to be traded. So the
9 story, you know, changes a little bit, but he also understood
10 that there was no risk. There was no disclosure of the NFA
11 settlement to Mr. Howard, and there was never any disclosure
12 of the massive, the staggering trading losses. Even up until
13 the day or so before the search warrants and the seizure
14 warrants were executed and the receiver was appointed,
15 Mr. Howard testified that a day or a few days before that they
16 both were in attendance at a birthday party and the defendant
17 told him none of this. And as a result, the money that he had
18 hoped to set aside to help with foster children he and his
19 wife have adopted is no longer available to them.

20 Those victims testified to you that had they known
21 that this was false, had they known about the NFA settlement,
22 had they known that the spread wasn't generating the gains
23 that were going to account for the interest they were
24 promised, they would not have invested. These
25 representations, this material omission were material

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1 considerations.

2 Now, the Court will instruct you that a material fact
3 is an important fact that a reasonable person would use to
4 decide whether to do or not do something. A fact is material
5 if it has the capacity or natural tendency to influence a
6 person's decision. It doesn't matter whether the decision
7 maker actually relied on the statement or knew or should have
8 known that the defendant -- that the statement was false.

9 So members of the jury, the government would submit
10 to you that the evidence is clear and that the testimony of
11 the victims is uniform. These are facts, and this omission
12 are things that they needed to know, that had they known,
13 their decisions to invest would have been different. That
14 makes them material.

15 Ms. Cheslow was yet another one. And she said that
16 she had understood that her money at the outset was never
17 going to be traded, held in a collateral account. She also
18 said the NFA settlement was never disclosed. She mailed her
19 checks as we discussed. And she withdrew funds during that
20 program change period. She took all of her money out of the
21 investments before she put it back, the 185,000 in the loan
22 program, and that was the ultimate proof to her that this was
23 legitimate.

24 Now, you know that the NFA settlement is real because
25 you heard from Jennifer Sunu, and you heard from the defendant

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1 who said he entered into it. She is the compliance director
2 with the National Futures Association. And she told you that
3 if someone is trading -- is soliciting or trading forex on
4 behalf of a U.S. resident or more than one U.S. resident that
5 CFTC membership is required and NFA membership is also
6 required. And that is because the NFA has rules and
7 regulations about how an offering is made, about what
8 disclosures are provided to prospects, about how funds are
9 managed, and so forth. She went on at some length, but most
10 important she said the overarching mission is investor
11 protection and market integrity. Investor protection and
12 market integrity. That's why these rules are in place.
13 That's why the NFA exists, and that's why the defendant didn't
14 want to tell anyone about his settlement with the NFA and his
15 ban from participating in this activity because he wanted to
16 stay under the radar and avoid detection.

17 Let's talk about some additional fraudulent
18 misrepresentations. This screen went out. Are you still able
19 to see?

20 MR. MURRAY: Yes.

21 MS. BEDKE: I will look at this one.

22 Mr. Mitchell talked to you about a couple of other
23 very important concepts in this case, or issues. One is the
24 spread and another are the adjustments. So recall that
25 Mr. Mitchell explained that his software, Spotex's software

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1 platform is a passive technology conduit. He likened it to an
2 eBay. They are not trading. They're not handling money.
3 They're just providing the platform for buyers and sellers to
4 come together, and that all of that trading data and other
5 recordkeeping data is housed on that website -- or on that
6 platform, pardon me, so that people can see it and use it.

7 He also testified to you that they provide certain
8 functionalities to their clients, including ATC, which in turn
9 made the platform available to its customer, Oasis. And one
10 of those functionalities is the ability to go in and make
11 adjustments. He also told you about the spread, and he said
12 that spread is not real dollars; it's data. And he explained
13 and you saw it in a demonstrative video that the user can go
14 onto the Spotex platform, go to a certain menu and put in
15 whatever spread they choose. And in this case, you know from
16 the testimony of Joseph Paniagua that he did exactly that.
17 The defendant directed Joseph Paniagua to go onto the Spotex
18 website and to put in two pips. And Mr. Paniagua said that's
19 exactly what he did. He reached out to Dave Manoukian at ATC
20 and had Mr. Manoukian walk him through the process. He put it
21 in once. He added two on the open, two on the close, and it
22 was there in perpetuity.

23 Mr. Paniagua also told you that he was directed to
24 make adjustments. Now, there was a lot of conversation about
25 these adjustments. And you will recall that Mr. Paniagua said

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1 my job at the defendant's direction was to go in because
2 Spotex automatically allocated all of the trading losses and
3 profits across all the subaccounts in the Oasis portfolio.
4 And so he had to go in manually in the early days to bring
5 those numbers up. So if the trading losses were allocated,
6 for example, Ms. Katter's account which you saw or another
7 investor's account, he had to go in and add back in numbers to
8 bring that number up to the original amount of the principal
9 invested, plus any interest that supposedly had been earned on
10 that account, and that the reason he did that is because
11 Mr. DaCorta told him to do that. And he also added, well, the
12 investors didn't need to see the trading losses and profits
13 because that didn't have anything to do with the way they were
14 being paid. They were being paid because of the spread,
15 because of the volume of trading.

16 But members of the jury, you know that that spread is
17 a fiction. It's a fiction. And if it really didn't matter
18 that the investors see the trading losses and profits because
19 it didn't affect their bottom line, well, then what reason is
20 there to conceal it? It should be on the statements. It
21 should be made available to them on the AWS platform. It
22 never was. Mr. Joseph Paniagua said the investors never had
23 access to the trading data or the profits and losses.

24 John Paniagua testified to the same. He said because
25 his brother after a time became so overwhelmed with the number

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1 of investors that had come into Oasis, he could no longer make
2 the adjustments manually on a monthly basis. And that's why
3 John Paniagua had to build software to make the adjustments
4 automatic and that that was the data that was drawn from the
5 Spotex website from the platform and broadcast, if you will,
6 or transmitted for publication and consumption on the AW
7 website.

8 Remember, just a few moments ago Mr. John Paniagua
9 said, I was directed to pull the spreads and the adjustments.
10 That's what I did. If the trading losses and profits really
11 don't have anything to do with the investors, then why should
12 they care? Because the defendant and Mr. Anile don't want a
13 run on the bank. There's not enough money there to make
14 everybody whole.

15 You also heard Joseph Paniagua testify about the
16 daily reports that he provided and the monthly account
17 statements. We've talked about that. Mr. Joseph Paniagua
18 said he never had access to the bank accounts. So he didn't
19 realize, you know, how things didn't line up. He only saw the
20 Spotex data. And he told you that at the end after the
21 receiver was appointed and stepped into the shoes of the
22 operators of Oasis, that Joseph Paniagua was asked to look at
23 that data and try and come up with a calculation as to how
24 much money was owed to the investors. And that calculation is
25 in Government Exhibit 90C, and it says \$88 million in

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1 principal and promised interest.

2 Here is another example of fraudulent representations
3 regarding the spread and the adjustments. This is -- I
4 believe it's Exhibit 425. I don't want to misspeak, but this
5 is one of the charts that talks about the trading losses by
6 month. And this chart shows losses, among other points in
7 time, in 2018 in staggering amounts. And we talked about the
8 extravagant expenditures that happened after that. In
9 addition, Mr. DaCorta sent an email out to all investors
10 telling them on June 14 of 2018 that there was going to be a
11 bonus awarded in July. This is on the heels of millions of
12 dollars in trading losses. Why, members of the jury? Again,
13 they didn't want a run on the bank. If people discover -- if
14 investors discover all these trading losses, they're going to
15 want to get out. And this bonus, the government submits, is
16 yet another example of an effort to conceal those trading
17 losses and have people keep their money in Oasis. And this
18 exhibit, the chart is Exhibit 425F1.

19 In addition on these issues of the spread pay, you
20 heard from Matthew Childers. And Mr. Childers told you
21 unequivocally that the defendant and Oasis were not a market
22 maker. That is just not what they did. And he gave you a
23 panoply of reasons as to why and how he came to that
24 determination based on his extensive experience not only as a
25 forex trader himself and market maker but also as a ten-year

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1 regulator with the NFA. He told you that the spread pay was
2 illusory. It was a fiction. It was like fairy dust.

3 He explained to you in terms that I could understand
4 that Oasis was putting a two-point markup or a two-pip markup
5 on the trade that was being charged to investors and then
6 putting that same two pips back into its pockets or back into
7 its account and claiming it as earnings, right? He said it's
8 like taking money out of one pocket and putting it in the
9 other. You are not generating any revenue.

10 And it makes sense, doesn't it, because at the end of
11 the operation of Oasis when the receiver is appointed and he
12 steps in and takes over, there is no account over there at ATC
13 that's holding any additional spread pay. There is one
14 trading account. \$22 million went over there. There's
15 \$2,005,000 left. There's no 50 million. There's no
16 10 million. There's no anything. There is no spread pay.

17 And if you had any doubts at all about what happened
18 to the spread pay or if somehow someone was persuaded that the
19 defendant's version of what this is was true, he testified
20 that he put all the spread pay, he plowed it back into the
21 trading. So even if it did exist, it was lost. And none of
22 it ever made its way back to the OIG account or the Oasis
23 Management account to be available to make distributions to
24 investors.

25 Further, Mr. Childers talked to you about the trading

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1 that was in particular happening at the very end. So later in
2 2018 and into 2019, and the defendant told you during his
3 testimony that again 2018 was a terrible trading year and that
4 a lot of money was lost. And so in his words, they backed off
5 or slowed down on the trading and took a silver position. And
6 Mr. Childers told you that that silver position was an
7 incredibly risky position to take. He said it was woefully
8 undercapitalized and that it would have been liquidated,
9 absent the addition of a significant amount, millions of
10 additional dollars into the ATC account, by May of 2019
11 because the position that he took vis-a-vis the capital that
12 was there in the ATC account was unworkable. It wouldn't have
13 lasted. It wouldn't have saved the day.

14 Mr. Childers also said as to the real estate and the
15 hard gold and silver, the gold coins and silver ingots and
16 whatnot, that it was not liquid, and so it wasn't a good hedge
17 and it wasn't able to be liquidated quickly such that it could
18 be poured into trading to save the drowning trading account.

19 And here is an example of how he explained it in a
20 visual way. This is Exhibit 425B1. And he showed you that if
21 you looked at all the trading data in Spotex, that the spread
22 just inflated the numbers, that it wasn't really real because
23 at the end of the day the net profits and losses were the
24 same. It was a loss of over \$18 million. Whether you
25 factored in the spread or you didn't factor in the spread, the

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1 result is the same. And remember, members of the jury, this
2 \$18 million figure, that aligns with exactly what Defendant
3 DaCorta told you. He said at the end of the day by the end of
4 2018, they were \$18 million down.

5 So on April 19 -- pardon me -- 18th I think it was of
6 2019 when the CFTC's civil action came to light and the
7 receiver initiated his action and law enforcement executed
8 search warrants and seizure warrants, the defendant was
9 interviewed. And he told law enforcement that he thought he
10 owed \$50 million, but he wasn't precisely sure about the
11 amount. When they asked him about revenue stream, he said, I
12 don't know. And he said, I'm sorry. And he added that
13 Mr. Gil Wilson, one of the employees of Oasis was an innocent
14 person. That's consistent with the documentary and
15 testimonial evidence of the other witnesses.

16 Now, you also know from Mr. Wiand, the receiver who
17 was appointed by the Court, that at that same time he stepped
18 in and took over the entire Oasis operation and all of its
19 assets and holdings. And he told you that based upon all of
20 his calculations and that of the forensic accountants and
21 other staff whose assistance he enlisted, that there was
22 approximately \$83 million that came in from investors. And
23 that after all was said and done, there was only about
24 17.4 million available to distribute to victims at this time.
25 That includes, members of the jury, the \$2,005,000 in the ATC

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1 account. It includes some money that was still in the OIG
2 account, money in the Oasis Management account, and a little
3 bit of money here and there in those LLCs that were created to
4 purchase the real properties. It includes the money, the
5 proceeds from the sales of the real properties, cars, jewelry,
6 things like that where that was possible. All of that, all of
7 those assets, all of that cash amounted to \$17.4 million.

8 And Mr. Wiand testified that he still has other
9 actions. He is pursuing other parties civilly hopefully to
10 recover more that can be distributed to the victims, but
11 that's where he stands now. And that leaves a significant gap
12 because he has received claims from victims to the tune of
13 somewhere between 56 and \$60 million. That does not show that
14 Oasis was in any position to pay back the investors, not their
15 interest gained and certainly not even their principal
16 investments.

17 Agent Batsch, his testimony, his financial analysis
18 substantiates that other testimony. And as I said before, all
19 of his summaries, all of his many spreadsheets are in the 500
20 series of exhibits. His analysis covered a slightly more
21 limited period but the period during which the bulk of the
22 relevant activity took place. So whereas Mr. Wiand's went all
23 the way back to 2011, Agent Batsch's started in January of
24 2015 and went all the way through the April date in 2019. And
25 you can see that Agent Batsch's numbers given the difference

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1 in periods are comparable. He identified over \$77 million of
2 investor funds coming in.

3 He also prepared for you Exhibit 500, which shows
4 where all of the money went, including over to trading at ATC
5 and CFH before that. That's not included in the 2015 date.
6 He also showed you all of the money that went for operating
7 expenses. He showed you the money that was used to pay back
8 interest and principal withdrawals when they were requested.
9 He also showed you all the other distributions that were made
10 in connection with the defendant and Mr. Anile's lifestyle.
11 That's all in 500 and the supporting spreadsheets in the
12 detail.

13 The defendant knew the unlawful purpose of this
14 conspiratorial plan, and he knew that there was not enough
15 money to repay the investors. There is no evidence, nothing
16 to show that any of these real properties were liquidated or
17 in the process of being liquidated by Oasis. We know that
18 there was no money that came from those properties back into
19 the OIG or Oasis Management account. Only money went out.
20 You know from the testimony that there was no income generated
21 from any of these business ventures like Roar of the Lion,
22 Full Spectrum Wellness, et cetera. None of that resulted in
23 any money coming back into the Oasis accounts. You know that
24 there was no money that came back into the Oasis accounts via
25 the silver, either the silver position because all that money

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1 was lost in the trading, or the hard silver and gold coins.
2 No money ever came back. And that testimony is consistent
3 through and including the defendant's own testimony.

4 Now, that is Count 1. And the government submits
5 that based upon all of that evidence it is beyond question
6 that the defendant and Mr. Anile had a mutual understanding
7 that they were going to run this operation and they were going
8 to use the lenders' funds for all of these purposes including
9 return of interest and principal withdrawals when requested to
10 the investors which is a Ponzi-style scheme.

11 They also agreed to conceal the trading losses. And
12 they perpetuated or perpetrated this fraud via the wires and
13 the mailings. They had an intent to deceive. They concealed
14 it through the fraudulent misrepresentations and the material
15 omission alleged.

16 Now, let's turn briefly to Counts 2 and 3. Count 2
17 charges money laundering. It is an illegal monetary
18 transaction. And with respect to Count 2, it is the
19 government's burden to prove the following:

20 One, the defendant knowingly engaged or attempted to
21 engage in a monetary transaction.

22 Two, the defendant knew the transaction involved
23 property or funds that were the proceeds of some criminal
24 activity;

25 Three, the property had a value of more than \$10,000;

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1 Four, the property was in fact proceeds of wire fraud
2 or mail fraud;

3 And, five, the transaction took place in the United
4 States.

5 Now, the transaction that is the subject of this
6 account is the payoff of the Lost Key residential property.
7 Here's a picture of it in Exhibit 302A. You know and we
8 discussed this just a little bit ago that in Exhibit 306A2,
9 there was a wire in February of 2019 that was sent to the law
10 firm handling the settlement in the amount of \$653,293.67.
11 That money came from investor dollars that were acquired from
12 investors via fraudulent misrepresentations and promises and
13 that material omission. That makes that money, the proceeds
14 of the wire fraud and/or the mail fraud, and that's the money
15 that was used to pay off this house. It was more than
16 \$10,000. It was \$653,000, and it satisfied the mortgage in
17 this case. It was in the United States. The government has
18 satisfied its burden with respect to this count.

19 The final count is filing a false tax return. And
20 with respect to this count, Count 3, the government has to
21 prove the following:

22 One, the defendant made or caused to be made a U.S.
23 individual income tax return Form 1040 for the year 2017;

24 Two, the tax return contained a written declaration
25 that it was made under the penalty of perjury;

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1 Three, when the defendant made or helped to make the
2 tax return, he knew it contained false material information;

3 Four, when the defendant did so, he intended to do
4 something he knew violated the law;

5 And, five, the false matter in the tax return related
6 to a material statement.

7 Members of the jury, you recall the testimony of Mark
8 Burling. That is the CPA the defendant retained once he got
9 down to Florida after he had been -- after his prior CPA firm
10 in New York had withdrawn from the engagement. Mr. Burling
11 was unequivocal that he used the information provided by the
12 defendant to prepare the 2017 income tax return. He said he
13 used that information, he prepared the return. He sent a
14 draft of the return to Mr. DaCorta and asked him to review it,
15 and if he had any questions or wanted to discuss it, to call
16 him and let him know.

17 Mr. Burling said contrary to the defendant's
18 testimony, that he never got a call, he never had a request
19 for a meeting. There was no issue. Mr. DaCorta didn't raise
20 any. And I asked him specifically, I said if the defendant
21 testified that he called you and expressed concern that the
22 income number was too low, would that be a false statement?
23 And Mr. Burling said, yes, that would be a false statement.
24 That was just yesterday afternoon.

25 Mr. Burling further testified that the defendant,

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1 instead of calling him and expressing concerns or asking
2 questions, signed the E-file authorization. That's the
3 document that says under penalties of perjury I am attesting
4 that the information in this tax return is true and correct.
5 He signed that authorization. He provided it to Mr. Burling.
6 And Mr. Burling sent the tax return to the IRS. And you have
7 all of the documents that support and substantiate
8 Mr. Burling's testimony. This one, Exhibit 555, is the
9 certified copy of that return that was submitted to the
10 Internal Revenue Service. This return shows on the 1040 that
11 the income reported was negative \$439,026. Based on the
12 evidence we have been discussing, you know that's not an
13 accurate number. The defendant knows that's an inaccurate
14 number.

15 And just one piece of additional evidence that shows
16 that? During 2017 the defendant bought this Maserati. Now,
17 he didn't pay in full for it. He applied for financing,
18 right, for part of it. And on his credit application, which
19 is Exhibit 321, he reports his gross income as \$250,000. Oh,
20 and he has a second employer, and he gets over 16,000 a month
21 from that. That money is not reported on the income tax
22 return. The defendant knew the income number was false. He
23 didn't need to ask Mr. Burling. You have Mr. Burling's draft
24 of the return. That's Exhibit 58. This is the one that he
25 sent to the defendant and said look at it, make sure it's

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1 right, let me know if you have questions. It includes the K-1
2 we discussed, and it includes the E-file authorization
3 document that says the taxpayer declaration and signature
4 authorization. Under penalties of perjury, I declare I have
5 examined a copy of my electronic individual tax return and
6 accompanying schedules and statements, and to the best of my
7 knowledge and belief it is true, correct and accurate and
8 accurately lists the amounts and sources of income and so
9 forth. And the defendant signed it. Members of the jury,
10 based upon that evidence, Count 3 has also been proved beyond
11 a reasonable doubt.

12 So on behalf of the United States based upon all of
13 the evidence that we have discussed this afternoon and all
14 that you have heard during the course of the trial, the United
15 States respectfully requests that you return verdicts of
16 guilty as to all three counts.

17 Thank you.

18 THE COURT: All right. Well, thank you, counsel.

19 And Mr. Allen, why don't you give us -- or I'm sorry.

20 Ms. Irvin, why don't you give us about the first two-thirds of
21 your defense closing, and we'll take the next third first
22 thing in the morning.

23 Yes, ma'am, you have the floor.

24 MS. IRVIN: Can we have the Elmo available?

25 Your Honor, would it be all right if the jury took a

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1 stretch break if they need one while I'm preparing?

2 THE COURT: While she's doing that, I do need one.
3 Maybe they don't. Okay.

4 (Brief recess taken.)

5 THE COURT: Ms. Irvin, what say you?

6 CLOSING ARGUMENT ON BEHALF OF

7 COUNSEL FOR THE DEFENSE

8 MS. IRVIN: At the beginning of this trial in opening
9 statements, my colleague, Mr. Allen, put up this picture, gave
10 you notice that there was going to be a lot of information, a
11 lot of testimony. And I don't want that to be something that
12 overwhelms your process because in reality there's really only
13 one thing that you need to focus on. Focus on what was in
14 Michael DaCorta's heart, mind, and soul. That's what this
15 case is about. It's about what Michael DaCorta intended to
16 do. Did he have a scheme to defraud or a complex business
17 that was misunderstood by the government?

18 The evidence in this case shows he was striving to
19 succeed, not intending to deceive. How do you figure that
20 out? Well, the first place that you can look is his journal.
21 His journal entries are from November 2012. Those journal
22 entries represent what he was thinking, what he was intending.
23 And he wrote in his own words, "My desire is to rebuild a new
24 business in the same manner as I built ICT, only this time use
25 the lesson of failure to catapult me to enormous success, so

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1 great that most would believe it to be impossible to achieve."
2 Read his words. He's telling you what he intends to do. He's
3 telling you what he wants to achieve.

4 Let's start with the NFA agreement. You heard
5 directly from Mr. DaCorta on Friday and on Monday describe the
6 foundation and growth of Oasis Management, LLC, and Oasis
7 International Group. In doing so, he testified about his NFA
8 agreement. That's not easy for him to do because this goes
9 back to a time where it was difficult for him and for this
10 company that he was trying to build.

11 As a result of the NFA closing audit in 2009, he
12 considered the NFA's findings. He neither admitted nor denied
13 them. And he agreed not to seek further NFA membership by his
14 own signature. Let's look at what that NFA agreement said.
15 As long as he did not seek NFA membership in the future, he
16 was abiding by this agreement. And what would happen if he
17 breached the agreement? Well, it's written there. And it
18 says they would deny his application as registration as an NFA
19 member or associate. They would deny any application for
20 registration as an NFA member of any firm of which he was
21 acting as a principal and/or revoke the registration of any
22 NFA member of which either of them is a principal. That's
23 all. Regulatory, informal, offline. That's what this
24 agreement says.

25 In moving forward, he had to make some decisions. In

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1 the months that followed, he had no plans to participate in
2 forex trading. He was looking for another business
3 opportunity. He was frustrated by the 2008 financial crisis.
4 He was trying to figure out what was next for him.

5 And that next opportunity came with Ray Montie and
6 Ambit Energy. He found a trusted friend and partner in Ray
7 Montie, someone who encouraged him to pick himself up, someone
8 who was interested in and excited about his financial
9 background, encouraged him to get back into trading. And he
10 asked him, would you trade forex for me? Mr. DaCorta
11 testified he hesitated. He wasn't sure. Mr. Montie, he said,
12 was persuasive and said go ahead and try. So Mr. DaCorta
13 agreed.

14 Before he agreed, he believed that he could still
15 trade for Mr. Montie despite the NFA agreement because he
16 thought I could trade just for one person. There was a
17 successful trade. And that let Mr. Montie to suggest, hey,
18 this was successful, you made me some money. I believe it was
19 a \$25,000 forex trade that turned into like a \$37,000 result.

20 So they have an additional conversation. And
21 Mr. Montie says, I think we should expand this to some of our
22 friends and family. Mr. DaCorta hesitates again, takes some
23 consideration, wonders is this something that I can do and
24 stay in compliance with the NFA agreement. So what did he do?
25 You heard him testify that he called someone that he knew and

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1 already had a business relationship with at CitiFX. His name
2 was Michael Merachi. And he discussed his ability to trade
3 for this small investment club that they called it, these
4 friends and family, these six to eight people. And because it
5 was less than 15 people, Mr. DaCorta believed and understood
6 that he could trade forex for those folks.

7 There's no testimony that Mr. DaCorta solicited or
8 pressured or even asked Ray Montie if he could trade for him.
9 There's no testimony that Mr. DaCorta asked or solicited or
10 pressured any of the six to eight family or friends asking
11 them, hey, can I trade forex for you? This was simply a small
12 investment club of six to eight friends and family, that's
13 what they called it, that were interested in forex trading.
14 And Mr. DaCorta did the trading for them successfully.

15 Let's fast forward slightly to OIG. Mr. DaCorta
16 testified that he showed the same NFA agreement that we have
17 seen many times to Attorney Joseph Anile. It was
18 Mr. DaCorta's testimony that he showed it to Mr. Anile to get
19 his advice as an attorney to find out whether or not the steps
20 that they were making to start creating Oasis International
21 Group would allow Mr. DaCorta to trade on behalf of OIG.

22 Why ask Attorney Joseph Anile? Well, Mr. DaCorta
23 testified that he respected Mr. Anile's reputation, his
24 knowledge, that he was known for being an attorney that worked
25 in the financial field, compliance, regulatory, someone that

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1 came with a certain kind of reputation and experience so much
2 so that he asked Mr. Anile to join him and Ray Montie at OIG.
3 At each of these steps, Mr. DaCorta considered should I do
4 this? Can I do this? Can I trade forex and still be in
5 compliance with the NFA agreement? That was his clear
6 intention. You heard him testify to it, what was in his
7 heart, what was in his mind, what was in his soul.

8 But what about Joe Anile's testimony that Mr. DaCorta
9 never showed him the NFA agreement? Ask yourselves, is
10 Attorney Joseph Anile credible? He testified in this
11 courtroom under oath that he was not acting as an attorney at
12 any time for Oasis International Group. He was absolutely
13 adamant that he was only a partner, that he was not an
14 attorney, and he only brought in other attorneys to help as
15 needed. Yet almost every person who testified in this case
16 that was associated with OIG either as a lender or employer
17 recognized that Mr. Anile was the attorney for OIG and Oasis
18 Management, LLC, and Oasis Global FX. You heard that from Deb
19 Cheslow, not just saying that he was an attorney but that he
20 was an attorney that was in company meetings, giving advice,
21 talking about compliance, giving guidance about what people
22 should say. If they didn't know something, he was telling
23 them you shouldn't say it. If this is not within your purview
24 of knowledge, don't say that. That's one example from Deb
25 Cheslow about her impression about who Mr. Anile was as the

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1 attorney for OIG.

2 You heard it from Joe Paniagua who had daily
3 interaction with Mr. Anile. He provided him daily reports
4 about what was going on every day and recognized that he was
5 the attorney. He was the one that approved any loan
6 applications. He was the one in charge of wiring money. You
7 heard it from John Paniagua today. You heard it from Michael
8 DaCorta. You also heard it from lenders, Michael Chalhub and
9 Ian Howard.

10 Why would he not want to be the attorney for the
11 company that he was actually doing legal work, compliance work
12 for? Not sure. But on cross, I showed him a memo from OIG
13 that was drafted with his name that said Joseph Salvatore
14 Anile, II, Esquire. He said the esquire is just a formality,
15 but he recognized that that was a memo that came from him,
16 Attorney Joseph Anile.

17 You may recall that on cross-examination I showed him
18 the transcript from Mr. Anile's own sentencing hearing in this
19 courthouse in front of another federal district court judge
20 where he was also placed under oath. And in that testimony,
21 Mr. Anile, in speaking to the judge sentencing him, admitted
22 that he was the attorney for OIG, that he was the attorney for
23 Mr. DaCorta. And when presented with this transcript, he
24 still would not concede that he was the attorney for Oasis.

25 Ask yourself, what was his motivation for testifying

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1 in this court today, in this court last week? What was in his
2 heart, his mind, in his soul? Well, we know from his
3 testimony, Number 1, his health. He's in terrible health. He
4 is looking at serious issues going forward with respect to his
5 health. We saw that he was in a wheelchair. He explained
6 some of the things that are going on with him, diagnoses that
7 he's waiting to get. His health is absolutely a consideration
8 for him as it would be for any middle-aged man but in
9 particular a middle-age man who is getting ready to serve a
10 ten-year sentence that has already been imposed by a judge.

11 I asked him in consideration for whatever testimony
12 he was giving, did he anticipate or did he know that there was
13 an option for the government to file a motion to reduce his
14 sentence based on his testimony. And on cross he said no, but
15 on redirect by Ms. Bedke, he then suddenly understood, oh,
16 yes, there is this possibility for me to get a benefit from
17 sitting here today, an ill man in the middle part of his life
18 looking at a ten-year sentence with his family in the back of
19 the courtroom.

20 Why does Mr. Anile's credibility matter? Because he
21 testified under oath about four different stories no one else
22 can corroborate about Michael DaCorta. Let's talk about that
23 first story. The first story is that Michael DaCorta did not
24 show him the NFA agreement. That's how Mr. Anile testified.
25 Mr. Anile testified he never saw it. Michael DaCorta

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1 testified that he and Mr. Montie met Mr. Anile at a Long
2 Island diner to discuss the beginnings and start brainstorming
3 how they were going to structure Oasis International Group.
4 Nobody was a partner yet. This was really just discussing the
5 beginnings of this. What kind of structure are we going to
6 have for this corporation? How are we going to do this? Is
7 this going to be a hedge fund or something else?

8 Not long after that meeting, Mr. Anile went to
9 Mr. DaCorta's house, according to Mr. DaCorta's testimony, and
10 at his house Mr. DaCorta testified that he showed the
11 agreement that he had in his home office to Mr. Anile to ask
12 him specifically can we do this? Can I trade forex for OIG
13 and still be in compliance with the NFA agreement? Based on
14 that conversation, Mr. DaCorta understood that he could. He
15 sought counsel from Mr. Anile, and because of that, they went
16 forward.

17 Decide who you believe. Mr. DaCorta's consistent
18 efforts to try to stay in compliance with the NFA agreement or
19 Mr. Anile who has every reason to make up a story, who has
20 every reason to do whatever he can to get a lesser sentence
21 because of his health and because of the amount of time that
22 he's looking at.

23 Story Number 2. Around 2016, Mr. Joseph Anile claims
24 that his brother, Frank Anile, who at the time was working on
25 developing the back office for OIG, told him, Joseph Anile,

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1 that Michael DaCorta had changed a customer account. There is
2 no other witness to this conversation. Mr. Frank Anile is now
3 deceased. He passed away not long after this supposed
4 conversation took place. So what evidence do you have to look
5 for Michael DaCorta's credibility in his testimony that this
6 never happened?

7 Well, first, testimony from Joseph Paniagua who ended
8 up taking over the back office after Frank Anile passed away.
9 And he testified that Mr. DaCorta never had access to the back
10 office, never had access to customers' back office accounts.
11 And there was a relationship between Frank Anile and Joseph
12 Paniagua that went back to their coaching days together where
13 they would have been communicating with each other on a
14 regular basis. And however it is that Frank Anile was
15 operating the back office, he handed that same back office on
16 to Joseph Paniagua for him to continue to develop. The
17 government showed no record evidence that any customer account
18 was changed. No one was there to hear this claimed story.

19 Who do you believe? Mr. Paniagua who can tell you
20 who had access to the back office that he worked on from 2016
21 all the way until OIG was closed in 2019? Mr. DaCorta who
22 testified that that conversation never happened and that he
23 had no ability to be able to access those customer accounts?
24 Or Mr. Anile who has a reason to tell a story, who has a
25 reason to help himself out?

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1 Story Number 3. Mr. Anile also said that in 2017
2 there was a conversation in which Mr. DaCorta told him there
3 is a \$4 million gap. And what he meant by gap, I assume, is a
4 loss, and that there is a supposed agreement during that
5 conversation that we're not going to tell the investors.
6 There is no other witness to this conversation. Why this does
7 not make a lot of sense is because there are daily reports
8 that both Mr. Anile and Mr. DaCorta get from Mr. Joe Paniagua.
9 They regularly communicated with each other about these daily
10 reports, all three of them. If there was a discrepancy, if
11 there was a problem, there was a communication that was going
12 on between all three of them by email or by phone.

13 Mr. DaCorta testified that conversation did not happen.

14 There was no conversation about hiding information
15 from investors. Decide who you want to believe, Mr. DaCorta
16 or Mr. Anile, already sentenced, looking for a way to reduce
17 his sentence.

18 Story Number 4. He claims that in 2018 there was a
19 conversation between he and Mr. DaCorta, now not about
20 \$4 million but now about a seven and a half to \$15 million
21 loss, and again we are not going to tell investors.

22 And the government tells the story like this: Oh, my
23 gosh, says Mr. Anile. That sounds like a Ponzi scheme. And
24 Mr. DaCorta responds, oh, my gosh, yes, it is a Ponzi scheme.
25 Mr. DaCorta testified there was no such conversation.

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1 Mr. Anile has a reason to tell these stories. Can you believe
2 Mr. Anile? Can you believe him when he is the same person who
3 after OIG was closed on April 18, 2019, took it upon himself
4 in the middle of this chaos of their company being shattered
5 to decide to record conversations without the permission of
6 his partners, of his colleagues, of his friends, of his
7 personal CPA. Consider the timing of when he did this.

8 Consider his testimony here a week and a half ago
9 when he said, I was lying, I was lying on those phone
10 conversations. I was going on a fishing expedition. I wanted
11 to see what they knew. I wanted to find out what they were
12 going to say about what was going on. He was pretending like
13 he was getting attorneys for his partners, for his colleagues,
14 for his business. That's what he generally was talking about,
15 getting counsel.

16 And listen to the recordings and hear what he says.
17 Don't talk. Don't talk without counsel at the same time that
18 he is pretending that he is getting counsel for the company,
19 for his colleagues, for his partner. Those partners and
20 colleagues included his CPA, John Caliendo, Joseph Paniagua
21 who ran the back office, interestingly Burt Wiand who is the
22 receiver, and Michael DaCorta.

23 When you listen to the calls, and I encourage you to
24 do so, listen to what Joe Anile sounds like on these calls.
25 He's energetic, almost excited. On one of the calls in the

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1 background you can hear the song playing, and ironically it's
2 the song "Taking Care of Business." He is in fact taking care
3 of business, but he's taking care of his own personal
4 business.

5 Keep in mind again these recordings are in the days
6 and week following the closing of this business that he has
7 been a part of, yet he sounds excited. He sounds energetic.
8 This is at the same time after FBI and IRS agents have served
9 search warrants on Mr. DaCorta's home, Mr. Anile's home where
10 their wives and children live, their other business
11 properties, their office. They seize cell phones, computers,
12 documents, but Mr. Anile finds a way to be able to record
13 these conversations with his colleagues and business partners.

14 He even testified that on Easter Sunday he called an
15 attorney because he is actually finding attorneys for himself
16 and his family but not for these other colleagues. And when
17 he calls the attorney and he tells him, hey, I recorded these
18 conversations, the attorney yells at him and tells him he
19 shouldn't have done that, tells him all the reasons why. That
20 could be obstructing a federal investigation. Don't do that.
21 What does he do? Keeps recording conversations the following
22 week. Is that a reason to believe Mr. Anile?

23 I also want you to listen to how Michael DaCorta
24 sounds on those conversations. And I want you to remember
25 that the people on the other side of that line don't know that

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1 they are being recorded. Mr. DaCorta sound listless,
2 depressed, forlorn, uncertain. He tells Mr. Anile, I just
3 don't know what to do. Mr. Anile says, Michael, pick yourself
4 up, pack up your house, you got to go.

5 Compare their reactions to agents showing up at their
6 houses that day right before Easter weekend. Compare how they
7 react to this. One person almost giddy, energetic. The other
8 person uncertain about what to do next, because who is
9 Mr. DaCorta calling on that phone call? Mr. Anile, his
10 friend, his partner, his attorney.

11 I also want you to listen to those calls between
12 Joseph Anile and Mr. DaCorta, in particular to listen to the
13 things that you don't hear. There is no conversation that
14 says, hey, we've got to get out of town, pack up your house so
15 we can leave the country. There's no conversation on there
16 about how do we cover up this Ponzi scheme. There's no
17 conversation about how do we cover up this fraud. None of
18 that is on there. Take note. Listen for yourselves.

19 What is in Mr. Anile's agenda when he makes these
20 calls? Self-preservation. That's what you saw. That's what
21 you heard when he testified in this court. If the supposed
22 conversations that he had, those stories, Number 3 and
23 Number 4 that I talked about, if they really were about a
24 fraud, if they really were about keeping quiet to the
25 investors, if there really was a conversation where they said,

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1 oh, is this a Ponzi scheme, yes, it is, how come there is no
2 conversation about that in these recorded conversations. Ask
3 yourself that.

4 Mr. Anile is a middle-aged man, very serious,
5 concerning health issues looking for a way to get a lesser
6 sentence. It's up to you to decide what you think about his
7 credibility. It's up to you to decide what was in Mr. Anile's
8 heart, mind, and soul when he testified here last week.

9 Putting Mr. Joseph Anile to the side, let's look at
10 what the testimony and evidence showed about Michael DaCorta's
11 efforts to build and grow Oasis Management, LLC, and Oasis
12 International Group. Again, this started as a small group of
13 family and friends, forex trading in the beginning. And we
14 learned that there is a change in the business model to a loan
15 program or what we learned is debt financing in about 2017.

16 There's no pressure to change to the loan program.
17 If you are an investor in 2016 and you don't want to go to the
18 2017 loan program, it's not a problem. Withdraw your money
19 and go invest wherever you want to. If you're interested in
20 it, you are given a promissory note to sign and that's how you
21 start the program.

22 You saw and heard numerous times what the use of
23 funds paragraph allowed for the funds to be used for and the
24 terms of the loan. Attorney Joseph Anile testified he drafted
25 that loan agreement. An attorney who worked for OIG drafted

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1 that agreement. If a prospective lender disagreed, they
2 didn't have to participate. If you don't like the terms of
3 the loan, whether it's a mortgage or a car loan or buying
4 furniture, if you don't like the terms of the loan, you don't
5 go forward with it.

6 You heard some sales calls. I think those are around
7 2018, in evidence. There is no pressuring anyone to invest.
8 There is no pressuring anyone to be a lender. You heard
9 informational calls with the opportunity to follow up with
10 questions. And whoever was hosting that informational call
11 provided their email address and cell phone number. If what
12 you heard was something you didn't like, you don't send the
13 email, you don't make the phone call. If it's something you
14 do like, if it's something you are interested in, then you
15 send the email, you make the phone call, you get more
16 information. You decide as a lender is that something you
17 want to do.

18 You also saw and heard numerous times about the risk
19 disclosure. Consider retired Special Agent Stone's 2019
20 undercover call with Mr. DaCorta. In that call, Mr. Stone who
21 at the time was pretending to be somebody named Spinelli asks,
22 so my money goes to forex? And Mr. DaCorta says, well, we own
23 other capital, real estate, silver, private equity. It's to
24 ensure we have more assets than what we owe. Is that what he
25 intended? Absolutely.

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1 Let me read that again to you. What did Mr. DaCorta
2 intend about this loan program? To be able to own other
3 capital, real estate, silver, private equity, to ensure we
4 have more assets than we owe. Mr. DaCorta tells Agent Stone
5 acting as Mr. Spinelli, there's no pressure. The amount is up
6 to you.

7 In 2017, OIG is growing, and it's doing okay for a
8 young company. It's profitable and the spread is bringing in
9 revenue. At the end of 2017 and 2018, there is going to be
10 another change in the loan program. We also heard from
11 Mr. Joe Paniagua's testimony that his workload had been
12 increasing and he was having trouble keeping up with the
13 documents.

14 There was testimony, for example, from Patti Katter
15 that she didn't get her loan document right away. There was
16 testimony both from Deb Cheslow and from Mr. Paniagua
17 explaining it really had to do with not having enough
18 administrative help at OIG at the time. Not because he was
19 careless, not because he was trying to hide something but
20 because he needed help.

21 Deb Cheslow also testified about the need for what
22 she called on ops officer or an operations officer. John
23 Paniagua and Michael DaCorta testified about -- excuse me.
24 Joseph Paniagua and Michael DaCorta testified about
25 conversations seeking to hire a CFO. They knew they needed

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1 someone else other than Mr. Anile to be taking care of the
2 financial books of the accounting.

3 You also heard testimony that Mr. Anile disagreed and
4 he delayed those hires, and he disagreed with the possibility
5 of Deb Cheslow becoming an operations officer. It wasn't
6 until into 2019 that he agreed, okay, we'll bring on my own
7 personal CPA, John Caliendo, and that will be the person that
8 will help us with the audit.

9 At that time Deb Cheslow is hired by Mr. DaCorta, and
10 she starts to bring some well needed organization to this
11 business. She also testified importantly that she had done
12 due diligence on Oasis, and she even had tests to see whether
13 if she withdrew money it would work. She believed in OIG so
14 much she wanted to help it succeed. She saw there were
15 customer service needs. She saw there was administrative
16 needs. And so even though Mr. Anile was not interested in
17 hiring her as an operations officer, Michael DaCorta brought
18 her in on a contract basis. Again, she would bring much
19 needed structure, maybe a little too late, and some relief to
20 Mr. Joe Paniagua.

21 At that time there is also a real need to update the
22 back office, to automate it and to make sure that the IB
23 accounts for each lender are available online. And you heard
24 testimony about the efforts to do that, and a transition is
25 happening in 2018. Again, this is an important place because

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1 lenders can make the decision do they want to stay in this
2 program? Is this something they agree with, or is this the
3 time for them to say, you know what, I'm not interested in it
4 anymore. I'm going to take my money out and invest it in
5 something else. And they have the opportunity without
6 pressure to be able to withdraw their money or continue on the
7 loan program.

8 And that's where that AWS website comes into play
9 here, because this is when we hear through testimony from Joe
10 Paniagua, from Deb Cheslow, from John Paniagua that there is a
11 loan agreement that must be reviewed online and that a person
12 as a new lender or an already existing lender who is going to
13 stay in the program has to go in and fill in their
14 information, read the loan agreement, and then agree that they
15 have had the opportunity to read and review the risk
16 disclosure. And the only way to be able to submit that risk
17 disclosure is by clicking, having the opportunity to read it,
18 signing and then submitting it.

19 You heard from Mr. Stone when he was working in his
20 undercover capacity that he was trying to figure out a way to
21 be able to do it without submitting the application, and it
22 didn't work. And the reason why is because they put in place
23 this safeguard to demonstrate, lender, we are giving you the
24 opportunity. In fact, you should take the opportunity to read
25 the loan agreement, the promissory note, and you must read the

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1 risk disclosures. Now, they can't force somebody to read
2 those terms, but those are the only safeguards they could put
3 in place to say there's risks here. Here is the risk
4 disclosure. Read it. And we are not going to let you go
5 forward until you click on it and you are able to look at it.

6 How do we know that people like Ian Howard, Patti
7 Katter and others signed? Because there is a digital
8 signature that John Paniagua was able to demonstrate happened
9 in each one of those cases. That wasn't a digital signature
10 that was just sort of formulated by a computer. It was that
11 person's own signature that they either use with a pen or use
12 with their finger to be able to sign online. That's
13 important.

14 And that's important because you saw and you heard
15 testimony from some lenders who remembered signing, from some
16 lenders who weren't sure if they filled out the account, from
17 at least one lender who had his wife fill out the account, but
18 you heard how it was captured, and you heard that you could
19 not submit the application until that click and until that
20 signature happened.

21 You heard testimony from both Joe and John Paniagua
22 that there were adjustments that were being made to bring the
23 balance to the correct amount each month. And I want to talk
24 about what that means. These are two brothers who both have a
25 lot of knowledge in their own industry. I think based on

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1 their testimony, I will leave it to you to judge their
2 credibility about the way that they handle themselves in their
3 job that they did for OIG and the jobs that they have outside
4 of OIG.

5 But I want you to consider their testimony in line
6 with the testimony that Mr. Mitchell from Spotex gave about
7 how Spotex really works. This is software that Spotex
8 provides for other companies to be able to use, other
9 companies who trade in forex. There is something called a
10 PAMM account. PAMM account means you can trade from one
11 account. So if you are a company who wants to trade in forex,
12 this might be the kind of software that you would want to use.

13 Spotex software was used by ATC. Oasis was a
14 customer of ATC. As a result, that's how they were using
15 Spotex software. Each fund, each company decides the
16 allocations that it's going to use according to that company's
17 decisions. And reconciliations are done at the end of every
18 day. At the end of every day there is a reconciliation. And
19 you heard testimony about that from Joe Paniagua, from John
20 Paniagua. You also saw at least one email during the Spotex
21 witness's testimony that there was an email where even when
22 it's pennies off, the business and Spotex are trying to ensure
23 that those numbers match. The business and Spotex are trying
24 to make sure that those pennies match. That's an adjustment.

25 There is a secure login which means there is

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1 generally only one person from each company that's able to log
2 in. Of course, they can designate how many there is, but we
3 know from testimony there is one person that had the ability
4 to log in, and that's the person who ran the back office for
5 OIG.

6 Mr. Mitchell was asked, can you provide a four-pip
7 markup? He agreed that you could. He also testified we made
8 that option available for all customers. The software was
9 designed to make adjustments. He did say he didn't know how
10 OIG was using it for their loan program, but he also testified
11 that there is nothing nefarious about changing the spread.

12 The government's position is this was all fake. The
13 spread is not fake. The money that is being exchanged is not
14 fake. This is real foreign currency. There is a real
15 counterparty. Mr. Mitchell's testimony demonstrates the
16 credibility of the software that was being used and that this
17 trading was real and credible.

18 Why did some additional adjustments need to be made
19 at the end of each month according to the Paniaguas'
20 testimony? Because this was a loan program. This was not a
21 traditional investment program. Mr. Mitchell had no
22 information about that when he was testifying. So he couldn't
23 speak to why they were making those adjustments, but the
24 adjustments were not nefarious. They were the changes they
25 were making to bring the loan amount to the correct place that

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1 it was supposed to be according to the program.

2 You decide for yourself based on what you heard from
3 Joe Paniagua and John Paniagua. Decide for yourself their
4 credibility. Decide for yourself their knowledge base about
5 the software that they were working with over a long period of
6 time.

7 Now, in 2018 OIG had losses. There is no question
8 about that. Mr. DaCorta doesn't deny it. He testified that
9 the spread continued to create revenue. Remember the
10 difference between profit and revenue. He also testified
11 about the corrective action that he was making to combat the
12 losses and to continue to grow the company's assets.

13 Real estate, eleven residential and commercial
14 properties in total. You heard from two appraisers who
15 testified as to the value of those properties and how they
16 substantially increased. Look at those numbers and compare
17 what those numbers are. And you don't just have to rely on
18 the defense appraisal experts that we presented. Think about
19 what Mr. Kihnke told you. He's a real estate developer. And
20 he talked about what he called a very beautiful property, the
21 Longboat parcel, that he and Mr. DaCorta had been in
22 conversations about purchasing that parcel, developing it into
23 condos. And Mr. Kihnke, a lender in this case, a government
24 witness said that he estimated that if they were able to do
25 what they were intending to do, this would be a

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 30 percent-plus return on the investment. It's not fake.
2 It's not fiction. It is real money. Real investment. Real
3 profit, real revenue, the reason why Mr. DaCorta and OIG were
4 acquiring real estate assets.

5 Private equity. You heard testimony from
6 Mr. DaCorta, Deb Cheslow, and even Joe Anile about the efforts
7 they were making to invest in other businesses to bring
8 additional revenue to the company. Do business ideas always
9 work?

10 Mr. Allen told you at opening statement that there is
11 a show called Shark Tank that I watch too much. Ideas aren't
12 always great ideas. Business ideas aren't always profitable.
13 Sometimes they don't work, but if you don't pursue them, how
14 do you know?

15 So you heard Mr. DaCorta talk about the business
16 opportunities that worked and the ones that didn't. Example,
17 you heard about Full Spectrum Wellness. It's a medical device
18 that's supposed to scan and demonstrate what might be going on
19 that's making you not feel well. It's not intrusive. It's
20 not an x-ray, but the problem was there wasn't a way to have a
21 medical code associated with it, and so there wasn't a way to
22 be able to charge the medical insurance companies so they
23 could reimburse the doctor who is using this device.

24 Did money go into trying to develop that product?
25 Yes, over the course of two years. Larry Waldman was hired on

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 a contract basis to be able to help develop this. Both of
2 Mr. DaCorta's sons were brought in at Mr. Waldman's
3 encouragement to try to develop this business. You heard that
4 they went to training in Carson City, Nevada, to be able to
5 figure out what are the things they needed to do to be able to
6 market and sell this device. It didn't work because there
7 wasn't a medical insurance code, not because the device didn't
8 work, not because the company wasn't still operating. Was
9 that a loss for Oasis Management, LLC? Yes. But it was a
10 business opportunity that they were pursuing to bring more
11 assets to the company.

12 Mr. DaCorta also talked about two opportunities that
13 were ready to work. You heard him testify about Mirror
14 Innovations, and you heard him describe this way of being able
15 to advertise literally on a mirror. For example, he gave
16 CitiFX Field where the Mets play or where the Lightning play
17 where you would be able to put right there in the bathroom for
18 the men's or women's restroom some advertisement for a
19 company, and it would be right on the mirror. There was a
20 patent that was already held for this product. And as a
21 result of the contract, they were to have 51 percent of that
22 patent, but the government closed OIG before they could start
23 work with the company. That was not a loss. That was not
24 their fault. That wasn't something where there wasn't a code
25 and that's the reason why they couldn't make a profit. That

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 was their inability to be able to move forward because their
2 business was shut down on April 18, 2019. They never got a
3 chance to get it off the ground.

4 And the same is true for Roar of the Lion. This was
5 not a made-up company. This was a company where Deb Cheslow
6 came in on a contract basis to be able to help develop the
7 online presence of this company. This is health and fitness
8 supplements. They had real inventory. This is online and
9 ready to sell. Were they selling a ton of product? No. They
10 had just gotten started. And in just getting started on their
11 online presence, they didn't just wait passively to see if
12 this was going to work. Mr. DaCorta had also reached out to
13 another company, Deleese, and he was able to establish a
14 contract and a lease at an LA Fitness with a possible
15 opportunity to do it at four or five other LA Fitnesses where
16 they would lease space and be able to display the Roar of the
17 Lion products. They signed a contract, completed and ready to
18 go. On online presence for Roar of the Lion products,
19 inventory in place and ready to go and shut down on April 18,
20 2019. Another business that could have been a part of the
21 assets that Mr. DaCorta was intending to bring to OIG.

22 You saw the pictures and you heard testimony about
23 the hard gold and silver that they were purchasing. You have
24 heard a great deal about the silver position. I will note
25 that Mr. Childers' testimony did not take into account the

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 other assets that were not fully realized by OIG at the time
2 that he testified. He did testify that he didn't know about
3 all of Oasis Management, LLC, and OIG's assets. And so when
4 you consider Mr. Childers' testimony, consider that it's in
5 the vacuum of what he knows, and he doesn't know everything.

6 What was the point of the real estate, the hard
7 silver and gold, the private equity deals and the silver
8 position? Regardless of whether they were a great success or
9 an emerging opportunity, Mr. DaCorta's intent was to ensure
10 that he could always repay lenders when they asked for their
11 interest or they asked for their principal.

12 If OIG struggled, if trading was not doing what it
13 was supposed to be doing, if he was holding positions too long
14 and that was incurring too many fees, you heard him testify
15 that he made corrective action. You heard Joseph Paniagua say
16 that he would tell him if he was concerned about something and
17 that Mr. DaCorta would take corrective action.

18 Important to take in mind the testimony that up until
19 the day OIG was shut down on April 18, 2019, every lender
20 request for interest or principal was paid back. Every
21 request by every lender for interest or principal was paid
22 back until OIG was shut down on April 18 of 2019.

23 Before we break, I would like to talk about the
24 lenders. Some did due diligence. Some did not. We know, for
25 example, that Deb Cheslow did. Not only did she do due

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 diligence, she did those test cases of withdrawing some money,
2 putting in some more money, withdrawing completely from one
3 program, completely taking out her entire amount that she had
4 invested and then putting it back into the loan program.

5 We know that Ian Howard showed his loan agreement and
6 the risk disclosure to his attorney, and his attorney gave his
7 approval. He showed the loan agreement and the risk
8 disclosure to a very wealthy friend of his who he trusted in
9 and felt like was a great investor, and he gave his okay. He
10 gave his approval to participate in the OIG program.

11 We also heard from lenders who didn't read the loan
12 program -- the loan agreement, who admitted that they didn't
13 read the risk disclosure and yet they signed it. They all had
14 the opportunity to ask more questions. You heard testimony
15 from Mr. Paniagua that Mr. DaCorta always made himself
16 available to answer questions whether it was by phone or
17 whether it was by email or whether it was in person. All had
18 the opportunity to be able to vet this loan program with an
19 attorney, with a financial advisor. All had the opportunity
20 to read the risk disclosure. And all signed the loan
21 agreement per Mr. Paniagua's testimony.

22 Your Honor, this is a good time to break.

23 THE COURT: All right. Very well. Thank you.

24 All right, ladies and gentlemen. Thank you very
25 much. Tomorrow you don't need to pack your lunch. If you are

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 here and you want lunch, we've got it covered. Also, eat a
2 light breakfast. Between my house and the courthouse is
3 Krispy Kreme, so I'll bring some. We can get all sugared up
4 for the final argument.

5 So have a good evening. Does 8:30 work?

6 THE COURTROOM DEPUTY: 9:00.

7 THE COURT: The man says 9:00 a.m. And we might even
8 have a mid morning Krispy Kreme if there's some left over.

9 (Jury escorted out of the courtroom.)

10 THE COURT: You have a defense instruction you want
11 me to look at?

12 MR. ALLEN: Yes, Your Honor.

13 THE COURT: Did you show it to Ms. Bedke?

14 MR. ALLEN: I did.

15 THE COURT: And I jumped the gun a little bit,
16 government. Counsel, I assume you object to the puffery
17 instruction?

18 MS. BEDKE: Yes, Your Honor.

19 THE COURT: Thank you.

20 MR. ALLEN: Your Honor, I know the Court has ruled,
21 but based on the government's opening and discussions about
22 how Mr. DaCorta violated the NFA rules and regulations, we
23 would renew our request for the instruction about Mr. DaCorta
24 not being on trial for violating regulatory rules.

25 THE COURT: All right. It's so noted. Thank you.

REDIRECT EXAMINATION OF JOHN PANIAGUA

1 MR. ALLEN: Thank you, Your Honor.

2 THE COURT: Anything else, everybody?

3 MR. ALLEN: No, Your Honor.

4 THE COURT: So Ms. Bedke has got a half hour on
5 rebuttal, but Ms. Irvin has a little bit more than that for
6 her, like 35. Does that sound right?

7 MS. IRVIN: Yes, sir.

8 THE COURT: All right. We will see you all later.
9 Mr. Houston says 9:00.

10 Thank you.

11 (Proceedings concluded at 6:00 p.m.)

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REDIRECT EXAMINATION OF JOHN PANIAGUA

1 UNITED STATES DISTRICT COURT)
2 MIDDLE DISTRICT OF FLORIDA)

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4 **REPORTER TRANSCRIPT CERTIFICATE**

5 I, Tracey Aurelio, Official Court Reporter for the United
6 States District Court, Middle District of Florida, certify,
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9 stenographic notes taken by the undersigned in the
10 above-entitled matter (Pages 1 through inclusive) and that
11 the transcript page format is in conformance with the
12 regulations of the Judicial Conference of the United States of
13 America.

14 /s Tracey Aurelio

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Tracey Aurelio, RMR, RDR, CRR
Official Court Reporter
United States District Court
Middle District of Florida
Tampa Division
Date: September 5, 2022

EXHIBIT G

**CFTC RESPONSE IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT BY
DEFENDANT MICHAEL J. DaCORTA**

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)
) 8:19-cr-605-WFJ-CPT-1
 PLAINTIFF,) Tampa
) April 19, 2022
 v.) 8:52 a.m.
)
 MICHAEL J. DACORTA,)
)
 DEFENDANT.)

DAY 2
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

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(Proceedings commenced at 8:52 a.m.)

THE COURT: Let's go on the record. Let's get on the record here for a minute, counsel. So Number 12, Kenneth Dilallo, says he has a death in the family, an uncle who resides in New York, and he was made aware of his death during the trial yesterday. He wants to be excused. He's here.

So what says the government?

MS. BEDKE: The government has no objection, Your Honor. I'm sure if he is thinking about that, he is not going to be paying attention to our evidence.

THE COURT: Mr. Allen, what do you have to say about that?

MR. ALLEN: Your Honor, who does that move to the jury?

THE COURT: Say that again.

MR. ALLEN: Which alternate becomes an actual deliberating juror?

THE COURT: The first alternate, which would be Jessica Norton.

MR. ALLEN: Let me just talk to my client.

(Attorney-client conference.)

MR. ALLEN: Your Honor, we have no objection.

THE COURT: Well, I don't want to tell him no and then we'll have to have a recess for three days for him to get

1 up there and all that. So I will excuse him since there is no
2 objection to that.

3 Mr. Houston, I don't think we need to bring him in.

4 THE COURTROOM DEPUTY: I will let him know.

5 THE COURT: Probably should have gotten four
6 alternates. Is everybody else ready, Mr. Houston?

7 THE COURTROOM DEPUTY: Not yet, but I will
8 double-check.

9 MR. ALLEN: Your Honor, there's two issues that we
10 anticipate coming up with two of the government's witnesses.
11 I don't know if the Court wants to deal with that now.

12 THE COURT: We have a minute anyway. Go ahead.

13 MR. ALLEN: So I think the first issue is going to be
14 resolved. One of the exhibits that they're going to introduce
15 is a record of sort of Mr. DaCorta's history and any
16 discipline issue. There is a section in that report that sets
17 forth the civil proceeding against him, the CFTC, and it has
18 the allegations that are alleged in the civil case which has
19 been stayed and not been adjudicated, and we are just asking
20 that that section be redacted. We don't think the jurors need
21 to know what the allegations are in the civil case. So we are
22 just asking that on page 16 of 18 the section regarding civil
23 judicial event, which is the currently pending CFTC civil
24 lawsuit against Mr. DaCorta just be redacted before this
25 exhibit comes in.

1 THE COURT: The entire page 16 of 18?

2 MR. ALLEN: It doesn't have to be the entire page,
3 but there is a section, a paragraph that sets forth --

4 THE COURT: What's the exhibit number? Do we have a
5 number on it?

6 MR. CHEE: Yes, Your Honor. It's 100A. May it
7 please the Court, David Chee for the government.

8 And Your Honor if I may respond?

9 THE COURT: Sure.

10 MR. CHEE: We do have a redacted version of that
11 document, of 100A. The government is not seeking to elicit
12 testimony from the witness pertaining to the redacted portions
13 of page 16 that counsel has identified.

14 THE COURT: That should solve that problem.

15 MR. CHEE: Yes, sir.

16 THE COURT: It's redacted.

17 MR. ALLEN: Yes, Your Honor.

18 The second issue -- I think it's Mr. Murray's
19 witness. He's not here and maybe we should wait, but that
20 relates to one of the government's experts, Ms. Sunu. She's
21 from the NFA. In the government's summary notice of that
22 expert witness's testimony, it indicates that she intends to
23 explain what a pool operator is. And I reached out to the
24 government because it didn't say she was going to express an
25 opinion that Mr. DaCorta was operating as a pool operator, but

1 I asked is she going to express an opinion as to whether or
2 not Mr. DaCorta and his company was acting as a pool operator,
3 because we would want to hire an expert to contest that
4 allegation. And I was told that, no, she's just going to
5 describe what a pool operator is but she is not going to
6 express an opinion that his company was acting as a pool
7 operator. And we would object. We don't think it's relevant
8 to describe what a pool operator is if she's not expressing an
9 opinion that he was operating as a pool operator.

10 My concern is they are going lay out this definition
11 and potentially argue in closing that's what he was doing. He
12 has not been accused of violating any of the NFA rules as part
13 of the charges against him.

14 THE COURT: Why don't we just take that up -- is this
15 witness come in this morning?

16 MS. BEDKE: Yes, Your Honor, but later this morning.
17 I would assume after the morning break.

18 THE COURT: We will hear from Mr. Murray on it.

19 MR. ALLEN: Yes, Your Honor.

20 THE COURT: So I guess it's a relevance objection.

21 MR. ALLEN: Relevance and 403, maybe constructive
22 amendment of indictment too.

23 MS. BEDKE: Your Honor, I apologize that we are
24 straggling in. I guess I understood that the jurors were
25 supposed to report at 8:45 because we were going to start at

1 9:00.

2 THE COURT: You're good.

3 MR. MURRAY: Your Honor, we just have a brief
4 preliminary matter.

5 THE COURT: Is this the pool operator thing?

6 MR. MURRAY: No. It's more clerical than that. When
7 I was reading off the exhibits that went in without objection
8 yesterday, according to the live feed I forgot to mention
9 Exhibit 38. It was part of the bulk exhibits. It actually
10 was in the pile. It was published. I just want to formally
11 move that in. There is no objection. It is my understanding
12 there is no objection.

13 MR. ALLEN: That's correct, Your Honor. No
14 objection.

15 THE COURT: All right.

16 (Government Exhibit 38 admitted.)

17 THE COURT: While we're waiting, Mr. Allen had sort
18 of a 403 relevance objection to your expert saying what a pool
19 operator was. And it's my understanding she is going to say
20 what a pool operator is or what constitutes that without
21 opining that Mr. DaCorta was one. Is that generally correct?

22 MR. MURRAY: Correct, Your Honor.

23 THE COURT: All right. Mr. Allen, I would rather
24 take this on the fly.

25 MR. ALLEN: That's fine, Your Honor.

1 THE COURT: What are we talking about? A swimming
2 pool? I am so green to this case that I'm just not real
3 comfortable making a ruling notwithstanding these very clear
4 openings, how it fits and all that. So let's just take it on
5 the fly. And if you have a problem with a contemporaneous
6 objection from the bar, then you can come sidebar.

7 MR. ALLEN: Yes, sir. That's actually going to be
8 Mr. Rosenthal. He will make that contemporaneous objection.
9 Thank you.

10 MR. MURRAY: Your Honor, I'll just add for the record
11 in our expert disclosure to which there is no Daubert motion
12 objection, we disclosed that she was going to be testifying
13 about the regulatory framework, what commodity pool operators
14 are and commodity interest pools are, why they are regulated.
15 So this isn't --

16 THE COURT: Ready? Bring them in.

17 And I think I understand the gist of it. Let's just
18 take it on the fly. Sometimes these things are not quite as
19 pointed and prejudicial in realtime as they appear. And maybe
20 it will be worse.

21 MR. ALLEN: That's usually my experience.

22 THE COURT: Mr. Houston, you excused Number 12?

23 THE COURTROOM DEPUTY: Yes, Your Honor.

24 MR. MURRAY: Your Honor, additionally yesterday I
25 think we forgot to invoke the rule, but we'd ask the Court to

DIRECT EXAMINATION OF PATTI KATTER

1 sequester the witnesses.

2 THE COURT: So the rule is invoked.

3 MR. ALLEN: Thank you, Your Honor.

4 (Jury escorted into the courtroom.)

5 THE COURT: Thank you, ladies and gentlemen.

6 Government, you can call your next witness, please.

7 MR. CHEE: Thank you, Your Honor. The government
8 calls to the stand Patti Katter.

9 THE COURTROOM DEPUTY: Raise your right hand, please.

10 (Witness sworn.)

11 THE COURTROOM DEPUTY: Can you state your full name
12 for the record.

13 THE WITNESS: Patti Renee Katter.

14 MR. CHEE: May I inquire, Your Honor?

15 THE COURT: Please.

16 **PATTI KATTER, CALLED BY THE GOVERNMENT, SWORN**

17 **DIRECT EXAMINATION**

18 BY MR. CHEE:

19 Q Good morning, ma'am. How are you today?

20 A I could be better.

21 Q Could you please speak up just a little bit because your
22 voice has to be picked up by the court reporter who is typing
23 everything as we speak.

24 A Yes.

25 Q Thank you. That's much better.

DIRECT EXAMINATION OF PATTI KATTER

1 May you please introduce yourself to the ladies and
2 gentlemen of the jury.

3 A My name is Patti Katter.

4 Q Ms. Katter, where do you live?

5 A I live in Lakewood Ranch, Florida.

6 Q How long have you lived there for?

7 A Since 2014.

8 Q Ms. Katter, where are you from originally?

9 A Originally I'm from Michigan, but my husband is a
10 military veteran so we traveled a lot. We moved to North
11 Carolina while he was in the Army. We lived there until he
12 was injured in combat and he had to medically retire. We
13 moved back to Michigan for a little while before moving here
14 to Florida in 2014.

15 Q How long was your husband serving in the military for?

16 A Well, that's actually a little complicated. When I first
17 met him, he was a Marine Corps veteran. He was just getting
18 out of the Marines. He had about a ten-year break in service.
19 He was a police officer in Michigan, and then he joined the
20 Army in 2005. He was injured in Iraq in 2007. And then they,
21 the Army, kept him in for medical treatment until 2010.

22 Q And then after 2010, did your husband retire from the
23 military?

24 A Yes. He had to retire. When he was injured, he suffered
25 moderate to severe brain injury which causes him to have

DIRECT EXAMINATION OF PATTI KATTER

1 seizures, and he has some other physical issues. He has had
2 several surgeries and things like that.

3 Q Is it more accurate to say a medical release or
4 retirement from the military?

5 A He was medically retired.

6 Q Ma'am, what do you do for work?

7 A I actually have a podcast. I have been interviewing
8 military veterans for several years. And then I turned it
9 into a business in 2019. I am also a military advocate and a
10 military family advocate for the Elizabeth Dole Foundation.

11 Q You mentioned earlier in your testimony a disability that
12 your husband suffered. Are you the caregiver for your
13 husband?

14 A Yes, I am.

15 Q Do you have any children?

16 A Yes, we do.

17 Q What does your husband do for work?

18 A He is unable to work.

19 Q And why is that?

20 A Because of his head injury he does have some short-term
21 memory problems. That's a significant factor. He does have
22 some other issues like seizures, and he has post traumatic
23 stress. Several of his friends were killed in war in front of
24 him, and he has some issues with that still.

25 Q Ma'am, would it be fair to say that you're the primary

DIRECT EXAMINATION OF PATTI KATTER

1 breadwinner in the family?

2 A Yes.

3 Q Ms. Katter, are you familiar with an individual named
4 Michael DaCorta?

5 A Yes.

6 Q Do you see Michael DaCorta in the courtroom here today?

7 A Yes.

8 Q May you please identify Michael DaCorta with an article
9 of clothing and point out where he is sitting?

10 A He's wearing a black suit with a striped tie.

11 MR. CHEE: May the record reflect that the witness
12 has identified the defendant?

13 THE COURT: Noted. Thank you.

14 BY MR. CHEE:

15 Q Ms. Katter, when was the first time that you met the
16 defendant?

17 A In 2017.

18 Q Could you tell us the context in which you met the
19 defendant?

20 A He was friends with some of our mutual friends that
21 introduced us to each other. So we became friends. He would
22 come to some of the get-togethers that other of our friends
23 had, and we met that way.

24 Q What types of social activities did you and your husband
25 partake in with Mr. DaCorta?

DIRECT EXAMINATION OF PATTI KATTER

1 A I believe there was like a Super Bowl possibly he had
2 attended, but the biggest one I remember was in 2017 he had
3 invited us to a Christmas party.

4 Q Before we get to the 2017 Christmas party, I would like
5 to ask just a few more questions. Is that okay?

6 A Yes.

7 Q Was your husband acquainted with the defendant?

8 A Yes.

9 Q In what way?

10 A They became really good friends playing pickleball.

11 Q Did you or your husband ever tell Mr. DaCorta about your
12 family backstory, about Mr. Katter's military service?

13 A Yes.

14 Q Did you tell Mr. DaCorta about Mr. Katter's disability?

15 A Yes.

16 Q What, if anything, did the defendant say about
17 Mr. Katter's service or disability?

18 A Kind of like thank you for your service. You know --
19 well, before we invested money with him, I went over it in
20 more detail.

21 Q You mentioned a 2017 Christmas party. Could you tell us
22 what the purpose of that event was for?

23 A It was for his current investors and people interested in
24 investing in his company.

25 Q Do you know the name of the defendant's company?

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1 A Oasis International.

2 Q How did you receive an invite to this 2017 event?

3 A How did I what?

4 Q How did you receive an invitation for the event?

5 A Just asked if we would go. I don't remember a formal
6 invitation exactly. Maybe an email invitation.

7 Q Where was the event held?

8 A It was at the Ritz Carlton.

9 Q Do you remember how many people were in attendance?

10 A There were a lot of people in attendance. I would think
11 a few hundred or a couple hundred. I don't know.

12 Q If you were to describe the event in a few words, what
13 would be your description?

14 A It was very eloquent. I have been to military balls. I
15 have been to the White House. And this was as extravagant if
16 not a lot more extravagant than that. There was a lot of
17 money at that event.

18 Q When was the first time that you learned about the
19 company named Oasis?

20 A We had talked about it a little bit in 2017, my husband
21 and I did when some of our friends had invested in the
22 company.

23 Q Did there come a time when you and your husband
24 considered investing in Oasis?

25 A Yes.

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1 Q Now, how did you -- let me rephrase that.

2 Did you in fact at some point invest money in Oasis?

3 A Yes.

4 Q How did you come to that decision?

5 A Well, after going to the Christmas party, we had thought
6 about it for a couple of months. And I had reached out to
7 Mike to see if we could reach out for more information. My
8 husband kept talking about it to me saying it sounded like a
9 really good investment. So we decided to meet with Mike in
10 2018, February.

11 Q When you say "Mike," do you mean the defendant?

12 A Yes, I do.

13 Q When did you meet with the defendant to discuss a
14 potential investment?

15 A It was in February of 2018.

16 Q Do you recall where you met?

17 A Yes.

18 Q Where was that?

19 A At his Longboat Key location.

20 Q Was that an office or what -- let me ask it a different
21 way.

22 What type of address was the Longboat Key location?

23 A It was an office, and it was on the water.

24 Q So what happened during that meeting with the defendant,
25 yourself, and your husband?

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1 A Well, we talked extensively about how important this
2 money was to me, and I wanted to invest in something that I
3 knew I wouldn't be able to lose the money because we were in a
4 really big pinch at the time. My husband is no longer able to
5 work and I'm the main breadwinner and we had college kids. So
6 that's kind of how it started, the conversation.

7 Q Ms. Katter, when you say "this money," what money are you
8 referring to?

9 A I had some money put aside. From when my husband was
10 wounded in war, he received something. It's a benefit from
11 the military. So it's part of a life insurance plan, but if
12 you are wounded in war, you can receive money. It's TSGLI is
13 the acronym for it. Ken received \$25,000 of that. And then
14 unfortunately in 2015, I lost both of my parents. They passed
15 away. And my dad had set aside a significant -- I say
16 significant. It was significant to us. It was an amount of
17 money that he set aside for me to be able to make our family's
18 life better for our kids. It wasn't that much though.

19 Q And how much money was that?

20 A The total for that was \$100,000 that my dad left me, but
21 we spent some of that on another place. So basically we had a
22 hundred thousand dollars from when my husband was wounded, the
23 25,000, and then the 75,000 was from when my dad passed away.

24 Q Now, before learning of Oasis and meeting Michael
25 DaCorta, what had you planned to use that \$100,000 for?

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1 A Well, we were hoping to find a good way to make money off
2 of it because my husband basically lives on disability and
3 it's my responsibility to bring in money. So I had debated
4 back and forth like with the stock market. I actually met
5 with some people from a company who sells stocks and decided
6 that's not a good idea. I waited over two years until we
7 became friends with Mike. And I thought that I could trust
8 him. I explained to him that, again, that this is a lot of
9 money to us. And so we decided to invest with Mike because he
10 was our friend. I didn't think --

11 Q Now, turning your attention back to that 2018 meeting,
12 what types of questions did you ask the defendant about Oasis?

13 A I asked Mike how -- I was actually really concerned about
14 losing money. I didn't want to lose money. Mike, how -- you
15 know, how strong is this? And he assured me that it was a
16 really strong investment, that there was virtually no way that
17 we would lose our money unless the entire global economy
18 collapsed.

19 Q What did the defendant tell you about how he was
20 investing the loan monies?

21 A Buying and selling foreign currency.

22 Q Did you ask the defendant about any risks associated with
23 your loan?

24 A Yes.

25 Q And what did the defendant say to that?

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1 A He said basically unless the entire global economy
2 crashed, my money would be really safe.

3 Q Were there any guarantees made to you with respect to the
4 performance of your loan monies?

5 A Yes.

6 Q What were they?

7 A He said that we would be making about a 12 percent
8 interest.

9 Q Now, did the defendant tell you anything about his own
10 personal background or experience in this conversation in 2018
11 at Longboat Key?

12 A Yes.

13 Q What did he tell you?

14 A He had extensive experience doing this.

15 Q Did that factor at all into your decision to provide a
16 loan or investment to Oasis?

17 A Yes.

18 Q Did you ask him about that trading experience or
19 investment experience that he explained to you? Did you ask
20 more questions about that?

21 A Not a whole lot of detail because I thought he was our
22 friend.

23 Q When you say "I thought he was our friend," what do you
24 mean?

25 A Well, I thought he was our friend. I thought we could

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1 trust him. You know, our family has been through a lot
2 between my husband being wounded in war and me losing my
3 parents. We finally had a good friend group. Mike was our
4 friend. He assured me he would take care of us.

5 Q How did the defendant characterize that \$100,000?

6 A As a loan.

7 Q And what did you understand that to mean?

8 A A loan with interest.

9 Q The interest would be -- what would be the interest that
10 you understood?

11 A So the interest would be -- it should be at least about
12 12 percent. It depended on the currencies, but it would be
13 never less than that amount.

14 Q What did the defendant tell you about your ability to
15 take out your loan monies from Oasis?

16 A He told us that we would usually need about a 30 days'
17 notice unless we really needed it. And because he was our
18 friend of course, he takes care of his friends.

19 Q Now, going back to the amount of the loan, how did you
20 and your husband settle on the \$100,000? Was there any
21 negotiation on that?

22 A Yes. When we walked in the office before we even talked
23 to Mike, my husband and I again talked to each other. We
24 talked to each other a lot about things. We had agreed
25 originally on 20 to \$25,000 before we talked to Mike that

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1 morning.

2 MR. CHEE: May the record reflect I'm showing defense
3 counsel a series of exhibits.

4 I'm asking permission from the Court to approach the
5 witness.

6 THE COURT: Of course.

7 MR. CHEE: May the record reflect I'm showing the
8 witness a series of exhibits.

9 BY MR. CHEE:

10 Q Ms. Katter, I have just handed you a stack of exhibits
11 comprising 200A, 200B, 200D, 200E, 200F, 200G, 200H, 200I,
12 200J, 200K, 200N, 200Q, 200O, 200P.

13 Ms. Katter, have you had an opportunity to review the
14 exhibits that I have previously described on the record?

15 A Yes.

16 Q Do you recognize those exhibits?

17 A Yes.

18 Q What are they?

19 A Well, there is a series of documents. One is the
20 promissory note and loan agreement that we had, that he gave
21 me after the day we met. My funds transfer that I wired him
22 money, emails from him and -- well, to him and from his
23 company.

24 Q Thank you, ma'am.

25 Are the exhibits that I had provided to you, those

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1 are fair and accurate depictions of what you had seen before?

2 A Yes.

3 Q And receiving from Oasis?

4 A Yes.

5 MR. CHEE: At this time, Your Honor, the government
6 would move into evidence Exhibits 200A, B, D, E, F, G, H, I,
7 J, K, N, Q, O, and P.

8 THE COURT: All right. They'll be admitted.

9 MS. IRVIN: No objection, Your Honor.

10 (Government Exhibits 200A-200B, 200D-200K, 200N-200Q
11 admitted.)

12 BY MR. CHEE:

13 Q Ms. Katter, I'd like you to turn to Exhibit 200A.

14 MR. CHEE: May I publish this document, Your Honor?

15 BY MR. CHEE:

16 Q Ms. Katter, what is Exhibit 200A?

17 A It is the promissory note and loan agreement.

18 Q I would like to turn your attention to the first
19 paragraph on the first page of Exhibit 200A. What is the
20 amount of the loan, the loan amount?

21 A \$100,000.

22 Q And whose name appears in the sentences before \$100,000?

23 A My husband and my name.

24 Q I would like you to turn to page 3 of Exhibit 200A. Look
25 at the very bottom. And whose name is signed at the bottom of

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1 200A, page 3?

2 A Michael DaCorta.

3 Q And what is the title under Michael DaCorta's name?

4 A Chief executive officer.

5 Q Now, turning back to page 1 of Exhibit 200A, I would like

6 to turn your attention to the first paragraph, the heading

7 "Interest." And what is the interest amount noted on

8 Exhibit 200A?

9 A Twelve percent.

10 Q What, if anything, did the defendant tell you about that

11 12 percent interest rate?

12 A That we would be guaranteed to receive 12 percent at

13 least, if not greater.

14 Q Now, how did you transfer the \$100,000 loan to Oasis and

15 the defendant?

16 A I wired the money.

17 Q I would like to turn your attention to 200D. Before we

18 publish this exhibit, please turn your attention to page 3 of

19 Exhibit 200D to the line item on 220. Do you see your name on

20 that document?

21 A Yes.

22 MR. CHEE: May I please publish?

23 BY MR. CHEE:

24 Q Is that your name on Exhibit 200D, page 3?

25 A Yes.

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1 Q Is the amount of the loan accurate?

2 A Yes.

3 Q Did you receive any loan paperwork or documentation
4 showing the transfer of those funds to Oasis?

5 A Not from Mike. My bank, I had a receipt for the hundred
6 thousand dollars.

7 Q Did you receive anything from Oasis or the defendant?

8 A Not originally.

9 Q Please turn your attention to Exhibit 200B. I would like
10 to turn your attention to page 2. What's the date of the
11 email that you sent that's shown on page 2 of Exhibit 200B?

12 A February 24, 2018.

13 Q And who is the recipient?

14 A Gil, Gil Wilson.

15 Q Who is Gil Wilson?

16 A It was Michael's assistant.

17 Q I'd like you to read the paragraph of text beginning
18 with, "Hi, Gil." Could you please read that into the record?

19 A "Hi, Gil: After putting our investment in with Oasis, I
20 have been a tiny bit nervous. I've never really given anyone
21 that type of money without any type of contract or agreement.
22 Literally just wiring our money someplace without anything to
23 show for is a little unsettling if I think about it too long.
24 I know Ian and Melissa Howard have been very happy with their
25 return, and there are others very happy. Is it normal not to

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1 have been given any type of paperwork? I mean, Mike really
2 seems amazing, and that's why we went ahead with it on the
3 trust system. I'd love some input to best understand if this
4 is normal. I know I should have asked this last week. I
5 didn't really second-guess it. I'm not really second-guessing
6 it now either but would just like to be better educated on how
7 it works to put my mind at ease a little more. Thank you,
8 Patti Katter," and it has my known phone number.

9 Q Ms. Katter, why did you write in the email shown on
10 Exhibit 200B that you were a little bit nervous or a bit
11 nervous?

12 A I started getting nervous. That was our savings, that
13 money. That was our savings.

14 Q What did you mean when you wrote in the email, "We went
15 ahead with the trust system"?

16 A That Mike was our friend.

17 Q Now, did you eventually receive a copy of the loan
18 agreement and promissory note?

19 A Yes.

20 Q Ms. Katter, were you able to monitor the status of your
21 loan?

22 A Yes.

23 Q How were you able to do that?

24 A I was given login information to a website that showed
25 where we thought our money was.

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1 Q Ms. Katter, I would like you to turn your attention to
2 Exhibit 200E.

3 MR. CHEE: May I please publish this document?

4 THE COURT: Counsel, as long as it is admitted, you
5 can go right ahead and publish it.

6 MR. CHEE: Yes, sir.

7 BY MR. CHEE:

8 Q Ms. Katter, could you please read your email dated
9 March 16, 2018, to Gil Wilson.

10 A March 26?

11 Q March 26, yes, ma'am. I apologize.

12 A "Hi, Patti: The program that Oasis uses is a back office
13 for broker deals and hedge funds. I do not know why it shows
14 a decreasing number. We are currently looking into and adding
15 a new back office. Hopefully soon it will be implemented.
16 Here is what I got from our internal department. As of the
17 end of February, Patti has a loan to OIG, \$101,002.06. And
18 currently her special interest account, 25 percent transaction
19 fees, she has \$1,635.74 through Friday, March 23. Best
20 regards, Gil Wilson."

21 Q And I'm sorry, ma'am. I actually asked the wrong
22 question. I meant to ask you to read your email to Gil
23 Wilson. That's fine. We can just flip it around. So can you
24 please read your email at the bottom of Exhibit 200E starting
25 with, "Hi, Gil."

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1 A "Hi, Gil: I'm wondering what the account summary stands
2 for in my online account. I know we are supposed to disregard
3 this. However, it drives me crazy seeing that the number
4 continues to go down from 100K to 92K. So I thought I'd ask
5 what it means. Thank you."

6 Q Now, Ms. Katter, why did you write that email in
7 Exhibit 200E to Gil Wilson?

8 A When I logged on the website that they had set up, it
9 showed my money going from 100,000 down to 92,000. And
10 honestly, you can ask to get your money out, and I probably
11 would have done it if that was going down.

12 Q Now, what was your reaction after reading Gil Wilson's
13 response that you had previously read into the record?

14 A So the one where he actually said, well, that basically
15 what I interpreted was a mistake, and the loan -- my loan was
16 actually gaining interest. It gained \$1,635.74.

17 Q What effect at all did that have in your confidence of
18 Michael DaCorta, the defendant, and the Oasis loan?

19 A I started to feel a lot of relief. My money was going
20 up.

21 Q Please turn your attention to 200F. It's a one-page
22 document. I would like you to read your email to Gil Wilson
23 dated May 7, 2018, at the bottom of 200F.

24 A "Hi, Gil: I can't remember if Ken and I listed our kids
25 as beneficiaries if something were to happen to us. Getting

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1 estate stuff in order. Thanks, Patti Katter."

2 Q Why did you write this email to Gil Wilson?

3 A My husband has a lot of health issues. And honestly a
4 lot of our friends who were in combat passed away. I am
5 heading towards 50. I know it's not that old, but at the same
6 time if anything happened to my husband or I, we want to make
7 sure that our kids are taken care of, which my dad would have
8 wanted us to do.

9 Q And what was Gil Wilson's response, which is in the top
10 of Exhibit 200F?

11 A "Hi, Patti: Good morning. I hope you are all doing
12 well. No, the promissory note and loan agreement is made out
13 jointly to you and Ken. There is no specific beneficiary
14 designation like an IRA or insurance contract. While getting
15 your estate in order, just make sure you add the promissory
16 note and loan agreement to your estate plan, i.e., your will
17 or trust. Your estate planning adviser should know what is
18 best for your situation. Best regards, Gil Wilson."

19 Q What was your reaction after reading Gil Wilson's
20 response?

21 A I made sure that all of our life insurance plans and
22 everything were taken care of for our kids. And I felt -- you
23 know, I started doing that basically.

24 Q I would like to turn your attention now to Exhibit 200G.
25 It's a two-page document. There appears to be a spreadsheet

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1 on the second page. Now, who is that email addressed to in
2 200G, page 1?

3 A Myself.

4 Q And who is it from?

5 A Joseph Paniagua. And it's copied to Mike DaCorta and Gil
6 Wilson.

7 Q Please turn your attention to the second page of
8 Exhibit 200G. And could you explain what this is?

9 A Yes. This is what it looked like when I went to log in
10 to the Internet website provided. It shows where my money is
11 and where the interest is and how much the interest is.

12 Q Let me just ask a clarifying question. Is this a
13 statement that you received by email from Joseph Paniagua?

14 A Yes, it is.

15 Q Did you receive periodic updates to show what the loan
16 statement or the loan balance was for your loan?

17 A Yes, I did.

18 Q Is this an example of such a statement?

19 A Yes.

20 Q Please look at the ending balances for February, March,
21 and April of 2018.

22 A Wait a second. I wanted to make sure. I'm sorry.

23 Q The top sort of row there.

24 A Yes.

25 Q Could you please look at the columns under February 18,

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1 March 18, and April 18, and then look at the ending balances.

2 A Yes.

3 Q What do the loan balances show at the end of each of
4 those months?

5 A My money kept going up in value.

6 Q Now, how did you interpret those figures when you
7 received that loan statement in Exhibit 200G?

8 A A lot of relief.

9 Q Why was it relief?

10 A Because as mentioned before, my husband is a disabled
11 veteran and unable to work. So many people would be able to
12 receive bonuses from work and more money from work and
13 promotions, and he is not able to do that since he was wounded
14 back in 2007. And it's on my shoulders to have an income come
15 in and have kids that are adult children who need help with
16 college and things like that, so.

17 Q How did the loan balances and the ending balances affect
18 your confidence in Oasis and the defendant?

19 A It made me feel really good about it.

20 Q Did you believe that your loan monies were being handled
21 correctly --

22 A Yes.

23 Q -- after the statement?

24 A Yes.

25 Q Please turn your attention to Exhibit 200H. Could you

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1 please read the subject of the email in 200H?

2 A "July bonus month."

3 Q Would you please read the first paragraph after, "To
4 all"?

5 A "As an appreciation for your patience as we work to
6 enhance the back office product, it is my pleasure to announce
7 we will be paying all lenders double for the month of July.
8 Therefore, from July 1 until July 31, you will be able to
9 share two full basis points or 50 percent of the spread we
10 capture."

11 Q Now, ma'am, what was your reaction after reading the
12 first paragraph that you just read into the record when you
13 received this email?

14 A I was actually starting to get really excited about this.

15 Q Can you please read the second paragraph aloud?

16 A "Although the volume has been a bit slow, yesterday and
17 today seem like to be back to normal with 1.1 bil yesterday
18 and 1.85 bil done as I write this email so far today. I
19 expect after both the fed meeting" -- it says, "fed meeting
20 yesterday and the ECB, today markets will be much more active
21 as traders and investors digest the results."

22 Q How did this paragraph affect your belief and confidence
23 in the defendant's ability to handle your loan monies?

24 A I felt good.

25 Q After reading the email in Exhibit 200H, did you have any

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1 thoughts about pulling your loan monies out of Oasis?

2 A No.

3 Q Please turn your attention to Exhibit 200I. Now, I would
4 like you to go all the way down to the second to last
5 paragraph starting with, "My outlook." Could you please read
6 that into the record?

7 A "My outlook is for our trading to pick up in volume
8 within the next two weeks and to be at a high level for the
9 remainder of the year."

10 Q What reaction did you have after receiving this email?

11 A Good.

12 Q Do you care to elaborate?

13 A Yes. So basically he was saying that the money that we
14 are all invested in is going to be going up. It is a high
15 level. It should be up the rest of the year.

16 Q Now, did you at any point during the duration of having
17 your loan monies in Oasis consider withdrawing any funds?

18 A At the beginning I was really nervous. By this point,
19 no.

20 Q Please turn your attention to Exhibit 200J. Generally,
21 ma'am, what's the subject -- actually, what is the subject
22 line of this email in 200J?

23 A "OIG Withdrawal Policy."

24 Q Now, did you read this email when you received it?

25 A Yes.

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1 Q What was your reaction after reading the withdrawal
2 policy that's enumerated, that's listed in 200J?

3 A I wasn't really concerned with it, to be honest, because
4 when we had that meeting at Longboat Key with Mike, he had
5 said if there was any emergencies, we could basically take our
6 money out early if we had to. So I really didn't pay too much
7 attention to this. At that point I thought, you know, Mike
8 was really good for his word.

9 Q Did the mere fact that Oasis had a withdrawal policy have
10 any affect on your confidence in Oasis and the defendant?

11 A Not really. I also knew it was just kind of reiterating
12 the fact to me that if I needed the money, I could get it back
13 out.

14 Q And why was that important to you that you had the
15 ability to take out your money, your loan monies?

16 A Well, if there is an emergency situation at home, you
17 know, that's a big thing. I have to feed my family still.

18 Q I would like to turn your attention to Exhibit 200K.
19 Looking at the bottom of 200K, it's a one-page document. Who
20 is this -- who is the email written by or sent by -- or who
21 signed the email? Excuse me.

22 A Michael DaCorta.

23 Q Could you please read the first paragraph of 200K into
24 the record?

25 A "OIG is once again planning to celebrate another

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1 successful year. As we all begin to get ready for our big
2 bash on December 1, we also wanted to let you know that all
3 funds in our program by November 30 will earn a minimum of
4 1.5 percent for the month of December."

5 Q What reaction did you have after reading the first
6 paragraph of this email?

7 A Well, I was really thankful I invested a hundred thousand
8 dollars because otherwise I don't think that we would have
9 been invited to this, first of all.

10 Q What's the basis of that belief that you would not have
11 been invited but for investing \$100,000 in loan monies?

12 A Originally I was going to invest 20 to 25,000, but the
13 day on Longboat Key Mike had mentioned that we wouldn't be
14 able to qualify for the higher interest loan and we wouldn't
15 be invited to the bigger events.

16 Q Could you please read the second paragraph of
17 Exhibit 200K?

18 A "That is a bonus of 0.5 percent as a thank you for being
19 part of our very special group. We appreciate all of you very
20 much and understand some cannot travel here to celebrate with
21 us, so we are delivering a special holiday gift to all."

22 Q Now, Ms. Katter, did you attend the holiday party or
23 Christmas party described in 200K?

24 A Yes.

25 Q Did your husband go as well?

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1 A Yes.

2 Q Would you please describe this Christmas party to us?

3 A It was another really elaborate, big bash. They had live
4 music. Mike was up on stage talking, you know, thanking
5 everybody for being there. Everybody cheered for him like he
6 was a big rock star at that point.

7 Q Where was that event held?

8 A At the Ritz-Carlton in Sarasota.

9 Q And would you be able to put a figure on the number of
10 people that were in attendance?

11 A It was again a big event, a couple hundred people or so.
12 There were big ice sculptures there too. When you walk into
13 the door, just imagine you're at the Ritz, right? Big ice
14 sculptures, tables with appetizers before the meal. You go
15 in, sit down at these big red tables, catered meal. You know,
16 nice.

17 Q I would like to turn your attention to 200N, as in
18 November. It's a three-page document. I would like to turn
19 your attention to the third paragraph starting with the lines,
20 "In addition." And could you please read that paragraph?

21 A "In addition, we are in the midst of putting an entire
22 lender services team into place who will be able to get the
23 answers you need when you need them. This comes with a
24 wonderful side benefit. Since Mike and Joe will no longer be
25 fielding individual calls or responding to inquiries, they

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1 will be free to focus on enhancing the profitability of your
2 loan."

3 Q Now, what reaction did you have after reading that
4 paragraph and the email when you received it?

5 A Oh, great, this company is really growing.

6 Q Please turn your attention to Exhibit 200P. It is a
7 one-page exhibit. I would like you to turn your attention to
8 the fourth paragraph starting with, "We currently," and would
9 you please read that paragraph into the record?

10 A "We currently have markets on edge and paralyzed due to
11 the uncertainty regarding fed policy, awaiting the Mueller
12 report, ongoing Brexit issues, French protests, China trade
13 issues, North Korea negotiations, India/Pakistan tensions,
14 Russian military posture and rhetoric just to name a few.
15 When that level of uncertainty is coupled with very
16 disappointing economic growth around the world, especially in
17 China and Europe, it is easy to see that something will give
18 one way or the other very soon. I expect March to be a much
19 more active month. Stay tuned."

20 Q What is the date that you received this email?

21 A February 28, 2019.

22 Q What was your reaction, Ms. Katter, upon receiving and
23 reading this email?

24 A It was good because at the beginning of the email it did
25 mention that we are still guaranteed a minimum of the

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1 1 percent interest for that month.

2 Q And you're citing to the second paragraph of
3 Exhibit 200P?

4 A Right.

5 Q What effect, if any, did that have on your confidence in
6 Oasis and in the defendant to properly handle your monies?

7 A Well, by that time Mike had been really active at us
8 making money it looked like every time I checked the computer.
9 So we were still really confident. He closed out saying that
10 he expected March to be a much more active month.

11 Q Please turn to Exhibit 200Q. There are several pages to
12 this document. Can you please turn to page 6. Whose name is
13 listed -- I'm sorry. Did you have the opportunity to turn to
14 page 6, Ms. Katter?

15 A I thought this was page 6.

16 Q I will give you what's called a Bates number. It's
17 Invest-16830 on the right of Exhibit 200Q.

18 A Okay. Yes.

19 Q Ms. Katter, whose name is listed on that page there?

20 A Mine.

21 Q The contact last name, is that your last name there?

22 A Yes.

23 Q Is that your phone number there as well?

24 A Yes.

25 Q Now, please go back to the first page. And please look

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1 at the column marked "Daily Interest at 1 Percent." That's
2 the fourth column from the left.

3 A Yes.

4 Q Upon reviewing this document, did you have an
5 understanding as to whether your account was gaining interest?

6 A No. On the first line it shows we gained 39.92 percent
7 interest. That's a good interest.

8 Q Were you able to log in to the Oasis back office system
9 and check the status of your loan?

10 A Yes.

11 Q How many times were you able to do that or did you do
12 that?

13 A I did it a lot.

14 Q Did the interest figures, the accrual figures that are
15 shown in Exhibit 200Q ever have any effect on your belief in
16 the legitimacy or the performance of Oasis?

17 A I thought we were doing great.

18 Q Now Ms. Katter, how did you understand that your loan
19 monies were to be handled?

20 A I just figured that Mike was trading and buying, selling
21 currencies for us. He mentioned on the day we met with him in
22 Longboat Key that they were doing it around the clock, 24
23 hours a day, 7 days a week.

24 Q Would you have provided a loan in that amount of
25 \$100,000, had you known that monies would be spent on

DIRECT EXAMINATION OF PATTI KATTER

1 properties or cars?

2 A Never in a million years.

3 Q Or invested in other businesses?

4 A Never.

5 Q Ms. Katter, how did the loss of the loan amount that you
6 described affect you and your family?

7 A Well, I still am trying to make up for lost time. I was
8 trying to make up for lost time when I met Mike. When my
9 husband was wounded in 2007, it was already difficult. Then
10 he retired and we discovered that our income was significantly
11 less than what he would have made in the military. I spent
12 years with Ken in hospitals and doctor appointments as did my
13 kids. I took them out and home-schooled them in doctors'
14 offices and hospitals. I didn't have time to work full-time
15 while I was trying to take care of my husband. I didn't have
16 time to save money for college for my kids. I didn't have
17 time to try to make money for weddings, for cars, for my
18 children to help them with the little things. There were
19 times that we spent living paycheck to paycheck. And I
20 finally -- you know, after my dad passed away, we had this
21 little cushion that was taken from us. And still to this day
22 I'm trying to make up for time.

23 Q Ms. Katter, did you receive any of the loan moneys that
24 you provided to Oasis back?

25 A No.

CROSS-EXAMINATION OF PATTI KATTER

1 MR. CHEE: May I have just a brief moment?

2 Thank you for your time, ma'am. No further
3 questions.

4 THE COURT: All right. Cross-examination, please.

5 **CROSS-EXAMINATION**

6 BY MS. IRVIN:

7 Q Good morning, Mrs. Katter.

8 A Good morning.

9 Q You said that the money that you invested was a
10 combination of money that you and your husband had in savings?

11 A Yes.

12 Q And it was also money that was left to you by your
13 father?

14 A Yes.

15 Q For these reasons, you said this money had an emotional
16 attachment for you, and we can see that. That's why you were
17 particularly thoughtful about where you were going to invest;
18 is that correct?

19 A Yes.

20 Q And you I think mentioned in your direct testimony that
21 you had talked to other people about other investment
22 opportunities and decided not to go with those opportunities.
23 In your email you mentioned some friends, the Howards who told
24 you about OIG; is that correct?

25 A Yes.

CROSS-EXAMINATION OF PATTI KATTER

1 Q And as far as you know, their investment was doing well?

2 A Yes.

3 Q It sounds like you had other friends in your friend group
4 that were also investors in OIG?

5 A Yes.

6 Q And as far as your understanding, their investments were
7 doing well?

8 A Yes.

9 Q So in about 2017 it happened that you were invited to the
10 Christmas party that was hosted by OIG?

11 A Yes. Mike invited me and Ken.

12 Q Say that again. I'm sorry.

13 A Yes. Mike invited my husband and I.

14 Q And he invited you as friends. You were not lenders or
15 investors at the time, correct?

16 A Correct.

17 Q At that 2017 Christmas party, you met other people who
18 worked for OIG?

19 A I don't really remember any of them.

20 Q Okay. You met other investors and other lenders at the
21 OIG Christmas party?

22 A None that I remember. We sat at the table with our
23 friends.

24 Q So at the 2017 Christmas party, you stayed with your
25 friend group who were investors at OIG?

CROSS-EXAMINATION OF PATTI KATTER

1 A Yes.

2 Q After these interactions with the Howards and with your
3 friends, it sounds like you and your husband had some
4 discussions about getting involved in OIG; is that correct?

5 A Right. My father and mother both passed away in 2015.
6 So I had been hanging on to the majority of that money for a
7 while since 2007 with my husband being wounded.

8 Q So in discussing how you were going to invest that money,
9 you gave Michael DaCorta a call to meet with him at his
10 office; is that correct?

11 A Yes. He had mentioned to us at the Christmas party if we
12 were interested to give him a call.

13 Q Okay. Could you do me a favor? I'm having trouble
14 hearing you.

15 A Yes.

16 Q If you could keep your voice up a bit.

17 A Yes. At the Christmas party, he did mention to me if we
18 were interested to give him a call.

19 Q Okay. And so you and your husband, you give Mr. DaCorta
20 a call; is that correct?

21 A Yes.

22 Q And then you and your husband meet with Mr. DaCorta at
23 his office?

24 A Yes.

25 Q When you meet with him at the office, you explained to

CROSS-EXAMINATION OF PATTI KATTER

1 him your husband's military service?

2 A Yes.

3 Q Explained to him your husband's military disabilities?

4 A Yes.

5 Q You explained to him the importance of this money that
6 you want to invest in OIG?

7 A Yes.

8 Q And Mr. DaCorta then explains to you how the program
9 works?

10 A He said that he basically buys and sells foreign
11 currency, yes.

12 Q And when he uses the term "foreign currency," did he use
13 the term forex?

14 A No.

15 Q So he very plainly explained to you we're involved in
16 foreign currency trading?

17 A Yes.

18 Q He explained that the way that they make money is through
19 something called the spread?

20 A I don't remember that, no.

21 Q He explained to you that the way they are able to make
22 money for lenders is through the volume of foreign currency
23 trading?

24 A Yes.

25 Q And he explained that if you are interested in this

CROSS-EXAMINATION OF PATTI KATTER

1 program, then you would be loaning this money to OIG; is that
2 correct?

3 A Yes.

4 Q And there is a promissory note that the government showed
5 to you and I think that you have in front of you. And it
6 explains the terms of that loan to OIG. Do you agree with
7 that?

8 A I did not receive that the day that I wired the money to
9 him. I had to ask him for that. And I was concerned about
10 the entire process. And he assured me we would not lose our
11 money unless there was an entire global economy collapse
12 because he was trading currencies in other countries.

13 Q Let's get back to the promissory note just so I'm clear
14 about how you received it. In the email that we were able to
15 review already, the email that you sent to Gil Wilson said
16 that you had not received the promissory note; is that
17 correct?

18 A Yes.

19 Q And once you emailed Gil Wilson, you actually received
20 the promissory note within a week from John Paniagua; is that
21 correct?

22 A Yes.

23 Q In that promissory note, it did set out what the terms of
24 the loan agreements were; is that correct?

25 A Yes.

CROSS-EXAMINATION OF PATTI KATTER

1 Q If the government could pull up Exhibit 200A for me,
2 please. Thank you.

3 A Can I interject something here?

4 Q Pardon me just one second.

5 Ma'am, are you able to see paragraph Number 1 of the
6 promissory note that you have in front of you that is
7 Government's Exhibit 200A?

8 A Yes. The interest --

9 THE COURT: The witness said she wanted to interject
10 something. If you do, you may.

11 THE WITNESS: Thank you.

12 A Again, I did not receive this letter the same day I was
13 in to see Mike. However, Mike did assure me that we wouldn't
14 have to worry about a lot of any of the legalities because we
15 are friends. And if we needed anything, we could come to him
16 and get our money out. So I wasn't focused solely on this
17 paper.

18 BY MS. IRVIN:

19 Q Understood. So during the meeting you weren't focused on
20 the paper; is that correct?

21 A We didn't have any paperwork.

22 Q But after the meeting when you recognized that you didn't
23 have the paperwork, then that's when you emailed Gil Wilson?

24 A Yes.

25 Q And then through Gil Wilson's email, John Paniagua did

CROSS-EXAMINATION OF PATTI KATTER

1 give you a copy of this agreement?

2 A Yes.

3 Q In this agreement, if you will look at paragraph Number 1
4 where it says "Interest," I wanted to go back to something you
5 testified to. You stated that your understanding was that you
6 had received 12 percent interest per year on the loan amount;
7 is that correct?

8 A Correct.

9 Q Now, there is another section that I wanted to draw your
10 attention to, and that is Subsection B. Will you read what
11 Subsection B says, just that first line up to, "Provided"?

12 A "Twenty-five of the transaction fees, as herein defined,
13 provided, that upon the occurrence of an event of default, as
14 herein after defined."

15 Q I'm going to stop right there because I wanted to focus
16 on the 25 percent, but I appreciate that. The 25 percent of
17 the transaction fees meant that you would get the greater of
18 either your 12 percent per year or you get 25 percent of the
19 spread, correct?

20 A Yes, but Mike specifically told us not to worry about it.

21 Q Okay. And I understand that. What I wanted to make sure
22 that you understood from reading this loan agreement, this
23 promissory loan, is that the agreement was that you would get
24 12 percent per year on your loan; is that correct? Your
25 understanding of it was that you would get 12 percent of your

CROSS-EXAMINATION OF PATTI KATTER

1 loan per year as interest?

2 A At least.

3 Q Correct. And the second part of that is or 25 percent of
4 the spread, whichever was greater. Was that your
5 understanding?

6 A I didn't actually try to understand it, to be honest. I
7 took Mike's word.

8 Q Okay.

9 A And with everything else, the back office, when I could
10 log in to it, you could see our interest rising. So I
11 didn't -- I wasn't nervous about this.

12 Q Okay. Fair enough. Thank you.

13 You mentioned that you didn't meet any of the
14 employees at OIG at the Christmas party, but later you did
15 have the opportunity to meet a couple of those employees; is
16 that correct?

17 A I met with Gil. The day that I went in to see Mike, I
18 met one, but we were mainly talking to Mike. The other guy
19 was just kind of in and out because they just bought a
20 building and it was in disarray, and they were scrambling
21 around to fix it all up.

22 Q Let me back up because I didn't follow all of it. So you
23 did meet Gil Wilson?

24 A Very briefly.

25 Q And you did meet John Paniagua -- excuse me -- Joe

CROSS-EXAMINATION OF PATTI KATTER

1 Paniagua?

2 A Honestly if I didn't see their pictures, I don't remember
3 who's who.

4 Q Do you recall meeting a female employee at OIG?

5 A No.

6 Q Okay. Do you recall going to the OIG offices to set up
7 your account with OIG online?

8 A No, I did not do that.

9 Q Okay. After deciding that were going to invest money,
10 you testified that you wired money from your account to Oasis.
11 And that was on February 20 of 2018; is that correct?

12 A Yes.

13 Q I want to fast forward a bit to December of 2018. I
14 believe you may have received an email from Joe Paniagua
15 letting you know that they were updating the back office
16 website?

17 A I don't remember what month it was. But, yes, they sent
18 me an email saying that they were updating the website.

19 Q As part of the updating the website, they were also
20 updating their loan program. Do you recall that?

21 A Not off the top of my head.

22 Q Okay. If you wanted to continue to participate in the
23 loan program, then you would have to go through a new process
24 of setting up basically a new account. And that new account
25 would be a part of this updated back office. Do you recall

CROSS-EXAMINATION OF PATTI KATTER

1 that?

2 A They did not tell me that. They just said they were
3 working on a new website, that I recall. I don't recall that.
4 They were working on a new website, and they just needed more
5 information from me so that I could log in and like create a
6 new password and username for their new website.

7 Q You recall going through the process of creating that new
8 website -- that information, I should say, for that new back
9 office account?

10 A The only thing that was different that stuck out in my
11 head is somebody did tell me that during the new website they
12 needed a copy of our passports. So I thought that was weird,
13 but other than that, the only thing that I really had to do
14 was log in. We did the same thing. Put our Social Security
15 number in, I believe, update our -- like make sure our home
16 address is still the same, just like you would with any new
17 website.

18 Q Thank you.

19 MS. IRVIN: May I have a moment, Your Honor?

20 THE COURT: Of course.

21 MS. IRVIN: Your Honor, may I approach the witness?

22 THE COURT: Of course.

23 MS. IRVIN: Thank you.

24 BY MS. IRVIN:

25 Q Mrs. Katter, if you would please look at the document

CROSS-EXAMINATION OF PATTI KATTER

1 that I just passed to you. It should look somewhat familiar
2 but, do you recognize it?

3 A I don't recognize this off the top of my head because on
4 the front page, I feel like this would stick out and I would
5 have emailed Mike about it. It says the loan amount zero
6 dollars, and that would have freaked me out, to be honest.

7 Q So if you can look at and compare it, I think you have in
8 front of you Government's Exhibit 200Q.

9 A 200 what?

10 Q Q.

11 A Okay.

12 Q If you could turn to the page listed on the bottom as
13 Invest-16830.

14 A Okay.

15 Q This was a document that the government has already
16 reviewed with you. Do you recognize this particular page in
17 200Q? And if you don't, that's okay.

18 A Yes, I sort of do. So I remember just walking through
19 the process. Where it says primary applicant, I do remember
20 like why I had to fill everything out again, and they just
21 basically said it's because it's a new website. It's just a
22 technicality.

23 Q And then looking at a document I put in front of you,
24 does that help you -- if you look through each of the
25 payables, does that help you recall providing this information

CROSS-EXAMINATION OF PATTI KATTER

1 so that you could have an updated account on the new back
2 office website?

3 A Yes. I just figured it was just like a regular website.
4 You have to fill in the blanks before you can access your own
5 information.

6 Q So do you recognize this document now that you have had a
7 chance to review it?

8 A Not exactly, but it makes sense to me that I would have
9 filled it out. It just looks like all of my personal
10 information. Oh, wait, yes, I do because I see the signature,
11 and I do remember having to fill -- I didn't have a signature
12 pad. That's why I remember it.

13 Q And so that we are clear for the record, you do recognize
14 it. What do you recognize this document to be, this packet to
15 be of?

16 A I recognize it as needing to put my information into the
17 new website because they updated the new site. The other one
18 was a not very fancy website, and I remember this being a
19 really fancy website. It looked really great, and I loved it
20 because I could access all of my information. My numbers were
21 really clear on this website. So I just figured it was a
22 technicality in updates because the other one was clunky and
23 so they were finally refurbishing this one to make it nice.

24 Q Thank you, ma'am.

25 MS. IRVIN: At this time I would like to introduce

CROSS-EXAMINATION OF PATTI KATTER

1 Exhibit 225, Your Honor.

2 THE COURT: And this is not in 200Q?

3 MS. IRVIN: No, Your Honor.

4 THE COURT: D225, any objection?

5 MR. CHEE: No objection, Your Honor.

6 THE COURT: It will be admitted.

7 (Defendant Exhibit 225 admitted.)

8 MS. IRVIN: If the courtroom deputy could switch over
9 to our trial director.

10 THE COURTROOM DEPUTY: It's switched.

11 BY MS. IRVIN:

12 Q Ma'am, if you could keep that same document in front of
13 you or you can look at the screen.

14 A The 225?

15 Q The 225, yes, ma'am.

16 May we have the Elmo and I will just use the Elmo?

17 Ma'am, are you able to see the first page?

18 A Yes.

19 Q On the first page, can you tell me what you recognize the
20 IB ID number to be?

21 A What is that?

22 Q The IB number, do you recognize that number?

23 A IB?

24 Q IB.

25 A Not off the top of my head. That's the one underneath

CROSS-EXAMINATION OF PATTI KATTER

1 the username.

2 Q Where my finger is pointed where the IB number is, do you
3 see that?

4 A I do not recognize that number off the top of my head.

5 Q Not a problem. And then do you recognize the loan number
6 that is underneath it?

7 A No. I never really looked at my loan number before
8 really.

9 Q That's okay. How about your name is listed where it says
10 "Katter"?

11 A Yes.

12 Q And then your first name is listed where it says "Patti"?

13 A Yes.

14 Q It has your phone number listed?

15 A Yes.

16 Q And zero on the loan amount. And I think you said that
17 makes you nervous?

18 A Yes.

19 Q At this point this is you filling out information to just
20 initiate the new account and the new version of the back
21 office; is that correct?

22 A Yeah. Actually somebody was walking me through this
23 process on the phone and told me not to worry about some of
24 it.

25 Q There is a security code that's listed. We are going to

CROSS-EXAMINATION OF PATTI KATTER

1 flip to the second page. It has other personal information on
2 the second page including your date of birth, and you
3 mentioned the passport ID. Do you recall that there were
4 emails that were sent concerning Oasis's concern about
5 identity theft and that was the reason why they asked for
6 particular photo identification?

7 A I don't remember the emails exactly because there was a
8 lady -- whoever sent the email, it was a lady. I called her
9 instead of like -- I decided not to freak out about it because
10 at the beginning I was a little nervous of the investment, and
11 I thought I will just call this person and see why they need
12 our passport information. And she told me -- shall I tell you
13 why they told me they needed the passport information?

14 Q Sure.

15 A She said because since they were trading foreign
16 currencies, they now need it. Because they are doing so well,
17 they are making so much money, they need to make sure they
18 have all of their records straight.

19 Q If you could please turn to the page on the bottom right.
20 It says AWS-000595.

21 A Yes.

22 Q And it shows your estimated annual income at the time was
23 \$54,000.

24 A Yes.

25 Q It shows your net worth is \$500,000?

CROSS-EXAMINATION OF PATTI KATTER

1 A That includes if we sold our home, yes.

2 Q And the risk capital that's listed there is \$120,000?

3 A Yes.

4 Q It shows retired. And I'm assuming that means that your
5 husband's retired?

6 A Yes.

7 Q It shows that you were employed at the time?

8 A Yes.

9 Q You are employed as a receptionist at Sarasota Facial
10 Aesthetics?

11 A Yes. I could only work part-time because of going to his
12 medical appointments with him.

13 Q And at the bottom, do you recognize the signature that is
14 listed as the primary signature?

15 A Yes.

16 Q And let me actually move this up a little bit. I'm
17 looking at page AWS-596. For the primary signature, who do
18 you recognize that to be?

19 A My husband.

20 Q For the secondary signature, do you recognize that
21 signature as yours?

22 A Yes. Also, I do not know in this instance if I signed my
23 husband's name or not, but I do have paperwork stating that I
24 am allowed to sign his name due to his brain injury.

25 Q Understood. Thank you.

CROSS-EXAMINATION OF PATTI KATTER

1 And seeing that digital signature, do you recall if
2 that signature process was a part of a new process of
3 resigning a new loan and reviewing your risk disclosure?

4 A No.

5 Q By about April 2019 you had approximately \$116,000 in
6 your Oasis account; is that correct?

7 A I don't remember the exact number off the top of my head.

8 Q Do you recall that you learned that federal agents had
9 arrested Mr. DaCorta in April of 2019?

10 A Yes.

11 Q Do you recall that you learned that federal agents had
12 seized all of OIG's assets?

13 A Yes.

14 Q Including your money?

15 A Including what?

16 Q Including your money.

17 A Yes. I actually -- may I tell you how I found out?

18 Q Yes.

19 A Okay. We went to our best friend Aaron Ruskey's birthday
20 party, and Mike was there with his wife and knew that the FBI
21 had been investigating him. And we did not find out that way.
22 We found out because our friend Ian called us to tell us.

23 Q And that friend that you are talking about is Ian Howard?

24 A Yes.

25 Q Afterwards that same month in April of 2019, you were

CROSS-EXAMINATION OF PATTI KATTER

1 interviewed by Agent Shawn Batsch, correct?

2 A Yes.

3 Q And he told you that Oasis was a Ponzi scheme?

4 A Yes.

5 Q And you believed him?

6 A Yes. There was enough evidence in my opinion.

7 MS. IRVIN: Thank you.

8 No further questions, Your Honor.

9 THE COURT: Redirect, please.

10 THE WITNESS: Can I say something? I don't know if
11 he used the word "Ponzi scheme." He said Mike was in big
12 trouble because he was --

13 MS. IRVIN: Your Honor, objection. I already --

14 THE COURT: Come back. Yes, you may complete your
15 answer. And then if there is a little more cross, that's
16 fine. Go ahead.

17 A Sorry. I just didn't recognize the word "Ponzi scheme."
18 Now that I think about it, it was later on when I was
19 researching what it was called that we were told. But when
20 they came to the house, they did say that Mike was being
21 investigated because he didn't use our money the way that it
22 was supposed to be used.

23 BY MS. IRVIN:

24 Q At the time that you spoke to Agent Batsch, Mr. DaCorta
25 was being investigated by that agent, correct?

REDIRECT EXAMINATION OF PATTI KATTER

1 A I don't know.

2 Q He was speaking to you and letting you know that
3 Mr. DaCorta was being investigated. He had not been
4 convicted, correct?

5 A Correct.

6 MS. IRVIN: Thank you.

7 THE COURT: Redirect, please.

8 MR. CHEE: Yes, Your Honor.

9 **REDIRECT EXAMINATION**

10 BY MR. CHEE:

11 Q Just a few questions, Ms. Katter.

12 During cross-examination defense counsel stated that
13 Mr. DaCorta, the defendant, was arrested in April of 2019.
14 Now, did you see him be arrested on that date?

15 A Did I see him?

16 Q You see Mr. DaCorta being arrested?

17 A I did not see him being arrested, no.

18 Q I would like to also turn your attention to an exhibit
19 that defense counsel presented to you on cross-examination.
20 There was a page of that exhibit in which it listed your net
21 worth. And you stated that it includes the value of your
22 home. Could you explain how you received your home?

23 A Yes. Because my husband was wounded in war, there was a
24 nonprofit that heard about my husband's injuries. They award
25 mortgage-free homes to military veterans. And they surprised

DIRECT EXAMINATION OF DEBORAH OREMLAND

1 my husband and I and our family and gave us a mortgage-free
2 home.

3 MR. CHEE: Thank you, ma'am.

4 No further questions, Your Honor.

5 THE COURT: Thank you, ma'am. You may step down.

6 Let's call your next witness, please.

7 MR. CHEE: Yes, Your Honor. The government would
8 like to call to the stand Ms. Deborah P. Oremland.

9 MS. BEDKE: Your Honor, may I remove the exhibits
10 from the stand?

11 THE COURT: Of course. Thank you.

12 THE COURTROOM DEPUTY: Please raise your right hand.

13 (Witness sworn.)

14 THE COURTROOM DEPUTY: Can you state your full name
15 for the record.

16 THE WITNESS: Deborah Oremland.

17 THE COURTROOM DEPUTY: Thank you. Please be seated.

18 **DEBORAH OREMLAND, CALLED BY THE GOVERNMENT, SWORN**

19 **DIRECT EXAMINATION**

20 BY MR. CHEE:

21 Q Good morning, ma'am. How are you today?

22 A I'm well. Thank you.

23 Q May you please introduce yourself to the jury?

24 A I'm Deborah Oremland.

25 Q Ms. Oremland, please tell us where you live.

DIRECT EXAMINATION OF DEBORAH OREMLAND

1 A I live in Arlington, Virginia.

2 Q How long have you lived there for?

3 A For around 15 years.

4 Q Can you tell us your educational background?

5 A Sure. I have an undergraduate degree from the University
6 of Michigan and a law degree from the American University,
7 Washington College of Law.

8 Q Where do you currently work, ma'am?

9 A I work at FINRA.

10 Q What does FINRA stand for?

11 A Financial Industry Regulatory Authority.

12 Q Now, what does FINRA do?

13 A FINRA is what's called a self-regulatory organization.
14 It's private. It's nongovernment. And it's a membership
15 organization, and the members are comprised of broker-dealers
16 and their employees, brokers. And FINRA regulates certain
17 aspects of the securities industry. And its mission is to
18 protect investors and protect the integrity of the market.

19 Q Would you please care to explain what a broker-dealer is?

20 A A broker-dealer is an entity. It's a business that's
21 involved with buying and selling stock for itself or for
22 customers.

23 Q How does FINRA regulate broker-dealers?

24 A FINRA writes rules to govern broker-dealers' behavior.
25 It conducts compliance examinations to make sure that the

DIRECT EXAMINATION OF DEBORAH OREMLAND

1 businesses and their employees are following the rules. And
2 FINRA can also discipline its members if they're not following
3 the rules.

4 Q Does FINRA regulate anybody else or any other entity?

5 A No.

6 Q Who, if anybody, oversees FINRA?

7 A FINRA is overseen by the Securities and Exchange
8 Commission or the SEC.

9 Q What is the SEC?

10 A The SEC is the federal agency that's tasked with
11 enforcing the federal securities laws, also in an effort to
12 promote investor protection.

13 Q Now, you mentioned earlier that you work at FINRA. What
14 is your current position at FINRA?

15 A I'm an attorney with the Criminal Prosecution Assistance
16 Group or CPAG.

17 Q What is CPAG?

18 A CPAG is a small unit within FINRA that provides
19 assistance to the government in their investigations and
20 prosecutions involving securities fraud.

21 Q Now, what are your responsibilities as an attorney at
22 CPAG?

23 A It really depends on the case, but oftentimes I'm
24 involved with analyzing trading information or other evidence.
25 I occasionally will testify at trials and just provide

DIRECT EXAMINATION OF DEBORAH OREMLAND

1 assistance in whatever ways that are needed.

2 Q And how long have you been assigned to the CPAG group?

3 A I have worked with CPAG for over 15 years.

4 Q Prior to working at the CPAG group within FINRA, where
5 were you before that?

6 A I worked in the enforcement department for about a year.
7 And then I was also in the market regulation department for
8 about three and a half years doing fraud surveillance work.

9 Q During the time that you have worked with FINRA, have you
10 ever conducted training for law enforcement agencies?

11 A Yes.

12 Q Which agencies would that be?

13 A I've done training for the FBI, for IRS, and some postal
14 agents, and then also various U.S. Attorney's Offices.

15 Q Would you explain to us what types of professionals must
16 be registered with FINRA?

17 A Anyone who wants to buy and sell stock for customers must
18 be registered with FINRA.

19 Q And why is that?

20 A It's under the federal securities laws. And really
21 people are trusting their brokers with their money, so they
22 are subject to regulatory oversight just to ensure their
23 protection. And brokers have to be able to show a certain
24 level of competence and knowledge of the industry and the
25 rules in order to manage individuals' money.

DIRECT EXAMINATION OF DEBORAH OREMLAND

1 Q How does an individual become registered with FINRA?

2 A They get a job with a broker-dealer, and then they have
3 to take one of the licensing exams.

4 Q Generally speaking, what kind of exams does FINRA offer?

5 A There is a general securities representative exam called
6 the Series 7, and that's really the baseline test to take to
7 get your license and to start working as a broker.

8 Q So -- excuse me. Let me ask it a different way.

9 Is there an exam which is typically the starting
10 point for somebody who wants to be registered with FINRA?

11 A Yes, the Series 7.

12 Q Now, could you tell us a little bit about the Series 7
13 exam? How long is it?

14 A The exam is tough. It's like 250 multiple choice
15 questions. It's at least -- well, you know, the test has
16 changed over time but anywhere from like a 6-hour test. And
17 it covers all the types of securities products, how the
18 markets operate. It also touches on the federal securities
19 laws and general rules and the dos and don'ts of being a
20 broker and what's prohibited under the laws. And it's hard to
21 pass this test. It's a tough exam.

22 Q Generally speaking, what is the passing score from one of
23 the FINRA exams?

24 A It's around 70 percent. So you have to get like over
25 70 percent or 72, some point to pass the test.

DIRECT EXAMINATION OF DEBORAH OREMLAND

1 Q Does it depend on the exam that's being written, the
2 passing score?

3 A Yeah.

4 Q Is there an exam that FINRA offers for supervisors or
5 people, managers in supervisory roles?

6 A Yes.

7 Q What exam would that be?

8 A It's called the Series 24.

9 Q And what types of topics are covered on the Series 24?

10 A Well, it's basically a test to make sure that you are
11 equipped to manage and supervise brokers.

12 Q Does FINRA have a way of keeping track of who has taken
13 such exams?

14 A Yes.

15 Q What is that system called?

16 A It is called the Central Registration Depository or CRD.

17 Q What is the CRD?

18 A CRD is a giant database of information of anyone who has
19 or been registered or even signed up to take an exam. It also
20 has information about the broker-dealer companies themselves.

21 Q Now, why does a system such as the CRD exist in the first
22 place?

23 A Well, it helps regulators keep track of who is in the
24 industry. It has a wealth of information about brokers and
25 the broker-dealer firms. And there are certain tools that are

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1 a derivative of CRD that are available to the public. FINRA
2 offers what's called BrokerCheck, and it's on our website
3 where you can search the name of your broker to see if he or
4 she is registered. It also will tell you the employment
5 history, which exams they have taken and also if they've had
6 any sort of disciplinary history.

7 Q Now, why does FINRA make available BrokerCheck to the
8 public?

9 A Just to give the public this tool to see who they are
10 investing their money with. It gives them an opportunity to
11 have us look into an individual's background and disclosures.
12 It's all in the same effort and vein of protecting investors.

13 Q How is information added to the Central Registration
14 Depository?

15 A Just say CRD. It's easier.

16 Q I will reask the question. How is information added to
17 the CRD?

18 A So either by broker-dealer firms themselves or by the
19 individual brokers. There is some information that's
20 incumbent upon the brokers to update periodically with FINRA.

21 Q Are there reporting requirements for both the
22 broker-dealers and the individuals holding licenses?

23 A Yes.

24 Q Now, once a person successfully passes one of the FINRA
25 exams, are there continuing education requirements?

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1 A Yes.

2 Q Do these licenses expire?

3 A Well, once you stop working at a broker-dealer firm, yes.

4 Q Now, if somebody changes jobs or stops working at a
5 broker-dealer as you've pointed out, how is that reflected in
6 the CRD?

7 A If they stay in the industry?

8 Q If they change jobs within the industry?

9 A Oh, yeah. The broker-dealer firm will make a record
10 that's called a U5. And the broker will also submit a form
11 called a U4 to FINRA to indicate that they've changed jobs.

12 Q Now, you just mentioned earlier about what happens if
13 someone leaves the industry. So I will ask what happens to
14 the licensing or the licensure of a person who leaves the
15 investing or investment industry?

16 A It expires.

17 Q Do you know the defendant, Michael DaCorta?

18 A No.

19 Q Did you review a CRD report for Michael DaCorta?

20 A Yes.

21 Q And in relation to this case, did you provide the
22 government with a copy of the CRD report for Michael DaCorta?

23 A Yes.

24 Q And who asked you to do that?

25 A The government.

DIRECT EXAMINATION OF DEBORAH OREMLAND

1 Q Were you paid to produce the report?

2 A No.

3 MR. CHEE: May the record reflect I'm showing defense
4 counsel what's marked 100A and 100B.

5 Your Honor, may I have permission to approach the
6 witness with exhibits?

7 THE COURT: Yes.

8 MR. CHEE: May the record reflect that I have just
9 handed Ms. Oremland exhibits that are marked 100A and 100B.

10 BY MR. CHEE:

11 Q I would like you to take a quick look at those documents,
12 ma'am. And do you recognize 100A and 100B?

13 A Yes.

14 Q And what are they, starting with 100A?

15 A It's the CRD record for Michael DaCorta.

16 Q And 100B?

17 A This is also part of his CRD records. It has some legacy
18 information before CRD went online in the mid '90s.

19 MR. CHEE: Your Honor, the government moves into
20 evidence Exhibits 100A and 100B.

21 THE COURT: All right. They will be admitted.

22 (Government Exhibits 100A and 100B admitted.)

23 BY MR. CHEE:

24 Q Ms. Oremland, I would like for you to turn your attention
25 to page 12 of Exhibit 100A. According to the records

DIRECT EXAMINATION OF DEBORAH OREMLAND

1 maintained by FINRA and the CRD report, 100A, was the
2 defendant ever registered with FINRA?

3 A Yes.

4 Q Now, turning to the section entitled "Exam History,"
5 could you explain or tell the jury when Mr. DaCorta obtained
6 his Series 7 license?

7 A Sure. He took the Series 7 in January of 1986 for the
8 first time.

9 Q Now, I see a whole bunch of different exams in the left,
10 first column to the left. Could you explain what an S4 exam
11 is?

12 A Sure. So that's an options principal exam. So that's --
13 taking this test gave him the ability to supervise options
14 trading, individuals that worked with options.

15 Q And what does the defendant CRD report reflect with
16 respect to the Series 24 exam?

17 A He also took the Series 24. He passed it in February of
18 1988.

19 Q And how about the Series 55 exam? What is the Series 55
20 exam?

21 A That's an equities trading exam. He passed that in March
22 of 1999.

23 Q Could you explain what the Series 63 exam is?

24 A Sure. The Series 63 is taken in conjunction with the
25 Series 7. It's kind of the initial baseline examination to

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1 get your license. He took that along with the Series 7 for
2 the first time in January of '86.

3 Q I would like to turn your attention to page 3 of
4 Exhibit 100A. During what time period was the defendant
5 working in the securities industry?

6 A According to this document or these records, this covers
7 the time frame from around '92 through 2002, but looking at
8 his legacy history, we know he took the Series 7 in '86. So
9 he has some employment history prior to '92, which the CRD
10 went digital in the '90s. So that's why we have the gap, I
11 guess.

12 Q Could you please turn your attention to page 7 of
13 Exhibit 100 to the section titled "Employment History." And
14 it goes on for a few pages there. It goes on from pages 7, 8,
15 and 9. How would you describe the defendant's work history?

16 A Over the ten or so years covered here, he worked at
17 probably approximately ten or so different firms,
18 broker-dealer firms.

19 Q In the ten years that he was active and working in the
20 securities industry?

21 A Yeah. That's reflected in this document, but he worked
22 at some other firms that show up on the legacy history.

23 Q I would like to turn your attention to documents that are
24 Bates stamped FINRA 17 and 18.

25 THE COURT: Let me ask the jury, just if anybody

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1 needs a break? If you do, don't be embarrassed, raise your
2 hand. Otherwise, we'll keep going. Seeing no hands, let's
3 keep going.

4 BY MR. CHEE:

5 Q And that would be page 13 and page 14. Does the CRD
6 report for Mr. DaCorta show any continuing education
7 requirements that were completed? And I'm looking at the
8 middle of the page where it says "Current CE"?

9 A Yes.

10 Q Could you explain what is reflected in the continuing
11 education requirement section of the CRD?

12 A Sure. He completed it initially in '99. And then he did
13 continuing ed in 2001. So there's a requirement that you take
14 it within two years of when you are licensed and -- yeah, two
15 years initially and then every three years, but this rule
16 didn't come into effect until the late '90s.

17 Q Now, looking to the bottom of that page, page 13, there
18 is a section entitled "Filing History." Could you explain
19 what the filing history signifies?

20 A This is just a summary of all the information that came
21 into CRD either from the broker-dealer firm or from
22 Mr. DaCorta himself or from a regulator.

23 Q So just to be clear, in the right column it says
24 "Submitted By." Would those include from among other
25 entities, places that Mr. DaCorta, the defendant would have

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1 worked at?

2 A Yes.

3 Q But also regulators as well?

4 A Yes.

5 Q Would you please turn your attention to page 17 of
6 Mr. DaCorta's CRD report. Does the CRD report -- I'm sorry.
7 I'll let you get there.

8 A Okay.

9 Q Does the CRD for the defendant reflect any bankruptcies?

10 A Yes.

11 Q And what section of the CRD report on page 21 shows that?

12 A This?

13 Q That was a bad question. Let me reask that.

14 What information is contained within the bankruptcy
15 section of page 21 of Exhibit 100A?

16 A Just that there was a bankruptcy that occurred in
17 New York in 2001.

18 Q Would you please read the summary of the events listed in
19 Item No. 8?

20 A "I suffered a large loss in a private business venture.
21 The petition was filed in 2/2001. The meeting of creditors
22 was held on 4/5/01 the trustee appointed in the case close the
23 case, and a discharge will be granted in approximately 60 days
24 from the date of the meeting."

25 Q So how was -- according to the CRD report for the

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1 defendant, how was this bankruptcy resolved?

2 A How was it resolved?

3 Q Was the bankruptcy closed?

4 A Yes.

5 Q Are there any customer complaints listed in Exhibit 100A?

6 A Yes.

7 Q I would like to turn your attention to page 22 and focus
8 on, it says "SRO Arbitration." Would this be a complaint
9 lodged against Mr. DaCorta?

10 A Yes.

11 Q Generally, ma'am, what were the allegations?

12 A Allegations were of fraud, breach of fiduciary duty,
13 breach of contract, and negligence.

14 Q Does the CRD report for the defendant show what the
15 resolution of that complaint was?

16 A Yes. It was dismissed.

17 MR. CHEE: May I have just a quick moment, Your
18 Honor?

19 THE COURT: Yes.

20 BY MR. CHEE:

21 Q Ms. Oremland, can you please turn to Exhibit 100B,
22 Government Exhibit 100B. It's a 1-page document with a list
23 of employers. Could you explain the purpose of keeping a
24 document such as this in the FINRA records?

25 A This is records that were available through CRD. Brokers

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1 have always had the responsibility of submitting their
2 employment history and jobs or their history to FINRA. This
3 is just the same type of information that you see in the other
4 document just from before the mid '90s when it went digital.

5 Q What types of employment history are noted on the legacy
6 employment history in 100B?

7 A This covers broker-dealer firms and then some other jobs
8 that Mr. DaCorta held.

9 Q Now, why does the legacy employment history seem to end
10 in July 1999, the top row?

11 A By then it was no longer legacy CRD. It was the current
12 CRD.

13 Q Could you explain how 100B and 100A, those two exhibits,
14 are to be read together or understood together?

15 A Yes. This just covers the time period that the online
16 digital CRD doesn't have.

17 MR. CHEE: Thank you, Ms. Oremland.

18 No further questions, Your Honor.

19 THE COURT: All right. Cross-examination.

20 **CROSS-EXAMINATION**

21 BY MS. IRVIN:

22 Q Good morning.

23 A Good morning.

24 Q Ms. Oremland, I want to go just through a couple exhibits
25 with you, but before I get there I was wondering could we just

CROSS-EXAMINATION OF DEBORAH OREMLAND

1 go through again what FINRA regulates and make sure that we
2 understand that. FINRA regulates broker-dealers that are
3 registered in the United States; is that correct?

4 A Yes.

5 Q And are those broker-dealers that are only involved in
6 stocks and securities? So, for example, it does not include
7 broker-dealers that are involved in forex trading?

8 A Well, they might have business in foreign exchange, but
9 FINRA regulates broker-dealers that are in the business of
10 buying and selling securities.

11 Q And those are broker-dealers that are registered in the
12 United States?

13 A Yes.

14 Q You mentioned two other things that I want to make sure
15 that we understand. You mentioned that the Series 4 test has
16 to do with options. What are options?

17 A Options is -- it's a type of security. They are a
18 derivative of equity trading, but really they are a bit of a
19 more advanced or riskier investment. You're basically making
20 a bet that the stock price is going to go up or down.

21 Q When you use the term "equity trading," what does that
22 mean?

23 A Oh, that deals with stocks. Like, equity is a stock.
24 It's known as a share. It represents an ownership interest in
25 a company. So if you own stock in IBM, you own just a small

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1 amount of the company.

2 Q Thank you. I would like to have you look at Government's
3 Exhibits 100A that I think you have in front of you. And if
4 you could please look at page -- on the bottom it is listed as
5 FINRA-7. And the top of the page is listed at page 3 of 18.

6 A Okay.

7 Q And the second half of that document where it says
8 "Registrations with Previous Employers," do you mind blowing
9 up that whole second half? Thank you.

10 I was wondering could you take us through the
11 registration categories. What is an AG?

12 A It's an agent. So I guess CT is the state, so the state
13 regulator. The state is called registered representatives
14 agents.

15 Q Just an agent?

16 A Yes.

17 Q And CT would be Connecticut?

18 A I believe so.

19 Q And now underneath that, what is ET?

20 A Equities trader. I mean, I went through his licensing
21 exams. So he took the Series 55. So that's what that
22 designation reflects.

23 Q How about GP?

24 A General principal. So that is -- he took the Series 24.
25 He was a boss. He supervised brokers. So that's the GP,

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1 general principal, or the general sales of securities.

2 Q Directly underneath that, a GS?

3 A Generally securities. So that's his baseline license,
4 like Series 7.

5 Q And one more, OP. What is that?

6 A Options principal. So he took the Series 4. He was not
7 only just a general securities boss, but he also regulated
8 individuals who were involved in options trading.

9 Q Now, as to each one of those registration categories,
10 according to this report, each of those are registration
11 categories that Mr. DaCorta held at one time while he was a
12 member of FINRA; is that correct?

13 A That's right.

14 Q And that means, I think you explained that to us, that he
15 had to pass a certain series exam in order to be able to hold
16 that particular registration category?

17 A Yes.

18 Q Could you look at page 17 of 18. And the bottom page
19 number is FINRA-21. This is a -- I think you testified this
20 is a bankruptcy that was reported by Mr. DaCorta as a part of
21 this FINRA report. Do you know what business this bankruptcy
22 was a part of?

23 A No.

24 Q Could you also turn to page 18 of 18 at the bottom.
25 That's FINRA-22. Would you agree that this particular claim

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1 that was made was dismissed in the entirety by the panel?

2 A Yes.

3 Q And when it refers to the "panel", who is the "panel"?

4 A Arbitration panel.

5 Q The arbitration panel of FINRA?

6 A Yes.

7 Q Thank you. Could we now have Government's Exhibit 100B.

8 You have that one page in front of you. This is a really
9 interesting exhibit. Where does the information come from for
10 this particular document? This is Exhibit 100B, and it's a
11 one-page listing.

12 A This information came from Mr. DaCorta himself or from
13 the broker-dealers.

14 Q Is this typical of the kind of information that anyone
15 who is registered in FINRA may have on their report?

16 A Yes.

17 Q Including where they went to parochial school?

18 A Yes. It goes far back.

19 Q So if we look at the very bottom of the page, it shows
20 where he attended St. Lucy's School basically from first
21 through eighth grade in the Bronx; is that correct?

22 A Yes.

23 Q It shows he went to high school at Blessed Sacrament at
24 New Rochelle?

25 A Yes.

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1 Q Why is it that it shows other information that's not
2 related to employment that he had that would be related to
3 FINRA?

4 A FINRA requires a full employment history in order to get
5 your license. You have to obviously go pretty far back and
6 list all your jobs and schools or whatnot.

7 Q And that's the reason why it shows, for example, that he
8 worked at Ann & Tony's Restaurant from 1980 to 1986?

9 A Yes.

10 Q It shows that he worked at the Royal Card Store from 1980
11 to 1984?

12 A Yes.

13 Q It shows that he worked again at Ann & Tony's Restaurant
14 in 1984 and 1986?

15 A Yes.

16 Q And then finally unrelated, I guess at least at this
17 point, that he worked at Gino's Cafe in 1985 and 1986?

18 A That's what the record shows.

19 Q So it shows any employment that someone has when it's
20 completely unrelated to the financial -- to FINRA?

21 A Yes.

22 Q If you could look a little bit up at where it says Gems
23 Beverage World, 11/1988 to June of 1993. Is that a kind of
24 company that would be regulated by FINRA, as far as you know?

25 A No.

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1 Q And how do you know that by looking at it?

2 A It's not a broker-dealer.

3 MS. IRVIN: May I have a moment, Your Honor?

4 THE COURT: Yes. Thank you.

5 BY MS. IRVIN:

6 Q In addition to the places where Mr. DaCorta worked
7 outside of those regulated by FINRA, there are ones that are
8 included that are regulated by FINRA, what is the first entry
9 that you see that is a financial position that he held that
10 was regulated by FINRA?

11 A It is Austin Davenport Associates, '85. August '85 to
12 December '86.

13 Q And what does it show that his position was at that time?

14 A It says that he was a retail stockbroker.

15 Q What's the next position that it shows that he held right
16 above it?

17 A Ovest Securities.

18 Q For Ovest Securities it appears he worked there from 1985
19 to 1988?

20 A Yes.

21 Q What was his position there?

22 A Compliance manager.

23 Q The entry above it, can you tell me what company that is?

24 A Stuart-James.

25 Q Is there a particular reason why it doesn't show his

CROSS-EXAMINATION OF DEBORAH OREMLAND

1 position for Stuart-James?

2 A I don't know. This is all derived from what Mr. DaCorta
3 submitted to FINRA.

4 Q Okay. But above it has Stuart-James listed again, and
5 what does it show?

6 A It looks like that might have been -- so I guess the
7 record I was just talking about is one from the firm and then
8 DaCorta's own submission. Probably shows his -- it's the same
9 date, same firm, and it indicates his position.

10 Q For Stuart-James then, it shows what is his position
11 then?

12 A Retail stockbroker.

13 Q His next employment appears to be at Waterhouse
14 Securities; is that correct?

15 A Yes.

16 Q Now, it shows that he's a securities trader?

17 A Yes.

18 Q What is the difference between a retail stockbroker and a
19 securities trader?

20 A I mean, it could mean that he was trading on behalf of
21 the firm. I'm not entirely sure why there is a discrepancy in
22 how he described his position.

23 Q Could it be there was a difference in his role at each of
24 those places?

25 A I don't know.

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1 Q So you're really just looking at this based on here is
2 the name of the company that he worked at, here is the
3 position that he held at that company?

4 A Yes.

5 Q Right above that is Marine Midland Securities; is that
6 correct?

7 A Yes.

8 Q And above that is Gems Beverage World. And you stated
9 that was something that was separate and apart from business
10 that would be regulated by FINRA?

11 A Yes.

12 Q But then we have Marketrend Securities that's listed from
13 1991 to 1995. What does it show his position was at that
14 particular business?

15 A President, CEO.

16 Q Above that is Quest Capital Strategies. And what does it
17 show is his position there from 1991 to 1993?

18 A Stockbroker.

19 Q Above that is Marketrend Securities again. And that's
20 listed from 1993 to 1995. What is his position there?

21 A President CEO.

22 Q Above that it shows that he's self-employed for about six
23 months in 1995. And it shows that he's a day trader. Is that
24 something that's regulated by FINRA?

25 A No, but it appears that he was doing that as well as

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1 working at On-Site Trading.

2 Q That's correct. Thank you.

3 A So that is regulated.

4 Q We're close to the top. Sterling Foster & Company, it
5 shows he was employed there from 1995 to '96?

6 A Yes.

7 Q And then Provincial Capital Management from 1996 to 1997?

8 A Yes.

9 Q There's a brief two months of when he is unemployed; is
10 that correct?

11 A That's what this states.

12 Q And then he worked at Lexington Capital Partner & Company
13 in New York from 1997 -- from approximately September 1996 to
14 April 1997?

15 A Yes.

16 Q And then the last two entries that are on here, the first
17 is Empire State Brewing Company, Inc., and it does list
18 Wappingers Falls; is that correct?

19 A Yes.

20 Q It shows that he's the president?

21 A Yes.

22 Q And it lists a beginning date of April 1997?

23 A Yes.

24 Q And then finally it shows On-Site Trading, Inc., in
25 Tarrytown, New York, and that's 1998 to 1999?

REDIRECT EXAMINATION OF DEBORAH OREMLAND

1 A Yes.

2 Q Is there a reason why this stops at 1998 and 1999?

3 A Because all the other information is in the other report.

4 Q And in 1999, this report transitioned to -- this
5 information in this report transitioned to the other report?

6 A Yes, basically.

7 MS. IRVIN: Thank you.

8 One moment. One moment, Your Honor.

9 BY MS. IRVIN:

10 Q In reviewing Exhibit 100A and reviewing Exhibit 100B, you
11 would agree that there is no record of disciplinary action by
12 FINRA against Mr. DaCorta; is that correct?

13 A Yes.

14 MS. IRVIN: Thank you.

15 THE COURT: All right. Redirect, please.

16 MR. CHEE: Yes, Your Honor.

17 **REDIRECT EXAMINATION**

18 BY MR. CHEE:

19 Q Ms. Oremland, I would like you to look at page 12 of
20 Exhibit 100A. And I would also like you at the same time to
21 consider 100B. So if we can just have 100A on the screen
22 there.

23 So looking at the Series 7 exam history, why are
24 there two entries for the Series 7 exam?

25 A Because he took it twice because he left the securities

REDIRECT EXAMINATION OF DEBORAH OREMLAND

1 industry for a period of time.

2 Q Now, turning your attention to Exhibit 100B, the legacy
3 employment history, can you point to the area in which -- or
4 the row that shows Mr. DaCorta left the insurance industry or
5 had employment outside of the insurance industry?

6 A I believe it said Gems Beverage World, that he was the
7 owner of that.

8 THE COURT: Did you mean securities industry?

9 MR. CHEE: Yes, Your Honor, Securities Industry.

10 BY MR. CHEE:

11 Q Would employment at Gems Beverage World, would that
12 qualify as employment within the securities industry?

13 A No.

14 Q And is that an event that you previously described as
15 leaving the securities industry?

16 A Yes.

17 Q Would that require him to take the exams another time?

18 A Yes.

19 Q And turning back your attention to page 12 on
20 Exhibit 100A, and looking at the rows that show the Series 24
21 exams, why are there two entries for the Series 24 exams?

22 A He had to retake the Series 24 as well when he came back
23 into the industry.

24 Q Turning your attention to the last column, first column
25 from the right entitled "Exam Validity," why does it say

DIRECT EXAMINATION OF JENNIFER SUNU

1 "Expired" on the CRD?

2 A Because he had left the industry.

3 Q Based on your review of the CRD document in 100A, do you
4 know when he left the industry?

5 A In 2002. 2002.

6 Q And if you could just turn to -- excuse me.

7 MR. CHEE: Thank you, ma'am. No further questions.

8 THE COURT: All right. Ladies and gentlemen, why
9 don't we take our morning break. We will meet back here at
10 11:30 and then we'll run until 12:30 for lunch.

11 Please don't discuss the case or consult any outside
12 sources. Thank you.

13 Ma'am, you are excused.

14 (Recess taken.)

15 THE COURT: Government, let's call the next witness,
16 please.

17 MR. MURRAY: The United States calls Jennifer Sunu.

18 THE COURTROOM DEPUTY: Please raise your right hand.

19 (Witness sworn.)

20 THE COURTROOM DEPUTY: Can you state your full name
21 for the record.

22 THE WITNESS: Jennifer Sunu.

23 THE COURTROOM DEPUTY: Thank you. Please be seated.

24 **JENNIFER SUNU, CALLED BY THE GOVERNMENT, SWORN**

25 **DIRECT EXAMINATION**

DIRECT EXAMINATION OF JENNIFER SUNU

1 BY MR. MURRAY:

2 Q Good morning, Ms. Sunu.

3 A Good morning.

4 Q Ms. Sunu, are you employed?

5 A Yes, I am.

6 Q And where do you work?

7 A I work for a company called National Futures Association.

8 Q And briefly what is the National Futures Association?

9 A NFA is a regulatory organization for the United States
10 futures and forex trading markets.

11 Q And how long have you worked there?

12 A It will be 28 years in July.

13 Q And do you have any prior employment before the NFA?

14 A Not since I graduated college.

15 Q Where did you attend college?

16 A University of Illinois at Chicago.

17 Q And what did you study there?

18 A I was an accounting major.

19 Q And when you began working at the NFA out of college,
20 what department or function did you serve in?

21 A I started in the compliance department at NFA.

22 Q And where did you go after that?

23 A I have been in the compliance department for my entire
24 history at NFA.

25 Q Has your role changed within that department though?

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1 A Yes. I started as a staff auditor in the compliance
2 department in 1994. I was promoted then to experienced staff
3 auditor. After a couple of years, I was then promoted to
4 in-charge auditor who is the person that's responsible for
5 training and supervising the staff in the field. I was then
6 promoted to manager who is the person responsible for the
7 final reviewer for any exams that we conduct. I was then
8 promoted to associate director in 2001 and ran our New York
9 office for a couple of years. And then in 2006 I was promoted
10 to compliance director, and that's been my position ever
11 since.

12 Q And in your role as a compliance director, what is it
13 that you do?

14 A I oversee the exams that our teams conduct. So I discuss
15 the testing that they're going to be doing on the exams. They
16 bring any issues to my attention, escalate any material
17 violations that they find during the course of the exams. I
18 review all of the findings and the audit reports before they
19 are issued. And then I would also work with the team and our
20 enforcement area in the event that we had any disciplinary
21 action that we wanted to recommend.

22 Q Ms. Sunu, from your work and experience at the NFA, are
23 you familiar with forex trading?

24 A Yes.

25 Q Are you familiar with forex markets?

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1 A Yes.

2 Q Are you familiar with forex regulation?

3 A Yes.

4 Q Okay. So you're obviously familiar with the term

5 "forex"?

6 A Yes, I am.

7 Q What does forex stand for?

8 A It stands for foreign exchange.

9 Q What is a foreign exchange market?

10 A The foreign exchange market is the trading of foreign
11 currencies. So it's looking at one foreign currency compared
12 to another currency and speculating that the value of one
13 currency is going to increase or decrease compared to the
14 value of the other. And then as the values of those
15 currencies change, you would make or lose money depending on
16 the direction that those currencies moved.

17 Q And could you please provide the jury with a basic
18 example of a foreign currency exchange that would gain or lose
19 value?

20 A Sure. So say that you decide that British pounds are
21 going to increase in value compared to the U.S. dollar. You
22 would buy the currency pair of the British pound against the
23 U.S. dollar in the hopes that the British pound would continue
24 to increase in value, at which point you would sell that at a
25 later date and collect the profit.

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1 Q Now, in your time working at the NFA with the work that
2 you do, are you familiar with the term "retail forex market"?

3 A Yes.

4 Q What is that?

5 A So historically the markets had been primarily for
6 institutional investors. So those would be banks, insurance
7 companies, very large companies. And the retail forex market
8 was designed to be for smaller, less sophisticated investors.

9 Q Are retail forex markets regulated in the United States?

10 A Yes, they are.

11 Q Why?

12 A Retail forex tends to be a very high risky investment.
13 The retail forex customers are not as sophisticated. And so
14 Congress determined that those types of products and the fact
15 that they are traded by retail customers should be regulated.

16 Q Are there any other reasons besides the inherent risk of
17 trading forex that resulted in that regulation?

18 A There is the risk and then the fluctuality of the forex
19 markets and the general inexperience of those retail
20 customers.

21 Q Historically are there abuses in that area?

22 A Yes, we have seen abuse in the forex area.

23 Q And are the regulations passed by Congress that you just
24 testified about, are they in any way -- do they in any way
25 target that abuse?

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1 A Yes. There was a lot of fraud going on in the forex
2 markets prior to the time that Congress passed laws to have
3 them regulated, and that was a primary driver of that.

4 Q You just mentioned that forex trading is risky. What is
5 it about foreign exchange trading that makes it so risky?

6 A It's primarily the fluctuation of the market. So foreign
7 currencies can be very volatile. They increase or decrease
8 very rapidly sometimes. And then also given the inexperience
9 of the investors, that can also make it a very risky type of
10 investment.

11 Q I want to talk about the government agencies in this
12 space. What government agencies regulate forex?

13 A They're primarily regulated from the Commodity Futures
14 Trading Commission or the CFTC.

15 Q What is the CFTC?

16 A It is the government agency that's responsible for
17 overseeing both the U.S. futures market and also the retail
18 forex market.

19 Q And what is the NFA?

20 A The NFA is a registered futures association and a
21 membership organization. So Congress has passed laws, and
22 there's a CFTC regulation that goes along with that that says
23 that anyone who is doing business with U.S. investors needs to
24 be a member of a registered futures association. And since
25 its existence, NFA has been the only registered futures

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1 association. So in order for individuals or entities to do
2 business with U.S. investors, they need to be a member of NFA.

3 Q So the NFA is the only game in town?

4 A That's correct.

5 Q Could you explain to the jury where the NFA gets its
6 power from?

7 A The power is delegated by the CFTC through its
8 regulations.

9 Q Now, have you worked with the CFTC in your time working
10 with the NFA?

11 A Yes, I have.

12 Q So are you familiar then with the CFTC's rules and
13 regulations in addition to the NFA's regulations?

14 A Yes.

15 Q And are you specifically familiar with them as they apply
16 to forex markets?

17 A Yes.

18 Q What is an NFA member firm?

19 A So as I mentioned, any entity that does business with the
20 public, with U.S. investors needs to be a member of NFA. So
21 those are the intermediaries that do business with the public.
22 They need to be registered with the CFTC, and they need to be
23 NFA members.

24 Q So if you're a firm asking -- soliciting investment in
25 the United States from United States residents, you have to be

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1 an NFA member first?

2 A That's correct.

3 Q Generally how are member retail forex -- how are member
4 firms that engage in retail forex, how are they regulated by
5 the CFTC and the NFA?

6 A So the CFTC has oversight over the entire umbrella. So
7 they create regulations, they oversee NFA, and they also have
8 the ability to do direct investigations of their registrants
9 or other entities that are doing business in forex and then
10 can take actions as a result of any violations that they find.

11 Q What's a direct investigation? What does that look like?
12 Can you explain that in laymen's terms?

13 A Sure. So it might be easier if I explained a little bit
14 about NFA. So NFA is the entity that has more direct
15 oversight, meaning that we are going out to the field,
16 conducting examinations of our members, finding violations.
17 CFTC also has the ability to do that, although mostly they
18 rely on NFA to do more of the direct oversight, but the CFTC
19 will also investigate on their own.

20 Q When you say "the field," like what does that practically
21 involve?

22 A We go to visit firms at their locations.

23 Q And you ask them for information?

24 A Yes.

25 Q And you audit that information?

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1 A Yes, we do.

2 Q Are you familiar with the term "commodity interest pool"?

3 A Yes.

4 Q What is a commodity interest pool?

5 MR. ROSENTHAL: Objection. Relevancy.

6 THE COURT: Overruled.

7 A A commodity interest pool is when an entity or a person
8 creates another entity called a pool. And there are investors
9 that, as the name implies, pool their resources together in
10 order for those to be traded by the person who has created the
11 pool.

12 BY MR. MURRAY:

13 Q And how do those -- how do commodity interest pools
14 generally function in retail forex markets?

15 A So there will be accounts created in the names of the
16 pools, so bank accounts for the funds to go into. And then
17 forex trading accounts will be opened with a forex dealer in
18 the name of the pool. And then there is a person who is
19 responsible for administering that pool, operating that pool
20 and then deciding on trading for that pool.

21 Q And what's that person called?

22 A They're called a commodity pool operator or a CPO.

23 Q Are CPOs regulated by the CFTC and the NFA?

24 A Yes. That's one of the registration categories that we
25 have responsibility for.

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1 Q And does that mean -- when you say it's one of
2 registration categories, do they have to be NFA members?

3 A Yes, they need to be NFA members and registered with the
4 CFTC.

5 Q Ms. Sunu, I'm showing you what's been marked for
6 identification purposes as Government's Exhibit 110. Do you
7 recognize Government's Exhibit 110?

8 A Yes, I do.

9 Q What is Government's Exhibit 110 generally?

10 A It's a summary of what I have just described concerning
11 the oversights or the relationship between the CFTC, NFA, and
12 the commodity pool operators that we oversee.

13 Q Does it fairly and accurately describe the testimony you
14 have given, testimony that you're about to give?

15 A Yes, it does.

16 Q Would it be helpful to the jury to help structure and
17 explain your testimony?

18 A I think so.

19 MR. MURRAY: Your Honor, at this time we would move
20 into evidence Government Exhibit 110.

21 MR. ROSENTHAL: Your Honor, we would object on
22 relevancy grounds.

23 THE COURT: Let's approach sidebar.

24 (Bench conference on the record with all counsel
25 present.)

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1 THE COURT: Can I see the exhibit? So isn't this
2 just a demonstrative?

3 MR. MURRAY: Yes, Your Honor.

4 THE COURT: So you're not going to move it into
5 evidence. You're just going to show it.

6 MR. MURRAY: Yes. I meant publish, Your Honor.

7 THE COURT: You could have her do this on the Elmo
8 with the ink pen right now, right? You understand you can
9 say, well, put the circle for the CFTC. So it's a
10 demonstrative.

11 MR. MURRAY: Yes, sir.

12 THE COURT: Everybody know what I mean? Why can't he
13 use the demonstrative?

14 (Court reporter asked for clarification.)

15 MR. ALLEN: I was just pointing out that the judge
16 was not speaking a language we didn't understand.

17 MR. ROSENTHAL: The problem -- I mean, there's
18 multiple problems. Number 1 is -- our objection is she is not
19 going to testify, again, that Mr. DaCorta was operating a
20 commodity pool. So therefore it's not relevant on that ground
21 and that ground alone. So it's not relevant whether the
22 National Futures Association, at least through her testimony,
23 regulates commodity pools. She's not going to give further
24 testimony, which we have been assured that she won't, that
25 Mr. DaCorta was operating a commodity pool.

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1 Now, there's broader issues that this one is the --
2 it is a specific objection to this witness testifying as to
3 that issue, but in terms of the issue of the NFA settlement
4 itself, there's two issues there. One is the fact of the
5 agreement, the fact of the settlement itself.

6 Second, we've already heard this from the government,
7 that they are going to contend that Mr. DaCorta was somehow in
8 breach of that agreement, which in our view is not -- not only
9 is it not relevant but it's horribly prejudicial because it
10 suggests that a conviction can be had based upon a regulatory
11 violation.

12 THE COURT: Does that have anything to do with the
13 pools, the bridge of the agreement?

14 MR. ROSENTHAL: We don't know where they are going to
15 go with that.

16 THE COURT: And why is it relevant? Why is commodity
17 pools relevant? Is someone going to say he's a pool operator?

18 MR. MURRAY: No, Your Honor. So the reason it's
19 relevant, again I'll start by saying we disclosed this in our
20 expert disclosure saying she is testifying to exactly this.
21 The reason it's relevant is because Mr. DaCorta structured the
22 Oasis companies to avoid NFA regulation because he couldn't
23 register as an NFA member based on his settlement.

24 In Mr. Allen's very well done but very long opening,
25 he talked about the fact that he is a proprietary loan

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1 operator. And one of the reasons that that's their theory is
2 because those aren't regulated by the NFA. The reason this is
3 relevant and probative to us is twofold. One, it shows intent
4 to scheme to avoid this regulatory structure by structuring
5 companies overseas and still soliciting U.S. investors.

6 Secondly, he never disclosed to any of his investors
7 the terms of his NFA settlement, that he was banned from
8 soliciting U.S. investors, which is a material
9 misrepresentation.

10 THE COURT: So the point that we are here for is that
11 I'm not going to admit this as an exhibit, but it's a
12 demonstrative. So your objection to relevance as to his
13 demonstrative is overruled. They are not going to opine that
14 he was an operator.

15 MR. ALLEN: And they are not going to argue in
16 closing based on her explanation of what an operating pool is?

17 THE COURT: Well, they can argue in closing any fair
18 inference from the evidence that's admitted. Now, if he takes
19 the stand, this might come flying in a hundred ways from
20 Sunday or one of his allies. So you may use that as a
21 demonstrative, mark it as an exhibit, but it's not going to be
22 admitted as an exhibit. All right?

23 MR. MURRAY: Yes.

24 MR. ALLEN: Can we give an instruction to the jury
25 that he is not accused of being a pool operator?

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1 THE COURT: Well, not right now. I'll consider that,
2 but I'm not going to do it right now.

3 Anything else, counsel?

4 MR. ROSENTHAL: No.

5 THE COURT: Thank you.

6 (End of bench conference.)

7 THE COURT: Ladies and gentlemen, we don't do a whole
8 bunch of sidebars but occasionally we do. And this exhibit is
9 called a demonstrative. And back in the day when I used to do
10 this, we had a big whiteboard, or worse than that, a
11 flipboard. We'd write up there and we'd say, well, witness,
12 tell me what this means. Is the light red or green, and he'd
13 go like this. Nowadays, of course, it's all computerized.

14 So what I've said is the government can use this as a
15 demonstrative in the same way if I was using a magic marker on
16 a big white piece of paper. It's not evidence in the case
17 insofar as it won't come back to you, but it's to aid the
18 witness's testimony. It won't come back to you in the jury
19 room. And you can value this and help you or decide that it's
20 not helpful at all and disregard it in your complete
21 discretion.

22 All right, counsel.

23 MR. MURRAY: Thank you, Your Honor. Could we publish
24 Exhibit 110, please -- or demonstrative.

25 THE COURT: Demonstrative 110, yes.

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1 The reason it is labeled is we will put it in the
2 permanent record even though it's not an exhibit. It is to
3 illustrate the witness's testimony.

4 BY MR. MURRAY:

5 Q Ms. Sunu, do you see that in front of the screen in front
6 of you?

7 A Yes.

8 Q Can you walk the jury through how that relates to the
9 testimony you just gave?

10 A Sure. So at the top, you'll see there's the Commodity
11 Futures Trading Commission. That's the CFTC, the government
12 agency that oversees the futures and retail forex markets in
13 the U.S.

14 Beneath that is NFA, which is the company that I work
15 for. So that's meant to demonstrate that the CFTC oversees
16 NFA in its role as a regulator and registered futures
17 association.

18 Beneath that you have commodity pool operators or
19 CPOs, which is one of the registration categories and types of
20 NFA member that we regulate.

21 Q And why are CPOs regulated?

22 A The main reason why CPOs are regulated is because they
23 hold customer funds, which is an area that we want to make
24 sure that the customer funds are protected. We also want to
25 make sure there is no fraud going on and that they are

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1 following all the rules and regulations.

2 Q So we have talked about commodity interest pools. Are
3 you familiar with the term proprietary pool or proprietary
4 fund?

5 A Yes.

6 Q What is a proprietary pool or proprietary fund?

7 A So a proprietary fund is essentially when an entity uses
8 its own funds to conduct trading. So it's trading its own
9 funds. And it's generally when there's a person who creates
10 that entity and they are using their own funds for the
11 purposes of trading.

12 Q And how does that differ from a commodity interest pool,
13 if at all?

14 A So a commodity interest pool is when a group of people
15 have their funds combined for purposes of trading. So there
16 is generally, again, one person who might solicit those people
17 to invest in the pool. And those people don't really have
18 much in the way of a say into the types of trading that's
19 being done or the specific trades that are being put on. They
20 are more passive investors. And it's the person who has
21 created the pool that's the main person or the CPO, and then
22 those other people are passive investors in the pool.

23 Q And when you say proprietary funds are defined as using
24 their own funds, what do you mean by that? What do you mean
25 by using their own funds?

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1 A It's, generally speaking, when there is a person who
2 takes their own funds that they have gotten from employment or
3 savings or inheritance or whatever the case may be but they
4 have taken those funds and created an entity, and then they
5 use that entity to trade the funds through; whereas, with a
6 commodity pool, they're bringing in funds from other investors
7 and using that entity to trade those funds.

8 Q Now, for proprietary lenders using their own funds, are
9 they regulated by the NFA?

10 A So if it's a proprietary pool where it's using its own
11 funds, it's not regulated by NFA. It would fall outside of
12 our jurisdiction.

13 Q Ms. Sunu, in your experience as a regulator, have you
14 ever had to examine the difference between proprietary lenders
15 and commodity interest pools?

16 A So we have had circumstances where we've had firms tell
17 us that the entity that's doing the trading is not under NFA's
18 jurisdiction because they say that it's a proprietary fund.
19 In those cases what we would do is look to see where the money
20 is coming from that's being used for trading and whether
21 that's coming from outside passive investors or whether it's
22 coming from the person who has created the company that's
23 doing the trading.

24 Q So it's a fact-intensive inquiry?

25 A Yes, it is.

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1 Q What, if anything, does that analysis primarily turn on?

2 A It's looking at the cash records, bank accounts and other
3 records to determine the source of those funds. And if we
4 determine that the source of those funds is coming from
5 outside investors, regardless of what those investors --
6 whether it's through loans that were given to the entity or
7 whether it's through them investing in the entity, regardless
8 of the format that it's in, if it's coming from outside
9 investors who aren't directly involved in operating the pool,
10 then we consider that to be a commodity pool.

11 Q Do you look at all of the intent of the investors in that
12 analysis?

13 A Yes. So if the investors believed that the purpose of
14 the pool was to trade futures or forex or other types of
15 investments but futures and forex being at least a component
16 of that, then it would be considered a commodity pool and
17 would be within our jurisdiction.

18 Q And so I want to leave the land of proprietary lending
19 and get back to commodity interest pools and CPOs. Assuming
20 an entity is a commodity interest pool, are there exceptions
21 to the regulations that you have described?

22 A Yes. So there's two types of exceptions that would have
23 the pool fall outside of NFA's jurisdiction. One would be if
24 it's excluded from the definition of commodity pool or the
25 definition of a CPO. And that's, for example, if it was an

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1 offshore pool, so a non-U.S. pool that had only non-U.S.
2 domiciled or resided investors. That would be one example of
3 a time that it would be excluded from our jurisdiction.

4 Another example would be when we have what's called
5 exemptions, so they're exempt from registration. And that
6 would be situations such as when it's a pool that primarily
7 trades something other than futures or forex and it's a very,
8 very small portion that is trading futures or forex, or if
9 it's, for example, a pool that has a very small amount of
10 investors or investment funds. In this case it would be a
11 total of \$400,000. Those types of things would be exempt from
12 registration, but they would still have to file those
13 exemptions with NFA. So we would be aware of the company
14 that's doing it, but it would fall outside of our
15 jurisdiction.

16 Q And you said one of those exclusions would be a foreign
17 registered company but only if all of the investors were
18 foreign as well?

19 A Yes.

20 MR. ROSENTHAL: Objection. Leading.

21 THE COURT: Sustained.

22 BY MR. MURRAY:

23 Q Let me ask it a different way, Ms. Sunu. If a company
24 was registered overseas and any of the investors were American
25 based, how would that fit into what you've just described?

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1 A So if it's an overseas pool and any of the investors are
2 U.S. investors, then the CPO is required to be registered.
3 They are required to be a member of NFA, and they would fall
4 within our jurisdiction.

5 Q What types of regulations govern commodity pool
6 operators?

7 A There is a number of regulations that apply. I think the
8 three main areas relate to advertising, risk disclosure, and
9 then also the handling of customer funds.

10 Q Let's take those in turn. Is that, by the way, what's
11 reflected on demonstrative 110?

12 A Yes, it is.

13 Q Let's take those in turn. Let's talk first about
14 advertising and soliciting investment. What types of
15 regulations govern commodity pool operators in that bucket?

16 A So the main idea behind advertising and solicitation is
17 that we want the information that's provided to the investors
18 to be balanced and not misleading. So, for example, they
19 can't guarantee that profits are going to occur. They can't
20 guarantee a particular rate of return that someone is going to
21 have because forex trading is very volatile and you never know
22 how much you are going to make or lose trading forex.

23 We want to make sure that the information is
24 accurate. So that if, for example, they are presenting rates
25 of return that their trading program has obtained, that that

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1 information is accurate. We also want to make sure that the
2 discussion of the risks are balanced so that they can't talk
3 about how, for example, how easy it is to earn money trading
4 forex without balancing the discussion of potential profits
5 with the discussion that forex trading is actually very risky
6 and you have the ability to lose your investment.

7 Q And Ms. Sunu, these regulations that you are talking
8 about and that you are going to continue speaking about, are
9 these published somewhere?

10 A Yes. So they are both CFTC regulations published in a
11 very big book, and then also NFA has rules that are more
12 descriptive about specific areas of solicitation and
13 advertising. And those are published in our NFA rules which
14 are available on our website and in books.

15 Q So you are just summarizing these for the jury's ease?

16 A Yes.

17 Q Let's talk about the second bucket you mentioned,
18 disclosure requirements. What is that, and what is a summary
19 of some of the regulations in that area?

20 A So generally speaking, commodity pools are required to
21 provide investors with what's called a disclosure document.
22 And they are required to give that to the investors prior to
23 the time that they accept the funds from the investors. And a
24 disclosure document is pretty much what it sounds like. It is
25 disclosing certain information to the investors. So, for

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1 example, it has to include information about the business
2 background of the company. It has to include information
3 about the business background of any people who are
4 responsible for running that company, overseeing it, the
5 disciplinary actions that may have been taken against the firm
6 or the people responsible for running that company. It will
7 discuss the various risks that are involved in trading forex.

8 So, for example, market risks, you know, I talked a
9 little bit about how the markets fluctuate and sometimes they
10 can be very volatile and you might not be able to get out of a
11 trade as quickly as you had hoped. There is risk with respect
12 to the other entity that you are placing the trade with. So
13 if that other entity were to go out of business, you might
14 lose the money that's in your account. Technology risk,
15 because all this trading is done electronically, if there is a
16 system crash or some kind of system failure, that could affect
17 your ability to make money trading forex. So those are the
18 types of disclosures that we would expect to see as well as
19 fees that are being charged by the CPO for the pool and any
20 past performance, so any past trading performance rates of
21 return for the pool or any other commodity pools that that CPO
22 has traded in the past.

23 Q When you say fees for the commodity pool operator, what
24 do you mean by that?

25 MR. ALLEN: Your Honor, may we approach?

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1 THE COURT: Yes.

2 (Bench conference on the record with all counsel
3 present.)

4 MR. ALLEN: Your Honor, I would ask the government to
5 remove the demonstrative aid. One, they've highlighted
6 commodity pool operator. They have kept it up there the whole
7 time. It is the only thing highlighted on the demonstrative.
8 They're not even using the demonstrative. They're going to
9 argue in closing he's a commodity pool operator.

10 THE COURT: What else do you have? You want the
11 demonstrative down.

12 MR. ALLEN: I do, Your Honor. I want to renew my
13 objection and also add 403, that this is going to be confusing
14 for the jury because now we are talking about commodity pools
15 which isn't alleged in the indictment. It is alleged in the
16 general admission for not disclosing it. I think this is
17 highly prejudicial.

18 THE COURT: You have made your record on that point.

19 Now, she is talking about the three points at the
20 bottom of your demonstrative. Has she gone into the third one
21 which is funds management?

22 MR. MURRAY: Not yet.

23 THE COURT: Overruled.

24 MR. ALLEN: Those are not things that they have
25 alleged.

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1 THE COURT: Well, it's my understanding that they
2 allege in the manner and means of the conspiracy, quote,
3 unquote, losses, discuss misconduct in the forex market. I
4 may be wrong on that, but I'm pretty sure I read that.

5 MR. ALLEN: The only thing they allege was that there
6 was a material admission that he did not disclose that he had
7 entered the settlement agreement and couldn't trade. They are
8 getting into all kinds of things the NFA regulates.

9 THE COURT: We will let you make any full record you
10 want.

11 Overruled.

12 (End of bench conference.)

13 MR. MURRAY: May I proceed, Your Honor?

14 THE COURT: Yes. Thank you.

15 BY MR. MURRAY:

16 Q Ms. Sunu, you were talking about the risk disclosure
17 requirements for commodity pool operators. And I believe my
18 last question to you was, when you say fees have to be
19 disclosed in those documents, what type of fees are you
20 referring to?

21 A So it really depends on the pool. Typically we would see
22 some type of management fee, which is a set fee that would be
23 paid on, say, a monthly basis or a quarterly basis that's a
24 percentage of the assets that are in the pool.

25 We can also see something that's called a performance

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1 fee or an incentive fee. And that's based off of the gains
2 that the pool earns in the trading accounts. So the CPO, if
3 they disclose it, could receive a portion of the profits that
4 are generated by the trading.

5 Q What about compensation for the CPO?

6 A So compensation for the CPO is generally coming out of
7 the fees that are being charged through the management and the
8 performance fee process.

9 Q Are you familiar with the term "associated persons"?

10 A Yes.

11 Q What is an associated person?

12 A So an associated person is a person who is affiliated
13 with the CPO. And they are responsible for soliciting
14 investors for the pool and then also supervising anyone who
15 solicits those investors.

16 Q And how, if at all, does that relate to the disclosure
17 requirement document?

18 A So those individuals that are associated with the pool
19 would need to be disclosed in the disclosure documents, so the
20 names of those people and then their business background and
21 any disciplinary actions that may have been taken.

22 Q Now, looking at demonstrative 110 that's still on the
23 screen, where are we at now?

24 A I think fund management is the last area.

25 Q Okay. So what type of regulations govern fund

DIRECT EXAMINATION OF JENNIFER SUNU

1 management?

2 A So as I mentioned, CPOs have the ability to accept funds
3 directly from customers. And so we want to ensure that those
4 funds are handled correctly and that they're reported out to
5 the investors correctly. And so the funds that come in have
6 to be sent from the investors into an account in the name of
7 the pool itself. So typically we would see funds going into a
8 bank account in that pool's name. They can't be what's called
9 commingled with other funds from other entities.

10 So, for example, you can't take two different pools
11 that are operated by the CPO and combine those funds together
12 into one bank account or one trading account. They have to be
13 kept separate. You can't commingle funds between the pool and
14 the CPO or a person who is affiliated with the CPO.
15 Everything from the bank accounts to the trading accounts need
16 to be kept separate in accounts in the name of the pool
17 itself.

18 And then with respect to reporting, the CPOs are
19 required to provide their investors with account statements on
20 a periodic basis. So they would report out the value of the
21 pool, the value of that investor's share of the pool at the
22 time, and then what kinds of gains or losses they have had
23 since the last time they reported it out.

24 They are also required to report certain information
25 to NFA on a quarterly basis concerning where the funds are

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1 held, what the value of the pool is, what the rates of return
2 have been, so the performance in the pool.

3 And then investors are also required to receive an
4 audited financial statement every year that's done by an
5 independent accounting firm for the pool in which they
6 disclose the assets and liabilities of the pool, the income
7 and expenses that the pool has earned over the past year, and
8 then any relevant information about the investments. And then
9 that is not only given to the investors but also sent to NFA.

10 Q You mentioned the regulations disallow commingling of
11 funds and it has to stay in the account.

12 A Yes.

13 Q How would the regulations treat money being sent to a
14 different account for the purpose of a real estate investment?

15 A So if it's sent to -- if the pool is investing in real
16 estate, the investment needs to be in the name of the pool.

17 Q And the same question with respect to sending money to a
18 company, your child's company, a company in your child's name
19 for the purpose of launching that company, how would that be
20 treated?

21 A So if you are investing in another company, that
22 investment needs to stay in the name of the pool. They
23 wouldn't be allowed to just transfer funds to the CPO or the
24 person who is running the CPO or their children or anything
25 like that.

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1 Q How would the NFA treat other investments within the
2 commodity pool that are unrelated to forex? Is that
3 permissible? Is that not permissible?

4 A They are allowed to invest in other types of investments.
5 All of that would need to be disclosed in the disclosure
6 documents. And all of those other types of investments would
7 still need to be in the name of the pool. So in the course of
8 our examinations that we do, it's very frequent that we would
9 find that they are trading in securities or real estate or
10 something else, but we would always look at those investments
11 to make sure that those investments are also done in the name
12 of the pool.

13 Q When you say "done in the name of the pool," what do you
14 mean by that?

15 A So they're maintained in accounts in the name of the
16 pool. So, for example, if they were trading securities or
17 stock, we would expect to see a brokerage account at a
18 securities firm in the name of the pool.

19 Q Ms. Sunu, is it permissible under CFTC and NFA
20 regulations for a CFO to be exempt from these regulations by
21 mere fact of registering overseas?

22 A No.

23 Q We can take down 110.

24 Ms. Sunu, are you familiar with an individual named
25 Michael DaCorta?

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1 A Yes, I am.

2 THE COURT: For the record, ladies and gentlemen,
3 that was a demonstrative which has been taken down. It's
4 illustrative of the witness's testimony if you find it to be.
5 If you find it unhelpful, then you can disregard it entirely.

6 Go ahead, sir.

7 BY MR. MURRAY:

8 Q Are you familiar with an individual named Michael
9 DaCorta?

10 A Yes, I am.

11 Q Are you familiar with -- or strike that. Let me
12 rephrase.

13 In your time at NFA, are you familiar with a firm
14 called Oasis International Group ever being registered as a
15 member of the NFA?

16 A Oasis has never been registered with the CFTC or an NFA
17 member.

18 Q What about Oasis Management, has that ever been a
19 registered member of the NFA?

20 A No.

21 Q I want to talk a little bit about your time working at
22 the NFA. And during that time are you familiar at all with a
23 firm called International Currency Traders Limited or ITC?

24 A Yes.

25 Q And how, if at all, was that firm related to Mr. DaCorta?

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1 A Mr. DaCorta was the associated person and principal of
2 ICT when it was registered and an NFA member.

3 Q And how are you familiar with Mr. DaCorta and ICT?

4 A I am aware that we conducted an examination of ICT in
5 2009.

6 Q And was that -- did that result in a settlement?

7 A Yes, it did.

8 Q And that settlement, is there an agreement spelling out
9 the terms of that settlement?

10 A Yes.

11 Q I am showing you for the record what's been marked for
12 identification purposes as Government's Exhibit 111. Do you
13 recognize what I have handed you?

14 A Yes, I do.

15 Q What is it?

16 A This is a copy of the agreement that was entered into
17 between International Currency Traders Limited and Michael
18 DaCorta and NFA.

19 Q Is it a fair and accurate representation of the agreement
20 between the NFA and Mr. DaCorta?

21 A Yes, it is.

22 MR. MURRAY: Your Honor, the government would move
23 Exhibit 111 into evidence.

24 THE COURT: All right. It's admitted.

25 (Government Exhibit 111 admitted.)

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1 MR. MURRAY: And permission to publish that, Your
2 Honor?

3 THE COURT: All right. Yes.

4 BY MR. MURRAY:

5 Q Ms. Sunu, just taking this -- let's take the top half of
6 this. And can you just please read that to the jury?

7 A Sure. "Agreement between National Futures Association
8 and International Currency Traders Limited and Michael
9 DaCorta.

10 Agreement made this 9th day of August 2010 between
11 National Futures Association, NFA, and International Currency
12 Traders Limited and Michael DaCorta.

13 Whereas, in 2009" --

14 Q Hold on one second.

15 I'm sorry about that. Continue?

16 A "Whereas, in 2009, NFA conducted an audit of
17 International Currency Traders Limited, ICT, a Forex Commodity
18 Trader Advisor, CTA, NFA member.

19 Whereas, NFA is considering recommending formal
20 disciplinary action against ICT and DaCorta based on the
21 deficiencies found in the 2009 audit of ICT.

22 Whereas, NFA would be willing to forego recommending
23 formal disciplinary action against ICT and DaCorta if ICT
24 would agree to withdraw from NFA membership and not reapply
25 for registration as an NFA member, or act as a principal of an

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1 NFA member, at any time in the future; and DaCorta would agree
2 to withdraw from NFA associate membership and as a principal
3 of ICT and not reapply for registration as an NFA member or
4 associate, or act as a principal of an NFA member, at any time
5 in the future.

6 Now therefore, NFA does hereby agree to forego
7 recommending formal disciplinary action against ICT and
8 DaCorta, based on NFA's 2009 audit, and settle all issues
9 arising therefrom."

10 Q And turning to the next -- is that end of the page?

11 A That is the end of the page.

12 Q And can we turn to page 2, please, and continue reading?

13 A "In consideration of NFA's agreement, ICT, without
14 admitting or denying the findings in NFA's audit, hereby
15 agrees to withdraw from NFA membership and not reapply for
16 registration as an NFA member, or act as a principal of an NFA
17 member, at any time in the future; and DaCorta, without
18 admitting or denying the findings in NFA's audit, hereby
19 agrees to withdraw from NFA associate membership and act as a
20 principal of ICT" -- I'm sorry -- "and as a principal of ICT
21 and not reapply for registration as an NFA member or
22 associate, or act as a principal of an NFA member, at any time
23 in the future. ICT and DaCorta further agree that, in the
24 event they were to breach this agreement by applying for
25 registration as an NFA member or associate or acting as a

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1 principal of an NFA member, then their breach of this
2 agreement shall constitute sole good cause for, one, denying
3 their applications for registration as an NFA member or
4 associate; two, denying the application for registration as an
5 NFA member of any firm of which either of them is a principal;
6 and/or three, revoking the registration any NFA member of
7 which either of them is a principal."

8 Q And turning to the bottom half of the page, is this
9 agreement signed?

10 A Yes, it is.

11 Q And what's the date of the agreement?

12 A It was signed August 9, 2010. And then NFA signed it on
13 August 31, 2010.

14 Q And who are the signators of the agreement?

15 A So Michael DaCorta signed the agreement on August 9,
16 2010. And then Ronald Hirst, who is associate general counsel
17 and enforcement coordinator for NFA signed it on August 31,
18 2010.

19 Q Leaving ICT aside, from a regulatory perspective what
20 does that last paragraph in effect mean with respect to
21 Mr. DaCorta, the person?

22 A So Mr. DaCorta, as it indicates, would be prohibited from
23 applying for -- he would have to withdraw his current
24 membership as an associated person and principal of ICT. And
25 he would be prohibited from reapplying for associate person

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1 status or principal status of any member in the future which,
2 again, because of anyone who does business with the U.S.
3 investing public would need to be a member of NFA in order to
4 do that, it effectively prohibits him from conducting any
5 futures or forex trading activity with U.S. investors.

6 Q What if it was under a different company?

7 A It would still apply.

8 MR. MURRAY: No further questions, Your Honor.

9 THE COURT: All right. Let's get some cross, and
10 then we will break at half past. So we can start on the
11 cross. Thank you.

12 **CROSS-EXAMINATION**

13 BY MR. ROSENTHAL:

14 Q Good afternoon, Ms. Sunu.

15 A Good afternoon.

16 Q So you have been with the NFA for your entire career,
17 correct?

18 A Yes, I have.

19 Q You started in the mid '90s?

20 A Yes. 1994.

21 Q And you worked your way up over the years?

22 A Yes.

23 Q And now you are at the point where you are not in the top
24 brass of the NFA but you're just below that, correct?

25 A That's correct.

CROSS-EXAMINATION OF JENNIFER SUNU

1 Q You indicate that since you graduated from college, you
2 have never worked for anybody other than the NFA?

3 A That's correct.

4 Q So you have never been on the trader's side of this?

5 A That's correct.

6 Q You have never actually been out in the marketplace?

7 A That's correct.

8 Q So you don't -- you testified as to NFA's interpretation
9 of regulations. You have never been in a position of being on
10 the outside trying to interpret these regulations?

11 A That is true.

12 Q And you said that -- I think you used the example of
13 proprietary trading as something where there has been
14 disagreements in the past as to whether a particular structure
15 is proprietary trading or not?

16 A We have had circumstances where a firm has tried to
17 assert that certain investments were proprietary, and we had
18 determined that they were not in certain circumstances.

19 Q All right. And that was based upon their interpretation
20 of the regulations?

21 A I would assume so.

22 Q And if one were to try to ascertain what these
23 regulations actually encompassed, they may consult somebody
24 other than the NFA?

25 A Yes.

CROSS-EXAMINATION OF JENNIFER SUNU

1 Q For example, they may consult their own attorney who may
2 or may not be familiar with the area?

3 A That's true.

4 Q And if the particular concern has an attorney that is
5 house counsel, that may be who they consult as well?

6 A That's correct, yes.

7 Q And you don't dispute that someone could come to an
8 opinion different from yours?

9 A I do not dispute that.

10 Q Okay. All right. It doesn't mean you're right. It
11 doesn't mean they're right, but you understand that there is a
12 gray area in some of these regulations?

13 A I understand that people can come to different
14 conclusions on a particular regulation, yes.

15 Q That's because the regulations are not always the model
16 of clarity. Would you agree with that?

17 A I would say that there are sometimes when it's necessary
18 to ask for additional guidance, yes.

19 Q And so having never been on the other side as a position
20 of a trader, you can't put yourself in the position of
21 somebody trying to figure out what these regulations mean?

22 A I would say that I am -- I have never been in the
23 position of a trader. I have discussed with a number of firms
24 over the years what their positions are, yes.

25 Q And, in fact, you talked a moment ago about you being in

CROSS-EXAMINATION OF JENNIFER SUNU

1 just below the top brass in the NFA. You go around the
2 country speaking on behalf of the NFA; is that correct?

3 A I have spoken on various panels and at various
4 conferences on behalf of the NFA, yes.

5 Q Podcasts and things like that?

6 A Yes, I have.

7 Q Now, you said that in terms of what you regulate, you
8 would agree you do not regulate transactions overseas?

9 A We do not regulate transactions where the entity is
10 overseas and all the investors are overseas.

11 Q But if let's say transactions are taking place in the
12 United Kingdom, who regulates that?

13 A If it's with U.S. investors, the CFTC and NFA would still
14 have jurisdiction over those.

15 Q And if it involved like an overseas broker-dealer?

16 A If it was an overseas broker-dealer that had U.S.
17 investors, we would still have regulation over that.

18 Q And again, these are in the regulations where you
19 acknowledge that these regulations generally can result in
20 gray areas?

21 A I wouldn't say they generally result in gray areas, but
22 there are times when there are disagreements about how to
23 interpret a regulation.

24 Q Now, you talked about what would constitute proprietary
25 trading?

CROSS-EXAMINATION OF JENNIFER SUNU

1 A Yes.

2 Q You don't dispute that an individual has the right to
3 trade their own money, correct?

4 A I do not dispute that.

5 Q And would a trust be able to trade its own money?

6 A Whoever is responsible for trading, for overseeing that
7 trust would have the authority to make those decisions.

8 Q And you're familiar with the term "segregated trading
9 account"?

10 A Yes, I am.

11 Q And a segregated trading account would mean that an
12 individual investor would have their own lending account,
13 correct?

14 A A segregated trading account is typically when a futures
15 or forex dealer separates the customer funds from the firm
16 funds and there are certain protections that are given to
17 those segregated funds.

18 Q You used the term "customer funds."

19 A Yes.

20 Q And so, for example, if I was to invest in a segregated
21 trading account, there would be an account in my name,
22 correct?

23 A If -- well, if you were to invest in a -- you wouldn't
24 invest in a segregated trading account. You would have an
25 account at, say, for example, a forex dealer. The forex

CROSS-EXAMINATION OF JENNIFER SUNU

1 dealer would segregate the customer funds separate from their
2 own funds so that those customer funds are accounted for
3 separately than the firm-owned funds so that there's different
4 accounting being used for that which belongs to customers of
5 the forex dealer versus that which belongs to the firm.

6 Q So what belongs to the firm would be different from, say,
7 for example, segregated trading accounts?

8 A For forex dealers. In the example of a commodity pool
9 operator, the funds would be held in the name of the pool, and
10 that's how they would be separated out from, say, a CPO's
11 funds.

12 Q Now, a company that is involved in multiple things, forex
13 may be one of them, you'd unassert that you would have any
14 jurisdiction over the remainder of their activities?

15 A So if it's a commodity pool, we would have jurisdiction
16 over all of the investments of that pool. So we would not
17 only be able to look at the futures trading, the forex
18 trading, but if there is other trading that's going on, other
19 investments that are going on, we would have jurisdiction over
20 the commodity pool in its entirety.

21 Q And so if a company had numerous concerns, real estate,
22 whatever, you would not -- you're saying you would assert
23 jurisdiction over the real estate concerns?

24 A So we would be responsible for ensuring that all of the
25 assets and all the different types of investments of that pool

CROSS-EXAMINATION OF JENNIFER SUNU

1 are accounted for. So if, for example, we saw that a CPO was
2 investing in real estate but they were committing fraud in
3 that area and they were overvaluing the amount of the value of
4 that real estate and it was -- we determined it to be
5 fraudulent, we could take disciplinary action against the
6 commodity pool operator for the activities in that commodity
7 pool even though the real estate transaction is not something
8 that is generally regulated by NFA.

9 So both NFA and the CFTC have the ability to look at
10 all of the investments of a commodity pool. If there was a
11 situation where there was an entity who was solely trading
12 real estate and was not a commodity pool listed with NFA, we
13 would not have jurisdiction over that.

14 Q Now, you mentioned --

15 THE COURT: Counsel, let me interrupt you.

16 Thank you. We'll take our lunch break now, ladies
17 and gentlemen. Let's try to start back up, if we can, at
18 1:30, at half past. Thank you very much.

19 Please don't discuss the case or consider or consult
20 any outside sources.

21 (Lunch recess taken.)

22 THE COURT: Thank you, ladies and gentlemen.

23 All right, counsel. I think you were still on cross.
24 Thank you.

25 BY MR. ROSENTHAL:

CROSS-EXAMINATION OF JENNIFER SUNU

1 Q Good afternoon, Ms. Sunu. Just a couple more questions.
2 The NFA just so we are clear, is not a governmental agency,
3 correct?

4 A That's correct.

5 Q So it's a private agency?

6 A Yes.

7 Q And so just a couple more questions on what the NFA in
8 your view can regulate. If let's say, for example, somebody
9 were to loan somebody -- say I were to loan somebody money for
10 forex trading as an example, would your view be that that
11 would require the person to register with the NFA?

12 A If you were loaning money for the purpose of forex
13 trading, yes.

14 Q Just one person -- let's say my nephew is a forex trader.
15 I say here's a hundred bucks. He would then have to register
16 with the NFA simply based upon the fact that I loaned him the
17 money?

18 A Not a relative, no.

19 Q Or if he had a friend that was trading, the fact that I
20 would loan his friend a hundred bucks would mean his friend
21 would have to register with the NFA?

22 A So as I mentioned earlier, there are certain exemptions
23 from retirement. So a hundred dollars would fall under one of
24 those exemptions. But if it was a significant amount of money
25 that was being loaned or involved marketing, that investment

REDIRECT EXAMINATION OF JENNIFER SUNU

1 vehicle through the loan process and for forex trading, that
2 would require NFA membership.

3 Q And you would agree that a corporation can trade in
4 forex, can trade its own money in forex, correct?

5 A A corporation can trade its own money, yes.

6 Q Even though the corporation would have shareholders?

7 A It depends. So you're talking about whether or not they
8 would be required to be an NFA member?

9 Q Yes. Let's say -- let's take General Motors suddenly
10 decides they're going to be involved in forex trading. They
11 wouldn't have to be a member of the NFA, would they?

12 A That's correct, because with General Motors the purpose
13 of the entity is not to trade forex.

14 Q Because they're primarily involved in selling cars,
15 correct?

16 A Yes.

17 Q So it's a question of what the primary business is?

18 A A question of what the primary business is and how it's
19 marketed to the investors.

20 MR. ROSENTHAL: Thank you.

21 THE COURT: All right. Redirect, please.

22 **REDIRECT EXAMINATION**

23 BY MR. MURRAY:

24 Q Ms. Sunu, you just testified that the NFA is not a
25 government organization, right?

REDIRECT EXAMINATION OF JENNIFER SUNU

1 A That's correct.

2 Q How would you characterize it with respect to
3 governmental regulatory power?

4 A The power that we have?

5 Q Yes.

6 A We have power that has been granted to us by the CFTC
7 through Congress.

8 Q I think you were just asked about one individual lending,
9 giving a loan to someone to invest in forex. What about 500
10 people, if 500 people gave money to a manager and were told
11 that that manager was a forex expert and he was going to be
12 investing in forex, how would the NFA treat that?

13 A 500 people loaning money to an investor for the purpose
14 of forex, we would say that CFTC registration is required and
15 NFA membership is required.

16 Q What if that person said, no, no, these are loans?

17 A It doesn't matter whether it's a loan or whether it's a
18 share of an entity like a stockholder type thing. Any time
19 that someone is providing money to a company for the purposes
20 of forex trading and doesn't fall under the type of exemptions
21 that I mentioned earlier, they would be required to be an NFA
22 member.

23 Q I want to republish Exhibit 111, please, page 2.

24 Ms. Sunu, you testified earlier that -- I think you
25 agreed with counsel that sometimes regulations can have gray

REDIRECT EXAMINATION OF JENNIFER SUNU

1 areas, correct?

2 A Yes.

3 Q What's on the screen in front of you?

4 A This is the first paragraph on the second page of the
5 settlement that Mr. DaCorta entered into with NFA.

6 Q Based on your understanding of that agreement and what's
7 in front of you, anything gray about the terms of that
8 agreement?

9 MR. ROSENTHAL: Objection, beyond the scope of cross.

10 THE COURT: Overruled.

11 MR. MURRAY: I'm sorry. I didn't hear Your Honor's
12 ruling.

13 THE COURT: The objection was overruled.

14 BY MR. MURRAY:

15 Q Is there anything gray --

16 A Would you repeat the question?

17 Q Ms. Sunu, based on your understanding of terms of the
18 agreement and what's on the screen in front of you, is there
19 anything gray about the terms of that settlement agreement
20 from your perspective?

21 A In my opinion, there is nothing gray about this.

22 MR. MURRAY: No further questions, Your Honor.

23 THE COURT: Let's call your next witness.

24 You may step down, ma'am. Thank you.

25 MR. MURRAY: Your Honor, the United States calls

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 Matthew Kihnke.

2 THE COURTROOM DEPUTY: Please raise your right hand.

3 (Witness sworn.)

4 THE COURTROOM DEPUTY: Can you state your full name
5 for the record.

6 THE WITNESS: Matthew Kihnke.

7 THE COURTROOM DEPUTY: Thank you. Please be seated.

8 MR. MURRAY: May I proceed, Your Honor?

9 THE WITNESS: Yes.

10 **MATTHEW KIHNKE, CALLED BY THE GOVERNMENT, SWORN**

11 **DIRECT EXAMINATION**

12 BY MR. MURRAY:

13 Q Good afternoon.

14 A Hello.

15 Q Mr. Kihnke, how old are you?

16 A Fifty-four.

17 Q If you could just sit a little bit -- I know the
18 microphone is difficult there.

19 I'm sorry. Could you repeat how old you are?

20 A Fifty-four.

21 Q And where did you grow up?

22 A In Spring Lake, Michigan.

23 Q And where did you go to school?

24 A In Grand Rapids, Michigan.

25 Q And where do you currently live?

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 A In Sarasota, Florida.

2 Q You work there as well?

3 A Yes, I do.

4 Q And what do you do for work?

5 A I'm in the real estate development business.

6 Q And what is it exactly that you do in the real estate
7 development business?

8 A I buy land and I hire architects, engineers, and
9 contractors to build buildings for me. I'm in residential, so
10 I build condos, and I hire firms to sell those out for me. So
11 it's just a development business.

12 Q And how long have you been involved in that industry?

13 A Approximately 30 years.

14 Q Approximately how many projects would you say that you
15 have done?

16 A Overall?

17 Q Yes.

18 A I have been involved in, if I had to guess, 30 plus.

19 Q How would you characterize the size of those projects?

20 A They range anywhere from -- earlier in my career it would
21 be a couple hundred thousand dollar home now up to a million
22 dollar building. So the range is fairly dramatic.

23 Q And geographically speaking, where are the majority of
24 those projects?

25 A Approximately 13 of them are in Florida. I have done

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 some stuff in Anguilla, Turks and Caicos, and Michigan. And
2 the majority of the larger projects were in Chicago.

3 Q From the years 2016 to 2019, did you have any work, any
4 projects in Florida that you were working on?

5 A Yes.

6 Q Did you own real estate in Florida?

7 A Yes.

8 Q Where in Florida?

9 A In Bradenton and Sarasota.

10 Q Mr. Kihnke, are you familiar with an individual named
11 Michael DaCorta?

12 A Yes, I am.

13 Q Is he here in the courtroom today?

14 A Yes.

15 Q Could you please describe him?

16 A Sitting with a black suit on, a striped tie, second from
17 the left in the chair.

18 Q How did you first become familiar with Mr. DaCorta?

19 A Through an individual named Frank Duran.

20 Q And how did you know Frank Duran?

21 A Just in social circles in Sarasota. Apparently I had met
22 him about ten years prior. And he came up one evening and
23 reintroduced himself to me and reminded me that he was trying
24 to bring a buyer --

25 MR. ALLEN: Objection. Hearsay.

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 THE COURT: Sustained.

2 BY MR. MURRAY:

3 Q Tell the jury about how you met Mr. DaCorta through
4 Mr. Duran?

5 A Frank Duran was working out with, according to him, at a
6 facility in Lakewood Ranch --

7 MR. ALLEN: Objection. Hearsay.

8 MR. MURRAY: It's not offered for its truth.

9 THE COURT: Ladies and gentlemen, we have this
10 hearsay rule which is about 300 years old. And what it says
11 is out-of-court statements generally with some exceptions
12 don't come in. So that's what we're talking about here.

13 So let me just ask you -- Mr. Kihnke, don't give us
14 the substance of what he said. See if you can just answer the
15 question.

16 Put the question again, and we will try and avoid the
17 out-of-court statement of this person who's not a defendant,
18 not in court today.

19 Go ahead.

20 BY MR. MURRAY:

21 Q So Mr. Kihnke, how did you meet Mr. DaCorta? Could you
22 just tell the jury about the first time that you met him?

23 A An individual named Frank Duran was a mutual friend.

24 Q Can you tell us about that initial interaction with
25 Mr. DaCorta?

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 A Frank set up a meeting, I believe it was a lunch meeting
2 and introduced me to him in downtown Sarasota, and we sat down
3 and we discussed a forex trading opportunity.

4 Q And roughly what year was that?

5 A 2016, I believe.

6 Q During that meeting -- well, let me ask you, were there
7 additional meetings with Mr. DaCorta after that meeting?

8 A Yes.

9 Q Did you have a personal relationship with Mr. DaCorta
10 after that meeting?

11 A I would consider so, yes.

12 Q At any time in that meeting or in the subsequent
13 meetings, did Mr. DaCorta ever say anything about his
14 background?

15 A Yes.

16 Q What did he say?

17 A Well, he had indicated that -- he was an entrepreneur at
18 heart similar to me and had discussed a beer company that I
19 believe he grew and sold. And then we started talking more
20 about the forex trading, which was what he was more involved
21 in now or at that time.

22 Q And what did he say about that?

23 A He told me that he was -- they structured or set up a new
24 company, and they were just expanding that out into Florida.
25 He moved down here and was building this company.

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 Q And what was the company called?

2 A Oasis.

3 Q Did he speak to you at all about how he was structuring
4 Oasis?

5 A Yeah. We spent, I think, quite a few meetings discussing
6 the company and what he did, how he did it and the structure
7 of the company just because I'm interested in that type of
8 thing.

9 Q And what did he say about its structure?

10 A It was structured offshore so that the trades and the
11 clears -- the trades and the money would clear offshore, not
12 in the United States. And his company was set up, I believe,
13 in three different areas. I think there was Cayman Islands, I
14 believe Belize was one of the areas, and I believe England
15 were the three areas that he had structures set up. And I
16 don't know if they were simply bank accounts or
17 clearinghouses, but those were the three areas that I recall.

18 Q What, if any, reason did he give for why he was setting
19 up companies offshore?

20 A I think in 2008 when the Lehman bank went down, that was
21 one of the world's largest clearing firms. And I believe his
22 interaction in trading paid a big price back in 2008 when
23 Lehman shut down. And so the reasoning behind setting up and
24 structuring a company down in the Islands or outside the
25 United States, I was told because there was a \$20 million cost

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1 that all of these large forex trading companies had to pay in
2 order to get licensed within the United States. And that
3 piece was something that came up after the Lehman debacle, if
4 you will. Simply put, that's the justification that I
5 understood.

6 Q Did he at any time say anything about a settlement with
7 the National Futures Association banning him from soliciting
8 U.S. investors?

9 A Not that I'm aware of, no.

10 Q How many times in total would you say approximately that
11 you discussed Oasis with Mr. DaCorta?

12 A In total?

13 Q In total.

14 Let's start before. Did you eventually invest in
15 Oasis?

16 A Yes, I did.

17 Q Let's say before you invested. How many times did you
18 meet with Mr. DaCorta and talk about Oasis?

19 A Probably seven times before I ever transferred money to
20 him.

21 Q And how about total, total since you've met him?

22 A Well over 20. Probably 25, possibly 30.

23 Q So I'm going to take you back before you first invested.
24 How did he pitch you on the Oasis opportunity? What did he
25 describe the opportunity as?

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1 A It was -- it was a forex trading, so we were trading
2 currencies. There's a handful of currencies that he was
3 trading and gold and silver. And so what he was -- the
4 discussions that we had -- so I was trying to get my brain
5 wrapped around this -- was we would deposit money with the
6 firm. The money would go into an account that was a leveraged
7 account against the monies that they were trading. They had
8 their own money that they were trading. And this was money
9 that sat in an account that allowed them to clear their trades
10 with leverage.

11 So my understanding was the money went into an
12 account, sat there. It was never to be risked, never to be
13 traded. And they had their -- the partners' money sat in an
14 account, and that's what they traded. So my understanding was
15 that the money that we put up allowed them to do larger trades
16 with larger leverage because they needed the clearinghouse to
17 use that money as a collateral. So I looked at it as a
18 collateral account.

19 Q You said never to be risked and never to be traded. So I
20 wanted to start with the risk. Did he provide any explanation
21 for why collateral would never be at risk?

22 A The -- at the beginning of this whole thing, I was told
23 that they had between 40 and \$60 million that they would
24 trade, which was the partners' money. In order to get
25 leverage which would allow them to trade up to I believe it

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1 was ten times leverage, it needed a collateral account which
2 the bank would look at in order to clear their trades every
3 day.

4 Because the trades were so short, they would try to
5 trade multiple times in minutes and seconds. And so my
6 understanding was that our money was only used as collateral.
7 So there was a stop loss on their trading account. And my
8 understanding again in my conversation with Mike was that our
9 money could never be at risk and would never be traded or at
10 risk because they would have to lose all of their money, all
11 of their \$60 million that was in this account being traded
12 before the bank would ever go after the collateral account.
13 The \$60 million would be leveraged up to ten times. So it
14 would give them in effect a tremendous amount to trade.

15 They said that they could never lose the 60 million
16 because there was a stop loss of 10 percent on every one of
17 their trades. So in effect with my understanding, if they had
18 \$60 million of risk out, the worst that they could do is lose
19 \$6 million of that. And they would never be able to lose all
20 60 million of it.

21 Q And when you say -- I think you said 40 million of the
22 partners' money. Who did you understand the partners to be?

23 A An individual named Ray Montie, Joe Anile, and Mike
24 DaCorta.

25 Q And were you ever considered a partner?

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 A No.

2 Q And so to be clear, where did you think your money was
3 going?

4 A To the bank that was being used as basically a collateral
5 account.

6 Q Mr. Kihnke, did you ever think that your money was going
7 to purchase forex contracts or forex currency in any way,
8 directly?

9 A No, I did not.

10 Q How many times would you say you spoke to Mr. DaCorta
11 about where your money was going and how it was going to be
12 used by Oasis?

13 A A lot. It was probably one of my biggest concerns before
14 putting money in there. So at least every single time before
15 I deposited money and I think a few times after that, but the
16 money was already gone. So I think that conversation didn't
17 take place as often.

18 Q Did you ever ask for proof of where your money was
19 sitting?

20 A Yes, I did.

21 Q Can you tell the jury about that?

22 A One time I asked Michael if I could see a report from the
23 bank where they held our money, and I was told no.

24 Q You said you were told no. Who told you no?

25 A Michael.

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 Q Did he provide an explanation for why?

2 A He did. I don't recall what it was though.

3 MR. ALLEN: I'm sorry, Your Honor. I didn't happen
4 to hear that answer.

5 THE COURT: "He did. I don't recall what it was
6 though."

7 MR. ALLEN: Thank you, Your Honor.

8 BY MR. MURRAY:

9 Q Mr. Kihnke, were you ever of the understanding throughout
10 this investment process that your money was going to be used
11 for any purpose beyond what you just described?

12 MR. ALLEN: Objection. Leading.

13 THE COURT: Overruled.

14 A No.

15 BY MR. MURRAY:

16 Q Did Mr. DaCorta ever mention any other businesses outside
17 of forex?

18 A Yes.

19 Q And what do you recall him mentioning?

20 A I think they were talking about diversifying. Taking
21 tangible gold and silver was one of the things he talked
22 about. Purchasing real estate was one of the items he talked
23 about. And I think there was like a protein shake, a workout
24 food, vitamin supply company that he had also talked about.

25 Q What was your understanding of those diversifying

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 ventures relative to your investment with Oasis?

2 A I thought it was wise for them to do that. I think in
3 their position if you are sitting on all of this money,
4 diversification within that marketplace was probably the right
5 thing to do.

6 Q What was your understanding of whose money that was in
7 terms of those businesses you just mentioned?

8 A The company's money, Oasis.

9 Q Did you ever have an understanding that your money was
10 going to be used in those ventures?

11 A No.

12 Q Would you have invested in Oasis had you known that your
13 money was going to be used in the Lion fitness company that
14 you just mentioned?

15 A No.

16 Q How about real estate?

17 A No.

18 Q Why?

19 A Because I was hiring them, I thought, and partnering with
20 them on forex trading, nothing else.

21 Q So you would never have invested in real estate through
22 Oasis?

23 A No.

24 Q Is there a particular reason for that?

25 A It's my core business. It's what I know best. I

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1 wouldn't pay somebody else to do something that I probably am
2 much more savvy at than the Oasis team was. I wouldn't take
3 the risk on that.

4 Q Did you ever meet anyone else from the Oasis team?

5 A Yeah. I met Mr.-- I can never pronounce the name Peglia,
6 Puglia, whatever. Joe Paniagua I think it is. I can't -- I
7 can never remember. I met him, Frank Duran, Joe Anile. Ray
8 Montie I met twice at the Christmas events, and of course
9 Michael DaCorta. That's it. That's all I recall.

10 Q Did you ever go to the Oasis office?

11 A Yes.

12 Q What, if anything, did you observe at the Oasis office?

13 A Well, I observed a lot. I was there a number of times.
14 It's a great facility on the water at Longboat Key, beautiful
15 view, great building, great real estate. They redid it, spent
16 some money rehabbing it. Great facility.

17 Q Did you ever see anything occurring inside the facility
18 beyond the structure of the building?

19 A Sure.

20 Q What did you observe?

21 A I have been there a number of times to meet with Mike. A
22 couple times I just stopped in to say hi, see how things were
23 going. A couple times he was showing me the trading platform
24 that they had, that they used, you know, showed me how they
25 were trading the forex trades. And I sat there and we did a

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1 trade on the system and thought it was pretty cool. I was
2 looking at the different arrays of how, you know, the methods
3 that he would trade within certain areas on the system. And
4 so that was one of the meetings.

5 I met there multiple times with other prospects
6 including my wife and parents who are also investors. Met
7 there -- they had a happy hour or some type of a function
8 where they brought in prospects. Some were from the Midwest,
9 maybe Nebraska, Minneapolis, something like that. They had a
10 group of people that came in. I went over there and met
11 everybody then but was there periodically.

12 Q You mentioned prospects. Did you ever see DaCorta pitch
13 Oasis to anybody else besides yourself and your immediate
14 family?

15 A Yes.

16 Q Who?

17 A Friends. Friends of mine that some invested, some
18 didn't. There was a couple of groups that came in. I was
19 invited to a couple of dinners that we went out on, and they
20 had some groups of people that were looking at investing in
21 the platform as well. I don't recall their names, don't
22 remember what company they were from. There were three or
23 four of them at one dinner that we had that was discussing the
24 trading opportunity.

25 And meetings around town that Frank Duran would set

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1 up. There would be multiple people, and Frank would use my
2 name to gather people to prospect and look at investing.

3 Q How would you characterize the sales pitch that you
4 observed in those meetings?

5 A I mean, it was -- some of these guys are much more savvy
6 than I am with regards to the investment and the platform in
7 forex trading. I'm a novice at best. A couple of these guys
8 did a deep dive, and I was very impressed with the terminology
9 and the language that they spoke and the opportunities. And I
10 learned from being around and listening to what they were
11 speaking about.

12 Q Was Mr. DaCorta's pitch consistent with the pitch he gave
13 you?

14 A Yes. It seemed to be.

15 Q How did he describe in those meetings that you observed
16 the investment money being used?

17 A The same. Their account was the account that was being
18 traded, and the collateral account was what they were trying
19 to build to be able to trade larger trades, more of it.

20 Q Did you ever do any diligence yourself on Oasis or
21 Mr. DaCorta?

22 A I did. I reached out to one of my law firms that I used
23 and asked them if they could do some background and search for
24 me. They gave me a private investigator's name, which I
25 reached out, talked to him. And that was about it.

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1 Q And without getting too much into details of that, what
2 was the information you received based on that?

3 A Nothing terribly in depth. I expected more. He gave me
4 odds that it was about 50 percent, it was a 50/50 that it
5 was --

6 MR. ALLEN: Objection. Hearsay.

7 THE COURT: Sustained.

8 BY MR. MURRAY:

9 Q Did you receive information back after that check in any
10 way?

11 A Yes.

12 Q Did you decide to invest anyway?

13 A Yes, I did.

14 Q I want to ask you about the rate of return for the Oasis
15 opportunity.

16 A Okay.

17 Q What was your understanding of what that was?

18 A I was told that we were guaranteed a 12 percent return on
19 our money or up to 25 percent of the profits generated from
20 the trading days.

21 Q And how would you characterize that rate of return? Was
22 it variable or fixed?

23 A Well, it was a fixed rate at 12 percent. So if they made
24 less money on any particular day of trading, we were
25 guaranteed still a 12 percent rate of return, annual rate of

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1 return on our money. So at the end of the year if their
2 trades only made 8 percent, we would still get 12 percent.

3 Q Did that seem high to you?

4 A Not really. Not particularly.

5 Q Why?

6 A It's a leveraged business. I'm in the real estate
7 development business, which is a leveraged business as well.
8 It certainly did a lot better than the banks that were paying
9 nothing or a quarter of a percent. So I thought 12 percent
10 was a good, solid return.

11 In the real estate development business, people --
12 there are a lot of people that will charge between 12 and 18
13 percent to loan money for projects. I don't partake in that,
14 but it's called hard money lending, and there's a lot of
15 people that do it. So 12 percent on this didn't seem
16 outlandish to me.

17 Q Mr. Kihnke, how many times did you invest in Oasis?

18 A I believe four times.

19 Q I'm showing you what's been marked for identification
20 purposes as Government Exhibit 201A and B. I'm going to start
21 with 201B. Do you recognize 201B?

22 A Yes, I do.

23 Q What is 201B?

24 A An email from Joe Paniagua cc'ing Michael DaCorta on it.
25 There's a promissory note executed.

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1 Q And is it a fair and accurate representation of an email
2 that you got from Oasis?

3 A Yes.

4 Q How about 201A? Do you recognize that?

5 A Yes.

6 Q And what is that?

7 A This was the promissory note that we received every time
8 we would wire in a loan.

9 Q And is it a fair and accurate representation of one of
10 the promissory notes that you received from Oasis?

11 A Yes, it is.

12 MR. MURRAY: Your Honor, the government would move
13 into evidence 201A and 201B.

14 THE COURT: They are admitted.

15 MR. ALLEN: No objection, Your Honor.

16 THE COURT: Thank you.

17 (Government Exhibits 201A and 201B admitted.)

18 MR. MURRAY: So I want to start by publishing 201B.
19 Just going to the bottom of the first page.

20 BY MR. MURRAY:

21 Q Who is this email from?

22 A From Joe.

23 Q And going to the second page, what does it say?

24 A "Pleasure meeting you and Merissa for the first time last
25 night. Please find attached your promissory note executed.

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1 Please let me know if you have any questions and/or concerns.

2 Best regards, Joe."

3 Q And Mr. Kihnke looking at 201A, if we can just focus on
4 the top of that document. And you mention this is the first
5 promissory note you received from Oasis. What is the amount
6 on this promissory note?

7 A \$1 million.

8 Q Well, what's the date on the promissory note?

9 A July 12, 2017.

10 Q Is your name on the promissory agreement?

11 A Yes, it is.

12 Q Can we go to the last page of that document, please. And
13 the bottom, who is this signed by?

14 A Michael DaCorta, Oasis International Group.

15 Q Mr. Kihnke, how did you make that investment payment?
16 How did you send the money?

17 A Wire transfer.

18 MR. MURRAY: And Your Honor, permission to publish
19 201Q which is identical to Exhibit 9A which is already in
20 evidence.

21 THE COURT: All right.

22 MR. MURRAY: I should say it's contained within
23 Exhibit 9A.

24 THE COURT: Very well.

25 MR. ALLEN: Your Honor, I think this is a duplicate

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1 exhibit of what 9A is. I have no problem if they want to
2 relabel the same exhibit as Q, 201Q.

3 THE COURT: All right. Well, I will leave that up to
4 both you gents to square up. But if it's already admitted or
5 part thereof, you may publish it.

6 MR. MURRAY: Thank you, Your Honor.

7 BY MR. MURRAY:

8 Q So going to page 3, do you see what this says on top,
9 Mr. Kihnke?

10 Well, before we get there, just the very top of the
11 document, the Fund Administration, can you please read that to
12 the jury.

13 A Fund Administration, Inc., for the benefit of.

14 Q Is this your bank account statement, Mr. Kihnke?

15 A It appears so, yes.

16 Q If you could --

17 A It's hard to see on your computer here. It's a little
18 fuzzy.

19 Q If we could go to page 3, the second line down. If you
20 would highlight that, please.

21 Could you read that to the jury?

22 A Funds transfer, wire from Matthew R. Kihnke pod account,
23 July 24, in the amount of \$1 million.

24 Q Does that fairly reflect the wire that you sent to Oasis
25 for that promissory note?

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 A Yes.

2 Q To be clear, Mr. Kihnke, this isn't your bank account,
3 right?

4 A No.

5 Q Do you own a company called Fund Administration, Inc.?

6 A No, I do not.

7 Q Mr. Kihnke, I want to turn now to the additional
8 investments you said you made. But before we get there, were
9 you getting updates on the performance of Oasis over time?

10 A Yes, I was.

11 Q And how would you go about getting those updates?

12 A Initially it was through -- there was just a report that
13 was generated that was sent to us, emailed to us.

14 Q And what did that look like?

15 A I think just kind of a snapshot of an investment where it
16 had the date of the initial investment, the total amount of
17 the investment, and then it would show any return on the
18 amount of money.

19 Q And I think you said initially. Was there a different
20 way you went about that later?

21 A Towards the end they had a computer system where you
22 could actually dial in to it, type a pass code and look at
23 your account.

24 Q And would you do that?

25 A Yes.

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1 Q After your first investment of a million dollars, what
2 was your understanding of your investment's performance after
3 that first investment?

4 A Well, it looked good. The account was growing. So I had
5 my million dollars. I think that next month I think it had
6 made \$23,000 or something. So it's better than a quarter
7 percent I would have received at the bank. So I thought it
8 looked like a good investment.

9 Q And how was Oasis set up to treat those returns for you?

10 A They would just reinvest them.

11 Q Did you manually do that or is that something that
12 happened automatically?

13 A There was communication between them and me. So they
14 automatically did it after I told them to reinvest rather than
15 take it out.

16 Q So I'm showing you what's been marked for identification
17 purposes as Government Exhibit 201C. Do you recognize 201C?

18 A Yes, I do.

19 Q And what is it?

20 A Email from Joe Paniagua to me on September 2 just saying,
21 "Hi, Matt: Hope all is well."

22 THE COURT: Has this been admitted?

23 MR. MURRAY: No, Your Honor.

24 THE COURT: So we don't want to publish it by reading
25 it yet until it's admitted.

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 BY MR. MURRAY:

2 Q Mr. Kihnke, just generally what are you looking at?

3 A This is just an email communication between Joe and
4 myself discussing the --

5 Q Before you get into what it's discussing, is it a fair
6 and accurate representation of an email communication between
7 you and Joe?

8 A Yes, it is.

9 MR. MURRAY: Your Honor, we would move in 201C.

10 MR. ALLEN: No objection, Your Honor.

11 THE COURT: Admitted.

12 (Government Exhibit 201C admitted.)

13 MR. MURRAY: And permission to publish, Your Honor?

14 BY MR. MURRAY:

15 Q Going to the second page of this document, could you
16 please read that to the jury on top?

17 A "By default your proceeds are rolled into the principal
18 amount unless otherwise noted to do so. Please find attached
19 your current loan statement with OIG. Please let me know if
20 you have any further questions about our program. Have a
21 great Labor Day weekend and stay well. With warmest regards,
22 Joe."

23 Q And Mr. Kihnke, when I ask you to read things, could you
24 please read them a little bit slower for the court reporter?

25 A Sorry.

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1 Q And Mr. Kihnke, does this email accurately reflect your
2 understanding of what was happening to your Oasis returns?

3 A Yes.

4 Q At any point did you decide to make any additional
5 investments into Oasis?

6 A Yes, I did.

7 Q Mr. Kihnke, before we get to those, I want to ask after
8 that first investment, did you remain in contact with
9 Mr. DaCorta?

10 A Yes, I did.

11 Q Did he ever say anything was wrong?

12 A No.

13 Q How were you in contact with him?

14 A Generally phone calls, but I would meet up with him,
15 either stop in his office, we'd have lunch once in a while,
16 dinner once in a while.

17 Q So when you saw him in person, what would you guys do?

18 A A couple times we went out to lunch. He would often be
19 on his phone trading, whatever platform would allow him on his
20 phone. And so we would talk and he would be trading and
21 watching markets and doing that stuff. Kind of fun to watch,
22 you know, and see. And sometimes it was just a conversation
23 after work, but sometimes it was at his office based on what
24 we set up.

25 Q And during that time, did you attend any events sponsored

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1 by Oasis?

2 A Yes, I did.

3 Q What did you attend?

4 A Two Christmas parties that they threw.

5 Q Can you tell the jury about those Christmas parties?

6 A They were great parties. They were held at the
7 Ritz-Carlton. Great bands, great entertainment, a lot of
8 people. Everybody was happy. The food was fantastic. It was
9 a great event.

10 Q Were they popular in Sarasota?

11 A Yes, they were.

12 Q How so?

13 A I think it turned into an event where people wanted to go
14 to it. And it was thought of as being a very, you know, kind
15 of a chic event to go to. Great food, great entertainment,
16 great people. It was great to meet people there. A lot of
17 people would come up and ask Frank for tickets to go to the
18 event, but it was always a good event.

19 Q I'm showing you what's been marked for identification
20 purposes as Government Exhibit 201P.

21 What have I handed you there as 201P? What is that?

22 A A picture from one of the events.

23 Q Does it fairly and accurately represent -- well, you said
24 a picture from one of the events?

25 A From one of the holiday parties.

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1 Q And who is in that picture?

2 A Myself, my wife, and Frank -- yeah, Frank Duran.

3 Q Does it fairly and accurately represent the scene as you
4 remember it?

5 A Yes.

6 MR. MURRAY: Your Honor, the government would move
7 into evidence Exhibit 201P.

8 MR. ALLEN: No objection.

9 THE COURT: All right. Thank you. Mark it in.

10 (Government Exhibit 201P admitted.)

11 MR. MURRAY: Publish 201P, please.

12 BY MR. MURRAY:

13 Q Mr. Kihnke, let me first ask who was in this photo?

14 A Myself, my wife, and Frank Duran.

15 Q And where is your wife?

16 A To the left. You can see her on my right cheek. It is a
17 little hard to see her.

18 Q And who is the individual in front of you?

19 A Frank Duran.

20 Q Do you recall which holiday party this was?

21 A I think it was the second, but I'm not sure.

22 Q Mr. Kihnke, I want to turn now to the additional
23 deposits. I'm handing you what's been marked as Government
24 Exhibit 201D, 201E, and 201E1.

25 Let's start with 201D. Do you recognize that?

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1 A Yes, I do.

2 Q And without reading it, what is it generally?

3 A Just again communication between Joe Paniagua and myself.

4 Q And how about 201E, do you recognize that?

5 A Yes.

6 Q What is that?

7 A The same thing, just communication between Joe confirming
8 there was a second deposit of \$1 million made.

9 Q And are they fair and accurate? Does what's in front of
10 you fairly and accurately represent communications you
11 received?

12 A Yes.

13 MR. MURRAY: Your Honor, the government would move
14 into evidence 201D and 201E.

15 MR. ALLEN: No objection, Your Honor.

16 THE COURT: Admitted.

17 (Government Exhibits 201D and 201E admitted.)

18 BY MR. MURRAY:

19 Q How about 201E1, do you have that in front of you?

20 A Yes, I do.

21 Q What is that?

22 A This looks like the receipt we would get for the
23 investment at the end of each month.

24 Q Is it something you recognize as relating to you?

25 A Yes, I do.

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1 Q Does it fairly and accurately represent a receipt you got
2 from Oasis?

3 A Yes.

4 MR. MURRAY: Your Honor, the government would also
5 move into evidence 201E1.

6 MR. ALLEN: No objection.

7 THE COURT: Admitted.

8 (Government Exhibit 201E1 admitted.)

9 BY MR. MURRAY:

10 Q Let's start with 201D on the screen, please. Would you
11 please at the bottom tell us who this email is from, who it's
12 to and what it says?

13 A From Joe Paniagua to me, August 2. "Please see attached
14 for promissory note on today's funds."

15 Q And turning to 201E, the same thing. Who is this from,
16 and what does it say?

17 A From Joe Paniagua to me regarding the promissory note and
18 the second deposit of \$1 million.

19 Q Mr. Kihnke, MRK@MKequity.com, whose email address is
20 that?

21 A That is mine.

22 Q And did Oasis issue a promissory note with respect to
23 this deposit as well?

24 A Yes, they did.

25 Q I'm showing you Government's Exhibit 201F. Do you

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 recognize 201F?

2 A Yes, I do.

3 Q What's that?

4 A This is the promissory note for the \$1 million deposit on
5 August 2.

6 Q And does it fairly and accurately represent the
7 promissory note that you received from Oasis?

8 A Yes.

9 MR. MURRAY: The government would move 201F into
10 evidence.

11 MR. ALLEN: No objection, Your Honor.

12 THE COURT: It's admitted.

13 (Government Exhibit 201F admitted.)

14 BY MR. MURRAY:

15 Q And let's pull up 201F.

16 Mr. Kihnke, could you just please tell the jury what
17 we're looking at here and what the date is?

18 A A promissory note for a million dollar loan on August 2
19 of 2017.

20 Q And if you go to the last page. Who signed this
21 document?

22 A It appears to be Michael DaCorta, Oasis International
23 Group.

24 Q And I want to show you Government Exhibit 201Q, which is
25 also Exhibit 9A. Page 4, please. If you could highlight,

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 please, the second entry on that line.

2 What does that say, Mr. Kihnke?

3 A This is the wire transfer on 8/2 from Matthew R. Kihnke's
4 pod account for a million dollars.

5 Q Does that accurately reflect your second investment in
6 Oasis?

7 A Yes.

8 Q Mr. Kihnke, you mentioned previously that you would
9 sometimes see the performance on statements. I want to
10 publish Exhibit 201E that's already in evidence. I'm sorry
11 201E1. If you could highlight the third box down.

12 What does this show?

13 A This is the investment highlight with the returns as of
14 August 31, 2017.

15 Q And as of that date, how much had you invested?

16 A I had \$2 million of investment which had a pending
17 balance of 2,053,560.97.

18 Q Is this a fair type of statement that you would get from
19 Oasis?

20 A Yes, it is.

21 Q Did you invest again after that date?

22 A Yes, I did.

23 Q I'm going to show you what's been marked as Government's
24 Exhibit 201H and 201G. Let's start with 201H. Do you
25 recognize 201H?

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 A Yes, I do.

2 Q Without getting into its contents, what is 201H?

3 A Again, an email transmission between Joe Paniagua to me
4 regarding a third promissory note.

5 Q Does it fairly and accurately represent communications
6 that you had via email?

7 A Yes.

8 MR. MURRAY: Your Honor, the government would move
9 into evidence 201H.

10 MR. ALLEN: No objection, Your Honor.

11 THE COURT: Admitted.

12 (Government Exhibit 201H admitted.)

13 BY MR. MURRAY:

14 Q Could we publish 201H, please.

15 And could you just tell the jury who is sending that
16 email, who is receiving it, and what the subject line is and
17 what the email says?

18 A September 7 Joe Paniagua sent me an email binding my
19 attached third promissory note for my investment with OIG in
20 the amount of \$3 million.

21 Q And did you receive paperwork back reflecting an
22 investment in that amount of \$3 million?

23 A Yes, I did.

24 Q I want to turn now to Exhibit 201G that's in front of
25 you. Do you recognize that?

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 A Yes, I do.

2 Q What is 201G?

3 A The same promissory note issued on September 7, 2017, for
4 the \$3 million loan.

5 Q And does what's in front of you fairly and accurately
6 represent the note that you received from Oasis?

7 A Yes, it does.

8 MR. MURRAY: Your Honor, move into evidence 201G.

9 MR. ALLEN: No objection, Your Honor.

10 THE COURT: Admitted.

11 (Government Exhibit 201G admitted.)

12 MR. MURRAY: Can we publish 201G briefly?

13 BY MR. MURRAY:

14 Q What's the date on this one, Mr. Kihnke?

15 A September 7, 2017.

16 Q What's the amount?

17 A \$3 million.

18 Q And if we could go to 201Q, page 9, please. And if we
19 could find the -- could you please read that to the jury,

20 Mr. Kihnke?

21 A On 9/6 funds transfer, wire from Matthew R. Kihnke, pod
22 account for \$3 million.

23 Q Does that accurately reflect your third investment in
24 Oasis?

25 A Yes, it does.

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 Q Mr. Kihnke, I'm handing you what's been marked as
2 Government Exhibit 201I. If you could take a second to
3 examine 201I and let me know if you recognize that.

4 A Again, an email transmission from Joe Paniagua on
5 October 1.

6 Q Is it a fair and accurate representation of email
7 correspondence that you received?

8 A Yes.

9 MR. MURRAY: Your Honor, the government would move
10 into evidence 201I, Government's Exhibit 201I.

11 THE COURT: 201I is admitted.

12 MR. ALLEN: No objection, Your Honor.

13 (Government Exhibit 201I admitted.)

14 MR. MURRAY: If we could publish that and go to
15 page 3, please. And highlight the third box, please.

16 BY MR. MURRAY:

17 Q And Mr. Kihnke, what are we looking at here?

18 A As of September 30, this is the account balance and the
19 account investment, 5 million total.

20 Q And is that a fair reflection of the amount of money you
21 invested in Oasis through September 30 of 2017?

22 A Yes, it is.

23 Q I am also going to be bringing up for the record
24 Government Exhibit 201K and 201J.

25 And starting with Exhibit 201K, again 201K do you

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 recognize that?

2 A Yes, I do.

3 Q What is that?

4 A A transmission on January 26, 2018, between Joe Paniagua
5 and myself.

6 Q And is it a fair and accurate depiction of -- you called
7 it transmission -- communications that you had with that
8 individual?

9 A Yes.

10 Q And how about 201J, what is that?

11 A That is a promissory note issued on January 24, 2018, in
12 the amount of \$2 million.

13 Q Is that a fair and accurate representation of a
14 promissory note that you received?

15 A Yes, it is.

16 MR. MURRAY: Your Honor, the government would move
17 into evidence Government Exhibits 201K and J.

18 THE COURT: All right. They're admitted.

19 MR. ALLEN: No objection, Judge.

20 (Government Exhibits 201K and 201J admitted.)

21 BY MR. MURRAY:

22 Q Mr. Kihnke, did you invest again for the fourth time?

23 A Yes. Yes.

24 Q I want to publish, please, Exhibit 201K. And could you
25 please read that to the jury and tell the jury who it is from,

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 what the date is, who it's to, and what it says?

2 A Email from Joe on January 26, 2018, promissory note, and
3 the total loan amount of \$2 million.

4 Q And if we could publish Exhibit 201J also. And what's
5 the date on this document?

6 A January 24, 2018.

7 Q And how much is this for?

8 A \$2 million.

9 Q And if we could please publish 201Q, page 14.

10 Mr. Kihnke, could you please read that to the jury?

11 A January 24, funds transfer from Matthew R. Kihnke pod
12 account for \$2 million.

13 Q How were those funds transferred?

14 A By wire.

15 Q Did you participate in those funds being transferred?

16 A Yes.

17 Q Did you send a wire?

18 A Yes.

19 Q Mr. Kihnke, I'm showing you what has been marked as
20 Government Exhibit 201L. Do you recognize 201L?

21 A Yes.

22 Q What is 201L? What are we looking at here?

23 A The loan statement that Joe sent me on February 5. This
24 was the January 31 loan statement which highlights the total
25 investment and interest to date.

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 Q And is what's in front of you a fair and accurate
2 depiction of those emails and statement?

3 A Yes, it is.

4 MR. MURRAY: The government would move into evidence
5 Government's Exhibit 201L.

6 MR. ALLEN: No objection.

7 THE COURT: All right. Admitted.

8 (Government Exhibit 201L admitted.)

9 BY MR. MURRAY:

10 Q If we could publish 201L and go to page 3, please.

11 Mr. Kihnke, what are we looking at here?

12 A This is the account balance statement that they forwarded
13 out on January 31, 2018, highlighting the total loans and
14 total interest to date.

15 Q And what are your total loans as of that date?

16 A \$7 million.

17 Q And what is the interest number that's shown on the
18 statement?

19 A \$655,737.56.

20 Q Mr. Kihnke, how does that information reflect your
21 understanding of where your investments were at on that date,
22 January 31, 2018?

23 A Held in a bank account, collateral account.

24 Q And were you under the impression that that information
25 was accurate at that time?

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 A Yes.

2 Q Mr. Kihnke -- and you can take that down, please.

3 Did anyone in your family invest in Oasis?

4 A Yes, they did.

5 Q Who?

6 A My mom, my dad, and my wife.

7 Q I'm showing you what's been marked as Government's

8 Exhibits 201N and 201M. Let's start with 201N. Do you

9 recognize 201N?

10 A Yes, I do.

11 Q Briefly, what is that?

12 A It's the promissory note that was issued for my mother's

13 investment.

14 Q Is that N or M in your hand?

15 A N, 201N.

16 Q And does it fairly and accurately represent that, depict

17 that?

18 A Yes, it does.

19 Q And how about 201M?

20 A The promissory note 201M, that's the promissory note for

21 that 475,000 issued on January 24, 2018.

22 Q And does it fairly and accurately depict the promissory

23 note --

24 A Yes.

25 Q -- on that date?

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 A Yes.

2 MR. MURRAY: Your Honor, the government would move
3 into evidence Government Exhibit 201N and M.

4 MR. ALLEN: No objection.

5 THE COURT: Admitted.

6 (Government Exhibits 201M and 201N admitted.)

7 BY MR. MURRAY:

8 Q Let's start with 201N. Could you please read this to the
9 jury, who is it from, who is it to, and what the date is and
10 what the subject is?

11 A From Joe Paniagua dated January 26 to me, cc'ing Michael
12 DaCorta. Says, "Hi, Matt: Please see attached J Brill
13 Properties, LLC, 1/24/18 promissory note and loan in the
14 amount of" --

15 Q Can we go to the next page?

16 A "\$475,000 executed. Best regards, Joe."

17 Q What is J Brill Properties, LLC?

18 A That is an investment account that my mother used to fund
19 this investment.

20 Q And if we could publish Exhibit 201M, please. And
21 Mr. Kihnke, what's the date on this? Well, first of all, what
22 is this?

23 A This is the promissory note that was issued for the
24 J Brill investment on January 24, 2018.

25 Q And what's the amount?

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 A For 475,000.

2 Q And does that reflect your understanding of what your
3 mother invested?

4 A Yes.

5 Q Did you have any involvement in that investment?

6 A Yes.

7 Q Are you familiar with how that money was sent to Oasis?

8 A Yes.

9 Q How?

10 A By wire initiated by me.

11 Q I'm showing you -- if we could publish 201Q, page 14.

12 And could you just read that to the jury, please?

13 A January 24 funds transfer, wire from J Brill Properties,
14 LLC, January 24, 475,000.

15 Q Is that a wire you sent?

16 A Yes, it is.

17 Q Mr. Kihnke, walk all the way back now to when you first
18 invested in Oasis. What kind of paperwork did you receive?

19 A Not much. Like there was a very general brochure maybe
20 if I recall. I don't recall specifically the brochure, but I
21 remember there was something that was distributed.

22 Q Do you ever recall receiving anything entitled "Risk
23 Disclosure Agreement" when you first invested?

24 A No.

25 Q Besides the promissory notes that we have gone through

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 here today, were you ever asked to sign anything else by Oasis
2 at any point in time?

3 A Yes.

4 Q Tell us about that.

5 A Frank had reached out to my wife and myself and told me
6 that they were having a --

7 MR. ALLEN: Objection, hearsay. Hearsay, Your Honor.

8 THE COURT: What's Frank's last name?

9 MR. ALLEN: Frank Duran.

10 MS. BEDKE: Your Honor, I will rephrase the question.

11 THE COURT: Same thing, ladies and gentlemen on the
12 hearsay. Now, what a defendant says is not hearsay typically.
13 And also if there is an agent of a defendant, so if I had a
14 real estate agent and I said, hey, real estate, sell my house,
15 those acts might be an agency that would apply to me.

16 So I'm sustaining that, and that means the objection
17 was well taken because that person whose verbal speech is
18 being related is not present here under oath.

19 Let's just rephrase that.

20 BY MR. MURRAY:

21 Q Mr. Kihnke, can you tell us, can you walk the jury
22 through when you were asked to sign something by Oasis?

23 A I was invited to an event at the office. There were a
24 number of prospects and investors that were to be there that
25 we were supposed to be introduced to. We showed up at the

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 event, and there was probably 15 people, 15 to 20 people
2 maybe. My understanding was, is that they were from -- a
3 group of these people were from the Midwest, and they were
4 looking to invest in the platform.

5 And in the midst of running around and meeting a
6 bunch of people, I was told to come into a room to sign a
7 quick modification to the documents that they wanted in their
8 file. And so I went into the room, sat down, and I had --
9 there were people all over and chirping in my ear to sign this
10 document. And the computer wouldn't load fast enough to get
11 me to the signature line. So as I was looking at the
12 document, I'm looking at all this information. And I told the
13 guys that were on me to sign it, I said I'm not signing it.
14 Why don't you just email it to me. I'm not going to sign in
15 these conditions of people all over yelling and screaming to
16 sign this. And I said, and I haven't reviewed it. I said,
17 email it to me. I will review it and sign it and get it back
18 to you this week.

19 Q When you said a document but then you said the computer
20 was loading, what form was this document in?

21 A It was hard to see because it was just a document they
22 were trying to get me to a signature line to sign it. And I
23 never -- I didn't have time to go through and read it. And
24 that's when I told them to forward the document to me, that I
25 will view it and sign it that week, and it was never forwarded

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 to me.

2 Q Are we talking about an electronic document though or a
3 paper document?

4 A Electronic document.

5 Q And did anyone from Oasis ever send that to you?

6 A No.

7 Q Mr. Kihnke, when was that roughly?

8 A Towards the end of this whole thing. Maybe four, five
9 months before this was closed down.

10 Q How deeply invested were you in Oasis at that time?

11 A I had been pulling money out at that time. I believe I
12 went back and checked the dates. I think I had pulled a
13 substantial amount of money out before that. I think that
14 occurred -- if memory serves me going back, about three to
15 four months before the company was closed or shut down.
16 That's about the time frame I recall.

17 Q And without getting into what your net position was, how
18 much money had you deposited in total in the fall of 2018?

19 A Seven million.

20 MR. MURRAY: Your Honor, can I have permission to
21 publish a document? My understanding is there is no
22 objection.

23 MR. ALLEN: May I have a moment?

24 BY MR. MURRAY:

25 Q Mr. Kihnke, at the time -- that story you are telling

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 about people in your ear, did you know what that was?

2 A No idea. I was just told it was an update to the
3 documents.

4 Q Mr. Kihnke, would you have ever invested in Oasis if you
5 were told that Oasis would have the ability to do whatever
6 they wanted with your money?

7 A No.

8 Q So I think you mentioned as time went on you were
9 withdrawing money. Why did you withdraw money?

10 A I had some real estate that I was purchasing to build a
11 building on. And I needed to hit certain liquidity measures
12 with the bank so they would finance it. So I started pulling
13 money back, one for acquisition of the land, and the others
14 were to meet liquidity measures for the financiers.

15 Q Was it one withdrawal or did you make multiple
16 withdrawals?

17 A Multiple.

18 Q Did your decision to do that have anything to do with
19 concerns about Oasis?

20 A No.

21 Q If we could pull up 201Q again, please, page 17. And
22 could you read that line starting with the date?

23 A 5/4, CBUSOL transfer debit, wire to Matt Kihnke in the
24 amount of 3 million.

25 Q Does that accurately reflect your first withdrawal?

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 A Yes.

2 Q And page 34, please, of that same exhibit. If you could
3 read that as well.

4 A On 6/15, CBUSOL transfer debit, wire to Matt Kihnke in
5 the amount of 1 million.

6 Q Does that accurately reflect one of your other
7 withdrawals?

8 A Yes.

9 Q And on page 37, please, of that same exhibit. And could
10 you read that, please?

11 A On 7/2, CBUSOL transfer debit, wire to Matt Kihnke in the
12 amount of 1.5 million.

13 Q Does that accurately reflect one of your other
14 withdrawals?

15 A Yes, it does.

16 Q And finally on page 24, please, of that same exhibit.
17 And could you read that?

18 A On 11/9, CBUSOL transfer debit, wire to Matt Kihnke in
19 the amount of \$500,000.

20 Q Mr. Kihnke, when you were telling the story about being
21 in that room with people in your ear, you say -- you told the
22 jury you didn't know what the document was. Do you recall
23 anything about the document at all?

24 A I don't.

25 Q Anything about its appearance whatsoever?

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 MR. ALLEN: Asked and answered.

2 THE COURT: Overruled.

3 THE WITNESS: Answer or no?

4 THE COURT: Go ahead.

5 A There was -- as it opened up, we are trying to scan, like
6 run through the sheet to get to a signature line. And when I
7 realized there was so much that we were panning through, I
8 told the individuals that were hounding me to send me the
9 document. I wasn't going to sign it then after I saw how much
10 stuff was in there, things that I hadn't read yet. So I
11 remember starting to read something, and I don't recall what
12 it was. I just remember it being a lot. And I told them that
13 they could send it to me, I will review it and sign it and get
14 it back to them the next week.

15 BY MR. MURRAY:

16 Q How would you characterize the print in the document?

17 A It was tight. I mean, it was a lengthy document and
18 there was a lot of verbiage. So that's when it kind of piqued
19 my interest a little bit more and I told them that I was going
20 to read the document. And that's when I asked them to forward
21 it to me, which they said they would do.

22 Q Mr. Kihnke, at a certain point, did you realize something
23 was wrong with Oasis?

24 A In hindsight or --

25 Q No. Around that time in January -- in late 2018, early

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 2019?

2 A Not until after they were closed down.

3 Q I want to turn your attention to early 2019. Did you
4 observe anything about Mr. DaCorta's behavior in that time
5 period?

6 A I remember the last couple times I was at the office
7 there was no trading happening there. There was nobody there.
8 The lights were mostly off. I met with my mom and my dad and
9 Michael with him in the office, and it was just a very like
10 quiet, peaceful place, and there was just nobody there. So
11 that's -- in retrospect I go back and think about that. But
12 other than that, no, I wasn't -- there were no red flags for
13 me.

14 Q Do you recall what his demeanor was at that time in the
15 office during those meetings?

16 A I mean, he was always a very cordial gentleman. I
17 don't -- a nice guy. There was nothing that set me off, I
18 have to get my money out of here.

19 Q Let's talk about your bottom line. We talked about you
20 depositing money and withdrawing money. How much did you
21 deposit total, how much did you withdraw in total, and what
22 was your bottom line with Oasis?

23 A Over the course of the relationship, I had deposited
24 \$7 million and withdrew \$6 million and lost \$1 million.

25 Q When you say you lost 1 million, is that a rough estimate

DIRECT EXAMINATION OF MATTHEW KIHNKE

1 or is that an exact figure?

2 A That's an exact number minus cost of the wire transfer,
3 but the million dollars is what I lost.

4 Q Has this experience impacted you in any way?

5 A Sure, in many ways.

6 Q Tell us how.

7 A Well, for the obvious. I'm out a million dollars.

8 Q Has that -- did that have an impact on your life?

9 A Yeah. I mean, I have to hit liquidity measures with
10 banks to develop projects. So I ended up having to sell some
11 real estate to make up the million dollars on the next project
12 that I did. So that was an unfortunate occurrence for me.
13 But I also -- I think the more brain damaging part of it has
14 been the people that I brought in to invest in this company
15 that ended up losing substantial money as well.

16 Q And why has that impacted you?

17 A Well, for obvious reasons. One is my wife. My mother
18 and my father, you know, it's been a topic of conversation
19 ever since this thing began. So it's a little bit of a sore
20 spot. It's enough money to where it changes things for my
21 mom's account. That was all of the cash that she had. My dad
22 as well spent -- put a lot of money into this thing. So it
23 makes you question -- makes you question people, your
24 friendships with people. It's not -- I considered Mike a
25 friend, and we ended up on the bad side of this thing. So,

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 yes, of course it's had an effect on us.

2 Q Is there anybody else outside of your family that
3 invested because of you?

4 A Yes.

5 Q Who are they?

6 A A person by the name of Bobby Rubenzer who's a friend of
7 mine. Henry Rodriguez who's a friend of mine. Henry pulled
8 his money out shortly after investing it. Bobby left his
9 money in.

10 MR. MURRAY: No further questions, Your Honor.

11 THE COURT: All right. Cross, please.

12 MR. ALLEN: Thank you, Your Honor.

13 **CROSS-EXAMINATION**

14 BY MR. ALLEN:

15 Q Good afternoon, sir.

16 A Good afternoon.

17 Q So let me get this straight. You keep saying you
18 invested \$7 million, correct?

19 A Correct.

20 Q Isn't it accurate, more accurate to say you loaned
21 \$7 million as an investment opportunity?

22 A You could say that, I guess, if you want to, sure.

23 Q Right. I mean, you have taken out loans for your
24 company, right?

25 A Sure.

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 Q In fact, when you are building hundred million dollar
2 properties, you have to take a loan to do that, right?

3 A Yes, I do.

4 Q And when you enter that loan, you enter an agreement to
5 repay the principal and the interest, correct?

6 A Right.

7 Q And in this sense that's what you were doing with
8 Mr. DaCorta and his company. You were loaning \$7 million, and
9 he was agreeing to repay you with principal and interest,
10 correct?

11 A Correct.

12 Q Now, was that your money, that \$7 million?

13 A Yes.

14 Q So you're kind of a millionaire?

15 A You could say that.

16 Q And how did you become a millionaire?

17 A By working very hard.

18 Q For 30 years?

19 A Yeah.

20 Q Every day?

21 A Yeah.

22 Q Would you agree with me that when you were dealing with
23 Mr. DaCorta, he was also working very hard?

24 A I hope so.

25 Q Well, you went to lunch with him once, right?

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 A Yes.

2 Q And while you were having lunch, he's actually doing
3 trading on his phone, correct?

4 A On two occurrences, yes.

5 Q I'm sorry?

6 A On two occasions, yes.

7 Q And you would agree working during a lunch meeting would
8 be working hard, right?

9 A Yes.

10 Q And I think you hung out with Mr. DaCorta -- I shouldn't
11 say "hung out," probably the wrong word, but I think you said
12 20 times, 18 times you met with him?

13 A If I had to guess, yes, that would be --

14 Q And would you agree with me that Mr. DaCorta during all
15 of those meetings was always striving to be successful for his
16 business?

17 A Yes.

18 Q And to be successful for you who was loaning him
19 \$7 million, correct?

20 A Yes.

21 Q And you ended up withdrawing 6 million of the 7 million
22 that you invested, right?

23 A Correct.

24 Q And I say invested, I meant as a loan, right? And never
25 once was there any hassle from Mr. DaCorta or his company

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 returning to you \$6 million, correct?

2 A That's correct.

3 Q And you testified a moment ago that you ended up losing a
4 million dollars --

5 A Correct.

6 Q -- correct? And isn't it true that you were not aware of
7 a single problem with Oasis International Group or that
8 million dollars until after the regulators shut down
9 Mr. DaCorta's business on April 18 of 2019, correct?

10 A Correct.

11 Q And you are aware, are you not, that the receiver that
12 was appointed to collect the assets that Mr. DaCorta's company
13 had collected well over a million dollars?

14 A I'm sure.

15 Q So you're only out the million dollars because the
16 receiver hasn't given you a million dollars, correct?

17 A That's correct.

18 Q Now, your company is called MK Equity Corporation?

19 A That's correct.

20 Q And you are a developer, correct?

21 A That's correct.

22 Q And you have a very nice website, do you not?

23 A I guess, yes. I think so.

24 Q When I realized you were testifying today, I had the
25 ability to look up your website. And you are familiar with

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 it, are you not?

2 A My website?

3 Q Yes.

4 A Yes, I'm very familiar with it.

5 Q And when you log on to your website, one of the first
6 things in big bold letters, it says offering you properties
7 that are truly bespoke, every detail is unique, resulting in
8 your luxury home being truly one of a kind, correct?

9 A Correct.

10 Q And that's kind of sales talk, right?

11 A I think it's factual.

12 Q Right, but you are selling your ability to build unique
13 and truly one-of-a-kind homes?

14 A Yes.

15 Q And I guess every home to some degree is one of a kind,
16 right?

17 A You hope so, yes.

18 Q And also on your website you say that your primary focus
19 is on unique developments. MK Equity provide a leading edge,
20 defined experience and boutique residential properties. Our
21 artistically talented team is continuously putting
22 architectural boundaries -- I'm sorry -- pushing architectural
23 boundaries and elevating the caliber of building in each of
24 our markets, right?

25 A Yes.

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 Q It's kind of a sales pitch, right?

2 A Sure.

3 Q Because you have customers going on there and you want
4 them to use you as a developer, correct?

5 A Yes.

6 Q And you just testified a moment ago that sometimes you
7 have to take loans in order to build your projects, right?

8 A That's correct.

9 Q And the goal there is you are taking on debt financing to
10 use as working capital to build a project to hopefully make
11 enough money to repay, correct?

12 A Correct.

13 Q Have you ever taken a loan you were not able to repay
14 because the housing market changed?

15 A No. We went through some pain and suffering in '08 with
16 that, but we repaid every dollar of every debt.

17 Q And to your knowledge, Mr. DaCorta repaid every dollar
18 and every debt prior to being shut down by the regulators,
19 correct?

20 A As far as I'm aware, yes.

21 Q Now, you indicated on direct examination that you went to
22 a lot of meetings and you heard Mr. DaCorta's sales pitch,
23 correct?

24 A That's correct.

25 Q And I think you kind of candidly acknowledged on direct

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 examination that other people kind of knew the terminology
2 better than you and that you really weren't at their level
3 with expertise of understanding what Mr. DaCorta's company was
4 doing?

5 A I understood it as what I would consider a basic level,
6 but all of the conversations that we heard, you know, that we
7 had, I understood. I got that. When they took it to a very
8 technical trading level, it was beyond my level.

9 Q And I'm assuming as a multimillionaire, this wasn't the
10 first time you have ever invested in something?

11 A That's correct.

12 Q I'm assuming, and correct me if I'm wrong, that you may
13 have purchased some stock in the past?

14 A I have.

15 Q And when you were investing in stock, you were dealing
16 with profits and potential losses, it was very different than
17 the loan situation you were in with Mr. DaCorta, right?

18 A No.

19 Q Okay. Let's talk about what stocks have you bought.

20 A That would go back about 25 years ago. I bought
21 Caterpillar, McDonald's, a whole slew of stocks. Stock
22 trading is not my business, so I don't do too well in that.

23 Q I understand. Did you ever get dividends on the stocks
24 you purchased from McDonald's?

25 A Yes. I don't think it was McDonald's. I this it was

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 Caterpillar.

2 Q I'm sorry. I'm just having a hard time hearing you.

3 A I think it was Caterpillar that I received dividends, but
4 it was very small.

5 Q And on some occasions did you suffer losses in some of
6 those early stocks that you had?

7 A Yes.

8 Q And that's a different type of investing than loaning
9 money as an investment, correct?

10 A That's correct.

11 Q Because with an -- with the loan, you just want to ensure
12 your principal and interest is repaid, correct?

13 A The loan as I saw it is different than the loan when I go
14 and borrow money from a bank. So there's a difference --
15 there's a discrepancy, I think, in what you're asking me and
16 the way that I saw the investment.

17 Q Okay.

18 A Investment, loan, whatever you want to call it, in my
19 mind it's an investment. You could call it a loan. That's
20 fine. I'll go with that.

21 My understanding was that the money that we were
22 depositing was never going to be traded or used. It was only
23 a collateral account. So for me in my basic understanding of
24 what that means, that money would never be touched or used.
25 It was only as collateral for the bank to clear any trades

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 that was done. So that I think is the difference in the way
2 that I understood it and still to this day understand it.

3 Q Yes, sir. Let's talk about that with a little greater
4 detail. So you did understand you were loaning money to Oasis
5 International Group, correct?

6 A Well, investing, loaning, however you want to decipher
7 the definition between the two. Yes, I was providing a loan
8 or investing in what they were doing.

9 Q You were given a promissory note?

10 A Yes.

11 Q And you read the promissory note?

12 A Yes, I did.

13 Q In fact, you seem like the person that's not going to
14 just sign something without reading it. That's what you
15 testified to.

16 A That's correct.

17 Q And the promissory note very clearly says you're loaning
18 a million dollars to Oasis International Group in exchange for
19 a repayment of 12 percent interest, and you said 25 percent of
20 the profits, correct?

21 A 12 percent or 25 percent of the profits, whichever was
22 greater I believe is the way that I understand it.

23 Q If you could please pull up Government's Exhibits 201 --
24 I'm sorry -- 201A. And if you could please call out the first
25 paragraph.

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 And this was on July 12 of 2017; isn't that correct?

2 A Yeah. That's correct.

3 Q And it says there that the principal sum of \$1 million --
4 excuse me. So it's a promissory note from Oasis International
5 Group to you, Matthew Kihnke, correct?

6 A Correct.

7 Q Principal sum of \$1 million, correct?

8 A Yes.

9 Q And that can be repaid to you in installments or
10 otherwise directed by the payee pursuant to the terms,
11 correct?

12 A Yes.

13 Q And that you could make demand for repayment, and they
14 have to repay you that million dollars within three days?

15 A That's correct.

16 Q If you could go down to Paragraph 1, which is "Interest."
17 Here it says, "Any unpaid loan amount due hereunder shall
18 receive the greater of interest calculated at a rate of
19 12 percent per annum," which means year, correct?

20 A Yes.

21 Q "Or 25 percent of the transaction fees." Do you see
22 that?

23 A Yes.

24 Q It doesn't say profits, does it?

25 A No.

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 Q And you were told during these several meetings with
2 Mr. DaCorta that they had purchased and owned a broker-dealer,
3 correct?

4 A That's correct.

5 Q And that what they were doing was generating revenue
6 based on the transactions that were taking place by trading
7 forex, correct?

8 A That's correct.

9 Q They weren't telling you that we are investing in forex
10 and we are generating profits and avoid losses like you were
11 told when you were investing with McDonald's stock, correct?

12 A Correct.

13 Q So it was all tied to sort of a transactional base
14 broker-dealer situation, correct?

15 A That's correct.

16 Q In fact, you were specifically told that your money
17 wasn't going to be traded, right?

18 A That it was not going to be traded?

19 Q Correct.

20 A Yes, that's correct.

21 Q That it was going to basically act as collateral?

22 A That's correct.

23 Q So they could participate in leverage trading as you
24 described it?

25 A That's correct.

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 Q And in fact, I think you said 10 to 1 is what your
2 understanding was?

3 A There was an amount, and I just -- I recall it as a 10.
4 It may have been 6 to 1, whatever the number was.

5 Q And you are sophisticated enough to understand that
6 leverage means you can put up as collateral a certain amount
7 of money but yet then conduct trades at a higher level of
8 money, correct?

9 A That's correct. At a six or ten times multiple.

10 Q And was it explained to you that the more trades, the
11 higher volume of trading that they could conduct would lead to
12 a higher amount of spread revenue?

13 A My understanding was that volatility in the market drove
14 the trading. The number of trades you could do in the
15 transaction. And we get a little bit wrapped up in the
16 terminology, which this is my area that I'm probably less
17 knowledgeable in, but the more -- the more trades didn't
18 always mean the more profit or the more money generated,
19 profits generated. Some of the trades were seconds in and out
20 where you would make small amounts of profit. Some may have
21 lasted -- and this is just through conversation. This is what
22 I understand through conversations with Mike.

23 So if the market was very volatile, it would allow
24 more transactions which would generally mean it would generate
25 more profits or, you know, more profits in any given day. And

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 so we always looked for that. And some days we would go on
2 the system and you would see very volatile days, and you would
3 have great trading days.

4 Q When you say more profits, you're talking about this
5 transactional fee that they can get?

6 A The transaction fee to me is -- I associate that with
7 profit. So that's where my terminology probably gets tangled
8 into this mess, but that's my point.

9 Q I understand. We're on the same page. You are kind of
10 using those interchangeably. And for you it is a profit
11 because you are going to get more than the one percent
12 interest you're being guaranteed as your minimum --

13 A Yes.

14 Q -- per month?

15 A That was my understanding.

16 Q Now, you learned about Mr. Anile during your meetings
17 with Mr. DaCorta, correct?

18 A Correct.

19 Q And you were told, were you not, from Mr. DaCorta that
20 Anile's role was to set up the legal structure of the entity?

21 MS. BEDKE: Hearsay, Your Honor.

22 THE COURT: Sustained.

23 BY MR. ALLEN:

24 Q Did you learn what Mr. Anile's role was?

25 A Yes, I did.

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 Q And what was your understanding of Mr. Anile's role?

2 A I was told what Mr. Anile's role was by Michael when we
3 sat down. And having conversations with both of them,
4 Mr. Anile had indicated that he has been friends with Michael
5 for quite a while, many, many years. They were friends from
6 New York, New Jersey, whichever. It is kind of one in the
7 same to me, but they were friends, and Joe was an attorney who
8 took care of all of the legal ends of this process. So he is
9 the one that structured all of the legal components for this
10 company.

11 Q And Mr. DaCorta's expertise from your understanding was
12 the one actually operating the broker-dealer and generating
13 the spread revenue?

14 A That seemed he was more the expert in the broker-dealer
15 and the trading, yes.

16 Q And I believe you testified on direct examination that
17 you were told or you became aware that Oasis International
18 Group was also buying hard gold and silver as an investment
19 opportunity?

20 A I think --

21 Q Not for you. For them.

22 A I believe the terminology that he used was it was a
23 hedge, as a hedge.

24 Q And do you know what a hedge is?

25 A Yes.

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 Q Can you explain to the jury what a hedge is?

2 A If you are dealing in a market where you've got real
3 estate assets going up and gold going down and you think real
4 estate is going to end up going down and gold prices may go
5 up, you hedge against it by buying gold to kind of offset your
6 losses on the other side of the trade.

7 Q And I think you testified on direct examination you in
8 your opinion felt that was a sound strategy?

9 A I did.

10 Q You also became aware that Oasis International Group and
11 Mr. DaCorta was purchasing real estate?

12 A Correct.

13 Q And you became a millionaire by purchasing and building
14 real estate, correct?

15 A Yes.

16 Q And you would agree with me that real estate over the
17 long-haul is one of the most successful, stable investment
18 opportunities for somebody in the United States?

19 A Yes. Because it's my business I will agree with that,
20 but it's not for the faint of heart.

21 Q Yes, because sometimes the market is really bad, right?

22 A Yes. I have had, yes, very, very bad times.

23 Q In fact, it was bad after the 2008 market crash, was it
24 not?

25 A Yes, it was.

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 Q And you became aware -- excuse me. You became aware that
2 Mr. DaCorta suffered in that 2008 market crash, correct?

3 A Correct. That was my understanding.

4 Q And he disclosed to you that he actually had a
5 bankruptcy?

6 A I don't -- there was some discussion about it. I don't
7 know if he ever told me that he had a bankruptcy or went broke
8 or whatever the scenario was. I don't recall that, but I
9 remember a conversation about it. I don't know if he ever
10 told me he went bankrupt or not.

11 Q You are trying to remember things that happened five
12 years ago, correct?

13 A It was a long time ago.

14 Q And do you remember being interviewed by Mr. Howland over
15 here and Mr. Batsch over here on April 26 of 2019?

16 A Yes.

17 Q And do you recall telling them on that day that
18 Mr. DaCorta told you that he had lost a bunch of money in
19 New York and filed for bankruptcy?

20 A I don't.

21 Q Would it refresh your memory to review their report?

22 A Maybe. Maybe.

23 MR. ALLEN: May I approach, Your Honor?

24 THE COURT: Of course.

25 A It very well may have. I just don't recall that.

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 BY MR. ALLEN:

2 Q So reading that report from Mr. Howland and Mr. Batsch
3 did not refresh your memory? And it's okay if it didn't.

4 A Listen, I'm on the stand. I don't recall Michael stating
5 that he had declared bankruptcy. So I'm not going to try to
6 report that. I don't know. We talked about so much stuff. I
7 remember that there was a conversation had regarding some
8 tough times back in 2008 when Lehman Brothers went down and
9 that was his clearing firm, and that crushed whatever the
10 business was that he was involved with then. I remember that.
11 I don't remember if there's bankruptcies or not, so I'm not
12 going to testify to that. It's not to say that it didn't
13 happen. I just don't recall that.

14 Q Do you recall being advised that the spread revenue, that
15 the spreads was in essence revenue for Mr. DaCorta's company,
16 Oasis International Group?

17 A Can you ask that again?

18 Q Do you recall being told that OIG, that the spread that
19 they were making as a broker-dealer was being characterized as
20 revenue as opposed to profits?

21 A In this case, I would look at revenue and profits as
22 being maybe one in the same.

23 Q For yourself or for his company?

24 A No. I think it's difficult because I'm not sure how they
25 ran their company or how they ran their expenses against

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 revenue. And so I don't know how much expense was behind
2 that. But my understanding was that the spread on these would
3 equate to 100 percent whatever the profit is for that trading
4 day. Any expenses that were incurred were taken out of the
5 75 percent. And the 25 percent would go to the investor,
6 lender, however you want to term that, but my understanding
7 was that all of the expenses would come out of their side of
8 the revenue generated or the profits generated.

9 Q Do you recall during your interview with Agent Batsch and
10 Agent Howland on April 26 of 2019 telling them that the
11 company dealt with a small niche in the market where the buys
12 and sells happen fast and the company would pick up the
13 revenue on the spread? Do you recall telling these two agents
14 that on April 26 of 2019?

15 A I don't. I haven't reviewed that document since we had
16 the conversation. Again, I can read it. I don't recall
17 stating that specifically to them now. This was back
18 three-plus years. So no, I don't. I believe I said it.

19 Q You don't recall, but you don't doubt that these agents
20 wrote it down correctly?

21 A That is correct.

22 Q So you indicated that you became aware of a business that
23 Mr. DaCorta was starting called Roar of the Lion?

24 A Yes.

25 Q Can you tell the jury a little bit more about what your

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 understanding was? I think you said there were supplements?

2 A It was fitness. Mike's into fitness and works out a lot.

3 And he told me he was getting involved in starting a company

4 that I believe his son was going to run called -- I think it

5 was Roar of something. I don't remember. But anyway, I got

6 some and tried it. I was working out a lot more with some

7 people back then, and so I tried it. But beyond that I don't

8 remember too much about it. It wasn't my favorite.

9 Q You actually -- there was actual real product that you
10 actually tried?

11 A Yes. Yes.

12 Q Didn't care for it?

13 A Personally, no.

14 Q So you testified that you had gone -- did you go to both
15 holiday parties, the 2017 and the 2018?

16 A Yes.

17 Q And they became very popular, I think you testified?

18 A Correct.

19 Q Do you participate in marketing other than your website
20 for your development of business?

21 A I'm sorry. Do I what?

22 Q Participate in marketing of your development business?

23 A Yes.

24 Q Other than your website?

25 A Yes.

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 Q And what type of other marketing do you do?

2 A We spend a lot of money on on-site advertisement. We
3 have real estate agents that spend a lot of money in
4 marketing, putting it out in papers and signage and whatever
5 else. There's multiple avenues that we use to market.

6 Q Would it be fair to say that you have to spend money in
7 marketing to make money in your business?

8 A I would agree with that to an extent, sure.

9 Q Would you agree that's probably true for a lot of
10 businesses?

11 A Yes.

12 Q And was it not your understanding that the Christmas
13 party or the holiday party in 2017 and 2018 was a marketing
14 event for his company?

15 A Listen, I enjoyed it. I had a great time. Marketing,
16 not marketing, I thought they did a great job with it. Yes, I
17 would assume that they wrote that off as a marketing event,
18 yes.

19 Q Now, you indicated that your wife invested as a lender
20 for Oasis International Group, correct?

21 A Correct.

22 Q And was she your wife at that time or you weren't married
23 yet?

24 A No, we were not married yet. She was my girlfriend at
25 the time.

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 Q And she is a corporate attorney, is she not?

2 A She is now, yes.

3 Q Was she an attorney then?

4 A Yeah. I was trying to figure out if she was a corporate
5 attorney. She's in-house counsel for a company in Sarasota,
6 so yes.

7 Q So she is bright, sophisticated?

8 A I think so.

9 Q And so are you.

10 A I don't know about that, but.

11 Q Well, you took from building \$100,000 houses to now
12 you're building a hundred million dollar buildings. That's
13 not an accident, right?

14 A I worked very hard.

15 Q If you could please pull up 201H and turn to Bates stamp
16 008, which is the third page. And if you could highlight
17 where it starts with, "Matt," there at the bottom all the way
18 down.

19 Can you please read that? And that's an email from
20 Mr. DaCorta to you, is it not?

21 A That's correct.

22 Q Can you please read that?

23 A Email from Michael to me on September 6, 2017, 10:34 a.m.
24 "Matt, you are very welcome for dinner. Thank you for your
25 continued confidence in our product. We look forward to

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 working with you on real estate deals in the future as well.

2 Best, Mike."

3 Q Do you recall what Mr. DaCorta was talking about in
4 working with you on real estate deals?

5 A Yeah. We had talked about the office building that was
6 purchased on Longboat Key, we were looking at doing, turning
7 that into a condo development. So we were looking at trying
8 to acquire the two parcels behind it to do a larger condo
9 development. And so they purchased the most important piece
10 for their office, and that's what we had discussed.

11 Q Okay. So I think you described the office building where
12 Oasis International Group was as waterfront property --

13 A That's correct.

14 Q -- correct? And I think you said it was a beautiful
15 piece of property on direct examination.

16 A It was.

17 Q And I guess as a developer you are always thinking that
18 in the back of your head when you see a property?

19 A I think that's the disease we have as developers, but
20 yes.

21 Q And was it your idea or his idea to potentially develop
22 that waterfront property; do you remember?

23 A Yeah. They brought it to me and brought that up. I
24 never addressed it. They said they were looking at a piece of
25 land to purchase for their office with a future intent to do

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 all of it.

2 Q As an investment for the company, increase the value,
3 right?

4 A Well, if you're going to develop it for condos, yes, you
5 increase the value by dropping the building that was there and
6 build new condominiums. So, yes, that was the intent.

7 Q Based on your experience as a developer, if those were
8 developed into condos, what type of return do you think you
9 could have gotten?

10 A In today's market?

11 MR. MURRAY: Objection, Your Honor. Calls for
12 speculation.

13 THE COURT: Overruled.

14 BY MR. ALLEN:

15 Q Yeah, in today's market.

16 A I would have to model the project, but I would imagine
17 that it's easily a 30 percent-plus return.

18 Q And you say today's market because the real estate market
19 is a lot better today than it was maybe four years ago?

20 A Yeah. The market is as good as it's ever going to be
21 right now in my opinion.

22 Q At some point -- well, you testified on direct
23 examination that you were receiving these monthly statements
24 from -- I'm going to say his name correctly, I think -- Joe
25 Paniagua that the government went through with you. And you

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 were shown the statements you were getting showing the
2 interest that you had earned on the money you had loaned to
3 them as an investment opportunity. Do you recall that?

4 A That's correct.

5 Q And then am I correct that at a later point in time you
6 were provided sort of a logon portal where you could see how
7 your interest was growing?

8 A That's correct.

9 Q And do you have a recollection of the process by which
10 that online portal, your account was set up?

11 A I'm not sure I understand your question.

12 Q Did you have to take any steps to set up the portal for
13 your account?

14 A Yes.

15 Q And what were those steps, if you recall?

16 A That's digging kind of deep. Joe Paniagua is the one
17 that really helped walk me through that to get all of that
18 stuff set up to where it would actually work. So when you
19 logged in and you put your password in, it would actually
20 bring up your information. So that was -- I couldn't tell you
21 what the process was because he helped walk me through it.

22 Q Was that done in person or over the phone, or do you
23 recall?

24 A I don't recall. I believe it was mostly over the phone
25 because my parents and my wife also had the same access. And

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 I think that it was done over the phone mostly.

2 Q Okay. And do you recall ever logging on and looking at
3 your account?

4 A Yes.

5 MR. ALLEN: For the record, I'm approaching the
6 witness with Defense Exhibit 215. I'm showing the witness
7 what has been Bates stamped as AWS-00376. If you could look
8 at that page of that exhibit.

9 Do you recognize -- does it look familiar on that
10 page, sir?

11 A I see a signature that appears to be mine.

12 Q Can you review the rest of that exhibit?

13 A The entire document?

14 Q I'm sorry?

15 A The entire document?

16 Q Yes, please. And see if there is anything else in there
17 you recognize other than your signature.

18 MR. ALLEN: Your Honor, I think I said Exhibit 215.

19 I think I meant to say --

20 BY MR. ALLEN:

21 Q What exhibit number is on there, sir, on the very front,
22 the sticker, just so the record is clear?

23 A 215.

24 Q 215. Thank you.

25 A Okay. What was your question?

CROSS-EXAMINATION OF MATTHEW KIHNKE

1 Q Do you recognize anything else in Exhibit 215 other than
2 your signature?

3 A Yeah.

4 Q And what do you know that entire exhibit to be?

5 A It looks like the general information on me of what I put
6 into the thing, name, address, phone numbers, email address,
7 mother's maiden name, birth place, that kind of stuff.

8 Q Is this part of what you would have seen when you logged
9 on to your portal for your account?

10 A It didn't look like this.

11 Q Okay.

12 MR. ALLEN: Your Honor, I'm going to approach the
13 witness with Defense Exhibit 287.

14 BY MR. ALLEN:

15 Q If you could review 287 and see if you recognize that.

16 A Not really, no, without going through every page, but it
17 looks like it's redundant. It doesn't look familiar to me.
18 The information looks accurate. I just don't remember seeing
19 this on any system I logged on to.

20 MR. ALLEN: If I could just have a moment, Your
21 Honor.

22 THE COURT: All right. Thank you.

23 MR. ALLEN: No further questions, Your Honor.

24 Thank you.

25 THE COURT: Redirect?

REDIRECT EXAMINATION OF MATTHEW KIHNKE

1 money lenders, 18 percent, 12 percent. Tell me what was the
2 cross that required this to be asked again.

3 MR. MURRAY: Your Honor, counsel spent a significant
4 amount of time talking about whether this was a loan
5 opportunity at 12 percent. And where I'm going with this line
6 of questioning is I want to ask the witness how he viewed this
7 opportunity, whether he viewed himself as a bank or whether he
8 viewed this as a true investment opportunity and the margin of
9 which he was more attracted to was something closer to
10 25 percent which would have been derived from the trading.

11 THE COURT: Overruled.

12 (End of bench conference.)

13 BY MR. MURRAY:

14 Q Mr. Kihnke, in terms of the rates of return in the Oasis
15 investment opportunity, what is it that attracted you about
16 the Oasis investment opportunity?

17 A I think diversification, what I thought was low risk with
18 a solid return, to put money in an account that I had easy
19 access to quickly which took care of my need for the liquidity
20 that I liked to have with regards to being able to purchase
21 other properties, meet the bank's requirements with the lender
22 that I use and the borrowing that I do with them. So I think
23 ultimately it was a good return, better than the quarter
24 percent or less than a quarter percent that I would get with a
25 bank.

REDIRECT EXAMINATION OF MATTHEW KIHNKE

1 Q And we talked about the 12 percent rate of return. What
2 was the upside? What was your understanding of the upside
3 rate of return on the Oasis investment?

4 A The upside was if we had great volatility in the market
5 and there was a lot of trading that was occurring, then we
6 would surpass our 12 percent return by a substantial amount.
7 I think the first year we were being told that the expectation
8 was somewhere around 18 to 22 percent could happen.

9 Q So that margin from 12 percent to 18, 22, 25 percent,
10 what was your understanding -- what was your understanding of
11 where that profit was coming from or that return would be
12 coming from?

13 A So the return was based upon -- and I'll try to clear up
14 some of the definitions that we were using earlier. My
15 understanding was that we put up -- the Oasis company had
16 \$60 million that they were trading. We provided the liquidity
17 measure or the collateral account, money that would allow that
18 60 million to trade at high multiples. So their investment,
19 instead of having \$60 million, the clearinghouse would allow
20 them to trade up to \$600 million, some, you know, real number.

21 So my thought was as those guys are trading, there's
22 days where they would have great days with volatility in the
23 market, but we were to receive 25 percent of the net revenue
24 that was generated. And so it was either we were going to
25 receive 12 percent annualized or whatever was more, the

REDIRECT EXAMINATION OF MATTHEW KIHNKE

1 investment of the 25 percent return on the investment on the,
2 I'll call it the revenue, profit, whatever, however you want
3 to call that. So the profits that were generated within the
4 trading, we would get 25 percent of that.

5 Q Did you view yourself as an investor?

6 A It's hard to say. After this whole thing has gone down,
7 people asked me did I invest in the company, and I tell them
8 yes. So I think from a standpoint -- I don't really think
9 that I ever looked at it as an investor because I wasn't
10 getting the 75 percent return that the company was receiving.
11 There was one time that I had asked Mike if I could buy into
12 the company because I was thinking if these guys are going to
13 generate this kind of revenue, I would rather buy in and own a
14 piece of the company, but I was turned down and so I didn't do
15 that.

16 Q Did you view yourself as a bank?

17 A Kind of because we were putting money into an account
18 that I was told over and over and over again that was not --
19 the money was not going to be used for anything other than a
20 collateral account. So it was no-risk money. So for me I
21 looked at it as a no-risk investment, bank loan, whatever you
22 want to call it. But because it was told to us so many times
23 that that money was never at risk, that only the Oasis money
24 was at risk, then my thought pattern was more that it's an
25 investment, it's a loan, it's whatever you want to call it,

REDIRECT EXAMINATION OF MATTHEW KIHNKE

1 but the money is never at risk. I may not make a 22 percent
2 return, but at least I'm guaranteed a 12 percent return. So
3 that was the thought process in this.

4 Q And we talked a lot about some of the different things
5 that Oasis was involved in. How would you characterize your
6 understanding of the primary focus of Oasis?

7 A Well --

8 MR. ALLEN: Objection. Asked and answered.

9 THE COURT: Overruled.

10 A I think their primary focus was forex and currency
11 trading.

12 BY MR. MURRAY:

13 Q And where did that understanding come from?

14 A In the many, many, many conversations that we had with
15 regards to investing money and wiring money into the account,
16 it was always trading. And we had the conversation often with
17 Frank, but we had conversations among everybody where we
18 thought they were making a tremendous amount of money because
19 they would buy a condo on the beach, assumed that that was
20 money that the company was -- they were profiting, so they
21 would take profits, buy a condo, and that was on their side of
22 the equation. So that was just shoring up the Oasis brand, if
23 you will, by diversifying into other things.

24 What I was involved in was just this little piece,
25 this deposit account over here where I put money in that would

REDIRECT EXAMINATION OF MATTHEW KIHNKE

1 allow them to leverage to do all the trading they were doing,
2 paying me back a return based upon either the 12 percent
3 guarantee, or if they had a really good month or year then I
4 would participate up to -- or participate in the 25 percent of
5 the total return that they were able to generate.

6 Q And you used this term "on their side of the equation."
7 At any time were you looking for your money 5, \$7 million to
8 jump onto their side of the equation to be exposed to Sarasota
9 real estate investments?

10 A No, I never looked at it that way.

11 Q Mr. Kihnke, do you view this as the court-appointed
12 receiver's fault that you lost \$1 million?

13 A That's an interesting question. No. No, I don't.

14 Q Who do you ascribe blame to, in anyone?

15 A Probably myself.

16 Q Anyone beyond yourself?

17 A Well, Michael as well.

18 Q I'm sorry. Who did you say?

19 A Michael DaCorta as well.

20 Q Why?

21 A Because I was told so many times that my money was never
22 at risk, which in my world means it's not at risk. If I go to
23 a bank and finance a project, I know what my risks are. And
24 by not being told what the risk tolerance was for what was
25 perceived to be going on, it's hard for me to make a solid

REDIRECT EXAMINATION OF MATTHEW KIHNKE

1 judgment if I'm going to invest in something where I don't
2 know what the true facts of the story are. And I was told an
3 awful lot that there was no risk to this until they had lost
4 all their money and that would be the only time that the
5 collateral account would be at risk.

6 Q Let's talk about that for a second. Counsel had asked
7 you about Mr. DaCorta using his phone and being at lunch and
8 always appearing to be working. You had a lot of social
9 interactions with him. At any time during those interactions
10 did Mr. DaCorta ever tell you that Oasis was taking losses?

11 A When he was showing me the app in his office and how he
12 would trade, there were certain highlighted lines where they
13 lost money on a trade. It wasn't a significant amount, but
14 the majority of the -- that was assuming I was reading this
15 incorrectly, but assuming that everything I was being told was
16 correct, which I presume it was, but there were lines in there
17 that there were losses taken but not in relation to the amount
18 where there were profits being taken. The profits outwon the
19 losses by a solid amount.

20 Q From the information that you were shown, the profits
21 outweighed the losses?

22 A Correct. And that was twice that I went in there and
23 looked at it. So I can't say I was doing this every week or
24 five times a month. It was two times that I went in his
25 office and saw him trading.

REDIRECT EXAMINATION OF MATTHEW KIHNKE

1 Q Did he ever mention Oasis taking catastrophic losses?

2 A No. I never heard about that.

3 Q Did he ever tell you not to invest more money?

4 A No.

5 Q Had he told you any of that, would that have alarmed you?

6 MR. ALLEN: Objection. Outside the scope of cross.

7 THE COURT: Sustained.

8 BY MR. MURRAY:

9 Q Mr. Kihnke, how would you characterize your forex trading
10 expertise?

11 A My expertise is pretty minimal at best. I wouldn't call
12 myself any part of a forex trader expert; a novice at best.

13 Q When Mr. DaCorta was showing you things on the computer
14 or doing things on his phone, how would you characterize your
15 understanding of what you were looking at relative to your
16 experience in the real estate market?

17 A I would say that in the real estate business I know what
18 I'm looking at. I would say in the forex trading, if there
19 was a 1 to 10 scale, I'm a 10 in real estate, and I would be a
20 1 in forex at best.

21 Q Mr. Kihnke, at any time were you privy to Oasis's books
22 or accounting records?

23 A No.

24 Q Were you ever given access to those?

25 A No.

REDIRECT EXAMINATION OF MATTHEW KIHNKE

1 Q You talked a little bit -- counsel asked you about the
2 Christmas party. Do you actually know where the money that
3 paid for that party was sourced from within Oasis?

4 A No idea.

5 Q When you mentioned Mr. DaCorta talking about paying
6 people back from past ventures, did you ever verify any of
7 that information that he provided you?

8 A No. I think that would be really difficult to verify.
9 But, no, I didn't.

10 Q So where does your information in that regard come from?

11 A Discussions that took place just in general.

12 Q With whom? Let me ask you a different way so as not to
13 draw an objection. Were any of those discussions ever with
14 Mr. DaCorta?

15 A We talked a lot about the -- and this goes back three,
16 four years. So it's hard to, you know, remember a lot of the
17 conversations that we had. I remember generally there was --
18 you know, the bankruptcy conversation, I was asked about, you
19 know, do you remember having that conversation with Michael.
20 You know, there was conversations of the bankruptcy. I don't
21 know if it was with Joe Anile, Mike, Frank, myself, if there
22 were other potential investors involved in that. That's why
23 I'm a little hesitant. I don't recall the conversation. I
24 remember the topic. I remember some concern over that, and we
25 talked through it. And the concept was the company that was

REDIRECT EXAMINATION OF MATTHEW KIHNKE

1 being formed offshore and the reasons why, and I was more
2 comfortable with the reasons why than the fact that there was
3 a bankruptcy, so.

4 Q I want to ask you about a report that counsel walked up
5 and showed you. Did you write that report? Have you ever
6 seen that report before today?

7 A No. Are you referring to the report from -- that was
8 Special Agent Batsch, that he wrote?

9 Q Yes.

10 A No, I had never seen that before.

11 Q And you didn't write it or cowrite it?

12 A No, I did not.

13 Q Mr. Kihnke, 2017, 2018, 2019, was there ever a point
14 where you believed that even one dollar of your money was
15 being directly used on that side of the equation?

16 MR. ALLEN: Objection. Outside the scope of cross.

17 THE COURT: Overruled.

18 BY MR. MURRAY:

19 Q I'll rephrase -- or I'll repeat the question.

20 From 2017, 2018, and 2019, did you ever believe for
21 one minute that one dollar of your funds was being directly
22 used on the side of the equation to directly purchase foreign
23 currency?

24 A No.

25 MR. MURRAY: No further questions, Your Honor.

DIRECT EXAMINATION OF DEBORAH CHESLOW

1 THE COURT: All right. Thank you. You may step
2 down, sir. Good day.

3 Call your next witness, please.

4 MS. BEDKE: The government calls Deborah Cheslow.

5 THE COURT: Thank you.

6 THE COURTROOM DEPUTY: Please raise your right hand.
7 (Witness sworn.)

8 THE COURTROOM DEPUTY: Can you state your full name
9 for the record.

10 THE WITNESS: Deborah Jean Cheslow.

11 **DEBORAH CHESLOW, CALLED BY THE GOVERNMENT, SWORN**

12 **DIRECT EXAMINATION**

13 BY MS. BEDKE:

14 Q Good afternoon. Would you please state your name for the
15 jury, please?

16 A Deborah Jane Cheslow.

17 Q Ms. Cheslow, how far did you go in school?

18 A I have an undergrad degree in aerospace and ocean
19 engineering from Virginia Tech.

20 Q When did you achieve that degree?

21 A 1987.

22 Q Do you have any other degrees?

23 A I'm sorry.

24 Q Any other degrees?

25 A Not in the academia realm.

DIRECT EXAMINATION OF DEBORAH CHESLOW

1 Q Would you provide the jury with a brief overview of your
2 employment history?

3 A Sure. Coming out of college, I went into the Air Force
4 as a second lieutenant and went to pilot training. I became
5 an instructor pilot. I flew 238s, which is a supersonic jet.
6 Then I went up to the Air Force Academy and mentored a
7 squadron of cadets as a captain and got out of the Air Force
8 while I was at the Air Force Academy.

9 And then I did some independent flight instructing
10 for a short period of time because I had two young children by
11 then and I was focusing on being mom.

12 Then I got a part-time job at a construction company
13 because I was bored when they were in preschool and
14 kindergarten and whatnot. I wanted something to do while they
15 were sleeping or in school, but that led to me eventually
16 becoming assistant manager of that construction company, which
17 was high-end custom homes, small company.

18 And that led to me being a consultant for a company
19 called EarthCraft Virginia, which ran the Green Building
20 Program for the State of Virginia. And I basically was the
21 manager for half of the state, the regional technical manager
22 for half the State of Virginia of that Green Building Program.

23 And then I have went out on my own and started my own
24 company in the realm of self-health, personal development
25 consulting and CDs, and I published a few books and was a

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1 speaker.

2 Q At some point, did you become familiar with two
3 individuals by the names of Raymond Montie and John Haas?

4 A I did.

5 Q And how did you become acquainted with those men?

6 A In I believe it was 2013, Ray Montie hired me as a
7 speaker to talk to his network marketing company group because
8 I was a motivational speaker of personal development, that
9 type of genre. And I ended up -- they liked what happened,
10 and I ended up doing repeat events for him over the next few
11 years. And John Haas was one of the primary members of his
12 team. So I got to know John in the course of that.

13 Q What was the name of Mr. Montie's company that hired you
14 for those presentations?

15 A He was a consultant with Ambit Energy, but his private
16 group was called the EC Factory.

17 Q And how long did you have that relationship with
18 Mr. Montie and Mr. Haas?

19 A I believe the last time I spoke for that group was 2015.

20 Q Now, at some point did you become familiar with entities
21 known as Oasis Management, LLC, and Oasis International Group
22 Limited?

23 A I did.

24 Q And how did you become familiar with those entities?

25 A Through the course of my speaking engagements with Ambit

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1 Energy, I also spoke for corporate and for some others beside
2 Ray Montie. There were numerous people that engaged me as
3 their coach either for themselves or their group. And one of
4 those clients of mine said to me one day, Deb, I have come
5 across an investment that makes a lot of sense and it's doing
6 well, and I just want wanted you to know about it. You should
7 ask Ray Montie and John Haas about it. And she wouldn't give
8 me any details, but she said I really should ask them. So I
9 did.

10 Q Did you also about that same time become familiar with an
11 individual named Michael DaCorta?

12 A Yes.

13 Q Did you speak with Mr. Montie and Mr. Haas about the
14 investment opportunity introduced to you?

15 A I did. I ended up talking rather shortly thereafter with
16 each of them individually.

17 Q Did you have occasion to speak to Mr. DaCorta about the
18 investment opportunity?

19 A Yes. After I talked to each of them, I liked what I
20 heard, but there weren't enough details. And John Haas was
21 able to give me different details about Satellite Holdings
22 Company, but Ray Montie just gave me the broad brush and said
23 you need to talk to Mike, Michael DaCorta. And so I asked,
24 actually I believe it was John, to make that arrangement. And
25 they set up a call and I talked to him one on one.

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1 Q And what did Mr. DaCorta tell you about the investment
2 opportunity at that time?

3 A So basically -- and those three phone calls were in very
4 short order, bang, bang, bang. So in 2015. So I don't know
5 for sure who said what, but I am confident in the big picture
6 that I received.

7 Q What was your understanding of the investment opportunity
8 having had these conversations with the three men, including
9 Mr. DaCorta?

10 A So the understanding was that Oasis Management was run by
11 Mike DaCorta, and he was trading currencies basically; that I
12 would have the opportunity to become a limited partner in
13 Oasis Management Group. And as a partner, I would give funds
14 and they would trade those funds. And if they lost, I would
15 lose. If they won, I would win. But there were certain
16 assurances in place with the strategy that they told me about
17 that it sounded too good to be true, but at the same time,
18 well, I trust this person, I trust that person. What if it is
19 true? That's a pretty good strategy.

20 Q Well, you said, "I trust this person, I trust that
21 person." To whom are you referring?

22 A So I talked to Ray first, Ray Montie, and then I talked
23 to John Haas. And I got off the phone with both of them, and
24 then we arranged the call with Mike DaCorta. And I got off
25 the phone and talked to my partner and said, you know, this

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1 sounds too good to be true, but what if it is. But it was the
2 information coming from those three individuals. Plus I had
3 my client, who was Jen Martin, who had already invested and
4 was thrilled with the outcome. And as my client I knew her
5 pretty well, and so I trusted her as well.

6 Q Do I understand you correctly then that you trusted your
7 client, Ms. Martin, Mr. Montie, and Mr. Haas because you had a
8 longstanding relationship with them?

9 A Correct. In general I trusted them and felt like I could
10 believe what they said and also knew that they had personal
11 experience with the investment and it had gone well.

12 Q When did all these conversations you described take
13 place?

14 A Late spring, probably May-ish of 2015.

15 Q Did you consider investing then in Oasis at that time?

16 A The conversation I recall with my partner was this sounds
17 too good to be true. We could -- it's a gamble, but I trust
18 Ray, I trust John, Jen loves it. What if this is the thing
19 we've been looking for? The stock market is not doing well.
20 What if?

21 And so we decided that we would put in -- we would
22 dip our toe in and put in funds that we were willing to lose
23 as if we were doing a risky stock in the stock market. So,
24 yes, we decided to invest.

25 Q You said there were some assurances. What were those?

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1 A It was explained to me by all three that they used a
2 strategy called stop losses, which the first assurance was
3 that Mike went into the market in the morning. He was out in
4 the evening. So it was in and out every day. So nothing was
5 sitting there long-term for something tumultuous in the market
6 to happen. So the fact that it was in and out and the money
7 was never at risk for more than a day, that was one.

8 And then the second one was that when he went in, he
9 put a thing called a stop-loss in place, which meant that if
10 the money climbed, great, but if it hit the entry point or the
11 stop-loss point, that was it. The money was pulled out. It
12 couldn't go below.

13 So that explanation -- and I should also mention that
14 I also knew that John Haas had worked on Wall Street for about
15 ten years and had a history. So I trusted him. And he had
16 experience in the industry, and he was the one that explained
17 a lot of that to me. So the fact that it was a stop-loss and
18 the fact that their history had not shown any losses since
19 inception, that they had had two break-even months and the
20 rest were gains sounded like a viable strategy.

21 Q Based upon all of this information you amassed, how did
22 you characterize the risk at the time?

23 A We still considered it very risky. That's why we
24 proverbially dipped our toe in.

25 Q How would you characterize the return as you understood

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1 it at the time?

2 A Two different companies. So Oasis Management, Satellite
3 Holdings, or both?

4 Q Let's take them one at a time.

5 A Okay. So Oasis Management considered it very risky
6 because I didn't have any experience with the stop-loss
7 concept, but again there was trust. But the possible returns
8 made it worth the risk. Again, we kind of looked at it as if
9 we were taking a really risky stock in the stock market
10 because since inception they had had some 20-some percent
11 gains. They had never had a negative month. So the gain
12 potential seemed better than anything I had ever had before.

13 Q And you said the other part of it was Satellite Holdings.
14 How is that different from Oasis Management?

15 A Satellite Holdings was a company that John Haas started.
16 He initially, from my understanding and his explanation, he
17 started it because there were people that wanted to take
18 advantage of the Oasis Management, Oasis International Group
19 opportunity but they didn't have cash. They only had what's
20 called qualified funds, IRAs and the like. And that couldn't
21 be used because it was an overseas venture.

22 So John started a company where he would take loans
23 from people. So, for instance, I could loan him \$10,000,
24 let's say, and he would pay me interest on my loan, but then
25 he would take the money that is now his to use as he sees fit

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1 because it was loaned to him and he would invest cash into
2 Oasis. So I knew that the money was going to the same place.
3 I was sending it directly on the -- to Oasis Management
4 company, but it was not at risk because if Oasis won, John
5 Haas and Satellite Holdings would win. If Oasis lost, John
6 Haas and Satellite Holdings would lose, but either way I would
7 get the promised 3 percent per quarter interest on my loan.
8 So my money was not at risk through Oasis.

9 Q Do I understand you to mean that if you invested directly
10 through Oasis Management, there was risk; is that correct?

11 A Yes.

12 Q But if you invested instead through Satellite Holdings,
13 Mr. Haas's company, the risk was borne by him and his company
14 and you had a guaranteed return?

15 A Correct.

16 Q Now, did you conduct any of your own due diligence other
17 than these conversations you described before deciding to
18 invest?

19 A I talked to people I trusted, basically did interviews of
20 the concept and their returns. And over the course of that I
21 learned that someone, I don't remember who, had paid for a 25
22 to \$30,000 level background check on Mike DaCorta and the
23 others. And what I was told is the only thing that that
24 person found was a speeding ticket. So I had people I trusted
25 and supposedly a high-level background check being done, but

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1 it was all one-on-one trust. I didn't do anything besides
2 that.

3 Q Did you ever consult a financial adviser or an accountant
4 or lawyer or someone else outside of this sphere?

5 A I did not.

6 Q And you invested?

7 A I did.

8 Q When did you invest?

9 A June of 2015.

10 Q And how much money did you invest at that time?

11 A 75,000.

12 Q And how did you deploy your investment dollars?

13 A I -- we decided that Oasis Management, if, man, if this
14 is real, wow, but it sounds really risky. So we put 25,000
15 there, and then we put 50,000 in Satellite Holdings where we
16 knew we could get a 3 percent per quarter, 12 percent per year
17 return, which we were thrilled about given the stock market at
18 that time.

19 Q And how did you mechanically make your investments?

20 A Wrote checks to each company.

21 Q How did you convey those checks to the individuals for
22 purposes of the investment?

23 A Mailed them.

24 Q And were you provided with any documentation to
25 memorialize the fact of your investments?

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1 A Yes. For Oasis Management there was an actual limited
2 partnership agreement. And then for Satellite Holdings there
3 was a promissory note for the loan.

4 MS. BEDKE: May I approach, Your Honor? May I
5 approach?

6 THE COURT: Oh, of course. And you don't have to
7 ask.

8 MS. BEDKE: Thank you, Your Honor.

9 BY MS. BEDKE:

10 Q I'm just going to remove those other exhibits from the
11 prior witness.

12 Ms. Cheslow, I have placed before you what have been
13 mark for identification as Government Exhibits 202A, 202B,
14 202C, 202D, and 202E. Do you have those?

15 A Yes.

16 Q And do you recognize them?

17 A I do.

18 Q How?

19 A Do you want me to list them?

20 Q Without describing what they are in particular, do you
21 recognize them as related to the investments you've just
22 described?

23 A Oh, yes, I do. I have these documents.

24 MS. BEDKE: Your Honor, the government moves for the
25 admission of Government Exhibit 202A, 202B, 202C, 202D, and

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1 202E.

2 MR. ALLEN: No objection, Your Honor.

3 THE COURT: All right. Mark them in.

4 (Government Exhibits 202A, 202B, 202C, 202D, 202E

5 admitted.)

6 BY MS. BEDKE:

7 Q Ms. Cheslow, we are going to publish these exhibits on
8 the monitor. You should feel free to look on the monitor or
9 on the paper copy of the document, whichever suits you.

10 A Okay.

11 Q We will start with Exhibit 202A, page 1. At the top of
12 the document, what is the name of this exhibit?

13 A "Oasis Management, LLC, Limited Partnership Agreement."

14 Q Now, were you familiar at this time with the entity Oasis
15 Management?

16 A Yes.

17 Q What did you know about it?

18 A That it was a company formed to pool the funds of
19 individuals and then trade currencies overseas.

20 Q Who is identified as the general partner of that entity
21 in this document?

22 A Michael DaCorta.

23 Q And who is identified as the limited partner?

24 A Me. My trust specifically.

25 Q Pardon me?

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1 A My trust.

2 Q And could I have you just read the -- I guess I would say
3 it's the first full paragraph or second full paragraph. It
4 begins with the words "the purpose." Would you read that
5 slowly for the court reporter?

6 A "The purpose of the partnership is to engage in the
7 business of offshore real estate, gold, silver, and foreign
8 currency trading, and to have all powers necessary or useful
9 to engage in business described. Without limitation, this
10 shall include the power to own, sell any currency deemed an
11 opportunity at any given time. The principal place of
12 business shall be 13315 Lost Key Place, Lakewood Ranch,
13 Florida 34202."

14 Q And would you read the next paragraph, please?

15 A "Each partner has contributed, or will contribute by the
16 1st of any month. The amount shown next to their signature to
17 this agreement will be their participation."

18 Q All right. And if we turn to page 2 of this document, on
19 the bottom half of the page, does it indicate there the amount
20 of your investment in Oasis Management?

21 A It does.

22 Q What is that amount?

23 A \$25,000.

24 Q And what's the date of your investment as reflected on
25 page 2 of the document?

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1 A June 11, 2015.

2 Q Let's go back to page 1. Would you read the next
3 paragraph, please, that's in bold?

4 A "Limited partners shall not be required to contribute
5 additional capital and will never be at risk for any
6 additional funds above the amount of their said investment."

7 Q What was your understanding of that provision, if you
8 recall?

9 A That there was no obligation to continue to invest, to
10 add more, to do a monthly contribution, nothing. I could stop
11 right there forever.

12 Q Would you read the next paragraph, please?

13 A "Each partner shall have a capital account that includes
14 invested capital plus that partner's allocations of gross
15 trading income."

16 Q Would you read the breakdown there about the trading
17 income?

18 A "Trading income shall be allocated as follows:
19 25 percent to the general partner, 75 percent to the limited
20 partners, according to their respective percentage ownership
21 interests."

22 Q And how did you understand, Ms. Cheslow, that was to
23 work?

24 A That the trades would be made for the day. Mine were
25 kept separate in their own account just like an investment

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1 firm would do, and essentially that I would get 25 percent of
2 what my money actually earned -- I'm sorry -- 75 percent of
3 what my money actually earned over that period. And the
4 commission or the fee or whatever you want to call it would be
5 25 percent going to Oasis Management.

6 Q Can you read the next paragraph too, please?

7 A "Limited partners share of profits will be distributed on
8 a monthly basis. In the event there is a loss for the month,
9 such loss must be recouped before either the general partner
10 or the limited partner receives a contribution. Any future
11 distribution of profits to either the general partner or the
12 limited partner shall be made only after any and all losses
13 are recovered."

14 Q During the term of your investment via this limited
15 partnership vehicle, were there ever any losses reported?

16 A No.

17 Q Would you read the next paragraph?

18 A "Except as otherwise expressly stated in this agreement,
19 the general partner shall manage the partnership business and
20 have exclusive control over the partnership business,
21 including all trading and direction of business operations."

22 Q And in this case, the person with all the control is
23 whom?

24 A Michael DaCorta.

25 Q Let me have you turn to Exhibit 202B. We will start with

DIRECT EXAMINATION OF DEBORAH CHESLOW

1 page 2 of that exhibit. What is this document?

2 A That's the check I wrote and mailed to Oasis Management
3 for my initial investment.

4 Q For \$25,000 on June 15 of 2015?

5 A Yes.

6 Q And page 1 of this document, this Exhibit 202B is what?

7 A The deposit ticket.

8 Q And it's deposited to what account? The account is in
9 what name?

10 A Oasis Management, LLC.

11 Q Let me have you turn next to Exhibit 202C. Let's start
12 on page 1 at the bottom half of the page. What is this
13 document?

14 A It's my email interaction with John Haas from Satellite
15 Holdings to start my initial investment with him.

16 Q And what's the date of your email communication?

17 A June 9, 2015.

18 Q Could I have you read the part in the middle that says,
19 "Check to me made out to"?

20 A "Check to be made out to Satellite Holdings Company.
21 Mail check to Satellite Holdings Company, 3280 Sunrise
22 Highway, Suite 215, Wantagh, New York 11793."

23 Q And would you read the next line?

24 A "As soon as the funds clear, a 36-month 12 percent note
25 will be issued."

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1 Q And let's move to the top of page 1 of this exhibit. Is
2 this your response?

3 A It is.

4 Q And what did you say to Mr. Haas?

5 A The check and the W9 are in the mail. Please reinvest
6 the interest. My trust is actually the holder of the note.
7 So please refer to the attached sample promissory note for the
8 wording. Let me know if you have any questions or need any
9 additional information. Thanks and have a wonderful weekend,
10 Deb."

11 Q And did you in fact mail the note -- mail the check?

12 A I did.

13 Q Let's look at Exhibit 202B -- D, D like David. What is
14 this exhibit?

15 A That is the check I mailed to Satellite Holdings Company
16 for \$50,000.

17 Q And why did you divide the investments 25 to Oasis
18 Management and \$50,000 to Satellite Holdings?

19 A Because we considered Oasis Management to be very risky,
20 and so take a small percentage of your portfolio and put it in
21 the risky part was my philosophy. And the guaranteed
22 12 percent per year interest from Satellite Holdings Company
23 on a loan seemed as foolproof as you can get. I know the
24 company could go under. So we wanted the majority to be in
25 the safe investment which was worth moving to over where we

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1 were because it was guaranteed. It was a fixed amount. I
2 could depend on it. I could plan on it. It wasn't volatile
3 like the stock market.

4 Q Let's have you look at Exhibit 202E, please. What is
5 this exhibit?

6 A The promissory note I received from John Haas for that
7 \$50,000.

8 Q And what's the date on this note?

9 A July 1, 2015.

10 Q And is the promissory note made in favor of your trust
11 like the other investment was?

12 A It is.

13 Q And does it indicate here what the rate of return is?

14 A Yes. I was looking for the place -- you want me to read
15 it? It does.

16 Q What is the rate of return as reflected in the promissory
17 note?

18 A 12 percent per year.

19 Q And let me have you turn to the last page, page 3 of this
20 exhibit. Who is the maker of this note?

21 A Satellite Holdings Company.

22 Q And it's signed by whom on behalf of that entity?

23 A Its president, John J. Haas.

24 Q Now, there is a mention of interest in your email
25 exchange with Mr. Haas, correct?

DIRECT EXAMINATION OF DEBORAH CHESLOW

1 A Yes.

2 Q And what were you referring to there?

3 A It was my choice whether to let the interest just stay
4 there and compound and compound, start earning interest
5 itself, or I could have distributions -- I believe for
6 Satellite Holdings it was quarterly and not monthly, but in
7 any case did I want distributions or did I want it to
8 compound, and I elected to have it stay and compound.

9 Q Did you monitor the performance of these investments?

10 A I did.

11 Q How?

12 A For Oasis Management I received a monthly statement via
13 email. And I also received weekly emails from Michael DaCorta
14 speaking to the performance of the week. And for Satellite
15 Holdings I received a quarterly statement from John Haas, but
16 I also in the background had the knowledge that the money was
17 over in Oasis. So it was doing the same thing. I was
18 monitoring in Oasis Management Group, but I got the quarterly
19 statement with my 3 percent interest on it.

20 Q Ms. Cheslow, I have handed you what have been marked for
21 identification as Government Exhibit 202P and 202Q. Do you
22 recognize those exhibits?

23 A I do.

24 Q In general terms how?

25 A They are the statements I received from both companies.

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1 MS. BEDKE: The government would move for the
2 admission of Exhibits 202P and 202Q.

3 MR. ALLEN: Can I just have a moment to look at them,
4 Your Honor, real quick?

5 No objection.

6 THE COURT: Admitted.

7 (Government Exhibits 202P and 202Q admitted.)

8 BY MS. BEDKE:

9 Q Ms. Cheslow, let's look first at Exhibit 202P. Would you
10 tell the jury what this exhibit is comprised of?

11 A It is the monthly statements that I received from Oasis
12 Management Group -- or Oasis Management, LLC, no group.

13 Q Let me have you look at the July 2015 statement, if you
14 would. It's the very last page of that exhibit. It's Bates
15 stamped Invest-191702.

16 A Yes.

17 Q We will just start at the top of the page. I think we
18 now have the last page up. Let me just confirm. If you can
19 make out the Bates stamp in the lower right-hand corner, we'll
20 blow it up here. It should say Invest-191702. Is that what
21 you're seeing?

22 A I am.

23 Q Ms. Cheslow, let's start at the top of the page. What's
24 the entity reflected here and the time period covered by the
25 statement?

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1 A Oasis Management, LLC, July 2015.

2 Q All right. And would you tell the jury what's depicted
3 before -- below July 2015?

4 A It shows the beginning balance, which was the 25,000 that
5 I invested the check we just talked about, the profit or loss
6 for this month, which was a profit of \$195.19, and then my
7 ending balance of \$25,195.19.

8 Q And what about the graph, I guess a bar graph below that,
9 what's depicted there?

10 A So that historically shows the year and its percentage
11 per month of earnings. And so to me that was a very important
12 thing and it gave me added confidence. We had gone into this
13 thinking it was extremely risky based on the trust of
14 individuals I knew, but looking at this graph, it's like,
15 well, there's the history right there. They had one
16 break-even month. I knew there had been two since inception.
17 But other than that, the gains, 1.14 percent, 1.17, 2.5, it
18 just every month was a gain, and it was better than the stock
19 market by far. So I was very happy.

20 Q And so just to be clear, the break-even month as depicted
21 on this graph is which one?

22 A April.

23 Q And all the other months that show a -- I guess a bar on
24 the graph, you would characterize as gain?

25 A And profit, yeah. Profit, yeah. And nothing is below

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1 the bar. There were no losses that year thus far.

2 Q And based upon your understanding, the profit was
3 generated by what?

4 A Trading the money of the investors on the foreign
5 currency market.

6 Q Was it attributable to anything else listed in the
7 limited partnership agreement we looked at a moment ago?

8 A Not to my knowledge.

9 Q There was a mention of offshore real estate, for example.
10 Did you have any understanding that the profits were
11 attributable to that?

12 A No. I thought it was all trading.

13 Q Let's look, if we can, at the next to the last page of
14 this exhibit. It bears Bates stamp Invest-191701. What is
15 this page?

16 A That is the August statement from the same company one
17 month later.

18 Q And in shorthand terms, what does it depict?

19 A That once again there was a profit.

20 Q And --

21 A But it was less than the previous month by almost half.

22 Q Let's look at September. That's Invest-191700. What
23 does that depict?

24 A Same trend, that there was once again a profit but less
25 than the month before.

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1 Q Let's look at October 2015, Invest-191699. What does
2 that show?

3 A Another profit. And it went back up almost on par with
4 that first month that I was in.

5 Q Let's look at November 2015, Invest-191698. What does
6 that show?

7 A Back down again but once more a profit.

8 Q And let's look at December 2015. Invest-191697 is the
9 Bates stamp.

10 A So another profit and kind of in the middle of the highs
11 and the lows.

12 Q So does the bar graph depict the entire year of 2015?

13 A It does.

14 Q And what do you see there?

15 A That the first quarter was bigger than anything else, and
16 then the break-even month, and then ups and downs, but for the
17 most part the average was respectable.

18 Q Were there any losses at all?

19 A No.

20 Q Let me have you look at Exhibit 202Q. What is this
21 exhibit?

22 A The compilation of the quarterly statements I received
23 from Satellite Holdings Company.

24 Q And let's just zoom in on the top half of page 1. Do
25 these statements also relate to your account?

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1 A I'm sorry. Do they what?

2 Q Do these statements in 202Q relate to your investment,
3 your account?

4 A Yes, they do.

5 Q And you said these are quarterly statements for -- let's
6 just take a look at the same period. Let's go to page 11.
7 It's the last page of the exhibit. It bears Bates stamp
8 Invest-191713. What is this page in particular?

9 A It is the September 30 statement. So I started July 1.
10 It's my first quarter.

11 Q Of 2015?

12 A Yes.

13 Q What does it reflect?

14 A The initial \$50,000 investment and the 1 percent per
15 month, 3 percent per quarter, which is \$1,500. So an ending
16 balance of \$51,500.

17 Q Let's look at the next to last page of this exhibit.
18 It's Bates stamped Invest-191712. What period of time does
19 this statement cover?

20 A So that's fourth quarter 2015. So ending December.

21 Q In general terms, what does it reflect?

22 A Again the guaranteed 3 percent interest, but this time
23 the interest was on the \$51,500. So the gain was -- the
24 interest was \$1,545.

25 Q You mentioned a moment ago that in addition to these

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1 statements you received weekly emails; is that right?

2 A Yes.

3 Q From whom?

4 A Michael DaCorta.

5 Q And how would you describe the emails?

6 A Generally speaking they were very short, oftentimes a
7 one-liner, but just saying, like you saw in that bar graph,
8 that there was a percentage per month that the trading
9 produced. Well, he would do it weekly. We had a good week.
10 It was .62 percent, or we had -- the markets were down this
11 week. We were at .2 percent. And he would kind of keep us
12 going throughout the month of where we stood so that we didn't
13 have to wait a month to see what that number was going to be.

14 Q Do you recall from those email weekly reports ever a loss
15 being reported?

16 A No.

17 Q Ms. Cheslow, I have placed before you what's been marked
18 for identification as 200X. I have given you both the paper
19 copy and a disk with the same content. Do you recognize 200X?

20 A I do.

21 Q I'm sorry. 202X.

22 A I do.

23 Q How do you recognize it?

24 A It's the emails we were just discussing that came weekly.
25 And sometimes there were ones in between. There would be a

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1 weekly one, and sometimes they were more than a line. There
2 was a commentary on here's what's happening in the world so
3 here's what I project. So giving a background to the gains or
4 losses that happened or to be expected.

5 Q And did you save all of those emails that you received
6 from Mr. DaCorta?

7 A I did.

8 Q And is that what is represented here in 202X?

9 A It is.

10 MS. BEDKE: Your Honor, the government would move for
11 the admission of Exhibit 202X.

12 MR. ALLEN: Can I just have a moment, Your Honor?

13 No objection, Your Honor.

14 THE COURT: All right. Admitted.

15 (Government Exhibit 202X admitted.)

16 BY MS. BEDKE:

17 Q Ms. Cheslow, we are going to set Exhibit 202X aside just
18 for the moment. But I want to ask you based upon the
19 performance of your investments that you made in July of 2015,
20 what, if any, further action did you take?

21 A So we were happy, very happy with the performance. Every
22 promise that had been made was being kept, so we invested more
23 money.

24 Q How much more did you invest?

25 A I believe it was 95,000. Yes, 95.

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1 Q I have now placed before you what have been marked for
2 identification as Government Exhibits F, 202F1, F2, G, H, I
3 and J. Do you recognize those exhibits?

4 A Yes.

5 Q How?

6 A It's basically the emails and the checks and the
7 documents that followed for the additional investments.

8 Q Do these all relate to the next rounds of investments you
9 just mentioned?

10 A Yes.

11 MS. BEDKE: Your Honor, the government would move for
12 admission of Exhibits 202F1, F2, G, H, I, and J.

13 MR. ALLEN: No objection, Your Honor.

14 THE COURT: They're admitted.

15 (Government Exhibits 202F1, 202F2, 202G, 202H, 202I, 202J
16 admitted.)

17 BY MS. BEDKE:

18 Q Ms. Cheslow, let's look first at Exhibit 202F1. And we
19 will start at the bottom half of that first page. What is
20 this document?

21 A I sent an email to John Haas at Satellite Holdings
22 Company informing him I wanted to invest another \$60,000 and
23 asked how I should do it, whether it should be a check or if
24 there was some other way.

25 Q Let me ask you to -- do you see the to and from section

DIRECT EXAMINATION OF DEBORAH CHESLOW

1 of this email on the bottom half of page 1 of 202F1?

2 A Yes.

3 Q And whose email address is the "From" line?

4 A Okay. So I looked at one thing in front of me and it was
5 the wrong thing. This is the one I sent to Michael DaCorta
6 with Oasis Management to invest an additional \$60,000.

7 Q And when did you send this particular email to
8 Mr. DaCorta?

9 A On January 17 of 2016.

10 Q What did you say to him in your email?

11 A "Hi, Mike: Great call yesterday. Thank you! We would
12 like to send an additional \$60,000 to you for investment in
13 Oasis. Should I just mail you a check or is there more to the
14 procedure? Thanks, Deb."

15 Q Do you recall what you were referring to when you said,
16 "Great call yesterday. Thank you"?

17 A Yes. Occasionally there were conference calls for
18 investors or potential investors. And there had been one and
19 I had gotten on it just to hear more information.

20 Q Does this Exhibit 202F1 include Mr. DaCorta's response to
21 you?

22 A Yes.

23 Q What does it say?

24 A "Deb, thanks. Appreciate your kind words. Just simply
25 mail out a check made out to Oasis Management, LLC, and mail

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1 to 13315 Lost Key Place, Lakewood Ranch, Florida 34202. Best
2 regards, Mike."

3 Q Did you mail your check?

4 A I did.

5 Q And did you say as much in your reply email?

6 A I told him it would go in the mail tomorrow and asked him
7 to let me know when he received it.

8 Q Let's have you turn to Exhibit 202F2. What is this
9 exhibit?

10 A That is the check that I mailed him.

11 Q And do you see the endorsement on this exhibit as well on
12 the back?

13 A Yes.

14 Q And what account was this check deposited into?

15 A A Wells Fargo bank account.

16 Q In the name of what entity?

17 A Oasis Management, LLC.

18 Q And does that account number end in 9302? Can you make
19 that out?

20 A I can't see it on the screen. Let me look. Yes.

21 Q Let me have you look next at Exhibit 202G. What is 202G?

22 A That is the check that I mailed to Satellite Holdings
23 Company for its additional investment of 35,000.

24 Q So did you divide your investments up between a direct
25 investment in Oasis Management and another investment through

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1 Satellite Holdings as you had initially?

2 A Yes, because the first time I said Oasis Management is a
3 big risk. We'll do 25,000, but I want 50,000 in the safe one.
4 But once I came to believe through performance that this is
5 real, then I wanted the higher gains of Oasis Management but I
6 still wanted the safety of Satellite Holdings. So I wanted to
7 bring them equal. So I put an additional amount in each that
8 brought each on total to an \$85,000 investment on my part.

9 Q Did you receive another promissory note to memorialize
10 your second investment made by Satellite Holdings?

11 A I did.

12 Q Let's look at 202H. What is this exhibit?

13 A The promissory note you referred to.

14 Q And what's the date?

15 A February 1 of -- yeah, February 1 of 2016.

16 Q And the amount?

17 A 35,000.

18 Q And Ms. Cheslow, how did you provide your funds for this
19 investment made by Satellite Holdings?

20 A Same as before. Mailed a check.

21 Q Mailed the check?

22 A Uh-huh.

23 Q Now, did you have any specific conversations with
24 Mr. Haas about this \$35,000 investment via Satellite Holdings?

25 A Yes. Generally speaking it was made clear by John Haas,

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1 Mike DaCorta and Ray Montie that you can get your money any
2 time. It's liquid and if you need it, you can have it, but
3 the intent was for long-term investment. And so I wanted to
4 honor that, but the 35,000 I intended to send to Satellite
5 Holdings I knew I was going to need in several months for my
6 daughter's college education expenses. So I had asked John --
7 I was up front with him. I said this money won't be in for
8 long but long enough to make some interest. Is that okay with
9 you? And he said it was.

10 MR. ALLEN: Objection. Hearsay.

11 THE COURT: Sustained. And with that we'll break for
12 the evening, ladies and gentlemen. Please drive carefully.
13 Please don't consult outside sources like Google or anything
14 like that or talk about this case.

15 Mr. Houston, when do we need to be back tomorrow?

16 THE COURTROOM DEPUTY: 8:45.

17 THE COURT: Mr. Houston instructs us to be back at
18 8:45. He runs the show around here. So thank you very much.

19 (Jury escorted out of the courtroom.)

20 THE COURT: Thanks, everybody. We will see you
21 tomorrow.

22 (Proceedings concluded at 5:03 p.m.)

23

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DIRECT EXAMINATION OF DEBORAH CHESLOW

1 UNITED STATES DISTRICT COURT)
2 MIDDLE DISTRICT OF FLORIDA)

3
4 **REPORTER TRANSCRIPT CERTIFICATE**

5 I, Tracey Aurelio, Official Court Reporter for the United
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7 pursuant to Section 753, Title 28, United States Code, that
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11 the transcript page format is in conformance with the
12 regulations of the Judicial Conference of the United States of
13 America.

14 /s Tracey Aurelio

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Tracey Aurelio, RMR, RDR, CRR
Official Court Reporter
United States District Court
Middle District of Florida
Tampa Division
Date: September 2, 2022