

The CFTC’s Motion for Summary Judgment Against Michael DaCorta (“Motion”) (Dkt. 749) shows that there is no genuine dispute as to a material fact for any of the claims brought by the CFTC against DaCorta in Counts I-V of the Amended Complaint (“Complaint”) (Dkt. 110). DaCorta’s response to the Motion (“Response”) (Dkt. 757) further solidifies the CFTC’s position, particularly with respect to any *genuine* dispute as to *material* facts.

In the Response, DaCorta relies on bare recitations of alleged “facts”—with no supporting record citations—to argue that his aggregation of funds from hundreds of individuals somehow escapes the definition of a commodity pool. DaCorta further argues that the CFTC’s Motion relies on issue preclusion to foreclose a commodity pool determination, which is incorrect. DaCorta also reprises an argument made in two prior motions to dismiss (Dkts. 454, 663) and his own Motion for Summary Judgment against the CFTC (“DaCorta Motion”) (Dkt. 750) that because the CFTC cannot prove that Oasis International Group, Limited (“OIG”) or Oasis Management, LLC (“OM”) were “insolvent,” then DaCorta could not have possibly been committing fraud. These arguments fail.

I. CFTC’s Statement of Additional Material Facts on Reply¹

1. In a solicitation phone call on March 5, 2019, Defendant Raymond Montie informed a potential pool participant and the potential pool participant’s CPA that there were no income or net worth requirements for investing in OIG

¹ Hereinafter, “Reply Facts.”

and/or OM. *See* Robinson Declaration in Support of SRO Motion, Dkt. 4-1 at 35.f.

2. 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 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)")² 13:24-19:6.

3. 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.

4. 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.

5. 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)")³ 136:21-137:12.

6. 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.

² Katter Tr. (Day 2) attached as "CFTC Reply Ex. A."

³ Charles Tr. (Day 7) attached as "CFTC Reply Ex. B."

II. LEGAL ARGUMENT

A. Collateral Estoppel Bars DaCorta from Arguing He Did Not Commit Fraud in the Oasis Scheme.

First, with respect to collateral estoppel, or issue preclusion, DaCorta misunderstands the CFTC's argument. The CFTC states in its Motion that:

[B]ased on the indictment, the trial proceedings, and jury instructions, no rational jury could have found DaCorta guilty without finding DaCorta *knowingly and willfully defrauded* Oasis pool participants in violation of the antifraud provisions of Sections 4b and 4o of the Act, 7 U.S.C. §§ 6b, 6o, and Regulation 5.2(b), 17 C.F.R. § 5.2(b) (2022).

Motion, Dkt. 749 at 13.⁴ In response, DaCorta (1) takes issue with the CFTC's use of the phrase pool participants, arguing that there were no commodity pools and therefore no pool participants, and (2) argues that the solvency of the Oasis entities was not proven at DaCorta's criminal trial. *See* Response, Dkt. 757 at 27-28.⁵ Notably, DaCorta's Response does not take issue with the use of collateral estoppel to establish that DaCorta knowingly and willfully defrauded individuals in the Oasis scheme, which is the sole argument made by the CFTC in its Motion. *See* Motion, Dkt. 749 at 13.

⁴ Page numbers for docket entries refer to file-stamped page numbering in the upper right-hand corner and not pagination at the bottom of the brief.

⁵ DaCorta also notes that his criminal conviction appeal has not been decided, but "the pendency of the defendant's appeal from his criminal conviction does not generally deprive the judgment of its preclusive effect . . ." *SEC v. Johnson*, No. 01-7874-CIV-HURLEY-LYNCH, 2006 WL 8423587, at * 2 (Jan. 23, 2006 S.D. Fla.) (citing *United States v. Int'l Board of Teamsters*, 905 F.2d 610, 621 (2d Cir. 1990) and *Webb v. Voirol*, 773 F.2d 208, 211 (8th Cir. 1985)).

B. The Undisputed Material Facts Show That the Oasis Pools Were Commodity Pools.

The CFTC refers to the individuals defrauded in the Oasis scheme as pool participants because there is no genuine dispute as to a material fact with respect to whether there was a commodity pool and whether those individuals who contributed to the commodity pool were “pool participants.” But the CFTC does not seek to use collateral estoppel to argue that a jury in DaCorta’s criminal trial found that a commodity pool existed. Instead, the CFTC relies on material facts, with record citations, to establish that a commodity pool existed. *See* Motion, Dkt. 749, Statement of Material Facts (“Facts”) ¶¶ 20-25.

DaCorta seems to take issue with the use of the phrase “pool participants” in the Motion’s Facts, but not with the underlying facts themselves. *See* Response, Dkt. 757, Response to Motion Facts ¶ 20 (asserting there were “no ‘funds from pool participants’”); ¶¶ 22-23 (“there were no ‘pool participants’”); ¶¶ 24-29 (same, disputing existence of pool participants). The “record citations” supporting DaCorta’s dispute of these material facts are simply references to approximately twenty paragraphs of DaCorta’s Second Motion to Dismiss (Dkt. 663), none of which cite to the record but instead state bare factual assertions unsupported by record citations. DaCorta has wholly failed to create any dispute of a material fact with respect to the existence of a commodity pool and the pool participants who contributed to the commodity pool.

The undisputed material facts establish that a commodity pool existed. Under 7 U.S.C. § 1a(10), commodity pool is “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 agreements, contracts, or transactions described in 7 U.S.C. § 2(c)(2)(C)(i), *i.e.* forex, within the scope of commodity interests). “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 both solicited individuals for the purpose of trading commodity interests, including forex, and that he then pooled their funds into a common account for the purpose of trading forex. *See* Motion, Dkt. 749, Facts ¶¶ 20-25, 28; DaCorta’s Motion for Summary Judgment (“DaCorta Motion”), Dkt. 750 at 9 (Johnson acknowledging money would be used for trading), 12 (McKee, same), 17 (John Paniagua, same), 23 (McFarland, same), 31 (DaCorta, same); DaCorta Motion Statement of Material Facts ¶ 17 (OIG engaged in forex trading).

DaCorta then appears to argue that the Oasis Pools were ECPs because they “traded on their corporate account as eligible contract participants for their sole customer OIG.” DaCorta Response, Dkt. 756 at 19. But the definition of an ECP *excludes* commodity pools *in which any participant is not otherwise an ECP*. *See* 7 U.S.C. § 1a(18)(A)(iv). OIG and OM did not have in place any

minimum income or net worth requirements for potential pool participants in the Oasis Pools. Reply Facts ¶ 1. Accordingly, a number of pool participants were not ECPs. Two pool participants testified at DaCorta's criminal trial that the loss of their respective \$100,000 investments in the Oasis Pools devastated their families financially. *See* Reply Facts ¶¶ 2-6; *see also* CFTC's Response to DaCorta's Motion for Summary Judgment, Dkt. 756 at Part III.B.3. These pool participants were not eligible contract participants—individuals with amounts invested on a discretionary basis *in excess of \$10 million*—and DaCorta did not and cannot argue otherwise. *See* 7 U.S.C. § 1a(18)(A)(iv) (definition of ECPs). DaCorta's own characterization and structure of the Oasis entities does not somehow undo an entire regulatory framework.

In his argument, DaCorta makes summary assertions with no record citations or legal authority. The CFTC's Motion, however, alleges specific, concrete facts with citations to the record that show that there is no genuine dispute that the Oasis Pools existed. *See* CFTC Motion, Dkt. 749, Facts ¶¶ 20-25. The simple fact is that DaCorta has introduced no properly-supported facts that would defeat a finding that the Oasis Pools existed.

C. Insolvency Is Not a Required Element of Any of the Counts Alleged Against DaCorta.

Insolvency is not a required element of any of the CFTC's charges against DaCorta. *See* Motion, Dkt. 749, Part VI. Solvent entities can, and do, commit fraud. *See, e.g.*, LIBOR line of cases finding fraud under Section 6(c)(1) of the

Act, 7 U.S.C. § 9(1): *In re Barclays PLC et al.*, CFTC No 12-25, 2012 WL 2500330 (June 27, 2012) (consent order); *In re Deutsche Bank AG*, CFTC No. 15-20, 2015 WL 1874880 (Apr. 23, 2015) (consent order); *In re Citibank, N.A.*, CFTC No. 16-17, 2016 WL 3035031 (May 25, 2016) (consent order); *In re UBS AG, et al.*, CFTC No. 13-09, 2012 WL 6642376 (Dec. 19, 2012) (consent order). The CFTC is not using collateral estoppel to support a finding of insolvency, as argued by DaCorta, because insolvency is wholly irrelevant to the CFTC's claims.⁶

III. CONCLUSION

Collateral estoppel forecloses DaCorta from arguing that he did not knowingly and willfully defraud others in violation of the antifraud provisions of Sections 4b and 4o of the Act, 7 U.S.C. §§ 6b, 6o, and Regulation 5.2(b), 17 C.F.R. § 5.2(b) (2022). He does not dispute this. Further, the undisputed material facts establish that a commodity pool existed, despite DaCorta's unsupported assertions to the contrary. Finally, in its Motion, the CFTC has supported each of the elements of its five claims against DaCorta with undisputed material facts. The CFTC therefore renews its request for the Court to enter summary judgment in its favor on Counts I-V of its amended complaint (Dkt. 110).

⁶ Although not relevant to the CFTC's claims, it strains credulity for DaCorta to claim the Oasis entities were solvent when, at the time the initial complaint was filed on April 15, 2019, the Oasis entities owed pool participants approximately \$110 million, but they had total assets (excluding real property) of less than \$10 million. Facts ¶ 34. DaCorta's purported expert acknowledged that the real property was worth, at most, \$10 million at the time the complaint was filed. DaCorta's Motion for Summary Judgment, Dkt. 750 at 25.

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CERTIFICATE OF SERVICE

I hereby certify that on August 21, 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 21, 2023, I provided service of the foregoing via electronic mail to the following unrepresented parties:

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Number	Title
A	DaCorta Trial Transcript (Day 2 - Patti Katter)
B	DaCorta Trial Transcript (Day 7 – Anthony Charles)

EXHIBIT A

**CFTC REPLY IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT AGAINST
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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I N D E X

1		
2	PATTI KATTER	
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GOVERNMENT EXHIBITS

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16		<u>ADMITTED</u>
17	38	10
18	200A	24
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21	200E	24
22	200F	24
23	200G	24
24	200H	24
25	200I	24

	GOVERNMENT EXHIBITS (Continued)	<u>ADMITTED</u>
1		
2	200J	24
3	200K	24
4	200N	24
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6	200P	24
7	200Q	24
8	100A	69
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10	111	117
11	201A	148
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13	201C	153
14	201P	156
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16	201E	157
17	201E1	158
18	201F	159
19	201H	161
20	201G	162
21	201I	163
22	201K	164
23	201J	164
24	201L	166
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	GOVERNMENT EXHIBITS (Continued)	<u>ADMITTED</u>
1		
2	201N	168
3	202A	225
4	202B	225
5	202C	225
6	202D	225
7	202E	225
8	202P	233
9	202Q	233
10	202X	239
11	202F1	240
12	202F2	240
13	202G	240
14	202H	240
15	202I	240
16	202J	240
17		
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19	DEFENDANT EXHIBITS	
20		<u>ADMITTED</u>
21	225	54
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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?

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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

DIRECT EXAMINATION OF PATTI KATTER

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

DIRECT EXAMINATION OF PATTI KATTER

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

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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.

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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.

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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.

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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

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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

CROSS-EXAMINATION OF DEBORAH OREMLAND

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,

CROSS-EXAMINATION OF DEBORAH OREMLAND

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

CROSS-EXAMINATION OF DEBORAH OREMLAND

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.

CROSS-EXAMINATION OF DEBORAH OREMLAND

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

CROSS-EXAMINATION OF DEBORAH OREMLAND

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

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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

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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

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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

DIRECT EXAMINATION OF MATTHEW KIHNKE

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?

DIRECT EXAMINATION OF MATTHEW KIHNKE

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

DIRECT EXAMINATION OF MATTHEW KIHNKE

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.

DIRECT EXAMINATION OF MATTHEW KIHNKE

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.

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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.

DIRECT EXAMINATION OF MATTHEW KIHNKE

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.

DIRECT EXAMINATION OF MATTHEW KIHNKE

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

DIRECT EXAMINATION OF DEBORAH CHESLOW

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

DIRECT EXAMINATION OF DEBORAH CHESLOW

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

DIRECT EXAMINATION OF DEBORAH CHESLOW

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

DIRECT EXAMINATION OF DEBORAH CHESLOW

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."

DIRECT EXAMINATION OF DEBORAH CHESLOW

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

DIRECT EXAMINATION OF DEBORAH CHESLOW

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.

DIRECT EXAMINATION OF DEBORAH CHESLOW

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?

DIRECT EXAMINATION OF DEBORAH CHESLOW

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

DIRECT EXAMINATION OF DEBORAH CHESLOW

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.

DIRECT EXAMINATION OF DEBORAH CHESLOW

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?

DIRECT EXAMINATION OF DEBORAH CHESLOW

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

DIRECT EXAMINATION OF DEBORAH CHESLOW

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

DIRECT EXAMINATION OF DEBORAH CHESLOW

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.

DIRECT EXAMINATION OF DEBORAH CHESLOW

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

DIRECT EXAMINATION OF DEBORAH CHESLOW

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

DIRECT EXAMINATION OF DEBORAH CHESLOW

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,

DIRECT EXAMINATION OF DEBORAH CHESLOW

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.)

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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
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 245 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 2, 2022

EXHIBIT B

**CFTC REPLY IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT AGAINST
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

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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

DIRECT EXAMINATION OF ANTHONY CHARLES

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?

DIRECT EXAMINATION OF ANTHONY CHARLES

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

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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

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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.

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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.

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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.

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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

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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?

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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

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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

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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?

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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.

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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)

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12 regulations of the Judicial Conference of the United States of
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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 3, 2022