what our model looked like the last five years. Do you understand what I'm saying?

A I do. I think and I can't say. I mean, every firm on the street probably does that, where they do this model, look back -- I mean, I guess we're sticking to mutual funds in this case.

You know, here's the mutual fund allocation. The same thing that I'm talking about in those proposals again -- you know. These are the five funds we're recommending today. Look at this great performance.

Q Okay.

A Even to a single fund -- you know, it's a five star fund. It did 18 percent last year, in 2008. It's amazing, you know. You've got to put your money in it.

Q And you know, I think it's obvious, but what are the limitations of hypothetical performance?

A The concern is misrepresentation, to the client.

Q Right, and define that for me.

A I guess misrepresentation as in -- you know, if I'm there that's one thing, or a Compliance person's there. But we're there 5 percent of the time. I don't know how it's being sold.

Q You don't know what the sales guys are doing?

A Exactly.

Q Okay. So the sales guys may very well say "This is

our historical record."

A They may.

Q Okay, and that -- when you say the concern is with misrepresentation, is that what you mean?

A That is what I mean, that a sales person is embellishing, or --

Q Right.

A I mean, benefit of the doubt or just not saying anything. I mean, they say, well, the disclosures. That's in reality what.

Q So the other concern would be whatever you call it on the first page, the client may not look at page 20, where it says "This is hypothetical performance." Is that the other concern on the misrepresentation side?

A Yes.

Q So where the financial advisor might be silent and just let the client assume whatever they want about the --

A There is a concern there, yes, the education kind of aspect.

Q Okay.

BY MR. ELLIS:

Q Can I kind of take a step back, because I've heard you guys use the word "model" in two different ways, and I want to make sure we're really clear on how we're using this going forward.

I think when Tom is talking about model performance, he's referring to this is actually how in 1999, if you had invested into a model at that time, here's how it would have performed."

The advertising that it sounds like you're talking about says if you took our current recommendations today, and if they would have been in place in '99, here's how they would have performed. Am I understanding what you're saying correctly?

A Right. But I think they're both being presented that way, and we got into this on the phone call. There is a way to do it correctly, and we got into this on the phone call. You've got to go -- you've got to backdate -- you know, your models, to reflect changes that were made along the way, to correctly say this is what we did.

Even then, we're forgetting like fees. We're forgetting important aspects in there, when we all know, I mean, in reality, if you're going to say that or do that, you've got to -- you should have GIPS-approved actual track records of clients' performance, if you're going to say unequivocally this is what we did.

BY MR. KELTNER:

Q Okay, and is another way to say that composite performance?

A Yes.

Q Okay, and that's actual client performance used to market the fund, as opposed to hypothetical performance?

A Right.

BY MR. ELLIS:

Q So in the materials you're talking about that in the presentations that you referred to, the model wasn't adjusted in each year going back to reflect what the model was at that time. It was strictly taking the current allocation that had been recommended to the client.

A Correct.

Q And how it -- okay.

BY MR. KELTNER:

Q I think we're all clear, but the hypothetical is a backward look.

A Yes.

Q It has nothing to do with historical performance.

A Correct.

Q Okay.

A Well, I mean, it is historical performance, but with hindsight it's 20-20.

Q Right, and so, I mean, could anyone generally pick the five best performing funds in the last -- you know, looking back five years? There's no trick to picking the best-performing funds when you're looking with the benefit of hindsight; correct?

A Correct, and that's the fallacy. It's not intentional. I mean, you're just -- when you pick a fund or a group of funds, you're likely going to pick funds that perform well. So they're going to look good. Whether it's one or eight put together, they're just going to look good, because you're not going to pick --

Q Sure, yes.

A But then you're going -- then we're not going to kid ourselves. You're not going to show a client like, oh, that.

Q You want to pick the best possible funds looking forward, but you also want to pick funds that have a good historical track record?

A Right. As a fiduciary, you want to pick the funds that you feel have the best chance of outperforming in the future. I mean, that's our job.

Q But you're going to put this in front of a client. You obviously don't want to show --

A That's the rub.

Q You don't want to show them a fund that lost 20 percent the last five years?

A Yes.

Q Okay. So when you were running this group, the performance that was given, that your group put together that was given to brokers, that was given to clients, that was all

hypothetical performance, right?

A Yes. It was up, yes, to a point.

Q Okay. So it wasn't an historical track record?

A Correct.

Q Who was involved in putting together those pitch books or PowerPoint presentations?

A The original ones were already kind of in place with Chip McNeil, and then approved by Compliance. I did very, I did not modify it a lot. Let me just back up. With Chip, he -- the reason why they were in place because he was doing this with separate account managers.

Do I need to distinguish the separate account managers? It's really the same asset allocation approach, but instead of putting mutual funds into the sleeve, you're putting in these 100,000 minimum separate account managers, where the client actually owns the positions.

It's not a mutual fund. So it's higher minimums. So you'd have a million-dollar -- you know. To allocate between seven managers, you'd need at least $700,000.

MR. CRAINE: You just let him ask a question and it will be better for you and better for him.

THE WITNESS: Okay.

MR. CRAINE: Okay.

BY MR. KELTNER:

Q So the fact that you all were using hypothetical

performance, I think I've seen some of those old presentations, and we might look at one or two here in a minute. It wasn't a secret that you were using hypothetical performance numbers, was it?

A No.

Q To people in your own group, to the people you reported to?

A No.

Q Okay.

BY MR. KING:

Q How do you know that?

A I guess just educated. I mean, well -- you know, Jason and I were -- you know, we work together. I think Jason was hired to kind of take over that process of mutual funds, the allocations and things --

BY MR. KELTNER:

Q And that's Jason D'Amato?

A Yes.

Q And so you guys worked hand in hand very closely?

A Yes, oh, yes.

Q Okay, and so Jason would pretty much know everything you know?

A Yes, yes.

Q Okay, I mean, he would have understood that these numbers that you all were giving the clients through brokers,

while you were there, were hypothetical in nature?

A Yes. I mean, I hope.

Q Okay.

A To Michael's point, I guess I really don't know what was in his head, but I hope he knew, as a CFA and an educated person building these models.

Q Okay, and he would have seen some of these pitch books, right?

A Yes.

Q Okay, and when would he have seen them?

A Well, he took over that proposal generation process. That's why he was hired, to take over that function.

Q Okay. So D'Amato, what time frame was he involved in putting the pitch books together, for lack of a better word?

A Right off the batt, just again depending on when he was hired.

Q Okay, and when -- you think that was later '03, early '04?

A Yes. I mean, I could maybe on a break. I could -- you know --

Q Think about it?

A Think through the time line some.

Q That's okay for now, but if you think of something

different, if you think of it as a different time frame?

A Well, it's not really a time frame. I could probably zero it in, though.

Q And who helped Mr. D'Amato put those pitch books together?

A No one, until we hired Seth.

Q Okay, Seth Hare?

A Yes.

Q And so --

A Sorry, go ahead.

MR. CRAINE: Good job.

BY MR. KELTNER:

Q I'll try not to cut you off. So when the client -- you know, fills out their questionnaire and they give it to the broker, and then the broker, I assume, sends it to the Investment Advisory Group --

A The broker would present it to their client.

Q Well, no. The broker gets the questionnaire?

A Oh, yes, yes.

Q And they fill out their profile and this is my age and this is my risk tolerance. Is that the type of information?

A That's how the process works, yes.

Q Okay, and then that questionnaire goes to the Investment Advisory Group; is that correct?

A Yes.

Q And then what happens?

A Then Seth, Jason and myself, depending on the time, would generate a proposal.

Q Okay, and does that --

A With the client's name on it.

Q And does a lot of that depend on just who happened to be around, who happened to be available in terms of who put it together?

A No, to put it tactfully -- you know, it's a little bit of a mundane-type job. So -- you know, Seth was hired. I hired Jason to do it, because you could be grinding out 15 or 20 a day, and then eventually Jason and I hired Seth to do it.

Q Okay. So it sounds like today you're certainly aware of the limitations and concerns about using hypothetical performance; is that fair?

A You mean as a Good Samaritan. I mean, I know -- I mean.

Q Well, earlier you talked about the risk of misleading investors --

A Oh, I think we have a duty to do the right thing.

Q Okay, and you know, today you know there's a risk around -- we talked earlier about the risks, about how that could be misrepresented to a client or a client might be

confused?

A Yes.

Q Did there come a time where you wanted to change how you presented performance, or was there ever talk about --

A Yes.

Q Okay. Tell me about that.

A There was a time -- and I think it was right after Jason and Seth were hired -- whereas, if we were to advertise hypothetical model returns, we need to build these models to be as accurate as possible.

When I say that, to take into account any changes along the way. One thing we haven't talked about is the actual performance of the clients, you know. You get a model here and the actual performance is what they do. If you want those two, if you want less dispersion between those two, you've got to go back into your models.

You would simply do that by taking into account changes. You make fund changes you made along the way, and allocation changes.

Q So that's what you're talking about now, and that's what I was loosely using as the term "model performance" earlier.

A Yes.

Q Where your model actually tracks the investments

that actual live clients were in; is that what you're talking about?

A That's right.

Q Okay. So assuming you control for mistakes in allocation and some timing differences and money in and money out, what you're talking about now and what I described as model performance, you would expect then to see the actual client performance very close to the model performance, right?

A That's correct.

Q Okay. So it's more of a true historical performance number, if you can control for those other variables?

A Yes.

Q Okay, and so there were discussions about moving to this type of model performance?

A Yes.

Q Okay, and then when did those take place?

A I want to say '04.

Q And who was involved in these conversations?

A You know, I think it was -- you know, I don't know if it came from Compliance or the responsibility I felt. I can't recollect the reason why, but I know if you -- just against the, to be the good steward of the program. I mean, if we're going to do, if we're going to advertise model performance, we should do it right, you know.

Q Okay, and so as another way to look at this, you wanted -- when you're advertising this stuff, you wanted it to represent what the actual clients were getting?

A Well, and I also wanted to do it to brag, because the analysis I was doing was we've done well, you know. I've done well. Let's promote that. Let's promote that these were -- this is the actual changes. I mean, I still think, like you said, you can't say this is the actual performance, like you could with a true composite. But you could say look, these take into account changes we made along the ways, funds we made mistakes in. They're still in there. We didn't take those out. We kept them in there until the point where they were sold.

Q And that type of performance reporting should result in a deviation between the model and customer performance that's relatively tight; correct?

A Yes. On that, you would a couple of hundred basis points because of fees. I mean, yes, very tight or fairly tight.

Q Okay, and since we're there, I'm trying to remember the fees on this program, were they around 150 basis points?

A They originally were 2 percent on the first tier. They might have come down to 150.

Q And I understand there was perhaps some flexibility

for different clients?

A Yes, there was discounting built into it.

Q Okay, perhaps for bigger clients, that kind of thing?

A Really a broker-client, at their discretion. There was, I recollect, a 30 percent. There was something built in. There was some discretion in there, but I don't remember what it was.

Q Okay, and as far as the actual compensation for the individual brokers, I guess was there a grid and then -- you know, they got some percentage of the 150 or 200 basis points?

A They got 45 percent.

Q So almost half of the commissions or the fees that were paid to the advisory firm went to the broker?

A Correct.

BY MR. ELLIS:

Q Can I clarify? Before 2004, did you do anything to memorialize your contemporaneous changes in your investment allocation, or your changes in fund managers, that would allow you to basically keep track of what your model did from month to month?

A Yes. That was at the advice of Compliance.

Q And how did you do that?

A Well, write-ups on any fund changes. Two things.

One, just kind of internal due diligence, why a fund was changed, replaced, why the new manager. Then an e-mail, because that's part of the active management aspect of the program to send out. "We switched this fund for this, because of all these XYZ reasons."

Q Okay. Did you have anything in place from 1999 to around 2004, when you're talking about, that you kept track of the performance as Model 1 or Model 2 or Model 3, and the client had invested precisely according to that model?

A We had certainly the performance reports, yes.

Q With funds specifically from that model or just from actual client returns?

A Well, both, because the client went into that model.

MR. KELTNER: I guess this might be --

THE WITNESS: Go ahead.

BY MR. KELTNER:

Q I don't want to cut you off. We can get some follow-up with anything else you've got. But it might be a good time to talk about how you tracked the actual client performance. We've heard talk of a software called Greenhill?

A Greenhill's the vendor, a third party vendor was used from when I started to 2004 or 2005.

Q Okay, and what is the Greenhill software to you?

A It takes a download. The assets were held at Bear Stearns' facility and it takes just a dump and generates the performance of the client. So it takes in beginning market value, any withdrawals, redemptions, contributions during the way, and then ending value, dividends and generates the performance, the actual client performance.

Q Okay, and those were done quarterly?

A Yes.

Q Okay, and were those performance reports generated and sent to the client?

A Yes.

Q And when we talk about performance, is that essentially an IRR, internal rate of return that reflects the actual cash flows in and out of the account?

A Yes.

Q And then this Greenhill, how is it used? You said it was used for client statements. Was it used by your group in any way, in terms of -- you know, internal tracking or --

A Yes. I had done -- I know I had done some analysis on just looking at performance over time versus benchmarks and stuff like that. But it would go Bear Stearns to Greenhill. They'd generate the reports, send them to us.

Actually, they didn't -- they'd generate, massage the numbers, and then it would come to us, and we would actually generate the reports, print them out in color,

review them and then mail them out.
Q Okay, and so then what happens to that Greenhill data? Is it preserved? I mean, would you keep each quarterly report?
A Yes, yes.
Q Okay.
BY MR. ELLIS:
Q So maybe with that in mind, I can clarify then when we were talking about what I was trying to get at before.
In order to determine what, say for example, Model 1, how it performed in 2000, was there a record in Greenhill or elsewhere that kept track of how bills and market allocations performed, or would you have to simply look at all the clients that invested according to Model 1?
A You would have to do -- it wasn't flip the switch. You'd have to kind of do a little leg work, but you could generate that report.
Q And it would be based on actual composite performance from a client?
A Yes.
Q Sorry, because I ask these ten-part questions. It wasn't necessarily that there was an account in Greenhill that is Model 1? They just sort of tracked that model's performance, so that it's pure performance?
A Correct.

Q Okay.
BY MR. KELTNER:
Q Could you not push a button, but could you go in and tell Greenhill "Aggregate these 15 growth accounts and tell me what the aggregate performance is," or did you have to kick them all out to a spreadsheet and then manipulate it?
A It was -- no, you could not. They might have had that service. You know, maybe that was something else they had, but no, you would not do it.
What you would have to do is -- I don't actually know how I did it, but you would have to identify what's a Model 9, what's a Model 8 by either account number, and then just generate those segregated accounts.
Q So you might generate all 15 accounts, and then would you take a weighted average or would you just kind of eyeball it and --
A It would be a weighted average. You're right. I think it would have to go to a spreadsheet.
Q Okay. So you might kick out all, whatever. We'll say there's 50 growth accounts. You put them all in a spreadsheet, get the internal rate of return for each one and then just weight it?
A Weight them out.
Q Weight it by the end of year balance or something like that?

A Yeah, either that or you pick a representative account.
Q Okay.
BY MR. ELLIS:
Q Was there anything in Greenhill that would identify which account followed which model?
A No.
BY MR. KELTNER:
Q Was there a system in numbering the accounts that would tell you? In other words, did they have different prefixes or could you tell by just looking at an account number what strategy it was?
A I don't think so.
Q Okay. So it sounds like you had this Greenhill capability to generate composite performance; correct?
A For individuals.
Q Yes, for individual accounts?
A Yes.
Q And we talked a few minutes ago about discussions about maybe we should get, move from true hypothetical performance to something more like historical model performance. Was there discussion about going to composite performance?
A No.
Q Okay. So what came of these discussions about

maybe we should move to a more true model performance?
A Partly, as like I said, is to kind of maybe promote the performance more verbosely, you know. If we've done this well, let's not use hypothetical.
I mean, people could see through that. That's a little bit of a crutch. If we're actually doing this, let's try to promote it as actual performance, and for regulatory reasons.
You know, I think at the time the SEC was kind of had some, I don't know, coming down, was frowning upon these type of hypothetical look-backs, and promoting that as actual performance.
Q Okay. So I think I understand the motivations. Did anything come of the discussions, or did you continue to use the hypothetical numbers?
A No, it was done. They were built, for lack of a better word. It was complete.
Q When was that? When did that happen?
A The '04-'05 time frame.
Q Okay. So you think --
A It was a project. It was a project for Seth and Jason to do. I oversaw it, we did it. But that's only -- I don't know what happened beyond that. I mean, you've got to keep updating it.
Q Right, okay. So when that starts happening, are

you doing it on a go-forward, or are you going back and pulling up all the --

A Going back.

Q So you're going back and trying to essentially build the model?

A Yes. I had to provide them, before they came there, all the fund changes that were made. I remember the project vividly. Fortunately for me, there wasn't too many. So we had to go back to -- I would assume, probably around my inception or even --

You know, because my inception was basically the program's inception, and go through and build all those changes into this model, and you come up to say 2005 and it's done. So now that model hypothetical thing is more accurate.

Q Okay.

A But now moving forward, you've got to still -- that was the hard part. The easy part is them okay, we made a change. Let's lock it into the model.

Q Okay, and when you say I remember the project vividly, what did you have to do?

A I had to dig through files and like we talked about, all the notifications. When did I make this fund change and files, e-mails. It wasn't that difficult.

Q Okay, and so but it sounds like when did you -- remind me what year you started?

A 1999.

Q Okay.

A So yes, June '99 or July '99.

Q So you had to go back physically to '99 and reconstruct, to a degree, what you had done on each model?

A Yes.

Q Do you think you were able to accurately do that, or were there gaps?

A I'm confident it was accurate.

Q Okay. So let me ask you another way. When we go back and we download the Greenhill data, and we compare actual client performance to the numbers that were reported to clients for '99, 2000, 2001, these numbers you reconstructed, are we going to see a deviation or --

A You're going to see a deviation. You'll always see a deviation, but it should be tight, fairly tight.

Q Okay, because one of the questions I asked you before, and we'll look at the numbers here in a minute, there were years where you all reported 18 percent returns with a market loss of 9.

A Yeah.

Q And those numbers were carried forward into future advertisements. So do you think those numbers reflected what clients actually got, as opposed to a historical or a model with the benefit of hindsight?

A I couldn't say.

Q Well, that's why I'm asking you how confident you were in the work that you did looking back, because --

A At the time, I was confident. I can't put my stamp of approval on it today. But when the analyses were done and I did the regression, too, towards actual performance reports, it looked good.

Q So you went back and compared the stuff to actual client reports from 1999 --

A Greenhill.

Q From Greenhill. So at the end of this project, you've reconstructed the models, and you've talked about model performance. Then as kind of a sanity check or a check, did you go back and compare to the actual client performance?

A Yes.

Q Okay.

BY MR. ELLIS:

Q Were all MFP client accounts pulled into Greenhill? Did it show all, the whole universe of client account returns?

A Yes. I mean, unless for some reason that, which would be a mistake, unless it was never added into Greenhill.

Q But it was supposed to have everything?

A Yes, yes.

Q Go ahead.

BY MR. KELTNER:

Q Okay. Well, let's go ahead, and here in about one minute, we'll take a break. We'll come back. We'll go quickly through a few examples of what we're talking about, just to set context, so we all kind of know exactly what we've been talking about.

A Okay.

Q Then we'll transition over to a few questions regarding the bank.

A Okay.

Q So you want to take an hour?

MR. CRAINE: We can go off the record.

MR. KELTNER: Yeah. Let's go off the record.

(Whereupon, a luncheon recess was taken.)

* * * * *

A F T E R N O O N S E S S I O N

MR. KELTNER: Let's go back on the record.

Mr. Zarich, before we took a lunch break, we were talking through some of the issues related to SAS and MFP and some of the performance reporting issues. So what I wanted to try to do now for a minute is to go through a few documents that you think may represent the pitch books and things like that that were used for the MFP programs and SAS programs.

Some of these documents were produced to us this morning, and so they're not Bates-stamped, and some of the others aren't either. So we'll work our way through them, and it may be a little tedious, because we may identify some things by --

We'll be very careful to talk about what we're talking about, so that when somebody looks at this record later, you can tell from the context of what we're saying specifically which document we're talking about.

So I'm marking as Exhibit Number 1, it's a document that was in your production this morning. It's entitled "Investment Proposal." It appears to be perhaps a prototype that's used maybe for other investors. Why don't you just go ahead and tell me what Exhibit Number 1 is?

(SEC Exhibit No. 1 was marked for identification.)

BY MR. KELTNER:

Q Just for the record, I'll note it says "Investment Proposal" on the cover page, has the Stanford Group company logo, and has a place that looks like it's set forth to put the client name and the date.

Then the following page says "Introduction" and it has some information regarding the Stanford family and Lodis Stanford.

A Well, it's clearly you're right, some kind of

proposal. I'm not sure it's an investment proposal, asset allocation recommendations, mutual funds recommendations. Should we just -- you want to just go through kind of --

Q Sure. I mean, if you go to what appears to be the sixth page --

A Mm-hmm.

Q It's entitled in the upper left-hand corner "Mutual Fund Partners Plus, Hypothetical Performance."

A Okay.

Q Do you see that page?

A Mm-hmm.

Q Then it says "Growth of assets on the first chart"?

A Yes.

Q Do you recognize this type of information?

A I do. The content -- let me rephrase that. The graphics looks to be I would say pretty confident is a Zephyr Analytics, which is a tool to generate graphs and such, and statistics and analysis such as these.

Then it's clearly again the models we're talking about, this particular one, income model. My guess would be this was around the time when the nine models became five, as we spoke of this morning, and those fives were numbered. They were named "Income Growth," et cetera.

Q And the pages behind the page that we're on now entitled "Mutual Fund Partners Plus, Hypothetical

Performance," the following pages, are those files of the different funds to which money was allocated?

A Correct. The assumption here is the funds on the page Hancock Classic, Cartesian, Calamos, Keely, that have these percentages here, that combined 100 percent would make up Stanford MFP Plus.

The Stanford MFP Plus model benchmark should be the weighted indices for each of these funds corresponding to those percentages. But I have no way of telling that. Then of course the S&P is the S&P 500 index.

Q Sure. So looking at this page that we started at, the one entitled "Mutual Fund Partners Plus Hypothetical Performance," so does this generally represent what we had talked about before, the hypothetical performance with the lookback?

A Potentially. I mean, yes.

Q Given the title, is that what you think it represents?

A Yes. It's a model allocation, I would think, but I couldn't be certain. I mean, again, in all likelihood, it's this allocation of funds that's making up that model.

Q Well, let's flip real quickly toward the back of the document, and look for the pages entitled "Glossary" in the upper left-hand corner. Then behind that, there's a page entitled "Disclosures."

A Is this all the way back? This is CD. Yeah. These are looking more like possibly what I was using.

Q Just for the record, this appears to be the sixth page from the back of the document. At the top of the page, it says "Disclosures." Are you on the page entitled "Disclosures"?

A I'm in Glossary, sorry.

Q It's just behind that.

A Yes.

Q Okay. So you see the first paragraph underneath the chart that starts "Calculation of Historical Returns"?

A Yes.

Q Okay. So it says "Calculation of historical returns for the total portfolio and total portfolio index are based on the proposed asset allocation and uses the same allocation for each historical period." Let's see. Then just skipping forward, it says "These hypothetical historical performance returns are net of manager fees only and does not account for fees wrapped of any associated account.

"The hypothetical historical performance allocations assume a quarterly re-balance. These are not actual current portfolios, but hypothetical historical allocation based on the allocation assumptions made in the proposal. Actual performance can and will vary. Past performance is not any indication of any future results."

A Mm-hmm.

Q So does this generally describe how the hypothetical calculations were calculated like we talked about earlier today? Is this an accurate description of the hypothetical --?

A I don't think it's a description. It's hard to answer that. It's more of a legal question. I think it's an attempt to explain it.

Q Can you tell me what it means?

A It means to me that these performances are based on the allocation that's set forth in this proposal. Yes, the historical performance is based on the allocation set forth in the proposal.

Q Okay, and so as it says here, these are not actual current portfolios but hypothetical historical allocations, based on the allocation assumptions made in the proposal?

A Yes.

Q So what does that mean to you?

A Again, hypothetical. I mean --

Q So is it attempting to explain to the client that this is based on today's assumptions with the benefit of hindsight or with the lookback, as opposed to actual performance data?

A Yes. Or more to your latter point, that this is not an actual client portfolio. This is not an actual

return. This is a hypothetical. It may fall short of explaining that, but it just says -- it does say it's hypothetical.

BY MR. KING:

Q How does it fall short?

A Well, I guess it doesn't get technical into what hypothetical is, kind of how we've been explaining it all day, that this performance is not a stream, a historical stream of current recommendations of funds or whether -- it just uses the word "hypothetical." So I guess it would leave that up to interpretation.

Q Okay, and sometimes I've seen in other perhaps more recent drafts, language to the effect that these numbers are calculated with the benefit of hindsight. Would that be more accurate or give the reader more information, in terms of letting you know that it's a current -- it's essentially a lookback?

A Again, kind of a legal question, and it depends on the audience, because I know what a hypothetical is. I think a lot of people in the business do. But I think to answer your question yeah, you probably could put more simple language in there.

Q That kind of brings me to a question that I thought about earlier. When we were talking about the dangers of using hypothetical performance or the risks around that, I

think one of the things you said, and correct me if I'm wrong, was that you don't know what people say when you're not there or when Compliance isn't there; correct?

A Yes.

Q Okay. What were the FAs told? I mean, were they told how to present this stuff? Were they told make sure that people know this is hypothetical and not actual? You know, what kind of training was there for the FAs?

A There were product training sessions. I don't know the frequency, but we did have them in the Private Client Services Group or Investment Advisory Group. Certainly, when a big part of that was when new brokers and teams came over, and I can't speak to but I'm sure Compliance and Branch had their levels of training as well.

Q But I know that generally there were these meetings. But were the FAs specifically told, when you talk to your clients, you've got to make clear that this is hypothetical and not actual historical performance?

A I don't remember. I would assume yes, but I can't say definitively either I don't remember, or --

Q Now, you talked about Compliance. Aside from general assumptions that Compliance would have reviewed this stuff, anything specific you can point to? You know, do you remember specific people, specific meetings, specific review procedures? How do you know Compliance would read this

stuff?

A Like I said earlier, the presentations that I was working off for those -- you know, I guess until this kind of format came along, it was pretty static. So it was signed off once and probably reviewed periodically as Compliance would do audits.

So it was approved, and then as long as we had made no changes to it, it was good from that point on.

BY MR. KING:

Q Until what was approved?

A The proposal and the disclosures, the presentation. Like this, maybe the one we spoke of earlier, ten pages. So it's like this is what we're going to send out. The format.

Now what obviously changes all the time would be the allocation of the dollar amount, the client name. The format was approved by Compliance.

BY MR. KELTNER:

Q And how would that -- because it sounds like you were using the same format pretty much from when you got there. So I guess first, how do you know it was reviewed by Compliance?

A I remember once looking at it.

Q And who is that?

A When I first got there, it was Rep Poppell, P-o-p-p-e-l-l, I believe. Rep, R-e-p.

Q Okay, and so what do you remember about Rep being involved? What did he do?

A Well, I guess just that, as far as we're talking here. I mean, his job was to -- I think at the time the BD and the RA was kind of blended together. But him and members of his team would come up to Denver maybe quarterly and do their audits.

What -- you know, I probably like mock SEC audits, go through files and make sure the client's agreements are signed and things like that.

Q Okay, but specific to the proposals, what did Compliance do?

A I just recollect that it was really just approved -- you know, and then if it was ever changed, that we would have to get that re-approved.

Q Okay, and tell me about that. How did you know that and did it happen?

A I just think that was -- you know, my superiors trained me on that.

Q Okay, and was there an instance where --

A I mean, there was -- I'm sorry, go ahead.

Q Were there instances where that happened? Well, first, what types of change would require Compliance, because as you were saying, lots of things changed from proposal to proposal. So what would trigger a compliance review?

A I think the language, the verbiage of the presentation.

Q Okay. What do you mean by that? Like give me an example.

A The disclosures, glossary -- you know, the history of the firm, stuff that's not pertaining specific to a client situation. Client situation being dollar amount invested.

BY MR. KING:

Q Was Stanford using a client proposal when you got there?

A Yes, it was just -- again, it was a PowerPoint template. It wasn't a generation system or anything like that. But yes, there was one there.

Q And so how soon after you arrived do you have to get re-approval from Compliance for some change?

A I just -- you know, and I'm again, drawing back far. But changing from the separate account. The program was called Portfolio Advisors, to this new MFP program required something, but I just don't remember who and how it actually happened, and if it was me or Chip McNeil.

BY MR. KELTNER:

Q Okay. We talked a while back or before the break about the discussions that took place about hypothetical, whether the data should be presented as hypothetical or as a model that more closely represented actual performance or

composites, kind of as three different buckets.

Were there any discussions regarding changing how the information was presented to the client? In other words, the document that we just looked at clearly says hypothetical performance, and we talked about how adequate the disclosure was or wasn't.

But were there discussions about changing what it was titled? In other words, dropping the word hypothetical or adding the word historical? I mean, those seem like, just to me, the kind of things that you would run by Compliance. Is that true, or were there ever those discussions?

A I don't remember specific to that to disclosures, discussions on that.

BY MR. KING:

Q Who drafted the disclosures?

A I don't know.

Q Were you involved in drafting the disclosures?

A No, no.

Q Were you consulted on drafting the disclosures?

A No, because they are -- I think it was more or less stock language -- you know, when I --

Q What do you mean by stock language?

A From previous proposals that were already in place, other programs.

Q Were the disclosures that were used in the MFP

program inherited from its legacy program?

A Yes, yes. And I don't know about these ones here, but for me, they were.

Q Oh, so that might not have required Compliance's involvement, correct, on the disclosures?

A It may be. Again, I don't know, and I seriously doubt I wrote the disclosures for like you said, the legacy programs.

Q Do you know remember having specific conversations with anyone in Compliance regarding historical performance results for this mutual fund wrap program?

A No, I don't recollect.

Q So other than Compliance just doing their general things that they do, reviewing account forms and doing quarterly SEC-type audits, you don't know that they were looking specifically at client proposals related to the Mutual Fund Partners program?

A I don't think they were. I mean, I don't remember that they were.

MR. KELTNER: I'm just trying to get a sense for how these thins may have changed over time, and you know, which forms you may recognize. I want to go through just a few more and kind of walk forward in time.

So I'm going to go ahead and mark as Exhibit Number 2 a document that I'll represent to you that it's an e-mail with an attachment, entitled -- it's an e-mail exchange between Seth Hare and Charlie Rawl, on or around July 25th, 2005, and it appears to attach one of these presentations.

I'll just note that you were copied on the initial request e-mail from Charles Rawl to Seth Hare on July 25th, 2005 at 1:38 p.m. You can see --

(SEC Exhibit No. 2 was marked for identification.)

BY MR. KELTNER:

Q I mean, the initial e-mail exchange, if you'd just look at the bottom of the page, you see there where you're listed as a copy on the July 25th --

A Yes, yes.

Q And just for context, again who's Charles Rawl?

A He was a financial advisor with the Stanford Group.

Q Okay, and Seth Hare, I think you said is somebody who worked in your group?

A He was a junior analyst within the group, yes.

Q I think you said he was the third hire that you made?

A Yes, and I should qualify that with Seth, other than Operations.

Q The third --

A Analyst.

Q Analyst, financial?

A Yes.

Q And I think we said earlier today that you, Mr. D'Amato and Mr. Hare at various times prepared some of these presentations?

A Correct.

Q And so this is typical of the protocol, where an FA might e-mail one of the three of you, in this case Mr. Hare, and request a proposal. Then Mr. Hare would pull it together based on the criteria in the questionnaire and then send it back?

A Yes.

Q This is an example of that?

A Yes. Well, it appears to be.

Q So let's go ahead and look at the presentation. I'll note the front page has the Stanford crest, and it says "Prepared for Louis L. Jacob, presented by Charles Rawl."

Just thumb through it real quickly and tell me if you recognize this format? I think I've seen several hundred in this format. I didn't know if this one might be more familiar to you.

A This one has, yes.

Q Okay, and again, just for the record, what is Exhibit Number 2?

A It's an e-mail with a proposal attached.

Q Okay, and just generally, what's the proposal?

A Well, it's to Luis Jacob, presented by Charlie Rawl, Charles Rawl.

Q And what's it presenting to the client?

A It looks to be a proposed investment allocation of $1 million, broken down to the asset allocation, alternative investments, equity, fixed income. It kind of goes into each of those sectors in more depth. Then about halfway through, hypothetical performance.

Q Yeah, let's start on that page there. It's just a blank page, but at the bottom right, it says "Historical Hypothetical Portfolio Performance."

A Oh, yeah.

Q Perhaps the page right before the page you're on. Okay, okay. So again this is describing the performance as Historical Hypothetical Portfolio performance. Looking at the next page, the one entitled "Mutual Fund Partners Plus Income Performance," and it appears to be dated as of June 2005, what is this page represent? I assume you've seen some of these before?

A Yes.

Q Okay. What is this page?

A This is again a hypothetical performance of the recommended model presumably, the model being MFP Plus Income. It shows historical returns going back five years

and various ratios and statistics.

It also compares this model against its balanced weighted index, presumably an MFP Plus income index, and then as well as the S&P 500 index.

Q Okay. I think looking at a number of these, the S&P 500 was the typical benchmark; is that correct?

A I think -- well, the balance benchmark and then the S&P is kind of the recognized standard index.

Q Okay. So again, these numbers here represent the hypothetical model allocation selected today, and then the back-tested or the performance generated as if clients had been in this investment in the prior period?

A Yes.

Q Okay. It's clear to me looking at this that this is not the true historical performance that an actual client would have received?

A Yes, yes.

Q That's consistent with your recollection of when you were actually working there?

A Correct.

BY MR. ELLIS:

Q Based on the date, this says these numbers are as of June 2005. At what point did people on your team start reconstructing model performance from past years? Did this represent model performance or is it hypothetical back-tested