

1 performance?

2 A When we were talking earlier about going back

3 through? You know, it was prior to this, because this is

4 about when I was on the way out to my next assignment with

5 the company. You know, if we can remember when Seth was

6 hired, you know. Somewhere in '04, late '04 maybe, somewhere

7 in '04.

8 Q And really, I'm trying to clarify whether these

9 numbers represent the whole hypothetical performance --

10 A I understand, yes.

11 Q -- or the newer version that --

12 A And I can't say.

13 Q Okay.

14 A Not being able to -- you know, just on this.

15 BY MR. KELTNER:

16 Q One of the things you told us earlier was that this

17 discussion about using, for lack of word, more accurate model

18 performance. In other words, closer to real performance.

19 You said you wanted to do that, because you wanted to

20 demonstrate your real track record, right?

21 A Close to, a more accurate reflection.

22 Q Sure, and you said that was, I think, because you

23 were proud of your real track record, and you wanted to be

24 able to show clients that, versus hypothetical, benefit of

25 hindsight numbers?

1 A Correct. I think it adds more validity to what

2 you're doing, to the marketing efforts.

3 Q Okay. So what I'm a little confused by is if you

4 wanted people to know that this is your real track record or

5 closer to your real track record, would you want hypothetical

6 stamped on top of it? Do you follow my question?

7 A Not really.

8 Q Okay. Well, you said you wanted to be able to show

9 clients your real track record, right, or something close to

10 it?

11 A Right.

12 Q Okay, and if you were going to do that, would you

13 call that hypothetical, or what would you call that?

14 A Oh, hypothetical.

15 Q Okay, and why is that?

16 A Well, it still is. I mean, anything that's not,

17 unless it's the client's actual return, it's hypothetical.

18 Q But what if it tracks the actual model, because

19 wasn't that your goal, to come up with performance numbers

20 that tracked your actual model?

21 A Right. But it's still hypothetical.

22 Q Still hypothetical?

23 A Yes.

24 Q Okay, and explain that to me?

25 A I think hypothetical is non-accurate. I mean,

1 that's not the right word. It's not the real performance.

2 Unless you use the real performance, then it's hypothetical.

3 BY MR. KING:

4 Q So when you use the term hypothetical, you mean it

5 to mean anything other than a composite?

6 A Correct.

7 BY MR. KELTNER:

8 Q Okay. So if you were going to use -- if you wanted

9 to be able to present something to investors that was true,

10 historical performance, you wanted to be able to slap

11 historical performance on the top of it, is the only way to

12 do that to do composites? I'm trying to understand, in the

13 context of what Michael just asked you.

14 A In my opinion, yes, yes.

15 Q Okay. So you personally, you're at your new firm;

16 they're doing something similar to this -- not say they do.

17 But you're at your new firm, and you're presenting something

18 to clients as a historical performance track record.

19 Would you do that with anything less than composite

20 data?

21 A No.

22 Q Okay, and why not?

23 A Well, part of it is I've learned that you can't.

24 But it's still, back to your earlier question, it's not the

25 real performance. It's not the actual performance, whether

1 it's one client or a composite of clients. As much as we did

2 or I wanted to achieve the accurate reflection of the model,

3 it's still hypothetical today.

4 BY MR. KING:

5 Q So in your view, all models are hypothetical?

6 A Yes.

7 Q Okay. Now when we talk about calculating the model

8 with the benefit of hindsight, would you agree with me that

9 are two different types of models. One done without the

10 benefit of hindsight, and one done with the benefit of

11 hindsight?

12 A Yes.

13 Q Okay, and can you tell me the difference is between

14 those two?

15 A I mean, I guess -- wait, one with the benefit of

16 hindsight?

17 Q Right. You can have a model that doesn't utilize

18 hindsight as an investment technique; correct?

19 A Yes. I guess that would be an actual composite of

20 performance.

21 Q Well, now, couldn't you just have a model portfolio

22 that's not an actual investor, a model portfolio of five

23 securities that if that were an investor, that that's what

24 we're going to have this year?

25 A Yes.

1 Q Right, and those would not have to be picked with
 2 the benefit of hindsight, right? You could pick those today
 3 and say if you invest in this, this is our model?
 4 A Oh, sure. Sure.
 5 Q So not all models are done with the benefit of
 6 hindsight?
 7 A Correct.
 8 BY MR. KELTNER:
 9 Q And just to follow up on that, I mean, you said at
 10 some point that's -- it sounds like that what you were trying
 11 to get to, where your actual model was what you were
 12 presenting the client?
 13 A Yes. Well, I think ultimately the composite
 14 returns, right.
 15 Q But before -- okay. Do you know who Steve Reardon
 16 is?
 17 COURT REPORTER: I'm sorry, the name?
 18 BY MR. KELTNER:
 19 Q Steve Reardon?
 20 A I know the name, but I can't --
 21 Q Okay. Are you aware that the Stanford Group and
 22 the advisory group brought in an outside consultant to
 23 compile composite data?
 24 A I have heard that, yes. I've heard that.
 25 Q Before he came in to do his work, did Stanford

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1 have -- did Stanford present to clients, in pitch books or
 2 otherwise, composite data or was it all, as we talked about
 3 here, hypothetical?
 4 A As far as I know, hypothetical.
 5 BY MR. KING:
 6 Q Now, was it all hypothetical with the benefit of
 7 hindsight, or was it just merely a model?
 8 A I guess I don't -- the semantics are kind of not
 9 all clear yet.
 10 BY MR. ELLIS:
 11 Q If I understand right, once you said you remember
 12 with clarity this process where you had Jason D'Amato and I
 13 believe Seth Hare go back, and you provided them with all of
 14 your investment recommendations, and they reconstructed --
 15 A Yes.
 16 Q -- what your investment models would have, what
 17 they performed during the past, rather than just taking them
 18 from an allocation and looking back with it. That's our
 19 distinction between a model versus a model with hindsight.
 20 BY MR. KELTNER:
 21 Q In other words, one represents what you actually
 22 told your clients to put their money in; the other one is
 23 sitting here today, I'm going to pick the best possible
 24 portfolio. That's the hindsight situation, sitting here
 25 today.

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1 A Right.
 2 Q I think what Mr. King is talking about is this is
 3 my actual model and you know, taking a hypothetical whatever
 4 it is, \$1,000, put it in there, this is what the return
 5 numbers were going forward. You know, one reflects your
 6 actual model that you had investors in.
 7 I mean, so when he's talking about model -- you
 8 know, with the benefit of hindsight, that's sitting here
 9 today, versus model performance based on your real model,
 10 your actual allocation models, okay.
 11 So what we're trying to get our arms around is
 12 which numbers are going to clients? Were they all models
 13 with the benefit of hindsight, or were they -- did they
 14 reflect your actual allocations?
 15 A I would say hindsight, until this project, as Craig
 16 brought up and we talked about. But and the project was
 17 completed, but I do not know what happened after that. So
 18 there was a period of time in this '04-'05 where the models
 19 were used in hypothetical performance.
 20 Q With the benefit of hindsight?
 21 A No, without. Like we went through, let's say,
 22 January 30th of 2004, and recreated all the models to reflect
 23 the actual changes in the portfolios.
 24 MR. KING: Let me see if I can clean this up for
 25 you. During your tenure, did Stanford Group provide any

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1 composite numbers to clients in its I guess what did you call
 2 it?
 3 MR. KELTNER: Pitch books.
 4 MR. KING: In its pitch books?
 5 THE WITNESS: Composite, no.
 6 BY MR. KING:
 7 Q During your tenure, did Stanford provide any model
 8 numbers to clients in its pitch books that did not utilize
 9 hindsight?
 10 A I don't know.
 11 Q During your tenure at Stanford, did Stanford Group
 12 provide to customers in its pitch books model numbers that
 13 did include numbers that used hindsight?
 14 A Yes.
 15 Q And how long did it do that? How long did it
 16 provide numbers -- well, when did it stop using hindsight in
 17 its pitch books?
 18 A I don't know.
 19 BY MR. KELTNER:
 20 Q Well, we've talked a lot around this project that
 21 was done, and what we're trying to pinpoint is when that was
 22 done and when changes were made based on that project?
 23 A Yeah, I apologize for not knowing when. I remember
 24 the project. I remember doing the analyses, and I don't
 25 remember the follow-through, how it transpired into this.

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1 Q So sitting here today, do you know one way or
 2 another whether they stopped using the models with the
 3 benefit of hindsight?
 4 A I do not know, I mean, not equivocally. I don't
 5 know.
 6 BY MR. KING:
 7 Q So that wasn't done during your time at Stanford?
 8 A The models were, yeah. This project we did?
 9 Q No. You don't know whether they stopped using
 10 hindsight in their models during your time there?
 11 A Right.
 12 Q Okay. I want to make sure I understand. You're
 13 running this program, right?
 14 A Yeah.
 15 Q And you're sending out the pitch books and you're
 16 responsible, at least to some degree, for the historical
 17 performance reporting, right?
 18 A Right.
 19 Q Okay. But you don't know whether the numbers being
 20 provided to clients were with hindsight and at what point
 21 they stopped using hindsight?
 22 A Correct.
 23 Q Okay. Explain how that could be to me. I mean,
 24 how is it that the person running the program doesn't know
 25 whether or not the numbers that are going to clients in these

1 pitch books are utilizing hindsight or not?
 2 A I guess years, a lot of years have gone by since
 3 I've been there, and I cannot say one way or the other, under
 4 oath, for a fact, that I know that the project I initiated
 5 got completed and was carried forward.
 6 I don't know. I mean, it was done and there was a
 7 period of time where I think things were good. But what
 8 you're asking me is under oath do I -- no, I don't know.
 9 Q Okay. So you initiated a project whereby Stanford
 10 would stop using hindsight in its performance reporting to
 11 clients?
 12 A Yes.
 13 Q Did Jason D'Amato work on that initiative with you?
 14 A Yes. Jason and Seth.
 15 Q And what was Jason's role in particular?
 16 A He really passed the torch on finding the MFP,
 17 MFP Plus, now SAS program to him. Seth was hired as another
 18 junior analyst to do more kind of the day-to-day proposal
 19 generation.
 20 Q But in the actual process of converting from models
 21 with hindsight to models that didn't involve hindsight, what
 22 was Jason D'Amato's role?
 23 A He would have been over that project. I mean,
 24 you're right. I was in the charge of the department. I had
 25 the ultimate responsibility. But he would have done the

1 day-to-day crunching the numbers, the analytics, probably
 2 with the help of Seth.
 3 Q So is there any doubt in your mind, as you sit here
 4 today, that Jason D'Amato understood that prior to you
 5 initiating this project, the numbers that were being provided
 6 to clients included models that utilized hindsight?
 7 A I'm sorry, one more time?
 8 Q Is there any doubt in your mind that Jason D'Amato,
 9 prior to you initiating the project to convert away from
 10 hindsight, knew that hindsight was involved in the numbers
 11 that were being provided to clients?
 12 A Well, I mean, we asked that this morning. I don't
 13 see how we couldn't have. I mean, of course he knew.
 14 BY MR. KELTNER:
 15 Q And why is that? Is it because he worked hand in
 16 hand with you --
 17 A Well, he's a bright guy. He's a CFA. I mean,
 18 these are clearly -- well, I can't say these, but the process
 19 of doing hypothetical returns.
 20 BY MR. KING:
 21 Q You talked to Jason D'Amato about the fact that the
 22 numbers used in the previous project were numbers used with
 23 hindsight?
 24 A Yes.
 25 BY MR. KELTNER:

1 Q And who actually calculated the models with
 2 hindsight? Was that you or was that Jason or is that Seth?
 3 A Well, software does a lot of it -- you know, that
 4 generates. You have to plug in the funds and the weightings,
 5 the allocations.
 6 Q But who did that?
 7 A Mostly Jason and Seth. I mean, all of us at some
 8 point.
 9 BY MR. KING:
 10 Q Sure. So there couldn't -- if you're the one
 11 plugging in an allocation as of today, and I assume you tell
 12 the program to kick out a hypothetical historical return; is
 13 that correct?
 14 A Mm-hmm, mm-hmm.
 15 Q Yes?
 16 A Yes, I'm sorry. The program kicks out.
 17 Q So you're the one -- somebody is putting in the
 18 allocation -- you know, these ten funds and telling it to
 19 kick out a hypothetical historical track record?
 20 A Yes.
 21 Q With the benefit of hindsight sitting here?
 22 A Yes.
 23 Q I mean, it has to be.
 24 A Yes.
 25 Q You're putting in the allocation that day, right?

1 A Right.

2 Q And you're telling me that the primary person who

3 did that was Jason D'Amato?

4 A Yes.

5 Q Who picked the mutual funds?

6 A I did. I did for years and then Jason.

7 Q Okay. So give me a year where you know that

8 hindsight was being used to develop these models?

9 A Again, this hindsight thing. Hindsight's always

10 used to look at, I mean, a track record. You're always using

11 hindsight, but as far as presenting it with a historical

12 hindsight numbers, always when I was there.

13 Q Okay, so let's say for 2004. Would you agree that

14 hindsight was used in 2004?

15 A Yes.

16 Q Who picked the mutual funds in the hypothetical

17 model with hindsight for 2004?

18 A It was right around -- you know, when I was passing

19 the torch to Jason. Again dates. I mean, he was hired to

20 take over that program. I don't know when.

21 Q Even if he wasn't picking them, is it likely that

22 Jason was the one inputting them into the software and

23 generating the models?

24 A Yes.

25 BY MR. KELTNER:

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1 Q If I understand right, when you say you're always

2 doing some amount of hindsight, it sounds to me like you're

3 referring to the fact that when I'm picking a fund for my

4 client's use, I'm obviously going to look at the past track

5 record. Is that --

6 A I just think the word "hindsight" is getting thrown

7 around a lot. Yeah, I think you do. You look. You look at

8 a historical, just like you would look at anything else. But

9 that's just performance.

10 MR. KING: But we're not talking about the

11 selection of the funds. We're talking about the presentation

12 of data to the client. That's the context.

13 MR. CRAINE: Exactly. I wanted to clarify it,

14 because he said yes, I always used hindsight. But it's not

15 like he -- you were probably saying of course I look back at

16 past returns when picking funds and directing them to

17 clients. I did want to get that --

18 MR. KELTNER: Well, that's what Michael was asking

19 about, selecting funds.

20 Real quickly I want to fly through a couple of

21 these other presentations. I've had marked as Exhibit

22 Number 3 a document that appears to be another pitch book.

23 It's entitled "Stanford Allocation Strategies," and it says

24 "Prepared for Barry Rumac," R-u-m-a-c, and "Presented by

25 Nigel Bowman." Do you know Mr. Bowman?

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1 (SEC Exhibit No. 3 was marked for

2 identification.)

3 THE WITNESS: I do not.

4 BY MR. KELTNER:

5 Q Okay. Just flipping through Exhibit Number 3,

6 again does this appear to you be another standard pitch book

7 for MFP/SAS?

8 A Yes.

9 Q And again, going to the page entitled "Allocation

10 Performance" or "Historical Allocation Performance," do you

11 see that, Historical Allocation Performance?

12 A Mm-hmm, yes.

13 Q I'll just note that the term "hypothetical" is

14 dropped from the page there. Did you have any discussions

15 with Mr. D'Amato or anyone else about the idea of dropping

16 the use of the word "hypothetical"?

17 A No.

18 Q When you flip to -- you know, the next page, let's

19 start there, it says "Stanford Allocation Strategies, SAS

20 Growth Performance." Do you see that page?

21 A Yes.

22 Q Are you familiar with this type of format?

23 A Yes. It's the same Zephyr Analytics, just

24 different arrangement.

25 Q Okay, and you see what's in the chart in the upper

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1 right hand corner that's got the dates running across the

2 top?

3 A It's a historical performance calendar year, with

4 this particular SAS growth model, and then again the blended

5 growth model index, and then again the S&P 500, and it's

6 calendar year returns from 2006 back to 1999.

7 Q It appears to have an "As of February 2007" date in

8 small font there?

9 A Yes, correct.

10 Q Flipping to the disclosures at the back real

11 quickly, and this is going to be the next to last page, do

12 you see that page?

13 A Mm-hmm.

14 Q Okay. The first paragraph underneath the "List of

15 Funds," I guess.

16 A Mm-hmm.

17 Q It talks about again, the use of hypotheticals. It

18 says "These hypothetical historical performance returns are

19 net of manager fees." I'm skipping forward. "The

20 hypothetical historical performance allocation assumes a

21 quarter re-balance. These are not actual current portfolios,

22 but hypothetical historical allocation, based on the

23 allocation assumptions made in the proposal. Actual

24 performance can and will vary."

25 The sentence the talks about the hypothetical

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1 historical performance, and then goes on to talk about that
2 the allocation is based on allocation assumptions made in the
3 proposal, I mean, does that sound like the hypothetical
4 performance that you were using when you were there, where it
5 talks about based on the assumption, the allocation
6 assumptions made in the model?

7 A It's similar, but I don't know if it's apples to
8 apples. But I'm not sure. As far as the consistency of the
9 language?

10 Q Right.

11 A I don't know.

12 Q If you go back to the performance page that we were
13 on a minute ago, the page entitled "Stanford Allocation
14 Strategies, SAS Growth Performance," and you know, we looked
15 at the historical track record going back '99, 2000, 2001,
16 2002, 2003.

17 If I were to tell you that those numbers matched
18 the numbers that were being used in prior years when the
19 staff was clearly labeled as hypothetical, but it's now
20 labeled as historical dropping the title "hypothetical," is
21 that something you would have done when you were there?
22 Would you have been comfortable presenting this stuff as
23 historical without a hypothetical disclaimer?

24 A No.

25 Q Okay, and explain to me why not.

1 A Well, hypothetical, I mean, I guess it could be
2 misleading here to say historical allocation. I mean, it is
3 misleading. It implies that it's the actual performance of
4 the portfolio or a composite.

5 Q Okay. Which implies that?

6 A This cover page saying "historical allocation
7 performance."

8 Q Okay, and to you, the use of the term "historical
9 allocation performance" to describe hypothetical performance
10 is misleading?

11 A Yes.

12 Q And that's something you would not have done when
13 you were there?

14 A I hope not.

15 Q Sitting here today --

16 A I don't think so.

17 Q And you absolutely would not be comfortable with
18 it?

19 A Correct.

20 Q And again, not to belabor the point, but is the
21 danger here that you're calling this stuff historical
22 performance in the front of the book, and you're dropping a
23 sentence at the back of the book that says something about
24 "hypothetical performance"?

25 A The danger is misrepresenting your performance.

1 Q Right. So the danger is that the client is going
2 to think this is true historical performance generated by the
3 manager?

4 A Yes, and the financial advisor. And/or the
5 financial advisor.

6 Q Just real quickly, I'm going to hand you a document
7 that I'm marking as Exhibit 4. I'll represent to you that
8 this is what we believe to be a very current pitch book. It
9 was produced to the SEC in the course of a recent
10 examination.

11 It's entitled "Stanford Allocation Strategy,
12 SAS Proposal," and it's prepared for Jane Foster, presented
13 by Tom Woolsey, or Woolsey, W-o-o-l-s-e-y. First, do you
14 know Mr. Woolsey?

(SEC Exhibit No. 4 was marked for
identification.)

17 THE WITNESS: I do not.

18 BY MR. KELTNER:

19 Q Flipping to the seventh page, and it's a document
20 entitled "Historical Performance" at the top?

21 A Mm-hmm.

22 Q Do you see that?

23 A Yes.

24 Q Okay, and again this a track record for the growth.
25 Does this appear to be a track record for the growth fund or

1 the growth model?

2 A It does. It's a track record for SAS. It looks
3 like just returns -- well, in one risk parameter. But track
4 record for SAS growth model versus just the S&P 500.

5 Q Okay, and again this is entitled "Historical
6 Performance." No use of the word "hypothetical." Again, you
7 think that's misleading, right?

8 A I do.

9 Q Okay. Based on -- you know, you said you talked a
10 number of clients over the years. You sat in on pitches.
11 Your typical client walking into the office, do you think
12 your typical client understands the difference between
13 hypothetical and historical performance?

14 A I probably couldn't answer that. I mean,
15 everyone's different. Some do and some don't.

16 Q Okay. But if you slap "Historical Performance"
17 across the top of the page, surely you can tell me what the
18 typical client would conclude from that?

19 A It implies that it's the actual performance of this
20 particular model.

21 Q In other words, if I were a client, and I had
22 invested in this model at the beginning of the year, these
23 are the results that I would have gotten; correct?

24 A Yes, or even back further than the year. It reads
25 to me historical performance as this model did 12.4 percent

1 in 2007, 14.6 in 2008 -- you know, so on and so on.

2 Q So somewhere in Stanford's files, I should be able

3 to go back and find a client who is in this model in 2007

4 that got these numbers, right, or close to these numbers?

5 MR. KING: If they're in fact hypothetical.

6 MR. KELTNER: If they are historical.

7 THE WITNESS: If they're historical composites,

8 yes.

9 BY MR. KING:

10 Q I mean, if that -- if an investor in this program

11 were invested on January 1st and stayed in in that current,

12 in the current allocations all the way through the end of the

13 year, then that client would have gotten the numbers on this

14 page, as represented on Exhibit 4?

15 A That it's implying that, yes.

16 MR. KELTNER: I'm going to go off the record.

17 We'll take a five-minute break and be right back.

18 (A brief recess was taken.)

19 MR. KELTNER: We'll go back on the record. I think

20 Mr. King wanted me to note a few discussions that took place

21 during the break briefly.

22 BY MR. KING:

23 Q And also to give you an opportunity to

24 discuss -- you were talking, I think, about Exhibit 4 a

25 moment ago, and I think you referenced earlier that putting

1 the numbers there under historical performance from 2007 back

2 to 1999, that that would have been misleading; correct?

3 A Yes.

4 Q And how does that -- during the break, you

5 characterized that in a particular way. What's your reaction

6 to the fact that it appears that Stanford Group Company used

7 those 2007 back to 1999 numbers under the heading "Historical

8 Performance"?

9 A Well, I used the word "shocking," but it was used

10 in really that it wasn't prevented by Compliance or

11 apparently no checks and balances to -- I mean, I guess if

12 this was disseminated out to clients or wherever it was, it

13 seems like that should have been picked up on.

14 Q And why do you characterize that as "shocking"?

15 A Well, it's a lack of oversight. It is, like I

16 said, historical performance just implies historical

17 performance of the actual clients and not hypothetical.

18 Q Okay, and in reviewing Exhibit 4, did you note

19 anything else that you would consider significant?

20 A There was one, and I'm not sure if it was this

21 exhibit. There was a disclosure that said performance was

22 net of management fees. That's actually incorrect, because

23 you have --

24 It's semantics, but you have advisor fees too. So

25 it's actually gross. It's net of mutual fund management

1 fees, but gross of advisor fees. Anything that says "net of

2 fees" is misleading as well.

3 BY MR. KELTNER:

4 Q Okay. So it's gross of the fees that Stanford

5 charges?

6 A Charged. But to me, it's a management fee. To a

7 client, that's what a management fee is, is what you're

8 charging me, 2 percent, 1 percent, one-and-a-half.

9 Q So to be more accurate, in your view, you would

10 back out 150 basis points or 200 basis points as Stanford

11 fees from these return numbers, if you're going to call them

12 net of fees?

13 A Or put another way, you just say this is gross of

14 all fees.

15 Q Okay.

16 A But yeah, that would be hard to do.

17 Q But if you say it's net of all fees, it should be

18 net of fees?

19 A Correct.

20 Q And it's not.

21 BY MR. KING:

22 Q Okay, and other than those two issues, your

23 reaction to Stanford's use of the term "historical

24 performance" to refer to the 2007 back to '99 results, and

25 this issue of whether the numbers used were gross or net of

1 Stanford's fees, we didn't have any other discussions during

2 the break; correct?

3 A Not pertaining to this, no.

4 MR. KELTNER: Just real quickly, during the break I

5 ran up and got another document, what I'm going to mark as

6 Exhibit 5. just want to try to wrap up around a few of these

7 issues.

8 Exhibit 5 appears to be another SAS presentation.

9 It says "Prepared for Chris Rahaim," R-a-h-a-i-m, and

10 "Presented by Charles Rawl." Again, does Exhibit 5 appear to

11 be a SAS growth proposal?

12 (SEC Exhibit No. 5 was marked for

13 identification.)

14 THE WITNESS: Yes.

15 BY MR. KELTNER:

16 Q Okay. I'll just note I hand-marked the original

17 and then copied it, just for ease of use, and I also omitted

18 any pages after the 14th page. Flipping to the 13th page,

19 the next-to-the-last page?

20 A Yes.

21 Q You see there the title "Historical Hypothetical

22 Portfolio Performance"?

23 A Yes.

24 Q And then flipping to the next page, you see the

25 chart in the upper right-hand corner that's got 2004 through

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1 2007?

2 A Yes.

3 Q Okay, and it says "As of August 2005." I mean,

4 based on the preceding page and the discussions that we've

5 had, does it appear to you that this is the hypothetical

6 model performance that we've been talking about all day

7 today?

8 A Yes.

9 Q Okay, and then I want you to grab Exhibit Number 4.

10 Leave that one out. You see Exhibit Number 4? Flip to the

11 page entitled "Historical Performance."

12 A Okay.

13 Q What I want to do is put this, this Exhibit

14 Number 4 side by side with Exhibit Number 5. I'll just note

15 that Exhibit Number 4 is SAS Growth, or is -- MF, SAS Growth.

16 Oh, I'm sorry. Exhibit Number 4 represents MFP Growth;

17 correct?

18 A I'm sorry. I thought four was --

19 Q Four I have as SAS Growth.

20 A Okay.

21 Q So Exhibit 4 is SAS Growth and Exhibit 5 is MFP

22 Growth; correct?

23 A Yes.

24 Q Are those the same things, other than the fact that

25 the names were changed?

1 A You know, I can't -- I don't know how --

2 We talked about changing the models. I don't know

3 how many models SAS had.

4 Q Okay. Let's look at it this way. In 2004, what

5 was the annual return for MFP Growth?

6 A 16.15 percent.

7 Q Okay, and for SAS Growth?

8 A Oh, 16.15 percent.

9 Q Okay, and for 2003?

10 A 32.84 percent.

11 Q For both SAS and MFP Growth?

12 A Yes.

13 Q Okay, and likewise 2002, the loss of 3.3 for both?

14 A Yes.

15 Q And 2001, 4.32 percent positive?

16 A Correct.

17 Q And 2000, a gain of 18.04 percent?

18 A Correct.

19 Q Okay, for both SAS Growth and MFP Growth?

20 A Yes.

21 Q Okay, and when we looked a minute ago at Exhibit

22 Number 5, which is MFP Growth, it was labeled "Hypothetical

23 Historical Performance."

24 A Right, yes.

25 Q And as we've talked about ad nauseam, that's

1 hypothetical performance with the benefit of hindsight?

2 A Mm-hmm.

3 Q Yes?

4 A Yes.

5 Q Okay, and as we talked about earlier, you see in

6 Exhibit 4 the exact same return numbers portrayed as

7 historical performance; do you see that?

8 A Yes.

9 Q Okay, and would you agree with me that that's

10 misleading, implying that this is historical when it's

11 precisely the same numbers that were disclosed as

12 hypothetical and historical, hypothetical/historical

13 performance?

14 A I'm sorry, misleading how again?

15 Q Well, it portrays these hypothetical numbers that

16 are in the earlier version as historical; correct?

17 A Yes, that is misleading.

18 Q Okay, and they're precisely the same numbers;

19 correct?

20 A Yes.

21 BY MR. KING:

22 Q So Stanford's using the same numbers under two

23 different headings, right?

24 A As in the MFP Plus Growth and SAS?

25 Q No. As in hypothetical and historical?

1 A Yes, yes. I got you.

2 Q So Stanford is using the same set of numbers under

3 two different headings, one under Hypothetical and one under

4 Historical; correct?

5 A Correct.

6 BY MR. ELLIS:

7 Q Does this give you any -- does it jog your memory

8 or give you any more of an impression of whether these

9 numbers represent the results of your model calculations from

10 2004, or the fact that these are the numbers they're using

11 today, does that indicate to you whether these are --

12 A Well, I'll tell you -- I'm sorry.

13 Q Okay, sorry. Go ahead.

14 A Well, I'll tell you there was one thing that was

15 very interesting here. The Exhibit 4, with just the

16 historical performance, is through June of 2008. Exhibit 5,

17 am I doing that right, is through August of 2005. So you

18 have a three-year period, yet you have the same calendar year

19 returns.

20 Q Correct.

21 A And it's possible that there could be locked-in

22 returns back there, because these further back calendar year

23 returns have remained the same. So in other words, if 2008

24 rolls around and you change some funds, you should have

25 different calendar year returns.

1 So the fact that they're similar does in fact lend
2 credence that there might be some of those changes locked in.
3 Does that make sense?

4 Q Yes. But that's based -- you're just basing that
5 on observation, not from any recollection you have of when?

6 A Observation of these two reports.

7 BY MR. KELTNER:

8 Q And that would be if it was actually -- you
9 wouldn't expect to see a change if these were true historical
10 results, right?

11 A Correct.

12 Q So it's only if you're changing the model today and
13 then looking back in time that you would expect to see the
14 change?

15 A Right. The allocations here, the recommended
16 allocations here are completely different than the
17 allocations here.

18 Q Could you identify --

19 A Oh, I'm sorry. The two presentations, Exhibit 4
20 and Exhibit 5, have completely different recommended funds,
21 you know. I think I've got to scratch that, because I don't
22 think the funds are in here. Yeah, I have to retract that.
23 I can't make the comment.

24 BY MR. KELTNER:

25 Q Okay. Now that we've gotten mired in exhibits and

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1 minutiae, I wanted to take a few steps back. One of the
2 things we talked about during our informal interview, a
3 couple of issues that I think fit together.

4 You brought up the idea of performance issues
5 coming to a head, I think it was a term you used last time we
6 talked, and I think the context for that was around the time
7 that they brought in the outside consultant, and there was
8 talk in late '06 about getting performance numbers. I mean,
9 tell me what that was about.

10 A I had been hearing in the halls, around the coffee
11 machine, on frequent visits back to the U.S. office from
12 Antigua, that there was disgruntled FAs, financial advisors,
13 about the performance of the program.

14 Q Okay, and specifically what were the FAs unhappy
15 about? Was it just that the program wasn't doing well, or
16 was there more to it?

17 A I certainly heard both, that the performance was
18 subpar and that I guess even more so, it wasn't what it was
19 advertised.

20 Q Okay. So to clarify, the financial advisors were
21 upset, because their clients weren't getting the advertised
22 performance?

23 A Yes.

24 Q Okay. So what can you tell me about that, in terms
25 of what you heard?

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1 A Just a general -- you know, your group's gone to
2 hell in a handbasket, what's going on? You know, just
3 advisors complaining about performance.

4 Q To try to nail this down a little bit, you
5 mentioned at the beginning of our conversation that
6 Mr. Grosebeck was a friend of yours?

7 A Yes.

8 Q Okay. Was Mr. Grosebeck one of the people you
9 talked to about this issue?

10 A Yes.

11 Q Okay, and what did Mr. Grosebeck talk to you about?

12 A He's not one to complain. I mean, he just, I
13 think -- you know, voiced concerns about it, about the
14 returns. I don't know specifics of the conversation.

15 Q Okay. So you heard this hallway talk from
16 Mr. Grosebeck and who else?

17 A Charlie Rawl, Charles Rawl, Mark Tidwell. I mean,
18 probably other advisors that I don't recollect names.

19 Q Okay. So they had talked to you about this
20 performance reporting issue while they were still at the
21 company, still at Stanford?

22 A Yes, yes.

23 Q And so what came out of this? I mean, did you have
24 any discussion with D'Amato or Stys or Como or Parrish
25 regarding these issues?

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1 A I did not. I just kind of --

2 Q Kind of what?

3 A I just didn't -- I didn't get involved. I was a
4 sounding board.

5 Q Okay. Sounding board for the FAs?

6 A Yes.

7 Q Okay. Anything else you can remember about those
8 conversations?

9 A No. No, I don't.

10 Q Did it give you an idea of the magnitude of the
11 problem or what years they were talking about?

12 A Well, this would have been in the 2006 kind of time
13 frame, but not as far as magnitude, if that's what -- you
14 know.

15 Q So it was the 2006 performance reporting that they
16 were concerned about?

17 A 2006 that this was happening. I suppose the
18 returns of question would have been probably the last year or
19 two. Bless you.

20 Q So anything else you can tell me about these
21 conversations?

22 A Not really.

23 Q Okay. But just to summarize it and make sure I
24 understand, again the issue was the financial advisors were
25 concerned or upset that their actual clients were not

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1 receiving the performance that was presented to clients in
 2 advertising?
 3 A Correct, and just generally upset about
 4 performance. I should probably add that meaning relative
 5 performance.
 6 Q Relative to the market?
 7 A Yeah. SAS is down. What's going on over there?
 8 Q Okay. Along those same lines, I understand that
 9 recently you've been contacted by Stanford regarding
 10 performance reporting issues; is that correct?
 11 A Well, they as you know, had an examination, SEC
 12 examination I guess this month for a couple of weeks, and I
 13 got two calls from Operations personnel.
 14 Q Okay, and who were the Operations personnel?
 15 A The first call was from Laura Comeaux,
 16 C-o-m-e-a-u-x.
 17 Q How is she related to Mr. Comeaux?
 18 A To Jay Comeaux? She is his daughter-in-law, his
 19 son's wife.
 20 Q So was that the first call?
 21 A Yes.
 22 Q Okay, and what did she call you about?
 23 A She called --
 24 MR. CRAINE: And then just so I'm clear, there was
 25 nobody from Legal present or involved?

1 THE WITNESS: Not that I know of. It was just her.
 2 MR. CRAINE: Yes great. Go ahead.
 3 THE WITNESS: She was asking about what was the
 4 name of that performance vendor we used to use.
 5 I'm like, "Oh, that's Greenhill." Pretty short
 6 call.
 7 She's like, "Oh, the SEC's here -- you know.
 8 They're trying to get, I guess get some old archived
 9 performance."
 10 I said, "Well, there should be records. That stuff
 11 should be kept ten years," putting on your hat, or is it
 12 seven? Or call Greenhill, you know. I said they're in D.C.
 13 They probably have archive files, and then that was it.
 14 BY MR. KELTNER:
 15 Q Okay. What did you -- did you say anything else to
 16 her? Were you surprised that they were calling to get
 17 historical data? Were you surprised they would have to call
 18 an ex-employee to get the historical data?
 19 A Very surprised. I mean, I was very cordial and
 20 very friendly. I want to help them, but I was just like why
 21 are you calling me?
 22 Q Okay, and why were you surprised?
 23 A Well, I had left that department four years ago.
 24 Q And were you surprised that an advisory firm that
 25 presents their track record to clients wouldn't have at their

1 fingertips the documentation to support the track record that
 2 they claim?
 3 A Yes.
 4 Q Is that because working in the business, you
 5 understand that you have to have evidence for a track record
 6 if you're going to use it for your clients?
 7 A Yes, and performance reports. You have to have
 8 records of anything sent to clients in the performance
 9 reports.
 10 Q Okay. Anything else you said to Laura on that
 11 call?
 12 A No.
 13 Q Okay. So what leads to the second call?
 14 A It was Laura and this time she brought in
 15 Julie Mayse, who was another one of my hires.
 16 Q What was that last name?
 17 A Mayse is M-a-y-s-e.
 18 Q Okay.
 19 A And Marie Gardner, and there might have been a
 20 fourth person, not Legal.
 21 MR. CRAINE: Thank you.
 22 THE WITNESS: And they were asking to get more
 23 archived information on some of these old model allocations.
 24 Where would they be kept? I said I don't know. I suggested
 25 call IT, maybe go through my old network or something. Go to

1 an old backup drive.
 2 BY MR. KELTNER:
 3 Q Okay. Specifically, what were they asking you for?
 4 A Old funds and allocations. When I say "old," I
 5 think pre --
 6 Q Pre-'05?
 7 A Yeah, '05, '04, '03 and beyond.
 8 Q Okay, and what were you able to tell them about
 9 where to find that stuff?
 10 A I had no idea as far as files. I suggested to go
 11 to IT.
 12 Q So they were trying to find client data, or were
 13 they trying to find the old allocation data, like where the
 14 model was invested or what the model was?
 15 A I think more the latter, more what was invested,
 16 you know. It was a strange call. I mean, it wasn't where's
 17 this, but it was like old allocations.
 18 Q Yeah. What was the --
 19 A Not proposals but like the models, like your old
 20 9 models. Where are those allocations?
 21 Q Okay. What was the tenor of the call or what was
 22 it like to you?
 23 A I'm sorry. Could you elaborate?
 24 Q Sure. I mean, were they -- I mean --
 25 A You mean like stressed, or --

1 Q Stressed or were they embarrassed at all to be
2 asking for this stuff, anything like that?

3 A I don't think so.

4 Q Who was leading the call?

5 A Laura.

6 Q And again, what's Laura's role?

7 A She's in Operations with SCM, but I don't know her
8 title, her official title. And they did say that Rhonda
9 Lear, I think is the Compliance officer, would be calling me,
10 and she never did. Or might be calling me with questions,
11 but she never did.

12 Q Okay. Did they give you any indication as to what
13 they had found so far? No?

14 A Oh, I'm sorry, no.

15 Q Just real briefly, I don't even think I need to
16 mark this as an exhibit necessarily, but there's an e-mail
17 that we found dated June 21, '05, and it's just sent by you
18 to the SGC Houston branch e-mail. That's all the FAs in
19 Houston?

20 A Yeah. Branch FAs, assistants.

21 MR. KELTNER: It says "Please Jason D'Amato and
22 myself in the Lodi Room, Monday, June 27th at 3:00 p.m. for
23 a State of the Union address on the MFP program."

24 It says "We'll be discussing methodology and
25 process, lookback at strategic changes, why changes were

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1 made, performance results from the changes, performance of
2 the program and current commentaries and expectations." We
3 can go ahead and mark it as Exhibit 6.

4 It's an e-mail dated June 21 from Michael Zarich to
5 SGC Houston Branch, copying Jason D'Amato, Priscilla Olivia,
6 it looks like.

7 (SEC Exhibit No. 6 was marked for
8 identification.)

9 THE WITNESS: My assistant.

10 BY MR. KELTNER:

11 Q So ballpark this time frame, is this close in time
12 to when you were given the offer to go to Antigua?

13 A Yes, I think -- I'm sorry. It was probably a
14 couple of months prior. I think August.

15 Q Okay. So what was the purpose of this State of the
16 Union address?

17 A Well, it was common to have sales meetings with the
18 brokers. I mean, that's part of what I would do, not just in
19 this branch but in other branches. I'm curious at Point 2 is
20 kind of what we've been beating around all day, lookback at
21 the strategic changes in the program.

22 Q When you say "strategic" --

23 A Meaning when we talked about trying to make those
24 models as realistic as possible, I don't know.

25 Q Okay. So you think this --

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1 A I mean, it's -- I'm sorry.

2 Q So you think -- does this give you any idea that
3 maybe the process of doing that project took place in '05,
4 close to your leaving for Antigua?

5 A I'd like to think that. I will say certainly it's
6 a sales meeting. I'm sure the pretense is to sell MFP, again
7 to keep promoting it. But that's what number two is. If I
8 had to guess, that was probably on the heels of that analysis
9 project, whatever you want to call it.

10 Q And who would have run a meeting like that? Would
11 that be you or D'Amato or --

12 A I would have. I would have run, most likely. I
13 might have had -- he might have spoke took, but I would have
14 run it.

15 Q Was there anything significant about this State of
16 the Union address?

17 A Yeah. I'm surprised at really my vernacular, but
18 I'm sure it was just a sales meeting. You know, Jay
19 Comeaux's the branch of Houston.

20 He probably said get my -- because he wants to have
21 sales meetings with his team all the time. He's like -- you
22 know, do a sales meeting with my group, and that's
23 probably --

24 MR. KELTNER: Let's go ahead and go off the record.
25 (A brief recess was taken.)

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1 MR. KELTNER: We're going back on the record
2 briefly after a short break. During the break, we agreed to
3 adjourn to another date next week that we'll work out, that's
4 mutually agreeable. We'll go ahead and go off the record at
5 this point and we'll reconvene next week.

6 (Whereupon, at 3:37 p.m., the examination was
7 adjourned.)

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