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1 where you talked about, you know, these issues regarding
2 the mode performance, you know, and it's lack of
3 reliability?

4 A There -- There may have been one or two max.
5 It may have come up at a meeting that was the -- the
6 primary purpose of the meeting was for something else. I
7 can't say for sure.

8 Q Okay. I mean, sitting here today, can you say
9 that D'Amto knew about the results of your work?

10 A Absolutely.

11 Q Okay. And how do you know that?

12 A Well, you know, unless Ken Johnson didn't tell
13 his boss anything, because Ken and I were communicating
14 on a fairly regular basis until I got to the point of
15 frustration with Ken and started asking him for less and
16 less and trying to find out more and more on my own.
17 But, yeah, I mean, they knew I was working on this and
18 whenever it made sense to send an e-mail blast out to
19 anyone more than Mark, Jason and Ken were always on that
20 distribution list.

21 Q Jason D'Amto and Ken Johnson?

22 A Absolutely, yeah. So, like, to use my earlier
23 scenario from when compliance and market were waiting for
24 my '06 7 numbers when I finally got them done, you know,
25 Jason and Ken would have been cc'd on that distribution

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5 had at least one, if not two, meetings where I really
6 gave them an education as to what I was -- what I did and
7 what I was doing.

8 And so, you know, I say good meeting,
9 because I think that I was successful in educating them.
10 I think they got it. And I think that they were very
11 happy to have me on board.

12 Q Okay. When roughly did these meetings take
13 place?

14 A Probably right around this -- you know, this --
15 this April, you know, '07 area and then maybe later. So
16 I would say mid, you know, Q2, Q3 of '07.

17 Q Okay. Did you explain to them, kind of, what
18 you were seeing or what -- what results you had -- or
19 what conclusions you had come to?

20 A Absolutely. I mean, you know, again, I think
21 as a consultant and not wanting to ruffle feathers I
22 think that I tried to keep, you know, the focus on -- you
23 know, numbers previously were inaccurate for whatever
24 reason. Let's not dwell on it. It's the past. I'm
25 putting in a better, tighter, more reliable process to

1 make sure that these numbers are accurate and will be
2 accurate on a go forward, so that was pretty much the
3 message I was conveying. I think all the venting and
4 frustration and potential -- this smells like a rat type
5 of conversations were kept off the record between Mark
6 stys and myself.

7 Q Okay. And that was the function of your

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1 list for sure.

2 Q Okay. And then ultimately they would have
3 known if numbers were restated?

4 A Well, all they would have to do is look at
5 their numbers and mine and know which direction the
6 numbers went.

7 Q Okay. And you said that eventually you
8 think --

9 A I stopped comparing. Sorry to interrupt you.
10 At that point I had stopped comparing, because it was a
11 waste of my time.

12 Q Okay. But you said that eventually you became
13 aware that they wanted your 2006 numbers to use in
14 marketing materials?

15 A Correct.

16 Q Okay. Let's back to up to that for a minute.
17 You said you engaged with compliance. Who from
18 compliance?

19 A Specifically Shenna, Shenna George and -- and
20 Rhonda, then Lear, now Davis.

21 Q Do you know whether Rhonda is related to Jim
22 Davis?

23 A I don't think so. I think she just got
24 married. Well, she just got married, so she might be
25 now. Who knows. I don't know the Davis that she

1 married.

2 Q Okay. And so what was your interaction with
3 Shenna and Rhonda?

4 A Well, we had some good meetings. You know, we
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8 concerns about client relations?

9 A Absolutely. Yeah. I mean, you know, people
10 aren't going to renew your account if they don't like
11 you.

12 Q But you think it was made clear to the
13 compliance team that the previously numbers were
14 inaccurate?

15 A Well, again, you know, previous numbers, to be
16 clear, at this point in time I had only looked at '06 and
17 the fourth quarter of '05?

18 Q Right.

19 A So from the fourth quarter of '05 through '06,
20 yeah, it was made clearly that previous numbers were not
21 good.

22 Q Okay.

23 A It was made clear to compliance that those
24 numbers were not -- that the '06 numbers -- which again,
25 I think is why they were waiting for me to -- everyone

1 was hot for these '06 numbers, for whatever reason.

2 Because I think marketing wanted to run
3 with them, because everyone wants recent track record,
4 you know, from marketing. And compliance was shutting
5 down marketing at that point saying, no, wait until Steve
6 is done. Wait until I see them in and bless them and
7 then you can, you know, do what you want with them,
8 because everybody feels good about it.

9 That was my -- I mean, I'm speculating,
10 but based upon the calls and e-mails I was getting from
11 the marketing guy and from the compliance folks, is they

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12 wanted these '06 numbers yesterday, and they wanted my
 13 numbers as opposed to whatever else they may have had.
 14 Q Okay. I think I've seen some e-mail traffic on
 15 some of these. Issues. Explain what you mean by
 16 compliance was shutting down marking.
 17 A Well, I think, you know -- I think there is --
 18 that compliance had a sense that anything marketing had
 19 received prior may not be accurate based upon meetings
 20 with me, and so compliance didn't feel comfortable and
 21 marketing using anything other than my numbers.
 22 Q Okay. So did you get the sense that compliance
 23 wanted on a go-forward basis to use your numbers?
 24 A Yes.
 25 Q Okay. Was there discussion with compliance

1 about, you know, whether they could use pre-2006 numbers?
 2 A We didn't talk about it.
 3 Q Okay. But you told them that the model numbers
 4 that you had gotten from IAG were inaccurate?
 5 A Yes.
 6 Q Okay. And were there discussions about wanting
 7 to wait to get your numbers before compliance would sign
 8 off on 2006 performance data being released?
 9 A I'm sorry. I didn't quite understand that
 10 question.
 11 Q Okay. Was the gist of your conversation with
 12 compliance that they did not want to let -- was -- was
 13 your understanding that compliance was of the opinion
 14 that 2006 performance should not be released until your
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19 quarter behind at that point, and that was a concern of
 20 mine at the time, because I was behind and I knew that I
 21 had to get caught up to Q1 of '07 ASAP, but that's when
 22 everyone started talking about this notion of audited
 23 numbers. And that's when I started including everybody
 24 each quarter end as the -- the books were closed on
 25 previous quarter, I would blast an e-mail out to Mark

1 Stys, Zack Parrish, Shenna George, Rhonda Davis, Jason
 2 D'Amto each quarter end from that point forward and say,
 3 okay, these numbers are blessed by me.
 4 Q Okay. Anybody else from compliance that was in
 5 the loop?
 6 A No. Not to my recollection. I think my -- if
 7 you checked my e-mails, my distribution list would be
 8 Shenna and Rhonda.
 9 Q Okay. Did you ever have any conversations or
 10 do you have any reason to think more senior people in
 11 compliance were aware of these issues?
 12 A It didn't make it into my world.
 13 Q Okay. No conversation was Jane Bates?
 14 A Oh, well. Jane -- Jane was Rhonda's
 15 predecessor.
 16 Q Okay.
 17 A And she was out of the picture before we got to
 18 a much better place, I guess for lack of a better word,
 19 as far as performance. So when Jane and I were talking I
 20 was still figuring things out.
 21 Q Okay.

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15 work was done?
 16 A Correct.
 17 Q Okay. And again, you base that on discussions
 18 with whom?
 19 A Discussions with compliance.
 20 Q Okay.
 21 A I mean, I think I got them on board, you know,
 22 through an educational meeting or two as to the accuracy
 23 of my numbers versus the numbers that they had seen
 24 previously. So I think I had probably, at least, given
 25 them preliminary numbers that, you know, probably varied

1 from what they had seen coming out of IAG to at least
 2 make them say, you know, stop the presses.
 3 Q Okay. And then on the go-forward basis, what
 4 is your interaction with compliance?
 5 A Well, I started to include them every time I
 6 put out, you know, quote, unquote, audited numbers.
 7 Q Right.
 8 A So I think that the jargon around the firm, you
 9 know, with my guys that I had placed in performance, the
 10 compliance folks, Mark Stys, Zack Parrish, Jason D'Amto,
 11 we started out speaking of this sort of concept and
 12 notion now of the audited number. And audited meant that
 13 I blessed it. You know, third-party, independent
 14 objective person with expertise came in and blessed the
 15 number. That was our audited number.
 16 So from -- from pretty much that -- that
 17 April, '07 date which -- which was, you know, had data up
 18 through December of '06. Right. So we were about a
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22 A I didn't have any -- I didn't have -- I don't
 23 think I had come to any firm conclusions while Jane was
 24 still resident.
 25 Q Did Jane express any concerns to you?

1 A Yeah. Absolutely. I mean, I think Jane's
 2 biggest concern was that Jose didn't know what he was
 3 doing. That may have been a quote.
 4 Q So fair to say that Jane had concerns about the
 5 accuracy of Jose's work product?
 6 A Well, I think, you know, my honest opinion is
 7 that I think when I arrived and Jane and I had -- had
 8 just a short window of overlap, I think people were
 9 confused. People that, you know, didn't -- didn't
 10 have -- it was confusing to me, and I had 12 years of
 11 performance under my belt.
 12 So if you have a rudiment -- you know,
 13 rudimentary knowledge of performance, you would be
 14 genuinely confused. And I think Jane was confused,
 15 because she's seen a number from Ken, she's seen one or
 16 more numbers from Jose. And at the end of the day all
 17 those numbers should be relatively, and they weren't.
 18 And so -- yeah, I mean, I can't tell you
 19 how many times in the early days that people like Jane
 20 said, thank you, God, you're here.
 21 Q Okay. I think one story you mentioned to us in
 22 Boston was something about Jane Bates blocking the
 23 distribution of account statements for some period.
 24 A Yeah. I don't know if she -- if blocking it is
 25 the right word. I know there was concern about
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1 fulfilling the obligation in the client agreement to
 2 report at least quarterly performance. And I know that
 3 Jose was backlogged with, literally if you walked into
 4 his office, boxes of statements that he was holding back.
 5 So I don't know really who had the final authority as to
 6 whether the client received a performance report or not.
 7 Q Were they being held -- were the statements
 8 being held back over concerns about whether or not they
 9 were accurate?
 10 A Yes.
 11 Q Okay. And how do you know that?
 12 A That's exactly what, you know, Mark Stys and
 13 Jose Flores and Jane Bates all, you know, verbally
 14 communicated to me.
 15 Q Okay. And was the source of concern the fact
 16 that there were essentially three different sets of
 17 numbers?
 18 A Three or four, depending upon who you asked.
 19 Q Okay. And that they didn't match?
 20 A Correct.
 21 Q We talked a minute ago about compliance
 22 shutting down marketing or limiting the distribution of
 23 marketing materials.
 24 A Uh-huh.
 25 Q And you said you had that specific conversation

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5 another body to help them get to where they wanted to be.
 6 So I recognized immediately that we needed
 7 resources to fix the problem, so that's when Rob Baker
 8 was brought in.
 9 Q Okay. Was one of your concerns also that the
 10 investments advisory group was calculating their own
 11 performance?
 12 A Well, I think that was Mark's concern and
 13 probably one of the driving forces towards bringing a guy
 14 like me in or -- or his initial urge to hire a senior
 15 manager in performance, and he ended up with me. But,
 16 yeah, I think that was a concern of Mark's.
 17 Q Okay. And is -- is part of that concern so
 18 what we talked about earlier today about grading your own
 19 cooking to a degree?
 20 A Absolutely.
 21 Q And again, I don't want to belabor the obvious,
 22 but why -- why is that concern as -- from a reporting
 23 expert's perspective?
 24 A Well, you know, you want that independent
 25 objectivity. That's one of the selling points of my

1 firm. You know, I've -- I've got hedge funds calling me
 2 know, the ones that are still standing that want their
 3 track record recalculated by an independent objective
 4 firm.
 5 And so even within a firm I think, you
 6 know, it makes sense, and in my experience, the -- the
 7 performance function is always separate from the

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1 with compliance, correct?
 2 A Uh-huh.
 3 Q Is that a yes?
 4 A Sorry. Yes.
 5 Q Okay. What about from the FAs or from the
 6 investment advisory group, were you getting pressure to
 7 get your numbers done so that they could use them?
 8 A Probably indirectly through Mark Stys. I
 9 think, you know, the FAs would communicate with -- with
 10 Mark Stys and Mark would -- would come to me and say when
 11 can we get, you know, good latest numbers.
 12 Q Okay. And did you take from your conversations
 13 with Stys that -- did you reach the same conclusion based
 14 on your conversations with Mr. Stys that they were
 15 holding out marketing materials waiting for you?
 16 A I think we were all of that general
 17 understanding, yes.
 18 Q Okay. Just to tie a few issues up before we go
 19 to lunch.
 20 Aside from recordkeeping issues and some
 21 of the, you know, rebalancing issues that we talked about
 22 before, what -- what was your general assessment of the
 23 performance reporting function when you got to the
 24 company?
 25 A That -- That they were understaffed and didn't

1 have the appropriate experience and skill set to -- to
 2 run a performance reporting operation of the size and
 3 scope of a Stanford. I think I was on the ground for two
 4 weeks maybe when I made a case to Mark that I needed
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8 investment management function. I think a very diligent
 9 firm will calculate their own performance just to keep
 10 the performance group honest. So you have a check and --
 11 a really diligent firm will have a check and balance
 12 where you have a performance group calculating and
 13 independently, and that's what is the book of record or
 14 that's what's, you know, going to end up in marketing
 15 and -- and what's going to end up reported to clients.
 16 And then you have the -- I'm sorry -- the
 17 investment management group calculating it for internal
 18 purposes only I think I advised Mark on that when I first
 19 arrived on the scene, is that anything calculated in that
 20 group should be for internal purposes only, because if
 21 do it that way and you have a calculated performance
 22 group, then you have a natural check and balance and the
 23 investment manager can challenge the performance group
 24 and say, hey, you're number is wrong, and the performance
 25 group can challenge the investment manager and say, hey,

1 no, your number is wrong, and then get to the right
 2 number. That's what a diligent office would do.
 3 Q Okay. Just to close few more issues out before
 4 we take a break so we'll have clean starting point after
 5 lunch.

6 we talked about you completing your 2006
 7 analysis in roughly mid 2007?
 8 A It depends upon what part of the analysis, you
 9 know, you're speaking of. I completed model returns for
 10 '06 in April of '07.

11 Q Okay.
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12 A I didn't complete composite returns probably
 13 until very late '07, maybe even '08, because we had to
 14 build a tool to do it and that took probably three or
 15 four months.
 16 Q Okay. And -- And then when did you complete
 17 2005 in terms of the composite returns?
 18 A I believe I did that in March of '08.
 19 Q Okay. And is that when you sent out the
 20 three-year composite returns?
 21 A Exactly.
 22 Q Okay. When did the discussions about getting a
 23 three-year composite begin?
 24 A Probably from, you; know, mid 2007 -- yeah,
 25 probably right around second or third quarter of '07.

1 Because I remember Mark telling me he wanted it ASAP, and
 2 I told him that it was a lot of work, which is why he
 3 ended up not getting it until March of '08, because I
 4 was -- I said I only know one way to do it and that's the
 5 right way, and that's how long it's going to take me.
 6 Well, I said I would probably try to get it a little
 7 sooner than -- I think I delivered later than I said I
 8 could, so I under-delivered a little bit.
 9 Q Okay. And did he convey to you why he wanted
 10 the three-year track record?
 11 A Yeah. I believe that, you know, they wanted to
 12 get this SAS program, you know, on more people's radars
 13 and, you know, people aren't going to talk to you
 14 without, you know, a three-year track record. I think
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19 Q Okay.
 20 A No. But I would think they would if it was
 21 good.
 22 Q In order to recruit other financial advisers?
 23 A Yeah, yeah. I could see that being a
 24 recruiting tool, I guess, sure.
 25 Q In other words, come here, we've got good

1 products for you to sell?
 2 A Exactly.
 3 Q We've got a great track record?
 4 A We've got the bank's CD.
 5 Q Right.
 6 A Yeah. I mean, if your financial advisers don't
 7 want easy products to sell.
 8 Q Right. So, I mean, essentially in marketing
 9 these things, these types of programs, these types of
 10 strategies, I mean, is it generally all about the track
 11 record? Is that what clients are drawn to?
 12 A Yeah. I would -- I would think so.
 13 Q Okay. At the end of the day, that's what the
 14 clients want to see, right, is the track record?
 15 A Yes.
 16 Q Okay. Okay. I think when we come back after
 17 lunch we'll pick up with some issues related to the FA
 18 complaint.
 19 A Okay.
 20 Q And then walk through some of your composite
 21 procedures and your conclusions, and then hopefully we

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15 that was the gist of his rational.
 16 Q When you say people aren't going to talk to
 17 you, are you talking about --
 18 A Potential investors. So if, you know, you want
 19 to get into a manager search universe of one of the
 20 larger firms like a UBS or Merrill or something like
 21 that, then -- then you need a three-year track record.
 22 And I think the fact that, you know, Mark
 23 was adamant about composite returns to -- to give as a
 24 three-year track record, when he had a three-year track
 25 record of a hodge-podge of model returns, he could have
 1 rolled with that. And I think, you know, testament to
 2 him, he didn't want to. He wanted a three-year composite
 3 track record.
 4 Q Okay. And you took it from your conversations
 5 with Mr. Stys that he didn't want to use the track record
 6 that he had gotten from friend IAG?
 7 A Correct.
 8 Q And he wanted a more reliable product like
 9 yours?
 10 A That and just the fact that people are going to
 11 ask him, hey, is this model a return or a composite
 12 return and, you know, composite return carries a lot more
 13 weight.
 14 Q Okay.
 15 A Or confidence, I should say.
 16 Q Right. Was there every any discussion of the
 17 use of the track record as a recruiting tool?
 18 A Not from me.
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22 won't -- we won't have too much more to do after that.
 23 A Okay.
 24 MR. KELTNER: So let's go ahead and go off
 25 the record at 12:32.
 1 (Whereupon, at 12:32 p.m., a luncheon recess was
 2 taken.)
 3 A F T E R N O O N S E S S I O N
 4 MR. KELTNER: Let go back on the record at
 5 1:08. Okay.
 6 BY MR. KELTNER:
 7 Q During the break, it came to my attention that
 8 we may have inadvertently failed to swear you in as we
 9 were going through the outline, so let's go ahead and do
 10 that for the remainder of the day.
 11 Mr. Riordan, could you state and spell
 12 your full legal name for the record.
 13 THE WITNESS: Sure. Stephen Riordan,
 14 s-t-e-v-e-n, R-i-o-r-d-a-n.
 15 MR. KELTNER: Okay. Could you please
 16 raise your right hand?
 17 (Witness sworn.)
 18 MR. KELTNER: Thank you. The testimony
 19 that you offered this morning prior to our break, was
 20 there anything to your knowledge inaccurate about that
 21 statement -- that testimony?
 22 THE WITNESS: No.
 23 MR. KELTNER: Okay. Okay. And was it
 24 truthful?
 25 THE WITNESS: Yes.
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1 BY MR. KELTNER:

2 Q Thank you. Okay. Let's pick up with a few
3 documents, and then talk about the -- in a little more
4 detail about the issue relating to complaints from the
5 FAs about performance issues.

6 I understand there was a meeting in
7 March of 2007 at which you may have presented some
8 findings; is that correct?

9 A Correct.

10 Q Okay. So I just wanted to go ahead and mark a
11 few things as exhibits that kind of tie those issues down
12 with respect to date.

(SEC Exhibit No. 31 was marked for
identification.)

15 BY MR. KELTNER:

16 Q I'm marking as Exhibit 31 an e-mail from Steve
17 Riordan dated Tuesday, March 20, 2007, to Zack Parrish
18 copying Mark Stys, and the subject is FW presentation for
19 FAs. And it appears to have attachment entitled
20 performanceassessment.zip and one entitled
21 presentationsupplement.zip.

(SEC Exhibit No. 32 was marked for
identification.)

24 BY MR. KELTNER:

25 Q I'm going to mark a separate document as

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5 Q Okay. Did you get two copies?

6 A Yeah. And just to clarify, this was not nearly
7 entirely my work. This was a collaboration between
8 myself and Mark Stys.

9 Q Okay. One question I had was Exhibit 32
10 appears to be the -- the document that you e-mailed to
11 Mr. Stys, who did the initial draft of Exhibit 32?

12 A Mark did.

13 Q Okay. And then he sent it to you for your
14 input?

15 A Exactly. Yeah. I filled in some of the
16 numbers, you know, slides that have numbers on them.
17 Most of that text, if not all, was written by Mark at
18 least originally. I may have edited some of the
19 language. My most significant contribution would be the
20 slides that have numbers in them.

(SEC Exhibit No. 33 was marked for
identification.)

23 BY MR. KELTNER:

24 Q Okay. I'm going to go ahead and hand you a
25 document that I'm marking as exhibit 33, it's another

1 version of Exhibit 32. We believe this is the final
2 version, because we got it from an attendee at the
3 meeting that took place on March 28th, 2007. So just
4 generally, have you seen Exhibit 33 before?

5 A Let's see. I would say, yes, because I was at
6 that meeting.

7 Q Okay. And just for the record, can you

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1 Exhibit 32, which appears to be a copy of the performance
2 measurements spreadsheet that was attached to Exhibit 32.
3 I'm going to ask you to confirm that. And I will just
4 represent to you that Exhibit 31 -- Exhibits 31 and 32 --
5 well, Exhibit 32 came from your production. Exhibit 31
6 came from another set of e-mail that we had.

7 On Exhibit 31, let's go ahead and remove
8 the second page, I think it was inadvertently copied
9 with -- the second page was inadvertently copied with
10 Exhibit 31. So you can go ahead and remove the second
11 page?

12 A Okay.

13 Q So Exhibit 31 is now just a one-page document.
14 What is Exhibit 31?

15 A Exhibit 31 looks like an e-mail from me to Zack
16 Parrish and Mike Stys on March the 20th, 2007, with two
17 attachments, performanceassessment.zip and
18 presentationsupplement.zip.

19 Q Okay. I will represent to you that Exhibit 32
20 is found in the electronic materials that you produced to
21 us entitled -- and it had the name performance assessment
22 attached to it. Looking at that, does that Exhibit 32
23 appear to be the presentation materials that you
24 prepared?

25 A Yes.

1 Q Okay. And just for the record, what are you
2 looking at next to Exhibit 32? Is that just another
3 copy?

4 A Looks like the same thing.
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8 describe for me what Exhibit 33 is.

9 A Sure. It is the presentation from the meeting
10 with the FAs to go over, you know, differences between
11 accounts, models, and composites, and also I think the
12 other intent of the meeting and the other slides within
13 Exhibit 33 and 32 is to, you know, communicate a message
14 to the FAs that, you know, we're on a new and improved
15 track for, you know, accurately reporting on a go
16 forward.

17 Q Okay. So an attempt to allay the concerns of
18 the financial advisors?

19 A Exactly.

20 Q Okay. And I think we talked about this morning
21 quite a bit, the FAs were not the happy about customer
22 accounts not meeting the model performance.

23 A Correct.

24 Q So let's talk in generalities first. Who led
25 had March 28th, 2007 meeting?

1 A For the best of my recollection, I think it was
2 probably led primarily by Zack Parrish, or at least
3 kicked off by Zack with, you know, Mark Stys being --
4 being also a leader of the meeting.

5 Q Okay. And Mr. Parrish was he the head of
6 Stanford Capital Management?

7 A That's my understanding.

8 Q Okay. The next person down the chain from him
9 was that Mr. Stys?

10 A At least one of Zack's direct reports was Mark.

11 Q Okay. And where does D'Amto fit into the
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12 picture when you're doing your or work?
 13 A At this point in time Jason reported -- Jason
 14 D'Amto reported to Mark Stys.
 15 Q Okay. So the chain goes D'Amto to Stys to
 16 Parrish --
 17 A Correct.
 18 Q -- in March of 2007?
 19 A That's correct.
 20 Q Okay. Did you have discussions with
 21 Mr. Parrish leading up to this March 28th, 2007 meeting?
 22 A I believe so. I can't remember exactly, but I
 23 would imagine that Mark and Zack and I probably at least
 24 talked this through prior to the meeting.
 25 Q Okay. Did Mark seem -- sorry. Did Zack

1 Parrish have an understanding of the performance
 2 reporting issues prior to this March 28, meeting?
 3 A You know, I didn't have a lot of direct contact
 4 with -- with Zack. Mark would be -- better be able to
 5 answer that question as to what he -- he knew or didn't
 6 know, because most of my communication was directly with
 7 Mark.
 8 Q Okay. But you think you had some kinds of --
 9 some kind of pre-meeting with Parrish and Stys before the
 10 March 28 meeting?
 11 A I think we may have.
 12 Q Okay. So tell me what you can remember about
 13 this meeting. How did it open up? What happened?
 14 A Well, you know, it's a little fuzzy on the
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19 spend a lot of money and I'm going to spend a lot of
 20 hours if you want me to prove out every single account
 21 for a year. That's a lot of work.
 22 So I personally selected accounts that I
 23 thought were the most egregiously off and chose specific
 24 months within those accounts that were egregiously off
 25 where I could prove to the FA that the account level of
 1 performance was, in fact, correct and that the tracking
 2 error was a result of two things. One, was model
 3 calculation error, and, two, was that the account didn't
 4 exactly hold the model.
 5 Q Okay.
 6 A So that spreadsheet was key to my piece in the
 7 presentation.
 8 Q Okay. Before we get into the details. Who
 9 else was at the meeting?
 10 A From my recollection, I know it was Charlie
 11 Rawls for sure, I think Mark Grossbeck was there, and
 12 there may have been -- I think Jay Comeaux was there and
 13 maybe one or two other people that I couldn't name.
 14 Q Okay. Did you mention Mark Tidwell?
 15 A I'm not sure if he was there or not.
 16 Q Okay. What about Doug Shaw?
 17 A He was there.
 18 Q Okay. How about Nancy Bramley?
 19 A I don't recall any women in the room.
 20 Q Okay. What about Don Miller?
 21 A Never heard of him.
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15 details, but I recall Zack sorts of kicking it off. You
 16 know, I remember, you know, probably most vividly what
 17 related directly to me about the meeting, and so I
 18 remember Zack introducing me. Because I hadn't met most
 19 or, if any, of those folks, maybe had met one of them.
 20 So he introduced me, talked about my background as a
 21 performance person and, you know, why they had brought me
 22 in and sort of letting them know that -- that Stanford
 23 and Zack and Mark specifically were taking the
 24 appropriate steps to get performance and reporting, you
 25 know, on a -- on a better track.

1 And then, you know, I would -- I would
 2 imagine Mark started to walk through the slides until it
 3 got to my piece, and then I presented my piece as sort of
 4 an educational type of track or tact, I should say. And
 5 that's essentially what I tried to do is I -- the
 6 supplement to this, we -- we haven't broken out yet,
 7 there's an Excel spreadsheet supplement -- it was called
 8 presentationsupplement.zip.
 9 Q Yeah. I don't think I've got it here, but I've
 10 seen it. It appears to be a breakout of certain accounts
 11 that were identified by the FAS; is that correct?
 12 A Exactly. Yeah. And that was a key piece, you
 13 know, that formed the entire basis really of my part in
 14 the presentation was to walk the FAS through that
 15 spreadsheet as part of the their education where I proved
 16 to them selecting example accounts from the universe that
 17 they provided that they felt were issues. I had
 18 explained to Mark Stys previously that you're going to
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22 Q Okay.
 23 A Dawn as a woman or Don as a man?
 24 Q D-o-n, Don as a man.
 25 A No, but I think he is the big guy down in
 1 Memphis, the fixed income guy. He wasn't there. If
 2 that's -- if that's who --
 3 Q Okay. Roughly how many people were at the
 4 meeting?
 5 A Seven.
 6 Q Okay. Is the room relatively about this size,
 7 a bigger room?
 8 A Yeah. Standard conference room.
 9 Q Okay. Was there anybody from compliance
 10 present?
 11 A I don't believe so.
 12 Q What was the reaction from the FAS to the
 13 meeting?
 14 A I thought it was very positive. I -- you know,
 15 from my perspective, I thought I saw lightbulbs go on
 16 around the room as I walked them through the numbers, and
 17 it appeared to me that they were getting it and that they
 18 were understanding. And that I felt confident that they
 19 were feeling confident that we were addressing the issues
 20 and that we had a good plan for our go forward.
 21 Q Okay. Was the concern approached from the
 22 question of whether the model was overstated or was
 23 the -- was the question whether the client performance
 24 was accurate? What was the focus?
 25 A That's a good question. I mean, I think --
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1 well, from my perspective, I think that -- that the FAs
2 were concerned that their clients were receiving
3 inaccurate performance, and I think we allayed that fear.
4 You know, and that was one of the main points I wanted to
5 make, you know, because if you recall, we're in a period
6 now where -- were client reports are being suppressed or
7 not sent out, there is a lack of confidence among, you
8 know, operations and compliance about the accuracy of --
9 of client reporting, yet at the same time they're
10 concerned about fulfilling their contractual obligation
11 to report.

12 And so one of the points I wanted to make
13 at this meeting, and -- and not to neglect mention that I
14 think FAs also have a say in whether the client gets the
15 report or they're -- they're able to -- they were a
16 component of the review process where client reports
17 would be sent to FAs, and if the FAs didn't think the
18 report was accurate they could suppress it or -- or stop
19 it from going out.

20 So what I was trying to get was a place
21 where people felt good about the client numbers, so the
22 examples I used that day proved out client returns to be
23 accurate.

24 And again, the tracking error was related
25 to model calculation error, and they selected accounts,

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5 meeting to allay the concerns of the FAs?

6 A Yes.

7 Q Okay. We talked about in this in Boston a
8 little bit, is it fair to say that the emphasis on the
9 meeting was on the accounts failing to track the model as
10 opposed to the bad math or the math error?

11 A I believe so, yeah.

12 Q Okay. And why was that?

13 A Because from my perspective I don't think
14 anyone was trying to call investment management out for
15 overstating, at least not to my knowledge. I think, you
16 know, from -- again just from my perspective, I think
17 that we had performance resources on board on -- on at
18 Stanford that were -- were not able to get any confidence
19 from the FAs, so they were talking to people that weren't
20 experienced with performance and couldn't explain why
21 things were as they were.

22 So I guess to make a long story short, I
23 was the first person that was able to come in and be able
24 to articulate and prove the numbers out and, you know,
25 show evidence, which I think raised everyone's confidence

1 level. So to make my point is I don't think that the
2 gist of the meeting was to call investment management out
3 on over -- intentionally overstating.

4 I think the purpose of the meeting was,
5 you know, do we have our arms around this whole, you
6 know, process of performance reporting? Can we -- Can we
7 do it right? Have we been doing it right? And, you

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1 the FAs that gave me the universal accounts to look at,
2 they gave me accounts that didn't exactly hold the model,
3 which was the other source of tracking error. So when we
4 found accounts that truly held the model and we had an
5 accurate model calculation the numbers were in line.

6 So I think from the FA's perspective they
7 wanted to get that confidence that the reports that their
8 clients were getting were accurate.

9 Q Okay. So when say the -- when you say found
10 accounts that were in line with the model, the numbers
11 matched is that including or excluding the bad math error
12 or the inaccuracy in the model?

13 A Well, you had to take the bad math out to get a
14 match, because what I'm saying is and findings were, and
15 they're still consistent to this day, is that Advent and
16 AXYS were doing their job, account level returns were
17 correct and any -- any results that anyone had -- had
18 seen that didn't match account level returns were for the
19 two reasons of tracking error that I mentioned.

20 Q Okay. So when you're comparing and when you're
21 explaining to the FAs that, in fact, account level data
22 did hold the model, you were referring to the corrected
23 model?

24 A Correct.

25 Q Okay.

1 A I had to remove the model error in order to tie
2 numbers.

3 Q Okay. And we talked about from your
4 management's perspective was the primary goal of the
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8 know, can I be confident that my clients are getting a
9 good number?

10 Q Okay. But was it also made clear at the
11 meeting that at least some component the difference was
12 comprised of math error or, you know, inflammation of the
13 model?

14 A I had to have touched upon that. I can't say
15 with a hundred percent certainty, but I can't imagine
16 that we would have neglected to convey that.

17 Q Okay. Were there any FAs that didn't seem to
18 be accepting the explanation?

19 A I didn't see any, no. I mean, I didn't get a
20 lot of questions.

21 Q Okay. Were there any questions about, you
22 know, just of kind of whether joking or serious about,
23 well, why is it that, you know, the model is always on
24 the high side? Anything like that?

25 A I can't say for sure.

1 Q Okay. But it may have happened?

2 A It may have.

3 Q Let's go ahead and walk through Exhibit 33
4 quickly again. And again, we think Exhibit 33 is the
5 version of the performance measure -- measurement and
6 reporting presentation that was used on March 28th of
7 2007. Okay?

8 So we'll just go through it in order, for
9 lack of a better term.

10 A Okay.

11 Q So the strategic plan slide, is this something
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12 you put together with Mr. Stys?
 13 A Yeah. And -- And again, I would probably that
 14 he -- he wrote it and then I edited it.
 15 Q Okay. So the first bullet point says,
 16 establish an independent performance measurement group.
 17 I guess that was going to be your role?
 18 A Well, it ended up being my role. I mean, I
 19 recruited the team.
 20 Q Okay. So are these improvements that -- that
 21 you -- these on page two of Exhibit 33, are these
 22 improvements that you recommended?
 23 A Absolutely.
 24 Q Okay. So to summarize a lot of this, it seems
 25 to be suggesting improved controls, improved accuracy

1 around the reporting process?

2 A Exactly.
 3 Q Okay. Like, for example, it say implement
 4 proactive controls and audit review and approval process.
 5 You know, kind of impractical steps. What does that
 6 mean?
 7 A Well, basically it's to, you know, catch
 8 mistakes earlier in the process, you know, if -- if there
 9 are accounting level mistakes at the account level, you
 10 know, put -- put a process in place where, you know,
 11 you're -- you're catching mistakes as they occur at the
 12 accounting level, the performance group is then -- has a
 13 process for reviewing returns and then further an
 14 approval process where, you know, essentially the FA is
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19 performance.
 20 Q Okay. So obviously that was one of your
 21 preliminary findings after, you know, you had done the
 22 work reflected in Exhibit 30? This is Exhibit 30 from
 23 earlier.
 24 A This is probably pertaining to a subsequent
 25 analysis that I performed. This is probably speaking

1 more to the analysis that I did specifically for this
2 meeting and was in that supplement presentation
3 supplement.

4 Q Okay. So the specific 30 some-odd accounts
5 that had been identified --

6 A Exactly.
 7 Q Okay. And then, again, I think we have talked
 8 about this before, you highlighted two possible -- well,
 9 I guess, you have got a couple of reasons here variance
 10 in holdings and timing of addition or subtraction of cash
 11 into the account, so those two issues are, one, it
 12 doesn't hold the model in terms of holdings, correct, in
 13 an account?

14 A Right.
 15 Q And the second would be this timing issue with
 16 respect to, you know, when money comes in and out of the
 17 account?
 18 A Right.
 19 Q Okay. So what would an example of that be?
 20 A Well, you know, if you have significant flows
 21 coming into or out of the account level, it is going to

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15 signing off and saying, you know, send -- send the client
 16 statements out. Let them rip.
 17 Q Okay. The statement about improving timeliness
 18 and accuracy in performance reports, was that, I guess,
 19 the ultimate goal?
 20 A Absolutely. Yeah. That's -- That's the goal
 21 of any performance group.
 22 Q Okay. And the standardized auditable process,
 23 you're talking about something that's transparent and can
 24 be tested?
 25 A Yeah. I'm not exactly sure what our meaning

1 was here on this particular bullet. You know, I think --
2 you know, some of these assets -- you know, this -- this
3 might be speaking to the -- like, the -- the coins and
4 bullion, but I'm not -- I'm not entire sure what we're
5 getting at with that bullet, to be honest.

6 Q Okay.
 7 A But you do want a standard source, a
 8 standardized source of data such as pricing, you know,
 9 and I think -- I think we're getting at -- you know, are
 10 we got good valuations on our statements.

11 Q Let's go ahead and skip to the slides on your
12 findings that were presented to the staff, at least at
13 the high level.

14 A Okay.
 15 Q So we're on a page entitled findings fees model
 16 versus composites. So the first bullet, what does that
 17 say?

18 A Model performance varies from account
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22 skew your numbers a little bit because a model never has
 23 any cash flow, so the model is pure. You can get a pure,
 24 you know, return, whereas, when you have cash moving in
 25 and out of the account and when it actually gets invested

1 in the model is going to concrete some noise in your
2 numbers.

3 Relatively small unless, you know, the
4 cash contribution or withdrawal is -- is very
5 significance relative to the size of the account.

6 Q Okay. And again, you know, obviously what
 7 seems to be left out of here is the math error or the
 8 inflation in the model. Is that because your analysis
 9 here was done with a corrected model?

10 A I think that was sort of the intent was to --
 11 you know, we didn't want to belabor the point that that
 12 model math was wrong, because you can't really even start
 13 to perform an analysis of account versus model and which
 14 is correct until you have, you know, a right model -- or
 15 how far apart they are until you have a right model.

16 So if -- if I had included that, it would
17 have just, I think, done more to confuse than to educate,
18 which was my goal.

19 Q Okay. And we think the math error may have
 20 been discussed, and it may be highlighted by some notes
 21 on the following page. Do you see the next page,
 22 Findings. How are we doing? Let's start -- Can you
 23 explain to me what this page is intended to portray?

24 A Well, I think, you know, the question here
25 is -- and I don't remember, it may be on the next page.
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1 But did we use, you know, my calculated model or the
2 previously calculated model by IAG to get these numbers.
3 So was the account level tracking error versus the
4 restated model or the original model. I'm guessing that
5 it was probably against the restated.
6 Q Okay.
7 A Because, again, that was the point I was trying
8 to make is -- is first of all, let's compare these
9 accounts to the actual model rather than an errored
10 model.
11 Q So just stepping back for a second. Generally,
12 this page entitled, Findings. How are we doing? It's
13 intended to portray, I guess, the extent of the error
14 in -- in the accounts that you analyzed versus the
15 corrected model?
16 A Exactly.
17 Q Okay. And these notes at the bottom, which I
18 will represent to you were taken by an FA at the meeting,
19 it says theoretical one does not include the 90 basis
20 points of bad math. Is -- And then -- so, I mean, given
21 that note, do you think you probably had some discussions
22 at the meeting saying this isn't the whole picture?
23 A Yeah, absolutely. Someone probably chipped in
24 and said, well, you know, there is -- we're seeing a lot
25 more than what these numbers represented, you know. And

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5 12 month average of 14.54, and then a model return of
6 15.55 in the middle of the page.
7 A Yep.
8 Q And then a restated of 14.65.
9 A Right.
10 Q Okay. I will tell you I think the 15.55 is the
11 number, the model number, that they were using in
12 advertising.
13 A Okay.
14 Q It looks like the 14.54 that would be a
15 composite that you calculated for 2006?
16 A Right.
17 Q And so the restated number would that appear to
18 you to be the corrected model number?
19 A The 14.65.
20 Q Yeah.
21 A Yes.
22 Q Okay. And so the difference between 14.65 and
23 15.55 appears to be 90 basis points?
24 A Correct.
25 Q Okay. If you flip to the prior page, Findings.

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1 How are we doing? This is theoretical and does not
2 include the 90 basis of bad math.
3 A Right.
4 Q Okay. So do you think the -- the difference
5 between the numbers on the following page, the 14.65 and
6 15.55 is that same 90 basis points of bad math?
7 A Absolutely.

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1 they're -- they're -- they're looking at the old model,
2 the -- the errored model.
3 Q Okay. And so you see on the line that says
4 greater than 100 basis points?
5 A Yes.
6 Q Okay. So number out at the far right-hand side
7 of the page the 10 percent, is that reflecting that only
8 10 percent of the accounts you analyzed had one than a
9 100 basis points of difference from the model?
10 A With the restated model, yeah.
11 Q Okay. And then there is a note here, if bad
12 math included 25 to 30 percent per Riordan, misspelled
13 your name, but per Riordan.
14 A Yeah, I will forgive them for that. Then that
15 is right. So that makes sense to me that, you know --
16 and I would have to, you know, see if I -- if I had
17 spreadsheets where I -- where I ran these numbers against
18 the old models and if I'm -- if I'm making a quote like,
19 then I probably did. And, you know, if -- if we're
20 looking at the SAS growth model, you know, I would want
21 to go back to Exhibit 30 and see if I could get an
22 understanding of -- of about how much, you know, we would
23 revise the model and --
24 Q Well, I think you could -- you might be able to
25 flip to the following page and we may be able to see

1 that. It's a page entitled Performance Composite Versus
2 Model.
3 A Okay.
4 Q And there is a composite return column with a
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8 Q Okay. So after you make your presentation and,
9 you know, have obviously talked about the -- the
10 different factors that may be driving differences between
11 the model and the actual account performance, what
12 discussions were there about, you know, what happens
13 going forward?
14 A Actually, can I just point out one thing --
15 Q Sure.
16 A -- before I answer that question? Is looking
17 at the page that's Performance Composite Versus Model.
18 Q Uh-huh.
19 A There are a few months where the restated model
20 did go up.
21 Q How many?
22 A June of '06, it went up two basis points.
23 August of '06, it went up two basis points. October of
24 '06, it went two basis points. November of '06, it went
25 up 14 basis points. So for this particular model for

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1 this particular time period it wasn't a hundred percent
2 swing the overstated way.
3 Q So there were a few months where it went up by
4 less than 14 basis points?
5 A Yeah. There was just a few months where I
6 restated it did go up.
7 Q Right.
8 A I just wanted to point that out.
9 Q But on an annualized basis the model was high
10 by 90 basis points?
11 A Correct.

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12 Q When I say the model, I mean the
 13 pre-restatement model.
 14 A Correct.
 15 Q Okay. So getting back to my question. What
 16 discussions were there about what we're going to do going
 17 forward?
 18 A I think it was all about, you know, moving
 19 towards composites, and I think I probably did a little
 20 education piece during the meeting on composites and why
 21 they're better and how to completely eliminate this
 22 problem. If we're marketing composite performance versus
 23 theoretical model performance.
 24 Q Were there any discussions at this meeting, or
 25 if not outside this meeting, regarding what to do about

1 pre-2006 numbers?

2 A No. I mean, even if you read the -- the last
 3 bullet of the final page of the presentation, it says, we
 4 will consider restating 2006 for all model portfolios.
 5 So I think that really indicates where our focus was.

6 Q Okay. Are you -- Are you confident of that
 7 sitting here today, or do you not just not have a
 8 recollection of it?

9 A I'm fairly confident just because, you know, I
 10 can say with surety that until I got the marching orders
 11 to get a three-year track record as of the end of '07 it
 12 never came across my desk to worry about any history.

13 Q Okay. So if -- if -- if a financial adviser
 14 who was present at the meeting had -- had a recollection

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19 engaged and Riordan on the sidelines.
 20 So I might have been thinking about, you
 21 know, where I was going to dinner that night or
 22 something.
 23 Q Okay. Did you say anything like, I feel good
 24 about 2006 forward, but all bets are off as far as
 25 accuracy goes for the prior periods and no one can even

1 verify it?

2 A Is -- Is that a quote? I don't know. I can't
 3 honestly recall.

4 Q Okay. Does that sound like something you might
 5 have said?

6 A Yeah. Probably, yeah. I -- I mean, I can say
 7 this with surety that I would tell Mark and probably Zack
 8 is that, you know, the only numbers I will stand behind
 9 are the numbers that I calculated myself. Any number not
 10 calculated by Riordan Consulting, I have no confidence
 11 in, from what I had seen.

12 Q Okay.

13 A That -- That I can say.

14 Q Okay. Did you say anything like the models are
 15 all overstated?

16 A Well, I mean, that ended up being a fact I
 17 think at least in '06. And I don't that we ever really
 18 looked hard at '05 other than Q4 of '05, which I did when
 19 I first arrived on the scene, but, I mean, you could take
 20 at '05 composites as they are today and compare to
 21 marketing materials and make that assessment. I know for

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15 that there was a discussion about what to do about the
 16 pre-2006 track record, would they be mistaken?
 17 A I think so.
 18 Q Okay. Were you ever asked about how they --
 19 what -- what they could do to secure the pre-2006 track
 20 record aside from, you know, doing your composites?
 21 A Yeah. I mean, I don't know if it came up at
 22 that meeting, but, I mean, I definitely was consulted
 23 with on, you know, how to get accurate performance
 24 historically. You know, I think one of the challenges
 25 that we had was -- was being able to get at the account

1 level data especially post Bear Stearns conversion, that
 2 was a big part of it where, you know, nobody seemed to be
 3 very confident that we could get account level data to
 4 build composites back pre-Advent, so at the end of the
 5 day all of the composites as they stand today are from --
 6 are post-Advent, you know. It's all Advent data.

7 Q Okay. Were there any discussions about, you
 8 know, putting the stake in the ground from 2006 forward
 9 and, you know, using your data and not using the earlier
 10 track record?

11 A There may have been.

12 Q Okay. What -- What do you remember about that?

13 A You know, I may tune out or glaze over if they
 14 start talk about, you know, FA pitch books or whatever.
 15 I mean, you know, my work was very focused. I think, you
 16 know, any talk about what they are going to market or not
 17 market or what they're going to have in a pitch book or
 18 not would be FAs and -- and Zack Parrish and Mark Stys

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22 a fact that -- that certain models in '06, if not all,
 23 were overstated.

24 Q Okay. Did you say anything like the restated
 25 models calculated by me is absolutely correct, the

1 previously stated model was not done by me and was
 2 incorrect?

3 A Sure.

4 Q Okay. Were you ever -- Were you ever consulted
 5 about using a disclaimer in association with the pre-2006
 6 track record?

7 A No.

8 Q Okay. Are you -- go ahead.

9 A I think -- I mean, I have been consulted with
 10 in general as to what kind of disclosures and disclaimers
 11 they should be putting on this stuff. And, you know, I
 12 definitely would have told Mark that if -- if you're
 13 showing model, you know, make sure that you say it's a
 14 model.

15 Q Okay. How would you do that?

16 A What in a footnote? How would -- How would I
 17 do what?

18 Q How would you disclose that it's a model
 19 performance?

20 A Well, you would say that the date, you know,
 21 of -- of what the model or what -- you know, let say if
 22 you have a mixture of composite and model, you would want
 23 to explicitly state which time period was model.

24 Q Okay. And when you say model, are we talking
 25 about model with the benefit of hindsight or model as in

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