

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 18-CR-681(WFK)
:
-against- : United States Courthouse
: Brooklyn, New York
:
JEAN BOUSTANI, : Friday, November 8, 2019
Defendant. : 9:30 a.m.
:
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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE WILLIAM F. KUNTZ, II
United States DISTRICT COURT JUDGE, and a Jury

A P P E A R A N C E S:

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RANDALL W. JACKSON, ESQ.
RAYMOND MCLEOD, ESQ.
MICHAEL S. SCHACHTER, ESQ.

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Proceedings recorded by mechanical stenography; transcript produced by Computer-Aided Transcription.

1 THE COURT: Good morning, sir, please be seated.
2 MR. SCHACHTER: Good morning, Your Honor.
3 Michael Schachter on behalf of Mr. Boustani.
4 THE COURT: Good morning, sir, please be seated.
5 MR. DiSANTO: Good morning, Your Honor.
6 Philip DiSanto on behalf of Mr. Boustani.
7 THE COURT: Good morning, please be seated, sir.
8 Good morning, Mr. Boustani, you may be seated.
9 MR. McLEOD: Good morning, Your Honor.
10 Ray McLeod on behalf of Mr. Boustani.
11 THE COURT: Good morning, Mr. McLeod, please be
12 seated.
13 Thank you all, thank you all for your patience.
14 All right, I understand we have some procedural
15 issues to address before we bring in the jury. I will hear
16 first from the Government, then I will hear from Defense
17 Counsel with respect to any of the procedural issues that we
18 need to address.
19 The Government first.
20 MR. MEHTA: Briefly, Your Honor.
21 I am sure you saw Mr. Schachter and I scurrying
22 around the courtroom for the past hour. That was not for
23 show, Your Honor. The parties agreed to a stipulation on the
24 witness that we mentioned yesterday from Alliance Bernstein
25 and so we will not be having to call him. He is present in

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1 (In open court.)
2 (Defendant enters the courtroom.)
3 (Judge WILLIAM F. KUNTZ, II esq enters the courtroom.)
4 (The following occurs outside the presence of the
5 jury.)
6 THE COURTROOM DEPUTY: All rise.
7 The Honorable William F. Kuntz, II presiding.
8 THE COURTROOM DEPUTY: Criminal cause for trial,
9 Docket Number 18-CR-681, United States versus Boustani.
10 Counsel, please state your appearances for the
11 record.
12 MR. BINI: Mark Bini, Hiral Mehta, Margaret Moeser,
13 Katherine Nielsen, Lillian DiNardo, Special Agent Angela
14 Tassone for the United States.
15 Good morning, Your Honor.
16 THE COURT: Good morning.
17 We have the spellings, you may be seated.
18 Ladies and gentlemen of the public, you may be
19 seated.
20 (Defendant enters the courtroom.)
21 THE COURT: Good morning, Mr. Boustani.
22 THE DEFENDANT: Good morning.
23 MR. JACKSON: Randall Jackson on behalf of
24 Mr. Boustani.
25 Good morning, Your Honor.

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1 the courtroom today, of course, but we will provide you a copy
2 of the stipulation within the hour, Your Honor.
3 THE COURT: You should know I have entered some
4 stipulations you folks were gracious enough to provide to me
5 late last night and early this morning, and as I repeatedly
6 said, I have no life, so I was delighted to spend time doing
7 that.
8 The little delay we had here today was one juror who
9 had a little subway problem and then I also had to deal with
10 a couple of other matters, so the delays had nothing to do
11 with you folks beyond that, lest you be concerned about that.
12 So, no worries.
13 Are there any other procedural issues to address
14 before we bring in the jury from the Government's point of
15 view?
16 MS. NIELSEN: Yes, Your Honor.
17 So, when we broke yesterday there was some
18 discussion about a recording the Defense wanted to play.
19 THE COURT: Yes.
20 MS. NIELSEN: So the Government and Defense have
21 agreed on a portion of the transcript that is fine to show the
22 jury, but the Government would ask that a larger portion of
23 the recording be played to provide the witness with context.
24 THE COURT: Is there any objection to that request
25 from the Defense?

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1 MR. JACKSON: No, Your Honor.
 2 THE COURT: Okay.
 3 So, we can play as much as the Government and the
 4 Defense agree.
 5 I take it, does it make more sense to play the
 6 entirety of the universe so that we do not have the Defense
 7 playing its greatest hits and then the Government going to
 8 side B to play its greatest hits, and the jury saying why
 9 didn't you may the whole thing initially? I think it makes
 10 more sense to play the entirety of the audio and then you can
 11 address the jurors' attention, Defense Counsel, since you are
 12 on your examination, to the portions you wish to address and
 13 then the Government can do that as well rather than to segment
 14 it, but it is up to you.
 15 So, how do you want to proceed?
 16 MR. JACKSON: Judge, I agree. There is just one
 17 slightly tricky issue I want to flag.
 18 THE COURT: Yes, sir.
 19 MR. JACKSON: Basically, first of all, we appreciate
 20 the Government's very collegial consideration of our
 21 transcript and agreement that 1803-T is appropriate to show to
 22 the jury.
 23 The Government was responding, understandably,
 24 looking at this last night and this morning thinking about how
 25 we need to deal with this. I didn't realize until just before

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1 court in my conversation with Ms. Nielsen that they would want
 2 to play a larger portion. So, we don't have a transcript to
 3 aid the jury for the larger portion. I think that's fine
 4 because it's all in English.
 5 THE COURT: But I think what we will just tell the
 6 jury is that we have a transcript of a portion --
 7 MR. JACKSON: Of a portion.
 8 THE COURT: -- of the tape and the parties agree
 9 that that should be sufficient.
 10 Now, I guess the question then becomes do you want
 11 to create a complete transcript so that if the jurors during
 12 their deliberations say, we would like the transcript of the
 13 recording sent into the jury room, you then do not have the
 14 problem of trying to cobble up the expanded transcript, which
 15 is not part of the actual trial, which might give my friends
 16 on the 17th floor a little agita saying, what do you mean
 17 creating a transcript after the jury has started its
 18 deliberations.
 19 So, do you want to think about that? You have got
 20 three-day weekend coming up. It might be appropriate to
 21 create the complete transcript and to say to the jurors, we
 22 now have a complete transcript should you at some point during
 23 deliberations want to see the entire transcript of what you
 24 have heard.
 25 So, today, they will see the side A of the greatest

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1 hits and then, if they want to see side B as well during
 2 deliberations, that will be an agreed-upon stipulated
 3 transcript.
 4 Does that work for you, folks?
 5 MR. JACKSON: That's perfect, Judge.
 6 THE COURT: You guys can explain it to them because
 7 I feel it is the role of Counsel rather than the role of the
 8 Court.
 9 MR. JACKSON: I will give a very brief explanation
 10 of what we are going to do before I play it and then I will
 11 play it. When we get to the minute mark that the portion we
 12 have the transcript gets to, I'll ask Mr. McLeod to stop it,
 13 display that transcript and then play that portion. And then,
 14 we can just deal with the rest.
 15 We will confer over the weekend and I'm sure we can
 16 come to an agreement in terms of -- we already have something
 17 draft, but it has to be verified and get everything accurate
 18 and I am sure we can discuss over the weekend. Whatever the
 19 Government would like to do with the full transcript, I'm sure
 20 we can come to an agreement.
 21 THE COURT: That is certainly acceptable to the
 22 Court.
 23 Is that acceptable to the Government?
 24 MS. NIELSEN: Yes, Your Honor.
 25 THE COURT: Thank you.

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1 And again, I appreciate and give kudos to both sides
 2 for your professionalism and responsible behavior as officers
 3 of the Court in working through these problems. Forget about
 4 saying saving the Court a lot of time, it saves the jury a lot
 5 of time and confusion, and I really appreciate that, and I am
 6 sure the jurors will as well.
 7 Do we have any other procedural issues to address
 8 before we bring the jury back in?
 9 MS. NIELSEN: Not from Government.
 10 THE COURT: Defense?
 11 MR. JACKSON: Not from the Defense, Your Honor.
 12 THE COURT: Thank you.
 13 Mr. Jackson, would you bring the jury in.
 14 You can bring the witness back.
 15 And you can return to the podium, sir.
 16 MR. JACKSON: Thank you, Your Honor.
 17 (Witness resumes stand.)
 18 THE WITNESS: Thank you, Your Honor.
 19 (Jury enters.)
 20 THE COURT: Welcome back, Ladies and Gentlemen of
 21 the Jury. Again, I thank you for your patience and your
 22 promptness. It is much appreciated.
 23 You will be pleased to know that there will be four
 24 or five bankers you will not be meeting in person because we
 25 are going to have some stipulations with respect to documents.

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1 And again, we will not see you on Monday. Nothing personal,
 2 but the Court is closed on Monday. Enjoy your Monday off and
 3 again, thank you for your patience. Please, be seated.
 4 You may be seated, ladies and gentlemen of the
 5 public.
 6 Please, be seated, sir. I am going to ask you, as I
 7 said I would: Have you spoken with anyone, including your
 8 attorney, since leaving the witness stand yesterday?
 9 THE WITNESS: No, I have not, Your Honor.
 10 THE COURT: Thank you.
 11 You may continue your inquiry, Counsel.
 12 MR. JACKSON: Thank you very much, Your Honor.
 13 THE COURT: Of course.

15 (Continued on following page.)

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1 better term, everyone and their mother at Credit Suisse signed
 2 off on these deals, correct?
 3 THE COURT: Don't blame mom, but you get it. That's
 4 an expression, it means a lot of people.
 5 A My mother never signed off on it.
 6 THE COURT: All right, see what I mean? Let's keep
 7 mom out of it, okay? Please.
 8 A lot of people signed off on it, that's the
 9 question.
 10 THE WITNESS: Yes, sir, all the key approvals that
 11 were required were provided.
 12 Q And we're talking about a lot of people, right?
 13 A Sir, it's hard to put a number on it. I remember more
 14 the committees or the processes. There were people involved,
 15 but for me to count and say it was four, five, ten. It's
 16 hard, sir. I can't, it's hard to specify a number.
 17 Q Okay.
 18 MR. JACKSON: Your Honor, at this time, I would like
 19 to offer a recording which has been marked as Defense
 20 Exhibit 1803 and the accompanying transcript of a portion of
 21 the recording, Your Honor, which is 1803-T.
 22 THE COURT: Any objection to 1803?
 23 MS. NIELSEN: No, Your Honor.
 24 THE COURT: Any objection to 1803?
 25 MS. NIELSEN: No objection.

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1 SURJAN SINGH,
 2 called as a witness, having been previously duly
 3 sworn, was examined and testified as follows:
 4 CROSS-EXAMINATION (Continuing)
 5 BY MR. JACKSON:
 6 MR. JACKSON: Good morning, ladies and gentlemen.
 7 THE JURY: Good morning.
 8 Q Good morning, Mr. Singh.
 9 A Good morning, sir.
 10 Q Mr. Singh, when we left off, we were going through some
 11 aspects of your direct examination. And in your direct
 12 examination, do you remember when you -- I'm sorry.
 13 During part of your cross-examination -- from me,
 14 actually -- do you remember being asked the question: Do you
 15 think it could be a fair estimate that dozens of people had to
 16 sign off on some of these transactions for them to go forward.
 17 And giving the answer: I would say, counting
 18 committees and key people, maybe four or five, but there are
 19 could be more, sir?
 20 A Yes, I do.
 21 Q Okay. And do you remember being asked the question:
 22 Maybe four or five people.
 23 And you answering: Yes, sir?
 24 A Yes, sir.
 25 Q The reality of the situation is that, for lack of a

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1 THE COURT: All right.
 2 (Government's Exhibits 1803 and 1803-T received in
 3 evidence.)
 4 THE COURT: Counsel will explain this to you. You
 5 will hear a recording, you will see a transcript that is a
 6 portion of the recording and when you get to your
 7 deliberations, by that point we will probably have the balance
 8 of the transcript for you.
 9 So, you are going to hear, as we used to say in the
 10 old days, you are going to have the A side and the B side to a
 11 record like you see in the old movies before any of you were
 12 born. Today you are going to get the A side of the record and
 13 the transcript and then, you are going to also hear the B
 14 side. And later, there will be a transcript of the B side.
 15 No one is trying to keep anything from the jury
 16 because you are the deciders of facts, but they have only
 17 gotten the A side transcript today, that is probably my fault
 18 more than theirs. But the good news is you are going to hear
 19 the A side, you are going to see the A side transcript today,
 20 and you are going to hear the B side today and later, you will
 21 get the B side transcript, once the lawyers have agreed to
 22 that. Again, you are the deciders of the facts, I just wanted
 23 to explain that to you.
 24 With that, let's go to the audiotape.
 25 MR. JACKSON: Thank you, Your Honor.

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Singh - cross - Jackson 3167

1 Mr. McLeod, if you can play it.
 2 (Audio played for jury.) (Audio stopped.)
 3 MR. JACKSON: Mr. McLeod, could you just pause it
 4 for one moment.
 5 Q Now, Mr. Singh, do you recognize the voices on this call?
 6 A I recognize mine, sir, definitely that.
 7 Q And one of the other voices is a colleague of yours,
 8 correct?
 9 A I believe so. I think it may be a gentleman called Mason
 10 Cranswick.
 11 Q Could it possibly be a person named Adam Bradbury?
 12 A It's possible, sir, yes.
 13 Q Okay. But regardless, one of the voices you recognize as
 14 yours?
 15 A Yes, sir. Unfortunately.
 16 Q And you are aware that certain calls at Credit Suisse are
 17 recorded, as a matter of course?
 18 A Yes, sir, I'm aware.
 19 MR. JACKSON: Can we continue playing.
 20 (Audio played for jury.) (Audio stopped.)
 21 MR. JACKSON: Mr. McLeod. Can you pause for a
 22 second.
 23 Just to note, this is the portion, Your Honor, that
 24 you referred to that we do have a transcript for.
 25 (Exhibit published.)

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Singh - cross - Jackson 3168

1 MR. JACKSON: Could you please, continue,
 2 Mr. McLeod.
 3 (Audio played for jury.) (Audio stopped.)
 4 MR. JACKSON: Your Honor, if it's acceptable the
 5 entire recording is in evidence, but we can stop playing
 6 there.
 7 THE COURT: I thought you were going to play the
 8 whole thing and then break it down.
 9 MR. JACKSON: We can continue playing.
 10 THE COURT: Why don't you just continue to play the
 11 greatest hits so we get to the end of it, and then we will
 12 have the examination.
 13 MR. JACKSON: Absolutely, Judge, thank you.
 14 (Audio played for jury.) (Audio stopped.)
 15 MR. JACKSON: Great.
 16 May I continue to inquire, Your Honor?
 17 THE COURT: As long as you do not bring mother
 18 into it.
 19 Go ahead.
 20 Q So, Mr. Singh, I just wanted to ask you about a couple
 21 parts of that recording.
 22 First of all, one of the things you talked about in
 23 that recording is that you had actually seen a bunch of the
 24 ships in question, right?
 25 A That is correct, sir.

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Singh - cross - Jackson 3169

1 Q And these were ships that you saw were actually delivered
 2 in Mozambique, right?
 3 A That is right, sir, in Maputo.
 4 Q And you were talking with your colleague about the fact
 5 that there was some debate about whether or not there would be
 6 mounted weapons on the ship?
 7 A There were some concerns that there were weapons affixed
 8 to the boats and I hadn't observed any.
 9 Q Right. What you saw was that they were delivered without
 10 weapons, right?
 11 A Yes, sir, that is correct.
 12 Q But what you were talking about in the conversation was
 13 your understanding that the Mozambicans would have the ability
 14 to use them as patrol boats because the sea men on the boats
 15 could have weapons?
 16 A Yes, sir. It was always considered there would be armed
 17 personnel on the ship.
 18 Q Right. Because the purpose, as you understood, of many
 19 of the boats was patrolling the EEZ, correct?
 20 A That is correct, sir.
 21 Q Now, you also made mention in the fact, you made mention
 22 of the fact that everyone and their mother at Credit Suisse
 23 had approved these transactions.
 24 That was your comment?
 25 A In this very formal meeting, sir, that is correct. That

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Singh - cross - Jackson 3170

1 was my technical analysis of the situation.
 2 Q Right. And you were having what you perceived to be a
 3 candid conversation right there with your colleague, correct?
 4 A I would say informal, sir. And I would just like to
 5 apologize to everyone for -- after listening to that, but yes,
 6 informal.
 7 THE COURT: This is Brooklyn, everybody's heard it
 8 before. Let's keep going, all right? Anybody that hasn't
 9 heard it really is not in this jury, okay?
 10 So, let's go.
 11 THE WITNESS: Thank you, Your Honor.
 12 THE COURT: You are welcome.
 13 Q By the way, there was also a reference in that call to,
 14 your colleague accused you of not reading all of your e-mails,
 15 right?
 16 Do you remember that part?
 17 A Yes, sir. Accused is strong, but I think he's
 18 referencing that I missed an e-mail.
 19 Q He's making a light-hearted comment about the fact that
 20 you didn't necessarily read every e-mail that came to you in
 21 the course of this.
 22 A Not the one that he had sent.
 23 Q Right. And it's true that a person dealing with the type
 24 of deals that you deal with would sometimes get large volumes
 25 of e-mails from a lot of different sources, right?

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Singh - cross - Jackson 3171

1 A There would be large volumes of e-mails, yes, sir.

2 Q And it's a fact that you didn't review in detail every

3 e-mail and every attachment that you received in connection

4 with your work, right?

5 A Not every one, yes.

6 Q Okay. Now, one of the things that you were alluding to

7 in terms of the scope of who had looked at this deal was just

8 the sheer number of people at Credit Suisse, right?

9 A Sir, I can't remember. I don't think I put a number on

10 there but there are certain departments that have looked at

11 it, I'm sure I referenced them.

12 Q I just want to ask you about several names of people and

13 whether or not you -- it's your understanding that these are

14 all people who were involved in the approval and review of the

15 Proindicus, EMATUM, the Mozambican deals.

16 A Yes, sir.

17 Q Do you know a person named Garrett Curran?

18 THE COURT: Would you spell that for the reporter,

19 please.

20 MR. JACKSON: Yes, Your Honor. That's

21 G-A-R-R-E-T-T, C-U-R-R-A-N.

22 A Yes, sir, I do know this person.

23 Q And that's a person who was involved in the approval and

24 review of these transactions, correct?

25 A I believe the Proindicus transaction. I'm not sure about

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Singh - cross - Jackson 3172

1 the EMATUM.

2 THE COURT: Sir, do not mumble. And pull the mic

3 towards you.

4 The end of you your answer you said: I believe in

5 the Proindicus transaction and.

6 THE WITNESS: Apologies, sir.

7 A I believe the gentleman Garrett Curran was involved in

8 the Proindicus transaction, but I don't recall him on the

9 EMATUM transaction.

10 Q And that's not an employee that you were involved in any

11 criminal activity with, correct?

12 A That is correct, sir.

13 Q We've discussed Eraj Srivani, correct?

14 A Yes, sir.

15 Q That's another person who was involved in the review and

16 approval of the Mozambican transactions?

17 A Yes, sir.

18 Q Okay. And that's another person that was not involved in

19 any criminal conduct with you, correct?

20 A That is correct, sir.

21 Q Are you in with a person named Marissa Drew?

22 A Yes, I am, sir.

23 Q That's another person that was involved in the approval

24 and review of the Mozambican transactions, correct?

25 A I believe for the EMATUM capital markets. Not sure about

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Singh - cross - Jackson 3173

1 the other transactions.

2 Q I'm correct that Ms. Drew was not involved in any

3 criminal conduct with you, correct?

4 A That is correct, sir.

5 Q Are you familiar with a man named Peter Stevens?

6 A Yes, sir.

7 Q That's another person who was involved in the approval

8 and review of the Mozambican transactions, correct?

9 A That is correct, sir.

10 Q He was a reputational risk approver?

11 A Sir, he was the head of credit risk management and the

12 head of reputational risk, or co-head of reputational risk.

13 Q Thank you.

14 And Mr. Stevens was not involved in any criminal

15 conduct with you, correct?

16 A That is correct, sir.

17 Q Are you familiar with a person named Adrian Ratcliffe?

18 A Yes.

19 Q All right. And Adrian Ratcliffe is another person who's

20 involved in the approval and the review of the EMATUM

21 transactions, right -- I'm sorry, the -- I'll say the

22 Mozambican transactions.

23 A I know that he was in the legal department, but I can't

24 recall if he gave an approval.

25 Q Okay. You know he was involved in the legal review,

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Singh - cross - Jackson 3174

1 correct?

2 A Yes.

3 Q Another person who is not engaged in any criminal conduct

4 with you, correct?

5 A That is correct, sir.

6 Q What about a person named Maria Leistner, do you know who

7 that is?

8 THE COURT: Could you spell that for the court

9 reporter.

10 MR. JACKSON: Yes, Your Honor, of course.

11 Maria -- M-A-R-I-A, last name Leistner --

12 L-E-I-S-T-N-E-R.

13 A Yes, I do know her.

14 Q This is a woman, a colleague of yours who was involved in

15 the approval and review of the Mozambican transactions,

16 correct?

17 A She was, I believe, on the reputational risk committee.

18 Q This is another person who is not involved in any

19 criminal activity with you, correct?

20 A That is correct.

21 Q Are you familiar with a person named Gael de Boissard?

22 A Yes, I am.

23 THE COURT: Spell that, please.

24 Q G-A-E-L, D-E, B-O-I-S-S-A-R-D.

25 And Mr. De Boissard was involved in the approval and

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- 1 review of these transactions, correct?
- 2 A Of the EMATUM transaction, I recall.
- 3 Q And he was not engaged in any criminal activity with you,
- 4 correct?
- 5 A That is correct, sir.
- 6 Q Are you familiar with a woman named Catherine
- 7 Mentov?
- 8 A Yes.
- 9 Q This is a person who was involved in the approval and
- 10 review of the Mozambican transactions, correct?
- 11 A Involved, yes.
- 12 Q This is a person who was not involved in any criminal
- 13 conduct with you.
- 14 A Not with me, sir.
- 15 Q And you're not aware of any criminal conduct that he was
- 16 engaged in?
- 17 A Yes, that is absolutely correct.
- 18 Q Are you familiar with a man named Charles Gooderham?
- 19 A Yes.
- 20 THE COURT: Spell that, the last name.
- 21 MR. JACKSON: That's C-H-A-R-L-E-S,
- 22 G-O-O-D-E-R-H-A-M.
- 23 THE COURT: Thank you.
- 24 Q Are you familiar with Mr. Gooderham?
- 25 A Yes, I am, sir.

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- 1 Q And none of those people are people who were engaged in
- 2 any criminal activity with you, correct?
- 3 A That is absolutely correct, sir.
- 4 Q Few more names. John Grussing. Andy Rosenberg. Charles
- 5 Donald. Eric Morris. Aaron Curtis?
- 6 A Sir, I don't recall those names. John Grussing I think
- 7 you asked me already before. And sorry, could you say the
- 8 other names again, please.
- 9 Q Andy Rosenberg. Charles Donald, Eric Morris and Aaron
- 10 Curtis?
- 11 A I recall Eric Morris, but not the others, sir.
- 12 Q Eric Morris is another person who was involved in the
- 13 review and approval of these transactions, correct?
- 14 A Of the EMATUM transaction, sir.
- 15 Q Not engaged in any criminal activity that you're aware
- 16 of?
- 17 A That is correct, sir.
- 18 Q There were a number of people involved in the legal
- 19 function, right. In the legal transaction review?
- 20 A Yes, sir.
- 21 Q That included Mark Bailey?
- 22 A That is correct, sir.
- 23 Q And Mark Bailey wasn't engaged in any criminal activity
- 24 with you, right?
- 25 A No, he was not, sir.

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- 1 Q This is another person who was involved in the review and
- 2 approval of the Mozambican transactions, right?
- 3 A That is correct, sir.
- 4 Q This isn't a person who was engaged in any criminal
- 5 conduct with you, correct?
- 6 A That is correct, sir.
- 7 Q I just want to list off a few additional names.
- 8 Paul Spencer Lloyd, John Grussing, David
- 9 Livingstone, Eric Morris, Clelia Pasqui?
- 10 THE COURT: Spell that.
- 11 MR. JACKSON: Yes, Your Honor. C-L-E-L-I-A,
- 12 P-A-S-Q-U-I.
- 13 Q Do you recognize those five names?
- 14 A I recognize the names other than you said a David
- 15 Livingstone.
- 16 Q Yes?
- 17 A I don't recall that gentleman.
- 18 Q Okay.
- 19 A And Celia P was the second name.
- 20 Q Clelia Pasqui?
- 21 A Yeah, I don't recall her.
- 22 Q Okay. The three other individuals are all individuals
- 23 who were involved in the approval and review of the Mozambican
- 24 transactions, right?
- 25 A Involved, yes.

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- 1 Q That also included other members of the reputational risk
- 2 and compliance committee, correct?
- 3 A I think you've listed the main members, but there may be
- 4 others.
- 5 Q What about Kenneth Leo?
- 6 A I don't remember Mr. Leo.
- 7 Q What about Balbir Bakhshi?
- 8 A Yes, he was part of the reputational risk committee.
- 9 Q What about?
- 10 THE COURT: Spelling of Bakhshi, please.
- 11 MR. JACKSON: Yes, of course, Your Honor.
- 12 B-A-L-B-I-R, B-A-K-H-S-H-I.
- 13 THE COURT: Thank you.
- 14 Continue.
- 15 MR. JACKSON: Thank you, Judge.
- 16 Q And you said Mr. Bakhshi was part of the reputational
- 17 risk and compliance committee, correct?
- 18 A That is correct, sir.
- 19 Q And he wasn't engaged in any criminal activity with you,
- 20 correct?
- 21 A That is correct, sir.
- 22 Q Sima Allen?
- 23 A Sima Allen, yes.
- 24 Q Paul Spencer Lloyd?
- 25 A Yes.

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- 1 Q Adam Bradbury?
- 2 A No.
- 3 Q Joe Robinson?
- 4 A Yes.
- 5 Q Those people, not engaged in any criminal conduct with
- 6 you, right?
- 7 A That is correct, sir.
- 8 Q You're not aware of any criminal conduct that you were
- 9 involved in?
- 10 A That is correct, sir.
- 11 Q And the ones that you recognized were all involved in the
- 12 reputational risk and compliance function as it related to
- 13 these Mozambican transactions, right?
- 14 A Involved, but not necessary approvers.
- 15 Q Okay. Some approvers, some just involved in the approval
- 16 process.
- 17 A Yes.
- 18 Q Now is it fair to say I haven't gone through an
- 19 exhaustive list of all the people who were involved in the
- 20 approval and review of these transactions, correct?
- 21 A Sir, I don't know, but you -- there could be more.
- 22 Q There could be more, right?
- 23 But none of those people are people who accepted any
- 24 money from you, for example?
- 25 A That is absolutely correct, sir.

VB OCR CRR

- 1 Q Now, do you remember being asked some questions about
- 2 whether you believed that the debt, if a client kept a loan on
- 3 its books, rolled up to the books and records of Credit
- 4 Suisse's parent company, do you remember that?
- 5 A Yes, sir.
- 6 Q And by parent company, which company -- you were talking
- 7 about which company here?
- 8 A Sir, I wasn't referring to any specific company. It's
- 9 part of the consolidated accounts of the group. Because we
- 10 had lots of checks and balances to ensure that our loans on
- 11 our books --
- 12 Q Let me just stop you.
- 13 THE COURT: Let him finish.
- 14 Go ahead.
- 15 THE WITNESS: Sorry, thank you, Your Honor.
- 16 A So, we had lots of checks and balances to ensure that our
- 17 loans on our books within GFG are reported in a group
- 18 appropriately and there were key reasons for that. Because we
- 19 had to have the right amount of capital against it, we had to
- 20 have them valued appropriately, so they would consolidate
- 21 within the group. I'm very confident of that.
- 22 Which is the ultimate legal entity parent? I'm not
- 23 qualified to say that about Credit Suisse Group, but those
- 24 loans were reported and did consolidate within the group.
- 25 Q Okay. So, to just focus in on my question. You're not

VB OCR CRR

- 1 Q As far as you know, they all did their jobs in connection
- 2 with these transactions.
- 3 A Yes, sir.
- 4 Q Thank you.
- 5 MR. JACKSON: Now, may we display, Your Honor, in
- 6 evidence, Government's Exhibit 1844.
- 7 THE COURT: Yes.
- 8 (Exhibit published.)
- 9 Q And you recognize this as an organizational chart for
- 10 Credit Suisse Group AG?
- 11 A Sir, I -- well. I'm not sure I know this slide, but I
- 12 understand what it's trying to say.
- 13 Q Right. You are not familiar, necessarily, with every
- 14 aspect of every org chart at Credit Suisse?
- 15 A Yes, sir, that's right.
- 16 Q Okay. Do you recognize all these entities?
- 17 A No, sir.
- 18 Q Which one did you work for?
- 19 A Sir, I worked for Credit Suisse Securities Europe
- 20 Limited.
- 21 Q Okay.
- 22 MR. JACKSON: Can we highlight that one, please,
- 23 Mr. McLeod. Okay.
- 24 Q So that's that one down at the bottom right, correct?
- 25 A That's correct, sir.

VB OCR CRR

- 1 sure which entity you were talking about when you were
- 2 referring to the parent, correct?
- 3 You weren't referring to a specific entity, correct?
- 4 A That is correct, I did not have a specific legal entity
- 5 in mind.
- 6 Q And to be very clear, okay, your job at Credit Suisse was
- 7 you were doing debt stuff for the emerging markets group,
- 8 right?
- 9 A Yes, sir, I did debt for emerging markets.
- 10 Q You have never seen the general ledger of Credit Suisse
- 11 Group AG; yes or no?
- 12 A I'm not sure, sir. I don't recall, but I'm not sure.
- 13 Q Okay. You don't recall.
- 14 Fair to say, the books and records of Credit Suisse,
- 15 the various companies, that was not your primary
- 16 responsibility at your job; yes or no?
- 17 A The books and records of GFG, my team, were my
- 18 responsibility and to make sure that they were appropriately
- 19 put in the systems, which would then flow through to the
- 20 remainder of the bank and its accounting. That was my
- 21 responsibility. Further than that, no, sir.
- 22 Q Further than GFG, that was not your responsibility,
- 23 correct?
- 24 A That is correct, sir.
- 25 Q Okay. Now --

VB OCR CRR

Singh - cross - Jackson 3183

1 MR. JACKSON: We can take that down, Mr. McLeod.

2 Q Now, we talked a little bit about your FCA testimony

3 yesterday, do you recall that?

4 A Yes, sir, I do.

5 MR. JACKSON: Can we display again, in evidence,

6 3500-SS-9 at page 35.

7 THE COURT: You may.

8 (Exhibit published.)

9 THE COURT: You will need to enhance it, it is too

10 small to read.

11 MR. JACKSON: Yes.

12 Can we enhance the bottom of this.

13 Q Can you see this answer, this question that was posed to

14 you at the top here, Mr. Singh?

15 A Yes, sir.

16 Q And you were asked a question about the way Mr. Boustani

17 dealt with or interacted with the deal team, correct?

18 A I believe that, sir, but it doesn't say -- I believe

19 you're correct but it just -- maybe if you went a little bit

20 higher I could see the reference to Mr. Boustani.

21 Thank you, sir.

22 Q Do you see that, where it says: So what did you make of

23 Mr. Boustani?

24 A Yes, sir, I do.

25 Q Okay. And then, in response to the question we were just

VB OCR CRR

Singh - cross - Jackson 3184

1 looking at, you said: He was like all clients, he was all

2 things in different times. So I mean, are clients demanding

3 in general? Yes. I haven't come across any clients that

4 aren't demanding. What can I recall about Jean, he was

5 Lebanese, his English wasn't always the best.

6 That's what you said in your FCA testimony, correct?

7 A That is correct, sir.

8 Q And that was true, correct?

9 A Yes, sir, that was true.

10 MR. JACKSON: Can we take that down.

11 Q In your direct testimony you were also asked a question

12 about -- well.

13 First of all, do you remember being asked about the

14 time period where Mr. Pearse left Credit Suisse during your

15 direct testimony?

16 A I don't remember the specific question, but.

17 Q You remember some questions about that?

18 A Some questions, yes.

19 Q Do you remember stating during your direct testimony that

20 Mr. Pearse indicated to you that there were other transactions

21 by which he had procured a side or -- a side or private

22 payment for himself?

23 A Yes, sir, I do recall that.

24 Q And these are other transactions you're talking about

25 that Mr. Pearse told you that he had set up for himself, a

VB OCR CRR

Singh - cross - Jackson 3185

1 side deal or kickback.

2 A Sir, he told me that he was expecting a private payment,

3 a side payment. I don't have further color than that.

4 Q Well, you did tell the prosecutors about the names of

5 some of the deals that Mr. Pearse told you he had set up a

6 side payment for himself on, right?

7 A Yes, sir, that's correct. What I meant is, it's not that

8 I don't have details about the names of the deals, it's that I

9 don't understand exactly what the money was for, specifically

10 related. So, it's hard for me to call it a kickback. I would

11 call it what I know it to be, which is a side payment.

12 Q Okay. You weren't specifically involved with Mr. Pearse

13 this those side deals.

14 A I wasn't involved at all, sir.

15 Q But one of the ones that you identified was the Akbars

16 transaction, a Russian transaction?

17 A Yes, sir.

18 THE COURT: Would you spell that for the reporter,

19 please.

20 MR. JACKSON: Yes, of course, Your Honor.

21 That's A-K-B-A-R-S.

22 Q You also identify a Kazak Company Restructuring called,

23 called the KMC transaction?

24 A That is right, sir.

25 Q And you identify the KDB transaction.

VB OCR CRR

Singh - cross - Jackson 3186

1 A That is right, sir.

2 Q Am I correct that you also told the prosecutors that

3 Mr. Pearse made to you the comment that all Lebanese people

4 are on the take.

5 A I don't remember that, sir.

6 Q Okay.

7 MR. JACKSON: I'd like to show you a document that

8 is marked as 3500-SS-1 at page 17.

9 THE COURT: For the witness and opposing counsel,

10 only.

11 MR. JACKSON: Yes, Your Honor.

12 Can we blow up the bottom half of that, please,

13 Mr. McLeod.

14 THE WITNESS: So, what's the question, sir?

15 Q My question is, does this refresh your recollection that

16 you told the prosecutors that Mr. Pearse had made the comment

17 to you that all Lebanese people are on the take?

18 A No, sir, it doesn't.

19 MR. JACKSON: Okay. Would you take that down,

20 please, Mr. McLeod.

21 Q You also told the prosecutors that you believe

22 regulation S meant that an instrument was off-shore from the

23 United States, correct?

24 A I'm not sure I'm qualified to make that statement, sir.

25 Q Do you recall telling that to the prosecutors?

VB OCR CRR

1 A I don't think so, sir.
 2 Q You also told the prosecutors that you had understood
 3 that Ice Canyon had a lot of pockets.
 4 Do you recall that?
 5 A Sir, I don't recall that specific comment, no.
 6 Q It's true, isn't it, that you told the Government that it
 7 was quite normal for a contractor to be involved in the
 8 finances of a deal.
 9 A Where it relates to the financing of their goods and
 10 services, yes, that's normal.

11 (Continued on following page.)

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VB OCR CRR

1 you received a number of e-mails that included one from
 2 Clifford Chance?
 3 A Sorry, it cut out slightly. Would you mind repeating?
 4 Q Yes, I apologize.
 5 In the course of working on these deals, you
 6 received a number of e-mails from people who were at the law
 7 firm Clifford Chance, correct?
 8 A That is correct, sir.
 9 Q It is a very respected international law firm, correct?
 10 A Correct, sir.
 11 Q That was involved in the approvals of this deal, correct?
 12 A Sir, they're not involved in the approvals of this deal.
 13 They were advisors or counsel to -- to Credit Suisse.
 14 Q They were advisors, so they were involved in the advisory
 15 process for Credit Suisse, correct?
 16 A They advised Credit Suisse, sir, that's correct.
 17 Q And at some point you received e-mails that included
 18 approvals, transmissions of approvals from the Central Bank of
 19 Mozambique for certain of these deals, correct?
 20 A I recall that, sir, yes.
 21 MR. JACKSON: Your Honor, I'd like to offer DX-2024,
 22 2024-A, and 2024-A-T, which is the translation.
 23 THE COURT: Any objection?
 24 MS. NIELSEN: I'm sorry, are they visible?
 25 THE COURT: Do you want to see hard copy?

SAM OCR RMR CRR RPR

1 EXAMINATION CONTINUES
 2 BY MR. JACKSON:
 3 Q And that's something that you told the prosecutors,
 4 correct?
 5 A Yes.
 6 Q And I'm correct, right, and this is a yes or no question,
 7 did you tell the prosecutors in your meetings with them that
 8 you had discussed with Andrew Pearse working in some capacity
 9 at Palomar?
 10 A No.
 11 Q You never said that to the prosecutors?
 12 A I don't recall that.
 13 Q I want to show you a document that is marked as SS-1.
 14 THE COURT: For the witness and opposing counsel and
 15 the Court only.
 16 A Yes, sir, what's the question?
 17 Q Does that refresh your recollection that you told the
 18 prosecutors that you had discussed working in some capacity at
 19 Palomar with Andrew Pearse, yes or no?
 20 A No.
 21 Q Okay.
 22 MR. JACKSON: We can take that down, please,
 23 Mr. McLeod.
 24 BY MR. JACKSON:
 25 Q Now, in the course of your working on these transactions,

SAM OCR RMR CRR RPR

1 (Pause.)
 2 THE COURT: Let's take them seriatim.
 3 Any objections to DX-2024?
 4 MS. NIELSEN: No objection.
 5 THE COURT: You may publish 2024.
 6 (Defense Exhibit 2024 was received in evidence.)
 7 THE COURT: Any objection to 2024-A?
 8 MS. NIELSEN: No objection.
 9 THE COURT: You may publish.
 10 (Defense Exhibit 2024-A was received in evidence.)
 11 THE COURT: And any objection to 2024-A-T as in Tom,
 12 any objection to that document?
 13 MS. NIELSEN: No objection.
 14 THE COURT: You may publish, it's admitted.
 15 (Defense Exhibit 2024-A-T was received in evidence.)
 16 THE COURT: They're all admitted.
 17 MR. JACKSON: Thank you, Your Honor.
 18 THE COURT: And highlight them because they are too
 19 small to read as they are.
 20 MR. JACKSON: Yes, Your Honor.
 21 (Exhibit published.)
 22 BY MR. JACKSON:
 23 Q You see this is an e-mail from Ms. Subeva to a number of
 24 different people, correct, including you?
 25 A That is correct, sir.

SAM OCR RMR CRR RPR

1 Q This is in March of 2013?
 2 A That is correct, sir.
 3 Q And do you see a number of the people at Clifford Chance
 4 are cc'd on this document, correct?
 5 A That is correct, sir.
 6 Q This is -- there are some things that are blacked out in
 7 the e-mail?
 8 A Yes, sir.
 9 Q Do you understand that sometimes certain legal
 10 information is redacted?
 11 A I guess so, sir.
 12 MR. JACKSON: Can we go to 2024-A, please?
 13 (Exhibit published.)
 14 MR. JACKSON: Can you blow up this part of it?
 15 BY MR. JACKSON:
 16 Q And can you understand what this is, this is the
 17 Portuguese version of this document, but do you understand
 18 what this is, Mr. Singh?
 19 THE COURT: Are you asking the witness if he reads
 20 Portuguese? Is that the question?
 21 Are you asking him if he has seen this in English
 22 and can say something about its Portuguese iteration?
 23 I am just not sure what you're asking him.
 24 MR. JACKSON: You're right, Judge.
 25 THE COURT: I know, that is my job, at least until
 SAM OCR RMR CRR RPR

1 the Court of Appeals.
 2 MR. JACKSON: Let me take those in order.
 3 BY MR. JACKSON:
 4 Q First of all, do you speak Portuguese?
 5 A No, sir.
 6 Q Okay. Do you remember getting this authorization from
 7 the Central Bank of Mozambique?
 8 A Sir, I can't recall if it's this document, but I do
 9 recall on the Proindicus transaction there was Central Bank
 10 approval.
 11 MR. JACKSON: Okay. Can we display 2024-A-T?
 12 (Exhibit published.)
 13 BY MR. JACKSON:
 14 Q You see here, this is a translation of the document we
 15 were just looking at, correct?
 16 A (No response.)
 17 Q Well, you see it's in English.
 18 I know you don't, you can't verify, but let me just
 19 ask you about, do you see where it says request for
 20 authorization to take out a foreign loan amounting to USD 372?
 21 THE COURT: Vader, Vader, Vader; slower.
 22 MR. JACKSON: Thank you, Judge.
 23 BY MR. JACKSON:
 24 Q Do you see that portion there, Mr. Singh?
 25 A I see what you highlighted, yes.
 SAM OCR RMR CRR RPR

1 Q And do you see it says: Regarding the issue at hand, we
 2 must inform you that the Bank of Mozambique authorizes us to
 3 take out the loan, and the following reference numbers were
 4 assigned, which should be used in every letter to be exchanged
 5 with the bank on this issue; do you see that?
 6 A I see the highlighted portion, sir.
 7 Q Okay. And it identifies Proindicus in the third bullet
 8 point, correct?
 9 A It does, sir.
 10 MR. JACKSON: One more set of documents, Your Honor.
 11 I'd like to offer DX-2025, 2025-A, and 2025-A-T.
 12 THE COURT: Any objection to 2025?
 13 MS. NIELSEN: Can you make that a little bit larger?
 14 THE COURT: Blow it up, so we can see it.
 15 MS. NIELSEN: No objection.
 16 THE COURT: Admitted.
 17 (Defense Exhibit 2025 was received in evidence.)
 18 THE COURT: 2025-A, any objection?
 19 MS. NIELSEN: I don't think I have "A," I have
 20 "A-T."
 21 THE COURT: Do you have that in front of you,
 22 counsel?
 23 2025-A is the Portuguese language document. Do you
 24 have any objection to that?
 25 MS. NIELSEN: No, Your Honor.
 SAM OCR RMR CRR RPR

1 THE COURT: Admitted.
 2 (Defense Exhibit 2025-A was received in evidence.)
 3 THE COURT: And 2025-A-T, do you have any objection
 4 to that document?
 5 MS. NIELSEN: No, Your Honor.
 6 THE COURT: All right, admitted.
 7 (Defense Exhibit 2025-A-T was received in evidence.)
 8 THE COURT: You may publish any and all of them.
 9 MR. JACKSON: Thank you, Judge.
 10 (Exhibit published.)
 11 BY MR. JACKSON:
 12 Q Let's look very quickly at 2025. Do you see this
 13 document?
 14 MR. JACKSON: If you can blow up that Mr. McLeod.
 15 Q Do you see this is Mr. Boustani forwarded along the
 16 Central Bank letter to you, to a number of people including
 17 you?
 18 A Yes, sir, I do see that.
 19 MR. JACKSON: Can we look at 2025-A? I'm sorry.
 20 (Exhibit published.)
 21 MR. JACKSON: Could you blow up the -- yes, that
 22 section, please, Mr. McLeod. Thank you.
 23 BY MR. JACKSON:
 24 Q Do you see this is the Portuguese version of this?
 25 A I guess so, sir.
 SAM OCR RMR CRR RPR

Singh - cross - Jackson 3195

1 MR. JACKSON: Can we go to 2025-A-T?

2 (Exhibit published.)

3 BY MR. JACKSON:

4 Q And you see here, this is the approval of the foreign

5 loan agreement amounting to U.S. dollars 850 million with

6 Credit Suisse, and it makes reference to EMATUM in this

7 letter, correct?

8 A I see that, sir, yes.

9 Q Okay.

10 MR. JACKSON: We can take that down, please.

11 Q And let me just ask you this: When this case -- you are

12 currently out on bail, correct?

13 A That is correct, sir.

14 Q When this case is over, it's your expectation that until

15 you're sentenced, you are going to go back to London, England,

16 to your home?

17 A That is my understanding, sir --

18 MS. NIELSEN: Object.

19 THE COURT: Was there an objection to that?

20 MS. NIELSEN: Yes, Your Honor; objection.

21 THE COURT: He's just asking for his expectation. I

22 used to expect 40 acres and a mule, but go ahead.

23 BY MR. JACKSON:

24 Q That's your expectation?

25 A Yes, sir.

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3196

1 MR. JACKSON: Your Honor, may I have one moment?

2 THE COURT: You may.

3 (Pause.)

4 MR. JACKSON: Your Honor, I have no further

5 questions for this witness.

6 THE COURT: Your witness, redirect.

7 MS. NIELSEN: Thank you, Your Honor.

8 THE COURT: I am worried, she didn't say just

9 briefly.

10 MS. NIELSEN: I learned my lesson, Your Honor.

11 THE COURT: Fire away.

12 REDIRECT EXAMINATION

13 BY MS. NIELSEN:

14 Q Good morning.

15 A Good morning, ma'am.

16 Q So during the recording that we listened to this morning,

17 there was a discussion about seeing ships related to EMATUM.

18 Do you recall that?

19 A That is correct, ma'am.

20 Q Did you see the ships when you were in Maputo?

21 A I saw some ships, ma'am.

22 Q What ships did you see?

23 A I saw some ships related to the EMATUM transaction, which

24 were tuna fishing boats. Not all of them, not 21 tuna boats

25 that were to be delivered, but I saw a couple. And they were

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3197

1 in relation to the Proindicus transaction, which was security

2 surveillance. There was some ships that were in the harbor,

3 but they weren't in the water, they were on land.

4 Q I'm sorry, how were they on land?

5 A Hard to describe, but there was like a metal frame, if

6 you can imagine my arms being a frame. And the ship kind of

7 (indicating) being there. I don't know if that's clear.

8 THE COURT: It's not, because you are turning your

9 head away and you are making hand gestures in the air.

10 Why don't you ask him questions to elicit something

11 that will be a little more permanent and less ethereal.

12 BY MS. NIELSEN:

13 Q Mr. Singh, were the Proindicus ships in some form of

14 holding device on land?

15 A That is correct, ma'am. A metal frame holding device.

16 Q And did you see any of the trimarans?

17 A No, I don't recall seeing trimarans.

18 Q Now, Mr. Singh, defense counsel asked you whether any of

19 the kickbacks that you had been promised prior to the approval

20 of the Proindicus loan -- sorry, defense counsel asked you

21 whether any kickbacks had been promised prior to the approval

22 of the Proindicus loan.

23 Do you recall that?

24 A Sorry, kickbacks to me or to a colleague of mine?

25 Q To your colleague.

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3198

1 A So prior to the approval of the Proindicus loan, yes.

2 Andrew Pearse was promised a kickback from Mr. Boustani.

3 THE COURT: He was promised a kickback from

4 Boustani, that's what you said?

5 THE WITNESS: Yes.

6 THE COURT: Keep your voice up. All testimony is

7 important. This is particularly important, so would you

8 please keep your voice up.

9 Put the question again and let's have the answer

10 clearly.

11 BY MS. NIELSEN:

12 Q So, Mr. Singh, defense counsel asked you whether any

13 kickbacks had been promised prior to the approval of the

14 initial Proindicus loan on February 28th of 2013, to your

15 knowledge?

16 A Sorry, ma'am, just to be clear, the approval of the loan

17 happens on or around March the 21st. Prior to March the 21st,

18 yes, there is a kickback promised to Andrew Pearse by

19 Mr. Boustani.

20 Q So you signed the loan agreement for Proindicus on or

21 about February 28th of 2013, is that correct?

22 A That is correct, ma'am.

23 Q So why weren't they approved at that point in time?

24 A Because, ma'am, at that stage the key approvals of

25 Reputational Risk plus Credit Risk Management are outstanding,

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3199

1 and as detailed in the loan agreement that they are
 2 outstanding and so as a condition precedent, and so money can
 3 be given under this loan.
 4 Q And so when was it that those conditions precedent were
 5 met?
 6 A It was on or after the 21st of March, 2013.
 7 Q And were you aware prior to that date about the kickbacks
 8 that Jean Boustani had promised to pay Andrew Pearse out of
 9 the subvention fee reduction?
 10 A Yes, ma'am. In the first two weeks of March, I have a
 11 conversation with Andrew Pearse where he details to me that he
 12 has cut a side deal with Mr. Boustani where Mr. Boustani will
 13 pay him monies or privately on the side for a reduction in the
 14 subvention fee that Privinvest Group will have to pay.
 15 Q And you kept that information secret from the approval
 16 committees and other approvers at Credit Suisse, is that
 17 right?
 18 A I did, ma'am.
 19 Q Now, defense counsel asked you a number of questions
 20 about how many people at Credit Suisse approved the Proindicus
 21 and EMATUM deals. And he listed a number of Credit Suisse
 22 employees who were involved in the approval process.
 23 Mr. Singh, did you tell any of those people about
 24 the kickbacks that had been promised to Andrew Pearse or that
 25 you had, in fact, been promised and received?

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3200

1 A I told none of those individuals, ma'am.
 2 Q And did you tell any of the relevant committees about the
 3 kickbacks you had been promised and then received?
 4 A Unfortunately, no, ma'am, I did not.
 5 Q And you signed the loan agreements for both Proindicus
 6 and EMATUM on behalf of Credit Suisse, isn't that correct?
 7 A That is correct, ma'am.
 8 Q Now, defense counsel asked you some questions about
 9 whether the defendant had spoken to outside investors.
 10 Do you recall?
 11 A Yes, I recall that, ma'am.
 12 Q Now, Mr. Singh, did the defendant know that Credit Suisse
 13 was marketing the Proindicus and EMATUM instruments globally
 14 to outside investors?
 15 A Sorry, which transaction did you refer to?
 16 Q The Proindicus and EMATUM.
 17 A Proindicus and EMATUM, yes, he was aware.
 18 Q And how do you know that?
 19 A Ma'am, because it was clear that Credit Suisse -- I'll
 20 take transaction by transaction, that's clearer.
 21 So, on the Proindicus transaction it was clear that
 22 Credit Suisse was not in position ever to give the full
 23 initial discussion of 350 million, but finally as
 24 \$372 million.
 25 It was always discussed that Credit Suisse will give

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3201

1 in the region of 150 to \$200 million. So, a significant
 2 portion of the transaction has to come from outside investors.
 3 Mr. Boustani, himself, offers support from Mozambican banks,
 4 from middle eastern banks, to provide that syndication
 5 support. And there is no restriction in any way, shape or
 6 form on where we can syndicate this loan. And it is clear
 7 that we're going to globally syndicate it.
 8 Q And what about the EMATUM transaction?
 9 A For the EMATUM transaction -- for the EMATUM transaction
 10 there was a specific requirement that I tell the Minister of
 11 Finance that there is gonna be an international capital
 12 markets transaction where international investors will
 13 publicly trade securities from the EMATUM transaction.
 14 That's a requirement from the EIBC Committee because
 15 there is a concern that maybe the customer doesn't appreciate
 16 that this is gonna be a public deal there's is gonna be
 17 Bloomberg and ratings, and we never want to surprise a
 18 customer inappropriately.
 19 There is a requirement for me to disclose that and
 20 get his confirmation. When I traveled to Maputo on our due
 21 diligence for EMATUM, I informed Mr. Boustani before that this
 22 is a requirement, that I need to do it so that we're clear. I
 23 pre-clear it with Mr. Boustani so that it is not a surprise
 24 for the Minister, so that he has time to deliberate and think
 25 about it.

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3202

1 And then when I am in a meeting formally with other
 2 CS colleagues telling the Minister about the fact that it will
 3 be an international capital markets transaction, Mr. Boustani
 4 is also in the meeting at the Ministry of Finance in Maputo in
 5 the government building.
 6 Q And, Mr. Singh, were some of the investors for the
 7 Proindicus and the EMATUM transactions located in the United
 8 States?
 9 A Yes, ma'am.
 10 Q And did the loan agreement or any of the materials that
 11 were sent to investors in Proindicus and EMATUM disclose any
 12 of the payments that Jean Boustani had made to you?
 13 A No, they didn't.
 14 Q Did they disclose the kickback that Jean Boustani had
 15 promised to Andrew Pearse for the original Proindicus loan?
 16 A No, they did not.
 17 Q Now, Mr. Singh, defense counsel asked you about some of
 18 the payments that you received from the defendant.
 19 How much were you paid again?
 20 A Ma'am, I received in the end \$5.7 million, just -- just
 21 under that.
 22 Q And those weren't salary payments from Privinvest, is
 23 that correct?
 24 A No, ma'am, they were not salary payments.
 25 Q And were any of those payments provided to you to get you

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3203

1 to join Palomar?

2 A None at all.

3 Q And were any of those payments given to you to entice you

4 to work on any investment fund?

5 A No, ma'am.

6 Q What were they paid to you for?

7 A Ma'am, they were paid to me to lobby in support of the

8 transactions that Privinvest Group wanted to undertake, which

9 were the Proindicus upsizes after Andrew Pearse left, plus the

10 EMATUM 500-million-dollar debt financing that was raised by

11 Credit Suisse.

12 Q And was that for you to lobby and support these

13 transactions within Credit Suisse?

14 A That is correct, ma'am.

15 Q And was this work that you did secretly while you were a

16 Credit Suisse employee?

17 A Yes, ma'am.

18 Q And defense counsel asked you a number of questions about

19 Andrew Pearse's role in the scheme.

20 Now, Mr. Singh, who did you believe offered and paid

21 you the kickbacks that you received?

22 A Mr. Boustani.

23 MS. NIELSEN: Ms. DiNardo, can we bring up

24 Government's Exhibit 1843 in evidence, please?

25 Mr. Jackson, may we publish to the jury?

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3204

1 (Exhibit published.)

2 MS. NIELSEN: Thank you.

3 Ms. DiNardo, if you would go to the second page,

4 please.

5 THE COURT: You are mumbling again. Pull it closer,

6 keep your voice up.

7 MS. NIELSEN: Ms. DiNardo, the second page, please,

8 and the second box.

9 (Exhibit published.)

10 BY MS. NIELSEN:

11 Q And defense counsel asked you some questions about

12 several one-million-dollar payments you received into your

13 ADCB account in September and October of 2013 from a numbered

14 bank account.

15 Do you recall that?

16 A I recall that, ma'am.

17 Q Do you see one of those transactions on this, the blow-up

18 that Ms. DiNardo has provided?

19 A Yes, ma'am, it's the deposit in my account on the 18th of

20 September for \$1 million.

21 Q And at the time that you received that payment, who did

22 you think that it was from?

23 A Jean Boustani.

24 Q Now, in the description of this -- for this payment,

25 where does it say that the payment came from?

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3205

1 A It references a long account number.

2 Q At that time did you know whose account number that was?

3 A No, ma'am.

4 MS. NIELSEN: Ms. DiNardo, if we could bring up

5 Government's Exhibit 1818 in evidence, please.

6 (Exhibit published.)

7 MS. NIELSEN: And if we could blow up the top; thank

8 you.

9 (Exhibit published.)

10 BY MS. NIELSEN:

11 Q Now, Mr. Singh, defense counsel showed you Government's

12 Exhibit 1818.

13 Had you ever seen this document before yesterday?

14 A No, ma'am.

15 Q Did the Government show it to you?

16 A No, ma'am.

17 Q Now, you testified --

18 MS. NIELSEN: And, Ms. DiNardo, you can take that

19 down; thank you.

20 Q You testified that at some point before you began

21 cooperating with the Government you may have heard or seen

22 something that indicated that the two one-million-dollar

23 payments came from Andrew Pearse. Is that right?

24 A Yes, ma'am.

25 Q Do you recall where you got that impression?

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3206

1 A Ma'am, there was an Indictment that came out and there

2 were subsequent pleas, where there was some detail of

3 \$2 million.

4 Q Based on your personal experience, did you still believe

5 that the ultimate source of the money, those two million-

6 dollars payments was the defendant?

7 A Yes, ma'am.

8 Q And why is that?

9 A Because the beneficiary of what I did is Privinvest

10 Group.

11 Q Did the defendant do or say anything in your presence

12 that made you believe that he was paying you these kickbacks?

13 A Yes, ma'am.

14 Q And what was that?

15 A Ma'am, when I met with Mr. Boustani for the whole day in

16 early July --

17 THE COURT: Of what year?

18 THE WITNESS: Sorry, Your Honor, in 2013.

19 A -- and he took me around and he created a fake job for me

20 as archives clerk and he created a fake address for me and he

21 took me through several queues or processes where I received a

22 residency permit. And then after that I discussed with him

23 the next steps in relation to meeting with private bankers and

24 opening a bank account.

25 And it is clear that he says he will look after me

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3207

1 in relation to the EMATUM transaction. There is no doubt in
 2 my mind.
 3 Q And that phrase, look after me, is that the same phrase
 4 that Andrew Pearse used with you on the run that you went on
 5 with him in the forest?
 6 A That is correct, ma'am, yes.
 7 Q And your understanding of that was what?
 8 A That I would be paid money.
 9 Q And when the defendant told you that he'd look after you,
 10 it was specifically in relation to the EMATUM transaction?
 11 A At the time he raised the EMATUM transaction because
 12 that's the one we were working towards, yes.
 13 Q Now, defense counsel also asked you about some side
 14 payments to Mr. Pearse.
 15 Do you recall that?
 16 A Yes, ma'am.
 17 Q When you had this discussion with Mr. Pearse, was it just
 18 one discussion?
 19 A Yes, I recall it being one discussion.
 20 Q And did Mr. Pearse tell you specifically what he was
 21 being paid for doing during that discussion?
 22 A No, he didn't specify exactly what the payment -- what he
 23 did to receive the payment.
 24 Q Did he specify the mechanics of how he was going to get
 25 paid?

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3208

1 A No.
 2 Q In fact, do you even know if Mr. Pearse was paid at all?
 3 A I do not.
 4 Q Now, defense counsel asked you some questions about the
 5 run that you took in the forest near Andrew Pearse's house in
 6 the summer of 2013, and whether you knew what Mr. Pearse or
 7 Detelina Subeva had said to the Government about that run.
 8 Do you recall?
 9 A Yes.
 10 Q And, Mr. Singh, did the Government show you any
 11 statements made by other witnesses in this case?
 12 A No, ma'am.
 13 Q What did the Government show you?
 14 A Nothing, other than e-mails that I had been on when I was
 15 at Credit Suisse.
 16 Q Defense counsel, however, showed you some e-mails that
 17 you were not on, didn't he?
 18 A Yes, ma'am.
 19 MS. NIELSEN: Your Honor, I'd like to use the ELMO
 20 now if I could.
 21 THE COURT: You may.
 22 (Exhibit published.)
 23 BY MS. NIELSEN:
 24 Q I am showing you what has been previously admitted as
 25 Defense Exhibit 1825.

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3209

1 Do you recall seeing this document?
 2 A Yes, ma'am.
 3 Q I believe you testified that you were -- that you did not
 4 know that you were an executor of Andrew Pearse's will, is
 5 that correct?
 6 A That is correct, ma'am.
 7 Q Now, Mr. Pearse, [sic] are you copied on this e-mail from
 8 Andrew Pearse anywhere?
 9 A I am not copied on this e-mail, ma'am.
 10 Q Had you seen this e-mail before defense counsel showed it
 11 to you yesterday?
 12 A No, I have no recollection of this e-mail at all.
 13 Q I am showing you now what's been marked and previously
 14 admitted as Government's Exhibit 2016 -- I'm sorry, Defense
 15 Exhibit 2016.
 16 (Exhibit published.)
 17 BY MS. NIELSEN:
 18 Q Do you recall this e-mail from yesterday?
 19 A Yes, ma'am.
 20 Q Are you copied on this e-mail?
 21 A No, ma'am.
 22 Q Had you ever seen it before it was put up by the defense
 23 counsel yesterday?
 24 A No, ma'am.
 25 (Exhibit published.)

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3210

1 BY MS. NIELSEN:
 2 Q And I am showing you now what was marked as Defense
 3 Exhibit 2020 in evidence.
 4 Do you recall this from yesterday?
 5 A Yes, ma'am.
 6 Q And are you copied on this e-mail?
 7 A No, ma'am.
 8 Q And had you seen this before yesterday?
 9 A No, ma'am.
 10 (Exhibit published.)
 11 Q I am showing you the attachment from Government's
 12 Exhibit -- or from Defense Exhibit 2020, which I believe is
 13 2020-A.
 14 Had you seen this document before yesterday?
 15 A No, ma'am, I've never seen this document before.
 16 Q So if you look at the line on the bottom of this page
 17 where the indication is "e.g. Uncle"?
 18 A Yes, ma'am.
 19 Q Had you ever seen this before yesterday?
 20 A No, ma'am, never.
 21 Q Had anyone approached you about working for Palomar in
 22 November of 2013?
 23 A No, ma'am.
 24 THE COURT: Turn off the ELMO, Mr. Jackson, so it
 25 doesn't turn into selfie land. Thank you.

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3211

1 MS. NIELSEN: Thank you.

2 BY MS. NIELSEN:

3 Q Now, defense counsel did ask you about your discussions

4 with Andrew Pearse regarding an investment fund, correct?

5 A Yes, ma'am.

6 Q When did you have those discussions with Mr. Pearse about

7 the investment fund?

8 A They were in mid-February to mid-April in the year 2013.

9 Q And defense counsel specifically asked you about a

10 company called Fladgate.

11 Do you remember that?

12 A Yes, ma'am, I do.

13 Q What is Fladgate?

14 A They're some kind of legal firm or services firm for

15 funds.

16 Q And what interaction did you have with Fladgate?

17 A None, ma'am.

18 Q Do you recall having some exposure to Fladgate in the

19 spring of 2013 in relation to the fund opportunity?

20 A I remember a document that Andrew had sent in the e-mail.

21 It was something they had produced. I don't remember meeting

22 anyone from Fladgate.

23 MS. NIELSEN: I was wrong, I am going to need the

24 ELMO again.

25 THE COURT: I really can't hear you. You are

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3212

1 mumbling. Keep your voice up, please.

2 MS. NIELSEN: Yes, Your Honor. I'm sorry, I'm going

3 to need the ELMO again.

4 (Exhibit published.)

5 BY MS. NIELSEN:

6 Q I am showing you what was marked as Defense Exhibit 2017

7 from yesterday.

8 Do you recognize this?

9 A Yes, ma'am.

10 Q And is that your e-mail account?

11 A Yes, it is, ma'am.

12 Q Which e-mail account?

13 A The one detailed as Dilawar Property Limited.

14 Q What's the date on this e-mail?

15 A It is 24th of November, 2013.

16 Q And I am going to show you now the attachment, DX-2017-A.

17 (Exhibit published.)

18 Q Do you recall seeing this yesterday?

19 A Yes, ma'am.

20 MS. NIELSEN: And I will scroll through it briefly.

21 Q Do you recall defense counsel asking you about these

22 slides yesterday?

23 A Yes, ma'am.

24 Q Now, who created these slides?

25 A Ma'am, could you flip forward a couple of slides so I can

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3213

1 recognize it properly?

2 Q Of course.

3 THE COURT: The question is who created these

4 slides, if you know?

5 A I recall I created these slides, ma'am.

6 Q And when did you create these slides?

7 A I can't remember the specific time, ma'am, but prior to

8 the date it was clearly sent.

9 Q Do you recall why you created these slides?

10 A Ma'am, there's some structural ideas for structured

11 finance transactions and I was showing them to Andrew Pearse,

12 who was my ex-boss and was very familiar with structured

13 finance transactions, to get his thoughts on them.

14 Q And was it in relation to any investment fund that you

15 were discussing with Andrew Pearse?

16 A No, ma'am.

17 Q What was it in relation to, Credit Suisse business?

18 A Ma'am, these are structured finance ideas that I was

19 developing myself and I wanted a second pair of eyes to review

20 them, give me critique, tell me if he thinks they work, if

21 they don't work.

22 My view at the time was they're good ideas and I may

23 try to pursue them myself.

24 Q Now, you sent these to the -- to Andrew Pearse in

25 November of 2013.

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3214

1 Do you recall why that was?

2 A No, there's nothing specific I recall about the timing.

3 Q Were you having any discussions with Andrew Pearse in

4 November of 2013 about going into business with him?

5 A No, ma'am.

6 Q About going into business with Jean Boustani?

7 A No, ma'am.

8 Q Were you pitching these ideas to him to join him in his

9 fund?

10 A No, ma'am.

11 Q In November of 2013, was Andrew Pearse trying to bring

12 you into his fund?

13 A No, ma'am.

14 Q And why not, if you have an understanding?

15 A He doesn't need me, ma'am. He's been my boss for 15

16 years. He's taught me most of what I know. Why pay for me

17 when you know it yourself?

18 Q Now, Mr. Singh, defense counsel asked you whether in 2015

19 other bankers at Credit Suisse were more positive about Credit

20 Suisse continuing to do business with Privinvest than you.

21 Do you recall that?

22 A Yes, I recall that.

23 Q And I believe particularly he mentioned Eraj Srivani.

24 Do you recall that?

25 A Yes, I do, ma'am.

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3215

1 Q What specifically do you recall about Eraj Srivani's
 2 meeting of Mr. Safa of Privinvest?
 3 A I recall that when Mr. Eraj Srivani joins as the head of
 4 Emerging Markets, that it is natural for someone in that
 5 position to go meet with investors and clients and be shown
 6 around so that they get a better understanding for the
 7 business.
 8 Mr. Adel Afioni takes him around to meet with
 9 Mr. Iskandar Safa at his house. I don't know if anyone else
 10 was there. I don't know if Mr. Boustani was there, for
 11 example, but I remember the reference was that Mr. Safa was
 12 there, Iskandar Safa.
 13 So when they go around, Mr. Afioni, Adel Afioni,
 14 is positive or bullish about the prospects of raising money
 15 under the Proindicus transaction, which I had previously told
 16 to Andrew Pearse we cannot do. It is not possible, for the
 17 obvious reasons that there has been an extension, the project
 18 is not making money. Which investor is really going to want
 19 to come into this transaction now?
 20 And Andrew Pearse after this meeting calls me and
 21 he's very frustrated. He feels that he's been made to look
 22 like a fool in the middle because people from Credit Suisse
 23 are going around and telling, I guess, his boss at the time,
 24 Mr. Safa, that it is possible. You can do it. And he has
 25 conveyed my message that it is not possible. And in his anger

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3216

1 and angst, he reveals to me that Mr. Afioni has also taken
 2 money from Privinvest.
 3 Q Did he explain in what context Mr. Afioni had taken
 4 money from Privinvest?
 5 A He didn't tell me the specifics of the reason, and I
 6 didn't ask him.
 7 Q What was your understanding of what he meant when he said
 8 Adel Afioni had taken money from Privinvest?
 9 A It's a side payment like Andrew was promised and like I
 10 was promised and paid.
 11 Q And Adel Afioni, was he a colleague at Credit Suisse?
 12 A Yes, ma'am.
 13 Q And the transaction that you were talking about in
 14 relation to this meeting and this call, which transaction was
 15 that?
 16 A It was the Proindicus transaction.
 17 Q And specifically, was it thoughts of an additional upsize
 18 for Proindicus?
 19 A Yes, ma'am.
 20 Q Now, Mr. Singh, defense counsel asked you some questions
 21 about your guilty plea and what crime you pled to.
 22 Do you recall?
 23 A Yes, ma'am.
 24 Q And what crime did you plead guilty to?
 25 A Ma'am, I pled guilty to conspiracy to commit money

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3217

1 laundering.
 2 Q And you pled guilty pursuant to a Cooperation Agreement,
 3 is that correct?
 4 A That is correct, ma'am.
 5 Q And, Mr. Singh, how much have you paid in forfeiture to
 6 the Government for that crime to which you've pled guilty?
 7 A Ma'am, I have paid \$5.7 million.
 8 Q And how much time in prison do you face for that crime?
 9 A I face up to twenty years.
 10 Q And what do you think will happen, Mr. Singh, if you
 11 don't tell the truth here?
 12 A I will breach the agreement that I've made with the
 13 Government, so I will be subject to further charges on top of
 14 conspiracy to commit money laundering. I will be bound by my
 15 guilty plea and I will be bound by, obviously, the monies that
 16 I've given to the Government, which is \$5.7 million. And I
 17 will probably be subject to further charges of perjury and
 18 further sentencing.
 19 MS. NIELSEN: Your Honor, may I have a moment to
 20 confer with my co-counsel?
 21 THE COURT: You may.
 22 (Pause.)
 23 MS. NIELSEN: Your Honor, no further questions.
 24 THE COURT: Thank you.
 25 Thank you, Mr. Singh. You are done. You may step

SAM OCR RMR CRR RPR

Singh - redirect - Nielsen 3218

1 down, sir.
 2 THE WITNESS: Thank you, Your Honor.
 3 THE COURT: You're very welcome.
 4 All right, ladies and gentlemen of the jury, we are
 5 now going to take our 15-minute break and then we will have a
 6 late-side lunch, but no talking about the case. We are not
 7 there yet.
 8 And enjoy the 15-minute break and then we will be
 9 back. Thank you.
 10 (Jury exits.)
 11 THE COURT: You may step down, sir, thank you very
 12 much.
 13 (Witness steps down.)
 14 THE COURT: The jury has left the courtroom. The
 15 witness is leaving the witness stand In the courtroom.
 16 You may be seated, ladies and gentlemen.
 17 Do we have any procedural issues to address outside
 18 of the presence of the jury and with the defendant present
 19 before we begin our 15-minute comfort break?
 20 MR. BINI: Not for the Government.
 21 THE COURT: Anything from defense?
 22 MR. JACKSON: No, Your Honor.
 23 THE COURT: Okay, we will see you in 15 minutes.
 24 Thank you.
 25 (Recess taken.)

SAM OCR RMR CRR RPR

1 (Judge WILLIAM F. KUNTZ, II exited the courtroom.)
 2 (In open court - jury not present.)
 3 THE COURTROOM DEPUTY: All rise.
 4 (Judge WILLIAM F. KUNTZ, II entered the courtroom.)
 5 THE COURTROOM DEPUTY: Judge Kuntz, presiding.
 6 THE COURT: Thank you. We have the appearances and
 7 the defendant is being produced.
 8 Do we have any -- you may be seated, ladies and
 9 gentlemen, excuse me.
 10 Do we have any procedural issues to address once the
 11 defendant is back in the courtroom?
 12 Welcome back.
 13 (Defendant entered courtroom.)
 14 THE COURT: Before we bring in the jury, anything
 15 from the Government?
 16 MR. BINI: Not from the Government, Your Honor.
 17 THE COURT: From the defense?
 18 MR. JACKSON: No, Your Honor.
 19 THE COURT: All right, Mr. Jackson, would you call
 20 the jury back in with the CSO?
 21 (Pause.)
 22 (Jury enters.)
 23 THE COURT: Welcome back, ladies and gentlemen of
 24 the jury. Again, thank you for your promptness. Please be
 25 seated.

SAM OCR RMR CRR RPR

1 S-A-N-T-A-M-A-R-I-A.
 2 THE COURT: Thank you.
 3 You may inquire, counsel.
 4 MR. MEHTA: Thank you, Your Honor.
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 6 (Continued on the following page.)
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SAM OCR RMR CRR RPR

1 And I am going to ask the Government to call their
 2 next witness.
 3 MR. MEHTA: Your Honor, the Government calls Marco
 4 Santamaria.
 5 THE COURT: Okay, please have the witness come
 6 forward and be sworn.
 7 MR. MEHTA: Yes, Your Honor.
 8 THE COURT: Thank you.
 9 (Witness entered the courtroom.)
 10 THE COURT: Please come forward, my courtroom deputy
 11 will swear you in at the front here. Stand up here, sir.
 12 (Witness takes the stand.)
 13 THE COURT: Thank you.
 14 THE COURTROOM DEPUTY: Please raise your right hand.
 15 Do you solemnly swear or affirm the answers you are
 16 about to give the Court will be the truth, the whole truth and
 17 nothing but the truth, so help you God?
 18 THE WITNESS: I do.
 19 THE COURT: Please be seated, sir. I am going to
 20 ask you to sit down. Make sure that microphone is on, that
 21 the green light is lit. The microphone swivels to you. It
 22 will twist, so twist it forward, lean forward a little bit.
 23 State your name and spell it, and then counsel will
 24 inquire.
 25 THE WITNESS: Marco Santamaria, M-A-R-C-O,

SAM OCR RMR CRR RPR

1 M A R C O S A N T A M A R I A,
 2 called as a witness by the Government, having been first
 3 duly sworn/affirmed by the Courtroom Deputy, was examined
 4 and testified under oath as follows:
 5 DIRECT EXAMINATION
 6 BY MR. MEHTA:
 7 Q Mr. Santamaria, where do you currently work?
 8 A I work at Bluecrest Capital in New York.
 9 THE COURT: Would you spell that for the reporter,
 10 please? And keep your voice up.
 11 THE WITNESS: B-L-U-E-C-R-E-S-T Capital.
 12 Q And what is Bluecrest Capital?
 13 A It is a hedge fund.
 14 Q And what's your position there?
 15 A I'm a portfolio manager.
 16 Q And prior to working at Bluecrest Capital, can you just
 17 tell the jury about your employment background a little bit?
 18 A I started my career as a -- as an economist at the
 19 Federal Reserve. I worked at Standard & Poors doing credit
 20 ratings for sovereign governments around the world. I worked
 21 as an economist on Wall Street for a period of time, and I
 22 have been a portfolio manager for the last 15 years or so.
 23 Q Did you ever work at Alliance Bernstein?
 24 A Yes, I did.
 25 Q When did you start there?

SAM OCR RMR CRR RPR

1 A I started in 2010.

2 Q And when did you stop working there?

3 A At the beginning of 2017.

4 Q And what was your position at Alliance Bernstein?

5 A I was a portfolio manager managing funds in emerging

6 markets.

7 Q And what is Alliance Bernstein?

8 A It's a large investment management firm based in

9 New York.

10 Q And where was your office located?

11 A In New York City.

12 Q Now, you mentioned Alliance Bernstein is a large

13 investment management firm.

14 Who are your clients, or who were your clients?

15 A Our clients ranged from large institutions, like pension

16 funds and insurance companies, to individuals who would invest

17 in mutual funds, much like you and I would do with our own

18 funds.

19 Q Are these discretionary accounts?

20 A Yes, they are.

21 Q Can you explain to the jury what a discretionary account

22 is?

23 A A discretionary account is one in which the investor

24 provides us, as portfolio managers, the ability to direct the

25 investments, choose what investments to make and not to make,

SAM OCR RMR CRR RPR

1 A A prospectus is a document that outlines the terms and

2 conditions of a particular bond or loan offering.

3 Q And why would you read a prospectus?

4 THE COURT: Would you move the microphone a little

5 closer to you, sir, because we are losing you?

6 Repeat the question.

7 BY MR. MEHTA:

8 Q Why would you review a prospectus?

9 A A prospectus would or does outline the basic features of

10 a transaction. There are -- it will tell you, for example,

11 what the proceeds of a particular transaction are being used

12 for. It will outline what would constitute a default. In

13 some cases there might be a guarantee by another entity on the

14 transaction and it would outline the terms of that guarantee.

15 And generally, outline the basic parameters of a transaction.

16

17 (Continued on the following page.)

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SAM OCR RMR CRR RPR

1 and the timing of those investments.

2 Q Does that mean that when you decide to make an

3 investment, you don't have to consult with a particular

4 client, is that right?

5 A That is true.

6 Q You make them on your own?

7 A Correct.

8 Q And when you made investments for your clients at

9 Alliance Bernstein between 2010 and 2017, were you located in

10 New York?

11 A Yes, I was in New York at the time.

12 Q Now, can you sort of walk the jury through a little bit

13 about your investment decision-making process generally?

14 A Well, we relied on the research that our research team

15 did on -- on particular investment situations. The research

16 team would make a recommendation that was debated within the

17 entire investment team, meaning other research analysts, as

18 well as portfolio managers. And then a consensus was -- was

19 reached on whether or not to make an investment. And

20 generally, as the lead portfolio manager for Emerging Markets,

21 I would -- I would lead those discussions.

22 Q As part of your investment process, did you ever review

23 prospectuses?

24 A Yes, very often.

25 Q What's a prospectus?

SAM OCR RMR CRR RPR

1 bY MR. MEHTA: (Continuing.)

2 Q Let's break that down a little bit. You mentioned that

3 the prospectus would discuss the proceeds. What do you mean

4 by that?

5 A Well, the proceeds would be when a borrower borrows

6 money, the use of proceeds section of an offering memorandum

7 would tell you what the borrower is going to do with that

8 money.

9 Q Why would that be important for someone who's going to be

10 investing in a loan or a debt instrument?

11 A It's important to assess whether the loan monies are

12 being used in a manner that would generate revenue down the

13 road to be able to repay the loan.

14 Q You also mentioned default or events of default, can you

15 explain to the jury what that means?

16 A A default is when a borrower fails to make payment on a

17 loan or a bond.

18 Q And does the prospectus outline certain provisions that

19 would cause a default?

20 A Yes. A default is not just the cessation of payments on

21 a loan, but also certain other events would trigger a default;

22 for example, not paying on other obligations or failing to

23 live up to the terms and conditions of the offering

24 memorandum.

25 Q When you mentioned about not paying other obligations is

SN OCR RPR

Santamaria - direct - Mehta 3227

1 that sometimes referred to as a cross default provision?

2 A Yes, that's what it's known as.

3 Q Can you explain to the jury what that means?

4 A Exactly what it sounds like which is if a borrower fails

5 to pay another creditor other than yourself, then you can

6 claim a default on the obligation for which you are a party

7 to.

8 Q And, so, would it be important for you to know, for

9 example, whether the borrower has other loans outstanding?

10 A Yes, it would.

11 Q Why is that?

12 A So that I would be able to have the knowledge that if

13 those loans are not being paid that I can trigger a default on

14 my own -- on the obligation to which I am a party.

15 Q Would it be important for you to know whether those other

16 loans are due before the loan that you're going to be

17 investing in?

18 A Yes, it would be very important to know that.

19 Q And why is that?

20 A So that I know -- I can assess whether the borrower will

21 have the appropriate cash flow to be able to service my loan.

22 Q So essentially you want to be able to assess whether they

23 will have the money to pay you back if they have other people

24 they have to pay back first?

25 A That is exactly right.

SN OCR RPR

Santamaria - direct - Mehta 3228

1 Q You mentioned the guarantee. Can you explain what a

2 guarantee is, just generally?

3 A A guarantee is when a third party agrees to ensure

4 payment in the case that the borrower does not make payment.

5 Q And can that be a government that guarantees the loan,

6 for example?

7 A Yes, it could be.

8 Q What is a credit risk, generally?

9 A Credit risk is the risk that a borrower will not make

10 timely payments and in full.

11 Q How do you assess credit risk in your business?

12 A Generally it's a -- it's an assessment of the solidity of

13 the business in terms of -- in the case of a corporate issuer.

14 In the case of a government issuer, a credit risk is assessed

15 on the basis of economic analysis and the ability of a country

16 to generate the resources to make payment on debt.

17 Q Have you ever heard the term reputational risk?

18 A I have.

19 Q What is reputational risk?

20 A That is the risk that an investment will cause

21 embarrassment to your firm or, worse, to your clients.

22 Q And does corruption and bribery factor into reputational

23 risk concerns?

24 A Yes, it would.

25 Q How so?

SN OCR RPR

Santamaria - direct - Mehta 3229

1 A It's not -- you know, corruption first of all is illegal

2 so we do not want to be associated with a transaction in which

3 illegal activities are taking place.

4 Q I want to direct your attention now to the fall of 2013,

5 September 2013 to be precise. Were you still working at

6 Alliance Bernstein at that time?

7 A Yes, I was.

8 Q What was your position at that time?

9 A I was a portfolio manager.

10 Q For which group?

11 A For the emerging markets group.

12 Q I know I asked you earlier, but generally what does an

13 investment manager do?

14 A Manages funds for clients in a particular sector; in my

15 case emerging markets.

16 Q When you refer to funds these are funds that are both

17 onshore which means in the United States?

18 A Correct.

19 Q And also some offshore funds that are in some other

20 country, domiciled in some other country; is that correct?

21 A Yes, that's correct also.

22 Q Is it your understanding that U.S. investors can invest

23 in onshore funds and in offshore funds?

24 A That is my understanding.

25 Q Where was your office located in September of 2013?

SN OCR RPR

Santamaria - direct - Mehta 3230

1 A It was in New York City.

2 Q Do you know an individual name the Pavel Lvov?

3 THE COURT: Spell the name for the reporter,

4 counsel.

5 MR. MEHTA: P-A-V-E-L L-V-O-V.

6 THE COURT: Do you know that person?

7 THE WITNESS: I do know Pavel Lvov.

8 BY MR. MEHTA:

9 Q Who is Pavel Lvov?

10 A At the time he was a sales representative for a Russian

11 bank named VTB.

12 Q Were you one of his clients?

13 A I was.

14 Q What does it mean to be a client of, say, the bank that

15 he worked for?

16 A I traded with that bank and Pavel was the counterparty

17 with which I conducted those trades.

18 Q Would Pavel provide you information on new deals, for

19 example?

20 A Yes, he would.

21 Q Now, I want to refer your attention to an investment

22 called EMATUM, do you recall that?

23 A I do.

24 Q What was EMATUM?

25 A EMATUM was a transaction in which a newly established

SN OCR RPR

Santamaria - direct - Mehta 3231

1 Mozambican fishing enterprise was borrowing funds to purchase
 2 fishing equipment, fishing ships specifically, and they were
 3 doing so with the benefit of a government guarantee, the
 4 Government of Mozambique.
 5 Q And I want to show you now Government Exhibit 2477, in
 6 evidence.
 7 (Exhibit published.)
 8 Q It's on your screen Mr. Santamaria.
 9 MR. MEHTA: And, Your Honor, if Mr. Jackson would be
 10 so kind to give him a hard copy of everything.
 11 THE COURT: Yes, please. Would you do that,
 12 Mr. Jackson? Thank you very much.
 13 You can look at the screen but my courtroom deputy
 14 is going to give you the volume that has the hard copies of
 15 the documents.
 16 You may proceed, counsel. Do you want to call his
 17 attention to a particular page? Go ahead.
 18 BY MR. MEHTA:
 19 Q If you can look on the screen, Mr. Santamaria, but it's
 20 tab one if it's more helpful to do that. Do you recognize the
 21 document?
 22 A I do.
 23 Q What is it?
 24 A It is a note from Pavel Lvov telling me about a
 25 transaction that they were -- that his bank was bringing to

SN OCR RPR

Santamaria - direct - Mehta 3232

1 market.
 2 Q What's the date of this e-mail?
 3 A The date is September 25, 2013.
 4 Q And what's the subject?
 5 A Will the subject is EMATUM bond package.
 6 Q You see that there are a number of attachments?
 7 A I do.
 8 MR. MEHTA: And if we could go to 2478, please?
 9 (Exhibit published.)
 10 BY MR. MEHTA:
 11 Q I don't know if you recall the prior e-mail referred to
 12 offering circular. We discussed prospectus. Is that the same
 13 as an offering circular?
 14 A Yes, it is.
 15 Q What is this document, Mr. Santamaria?
 16 A This is the offering circular or prospectus for the
 17 EMATUM transaction that you referred to earlier.
 18 Q Okay. Did you review this document before deciding to
 19 invest in the EMATUM LPNs?
 20 A Yes, I did.
 21 MR. MEHTA: Can we go to page 33, Ms. DiNardo?
 22 (Exhibit published.)
 23 BY MR. MEHTA:
 24 Q And what is this provision, Mr. Santamaria?
 25 A This is the use of proceeds that we were talking about

SN OCR RPR

Santamaria - direct - Mehta 3233

1 earlier where the borrower describes what he -- what will be
 2 done with the money that is being borrowed.
 3 Q And you mentioned earlier this is the type of provision
 4 you would have reviewed?
 5 A Yes.
 6 Q Do you recall reviewing this provision at the time?
 7 A I do.
 8 Q I don't want you to read the entire thing but could you
 9 summarize for the jury what the proceeds supposed to be used
 10 for?
 11 A The proceeds were to be used to purchase 27 fishing
 12 vessels as well as some attendant services to help establish
 13 this fishing enterprise.
 14 MR. MEHTA: And can we now go to page 49? Can you
 15 blow that up, please?
 16 Q Does the offering circular also include this document?
 17 A Yes, it does.
 18 Q Okay. What is this document?
 19 A It's a document that describes the terms and conditions
 20 of the transaction.
 21 Q Isn't it referred to as a loan agreement or a term
 22 facility agreement?
 23 A Correct.
 24 Q Is reviewing a loan agreement important before making an
 25 investment in a loan?

SN OCR RPR

Santamaria - direct - Mehta 3234

1 A Yes, it is.
 2 Q Okay. Why is that?
 3 A As I mentioned earlier, it -- it describes the parameters
 4 of the direction and the protections available to a contractor
 5 as well as the obligations of the borrower.
 6 MR. MEHTA: Can we go to page -- page 23 of the PDF
 7 and 32 of the loan agreement?
 8 Q Do you see where it says general undertakings, sir?
 9 A I do.
 10 Q What is a general undertaking?
 11 A Those are the commitments of the borrower for this
 12 transaction.
 13 Q And who is the borrower in the transaction?
 14 A The borrower was EMATUM, which is the fishing company
 15 with credit support from the Republic of Mozambique.
 16 Q And are general undertakings important for you to review
 17 before making an investment decision?
 18 A Yes, it is.
 19 Q Why is that?
 20 A It provides information on what the borrower has agreed
 21 to do in order to keep the transaction in good stead.
 22 MR. MEHTA: Can we go to provision 19.2 and blow it
 23 up, please?
 24 BY MR. MEHTA:
 25 Q One of the general undertakings is this compliance with

SN OCR RPR

- 1 laws provision. Do you see that?
- 2 A I do.
- 3 Q Okay. And would you have reviewed this provision before
- 4 making a decision in the EMATUM LPN?
- 5 A Yes, sir.
- 6 Q And why is that?
- 7 A As I mentioned earlier I would not want to invest in a
- 8 transaction in which the borrower would be engaging in illegal
- 9 activities and I would want to make sure that they undertake
- 10 not to do so.
- 11 MR. MEHTA: Can we go to 19.7, scrolling down?
- 12 Q And this is another use of proceeds provision?
- 13 A Yes.
- 14 Q And, here -- well, can you sort of summarize what this
- 15 says to the jury?
- 16 A This provision says that the borrowed funds would not be
- 17 used for the purposes of facilitating corruption.
- 18 Q And would you have reviewed this provision before making
- 19 an investment in EMATUM?
- 20 THE COURT: Counsel, again, keep your voice up. The
- 21 Court Reporter is having difficulty hearing you and so is the
- 22 jury, I'm sure.
- 23 BY MR. MEHTA:
- 24 Q Would you have reviewed this provision before making the
- 25 investment in EMATUM?

SN OCR RPR

- 1 A Yes, it was provided by the Ministry of Finance.
- 2 MR. MEHTA: Now, if we can go back to the e-mail
- 3 from Mr. Lvov which is 2477.
- 4 (Exhibit published.)
- 5 BY MR. MEHTA:
- 6 Q Did Mr. Lvov provide other documents for your
- 7 consideration?
- 8 A Yes. As you can see from the e-mail, there were other
- 9 attachments that he sent, including a note from the rating
- 10 agency, Moody's, explain its rating for the Republic of
- 11 Mozambique as well as what they called a teaser which was an
- 12 internal document that they provided to describe the issuer as
- 13 well as The Republic of Mozambique in a little bit more
- 14 detail.
- 15 MR. MEHTA: Can we look at 2479 in evidence?
- 16 (Exhibit published.)
- 17 MR. MEHTA: Can you blow that up at the top, please?
- 18 Q What is this document?
- 19 A This is a notice from Moody's Investor Service announcing
- 20 that it had assigned a B-1 rating to the Republic of
- 21 Mozambique.
- 22 Q What's a B-1 rating?
- 23 A A B-1 rating is a speculative grade rating that tells you
- 24 that Mozambique is not of the highest credit quality.
- 25 Q And would you have considered that as part of your

SN OCR RPR

- 1 A Yes, I would have.
- 2 Q Why is that?
- 3 A Again, to avoid situations in which funds that we lent
- 4 were being used for illegal purposes.
- 5 Q Okay.
- 6 MR. MEHTA: Can we go to -- can we go to page 128 of
- 7 the PDF?
- 8 Q And this document was also attached to the offering
- 9 circular; correct?
- 10 A Yes, it was.
- 11 Q What is this document?
- 12 A This is the document certifying the guarantee provided by
- 13 the Rep of Mozambique to this transaction.
- 14 Q Would you have reviewed this document?
- 15 A Yes, I would have.
- 16 Q Why is that?
- 17 A Well, the investment was in a Greenfield or a new
- 18 project. It had no operating history, no cash flows, no
- 19 financial record whatsoever. So repayment of the transaction
- 20 would be heavily dependent on the Government of Mozambique and
- 21 the validity of the guarantee that they provided to this
- 22 transaction.
- 23 Q And looking at the last page here, is this guarantee
- 24 being provided through a particular ministry, go up a little
- 25 bit?

SN OCR RPR

- 1 investment decision?
- 2 A Yes, I would have.
- 3 MR. MEHTA: Can we go to 2479 -- 2480?
- 4 (Exhibit published.)
- 5 MR. MEHTA: Blow it up, please.
- 6 BY MR. MEHTA:
- 7 Q What is this document?
- 8 A This document is also a Moody's press release in which
- 9 they announce that Moody's is assigning a B-1 rating to the
- 10 transaction in question which was the same rating as what was
- 11 applied to the Republic.
- 12 Q So Moody's has assessed the ratings for the Republic and
- 13 the actual notes as the same?
- 14 A Correct, on the basis of the guarantee.
- 15 MR. MEHTA: Can we go to the next attachment, 2481,
- 16 please?
- 17 (Exhibit published.)
- 18 BY MR. MEHTA:
- 19 Q What is this document?
- 20 A This is the internal teaser that VTB produced in
- 21 connection with this transaction.
- 22 Q What is an internal teaser?
- 23 A It's a -- it's a document that is produced by VTB itself
- 24 and provided only to prospective clients for this transaction.
- 25 Q And did you review this document before investing in

SN OCR RPR

Santamaria - direct - Mehta 3239

1 EMATUM?

2 A Yes, I did.

3 MR. MEHTA: Can we come out of this and blow up the

4 bottom right? The bottom right.

5 Q And you see further news information there?

6 A I do.

7 Q Okay. Can you look at that yourself and summarize for

8 the jury what it says?

9 A Essentially this is highlighting the fact that the

10 president of Mozambique and the president of France were

11 meeting at the site of a shipyard to sort of commemorate the

12 signing of a commission to build ships.

13 Q Is that shipyard CMN?

14 A It is.

15 Q And below that do you see a reference to the UAE

16 based-contractor for the vessels?

17 A Yes, I see that.

18 Q And then subcontracted shipyards in France?

19 A Yes.

20 MR. MEHTA: Take it down, please, Ms. DiNardo.

21 Thank you.

22 BY MR. MEHTA:

23 Q Now, Mr. Santamaria, we discussed a number of provisions

24 just now. Was it important to your investment decision in

25 EMATUM to know that the proceeds would not be used exclusively

SN OCR RPR

Santamaria - direct - Mehta 3240

1 for the fishing infrastructure and the 27 boats as outlined in

2 the agreement?

3 A Yes, it would have been important to know.

4 Q Would it have been important to your investment decision

5 in EMATUM to know that millions of dollars had been paid or

6 would be paid to Mozambique government officials --

7 MR. SCHACHTER: Objection.

8 THE COURT: Overruled.

9 Q -- by Privinvest investors?

10 THE COURT: Read the question back. Please keep

11 your voice up.

12 (Record read.)

13 A Yes, it would have been important.

14 THE COURT: Why?

15 THE WITNESS: Because the funds that I lent were not

16 being put to the purpose to which I believed them to be lent

17 for.

18 THE COURT: Next question.

19 BY MR. MEHTA:

20 Q Would you have invested in the EMATUM LPNs if you had

21 known that Privinvest was paying or was going to pay millions

22 of dollars to Mozambican government officials?

23 MR. SCHACHTER: Objection.

24 THE COURT: Overruled. You may answer, sir.

25 A It would have been important to know.

SN OCR RPR

Santamaria - direct - Mehta 3241

1 Q I'm sorry --

2 THE COURT: It would have been important to know.

3 Why is the question that follows which is what I am asking.

4 Why would it have been important to know?

5 THE WITNESS: For the same reason; that the funds

6 that I lent were not being put to the productive purposes to

7 which I thought, and in the case of money being given to the

8 Finance Ministry, I would have been concerned about the

9 quality of the government guarantee under those circumstances.

10 THE COURT: Next question.

11 BY MR. MEHTA:

12 Q Would you have invested in EMATUM if you knew that

13 information?

14 A I would not have.

15 THE COURT: Why not?

16 THE WITNESS: For the same reasons that the funds

17 would have been placed -- would have been used for purposes to

18 which -- which would not have generated the revenues that I

19 was expecting from the project and I would have been concerned

20 about the quality of the government guarantee.

21 THE COURT: Next question.

22 BY MR. MEHTA:

23 Q Would it have been important to your investment decision

24 in EMATUM to know that Privinvest was going to pay or would

25 pay millions of dollars to bankers at Credit Suisse who were

SN OCR RPR

Santamaria - direct - Mehta 3242

1 on the deal team for the EMATUM transaction?

2 A Yes, it would have been important to know.

3 Q Why?

4 A It would place in question the validity of any of the

5 documents that were placed in front of me in my mind.

6 Q Would you have invested in EMATUM if you had known that

7 information?

8 A No, I would not have.

9 Q Looking at the government guarantee, would it have been

10 important for you to know for your investment decision in

11 EMATUM that Privinvest had made payments or would make

12 payments to Manuel Chang, the Mozambican minister of finance?

13 A Yes, it would have been important to know.

14 Q Why?

15 A It would have placed in question the validity of the

16 government guarantee on the transaction.

17 Q Would you have invested if you had known that

18 information?

19 A I would not have.

20 Q Did you know any of that information at the time that you

21 invested?

22 A I did not know any of this.

23 Q Did you decide to invest in the EMATUM LPNs in September

24 of 2013?

25 A Yes, I did.

SN OCR RPR

1 Q Who made that decision?
 2 A I did, together with the rest of my investment team.
 3 Q And where were you when you made that decision?
 4 A In New York City.
 5 Q What happens usually after you make a decision to invest?
 6 A An order is placed in an order management system and that
 7 order goes through a compliance system to ensure that accounts
 8 are permitted to buy the securities and then the order is
 9 transferred to our trading desk where the order is executed.
 10 Q In September of 2013 when you made the decision to invest
 11 in EMATUM, where was your trading desk located?
 12 A The trading desk was located in New York City.
 13 Q Do you have -- did you consult with your clients prior to
 14 making the EMATUM LPN investment?
 15 A I did not, as I managed discretionary accounts as we
 16 discussed earlier.
 17 Q And who executes the trades typically for your decisions?
 18 A A trader based in New York City.
 19 Q I'm going to show you Government Exhibit 401-A in
 20 evidence.
 21 THE COURT: You may publish.
 22 MR. MEHTA: Thank you, Your Honor.
 23 (Exhibit published.)
 24 MR. MEHTA: Blow up the top, please. Thank you.
 25 BY MR. MEHTA:

SN OCR RPR

1 that right?
 2 A Correct.
 3 Q Why is that?
 4 A Because the price was not 100 percent.
 5 Q Was this trade made in the primary market or secondary
 6 market?
 7 A It was made in the primary market.
 8 Q What is the primary market?
 9 A It is the market for a newly minted transaction.
 10 Q And what is the secondary market?
 11 A The secondary market is trades on securities that have
 12 already been issued and have -- you know, have some life
 13 behind them.
 14 Q Are you familiar with something called Regulation S?
 15 A In general terms, yes.
 16 Q What is Regulation S?
 17 A It is a regulation by which certain transactions are
 18 exempt from registering with the SEC.
 19 Q And are you permitted at Alliance Bernstein to purchase
 20 Reg S offerings for some of your clients?
 21 A Yes, I am.
 22 Q Is that for your offshore funds?
 23 A Yes.
 24 Q And do you know what seasoning is?
 25 A I do.

SN OCR RPR

1 Q What is this document, sir?
 2 A This is a trade confirmation.
 3 Q What is a trade confirmation?
 4 A It is a document that confirms a transaction that took
 5 place either verbally or through a chat between a trader --
 6 between traders.
 7 Q And do you know who Christopher Farina is?
 8 A Christopher Farina was a trader that worked on my team at
 9 Alliance Bernstein.
 10 Q And looking at the date, what's the date of this trade
 11 ticket?
 12 A September 27, 2013, the ticket itself, yes.
 13 Q And do you know who Alexis Vaughn is?
 14 A Alexis Vaughn was a representative of VTB.
 15 Q And what is the trade that Mr. Farina is making with
 16 Mr. Vaughn here?
 17 A That ticket shows a purchase on Alliance Bernstein's part
 18 of \$35 million worth of the Mozambique EMATUM finance
 19 transaction.
 20 Q And where did Mr. Farina sit on September 27, 2013?
 21 A He sat in New York City.
 22 MR. MEHTA: Now, if you can scroll down a little
 23 bit.
 24 BY MR. MEHTA:
 25 Q The principal is a little bit less than \$35 million; is

SN OCR RPR

1 Q What is seasoning?
 2 A Seasoning is a period of time, 40 days I believe, for
 3 which -- after which a -- a Reg S security becomes eligible to
 4 purchase for U.S. investors.
 5 Q And after the initial \$35 million purchase on September
 6 27, 2013, did you and Alliance Bernstein make additional
 7 purchases of the EMATUM LPN?
 8 A Yes, we did.
 9 Q Were those made in the secondary market?
 10 A Yes.
 11 Q And those could have been made for onshore funds or
 12 U.S.-based funds?
 13 A Yes.
 14 Q Mr. Santamaria, have you ever worked as a trader?
 15 A I have.
 16 Q And are you familiar with the difference between a trade
 17 date and a settlement date?
 18 A Yes, I am familiar.
 19 Q What's a trade date?
 20 A A trade date is the date in which a transaction actually
 21 occurs, the date that two traders agree to exchange
 22 securities.
 23 Q And in your experience as a trader and as a portfolio
 24 manager, when are you committed to a transaction?
 25 A On the trade date.

SN OCR RPR

Santamaria - direct - Mehta 3247

1 Q What is a settlement date?

2 A A settlement date is when cash and securities exchange

3 hands based on the terms of the trade that took place on the

4 trade date.

5 Q And approximately how much time passes before that

6 happens after a trade date?

7 A It varies by market but usually it's two days, two

8 business days following the trade.

9 Q Now, if I purchased a security on Monday morning at 10

10 a.m., do I have to wait two days for settlement before I can

11 then sell that security?

12 A No. You can trade that security almost immediately after

13 having purchased it on the trade date.

14 Q What would happen if traders could take back their trades

15 after committing to them on a trade date?

16 MR. SCHACHTER: Objection.

17 THE COURT: Overruled.

18 In the ordinary course, if you know.

19 A It would undermine the very basis upon which our

20 financial markets work. People need to have trust in the

21 validity of transactions as they take place.

22 Q Can you make a trade, Mr. Santamaria, and see if the

23 stock goes up or down and take it back because it hadn't

24 settled yet?

25 A No, I cannot do that.

SN OCR RPR

Santamaria - direct - Mehta 3248

1 Q Now, as part of your diligence, did you send anyone to

2 Mozambique?

3 A I personally did not.

4 Q Did anyone on your team go to Mozambique?

5 A Yes.

6 Q Who?

7 A I'm blank go on his name. Kenneth Colangelo.

8 THE COURT: Spell that for the reporter, please.

9 THE WITNESS: Kenneth, K-E-N-N-E-T-H,

10 C-O-L-A-N-G-E-L-O.

11 THE COURT: How much longer do you have with this

12 witness?

13 MR. MEHTA: Your Honor, about 15 minutes.

14 THE COURT: Ladies and gentlemen, we're going to

15 take our lunch break now. Do not talk about the case. We

16 will see you about 3:00. It's ten to 2 now. Do not talk

17 about your testimony during the break. Enjoy your lunch.

18 (Jury exits.)

19 THE COURT: You may step down, sir. Enjoy your

20 lunch.

21 (Witness steps down.)

22 (In open court.)

23 THE COURT: Thank you. The jury has left the

24 courtroom, the witness is leaving the courtroom as well. Do

25 we have any procedural issues to address in the absence of the

SN OCR RPR

Santamaria - direct - Mehta 3249

1 jury, in the absence of the witness but in the presence in the

2 defendant?

3 MR. MEHTA: No, Your Honor.

4 MR. SCHACHTER: No, Your Honor.

5 THE COURT: Everyone have a good lunch and we will

6 see you back here at 3:00.

7 MR. MEHTA: Thank you, Judge.

8

9 (Luncheon recess taken.)

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SN OCR RPR

Proceedings 3250

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

2 (In open court.)

3 (The Hon. WILLIAM F. KUNTZ II, presiding.)

4 (Defendant present.)

5 (The following occurs outside the presence of the jury.)

6 THE COURT: Welcome back. Do you have any

7 procedural items to address before we bring in the jury and

8 the witness?

9 MR. BINI: No, Your Honor.

10 THE COURT: From the defense?

11 MR. JACKSON: Two small ones. This doesn't need to

12 be handled now but we wanted to hand up to Mr. Jackson, if

13 it's acceptable, a proposed order that would allow us to bring

14 in some of the models, some of the boats that we intend to

15 introduce during the defense case.

16 THE COURT: Have you shared these models with the

17 prosecution?

18 MR. JACKSON: Yes, Your Honor.

19 THE COURT: Any objection to the models.

20 MR. BINI: I believe that --

21 THE COURT: Not, I believe. You have to learn how

22 to answer the questions. Do you have any objections? Either

23 yes you do, or no you don't or you're not sure yet.

24 MR. BINI: Yes, Your Honor.

25 THE COURT: What are they?

SN OCR RPR

1 MR. BINI: We believe the pictures to be sufficient
 2 so we object to bringing in toy boats to show the jury.
 3 THE COURT: Are these, shall we say, artistic
 4 creations as opposed to the actual boats? These are not the
 5 actual boats.
 6 MR. JACKSON: We tried to bring the actual boats,
 7 but the door was too small.
 8 THE COURT: I will tell you on the record, and you
 9 see my if courtroom deputy laughing, I had a request, I kid
 10 you not, when I was first on the bench, within the first three
 11 or four months, from some lawyers in a civil case who I think
 12 were traditionally, and I say this not in any way lacking
 13 affection state court practitioners, and they put in the
 14 following request in writing, We have a --
 15 Was it a generator or a compactor?
 16 THE COURTROOM DEPUTY: A compactor, Judge.
 17 THE COURT: A compactor which was about a quarter of
 18 this very spacious room. We cannot get it through the doors
 19 so we would like permission for you to demolish a wall in the
 20 courthouse to bring our exemplar into the courtroom, to this
 21 courtroom, to which I responded: I discussed your application
 22 with one of my rabbis of the beach here, former Chief Judge,
 23 former U.S. Attorney, the Honorable Raymond Dearie and Judge
 24 Dearie said, Do you remember, Bill, that I had something to do
 25 with the Westies litigation? And I said yes, Judge and he

SN OCR RPR

1 reached over and pulled out a hat box and he held it up in
 2 front of me and he said, I think your head would do very
 3 nicely in here under the right circumstances. He put it back
 4 and said, well, I'm not going to tell you what to do. I
 5 declined their application.
 6 I think if you had pictures it would be appropriate
 7 to use the pictures rather than the toy boats. Although I do
 8 commend defense counsel for not offering to bring in the real
 9 boats because I do have hat boxes.
 10 MR. JACKSON: Your Honor, this is -- I would just
 11 say in terms of our expert, we plan -- the order we were
 12 putting in wasn't to offer them. It was to bring them to the
 13 courthouse to present them to the court to try to offer them.
 14 We think our experts will be able to use these small models.
 15 They won't take up much room.
 16 THE COURT: Here is the thing: Big models, small
 17 models; if you have pictures, let's go with the pictures
 18 because people will fight about scale and scope and you have
 19 all of this high tech stuff. I'm sure they can give you some
 20 beautiful pictures of the boats.
 21 I am going to deny the application for the boat
 22 toys, but I appreciate the fact that you haven't asked me to
 23 knock down walls to bring in the original boats, but feel free
 24 to make the application and I will borrow hat boxes from my
 25 colleague, Judge Dearie.

SN OCR RPR

1 MR. JACKSON: We appreciate that, Judge.
 2 THE COURT: Okay.
 3 MR. JACKSON: And the one other issue I wanted to
 4 raise is that we understand that the court is having the
 5 charge conference on Tuesday morning. We didn't know if the
 6 Court wanted to instruct the jury to come in at the same time
 7 or a different time but we wanted to raise it with the Court.
 8 THE COURT: I thought about that, but I thought if I
 9 told the jury to come in hour X, you guys as we say in
 10 Brooklyn, you've got to fight about or discuss objections to
 11 the jury charge until time X. Whereas if I tell the jury to
 12 be here at 9:30 and you have a desire to get to the jury, you
 13 will be more focused in your observations.
 14 I thought about telling them to come in later, but
 15 then again you will be more focused in your objections and
 16 your discussion of the objections. Maybe you will spend more
 17 time trying to work things out over the long weekend if you
 18 know that there is a jury sitting there waiting to come back
 19 in and hear the end of the Government's case, assuming the
 20 Government doesn't finish today, and hear the beginning of
 21 defendant's case, assuming the defendant is putting on a
 22 cavities. So, I thought about it and I decided to tell the
 23 jury to be here for 9:30.
 24 MR. JACKSON: Makes sense.
 25 THE COURT: I try to be transparent up to a point

SN OCR RPR

1 and opaque beyond that.
 2 Any other issues from the defense?
 3 MR. JACKSON: No, thank you.
 4 THE COURT: From the Government?
 5 MR. BINI: No, Your Honor.
 6 THE COURT: Mr. Jackson, you can get the witness.
 7 Mr. Mehta, you can take the podium.
 8 MR. MEHTA: Thank you, Your Honor.
 9 THE COURT: Point the microphone up, please.
 10 MR. MEHTA: I'll project, Your Honor.
 11 THE COURT: Good.
 12 Sir, come back to the witness stand. We've been
 13 talking about projection. This is what I sound like with the
 14 microphone off. This is what I sound like with the microphone
 15 on. You too can do this.
 16 THE WITNESS: Was I not doing that?
 17 THE COURT: Not exactly.
 18 (Witness resumes the stand.)
 19 (Jury enters.)
 20 THE COURT: Welcome back, ladies and gentlemen of
 21 the jury. Again, thank you for your promptness and, again, I
 22 will not be seeing you on Monday. Nothing personal, but the
 23 Court is closed. So please be seated. Ladies and gentlemen
 24 of the public, be seated as well.
 25 And, sir, I will ask you as I said I would, have you

SN OCR RPR

1 spoken with anyone including your counsel about your testimony
 2 during the break?
 3 THE WITNESS: I have not.
 4 THE COURT: Thank you. Please continue, Counsel.
 5 MR. MEHTA: Thank you, Your Honor.
 6 THE COURT: Yes.
 7 CONTINUING CROSS-EXAMINATION
 8 BY MR. MEHTA:
 9 Q Mr. Santamaria, do you recall before the lunch break we
 10 were discussing a colleague of yours, a Kenneth Colangelo? Do
 11 you recall that?
 12 A Yes.
 13 Q And you had said that Mr. Colangelo had traveled to
 14 Mozambique. Do you recall that?
 15 A Yes.
 16 Q Why did Mr. Colangelo go to Mozambique?
 17 A It's part of our ongoing monitoring of existing positions
 18 and exposures.
 19 Q At the time that Mr. Colangelo went to Mozambique, had
 20 Alliance Bernstein on behalf of its clients built up a
 21 position in the EMATUM LPNs?
 22 A Yes, it had.
 23 Q Can you explain to the jury what a position is?
 24 A A position is the holdings that our accounts have in this
 25 particular security.

SN OCR RPR

1 A I believe it's about 75 or \$77 million, in that range.
 2 Q Now, I've been using the shorthand LPNs. What is an LPN?
 3 A LPN stands for loan participation note and it is a
 4 security that signifies ownership in a loan that was made by a
 5 bank and that has been now made available to other investors.
 6 Q And as an investor in the EMATUM LPN, are you also a
 7 lender?
 8 A Yes, I am.
 9 Q Now, directing your attention to March 2016, when
 10 Alliance Bernstein had built up a position of 75 to \$77
 11 million in the EMATUM LPN, was there an offering or an
 12 exchange at that time?
 13 A Yes, there was.
 14 Q Can you tell the jury what an exchange offering is?
 15 A An exchange offering is an offer on the part of the
 16 borrower to exchange the original loan or bond for a new
 17 security.
 18 Q And when you heard about this offering, what was your
 19 reaction, sir?
 20 A Surprise because the need for the exchange was driven by
 21 economic difficulties in making payments on the existing loans
 22 that we did not expect would occur.
 23 Q Alliance Bernstein began purchasing the EMATUM LPNs when
 24 they were issued in September 2013; is that correct?
 25 A Yes.

SN OCR RPR

1 Q And, as a result of the fact that Alliance Bernstein had
 2 built up a position, did Mr. Colangelo travel to Mozambique to
 3 meet with individuals there?
 4 A Yes, he did.
 5 Q What was the purpose of that?
 6 A The purpose was to discuss with economic analysts,
 7 political analysts, government officials and others, the
 8 economic prospects for Mozambique.
 9 Q Was that part of your ongoing diligence on the
 10 investment?
 11 A Yes, it was.
 12 Q And when Mr. Colangelo went to Mozambique, did you or
 13 anyone at Alliance Bernstein, to your knowledge, know that
 14 Privinvest had paid millions of dollars to bankers at Credit
 15 Suisse in connection with the EMATUM transaction?
 16 A No, we did not.
 17 Q And did you or colleagues at Alliance Bernstein know that
 18 Privinvest had paid or was going to pay millions of dollars to
 19 Mozambican government officials?
 20 A No, we did not know that.
 21 Q When Mr. Colangelo came back, did he have any knowledge
 22 of these payments?
 23 A He did not.
 24 Q Now by the time of March 2016, approximately how much of
 25 a position had Alliance Bernstein built in the EMATUM LPNs?

SN OCR RPR

1 Q And continued to make purchases in the millions of
 2 dollars all the way through March 2016; correct?
 3 A If my recollection is correct, yes, throughout that
 4 period.
 5 Q And during that period was EMATUM paying coupon payments
 6 on the bond?
 7 A Yes, it was.
 8 Q What's a coupon payment, sir?
 9 A It is the periodic interest payments that are due on a
 10 loan or a bond.
 11 Q Are those payments expected as a bondholder?
 12 A Yes, they are.
 13 Q And then, in March 2016 after all of these payments had
 14 been made by EMATUM, there was annex exchange note; isn't that
 15 correct?
 16 A Correct.
 17 Q And you were surprised by that?
 18 A Yes, I was.
 19 Q Now, what was your role in the exchange offering?
 20 A I helped to organize a committee of other creditors to
 21 try and improve the terms of the exchange to benefit our
 22 clients.
 23 Q And when you say creditors, are you referring to other
 24 investors in the EMATUM LPNs?
 25 A Yes, other lenders to EMATUM.

SN OCR RPR

- 1 Q And were those lenders international?
- 2 A Yes, they were all -- from all over the world.
- 3 Q Were a number of them in the United States of America?
- 4 A Yes.
- 5 Q Now, when you say you organized this committee, what do
- 6 you mean by that?
- 7 A I found out who the other creditors were, organized
- 8 telephone calls to discuss the potential terms of any exchange
- 9 that we might agree to conduct and created a forum for the
- 10 lenders to exchange ideas and thoughts on the exchange.
- 11 Q Now, when you were working on deciding whether to
- 12 participate in the exchange, did you review any documents in
- 13 connection with that decision?
- 14 A Yes. There was an offering memorandum for the exchange.
- 15 MR. MEHTA: Okay. Can we show Government Exhibit
- 16 241 in evidence?
- 17 THE COURT: You may publish.
- 18 (Exhibit published.)
- 19 Q Sir, if it's helpful for you, it's tab six in the binder
- 20 in front of you. Some are paper people so you never know.
- 21 Now, what is this document Mr. Santamaria?
- 22 A Well, very similar to the other offering memorandum. It
- 23 describes the terms and conditions for the exchange of old
- 24 security for new securities.
- 25 Q And this offering was referred to as a 144-A offering; do

SN OCR RPR

- 1 (Continuing)
- 2 Q Like Alliance Bernstein?
- 3 A Lining Alliance Bernstein.
- 4 MR. MEHTA: Can we go to page 74 of the .pdf the
- 5 very bottom, the bold sentence.
- 6 Q And, sir, this is under a section called: Risk factors.
- 7 And -- you know, I'll have you read this just one
- 8 sentence, sir.
- 9 A Failure to address actual and perceived risks of
- 10 corruption and money laundering may adversely affect
- 11 Mozambique's economy and ability to attract foreign direct
- 12 investment.
- 13 Q And before I asked you about this specific sentence.
- 14 Just generally, would you have reviewed risk factors
- 15 in this document?
- 16 A Yes, I would have.
- 17 Q Okay. And explain to the jury why you would have done
- 18 that.
- 19 A Essentially, as with the previous transaction, to
- 20 understand the terms and conditions and to understand the
- 21 risks that would be involved in the transaction.
- 22 Q And as to this sentence, this refers to risks of
- 23 corruption; is that correct?
- 24 A Correct.
- 25 Q Is there any mention in here about actual payments by

VB OCR CRR

- 1 you recall that?
- 2 A Yes.
- 3 Q Can you tell the jury what a 144 A offering is?
- 4 A It's an offering that is made in and available to United
- 5 States investors.
- 6 Q Now, is it available to all U.S. investors?
- 7 A I believe so.
- 8 Q Did they have to have certain qualifications?
- 9 A They have to be what is known as QUIBs which stands for
- 10 qualified institutional buyers.
- 11 Q And what do you know or understand a QUIB or a qualified
- 12 institutional buyer to be?
- 13 A It is a buyer that has assets under management of a
- 14 certain size so it's typically a large and very sophisticated
- 15 investor.

(Continued on the following page.)

SN OCR RPR

- 1 Prinvest to Mozambican government officials?
- 2 A There is not.
- 3 MR. MEHTA: And can we go to the next page, scroll
- 4 down.
- 5 (Exhibit published.)
- 6 MR. MEHTA: Blow that up, the top half, please.
- 7 And, in fact, if we could just blow up the "in 2015"
- 8 paragraph.
- 9 Q And again, sir, if you could read this to yourself and
- 10 then just sort of summarize it for the jury. Your
- 11 understanding of this.
- 12 (Pause in the proceedings.)
- 13 A So this highlights the fact that the proceeds from the
- 14 original notes had been used for other, other vessels other
- 15 than -- for other -- for purposes other than purely fishing
- 16 vessels, including defense equipment.
- 17 Q And does it say here that EMATUM had taken delivery of
- 18 the tuna boats?
- 19 A Yes, it does say that in the middle of the paragraph.
- 20 Q And it says that these are press reports, right?
- 21 A That is correct.
- 22 Q Okay. Does it say anywhere in here that, in fact, the
- 23 proceeds had been used to pay payments to Mozambican
- 24 government officials?
- 25 A It does not say that.

VB OCR CRR

1 Q Anywhere in here it says that Privinvest had made
 2 payments to bankers at Credit Suisse in connection with the
 3 loan for EMATUM?
 4 A No, it does not.
 5 MR. MEHTA: Can we go to -- actually, let me ask you
 6 a question on that.
 7 Q In looking at these risk factors, would it have been
 8 important for you to know before participating in this EMATUM
 9 exchange that Privinvest had made millions of dollars in
 10 payments to Mozambican government officials?
 11 A Yes, it would have been important to know.
 12 Q Why?
 13 A Once again, the use of proceeds in a manner that was not
 14 outlined in the documentation made the ultimate repayment of
 15 the transaction questionable.
 16 Q Would it have been important for you to know before
 17 participating in the exchange if Privinvest had paid or was
 18 going to pay millions of dollars to Manuel Chang, the Minister
 19 of Finance, who has signed the EMATUM LPN loan?
 20 A Yes, it would have been important to know that.
 21 Q Why is that?
 22 A It would have placed question on the value of the
 23 guarantee under the existing notes.
 24 Q And finally on this point, would it have been important
 25 for you to know that Privinvest had made paid millions of

VB OCR CRR

1 Q And so I understand, these other loans were going to be
 2 paid before you got paid on the exchange offering?
 3 A Precisely.
 4 Q Would knowing about the Proindicus loan been important to
 5 you before participating in the EMATUM exchange?
 6 MR. SCHACHTER: Objection.
 7 THE COURT: Overruled.
 8 You may answer.
 9 A Yes, it would have been important to know.
 10 Q Why?
 11 A I wouldn't have agreed to have other loans be made
 12 payable before my new bond.
 13 Q And would knowing about the MAM loan been important to
 14 you before you decided to participate in the exchange?
 15 MR. SCHACHTER: Objection.
 16 THE WITNESS: Yes.
 17 THE COURT: Overruled.
 18 You may answer.
 19 A Yes, for the same reason.
 20 THE COURT: Let me ask you. Would it have been
 21 possible for you in terms of your customary due diligence as a
 22 competent professional to have found out about the prior
 23 positions the way someone, to use a very rough and very poor
 24 analogy, would find out that there is a first mortgage on a
 25 house when a bank goes in to lend?

VB OCR CRR

1 dollars to bankers at Credit Suisse in connection with the
 2 EMATUM loan before participating in the exchange?
 3 A Yes, it would have.
 4 MR. MEHTA: Can we come out of this, please. We can
 5 come out of this document, thank you.
 6 Q Sir, is the Proindicus loan disclosed by name in the
 7 EMATUM exchange offer circular?
 8 A I don't believe it is, no.
 9 Q Is the MAM or Mozambique Asset Management loan disclosed
 10 by name in the exchange?
 11 A No, I don't believe it is.
 12 Q Did there come a time, sir, that you learned about these
 13 loans?
 14 A Yes, the time came.
 15 Q Okay. How?
 16 A At the time of the closing of the exchange transaction
 17 there was a delay and the delay was caused by the need for
 18 other creditors to approve the transaction. And at that
 19 point, the bankers disclosed that there were other loans that
 20 were existing.
 21 Q What was your reaction to this?
 22 A I was not happy about it because those loans, both the
 23 Proindicus and the MAM loan, matured before these new
 24 securities that were being issued and, as a result, had
 25 priority in payment in terms of chronology.

VB OCR CRR

1 Why didn't you know about the prior debt?
 2 THE WITNESS: These were private transactions that
 3 were not in the public domain.
 4 THE COURT: When you say private transactions, could
 5 you tell the jury what you mean by private transactions.
 6 THE WITNESS: A transaction that takes place between
 7 the borrower and the lender alone and is not made public to
 8 others.
 9 THE COURT: Okay, go ahead.
 10 Q And to be clear, you learned about these loans after you
 11 had decided to participate in the EMATUM exchange?
 12 A Yes, that is correct.
 13 MR. MEHTA: I want to go back to 241 for a second,
 14 Ms. DiNardo.
 15 THE COURT: It is in evidence. You may publish.
 16 (Exhibit published.)
 17 MR. MEHTA: I don't have the .pdf number, but it's
 18 page 124 of the document.
 19 (Exhibit published.)
 20 MR. MEHTA: And it's Bates number 287806. That's
 21 helpful. I think it's the next page. Thank you.
 22 Can you blow up the bottom where it says joint
 23 dealer managers transacting with the issuer.
 24 Q Sir, have you seen this before?
 25 A I have.

VB OCR CRR

- 1 Q Okay. What is this, tell the jury, please.
- 2 A It's a disclosure that the underwriters of the
- 3 transaction, which were CSFB and VTB had other business
- 4 dealings with EMATUM.
- 5 Q And when you say CSFB, what are you referring to?
- 6 A It's Credit Suisse.
- 7 Q Does it say anywhere in this section that those prior
- 8 dealings were, in fact, the Proindicus and MAM loans?
- 9 A It does not say that specifically.
- 10 Q And to your knowledge was, in fact, Credit Suisse and VTB
- 11 involved in the Proindicus and MAM loans?
- 12 A That is my understanding.
- 13 MR. MEHTA: We can come out of this, ma'am.
- 14 Q Now, with respect to the exchange again.
- 15 Did you have any knowledge at the time that you
- 16 decided to participate in the exchange that Mozambique had hid
- 17 the Proindicus and MAM loans from the International Monetary
- 18 Fund or IMF?
- 19 MR. SCHACHTER: Objection.
- 20 THE COURT: Overruled.
- 21 You may answer.
- 22 A I did not know that.
- 23 Q Okay. What is the IMF, sir?
- 24 A It is a financial organization funded by governments
- 25 around the world to provide financial aid in times of economic

VB OCR CRR

- 1 Q After the exchange, did you learn information about
- 2 whether Mozambique had disclosed the Proindicus and MAM loans
- 3 to the IMF?
- 4 A Yes. The IMF became aware --
- 5 MR. SCHACHTER: Objection.
- 6 THE COURT: Overruled.
- 7 Complete your answer.
- 8 A The IMF became aware of those loans and, in fact, the
- 9 program was suspended.
- 10 Q And when you say it's suspended, what do you mean by
- 11 that?
- 12 A I mean that the IMF stopped providing financial
- 13 assistance to Mozambique.
- 14 Q And what kind of impact would that have on a country like
- 15 Mozambique?
- 16 MR. SCHACHTER: Objection.
- 17 THE COURT: Overruled.
- 18 If you know.
- 19 A The financial assistance was providing valuable dollar
- 20 resources to Mozambique which, in turn, would be available to
- 21 make repayments on the loans that we had made.
- 22 Q And in fact, after the IMF program was suspended, did the
- 23 Eurobond default?
- 24 A That is correct.
- 25 Q Did the IMF disclosure have an effect on the bond in the

VB OCR CRR

- 1 distress for developing countries.
- 2 Q Would you consider Mozambique a developing country?
- 3 A I would.
- 4 Q Okay. And at the time, was Mozambique involved in an IMF
- 5 program?
- 6 A It was.
- 7 Q And can you explain to the jury what that means, to be
- 8 involved in an IMF program?
- 9 A Under an IMF program a country agrees to follow a certain
- 10 set of economic policies in exchange for which it obtains
- 11 financial assistance.
- 12 Q And given that information -- did you know that
- 13 information at the time?
- 14 A I knew they had a program, yes.
- 15 Q Given that information, would it have been important for
- 16 you to know that Mozambique had hid the Proindicus and MAM
- 17 loans from the IMF?
- 18 MR. SCHACHTER: Objection.
- 19 THE COURT: Overruled.
- 20 You may answer, if you know.
- 21 A Yes, it would have been important to know that.
- 22 Q Why?
- 23 A Because it would have placed that program, that IMF
- 24 program, in jeopardy had the IMF known the extent of
- 25 Mozambique's borrowing.

VB OCR CRR

- 1 marketplace?
- 2 A It did. The bond fell sharply afterwards. In price.
- 3 Q Now, I want to go back to March of 2016 when you're
- 4 determining whether or not to participate in this exchange
- 5 with your \$77 million holding.
- 6 Did you meet with anyone as part of that
- 7 decision-making process?
- 8 A Yes. The finance minister and his team, together with a
- 9 number of bankers came to our offices in New York to discuss
- 10 the transaction.
- 11 Q And is that sometimes referred to in your parlance as a
- 12 roadshow?
- 13 A Yes, you could call it that.
- 14 Q And just for the jury's knowledge, can you just kind of
- 15 explain that, what that means?
- 16 A A roadshow is a process by which a borrower or
- 17 prospective borrower will go around to various cities to meet
- 18 different creditors or potential creditors to answer any
- 19 questions and make themselves available to provide information
- 20 about their activities.
- 21 Q And you said that these meetings took place at your
- 22 offices; is that correct?
- 23 A Yes, that's right.
- 24 Q Is that in New York?
- 25 A In New York City.

VB OCR CRR

- 1 Q To the best of your recollection, sir, who was at these
2 meetings?
- 3 A It was the finance minister of Mozambique, together with
4 some of his colleagues, and he was accompanied by a number of
5 Credit Suisse bankers.
- 6 Q If you recall, sir, in sum and substance, what did the
7 finance minister say to you?
- 8 A He explained the need for a restructuring or exchange of
9 the original securities and described the terms that he was
10 hoping to achieve for that exchange and provided an update on
11 the economic developments in Mozambique at the time.
- 12 THE COURT: And when was this, again?
- 13 THE WITNESS: This was in March of 2016.
- 14 THE COURT: Continue.
- 15 Q Did anyone at that meeting tell you that Privinvest, the
16 contractor for the EMATUM transaction, had paid or was going
17 to pay millions of dollars to Mozambican government officials?
- 18 A No.
- 19 Q Did anyone at that meeting tell you that Privinvest had
20 paid and was going to pay millions of dollars to bankers at
21 Credit Suisse in connection with the EMATUM transaction?
- 22 A No.
- 23 Q Did anyone at that meeting disclose to you the Mozambican
24 government had hid the Proindicus and MAM loans from the IMF?
- 25 A No.

VB OCR CRR

- 1 MR. MEHTA: Yes, Your Honor.
- 2 Q If you could please review this e-mail that you wrote,
3 sir, and then tell the jury, in sum and substance, what you
4 wrote.
- 5 (Pause in the proceedings.)
- 6 A What I shared with the committee was that I believed that
7 the Mozambican finance minister was acting in good faith to
8 try and resolve a difficult situation, that their intent, the
9 Mozambicans' intent, to was to make the transaction voluntary
10 and not inflict losses on creditors and that I believe that
11 there was a financial formula available to achieve those
12 goals.
- 13 Q Now, on the last point, financial formula.
- 14 What do you mean by that?
- 15 A That it was possible to structure a new security that
16 would not be overly onerous to the Mozambican economy but that
17 would still protect my ultimate clients from economic losses.
- 18 Q Do you recall the coupon or interest payment on the
19 original EMATUM LPN?
- 20 A Honestly, I don't remember the exact number, no.
- 21 Q Do you recall what was being proposed here by Mozambique
22 on the Eurobond?
- 23 A I believe their original proposal was around ten percent.
- 24 Q Okay. And what were you asking for in this e-mail?
- 25 A I was asking for 12 percent.

VB OCR CRR

- 1 Q Did anyone even mention the Proindicus and MAM loans by
2 name at that meeting?
- 3 A No.
- 4 Q Did you put some of the comments made by the finance
5 minister in an e-mail to other members of the creditor
6 committee?
- 7 A I did.
- 8 MR. MEHTA: I'm going to now move into evidence,
9 Your Honor, Government's Exhibit 3215.
- 10 THE COURT: Any objection to 3215?
- 11 MR. SCHACHTER: Objection.
- 12 THE COURT: Overruled.
- 13 You may publish.
- 14 (Government's Exhibit 3215 received in evidence.)
15 (Exhibit published.)
- 16 MR. MEHTA: And if we can go to the first e-mail,
17 which is going to be the page 3, I think it is. In the chain.
18 Blow it up.
- 19 Q And again, sir, I'm not going to have you read the entire
20 e-mail, but if you could just review it and then tell the
21 jury, in sum and substance, what you wrote in this e-mail to
22 other members of the EMATUM exchange committee.
- 23 THE COURT: Well, first, who wrote the e-mail?
- 24 THE WITNESS: I did.
- 25 THE COURT: Okay.

VB OCR CRR

- 1 MR. MEHTA: Can we go to the bottom of page 2. And
2 if we blow up the e-mail from Mr. Elijah Tyshynski.
3 Happy to give the spelling, Your Honor.
- 4 THE COURT: Please, do.
- 5 MR. MEHTA: E-L-I-J-A-H, T-Y-S-H-Y-N-S-K-I.
- 6 Q And sir, who is Mr. Tyshynski? And I apologize if I'm
7 butchering his last name.
- 8 A I believe he's a portfolio manager at Ontario Teachers
9 Pension Plan.
- 10
11 (Continued on following page.)
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VB OCR CRR

Santamaria - direct - Mehta 3275

1 EXAMINATION CONTINUES

2 BY MR. MEHTA:

3 Q And if you look at his e-mail address, is it your

4 understanding that "otpp" refers to the Ontario Teachers

5 Pension Plan?

6 A That is my understanding.

7 Q And do you understand Ontario to be a province in Canada?

8 A Yes.

9 Q And can we go and just read a short sentence, could you

10 just read the three sentences by Mr. Tyshynski to you?

11 A He says: Similar discussions here. We asked about the

12 Offering Memorandum disclosure and people got a bit squirmy.

13 Credit Suisse promised to get back to us on this.

14 Q And what is your understanding of what Mr. Tyshynski is

15 referring to as the OM disclosure and people are getting

16 squirmy?

17 A I believe he was referring to the section that you had

18 highlighted earlier on Credit Suisse's and VTB's business

19 dealings with EMATUM.

20 Q And were you ever provided with an adequate explanation

21 of that?

22 A I, personally, was not.

23 MR. MEHTA: Can we go to the first e-mail? It's

24 going to be page 1.

25 BY MR. MEHTA:

SAM OCR RMR CRR RPR

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1 Q And, first, sir, who is this e-mail from?

2 A This e-mail is from Ted Pincus, P-I-N-C-U-S, at Vanguard

3 Advisors, which is a hedge fund based in Switzerland.

4 Q He's writing to you and others?

5 A He's writing to me and other members of -- and other

6 creditors in this transaction.

7 Q And, for example, one of the names here is Jason Kaplan,

8 do you see that name?

9 A I do.

10 Q Who is Jason Kaplan?

11 A He is a portfolio manager at a hedge fund here in New

12 York City.

13 Q And do you see a reference to Todd Petersen?

14 A I do.

15 Q And he works at Prudential?

16 A Yes, he does.

17 Q And do you see a reference to William Perry?

18 A I do.

19 Q And do you know who that is?

20 A Yes. He -- he works at Stone Harbor, which is also based

21 here in New York City, an investment management firm.

22 MR. MEHTA: And if we could just scroll down to the

23 second paragraph, and can you blow that up, please?

24 BY MR. MEHTA:

25 Q And, again, sir, if you could just read this to yourself,

SAM OCR RMR CRR RPR

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1 and then provide the jury with a little bit of a sum and

2 substance of your understanding.

3 (Pause.)

4 A So he's speculating about why the bonds are trading so

5 poorly and wondering whether the talk of a restructuring

6 had -- had a negative impact on the price of the bonds.

7 Q Do you see where he references EMATUM being a "complete

8 failure (I am not looking for to reading their next set of

9 financials)"?

10 A I do see that.

11 Q What did you understand this to mean?

12 A Well, EMATUM as a standalone entity was not performing

13 very well and he was not looking forward to seeing the

14 financial results of EMATUM that were set to be published

15 shortly thereafter.

16 MR. MEHTA: Can we go to the next paragraph?

17 BY MR. MEHTA:

18 Q And, again, can you read that to yourself, sir, and then

19 provide the jury with a summary of your understanding?

20 (Pause.)

21 A So, he is reacting to the exchange proposal and he

22 discloses that he had a colleague visit Maputo, which is the

23 capital of Mozambique, where he -- where his colleague

24 reported that the affair was very much in the news locally and

25 that it was the cause of embarrassment for the -- for the

SAM OCR RMR CRR RPR

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1 current government.

2 Q And when you say "affair," what are you referring to?

3 A The EMATUM transaction, itself.

4 Q And do you see his reference here where it says:

5 "Although prior President Guebuza carried out the

6 deal and given that not all of the funds are accounted for (if

7 you consider the purchase of the fishing and military vessels

8 together)," what did you understand that to mean when he said

9 that?

10 A It implies that there were funds missing from the

11 original transaction.

12 Q Anywhere here where he says that after his visit to

13 Maputo or his colleague's visit to Maputo he learned that

14 there were payments being made by Prinvest to Mozambican

15 government officials?

16 A It does not say that.

17 Q And then later he says: "I'm not implying that it's a

18 1MDB scenario, but something is not right."

19 Do you see that?

20 A I do.

21 Q What is 1MDB a reference to, if you know?

22 A 1MDB was a bond transaction that was carried out in

23 Malaysia, and it turned out that that transaction involved

24 corruption.

25 Q And here it's saying: I'm not implying that it is that,

SAM OCR RMR CRR RPR

- 1 but he has concerns, is that right?
- 2 A That's right. It implies that he did not believe that
- 3 there was corruption.
- 4 Q Okay. And, in fact, does he say here at all that he
- 5 learned of corruption or any payments by Prinvest to
- 6 officials of Mozambique during this time period?
- 7 A It does not say that, no.
- 8 Q And anywhere here that says that he learned or anyone
- 9 else had learned that Prinvest had paid millions of dollars
- 10 to bankers at Credit Suisse in connection with the EMATUM
- 11 transaction?
- 12 A No, it does not say that.
- 13 Q I asked you earlier about the Proindicus and MAM loan.
- 14 Do you recall that?
- 15 A (Nodding.)
- 16 Q Is that a yes?
- 17 A Yes, I did.
- 18 Q Sir, would you have invested -- sorry, withdrawn, Your
- 19 Honor.
- 20 Would it be important for you to know that
- 21 Mozambique had approximately \$1.1 billion in debt for the
- 22 Proindicus and MAM loans?
- 23 A Yes, it would have been important.
- 24 Q Why?
- 25 A Because the repayment of those loans would have left

SAM OCR RMR CRR RPR

- 1 the EMATUM exchange?
- 2 A We participated in the exchange.
- 3 Q And can you just tell us the mechanics of that, sir, what
- 4 group in Alliance Bernstein puts forth the instruction to
- 5 participate in the exchange?
- 6 A So, the decision to participate in the exchange was made
- 7 by the investment team, led by myself. Instructions were
- 8 provided to a group within Alliance Bernstein called the
- 9 Corporate Actions Team, which sits in New York. And the
- 10 Corporate Actions Team instructs, either electronically or by
- 11 mail, as to our intentions with -- with the transaction.
- 12 Q And once the -- once the team in New York sends out the
- 13 instruction, are you committed to the instruction?
- 14 A As far as I recall from the Offering Memorandum, once the
- 15 instructions were provided, they were irrevocable.
- 16 THE COURT: You said committed to the instruction,
- 17 you mean committed to the transaction, or do you mean
- 18 committed to the instruction?
- 19 MR. MEHTA: I'll rephrase, Your Honor.
- 20 BY MR. MEHTA:
- 21 Q Was it your understanding when the Corporate Actions Team
- 22 sent the instruction, that Alliance Bernstein was committed to
- 23 participate in the EMATUM exchange?
- 24 A Yes, that is my understanding.
- 25 Q And, again, where does the Corporate Actions Team sit?

SAM OCR RMR CRR RPR

- 1 Mozambique with less resources to pay the loans that were owed
- 2 to me.
- 3 Q You mentioned that there were members of Credit Suisse at
- 4 the meetings, the road show in New York.
- 5 Do you recall that?
- 6 A Yes.
- 7 Q Do you recall a name Andrew Burton?
- 8 A Yes, he was at that meeting.
- 9 Q Who is Andrew Burton?
- 10 A He's a banker at Credit Suisse.
- 11 Q Did anyone from Credit Suisse or anyone from any other
- 12 entity tell you that Credit Suisse had valuations for the 27
- 13 boats on the EMATUM deal that were hundreds of millions of
- 14 dollars less than the loan amount?
- 15 A No, that was not mentioned.
- 16 Q Would that have been important for you to know?
- 17 MR. SCHACHTER: Objection.
- 18 THE COURT: Overruled.
- 19 A Yes, it would have been important to know.
- 20 Q Why?
- 21 A Because it suggests that money had been misappropriated,
- 22 and also that in the event that I wanted to collect on my
- 23 loan, the value of the ships would be insufficient to cover
- 24 the value of the loan.
- 25 Q Sir, what did you ultimately decide to do with respect to

SAM OCR RMR CRR RPR

- 1 A In New York City.
- 2 Q Did Alliance Bernstein revoke at any time prior to the
- 3 exchange being finalized?
- 4 A It did not.
- 5 Q And so when the instruction was sent from New York, that
- 6 was your final instruction, correct?
- 7 A That is correct.
- 8 Q After news came out after the exchange, did the bond
- 9 price take a hit?
- 10 A It got hit after the disclosure of the other two loans
- 11 and the removal of the IMF program, yes.
- 12 Q Did Alliance Bernstein begin selling off its position in
- 13 the EMATUM bond?
- 14 A It did.
- 15 Q Did Alliance Bernstein sell off its entire position in
- 16 the EMATUM bond?
- 17 A Ultimately, yes.
- 18 Q Did Alliance Bernstein incur losses on behalf of its
- 19 clients as a result of the selling?
- 20 A Yes, it did.
- 21 Q Do you recall approximately how much?
- 22 A I would estimate it to be in the millions of dollars.
- 23 Q And even taking into account, you mentioned it earlier,
- 24 coupon payments and payments of the bond, do you recall that?
- 25 A Yes.

SAM OCR RMR CRR RPR

- 1 THE COURT: You can't talk over each other. Finish
 2 your question.
 3 BY MR. MEHTA:
 4 Q Do you recall earlier, sir, I had mentioned coupon
 5 payments and payments on the bond for the EMATUM LPN?
 6 A Yes, I do.
 7 Q Even taking into account coupon payments and bond
 8 payments, did Alliance Bernstein suffer losses on behalf of
 9 its clients?
 10 A Yes, in the millions of dollars.
 11 Q Do you know what accrued interest is, sir?
 12 A I do.
 13 Q What is that?
 14 A It is the interest that accumulates with the passage of
 15 time, but it's unpaid.
 16 Q And how does accrued interest work when you sell off a
 17 bond position?
 18 A When you sell the bond, the amount of accrued interest is
 19 paid by the buyer to the seller.
 20 Q Taking into account coupon payments, any other bond
 21 payments and accrued interest when you sold off the position,
 22 did Alliance Bernstein incur losses on behalf of its clients
 23 on the Mozambican bond and the EMATUM LPN?
 24 A Yes, it did.
 25 Q Do you recall how much?

SAM OCR RMR CRR RPR

- 1 MR. SCHACHTER: Objection.
 2 THE COURT: Overruled.
 3 A I would not have.
 4 MR. MEHTA: No further questions, Your Honor.
 5 THE COURT: Thank you.
 6 Any cross-examination?
 7 MR. SCHACHTER: Yes, Your Honor.
 8 CROSS-EXAMINATION
 9 BY MR. SCHACHTER:
 10 Q Good afternoon, Mr. Santamaria.
 11 A Good afternoon.
 12 Q Sir, in your role at Alliance Bernstein, is it correct
 13 that you managed about \$25 billion as part of your emerging
 14 market portfolio?
 15 A Sounds a bit high, but it was certainly probably about
 16 20 billion.
 17 Q And with Mr. Mehta you talked about some of the clients
 18 whose money that you managed at Alliance Bernstein, is that
 19 right?
 20 A Yes.
 21 Q And you mentioned, I believe, some pension funds, is that
 22 correct?
 23 A Yes, that's correct.
 24 Q Pension funds, themselves, invest billions of dollars, is
 25 that correct?

SAM OCR RMR CRR RPR

- 1 A In the millions of dollars.
 2 Q Did there ever come a time, sir, when you considered
 3 taking legal action?
 4 A Yes, I did consider that.
 5 Q Against who?
 6 A Against Credit Suisse.
 7 Q Why?
 8 A I was not pleased with the lack of disclosure over the
 9 Proindicus and M-A-M or MAM loans prior to the exchange.
 10 Q Did you end up taking legal action?
 11 A I did not.
 12 Q Why not?
 13 A There was little appetite on the part of my firm to
 14 pursue it.
 15 Q At the time of that process -- I'll withdraw that.
 16 At the time you were making that decision, did you
 17 or your firm know that Prinvest had paid millions of dollars
 18 to bankers at Credit Suisse in connection with the EMATUM
 19 loan?
 20 A We did not know that.
 21 Q Sitting here today, if you had known that Prinvest had
 22 paid millions of dollars to Mozambican Government officials
 23 and bankers at Credit Suisse in connection with the EMATUM
 24 loan, would you have ever recommended that Alliance Bernstein
 25 invest on behalf of its clients in the EMATUM LPN?

SAM OCR RMR CRR RPR

- 1 A Yes.
 2 Q Billions with a B, is that correct?
 3 A That is correct.
 4 Q And in your experience pension funds are managed by
 5 extremely sophisticated investors?
 6 A Yes.
 7 Q And in your experience those pension funds will often
 8 diversify their portfolios, is that correct?
 9 A That is correct.
 10 Q They will invest some portions of assets that they're
 11 investing in low risk, safer investments, is that correct?
 12 A Yes, it is.
 13 Q But is it also correct that there are a portion of their
 14 portfolios that they will invest in investments that are on
 15 the much higher risk, but much higher reward ends of the
 16 spectrum, is that right?
 17 A That is true.
 18 Q Fair to say that the emerging market fund that you
 19 managed at Alliance Bernstein is on the higher risk/higher
 20 return end of the spectrum, is that correct?
 21 A That is fair, yes.
 22 Q And fair to say that Alliance Bernstein does not hide
 23 from its investors the nature of the risks associated with the
 24 portfolio that they're investing in, is that right?
 25 A It does not hide them, no.

SAM OCR RMR CRR RPR

1 Q Alliance Bernstein is straightforward with those pension
 2 funds and other institutions about the risks associated with
 3 investing in emerging markets, is that correct?
 4 A Yes.
 5 Q In fact, when a pension fund or any client is making a
 6 decision whether to invest in your emerging market portfolio
 7 at Alliance Bernstein, one of the things that they're able to
 8 see is the track record of the portfolio, is that correct?
 9 A Yes, that is correct.
 10 Q That's one of the pieces of information that Alliance
 11 Bernstein makes available to investors before they make a
 12 decision, is that correct?
 13 A Yes.
 14 Q And fair to say that in some years, on the high risk/high
 15 reward spectrum, you nailed the high reward part of it, is
 16 that correct?
 17 A True.
 18 Q You have had years, I saw in 2012 a return of 15 percent.
 19 Do you recall that?
 20 A That sounds about right.
 21 Q At a time when interest rates, do you recall that the
 22 risk-free interest rates were probably less than 1 percent?
 23 A Correct.
 24
 25 (Continued on the following page.)

SAM OCR RMR CRR RPR

1 A That's right.
 2 Q Including a crash in the price of or a significant
 3 decline in the price of oil and gas?
 4 A Correct.
 5 Q And that can hit some countries that are dependent upon
 6 gas development because when oil and gas companies see the
 7 prices of oil and gas falling, they halt development of their
 8 projects; is that consistent with your understanding?
 9 A It is.
 10 Q Now, Alliance Bernstein is also open with its investors
 11 about the countries whose debts the emerging market portfolio
 12 is investing in; is that correct?
 13 A Yes.
 14 Q In fact, it lays out for them where they're investing at
 15 least significant portions of the portfolio; is that correct?
 16 A Yes, it is.
 17 Q And in 2015 Alliance Bernstein was open with its clients
 18 about the fact that its emerging market portfolio was invested
 19 in Iraq; is that correct?
 20 A Yes.
 21 Q And when I say invested in Iraq that means it
 22 purchased -- it was lending money by purchasing the debt of
 23 the country of Iraq; is that correct?
 24 A Yes.
 25 Q And it was also open about buying debts of Venezuela and

SN OCR RPR

1 BY MR. SCHACHTER: (Continued.)
 2 Q And you were making 15 percent?
 3 A Yes.
 4 Q Wow. However, sometimes your returns are much more on
 5 the high risk end of the spectrum and your portfolio has lost
 6 significant amounts; is that correct?
 7 A Yes, that is true.
 8 Q In fact, in 2015 the same portfolio that made 15 percent,
 9 in 2012 loss about eight percent; it had losses of 8 percent
 10 in 2015; is that correct?
 11 A Yes.
 12 Q And sometimes losses happen due to circumstances out of
 13 your control; is that correct?
 14 A Yes.
 15 Q And, in fact, in 2015 in particular, there were a bunch
 16 of global economic factors that affected the economy globally.
 17 Do you remember that?
 18 A Yes.
 19 Q Do you remember that there were concerns about Greece
 20 defaulting on its debts?
 21 A Yes.
 22 Q And do you remember that China devalued its currency?
 23 A Yes.
 24 Q Do you also remember a crisis with falling commodity
 25 prices in 2015?

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1 the state oil company of Azerbaijan. Do you remember that?
 2 A Yes.
 3 Q And also Alliance Bernstein was buying the debt of
 4 Russia; is that correct?
 5 A Yes, that's right.
 6 Q And these pension funds and other investors were told
 7 about some of the countries whose debts the emerging market
 8 portfolio was purchasing; correct?
 9 A Yes.
 10 Q And all of those countries, Iraq, Russian Venezuela
 11 Azerbaijan, those are all countries that have significant
 12 reputations for corruption; is that right?
 13 A Yes.
 14 Q But you invested in the debt of those countries because
 15 you believed that it would help you provide a good return for
 16 your investors; is that correct?
 17 A That is right.
 18 Q Now, is it also correct that Alliance Bernstein
 19 specifically told their investors about the particular risks
 20 associated with investing in emerging markets?
 21 A I believe that's correct.
 22 MR. SCHACHTER: Your Honor, we would offer
 23 Defendant's Exhibit 10684.
 24 THE COURT: Any objection to 10684?
 25 MR. MEHTA: If I could see it, Your Honor.

SN OCR RPR

Santamaria - cross - Schachter 3291

1 THE COURT: Do you have hard copies for counsel or
2 put it on the screen or both?
3 MR. SCHACHTER: Yes, Your Honor.
4 THE COURT: Any objection to 10684, DX?
5 MR. MEHTA: No objection, Your Honor.
6 THE COURT: It is admitted.
7 (Defense Exhibit 10684 received in evidence.)
8 THE COURT: You may publish it to the jury.
9 (Exhibit published.)
10 BY MR. SCHACHTER:
11 Q Mr. Santamaria, I'm showing you a disclosure document
12 issued by Alliance Bernstein and registered with the
13 Securities and Exchange Commission and I would like to direct
14 your attention to certain particular disclosures that Alliance
15 Bernstein was making publicly and to its investors.
16 Specifically may I direct your attention to page four of this
17 exhibit under principal strategies. And do you see here where
18 there's a disclosure here to investors of the risks associated
19 with investing in emerging markets?
20 A Yes, I see that.
21 Q And can you just explain to the jury why is it that
22 investing in emerging markets generally involves risks that
23 are greater than the risks associated with investing in the
24 markets of developing countries or developed countries?
25 A Typically emerging market countries have less-strong

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Santamaria - cross - Schachter 3292

1 economies. They have less-developed financial market
2 infrastructure, they can be subject to political risks, and,
3 you know, they -- they're generally less -- their ability to
4 pay has in the past been less -- less-established than in
5 developed countries.
6 Q I would like to direct your attention to another
7 disclosure that Alliance Bernstein made to its investors under
8 principal risks a little bit further down on that page. Do
9 you see where it talks about uncertainties relating to the
10 economy, political regulatory and other uncertainties? Do you
11 see that?
12 A Yes.
13 Q What specifically is the regulatory kind of risk that is
14 being disclosed to investors here?
15 A This -- the regulatory risk generally pertains to
16 corporate stocks or bonds for companies that are subject to
17 regulation. For example, if you're investing in a utility in
18 an emerging market country, the regulatory framework under
19 which that utility operates.
20 THE COURT: Whoa, whoa, Lord Vader, not Woody Allen
21 or Chris Rock. You've been pretty good, but it's late in the
22 day and you're speeding up.
23 THE WITNESS: Apologies.
24 THE COURT: Take it from the top.
25 THE WITNESS: So, the regulatory risk is generally

SN OCR RPR

Santamaria - cross - Schachter 3293

1 pertinent when investing in companies in emerging markets
2 because the regulatory framework can impact the profitability
3 of companies in those countries.
4 Q Is there reference to political and regulatory
5 uncertainty as a reference to the strength and integrity of
6 the institutions associated with some of the countries that
7 you would be investing in? Is that fair to say?
8 A That's not what it says specifically, but it can be
9 inferred, yes.
10 Q And then also I will direct your attention to a section
11 below on investment-grade securities on the next page. Can
12 you just read this to yourself and then explain what is being
13 disclosed to investors who would be considering purchasing in
14 the emerging market portfolio at Alliance Bernstein?
15 THE COURT: Counsel, mumbling.
16 MR. MEHTA: I apologize, Your Honor.
17 THE COURT: Keep your voice up. Go ahead.
18 A This paragraph discloses that below-investment-grade
19 securities are riskier than investment grade securities and
20 may have greater price volatility than investment grade
21 securities.
22 Q And it references that they tend to have a higher
23 probability than an issuer will default or fail to meet its
24 payment obligations. Do you see that?
25 A I do.

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Santamaria - cross - Schachter 3294

1 Q Why is that something that Alliance Bernstein tells its
2 investors?
3 A It wants to make investors aware of the risks that they
4 may not be paid back on all of their securities.
5 Q It references below investment grade securities and
6 Mr. Mehta showed you the credit rating in particular for the
7 EMATUM loan participation notes. Do you remember that?
8 A I do.
9 Q Were those below investment grade securities? You made
10 reference to the credit rating.
11 A Yes, they were below investment grade.
12 Q Those would be commonly known as junk bonds?
13 A Correct.
14 Q And, in fact, Alliance Bernstein told its investors that
15 in 2013 a full 29 percent of its investments were in
16 non-investment grade or junk bond investments; is that
17 consistent with your recollection?
18 A Yeah, it depends by fund, but, yes we did own quite a few
19 junk bonds.
20 Q And that was disclosed to investors that were investing
21 in the emerging markets portfolio?
22 A Yes.
23 Q And, in fact, do you recall that in 2013, well --
24 withdrawn.
25 One of the investors that you placed in the EMATUM

SN OCR RPR

Santamaria - cross - Schachter 3295

1 loan participation notes was the Louisiana Teachers Pension
 2 Fund. Do you remember that?
 3 A I don't remember specifically but it's quite possible,
 4 yes.
 5 Q Do you recall that actually the Louisiana Teachers
 6 Pension Fund had made a public announcement that it was making
 7 a decision to invest in Alliance Bernstein's global high yield
 8 debt portfolio in August of 2013?
 9 A Again, quite possible.
 10 MR. SCHACHTER: Your Honor, we'll offer Defendant's
 11 Exhibit 10620.
 12 THE COURT: Any objection to 10620?
 13 MR. MEHTA: No objection, Your Honor.
 14 THE COURT: Admitted.
 15 (Defense Exhibit 10620 received in evidence.)
 16 THE COURT: You may publish.
 17 (Exhibit published.)
 18 BY MR. SCHACHTER:
 19 Q Showing you an article from Bloomberg that has the
 20 headline *Louisiana Teachers Pension Fund to Invest in Global*
 21 *Junk Bonds*, do you see that?
 22 A I do see it.
 23 Q And this is in August of 2013; do you see that?
 24 A Yes.
 25 Q And does -- and I believe you testified on direct that it

SN OCR RPR

Santamaria - cross - Schachter 3296

1 was about a month and a half later that you started your
 2 initial position in the EMATUM loan participation notes?
 3 A Yes.
 4 Q And does looking at these two things help you remember
 5 that, in fact, it was the Louisiana Teachers Pension Fund that
 6 was one of the investors that you did invest in the EMATUM
 7 LPNs?
 8 A Yes, I would have to agree that it's very likely that it
 9 did.
 10 Q And is this -- this -- this discussion of this pension
 11 fund investing in global junk bonds, is that consistent with
 12 what you were telling the jury earlier about how sometimes
 13 pension funds will invest a portion of their portfolio in high
 14 risk, high reward investments?
 15 A Yes.
 16 MR. SCHACHTER: You can take that down, Mr. McLeod.
 17 BY MR. SCHACHTER:
 18 Q Now, I believe, but I want to make sure that it's
 19 clear -- do you recall that the initial offering of the LPNs
 20 was what's called a Reg S investment; is that correct?
 21 A Yes.
 22 Q And do you recall that in the initial offering -- you
 23 also trade in the secondary market; is that correct?
 24 A That's correct.
 25 Q But the initial offering, do you recall that that was an

SN OCR RPR

Santamaria - cross - Schachter 3297

1 investment that could only be made by foreign funds?
 2 A Yes, at the initial offering; correct.
 3 Q And Alliance Bernstein is a money manager; is that right?
 4 A Yes.
 5 Q And that means that it is, as Mr. Mehta asked you, making
 6 investment decisions for corporate entities that are known as
 7 funds; is that correct?
 8 A Yes.
 9 Q However, it is not an Alliance Bernstein that is actually
 10 doing the purchasing; the actual purchase is made by the fund
 11 or the other corporation; is that correct?
 12 A Yes, that is correct.
 13 Q And sometimes those corporations are located in the
 14 United States and sometimes they're located offshore; is that
 15 right?
 16 A Yes.
 17 Q Do you happen to recall that the fund that you had
 18 purchased the LPNs in the initial offering was domiciled in
 19 Luxembourg; do you remember that?
 20 A Yes.
 21 Q Now, after the initial offering you purchased these LPNs
 22 in the secondary markets?
 23 A Yes.
 24 Q And in those circumstances what's happening is that
 25 Alliance Bernstein is buying LPNs from some other hedge fund

SN OCR RPR

Santamaria - cross - Schachter 3298

1 or institution that had previously bought the LPNs?
 2 A Yes.
 3 Q And in the initial offering there's no U.S. investors but
 4 a U.S. investor could have bought in the secondary market; is
 5 that correct?
 6 A That is my understanding.
 7 Q Do you happen to remember that the front cover of the LPN
 8 offering disclosure specifically said that it was not being
 9 offered to U.S. persons or words to that effect? Do you
 10 remember?
 11 A In the primary market, correct.
 12 Q Did you ever call up a man named Jean Boustani and let
 13 him know that there was something called the secondary market
 14 where a U.S. investor could buy the LPNs from some other hedge
 15 fund or institution?
 16 A I did not do that, no.
 17 Q Now, Mr. Mehta asked you about whether you would have
 18 invested in the loan participation notes had you known of
 19 payments that Privinvest made to government officials. Do you
 20 recall that?
 21 A Yes, I do.
 22 Q And you said you would not have?
 23 A Correct.
 24 Q And you also said that you would not have voted in favor
 25 of the Eurobond exchange had you known of payments like that;

SN OCR RPR

1 is that correct?
 2 A That's correct.
 3 Q I now, Mr. Santamaria, want to spend a little bit of time
 4 speaking with you about what motivated you to purchase the
 5 LPNs in the first place, okay?
 6 A Yes.
 7 Q These LPNs offered an excellent return relative to
 8 similar investments of similar risk; is that correct?
 9 A That's right.
 10 Q In fact, the yield -- at a time when interest rates were
 11 less than 1 percent, these LPNs offered a yield of about eight
 12 and a half percent. Do you remember that?
 13 A That sounds about right.
 14 Q And I believe -- I don't need to show it to you right
 15 now, but do you recall in that e-mail exchange that Mr. Mehta
 16 showed you there was a line in there that said, the fact is --
 17 well, actually --
 18 MR. SCHACHTER: Can we bring up Government Exhibit
 19 3215, please?
 20 THE COURT: In evidence?
 21 MR. SCHACHTER: In evidence, Your Honor.
 22 THE COURT: You may publish.
 23 MR. SCHACHTER: The first page, please.
 24 (Exhibit published.)
 25 BY MR. SCHACHTER:

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1 Q Now, as a professional, talented, diligent emerging
 2 market investor, fair to say that you do your homework on the
 3 factors that are important to making an investment decision?
 4 A We certainly try.
 5 Q Now, prior to investing in these EMATUM LPNs, you did
 6 your homework on the economy of Mozambique; is that right?
 7 A That's right.
 8 Q You wanted to understand the country of Mozambique's
 9 ability to repay its debts, fair to say?
 10 A Yes.
 11 Q And, so -- and that's -- that was important because, as
 12 you just explained, by virtue of the guarantee this was a lot
 13 like just a sovereign debt of the country of Mozambique; is
 14 that right?
 15 A Yes.
 16 Q And, correct, that this -- the guarantee was extremely
 17 important to you in making your investment decision?
 18 A It was.
 19 Q Mr. Mehta asked you about the fishing program, right?
 20 And this was -- he showed you the use of proceeds provision
 21 and it talked about the fact that this money was going to be
 22 used to fund a startup Mozambican fishing venture; is that
 23 correct?
 24 A That is correct.
 25 Q Fair to say that you were not scouring the world looking

SN OCR RPR

1 Q In the second paragraph do you see the sentence in the
 2 middle of the paragraph that says: The fact is that these
 3 bonds are the highest-yielding African sovereign guaranteed
 4 credit that I'm aware of?
 5 A I see that.
 6 Q And is that consistent with your recollection that one of
 7 the things that motivated you to buy these LPNs were that they
 8 were a very high-yielding African sovereign credit?
 9 A It was one of the considerations, yes.
 10 Q And, by the way, could we unpack that terminology? What
 11 does it mean to have an African sovereign guaranteed credit;
 12 why did those words apply to the EMATUM LPNs?
 13 A The fact that the EMATUM transaction was guaranteed by
 14 the Mozambican government made it a sovereign transaction and
 15 obviously it was African so that's what it was referring to.
 16 Q Thank you very much.
 17 MR. SCHACHTER: You may take it down Mr. McLeod.
 18 Q It was also attractive because it had a pretty short
 19 maturity date. Do you remember that?
 20 A I do.
 21 Q And what does that mean?
 22 A That I would be paid back quickly.
 23 Q And those two factors, the return and the maturity date,
 24 made the investment pretty attractive?
 25 A Among other things, yes.

SN OCR RPR

1 for opportunities to invest in African startup fishing
 2 ventures; right?
 3 A I was obviously open to the idea.
 4 Q But what you were most open to was investing in a debt
 5 that was guaranteed by the Mozambican government that offered
 6 this return and this maturity date; is that fair to say?
 7 A I would say that without the guarantee, I would not have
 8 invested in this transaction, yes.
 9 Q Fair to say that your view would be that these EMATUM
 10 LPNs would never have been sold on the strength of the fishing
 11 project alone; that it was the Government guarantee that made
 12 it possible to sell these LPNs?
 13 A I agree.
 14 Q And, in fact, to the topic of this being a startup
 15 fishing venture, Mr. Mehta showed you the credit rating of the
 16 loan participation notes. Do you remember that?
 17 A I do.

(Continued on the following page.)

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Santamaria - cross - Schachter 3303

1 (Continuing)

2 Q In fact, he showed you Government's Exhibit 2480.

3 MR. SCHACHTER: Can we publish that, Your Honor?

4 It's in evidence.

5 THE COURT: You may.

6 MR. SCHACHTER: Blow up just the under rating

7 rationale.

8 (Exhibit published.)

9 Q You see where it says that there was a rating by Moody's

10 that was given to the loan participation notes?

11 A That's right.

12 Q And it was a junk bond rating?

13 A It was.

14 Q And Moody's says that the reason why it's even giving it

15 that rating is not based on any rating or analysis of whether

16 the fishing project is going to generate revenue, correct?

17 A That is right.

18 Q The rating, it says under ratings rationale, it says:

19 The B-1 rating of the notes relies solely and exclusively on

20 the guarantee.

21 Do you see that?

22 A I do.

23 Q Explain to the jury, what does that mean, that that

24 rating relies solely and exclusively on the guarantee?

25 A Well, it's saying that in the absence of that guarantee,

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Santamaria - cross - Schachter 3304

1 the rating would not be what it is.

2 Q And investors, one of the things that they look to,

3 professional investors like yourself, look at credit ratings;

4 is that correct?

5 A Yes.

6 Q And here, sometimes, is it correct that a credit rating

7 will analyze the financial prospects of the project that is

8 being financed; is that right?

9 A Yes.

10 Q But here, that's not what happened.

11 A No, because there was no -- there was nothing to analyze

12 at the time. This was a green field, a start-up investment.

13 Q Exactly. There was nothing to analyze for Moody's

14 because this was a brand new start-up venture, be very

15 difficult to predict whether it was going to generate revenue

16 or not, fair it say?

17 A Yes.

18 Q We talked a little bit about how you were investing

19 because you believed that Mozambique was a good, a good bet to

20 repay its debts; is that correct?

21 A Yes.

22 Q Fair to say that part of the reason for that was because

23 of the gas reserves that had been discovered in Mozambique?

24 A That is correct.

25 Q But that was only -- well.

VB OCR CRR

Santamaria - cross - Schachter 3305

1 MR. SCHACHTER: Withdrawn.

2 Q And you did analysis of the gas reserves in Mozambique

3 and how profitable they would be over time; is that correct?

4 It's one of the things that you looked at?

5 A Yes, we thought about the investments that were being

6 made in the gas sector, the expected sales that would -- of

7 gas that was arise from those projects over time and whether

8 the cash flows would be sufficient to pay the loan over time.

9 THE COURT: How much longer do you have with this

10 witness?

11 MR. SCHACHTER: Your Honor, I'll take, I'll be

12 through the end of the day.

13 THE COURT: How much longer do you have with this

14 witness?

15 MR. SCHACHTER: Fair. I apologize, Your Honor.

16 I would say approximately 45 minutes?

17 THE COURT: Forty-five minutes. We do not have 45

18 more minutes, so why don't we take a comfort break now and we

19 will come back in about 12 minutes, and then we will continue

20 with this witness.

21 Do not talk about the case.

22 Sir, you do not talk about it with anyone during the

23 break.

24 All right, ladies and gentlemen, we will take a 12

25 minute break and then we will get to our 5:00 o'clock hard

VB OCR CRR

Santamaria - cross - Schachter 3306

1 stop, and then we will see you on Tuesday.

2 THE COURTROOM DEPUTY: All rise.

3 (Jury exits.)

4 (In open court; outside the presence of the jury.)

5 THE COURT: You may step down, sir. Thank you. Do

6 not talk with anyone during the break about your testimony,

7 including your Counsel. Please, step outside, thank you. See

8 you in 12 minutes.

9 You may sit down, ladies and gentlemen.

10 MR. SCHACHTER: Your Honor, may I provide the

11 witness with some water? He is losing his voice. I wanted to

12 disclose to the Government.

13 THE COURT: I believe there is water out there with

14 his Counsel. They can give him water, that does not count as

15 communicating with Counsel.

16 (Witness excused.)

17 THE COURT: Okay.

18 Do we have any procedural issues to address outside

19 of the presence of the jury? The witness has stepped down and

20 out of the courtroom, but the defendant is still here.

21 Any questions to talk about?

22 MR. BINI: Not for the Government, Your Honor.

23 MR. SCHACHTER: Not for the Defense, Your Honor.

24 THE COURT: Okay, see you in 12 minutes.

25 (Recess taken.) (Continued on following page.)

VB OCR CRR

1 (Continuing.)
 2 THE LAW CLERK: All rise.
 3 (Judge WILLIAM F. KUNTZ, II entered the courtroom.)
 4 THE COURT: We have the appearances. Please we will
 5 present the defendant. Thank you very much.
 6 (Defendant entered courtroom.)
 7 THE COURT: Please be seated.
 8 Do we have any procedural issues to address before
 9 we bring the jury back?
 10 MR. BINI: No, Your Honor.
 11 MR. SCHACHTER: No, Your Honor.
 12 THE COURT: Okay.
 13 Mr. Jackson, please tell the CSO to bring the jury
 14 in.
 15 (Pause.)
 16 (Jury enters.)
 17 THE COURT: Welcome back, ladies and gentlemen of
 18 the jury, but do not sit down.
 19 We are on the record.
 20 Ladies and gentlemen in the public, you may be
 21 seated.
 22 Madam Reporter, we are back on the record. You may
 23 sit down.
 24 Ladies and gentlemen of the jury, I apologize. It
 25 is 5:05. I owe you five minutes, but then again, every now

SAM OCR RMR CRR RPR

1 MR. BINI: Not for the Government, Your Honor.
 2 THE COURT: For the defense?
 3 MR. JACKSON: No, Your Honor.
 4 THE COURT: Have a great three-day holiday.
 5 MR. JACKSON: You too, Judge.
 6 MR. BINI: You too, Judge.
 7 THE COURT: Thank you.
 8
 9 (Proceedings adjourned to Tuesday, November 12, 2019
 10 at 9:30 a.m.)
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SAM OCR RMR CRR RPR

1 and then we did break a little early. I want to thank you for
 2 your time, for your attention, for your patience. We will see
 3 you on Tuesday morning, not Monday.
 4 When I was growing up it was called The Mickey Mouse
 5 Club and they had a song that said "Today is Tuesday, you know
 6 what that means, we are going to have a special day." So we
 7 will see you. You can look it up on Google and YouTube, you
 8 won't get in any trouble doing it.
 9 So, have a wonderful and safe and blessed Veterans
 10 Day. Be mindful of our veterans who fought to keep us free in
 11 a Democratic Republic.
 12 Have a great, quiet, restful three-day holiday. Do
 13 not talk about the case. Do not think about the case.
 14 We will see you Tuesday morning at 9:30, and we are
 15 adjourned. Thank you so much.
 16 THE JURY: Thank you.
 17 (Jury exits.)
 18 THE COURT: All right, you may be seated.
 19 The jury has left the courtroom. The witness is not
 20 on the witness stand because we did not need to bring him back
 21 in.
 22 And do we have any procedural issues to address
 23 before we break for our three-day-weekend --
 24 MR. BINI: Not for the Government.
 25 THE COURT: -- for the prosecution?

SAM OCR RMR CRR RPR

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