

# **Exhibit B**

Page 1	<p>1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION</p> <p>2</p> <p>3 In the Matter of: )</p> <p>4 ) File No. FW-3435</p> <p>5 KALETA CAPITAL MANAGEMENT )</p> <p>6</p> <p>7 WITNESS: Daniel Frishberg</p> <p>8 PAGES: 1 through 225</p> <p>9 PLACE: Securities and Exchange Commission</p> <p>10 801 Cherry Street, 19th Floor</p> <p>11 Fort Worth, TX 76102</p> <p>12 DATE: Thursday, March 25, 2010</p> <p>13</p> <p>14 The above-entitled matter came on for hearing, pursuant</p> <p>15 to notice, at 10:20 a.m.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Diversified Reporting Services, Inc.</p> <p>25 (202) 467-9200</p>	Page 3	
Page 2	<p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Securities and Exchange Commission:</p> <p>4 DOUGLAS GORDIMER, ESQ.</p> <p>5 JANIE FRANK, ESQ.</p> <p>6 LINDA YODER, CPA</p> <p>7 BRANDY HARE, CPA</p> <p>8 Securities and Exchange Commission</p> <p>9 Division of Enforcement</p> <p>10 801 Cherry Street, 19th Floor</p> <p>11 Fort Worth, TX 76102</p> <p>12</p> <p>13 On behalf of the Witness:</p> <p>14 ROBERT D. AXELROD, ESQ.</p> <p>15 5300 Memorial Drive, Suite 700</p> <p>16 Houston, TX 77007</p> <p>17 (713) 861-1996</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 C O N T E N T S</p> <p>2</p> <p>3 WITNESS: EXAMINATION</p> <p>4 Daniel Frishberg 4</p> <p>5</p> <p>6 EXHIBITS DESCRIPTION IDENTIFIED</p> <p>7 44 Subpoena for D. Frishberg 6</p> <p>8 45 Subpoena for Kaleta Capital</p> <p>9 Management 7</p> <p>10 46 Promissory Note, dated 6/15/09 178</p> <p>11 47 BizRadio LP Statement of Account 192</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	Page 4
Page 2	<p>1 PROCEEDINGS</p> <p>2 MR. FRANKLIN: Okay. On the record today, March</p> <p>3 25, 2010, at 10:20.</p> <p>4 Mr. Frishberg, would you first raise your right</p> <p>5 hand.</p> <p>6 Whereupon,</p> <p>7 DANIEL FRISHBERG</p> <p>8 was called as a witness and, having been first duly sworn,</p> <p>9 was examined and testified as follows:</p> <p>10 EXAMINATION</p> <p>11 BY MS. FRANK:</p> <p>12 Q Now is the point where we need for you to state and</p> <p>13 spell your full name.</p> <p>14 A Daniel Frishberg, F-r-i-s-h-b-e-r-g.</p> <p>15 Q Thank you. My name is Janie Frank. This is Doug</p> <p>16 Gordimer. Next to him is Brandy Hare and next to her is</p> <p>17 Linda Yoder. We are all officers of the Commission for the</p> <p>18 purposes of this proceeding.</p> <p>19 This is an investigation by the United States</p> <p>20 Securities and Exchange Commission, in the matter of Kaleta</p> <p>21 Capital Management, to determine whether or not there have</p> <p>22 been violations of certain provisions of the federal</p> <p>23 securities laws; however, as the facts are developed in the</p> <p>24 investigation, it may become -- the facts, as developed, may</p> <p>25 constitute violations of other federal or state, civil or</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	Page 4

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1 criminal laws.  
 2 Now have you -- this document we put in front of  
 3 you, this one right here, is the copy of the formal order  
 4 that was issued by the Commission in this proceeding. Have  
 5 you had a chance to review this?  
 6 A Yes.  
 7 Q Okay. And do you have any questions about it?  
 8 A No.  
 9 Q Okay. And the Exhibit 1 that we have put in front  
 10 of you, also, is a copy of the Commission's Supplemental  
 11 Information Form, also known as Form 1662. Have you had a  
 12 chance to review that document?  
 13 A Yes.  
 14 Q And do you have any questions about it?  
 15 A No.  
 16 Q Okay. Now you're here today represented by  
 17 counsel, right?  
 18 A Yes.  
 19 Q Okay. And that's Bobby Axelrod, right?  
 20 A Right.  
 21 MR. AXELROD: Correct.  
 22 MS. FRANK: Now are you representing Mr. Frishberg  
 23 individually or are you representing the Corporation?  
 24 MR. AXELROD: I represent BizRadio, and I'm here  
 25 today representing him for purposes of his testimony.

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1 MS. FRANK: Individually?  
 2 MR. AXELROD: Individually --  
 3 MS. FRANK: Okay.  
 4 MR. AXELROD: -- for purposes of his testimony  
 5 today.  
 6 MS. FRANK: Okay.  
 7 MR. GORDIMER: Mr. Axelrod, you also represent the  
 8 registered investment advisor?  
 9 MR. AXELROD: I do.  
 10 MS. FRANK: Okay. All right. I'm going to show  
 11 you what we've marked as Exhibit 44, which is a copy of the  
 12 subpoena that we sent to you. And I think that's the one  
 13 that just says we wanted you to come and testify and did not  
 14 have -- maybe it did have a records request.  
 15 (SEC Exhibit No. 44 was marked for  
 16 identification.)  
 17 MR. AXELROD: It did.  
 18 BY MS. FRANK:  
 19 Q Yes. Okay. And is that the subpoena that you are  
 20 here on today?  
 21 A Yes.  
 22 Q Okay. Now we -- it's got a different date on it,  
 23 but it was by agreement that we agreed to actually reschedule  
 24 it for today's date.  
 25 A Right.

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1 Q Okay. The -- now to the best of your knowledge,  
 2 have all the documents that were requested in the subpoena in  
 3 Exhibit 44 been produced?  
 4 A I think they're still working on e-mails.  
 5 MR. AXELROD: Yes. If I can answer that.  
 6 MS. FRANK: Sure.  
 7 MR. AXELROD: Through a series of communications  
 8 with the SEC, we've provided all of the documents, with the  
 9 exception of e-mail requests, which I don't remember the  
 10 exact number it is -- I think it's 1-b -- but that we're  
 11 working on still, candidly, because of the manpower source,  
 12 that we anticipate having to you the early part of next week.  
 13 MS. FRANK: Okay. Let me show you what I've marked  
 14 as Exhibit 45. This is the subpoena to BizRadio, which was  
 15 just a document subpoena.  
 16 (SEC Exhibit No. 45 was marked for  
 17 identification.)  
 18 MS. FRANK: Do you know -- I'll ask either one of  
 19 you. Have all the records that were requested in that  
 20 subpoena been produced by that time?  
 21 MR. AXELROD: Yes. We have provided a document  
 22 response to the February 4th request.  
 23 BY MS. FRANK:  
 24 Q Okay. Okay. Mr. Frishberg, first some background  
 25 information. I need to find out what licenses you have

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1 currently. Securities license.  
 2 A None. I'm a registered investment advisor.  
 3 Q Okay.  
 4 A I have obtained, but stopped being an NASD or a  
 5 FINRA representative many years ago.  
 6 Q Okay. But you have the -- I think it's called  
 7 Series 65 with the State.  
 8 A Well, I was actually grandfathered, but I was --  
 9 have that -- I have that license, but I didn't -- I wasn't  
 10 required to take my test.  
 11 Q Okay. But you're registered with the State of  
 12 Texas as an investment advisor?  
 13 A And the SEC.  
 14 Q Okay. Okay. Do you -- have you ever been  
 15 convicted of a crime?  
 16 A I had a marijuana misdemeanor when I was 20  
 17 something.  
 18 Q Okay.  
 19 BY MR. GORDIMER:  
 20 Q How long ago was that?  
 21 A 45 years ago.  
 22 MR. GORDIMER: Actually, let's get the date of  
 23 birth and social security number.  
 24 MS. FRANK: Okay.  
 25 THE WITNESS: I believe that that was expunged and

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1 no longer was -- it was a non-conviction, I think.  
 2 BY MS. FRANK:  
 3 Q Okay. What is your birth date?  
 4 A [REDACTED].  
 5 Q And what's your social security number?  
 6 A [REDACTED].  
 7 Q Okay. During -- at any point in your career, with  
 8 respect to the securities licenses, were you ever the subject  
 9 of a disciplinary hearing? Any disciplinary action?  
 10 A No.  
 11 Q And are you taking any medication that might impair  
 12 your memory?  
 13 A No.  
 14 Q All right. The registered investment advisor that  
 15 you have is called Daniel Frishberg Financial Services; is  
 16 that correct?  
 17 A Yes. Can I go back to that violation?  
 18 Q Sure.  
 19 A There was -- about 10 years ago or 15 years ago,  
 20 the State Securities Board, in a routine audit, asserted that  
 21 there were forms that should have been filled out because  
 22 some of my people were, at that time, dually licensed. This  
 23 was in the early nineties. And they had only filled the  
 24 forms out for the broker-dealer, but not again for the state.  
 25 And we decided not to fight about it, and we agreed on the

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1 wording, and that was disclosed in our ADV.  
 2 Q Okay.  
 3 A Or in the whatever they call it, CRD.  
 4 Q Okay.  
 5 BY MR. GORDIMER:  
 6 Q So was that an order from the State Securities  
 7 Board of Texas?  
 8 A Yes. We had them fill out the forms, I think I  
 9 paid a \$2,500 fine, and agreed -- and I think the deal called  
 10 for me to be able to submit wording of how it would be  
 11 disclosed and they would get to approve it.  
 12 BY MS. FRANK:  
 13 Q Okay.  
 14 A And that was in the early nineties.  
 15 Q Okay. Okay. And if you think of something at any  
 16 point --  
 17 A I wasn't one of the people that they asserted  
 18 were -- had the problem, but the people were employees of  
 19 RIA.  
 20 Q Okay. So was it the RIA that was being  
 21 disciplined?  
 22 A Yes.  
 23 Q Okay. Okay. What is the current status with the  
 24 financial services firm, DFFS?  
 25 A Status?

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1 Q Does it still exist?  
 2 A It is active.  
 3 Q Okay. What is the arrangement that you have with  
 4 Barrington Financial?  
 5 A We -- in response to this being a relief defending,  
 6 our custodian, Fidelity, notified that they wouldn't take  
 7 orders for us anymore, wouldn't provide those custodial  
 8 services for our clients, and we weren't able to find another  
 9 one that would. And so we found a home for our investors.  
 10 Q With Barrington Financial?  
 11 A Yes.  
 12 Q Okay. And when you say a home, what do you mean by  
 13 that?  
 14 A Well, a registered investment advisor that had a  
 15 place for custody.  
 16 Q So the customers of -- is it okay if I call it DFFS  
 17 or RIA?  
 18 A Right.  
 19 Q You know what I'm talking about?  
 20 A Yes.  
 21 Q Okay. The -- your customers of your RIA are now  
 22 customers of Barrington Financial?  
 23 A Yes.  
 24 Q Okay. Have they all moved over at this point?  
 25 A Well, most.

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1 Q Are there any that are still remaining in your RIA?  
 2 A There are many -- there are some who are still --  
 3 no.  
 4 Q Okay. Okay. So maybe not --  
 5 A We're kind of at the middle at the end of the  
 6 quarter and so it's kind of hazy. As of April 1, there will  
 7 be none.  
 8 Q Okay. So some are still in the process of moving?  
 9 A Yes, that's right.  
 10 Q Okay. Are some going to just leave their accounts  
 11 with Fidelity and basically not have an RIA anymore?  
 12 A They may. I hope not.  
 13 Q Okay.  
 14 BY MR. GORDIMER:  
 15 Q What percentage of your clients do you believe have  
 16 transferred or will transfer over to Barrington Financial?  
 17 A I don't know.  
 18 Q Is it more than half?  
 19 A Maybe half -- more than half the money. I don't  
 20 know about the number of clients.  
 21 BY MS. FRANK:  
 22 Q So what has become of the corporation?  
 23 A Well, it's there.  
 24 Q It's there. Okay. Are you going to dissolve it or  
 25 any --

Page 13	<p>1 A I don't know. I have not gone that far.                  2 BY MR. GORDIMER:                  3 Q But the registration is still current?                  4 A Yes.                  5 Q Okay. Do you have any ideas what you'll do with                  6 the registration for that firm?                  7 A No.                  8 Q So do you have a written agreement with Barrington                  9 Financial?                  10 A Not yet. Actually -- not yet.                  11 Q When do you anticipate getting one?                  12 A Well, I would have liked to have it already done,                  13 but we've been busy with this.                  14 Q What do you have -- what do you anticipate the                  15 written agreement covering?                  16 A Me providing portfolio advisement services to                  17 Barrington and some arrangement for the -- them acquiring                  18 our -- the assets.                  19 Q Your clients' assets?                  20 A Yeah. Well, the clients' goodwill was an asset of                  21 my firm.                  22 Q Okay. Okay. So some arrangement for acquiring the                  23 assets of --                  24 A Right.                  25 Q -- DFFS.</p>	Page 15	<p>1 about Mr. Heath, basically, and what his firm does.                  2 Q Are you still managing their portfolios?                  3 A I am advising on the management of their                  4 portfolios. They are already residing with Mr. Heath who has                  5 the discretion.                  6 Q Who is determining what securities to trade in for                  7 those portfolios?                  8 A He determines that.                  9 Q Who places the trade?                  10 A Sandip Gohkale.                  11 Q And who is he?                  12 A He is an employee of mine who is actually becoming                  13 an employee of Mr. Heath at the end of this quarter.                  14 Q Do you know how to spell his name?                  15 A G-h-o-k-a-l-e. But he's an employee now this week                  16 of Mr. Heath.                  17 BY MR. GORDIMER:                  18 Q But do you make any of the recommendations as to                  19 what securities to --                  20 A I make them, yes.                  21 Q Okay. And have you made all of them, as far as you                  22 know, for your clients?                  23 A I'm not sure.                  24 Q Okay. What is the structure? You make the                  25 recommendation and Mr. Heath has to approve it?</p>
Page 14	<p>1 A Right.                  2 Q Okay.                  3 BY MR. GORDIMER:                  4 Q Have you agreed verbally on what the terms will be                  5 on that?                  6 A Not exactly. I know what I would wish they were.                  7 Q Okay. But you and Mr. -- it's Mr. Heath, right,                  8 Bill Heath?                  9 A I'm somewhat over a barrel at the moment because                  10 I -- for the safety of the clients, I have to hurry up and                  11 get it done, and then I would have liked to have done the                  12 whole thing together, but my attorneys have been busy with                  13 you. And so it has dragged out.                  14 BY MS. YODER:                  15 Q Are there any current compensation arrangements                  16 with Mr. Heath that are not in writing?                  17 A Well he -- you mean that I pay him?                  18 Q Or he pays you.                  19 A Well, the portfolio management is not in writing                  20 and there is an agreement that that will be somewhere between                  21 the 50 basis points that I think it should be and the 25                  22 basis points that he thinks it should be.                  23 Q What is your current role with your clients that                  24 have moved at this point in time?                  25 A I take calls from them and answer them questions</p>	Page 16	<p>1 A Yeah.                  2 Q And then Mr. Gohkale can execute it.                  3 A Right.                  4 Q Okay.                  5 BY MS. YODER:                  6 Q Are you receiving any type of advisory fees at this                  7 point in time?                  8 A Actually, up until the end of this quarter, I                  9 received all of them and now in the current quarter, the                  10 billing will be done by Mr. Heath and he'll have to pay me                  11 for my advisory services.                  12 Q What will you be paid as a result of that?                  13 A Well, 50 basis points or 25 or something in                  14 between. Hopefully 50.                  15 Q Still negotiating on that.                  16 A Yes.                  17 Q Okay.                  18 BY MR. GORDIMER:                  19 Q How did you come to reach an agreement with                  20 Mr. Heath on leaving your clients to his firm? How did that                  21 come about?                  22 A You mean how did I meet him or what --                  23 Q Right. Exactly.                  24 A He was a registered investment advisor. He was                  25 the, at one time, the chairman of the board of my country</p>

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1 club. He was a Houston Astros baseball player. I knew him.  
 2 We talked. He was familiar with my investment style and  
 3 approved of it. And we determined that he was more a  
 4 financial planning compliance accounting person, and his  
 5 clients weren't getting the portfolio management that he  
 6 thought that I could provide and vice versa. And so I needed  
 7 to find a good company that would be an appropriate place for  
 8 the clients and whose investment philosophies would be  
 9 consistent with mine. And this seemed to work out well.  
 10 Q Did you have the discussions or negotiations with  
 11 any other firm?  
 12 A Yes. Many.  
 13 Q Many. And then you were talking about a dozen  
 14 more?  
 15 A Yes.  
 16 Q More than a dozen?  
 17 A Well, close to a dozen.  
 18 Q Were there any others you considered, other than  
 19 Mr. Heath's firm, that you were maybe considering?  
 20 A Yes.  
 21 Q And which ones?  
 22 A There were numerous custodial firms that we talked  
 23 to. There was Wed Bush was one of them that's a brokerage  
 24 firm and was -- served as custodian. There were a number of  
 25 custodial/brokerage firms whose names escape me now. I've

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1 just found them by searching for them and went through a  
 2 bunch of them.  
 3 Q Did Mr. Kaleta have any role in working it out with  
 4 Mr. Heath?  
 5 A No. Actually, Mr. Kaleta knew Mr. Heath, but no.  
 6 Q Had he ever introduced you to Mr. Heath?  
 7 A Yes.  
 8 Q Did he do that for purposes of trying to move your  
 9 clients there or was that an earlier time?  
 10 A I think for purposes of us trying to find a deal.  
 11 At the time I was not thinking of moving. I was thinking of  
 12 finding a custodian.  
 13 Q Okay. So who suggested Mr. Heath? Was it  
 14 Mr. Kaleta?  
 15 A He didn't suggest. He introduced me.  
 16 BY MS. FRANK:  
 17 Q Did -- other than Mr. Gohkale, have any of your  
 18 other employees moved over to Mr. Heath's firm?  
 19 A Yes.  
 20 Q Which ones?  
 21 A Mike Richardson, Pamela Caddell, Sonia Gunn, Warren  
 22 Gunn, Terry -- I'm sorry. I forgot her name. Her last name.  
 23 BY MR. GORDIMER:  
 24 Q And Sonia, is that Joao, J-o-a-o?  
 25 A Yeah, right. That's right.

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1 BY MS. FRANK:  
 2 Q What does Pamela Caddell do?  
 3 A She is my assistant, but she is the administrator,  
 4 basically, who keeps track of everybody.  
 5 Q What does Warren Gunn do?  
 6 A He's a clerical assistant.  
 7 Q And Terry.  
 8 A Same.  
 9 Q Same. Okay. And I understood Sonia was  
 10 Mr. Kaleta's assistant, but --  
 11 A Well, Mr. Kaleta is no longer with us.  
 12 Q Right. So you've kept her on?  
 13 A Yes.  
 14 Q Okay. What does she do now?  
 15 A She is a client service representative.  
 16 Q Okay.  
 17 A She's an interface.  
 18 REPORTER: I'm sorry?  
 19 THE WITNESS: She's an interface with clients.  
 20 REPORTER: Thank you.  
 21 BY MS. FRANK:  
 22 Q With respect to DFFS, did you buy out Al Kaleta's  
 23 stock in the company last fall?  
 24 A Yes.  
 25 Q Okay. And has that transaction already closed?

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1 A I'm not sure how to answer that. Yes.  
 2 Q Okay. Did you pay him money for his shares in  
 3 DFFS?  
 4 A No.  
 5 BY MR. GORDIMER:  
 6 Q What were the --  
 7 A I forgave the money that he owed me for having  
 8 bought them and didn't pay for them yet.  
 9 MS. FRANK: Okay.  
 10 BY MR. GORDIMER:  
 11 Q And how much was that?  
 12 A I don't think -- I don't know. It's not really  
 13 determined. There was a protracted negotiation with his  
 14 accountants and everybody and it was rendered moot by the  
 15 fact that the client -- that the business became worthless.  
 16 BY MS. FRANK:  
 17 Q Was -- did you have a written document with Mr.  
 18 Kaleta to buy his shares back?  
 19 A I don't know.  
 20 Q You don't know?  
 21 A I don't know. Whatever there was written, it was a  
 22 question of a corporate resolution, and things like that,  
 23 that were done.  
 24 Q Okay. Yeah. I was talking about like an actual  
 25 contract where, you know --

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1 A No. There were contracts that were written by his  
 2 lawyer, by accountants. And there were various tax reasons  
 3 why this one wasn't good and it needed to be changed. And  
 4 while that was all going on, he had already given up. He was  
 5 not allowed to work there. He had given up everything. But  
 6 then the business became worthless. And so he -- it, again,  
 7 was moot.  
 8 Q Okay. So by -- let's say by December 31st of  
 9 2009 -- I don't know when that took place, but were you the  
 10 only remaining shareholder left in DFFS at that point?  
 11 A Yes.  
 12 Q Okay. Now there had been some other shareholders  
 13 of the company?  
 14 A Right.  
 15 Q Which Rick Jordan was one of them.  
 16 A Right.  
 17 Q And Danny Stewart was one of them?  
 18 A Well, no. Stewart was one many years ago.  
 19 Q Many years ago. Okay. Okay, but Mr. Jordan had --  
 20 when did he leave the company?  
 21 A The end of '08.  
 22 Q And did you buy out his interest?  
 23 A Kaleta was actually buying his interest.  
 24 Q Okay. Now I'm confused. If he was -- he, Mr.  
 25 Kaleta's, stock was coming back to you because --

Page 22

1 A Well, I was the guy --  
 2 MR. AXELROD: Wait, wait. Let her ask the  
 3 question.  
 4 You didn't get to ask the question, did you?  
 5 MS. FRANK: No, but I mean, it's like what Terry  
 6 said, he knows where I'm going.  
 7 MR. AXELROD: But I think your question was going  
 8 to be predicated on if Mr. Kaleta -- but his stock came back  
 9 in '09 and, as I understand, Jordan's stock was being  
 10 purchased in '08? Is that correct?  
 11 MS. FRANK: End of '08, right.  
 12 MR. AXELROD: Yeah. Just want to be sure of the  
 13 chronology.  
 14 MS. FRANK: Yeah. So --  
 15 MR. AXELROD: Because I didn't understand what I  
 16 thought your question was going to be.  
 17 BY MS. FRANK:  
 18 Q So did Mr. Kaleta complete buying Mr. Jordan's  
 19 stock?  
 20 A No.  
 21 Q He did not complete that.  
 22 A No.  
 23 Q So when Mr. Kaleta leaves the company last fall, he  
 24 still owed Mr. Jordan some money?  
 25 A Well, I still owed Mr. Jordan money because I was

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1 the guarantor.  
 2 Q Of Mr. Kaleta's purchase from Mr. Jordan.  
 3 A That's right.  
 4 Q Okay. Okay. So that's -- is that still an  
 5 account --  
 6 A That is what I was interrupting you to say.  
 7 Q Okay. All right. So do you know how much Mr.  
 8 Kaleta was going to be -- what the agreed upon price of the  
 9 stock was what was owed to Mr. Jordan?  
 10 A 750,000.  
 11 Q Okay. Do you know how much was still owed by the  
 12 end of last year?  
 13 A 500 or more.  
 14 BY MR. GORDIMER:  
 15 Q What is the current status of Mr. Jordan's -- of  
 16 what is owed to Mr. Jordan?  
 17 A He is bought out. I'm the guarantor. I am on the  
 18 hook for his money. There is no company that has meaning at  
 19 the moment. And that's the status.  
 20 Q Have you paid anything to Mr. Jordan?  
 21 A No. He -- Kaleta paid him 250,000 at the first of  
 22 '09.  
 23 Q Okay. And as far as your debt as guarantor, have  
 24 you talked to Mr. Jordan about that?  
 25 A Yes.

Page 24

1 Q What is he saying? Is he still demanding payment  
 2 or --  
 3 A He still demands payment.  
 4 BY MS. YODER:  
 5 Q Mr. Frishberg, you're the guarantor personally, not  
 6 through the RIA.  
 7 A Right.  
 8 Q So personally.  
 9 A On that one, yes.  
 10 Q Okay.  
 11 BY MS. FRANK:  
 12 Q Okay. What I want to ask you about next is about  
 13 the RIA and sort of, when it did have meaning, what was the  
 14 sort of the way it functioned. What was your -- you owned, I  
 15 guess, part of the company. What other duties and titles did  
 16 you have?  
 17 A I was the chief of investment decisions. I was  
 18 the -- I did strategic decisions, not only of the portfolio,  
 19 but of how the company was being managed. I made deals. I  
 20 did seminars and public -- I was the public face of the  
 21 company.  
 22 BY MR. GORDIMER:  
 23 Q Did you have the final say in all investment  
 24 decisions?  
 25 A Yes.

Page 25

1 Q And also in all business decisions unrelated to  
 2 investments?  
 3 A Yes.  
 4 MR. AXELROD: What do you mean by that just so I'll  
 5 understand?  
 6 MR. GORDIMER: Well, I think he mentioned it  
 7 earlier. He was talking about different things. He had --  
 8 MS. FRANK: Made deals.  
 9 MR. GORDIMER: Yeah, made deals, he mentioned,  
 10 among other things. So I'm just --  
 11 MR. AXELROD: Okay. As it relates to that.  
 12 MR. GORDIMER: Yeah.  
 13 MR. AXELROD: So business.  
 14 MR. GORDIMER: Yeah.  
 15 BY MS. FRANK:  
 16 Q Did you have a title? Were you the president or  
 17 the CEO?  
 18 A CEO.  
 19 Q CEO. Did you have any other officers in the  
 20 company?  
 21 A Yes.  
 22 Q Who were they?  
 23 A When he was there, Jordan and Kaleta, and  
 24 previously when he was there, Stewart.  
 25 Q Okay. And what titles did they hold?

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1 A It evolved to some more closely held corporations  
 2 that were -- yes. Vice presidents or something. They were  
 3 officers.  
 4 Q Okay.  
 5 BY MR. GORDIMER:  
 6 Q For instance, did you have a chief financial --  
 7 A They ranked in order of how much they owned  
 8 basically.  
 9 Q Okay.  
 10 A But it was done in a very democratic manner because  
 11 whether I -- when you asked did I have the last call, the --  
 12 it was always managed according to what would ever be the  
 13 best deal. And so it wasn't really managed that way. It was  
 14 people handled different parts of it, and there was a lot of  
 15 autonomy.  
 16 Q Okay. And did that also include the investment  
 17 decisions or was that more of the --  
 18 A No.  
 19 Q Okay. That's just the business --  
 20 A Yes.  
 21 Q Okay. I'm setting that aside from investment  
 22 decisions.  
 23 Was anyone a chief financial officer during the  
 24 time that it operated?  
 25 A There were people -- always someone who acted in

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1 that capacity, who acted -- who did that role that would  
 2 normally be considered that.  
 3 Q Okay. Who are the most recent one or two that  
 4 acted in that role?  
 5 A The most recent one was Kaleta, Al Kaleta.  
 6 Q Before Mr. Kaleta, who was -- who would be  
 7 considered --  
 8 A It was -- that role was shared between Jordan and  
 9 Kaleta.  
 10 Q What was Mr. Stewart's role?  
 11 A He was now, in the last few years, when we brought  
 12 him back after his bout of problems, he was a salesman in  
 13 Dallas.  
 14 Q You say salesman. He tried to bring clients into  
 15 the firm?  
 16 A Yeah. Representative or registered representative.  
 17 Q Okay.  
 18 BY MS. YODER:  
 19 Q Now a registered representative is an associate of  
 20 a broker-dealer.  
 21 A Well, he was an associate of a registered  
 22 investment advisor.  
 23 Q Okay.  
 24 BY MS. FRANK:  
 25 Q So who was in charge of -- so you were in charge of

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1 investments, right?  
 2 A Yes.  
 3 Q I think you said that. Okay. How did you  
 4 structure that part of the business? Did you -- obviously --  
 5 I'm assuming you didn't speak with every single client about  
 6 every single transaction.  
 7 A I didn't speak with them, no.  
 8 Q Okay. How did you have that set up to where the  
 9 clients would get advice of what to do and how their  
 10 portfolios would be managed?  
 11 A We had discretion.  
 12 Q The RIA had discretion.  
 13 A Yes.  
 14 Q Okay. From an employee standpoint, though, who was  
 15 actually having the day-to-day contact with the clients?  
 16 A The day-to-day contact was Mike Richardson, whose  
 17 job it was to anticipate concerns and to field questions.  
 18 And then he was assisted by the other senior members of the  
 19 firm.  
 20 BY MR. GORDIMER:  
 21 Q Does that mean if Mr. Richardson couldn't answer a  
 22 question or wasn't available, it would go to a senior member  
 23 of the firm?  
 24 A Well, the senior members of the firm were always  
 25 supposed to be involved. Mr. Richardson was supposed to



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1 provide better service and anticipate issues. He was  
 2 supposed to do affirmative contacting of the clients to keep  
 3 in touch and make sure that we had contact with them. The --  
 4 one of the senior members of the firm, who had been -- who  
 5 were registered as a Series 65, whose job it was to have  
 6 brought the client in and oriented the client to start with,  
 7 he retained that responsibility. But Mr. Richardson was the  
 8 conduit for that.

9 Q And who was that? Who was the --

10 A Well, it was Kaleta or Jordan or Karl Eggerss.

11 Q Just as a background, Mr. Richardson worked out of  
 12 the San Antonio office.

13 A Yes.

14 Q Okay. And your firm had a Houston and a San  
 15 Antonio office?

16 A Yes.

17 Q Okay. Did you have any other offices? The Dallas  
 18 office?

19 A Yes. They were all connected by video.

20 Q Where did you work out of?

21 A Houston.

22 Q Where did Mr. Kaleta work out of?

23 A Houston.

24 Q Okay. What about Mr. Jordan?

25 A Mostly San Antonio, but he also went to Houston.

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1 Q Okay. And Mr. Stewart, you said was in Dallas?

2 A Pardon?

3 Q Mr. Stewart was in Dallas?

4 A Right.

5 Q And Mr. Eggerss was in San Antonio; is that right?

6 A Yes.

7 Q Was the main sort of the back office work done in  
 8 San Antonio as well?

9 A Yes.

10 Q Client accounts and documents were maintained  
 11 there?

12 A Yes.

13 Q All right. What was maintained in Houston?

14 A Copies of documents, and I'm not sure.

15 Q Okay, but your office and Mr. Kaleta's office. Any  
 16 other employees in Houston?

17 A Yes. Those people, Sonia Joao and Warren Gunn.

18 Q Okay.

19 BY MS. YODER:

20 Q Mr. Frishberg, on your Form ADV, it stated that  
 21 your documents were held in San Antonio. Were there  
 22 duplicates of all documents that Houston had held in San  
 23 Antonio?

24 A Oh, I'm sure. I'm not sure if Houston had  
 25 everything that San Antonio had, but San Antonio had

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1 everything.

2 Q That Houston had.

3 A And everything relevant.

4 Q Okay. Okay.

5 BY MS. FRANK:

6 Q Did that include documents related to the private  
 7 equity investments also?

8 A I don't know.

9 Q Who would have done -- who would know that?

10 A Some -- Kaleta. Whoever was the compliance officer  
 11 at that time.

12 Q And who was that?

13 A Well, it was Kaleta for the last year or so. Prior  
 14 to that, it was Jordan.

15 Q Would -- okay. Was -- would it have been important  
 16 for the San Antonio office to have copies of the private  
 17 equity documents for the clients? Should they have had them?

18 A I don't know.

19 Q Who was in charge of -- I'm a little confused. Who  
 20 was in charge of actually doing the -- of a portfolio review  
 21 for a client? Was it Mike Richardson?

22 MR. AXELROD: What do you mean by portfolio review?

23 BY MR. GORDIMER:

24 Q Well, did the firm do an annual or some other  
 25 periodic portfolio review for its clients?

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1 A Well, we tried to have a constant contact with them  
 2 and we sent them, every week, notes about what we were doing  
 3 and thinking. And we tried to stay in more contact with them  
 4 than quarterly or whatever.

5 Q But was there some sort of a rebalancing or  
 6 something like that?

7 A They didn't do rebalancing.

8 Q Okay.

9 A They did portfolio management.

10 BY MS. FRANK:

11 Q Well, did -- how much clients did you have?

12 A I'm not sure.

13 Q A hundred?

14 A I know how much money was under --

15 Q Okay. How much money was under management?

16 A Well, it eventually grew to a hundred ninety  
 17 million, or so, and it was in the hundred and forty million,  
 18 or so, in the year before that.

19 BY MR. GORDIMER:

20 Q When did it hit a hundred and ninety million?

21 A Toward the end of '09.

22 BY MS. FRANK:

23 Q Was there some sort of tickler system to keep up  
 24 with which clients had been spoken to as far as managing your  
 25 portfolios if you have --

<p style="text-align: right;">Page 33</p> <p>1 A Yes, but I don't know how they exactly did it.</p> <p>2 Q Okay.</p> <p>3 A We had everything automated so that you could see</p> <p>4 everything.</p> <p>5 Q Okay. Because I imagine if you had several hundred</p> <p>6 clients, you could -- some of them slip through the cracks,</p> <p>7 as far as communicating with them, unless you had something</p> <p>8 that could remind you we haven't talked to this one in a</p> <p>9 while. So we better call them up. So but that was an</p> <p>10 automated system that you had?</p> <p>11 A It was -- I don't know how they did that.</p> <p>12 Q Okay. Who did that?</p> <p>13 A Well, Richardson was the affirmative one who did</p> <p>14 that, but he was advised and supervised by these other senior</p> <p>15 members of the firm.</p> <p>16 Q What about yourself? Did you supervise him at all?</p> <p>17 A Not that much, but what I did was I anticipated if</p> <p>18 there was a reason why the clients needed some additional</p> <p>19 information. For example, a bond that I thought was going to</p> <p>20 go down in price, but we didn't want to sell it, and we tried</p> <p>21 to stay ahead of clients knowing about these things. So I</p> <p>22 tried to anticipate what they might want to know. I tried to</p> <p>23 include that in my very frequent newsletters to them, but we</p> <p>24 still wanted to have a constant rotation of who was being</p> <p>25 affirmatively contacted.</p>	<p style="text-align: right;">Page 35</p> <p>1 security that you thought would be a good thing to invest in?</p> <p>2 What would happen with the clients' accounts then?</p> <p>3 A Well, we would, together, decide how much and when</p> <p>4 to buy or sell of it and it -- I would try to include as much</p> <p>5 as possible, as much as I could from him. I had a lot of</p> <p>6 respect for him. In the end, if we differed, I would have to</p> <p>7 make the call.</p> <p>8 Q Okay. So if you wanted to buy, you would figure</p> <p>9 out how much of a particular security you need to buy.</p> <p>10 A Right.</p> <p>11 Q How is that apportioned among the accounts?</p> <p>12 A We had the accounts separated into groups. And all</p> <p>13 of the accounts were separated into fixed income and capital</p> <p>14 gains, which is roughly stocks and bonds. And that way we</p> <p>15 could buy 3 percent and that would be the same in your equity</p> <p>16 account whether you had a million dollars with a quarter of</p> <p>17 it in equities or five hundred million dollars with all of it</p> <p>18 in equities. The same percentage would apply unless you were</p> <p>19 in a group that we excluded, such as we called it widows, but</p> <p>20 we meant risk averse.</p> <p>21 Q Is that the fixed income folks basically?</p> <p>22 A No. There were a few people who chose to only have</p> <p>23 fixed income. That was against my warning that that's not as</p> <p>24 conservative a posture as you think it is.</p> <p>25 Q Right.</p>
<p style="text-align: right;">Page 34</p> <p>1 Q Well, how were investment decisions made? I mean,</p> <p>2 how often would -- would you hold meetings about it? How</p> <p>3 would that be determined?</p> <p>4 A Every day.</p> <p>5 Q Okay. Who would meet every day?</p> <p>6 A Karl Eggerss and I.</p> <p>7 Q Okay. Anyone else?</p> <p>8 A No.</p> <p>9 Q Would anyone participate maybe every so often?</p> <p>10 A No.</p> <p>11 Q Okay. So you and Mr. --</p> <p>12 A Well, years before it had been done in a more</p> <p>13 collective manner.</p> <p>14 Q Okay.</p> <p>15 A But it evolved into Eggerss and I doing it.</p> <p>16 Q Okay. And so what would happen on a daily basis?</p> <p>17 A We were constantly e-mailing each other. We were</p> <p>18 talking on video or Skype, we were sending each other ideas</p> <p>19 via e-mail, we were considering -- I would have an idea to</p> <p>20 research. He had the staff and the Bloomberg machine, and he</p> <p>21 would go and research it. I would look for correlations of</p> <p>22 things that would indicate an investment opportunity or</p> <p>23 problem, and he would follow it up, and then we would try to</p> <p>24 figure out how to time it accurately.</p> <p>25 Q So what would happen if you had found a particular</p>	<p style="text-align: right;">Page 36</p> <p>1 A But in the end, the clients' will would apply. My</p> <p>2 job was to let them know what I thought of their philosophy,</p> <p>3 but then to -- once I was convinced that they understood my</p> <p>4 point, we would follow their instruction.</p> <p>5 Q Okay. Now so if you made a decision, did you look</p> <p>6 at, like, total assets under management or in equities and</p> <p>7 then figure out what percentage of that you want to put into</p> <p>8 a particular security?</p> <p>9 A Yes.</p> <p>10 Q Okay. And then it would be carried out basically</p> <p>11 evenly through all the accounts that are managed, other than</p> <p>12 the ones that were --</p> <p>13 A You had a percentage here.</p> <p>14 Q Okay. Other than the ones that were separated out?</p> <p>15 A Right. Well, in each case, yeah, because there</p> <p>16 were several groups that we could only do it for very</p> <p>17 aggressive groups, which we had a nickname for, where we</p> <p>18 could not do it for very unaggressive groups. And then</p> <p>19 because of the fact that each person started at a different</p> <p>20 time with a different composition, you ended up with very few</p> <p>21 portfolios exactly the same as each other.</p> <p>22 Q Okay. So who would carry out -- once you determine</p> <p>23 all of this and talked about it with Mr. Eggerss, who would</p> <p>24 actually carry out handling the account transfers necessary</p> <p>25 to do it?</p>

<p style="text-align: right;">Page 37</p> <p>1 A He and his staff, which was Sandip and his clerical 2 help over there.</p> <p>3 Q Okay.</p> <p>4 BY MS. YODER:</p> <p>5 Q Now over time, though, the portfolios would begin 6 to look alike.</p> <p>7 A Well, they -- one would think, but they really 8 didn't that much because there were things that were 9 retained, and there would just be -- there weren't that -- 10 they weren't that similar.</p> <p>11 Q Okay.</p> <p>12 A Over time, there were -- if we had an asset and we 13 held it for a long time and people came in, they still 14 wouldn't have it unless it was appropriate to buy it at that 15 time. And so there were some things that a lot of people had 16 and some things that fewer people had.</p> <p>17 Q Just for clarification purposes, did you manage the 18 money as a whole or did you manage individual accounts, 19 meaning the person's portfolio?</p> <p>20 A We managed the person's portfolio because the -- we 21 didn't have any way to do it as a group because when a person 22 came in, we didn't just sell everything and bring them up to 23 date. We might have held securities in his portfolio for six 24 months until we thought it was the appropriate time. It 25 sometimes took six months or a year for someone to have it</p>	<p style="text-align: right;">Page 39</p> <p>1 A If I was going to buy IBM stock, I would start with 2 the assumption that it was appropriate for all of you, but 3 then if I had some reason why it wasn't appropriate for you, 4 I would find a mechanical way to not include you in it.</p> <p>5 BY MS. YODER:</p> <p>6 Q Okay.</p> <p>7 A And that was done via sometimes individual people 8 and sometimes groups of people who were classed as more or 9 less risk averse or more or less aggressive.</p> <p>10 Q Okay.</p> <p>11 BY MR. GORDIMER:</p> <p>12 Q Well, if you made a decision to purchase a 13 particular security and you figure out which clients, then, 14 would be part of that --</p> <p>15 A Yes.</p> <p>16 Q -- how do you determine what securities maybe to 17 sell, what fund to use in that person's account to purchase 18 the security?</p> <p>19 A You -- often there were assets there already to -- 20 because there was just a normal turnover. There were 21 dividends, there was money coming in that --</p> <p>22 Q Cash in other words.</p> <p>23 A Yeah. There was money there already. And if there 24 was such a problem, I -- most of the time they would bring it 25 up to me personally and I would say, "Don't do it then." Or,</p>
<p style="text-align: right;">Page 38</p> <p>1 the way we wanted to because we didn't -- earlier in my 2 career, I had occasions where I thought that something was 3 wrong and then it went up. And it turned out that the one 4 that I picked didn't go up as much.</p> <p>5 And so clients are -- they've got -- they don't 6 always understand what you're doing, but they're always 7 watching and second guessing. And so I tried -- I learned to 8 avoid that type of friction with the investor putting a 9 little extra time into not selling their assets for our 10 convenience, but only for a reason. And so it just worked 11 out that there were so many different variations, that they 12 really weren't the same.</p> <p>13 Q So I'm still a little confused. So if you saw a 14 particular equity stock that you would like to buy for the 15 portfolio --</p> <p>16 A Yes.</p> <p>17 Q -- you decided how much you were going to buy --</p> <p>18 A Yes.</p> <p>19 Q -- and then decided which individual clients would 20 receive that?</p> <p>21 A No. I would decide which individual clients 22 wouldn't receive it.</p> <p>23 Q Okay.</p> <p>24 BY MR. GORDIMER:</p> <p>25 Q You had them grouped?</p>	<p style="text-align: right;">Page 40</p> <p>1 "Sell this to get it," or, "Consider it. I'll think about 2 it. Let's think about it tomorrow" or we -- we did a lot of 3 individual decisions like that.</p> <p>4 BY MS. YODER:</p> <p>5 Q Who would bring that to your attention? Karl?</p> <p>6 A Yes.</p> <p>7 Q Okay.</p> <p>8 BY MR. GORDIMER:</p> <p>9 Q So for each account -- I assume that one of the 10 components of the particular accounts portfolio was cash; is 11 that right?</p> <p>12 A Yes.</p> <p>13 Q Okay. So is there a point in time when either you 14 have too much or too little cash? Too little to do this type 15 of transaction.</p> <p>16 A It wasn't too much.</p> <p>17 Q Okay.</p> <p>18 A Well, you're asking a question -- theoretically if 19 this was 1998, you might have no cash. At this point, you 20 have too much cash because the opportunities are sparse.</p> <p>21 Q And I guess my question is, if there wasn't enough 22 cash or you felt you were dipping too far into cash to make 23 the transaction that you had wanted, what would you do in 24 that particular case?</p> <p>25 A Either not buy it or get rid of something. As I</p>

<p style="text-align: right;">Page 41</p> <p>1 said right now, for the last several years, that really 2 hasn't been an issue. The issue has been finding 3 opportunities that are worth buying, not squeezing money. 4 BY MS. FRANK: 5 Q So -- okay. I'm still confused. Let's go back to 6 the IBM example. If you have -- you decide you want to buy a 7 block of IBM stock and you're going to, is that the way it 8 would work, you would buy a block for the firm and then the 9 firm would then parcel it -- 10 A And then we would give a spreadsheet to the 11 custodian who would separate it into who got it and how much. 12 Q Okay. And then do you then allocate it to the 13 accounts based on a percentage basis or do you look at 14 individual -- 15 A Percentage. 16 Q Okay. So everybody would get the same percent more 17 or less? 18 A More or less. 19 Q Okay. And that's a percentage of the IBM stock or 20 is it based on a different percentage, like, I don't know, 21 percentage of what assets they have? 22 A Yeah. Percentage of assets they have in that type 23 of -- that equity account. 24 Q Okay. 25 A Not a percentage of their total assets, but a</p>	<p style="text-align: right;">Page 43</p> <p>1 Q -- how many shares. 2 A Well, right. Well, we -- over time we evolved how 3 to systematically be able to do that accurately. They did 4 execute it, but they did it according to a system that we 5 evolved to be able to provide precision and great 6 individuality in the way that accounts were treated. 7 Q Okay. And that -- who handled it was Mr. Eggerss 8 and his staff. 9 A Yes. 10 Q Okay. 11 BY MS. FRANK: 12 Q Would Mr. Eggerss need to know whether or not a 13 client had some of their funds in private equity investment 14 to determine whether or not a percentage of an individual, 15 say, public company should be added to their account? 16 A He -- I guess he would because -- to the extent 17 that that was equity, but I believe that the way he would 18 determine it would be based upon the equity portfolio as it 19 sat there. I don't think he would consider a private equity 20 in that number. 21 BY MR. GORDIMER: 22 Q Meaning he's just looking at the percentage held in 23 equities, publicly traded equities, and figure out from that 24 number. 25 A Right. Right. Generally. I think, you know,</p>
<p style="text-align: right;">Page 42</p> <p>1 percentage of their capital gains portfolio. 2 Q Okay. So let's say Mary Smith has -- let's say 3 she's getting 50 percent in equities. 4 A Yes. 5 Q How would you allocate a block of the IBM stock to 6 her account? 7 A If there was 3 percent, then she would get 3 8 percent of the equity portfolio. In other words, if she had 9 50 percent in equities, then she would actually end up with 1 10 1/2 percent of her portfolio being IBM. 11 Q Okay. So whatever 1 1/2 percent of her portfolio 12 is, then that would translate into X number of shares in the 13 block. 14 A That's right. 15 Q And move into her account. 16 A Correct. 17 Q Okay. 18 BY MR. GORDIMER: 19 Q And that's something Mr. Eggerss and his staff 20 figured out? 21 A Well, we all figured out who the -- at that time, 22 per trade, yes. 23 Q Okay. I mean, for each individual account, 24 somebody is going to have to figure out -- 25 A That's right. That's right.</p>	<p style="text-align: right;">Page 44</p> <p>1 these are smart people with great precision, and I'm positive 2 that there were times when he made adjustments because he 3 knew the client then knew the appropriate -- I think he 4 really -- and Sandip does, and the people executing it now, 5 know the accounts. They don't necessarily know the people 6 well, but they know the accounts. And so they are working on 7 them every day. And so they do make individual adjustments 8 more than you would think. 9 BY MS. FRANK: 10 Q What -- would it be -- wouldn't he need to know, 11 Karl or anybody else, sort of the client's total investment, 12 total portfolio picture to really be able to make an informed 13 decision about what to put in the client's account? I mean, 14 in other words, if somebody has -- if the hypothetical Mary 15 Smith has half of her money in public equities and the other 16 half in fixed income, but she also happens to have, say, a 17 \$50,000 investment in the Wallace Bajjali fund, wouldn't that 18 be something that Mr. Eggerss would need to take into account 19 to know sort of whether to absorb some of her excess 20 liquidity to put into another stock or whether to leave that 21 liquidity in her account? I mean, what -- 22 A No. If it was meant to be cash, it would be in the 23 fixed income side. 24 Q Okay. 25 A It was meant to be a hundred percent invested in</p>

<p style="text-align: right;">Page 45</p> <p>1 the capital gains side. It was supposed to be a hundred 2 percent invested. The reason it wasn't was because of lack 3 of opportunity. 4 Q Okay. 5 A Not on purpose leaving cash there. That the money 6 that was in there, the client wanted it all invested. 7 Q Okay. 8 A And it was a source of vexation to them often that 9 it wasn't invested. They never had not enough cash. They 10 always had too much cash. 11 Q Would it be -- I guess what I'm struggling with is 12 if somebody is trying to make decisions based on someone's 13 portfolio -- 14 A Yes. 15 Q -- whether or not they would also need to know what 16 the other person's investments are. Let's say it's not even 17 an investment in Wallace Bajjali. Let's say they actually 18 have an account at Merrill Lynch that is not being managed by 19 you. So did you have some mechanism for knowing sort of that 20 client's total investment picture as opposed to just what 21 assets you had under management? 22 A It's a good question. And if you think about it, 23 that was the part of the system that I think is very good 24 because we didn't just stick them into a square peg in a 25 round hole and have a certain allocation. If the person had</p>	<p style="text-align: right;">Page 47</p> <p>1 A Right. 2 Q Presumably based on an initial interview with the 3 client. 4 A Well, based on ongoing. 5 Q Ongoing information. 6 A Yes. 7 Q Okay. And then -- so then that percentage 8 breakdown is based on other factors that are going on outside 9 the company. How does Karl Eggerss know, or anyone in that 10 position, know what the other information is related to that 11 client? 12 A Well, this is the challenge and this is why the 13 direct account representative is in communication with the 14 client and why we send newsletters all the time to them so 15 that they understand the thinking and why Mike Richardson is 16 rotating and calling everyone so that he can constantly stay 17 in touch with them. And when we think that there's something 18 situational that is about the market rather than the person, 19 we're sending them more developed newsletters and describing 20 that we think; for example, that we should be moving more 21 money into bonds. No matter what your situation, we think it 22 time to be more or less conservative. So we did a lot of 23 work to stay up-to-date with the clients. 24 Q Okay. So presumably, then, in -- 25 A And Mike Richardson's job was full-time calling --</p>
<p style="text-align: right;">Page 46</p> <p>1 an equity account at Merrill Lynch, they might only have 30 2 percent of the money under our management in equities and 3 they might have 70 percent of it in bonds. So that when 4 you're managing the 30 percent, you're still doing it by the 5 percentage, but you are allowing for what you just described. 6 If they had too much equities, then they would just 7 have more money in the bond portfolio or in cash. The money 8 that was in the actual capital gains portfolio, there was 9 meant to be 100 percent invested, and it only wasn't because 10 of lack of opportunity. 11 Q Okay. 12 A But that thing that you're talking about was 13 accounted for by the way their assets were allocated to start 14 with. And so if they made an investment in some other 15 equity, then we might change their allocation and move money 16 from their stock account to their bond account. That's why 17 we kept them separate so that we would be able to keep track 18 of that. 19 Q Okay. So that -- did Karl, or anyone on his staff, 20 have the ability to change those percentages between the 21 fixed income and the capital gains side? In other words -- 22 A Yes. 23 Q They did? Because that's -- it sounds like what 24 you're saying is you would set up the breakdown between the 25 two.</p>	<p style="text-align: right;">Page 48</p> <p>1 anticipating exactly these kinds of situations. 2 Q So and I understand he has, like, a computer 3 program that has got all the notes, or he's got a 4 computerized system of keeping up with all of the clients -- 5 A I'm sure. 6 Q -- and his conversations with them. 7 A Right. 8 Q So presumably, then, is this like a standard 9 question that he is asking the clients, is sort of -- now I 10 don't show your -- let's say, hypothetically, somebody's 11 allocation between the two sizes is sort of out of kilter 12 from what normally would be the case. Would he be asking 13 them -- 14 A What do you mean by out of kilter? 15 Q Well, let's say you had, like, 90 percent of fixed 16 income and only 10 percent in equities. Given their 17 investment goals, would he be asking them, it's like, "Why is 18 that? Do you have another account somewhere else? "Do you 19 have other investments elsewhere?" 20 A Yes. 21 Q So that I understand why this looks the way it 22 does. 23 A Yes. 24 Q So was this a standard question he was supposedly 25 asking them?</p>

<p style="text-align: right;">Page 49</p> <p>1 A Yes.</p> <p>2 Q And then presumably once he knows that answer, is</p> <p>3 it also a standard question that he follows up with them</p> <p>4 about whether or not their other investments have changed any</p> <p>5 since the last time he talked to them?</p> <p>6 A Yes. And that's why he was constantly rotating and</p> <p>7 calling them not even with -- sometimes he had a specific</p> <p>8 goal calling them. Sometimes he's calling them because he</p> <p>9 hadn't talked to them in a while. Just staying up-to-date</p> <p>10 with exactly that kind of thing, changes in their life.</p> <p>11 BY MR. GORDIMER:</p> <p>12 Q Well, what is the rotation? That's what I was</p> <p>13 trying to figure out before. I mean, how often does</p> <p>14 Mr. Richardson get around to calling each individual client</p> <p>15 approximately?</p> <p>16 A I bet several times a year.</p> <p>17 Q Even though it may not be like quarterly, but it</p> <p>18 may be just --</p> <p>19 A Maybe more than quarterly, one would hope.</p> <p>20 Q Okay.</p> <p>21 BY MS. YODER:</p> <p>22 Q How was that communicated to you as a portfolio</p> <p>23 manager?</p> <p>24 A Well, it -- on an individual basis, if there was</p> <p>25 something that required a decision, then it would be</p>	<p style="text-align: right;">Page 51</p> <p>1 percentage would go into equities versus fixed income?</p> <p>2 A That would be part of the overall plan and it would</p> <p>3 be made in consultation with the client. That was not an</p> <p>4 individual decision that we made as a discretionary decision.</p> <p>5 We made plans with the clients for what we were doing, and</p> <p>6 then what we did was execute within what we had already</p> <p>7 decided with the clients. When there was a strategic change</p> <p>8 to be made, that was done in consultation with the client.</p> <p>9 Q Who would be involved in that change, other than</p> <p>10 the client?</p> <p>11 A The client's direct representative and Eggerss and</p> <p>12 Mike Richardson.</p> <p>13 Q Would you be informed of those changes?</p> <p>14 A Sometimes. If it was very routine, probably not.</p> <p>15 Q When a client first joined -- came to the firm and</p> <p>16 became a client, were you involved in helping determine what</p> <p>17 portfolio management style that client would be provided?</p> <p>18 A Sometimes.</p> <p>19 Q What -- can you be a little more explanatory on</p> <p>20 that? At what time? What are some examples of when you</p> <p>21 would be included?</p> <p>22 A When -- depending upon -- I had a model portfolio</p> <p>23 for a person who was characterless: didn't have tax issues,</p> <p>24 didn't have risk issues, didn't have anything. If I had my</p> <p>25 choice, what would be the ideal strategy for you. For</p>
<p style="text-align: right;">Page 50</p> <p>1 communicated to me. If it fit in with the persons -- if it</p> <p>2 was something that's remedied by the person moving some money</p> <p>3 from their stock -- from the equity portfolio to the bond</p> <p>4 portfolio, then they would probably do that with the</p> <p>5 permission of the client. They couldn't do it without the</p> <p>6 client's permission, but they would do that in collaboration</p> <p>7 with the client. But if you think about it, most of those</p> <p>8 things you're talking about are handled by that kind of</p> <p>9 allocation.</p> <p>10 Q But you would be involved in those movements.</p> <p>11 A Depending upon how routine they were.</p> <p>12 Q If a client's risk tolerance changed, as a</p> <p>13 portfolio manager, would you be told that?</p> <p>14 A Probably, yeah.</p> <p>15 Q Because you would have to readjust the -- possibly</p> <p>16 readjust the portfolio to --</p> <p>17 A No. They would change the amount of allocation</p> <p>18 from one to another. It wouldn't be changing whether I would</p> <p>19 still buy 3 percent of IBM. It would change, what, 3 percent</p> <p>20 of IBM constituted. In other words, 3 percent of IBM in his</p> <p>21 account might be \$10,000 and 3 percent of IBM in your account</p> <p>22 may be \$2,000. And if you became more risk averse, then</p> <p>23 after adjusting the size of your portfolios, maybe 3 percent</p> <p>24 would only be \$1,000.</p> <p>25 Q Well, who would make the decision as to what</p>	<p style="text-align: right;">Page 52</p> <p>1 everybody. And I would say I think we should have more bonds</p> <p>2 right now because it's more risky. And so when there was</p> <p>3 somebody that would fit in with that average kind of</p> <p>4 situation, then they would do it within the guidelines that I</p> <p>5 had already set.</p> <p>6 Q "They" being?</p> <p>7 A "They" being the account representative and Eggerss</p> <p>8 and --</p> <p>9 Q Okay.</p> <p>10 A -- all of them, in consultation with the client.</p> <p>11 When there was a reason for it to be otherwise -- this person</p> <p>12 is risk averse, this person is very aggressive, they want to</p> <p>13 make a lot of money -- often then I would be called in</p> <p>14 because frequently, I would want to explain to them that</p> <p>15 you're not being as risk averse as you think you are, that</p> <p>16 you're actually taking more, rather than less, risk by doing</p> <p>17 this. Or you're not -- you think that the more risk you</p> <p>18 take, the more money you make, but that's a fallacy.</p> <p>19 Actually, the more risk you take, the more money you may</p> <p>20 lose.</p> <p>21 And so I would try to adjust their thinking to be</p> <p>22 more of what I considered to be strategically logical, rather</p> <p>23 than -- the reality is that clients come in with biases that</p> <p>24 are created not necessarily because they are a rational,</p> <p>25 experienced investor, but because their mother whipped them</p>

<p style="text-align: right;">Page 53</p> <p>1 with a bond certificate, or something, and they have this  2 bias. And I'm assuming that they're coming to me because  3 they're looking for a more surgical approach than what  4 they're able to do, which I find easy to do in your  5 portfolio, but hard to do in mine.  6 And so I'm trying to impart to them a more surgical  7 view. So if they happen to be an average person who is going  8 to fit in with -- it's a round peg and they're a round hole  9 and everything works fine, then it would probably happen with  10 minimal. I would be more like a maitre d' saying hello to  11 them and hoping you're getting good service. And if they had  12 a reason why they were not fitting into what I think would be  13 the standard thing, then there would be more to talk about.  14 Q Would you have oversight of everybody that came in  15 to make sure that they were the round peg in the round hole?  16 A No. I had a system in place. It was not possible  17 to do that with everybody. There were too many. No, I  18 didn't. I didn't have personal contact with each client like  19 that, no.  20 BY MR. GORDIMER:  21 Q Well, did you have to -- at least when they come in  22 and they become a client at first and they want to set up  23 their portfolio and some people have different risk  24 tolerances and want to put some in fixed income and whatever  25 in equities, did you have to approve the initial plan, I</p>	<p style="text-align: right;">Page 55</p> <p>1 security?  2 A No. Again, if they don't have the cash, then they  3 don't buy that security.  4 Q Well, I just meant generally. I mean, how are you  5 going to determine the gross amount to purchase of a  6 particular security unless you know how much they --  7 A Oh, because we have automated systems that  8 calculate for us what percentage of cash there is in general  9 in the portfolio. And sometimes we would actually have to  10 wait. If we had been doing several trades, it would become  11 so hard to keep up with it for the reasons you're describing,  12 that we would have to wait until everything cleared so we  13 could get another run and see what the exact amount of cash  14 in the portfolios looked like because sometimes you wouldn't  15 be able to figure it in your head.  16 If you had only done one trade in the last two  17 weeks, which is frequently true, then you pretty much knew  18 what you had. But if there had been a busy time when you had  19 made adjustments, sometimes you would be making the  20 adjustments in tiers so you could wait and let it catch up  21 and make sure that there was the appropriate cash there. The  22 automatic systems only go so far. And there's a reason why.  23 Obviously you could make a robot do the whole  24 thing. If you wanted to, at this point, you could automate  25 everything, but then you have no way to catch errors. And</p>
<p style="text-align: right;">Page 54</p> <p>1 mean, before it would actually -- the client would be  2 accepted and monies would be divided that way?  3 A No. No. No. I had senior people whose job it was  4 to do that. It was not possible for me to do that.  5 BY MS. FRANK:  6 Q Who would --  7 A I wasn't present back then.  8 BY MR. GORDIMER:  9 Q Okay.  10 A My duties were not present all the time to do that.  11 Q Right. But they have to clear it with you even  12 though they may have met with their client on this --  13 A No, they have guidelines that they follow. They  14 have to clear it with me if they feel that they're -- if  15 they're not following my guidelines.  16 Q Is that also true of people who want to change the  17 distribution of their portfolio?  18 A Again, if it was something that doesn't require my  19 attention, it wouldn't -- the goal is to not queue up a  20 hundred people waiting for my attention.  21 Q I understand. And one more thing. I guess if  22 there's a change and people move funds from, say, their  23 equity side to their fixed income side, you probably need to  24 know the total amount you have available for equities in  25 order to make a decision how much to buy of a certain</p>	<p style="text-align: right;">Page 56</p> <p>1 earlier many years ago I had cases where somebody would call  2 in and say buy short and the thing would get wrong. And I  3 would end up having to pay \$20,000 if something would go  4 wrong. And so I never had this system fully automated. It  5 also ended up with a manual spreadsheet that somebody that  6 had a real responsibility had to be able to look at who knew  7 what they were doing.  8 Q Who was that though?  9 A It wasn't totally automated.  10 Q Who had the responsibility?  11 A Whoever was doing the trades at the time had been  12 one short, and it was Eggerss, and but it was always a senior  13 person who was in charge. Earlier it had been whoever --  14 when we -- for the first many years at the firm, each  15 individual partner registered representative of the firm not  16 only got with the clients, who at that time we only had one  17 office, and I was there and I met each client and did a lot  18 of what you asked me if I did. And then but the client would  19 also have a personal relationship with one of the three  20 partners. And that person would do the trades for them, as  21 well as the service and as well as the follow-up.  22 And then the way it's done now were adjustments  23 that we made as the -- as we got larger. And in order to be  24 able to keep the service very hands on and very  25 individualized, we made these adjustments to make it work</p>

Page 57	<p>1 better for them. When we found people get queued up or not                  2 getting the service, we would put in something to stop the                  3 blockage.                  4 BY MS. YODER:                  5 Q So Mr. Frishberg, you met with some clients?                  6 A Yeah, I did.                  7 Q Was there any particular reason that you would meet                  8 with some? I mean, was there a certain group of clients you                  9 would want to meet with versus others that maybe not?                  10 A Usually it would be somebody who had issues with my                  11 philosophy or who disagreed or felt like he was getting good                  12 service or didn't feel he was being called back                  13 appropriately. And I think I -- in the last couple of years,                  14 I think I spent more time on those kinds of questions. And                  15 the rest of the time I would -- when I had the ability or                  16 time or when I was available I would more like walk around                  17 and, like the owner of the restaurant, saying, "Are you                  18 getting good service here? Are you happy? How do you like                  19 the steak tonight?" And things like that.                  20 Q Okay. So you did not review and approve every plan                  21 that was brought into your office.                  22 A No, I did not.                  23 MS. FRANK: Do you want to take a break?                  24 THE WITNESS: I would rather get it over with. I                  25 mean --</p>	Page 59	<p>1 A Oh, exchange change traded funds or sometimes                  2 mutual funds.                  3 Q And the cash portions that typically -- like a                  4 money market account of some kind?                  5 A Yes.                  6 Q And it was --                  7 A Sometimes a short term, a very short term, bond                  8 fund to get a little bit more yield.                  9 Q You mentioned private equities. Describe exactly                  10 what you mean by private equities.                  11 A Limited partnership or private non-registered                  12 securities.                  13 Q Okay. And when you say non-registered, I mean, how                  14 would you find out about these?                  15 A Mostly I was involved in the creation of them or                  16 consulted with it or they were people that I knew who were                  17 doing it.                  18 Q Okay. Can you give an example of what would be --                  19 A Wallace Bajjali.                  20 Q Wallace Bajjali. Anything else?                  21 A BizRadio.                  22 Q Okay. Anything else?                  23 A The Laffer Frishberg Wallace, the Perry Fund.                  24 Q Okay. That's four. Are there any other ones that                  25 you recall over the last just couple of years?</p>
Page 58	<p>1 MR. AXELROD: It's up to you-all.                  2 THE WITNESS: It's up to you.                  3 MR. AXELROD: It's 11:35. We've been an hour and                  4 fifteen minutes.                  5 MS. FRANK: Do you need more water?                  6 (A brief recess was taken.)                  7 MS. FRANK: All right. Back on the record.                  8 BY MR. GORDIMER:                  9 Q Let me ask, what types of securities or other                  10 products did you typically buy and sell for your clients? I                  11 mean, just list them. I know some of them are obvious, but                  12 what sorts of securities? I mean, I know you said public                  13 company stock with the trades and the stock exchange or                  14 NASDAQ. What else did you buy or sell for purposes --                  15 A Bonds.                  16 Q What types of bonds?                  17 A Mortgage bonds, high yield bonds, municipal bonds,                  18 corporate bonds, government bonds.                  19 Q Okay. Anything else?                  20 A Private equity.                  21 Q Okay. Anything else?                  22 A Not that I can think of at the moment. It's -- I                  23 mean, I -- no reason not to do anything else. I just can't                  24 think of anything else.                  25 Q Okay. And then the funds that are held in cash --</p>	Page 60	<p>1 A No.                  2 Q Okay. Now what about the Kaleta Capital Management                  3 notes? Was that considered part of the private equity side                  4 at all?                  5 A No.                  6 Q Okay. Was that considered any other type of                  7 investment that you would typically do?                  8 A No.                  9 Q Now weren't there other debt instruments, notes,                  10 that were in the client's portfolios private type company                  11 notes?                  12 A There was a Wallace Bajjali note.                  13 Q Okay.                  14 A And we -- no. Other than that, no.                  15 Q When you say Wallace Bajjali notes, what type of                  16 notes were they?                  17 A Well, Wallace and Bajjali created as I guess you                  18 would call it a trustee, financing vehicles, like, instead of                  19 bank financing. And they created these notes, which they                  20 did, which our clients put money into.                  21 Q Okay. And how many different types of notes were                  22 there?                  23 A A couple of kinds. Different levels of debt to                  24 equity, which carried more or less interest.                  25 Q Okay. So if I recall, there's --</p>



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1 A 11 or 12, yeah.  
 2 Q Okay. And were the -- who were the makers of these  
 3 notes?  
 4 A Makers? Wallace and Bajjali.  
 5 Q Anyone else?  
 6 A No.  
 7 Q Were there any notes that BizRadio was the maker?  
 8 A Yeah, but I don't believe that we actually issued  
 9 them or did them. They were -- we meant to. I have  
 10 documents made by an attorney. I don't believe that we  
 11 actually used that document.  
 12 Q Okay.  
 13 A I don't believe we ever issued those notes to  
 14 anybody.  
 15 Q Okay. So you don't -- do you know if any of your  
 16 clients had any of their money in notes from BizRadio?  
 17 A I don't -- no, I don't think so.  
 18 Q Now the different types of private equity and these  
 19 notes, are they all investment opportunities that you  
 20 approved for some of your clients?  
 21 A Yes.  
 22 Q Okay. And who determined which clients could get  
 23 involved in those types of products?  
 24 A Regulation D.  
 25 Q Okay. What do you mean? Explain.

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1 A And the client. Well, I mean, they had to be  
 2 millionaires.  
 3 Q And they had to be accredited; is that right?  
 4 A Right.  
 5 Q Okay. What other determinations did you make as to  
 6 which clients could become involved in those?  
 7 A Well, they have to be suitable and be able to  
 8 understand it.  
 9 Q Did you establish the rules by which the clients  
 10 could get involved in those types of investments?  
 11 A Well, I did, but I used your guidelines as my  
 12 guidelines.  
 13 Q Okay. But what I'm saying is that if a client --  
 14 why don't you explain to me how a client would become  
 15 invested in one of those opportunities.  
 16 A We didn't have anything like that until a few years  
 17 ago when we -- in 2001, I started to do mortgage bonds  
 18 because I was worried about the stock market. And when I  
 19 became worried about both the stock market and the bond  
 20 market and the economy in general, I started to look for  
 21 private deals to do. And I found a few and looked at them,  
 22 and one of them was what was at that time called Perry  
 23 Properties was being run by the mayor of Sugarland, along  
 24 with other people.  
 25 Q That's David Wallace, correct?

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1 A That's right. And we found that to be a good  
 2 investment. And so we started to invest money in that.  
 3 Q How did you decide, A, how much to invest and B,  
 4 which clients to put in it?  
 5 A Again, I was looking for clients that would be able  
 6 to diversify their equity away from the stock market. And so  
 7 it would be -- they had to be a millionaire and they had to  
 8 be able to completely understand that. And I was looking for  
 9 diversification to reduce their risk.  
 10 Q Approximately how many clients ended up being  
 11 invested for --  
 12 A I don't know. 20, 30, 50. I don't know.  
 13 Q And who would be the one to explain this investment  
 14 to their client?  
 15 A Generally, Wallace would be invited in to talk to  
 16 the client. And the -- and Al Kaleta was a part of that.  
 17 Q Okay. Were you a part of that?  
 18 A Sometimes, particularly earlier in the process when  
 19 we were smaller and newer. I was back years ago.  
 20 Q Okay.  
 21 A More a part of that process.  
 22 Q Even when you weren't part of the actual discussion  
 23 with the client --  
 24 A Yes.  
 25 Q -- is that something you authorized Mr. Kaleta and

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1 Mr. Wallace to talk to that client?  
 2 A Yes.  
 3 Q Okay. So they weren't taking it up on their own  
 4 without you knowing.  
 5 A At that --  
 6 Q For the Perry investment.  
 7 A That's right.  
 8 Q Did that also follow with the Wallace Bajjali  
 9 investment kind of a similar way?  
 10 A Yes, but I was less involved in picking -- I was  
 11 less involved in the process. Wallace and Bajjali was the  
 12 successor to the Perry Properties. It was basically the same  
 13 management, but it was -- one of the partners had an  
 14 intellectual -- mental problems and had to be removed as  
 15 general partner, and all of that. And so Wallace and Bajjali  
 16 was the successor to that same company.  
 17 Q And what was the business of Wallace Bajjali?  
 18 A Real estate management. Well, investment  
 19 management. But actually real estate management.  
 20 Q Okay. And then how did you determine which clients  
 21 would get involved in the Wallace Bajjali fund?  
 22 A Clients that needed diversified equity investments  
 23 for whom that would be appropriate.  
 24 Q And by appropriate you mean generally accredited  
 25 and sophisticated?

<p style="text-align: right;">Page 65</p> <p>1 A Right. Well, both.</p> <p>2 Q Okay. And who would be the one responsible or ones</p> <p>3 responsible for discussing that investment opportunity with</p> <p>4 the client?</p> <p>5 A From my firm's point of view, it would be Kaleta.</p> <p>6 Q Okay. And did Mr. Wallace meet with them as well?</p> <p>7 A Sometimes.</p> <p>8 Q And who made the determination how much of a</p> <p>9 particular client's portfolio could be invested in one of</p> <p>10 these opportunities instead of Wallace Bajjali fund?</p> <p>11 A Well, you're asking me a question, which I now know</p> <p>12 how the different -- I know what actually happened, but if I</p> <p>13 go back then, the rule was no more than 10 or 15 percent was</p> <p>14 the guideline.</p> <p>15 Q How did --</p> <p>16 A I now know that that wasn't necessarily always kept</p> <p>17 because I'm seeing people that had more exposure than that,</p> <p>18 but I was surprised to find that that was happening.</p> <p>19 Q Well, when you say 10 to 15 percent was the</p> <p>20 guideline, who established the guideline?</p> <p>21 A I did. Well, I mean, the world has that as a</p> <p>22 guideline. I established that guideline, but most people in</p> <p>23 my position would have established a similar guideline.</p> <p>24 Q Was that communicated to Mr. Kaleta?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 67</p> <p>1 Q Okay. And who was responsible for explaining the</p> <p>2 Laffer Frishberg Wallace Fund investment to clients?</p> <p>3 A Well, again, from our firm's point of view, it was</p> <p>4 Kaleta. And he had assistance from Wallace when he required</p> <p>5 it.</p> <p>6 Q Okay. What about the notes that we had mentioned</p> <p>7 earlier, the notes that were issued for the Wallace Bajjali</p> <p>8 Fund. How was it determined which clients could invest in</p> <p>9 those notes?</p> <p>10 A They -- again, they would have to be suitable and</p> <p>11 have enough money and require that diversification.</p> <p>12 Q Okay. And who would be responsible for explaining</p> <p>13 the investment of those notes to the client?</p> <p>14 A Kaleta.</p> <p>15 Q Okay. And did Mr. Wallace participate in any of</p> <p>16 those?</p> <p>17 A I'm sure he did sometimes, yes.</p> <p>18 Q Do you know for sure or are you just guessing?</p> <p>19 A I know for sure that he did, but I couldn't tell</p> <p>20 you exactly which people. But I know he was there doing</p> <p>21 that.</p> <p>22 Q Okay. Did you supervise -- generally, did you</p> <p>23 supervise Mr. Kaleta's activities at the firm?</p> <p>24 A Yes.</p> <p>25 Q You were responsible for that, correct?</p>
<p style="text-align: right;">Page 66</p> <p>1 Q How was that communicated to Mr. Kaleta?</p> <p>2 A It was just generally known by all of us.</p> <p>3 Q I mean, did he -- was there something in writing</p> <p>4 that told him or was it just verbal?</p> <p>5 A Well, it was verbal and constant.</p> <p>6 Q Okay. Was there any written guidelines for it in</p> <p>7 your firm?</p> <p>8 A I don't know. Probably.</p> <p>9 Q Do you recall having conversations with Mr. Kaleta</p> <p>10 establishing the guidelines?</p> <p>11 A Yes, and with everybody.</p> <p>12 Q Did that stay the same from, say, the beginning of</p> <p>13 the Perry Fund until the end of, say, '09? Was that the</p> <p>14 same, that guideline?</p> <p>15 A Yeah. Yes. You know -- yes.</p> <p>16 Q What about the Laffer Frishberg Wallace Fund? How</p> <p>17 was that -- how did you determine what clients would get</p> <p>18 involved in that fund?</p> <p>19 A That would be the same. Again, it was a successor</p> <p>20 fund. When it closed, another one -- they opened another</p> <p>21 one.</p> <p>22 Q Okay. Successor to the Wallace Bajjali Fund?</p> <p>23 A Pardon?</p> <p>24 Q Successor to the Wallace Bajjali.</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 68</p> <p>1 A I was.</p> <p>2 Q What did you do to supervise his explanation or his</p> <p>3 sales of the particular private equity investments to</p> <p>4 clients?</p> <p>5 A I explained them to him. Can I -- let me answer</p> <p>6 that another way. Mr. Kaleta is a 67 year old 30-year</p> <p>7 veteran retired as a bird colonel with an MBA in finance who</p> <p>8 was a war hero and received the silver star, was an</p> <p>9 intelligent, knowledgeable person with experience in business</p> <p>10 of 30 and 40 years. He was licensed, had a Series 65 that he</p> <p>11 passed, understood all the rules, regulations; he was in</p> <p>12 charge. And this is a generally accepted principle.</p> <p>13 Everybody knows what the rules are.</p> <p>14 Q Well, that didn't answer the question. What did</p> <p>15 you do to supervise him since you did have the obligation to</p> <p>16 supervise him?</p> <p>17 A Well, I thought that I had supervision in place and</p> <p>18 many layers of being able to go through the portfolios after.</p> <p>19 What I did was when a portfolio -- when a person was brought</p> <p>20 in or when investments were done, the next layer was that</p> <p>21 they would have a meeting with the San Antonio record group</p> <p>22 or Mike Richardson and/or Karl Eggerss. And they would go</p> <p>23 over how the portfolio was to be allocated and make sure that</p> <p>24 the client understood what it was and that the people who</p> <p>25 were actually going to be executing it understood what it</p>

<p style="text-align: right;">Page 69</p> <p>1 was.</p> <p>2 And as the paperwork was being done, there was a</p> <p>3 layer of where if it appeared that the goals of the clients,</p> <p>4 which were stated in writing -- I had -- in asking -- in</p> <p>5 answering your question, I've arrived at an answer for you.</p> <p>6 I had papers that each client filled out that talked about</p> <p>7 what their goals were and what they were trying to</p> <p>8 accomplish.</p> <p>9 And so first of all, the guidelines for what Mr.</p> <p>10 Kaleta would choose for them had to be congruent with the</p> <p>11 fact he was required to meet with them several times, not</p> <p>12 just once and spend one whole time on what their goals were,</p> <p>13 another whole time going over what the options might be,</p> <p>14 letting them go home and think about and coming back and then</p> <p>15 presenting them with a written thing and letting them plan.</p> <p>16 They would approve their plan and then the plan</p> <p>17 would be executed and the plan would have these options in</p> <p>18 it. Then their plan, as they were ready to sign up for all</p> <p>19 these things, they would do this in a meeting with Mike</p> <p>20 Richardson and/or Karl or whoever was back there, so that</p> <p>21 there was an independent person watching the thing.</p> <p>22 And if it turned out that they perceived that the</p> <p>23 client's disposition of assets was not congruent with what</p> <p>24 the client said his goals were, they would have the</p> <p>25 opportunity to bring that up right then and confront the</p>	<p style="text-align: right;">Page 71</p> <p>1 followed the other. One closed and another opened. I think</p> <p>2 it was your testimony like for instance, the Wallace Bajjali</p> <p>3 Fund would close and then the Laffer Frishberg Fund opened</p> <p>4 after that; is that right? So my question is, I mean, you</p> <p>5 had this process that somebody -- obviously Mr. Wallace came</p> <p>6 to you -- is that right -- to say I need funding for these</p> <p>7 things. Would you be able to sell them to your --</p> <p>8 A No.</p> <p>9 Q Then explain how it came up.</p> <p>10 A No. I was looking for opportunities for my clients</p> <p>11 to be able to put money into things, other than stocks and</p> <p>12 bonds, that wouldn't go up and down with the price of however</p> <p>13 everybody felt that day and what they're seeing on</p> <p>14 television. And I knew Wallace and I knew his management and</p> <p>15 felt he was capable. And so I was happy to have that</p> <p>16 opportunity for clients.</p> <p>17 Q It sounds like --</p> <p>18 A I wasn't selling anything.</p> <p>19 Q It sounds like the only private equity</p> <p>20 opportunities are ones associated with Mr. Wallace that you</p> <p>21 offered to your client.</p> <p>22 A They were the ones that I knew about and had direct</p> <p>23 knowledge of how they were being done. That's really what my</p> <p>24 philosophy was.</p> <p>25 Q I understand, but I'm saying in the grand scheme of</p>
<p style="text-align: right;">Page 70</p> <p>1 clients with the fact that their goals may not be congruent.</p> <p>2 And so there was that multiple layers of scrutiny of what was</p> <p>3 going on. And that was how I supervised it, by setting up</p> <p>4 that system with layers of supervision.</p> <p>5 Q Well, you approved the individual investments we've</p> <p>6 described, the private equity ones and the notes we're</p> <p>7 talking about --</p> <p>8 A Right.</p> <p>9 Q -- as being available to your clients, correct?</p> <p>10 A Mm-hmm.</p> <p>11 Q Is that a yes?</p> <p>12 A Yes.</p> <p>13 Q Okay. And you also determined that only a certain</p> <p>14 type of investor could actually get into them; is that right?</p> <p>15 A Yes.</p> <p>16 Q Okay. And you assigned, or at least allowed Mr.</p> <p>17 Kaleta to be the one to sell that investment to the</p> <p>18 particular client; is that correct?</p> <p>19 A Yes.</p> <p>20 Q Okay. What did you do to --</p> <p>21 A There was no selling. It was --</p> <p>22 Q Well, I mean, the client wouldn't know of the</p> <p>23 investment, but for --</p> <p>24 A We're not a broker. We didn't sell anything.</p> <p>25 Q Okay. But I think it was your testimony that one</p>	<p style="text-align: right;">Page 72</p> <p>1 things, they turned out to be only ones that Mr. Wallace</p> <p>2 was --</p> <p>3 A Yes. That's correct.</p> <p>4 Q Okay. So how would your clients even know they</p> <p>5 existed unless someone at your firm brought it up to them?</p> <p>6 A Well, we did -- I'm sure we did bring it up to</p> <p>7 them.</p> <p>8 Q Okay. And that's what I meant by selling. I</p> <p>9 didn't mean that you were selling as in a broker. I just</p> <p>10 meant that in the smallest term, if you will --</p> <p>11 MS. FRANK: Recommended.</p> <p>12 BY MR. GORDIMER:</p> <p>13 Q -- recommending.</p> <p>14 A I wasn't recommending them either. I was --</p> <p>15 MR. AXELROD: Introducing.</p> <p>16 THE WITNESS: Excuse me. I was not -- specifically</p> <p>17 I was not recommending them. As a matter of fact, there was</p> <p>18 a specific instruction that I gave to all of my people of how</p> <p>19 to talk to people about these things. You understand I have</p> <p>20 discretion. If I thought that it was appropriate for me to</p> <p>21 make the decision to present, I didn't have to recommend. I</p> <p>22 had the right to simply allocate.</p> <p>23 BY MR. GORDIMER:</p> <p>24 Q Even in a private equity.</p> <p>25 A Even in a private equity, yes. I had discretion.</p>

<p style="text-align: right;">Page 73</p> <p>1 But I chose not to do that with anything that wasn't liquid.  2 The reason those -- the issue with those was that they aren't  3 liquid. You can't really just get in and out of them. And  4 so I always left it to the client to read the document,  5 decide what to do. Do it because you want to.  6 When it was involved in something that was funding  7 a company that I was involved with BizRadio specifically, I  8 would disqualify myself and say I am biased about this. This  9 is -- certainly I have no ability to tell you that -- to  10 recommend this to you. That was always -- and all of my  11 people were always instructed that that was the way to  12 present these. There was never -- that's why I was objecting  13 to the selling or recommending, that -- recommending is what  14 I would do about IBM. These were allowing.  15 Q I think introducing was the word that was used.  16 A Introducing is fine.  17 Q Okay. And I guess that gets back to my question  18 about what did you do to ensure that Mr. Kaleta was following  19 the guidelines you established with respect to, you know, who  20 could be in these investments. How much of their portfolio  21 could be involved in these investments and things like that  22 happened. What did you do to assure that that happened?  23 A Instructions.  24 Q I mean, you could have reviewed the client's  25 portfolio to determine whether they were involved in these</p>	<p style="text-align: right;">Page 75</p> <p>1 investors, to the extent that they were sophisticated  2 millionaire investors and needed that kind of  3 diversification, I believed that it was appropriate for them  4 to consider this.  5 Q That doesn't answer the question whether you did,  6 on a periodic basis, discuss with Mr. Kaleta, you know, how  7 many people were involved in the private equities, how much  8 money were they investing, just to assure -- ensure that he  9 was following the guidelines.  10 A I asked him specifically are -- "How are you doing  11 this? Are you putting money into that? How much money have  12 you done?" Yes.  13 Q When did you discuss that with him?  14 A I don't know. Several times over the years.  15 BY MS. YODER:  16 Q Mr. Frishberg, Mr. Kaleta's background was  17 insurance, correct?  18 A Yes, among other things.  19 Q What other things was he involved in that you were  20 aware of?  21 A He also represented the -- when I met him, he was  22 the representative of a mutual fund money management company  23 on something -- on fund -- it was a money management mutual  24 fund that he was the representative of. He also had, as I  25 said, a finance degree and he was also -- had a management</p>
<p style="text-align: right;">Page 74</p> <p>1 types of investments, correct?  2 A Well, I had people that were reviewing them. Yes.  3 The answer is yes, I could have.  4 Q Okay. And you could have --  5 A Well, I couldn't have done it enough. I -- it  6 would have been impossible for me to have done that with  7 everybody. So I had people in place.  8 Q Did you do it with anybody?  9 A I -- no.  10 Q And that's the question. I understand --  11 A Did I personally review their account? No. I  12 wouldn't say nobody. I said not -- not as a rule, not  13 generally.  14 Q Well, did you go over with Mr. Kaleta afterwards  15 how many in -- how many clients were involved or got invested  16 in these projects on a regular basis in any way?  17 A I don't -- maybe you can ask that a different way.  18 Q Okay. Well, did you review, say on a periodic  19 basis, okay, how many clients invested some money in  20 Fidelity?  21 A Just like -- yeah. I understand what you're asking  22 me now. Just like choosing IBM and saying I think IBM would  23 be appropriate for people who need an equity investment, I  24 was looking for a way to diversify away from the stock  25 market. And so for people who were sophisticated millionaire</p>	<p style="text-align: right;">Page 76</p> <p>1 degree.  2 Q As a representative of the mutual fund, what was  3 his role, to your knowledge?  4 A He was the wholesaler. His job was to explain that  5 to registered investment advisors or brokers to have them buy  6 that mutual fund.  7 Q So he basically was a selling agent.  8 A Selling, yes.  9 Q Okay. Did you train Mr. Kaleta when he first  10 joined your firm?  11 A Yes.  12 Q What background does Mr. Kaleta have in portfolio  13 management?  14 A He was not a portfolio manager.  15 Q So if he was not a portfolio manager, how could he  16 make recommendations or suggestions as to asset  17 diversification or private placements?  18 A He was following my guidelines, theoretically. You  19 know, I'm sitting here now knowing many, many things that I  20 didn't know then. And when I say these things, I realize  21 that sometimes what I'm saying didn't exactly happen that  22 way. But he had guidelines to follow that were established  23 by me who is a portfolio manager.  24 Q Well, how long did you train him for?  25 A Years.</p>

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<p>1 Q How many years?</p> <p>2 A Well, he was with me for five. I guess five years,</p> <p>3 six years, seven years.</p> <p>4 Q So what did you do to train him?</p> <p>5 A I spent constantly time with him all the time. I</p> <p>6 also explained the investments that I was making and why I</p> <p>7 was making them and what I was doing. And for a period of</p> <p>8 years, I met with every client with him and went through the</p> <p>9 whole relationship with him every step of the way. For</p> <p>10 years.</p> <p>11 Q So when did he join your firm?</p> <p>12 A Probably '99 or 2000.</p> <p>13 Q So for how many years did you sit with him then?</p> <p>14 A Until just two or three years ago.</p> <p>15 Q And then did you do periodic reviews of what he did</p> <p>16 once you quit sitting with him?</p> <p>17 A Not enough I see. No. Yes, but not enough.</p> <p>18 Q So when you did your periodic reviews, what did you</p> <p>19 look at?</p> <p>20 A Let me -- I don't think I did periodic reviews. I</p> <p>21 will change my answer there.</p> <p>22 MR. AXELROD: Well, let's define -- before we</p> <p>23 change answers, let's define what you mean by periodic</p> <p>24 review. If a periodic review means that you had discussions</p> <p>25 with him, that's a methodology of a periodic review. If what</p>	<p>1 company; I was working as rainmaker, appearing places,</p> <p>2 writing -- putting on a radio show, doing my job. And I</p> <p>3 would ask him how was this going, how was that going. What</p> <p>4 are you doing and --</p> <p>5 Q Okay.</p> <p>6 BY MR. GORDIMER:</p> <p>7 Q Were you on an investment committee with</p> <p>8 Mr. Wallace?</p> <p>9 A Yes.</p> <p>10 Q Okay. And that had to do with --</p> <p>11 A With -- of Mr. Wallace.</p> <p>12 Q Okay. And that had to do with investment</p> <p>13 opportunities for the different funds that he managed, the</p> <p>14 Laffer Frishberg Wallace and the Wallace Bajjali Fund; is</p> <p>15 that right?</p> <p>16 A Yes.</p> <p>17 Q Okay. So you had an idea of what sorts of</p> <p>18 investments those funds were going to make, correct?</p> <p>19 A Yes.</p> <p>20 Q Okay. And you had an idea of what their financial</p> <p>21 needs were to make those investments, correct?</p> <p>22 A Well, these were independent things. The</p> <p>23 investment committee didn't meet. It received proposals from</p> <p>24 Wallace. Each individual member of the committee would</p> <p>25 receive a package that would say we are going buy this -- we</p>
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<p>1 you're talking about is his work product and an analysis of</p> <p>2 the things and how he has treated certain individuals in a</p> <p>3 documentary basis, that's a different type of periodic</p> <p>4 review. So maybe we should clarify what you mean by periodic</p> <p>5 review, and then he can answer that question.</p> <p>6 BY MS. YODER:</p> <p>7 Q Okay. When I'm just saying periodic reviews, I'm</p> <p>8 really referring to his work product being more the asset</p> <p>9 allocations or the recommendations or suggestions that he was</p> <p>10 making to clients.</p> <p>11 A I -- he was charged with following my guidelines,</p> <p>12 and I trusted him and believed he was doing that accurately</p> <p>13 according to instructions. I did not review and not -- to</p> <p>14 find that he wasn't, but I -- he did have instructions of how</p> <p>15 he was supposed to do these things. They were clear.</p> <p>16 Q So you did not review what he did.</p> <p>17 A Other than talking to him about it all the time.</p> <p>18 Q Well, what would be the context of your discussions</p> <p>19 with him?</p> <p>20 A We officed next to each other, and at least two or</p> <p>21 three days a week, I was in the office and I knew him and I</p> <p>22 spoke to him. I sometimes went to dinner with him. I spoke</p> <p>23 to him.</p> <p>24 Q What would you talk about during these discussions?</p> <p>25 A Everything about the company. He was running the</p>	<p>1 want to buy this. Do you approve it. And then I would</p> <p>2 either approve it or disapprove it. And other members of the</p> <p>3 committee would get the same package, and then they would do</p> <p>4 that independently. Rarely did they confer, although from</p> <p>5 time to time, I would call one of them and ask them what they</p> <p>6 thought of something.</p> <p>7 Q But in these investment opportunities, there was a</p> <p>8 price, I assume, of what it was going to cost.</p> <p>9 A Yeah. That was the whole idea was for there to be</p> <p>10 separate governance so that -- to make sure that the price</p> <p>11 was --</p> <p>12 Q Okay. Right. And so --</p> <p>13 A It was for governance.</p> <p>14 Q Okay. And so you understood what either Wallace</p> <p>15 Bajjali Fund or Laffer Frishberg Wallace Fund would need to</p> <p>16 go through these projects that you approved, correct?</p> <p>17 A I never really thought of it that way, no.</p> <p>18 Q Well --</p> <p>19 A Not really, no.</p> <p>20 Q Well, who was the -- or what was the source of</p> <p>21 funding for those funds? Who provided the funds to allow it</p> <p>22 to do what it did?</p> <p>23 A Some of it -- much of it -- some of it was our</p> <p>24 clients investing in it.</p> <p>25 Q When you say some how much, percentage wise.</p>

<p style="text-align: right;">Page 81</p> <p>1 A I don't know. Percentage wise I can tell you 2 probably \$30 million, \$35 million. 3 Q Total for the three? The three? What was that 4 total? 5 A Yeah, something like that, but that represented 6 about 3 or \$400 million worth of actual assets that they 7 acquired. 8 Q Okay. 9 A They had financing, but they had other partners, 10 and I don't know who those were and what percentage. 11 Q Do you believe that your clients provided more than 12 50 percent of the fund? 13 A Yes, I do. 14 Q More than 75 percent? 15 A I don't know that. 16 Q Did the clients know you were on this investment 17 committee? 18 A Yes. 19 Q How did they know that? 20 A Well, they were told. 21 Q By whom? 22 A By me. By whoever they were talking to. It was 23 disclosed. 24 Q Was it disclosed in writing or just verbal? 25 A Yeah. Why -- well, I'm not understanding the</p>	<p style="text-align: right;">Page 83</p> <p>1 of it and part of the general partner. And so I disclosed 2 and instructed all of our clients to be told that in this 3 case, we were going to be -- that I was going to be part of 4 the general partner. That I would have compensation in it. 5 Q And your name is on it. 6 A Yes. That doesn't necessarily mean that I would, 7 but they were disclosed that I would. They would 8 particularly disclose that because they were told that I 9 wouldn't in the previous one. 10 Q And with respect to the Wallace Bajjali -- 11 MR. AXELROD: And one clerical -- one final thing. 12 When you say as to compensation -- if I might. 13 MR. GORDIMER: Yes, sir. 14 MR. AXELROD: Okay. When you say as to 15 compensation in the Laffer Frishberg, as distinguished, I 16 guess, from the Wallace Bajjali, are you talking about in 17 your capacity as a general partner? 18 THE WITNESS: Yes. 19 MR. AXELROD: Okay. I just wanted to make sure 20 that that's clear. 21 THE WITNESS: That if it worked, I would make -- I 22 would be a part owner of it. 23 BY MR. GORDIMER: 24 Q And that's explained in the private placement 25 memorandum for that?</p>
<p style="text-align: right;">Page 82</p> <p>1 question. You're talking about that as though that were a 2 conflict of interest. 3 Q I'm not. I'm just asking. 4 A Well, I see it the other way. 5 Q Okay. 6 A Because I never accepted any money for being on it. 7 And I was looking to have scrutiny of it. I wanted to be on 8 the investment committee because I wanted to see what they 9 were doing if we were putting money into it. So our clients 10 were told that, and it -- I'm sure -- and that it was a 11 benefit. And they were all told, also, that I was not 12 accepting, in the Wallace and Bajjali side, any fees for 13 doing it. Even though there were fees that were attributed 14 that I was supposed to receive, that I was not going to 15 accept them, and that I would renounce them, and, in fact, 16 did do that. 17 Q Okay. And the Wallace Bajjali Fund and the Laffer 18 Frishberg Wallace fund also -- 19 A Laffer Frishberg is a different story though. I'm 20 sorry. I'm sorry I interrupted you. 21 Q Tell me the different story. What is the different 22 story. What is the different story that you -- 23 A In the case of the Laffer Frishberg Fund, I said 24 the Wallace Bajjali fund came out with so lucrative and such 25 a good deal that I really wanted to be part of the management</p>	<p style="text-align: right;">Page 84</p> <p>1 A I'm sure it is, yes. 2 Q Now with respect to both of the Wallace Bajjali 3 Fund and the Laffer Frishberg Wallace Fund, some of the 4 investments made by those two funds were in BizRadio, were 5 they not? 6 A Yes. 7 Q Okay. As part of the investment committee, did you 8 authorize those or approve of those investments? 9 A I don't think that was ever submitted to me that 10 way, but I would have, yes. 11 Q And you knew about them, right? 12 A Yes, I did. 13 Q Okay. 14 MR. AXELROD: Did you suggest taking a break? 15 MS. FRANK: Go off the record. 16 (A brief recess was taken.) 17 MS. FRANK: Okay. We are back on the record. 18 BY MS. FRANK: 19 Q We wanted to switch gears here at this point and 20 wanted to ask you about BizRadio next. When did BizRadio 21 begin? 22 A Late '04. 23 Q And was there a corporation form to begin with or 24 was it -- what was the corporate entity or legal entity? 25 A It was a corporate general partner and a limited</p>

<p style="text-align: right;">Page 85</p> <p>1 partnership.</p> <p>2 Q And who all were the owners initially?</p> <p>3 A Well, really the partners were the investors.</p> <p>4 Q But who specifically?</p> <p>5 A There was a group of 10 or 15 investors.</p> <p>6 Q Individuals?</p> <p>7 A Yeah.</p> <p>8 Q Okay. Were they also investors with your RIA?</p> <p>9 A Yes.</p> <p>10 Q Okay.</p> <p>11 MR. GORDIMER: They were clients.</p> <p>12 MS. FRANK: Clients.</p> <p>13 THE WITNESS: Clients.</p> <p>14 BY MR. GORDIMER:</p> <p>15 Q All of them.</p> <p>16 A Yeah. Most of -- almost. Yes. Probably.</p> <p>17 Q Okay.</p> <p>18 BY MS. FRANK:</p> <p>19 Q And the general partner was a corporation owned by</p> <p>20 who?</p> <p>21 A Me and Richard Jordan and Al Kaleta, I believe, to</p> <p>22 a lesser extent. Mostly me and Jordan. I think Kaleta had</p> <p>23 something to do with it.</p> <p>24 Q And who managed the company from the beginning? By</p> <p>25 company, I mean BizRadio, not the corporate general partner.</p>	<p style="text-align: right;">Page 87</p> <p>1 resigned from that program because of the change in the</p> <p>2 format of the station on CBS Radio. I resigned on the air</p> <p>3 and I had a lot of people come to me, through e-mail and all</p> <p>4 kinds of stuff, proposing the idea. I had just said in</p> <p>5 passing, "Maybe we'll just go do our own business radio</p> <p>6 station." And people thought that that was a good idea and</p> <p>7 proposed it. And proposed it.</p> <p>8 Q So you had a program before 2004 then.</p> <p>9 A Yes.</p> <p>10 Q How long had you had a radio program?</p> <p>11 A Since the mid nineties, early nineties.</p> <p>12 Q Was that a mechanism for helping you get clients</p> <p>13 for your RIA?</p> <p>14 A Originally, yeah.</p> <p>15 Q But so that -- you say originally. Did that</p> <p>16 change?</p> <p>17 A Yeah. It got a life of its own. It was valuable,</p> <p>18 yes, on its own.</p> <p>19 Q The radio show was valuable on its own.</p> <p>20 A Yes.</p> <p>21 Q What do you mean?</p> <p>22 A It earned a lot of money for me, as the host of it.</p> <p>23 There was sponsors who paid a lot of money for me to be</p> <p>24 spokesman, and things like that, and there was advertising</p> <p>25 revenue. And it was -- people liked it. I liked doing it.</p>
<p style="text-align: right;">Page 86</p> <p>1 A Well, the corporate general partner was in charge</p> <p>2 of it. I was the CEO of it, but we had a -- well, we used</p> <p>3 our own personnel and as the company grew, we brought in</p> <p>4 management people and corporate people who knew how to build</p> <p>5 a company.</p> <p>6 BY MR. GORDIMER:</p> <p>7 Q Were you still CEO though?</p> <p>8 A Yeah.</p> <p>9 BY MS. FRANK:</p> <p>10 Q So by saying we used our own people, you mean used</p> <p>11 your own employees from the RIA to operate BizRadio?</p> <p>12 A Well, no. We had a -- we hired a general manager</p> <p>13 who had experience from CBS radio, we hired engineers, we</p> <p>14 hired operators, we hired radio experienced people --</p> <p>15 Q Okay.</p> <p>16 A -- to manage it and run it.</p> <p>17 Q Okay.</p> <p>18 BY MR. GORDIMER:</p> <p>19 Q How much capital did the limited partners put into</p> <p>20 it?</p> <p>21 A Three point -- three million -- three point</p> <p>22 something million dollars to start with.</p> <p>23 BY MS. FRANK:</p> <p>24 Q And what was the reason for starting BizRadio?</p> <p>25 A I had a radio program that was successful. I</p>	<p style="text-align: right;">Page 88</p> <p>1 BY MR. GORDIMER:</p> <p>2 Q So it led to personal gains for yourself --</p> <p>3 A Yes.</p> <p>4 Q -- in addition to whatever clients you may have</p> <p>5 gained along the way for RIA.</p> <p>6 A That's right.</p> <p>7 BY MS. FRANK:</p> <p>8 Q So when you first started BizRadio as a company in</p> <p>9 2004, what was the model that you were going to follow?</p> <p>10 A We had -- in the memorandum, we discussed it, and</p> <p>11 it was to be half of the profit would come from advertising</p> <p>12 revenues and half of it would come from what we call in-house</p> <p>13 product. But it was -- those were educational and even</p> <p>14 investment products that would be affiliated or designed by</p> <p>15 us, as well as CD's, Internet, stock. And the way we</p> <p>16 projected it, we thought that probably half or more of the</p> <p>17 revenues would come from those things that we invented.</p> <p>18 Q The in-house products?</p> <p>19 A In-house, yeah.</p> <p>20 Q Okay. I don't understand --</p> <p>21 A That's a term I made up. So it doesn't have a real</p> <p>22 definition in --</p> <p>23 Q I don't understand how a radio company sells a CD.</p> <p>24 A Well, the model came from when Ted Turner started</p> <p>25 TNT and CNN and all of that. He was -- found it difficult to</p>

<p style="text-align: right;">Page 89</p> <p>1 get regular advertising and compete with NBC and CBS. He put  2 on commercials, because he had a lot of commercial time, and  3 he invented a lot of things like Box Car Willie, the country  4 singer, and Zamfir and his pan flute, which was a guy playing  5 classical music on a whistle. And he just made a bums and  6 shopping devices, and all kinds of stuff, that he would use  7 his advertising inventory to sell. And so he was putting on  8 programs that people like to watch, but he wasn't able to get  9 General Electric to advertise on there. And so he created  10 his own products and sold them.</p> <p>11 Q Okay. So your idea was something similar.</p> <p>12 A Yes.</p> <p>13 Q The radio program would have its own --</p> <p>14 A Radio station --</p> <p>15 Q -- radio station with --</p> <p>16 A -- with a day, a full day, of programming.</p> <p>17 Q And there would be other types of products, whether  18 it was --</p> <p>19 A Right.</p> <p>20 Q -- an educational or investment product.</p> <p>21 A Right. Also a lot of people who have financial and  22 educational businesses would pay to have programs on it. So  23 it was kind of the opposite model of a -- compared to an NBC.</p> <p>24 Q Okay. Where somebody pays you to have their own  25 show on the program.</p>	<p style="text-align: right;">Page 91</p> <p>1 A Because it was that type of station that only  2 broadcast during daylight hours. Actually, in that original  3 station, they powered down. They still had some broadcast, I  4 think, at night, but they did other things with it. Our  5 audience is not a nighttime audience. So we didn't really  6 want to spend the money on reaching too few people, truck  7 drivers.</p> <p>8 Q Were you limited because of the license itself or  9 limited because of something else?</p> <p>10 A Yeah. That type of station has restrictions on  11 what it can do at night.</p> <p>12 BY MS. FRANK:</p> <p>13 Q And did you buy the station up-front or were you --</p> <p>14 A No. We --</p> <p>15 Q -- leasing time?</p> <p>16 A We leased it.</p> <p>17 Q Okay. And at what point did you buy the station?</p> <p>18 A We didn't buy that one. We bought a different one.</p> <p>19 Q From Salem.</p> <p>20 A Yes.</p> <p>21 Q Okay. Okay. Did -- has BizRadio ever been  22 profitable?</p> <p>23 A No.</p> <p>24 Q Okay. Has the -- I assume over the years that cash  25 flow has been different, where at times it has probably lost</p>
<p style="text-align: right;">Page 90</p> <p>1 A That's right.</p> <p>2 Q I mean, on the station.</p> <p>3 A Yes.</p> <p>4 Q Okay. And you said half would come from -- half of  5 the profit would come from advertising. And I assume that  6 means the traditional model --</p> <p>7 A Yeah.</p> <p>8 Q -- of General Electric or somebody who pays for  9 commercial air time.</p> <p>10 A Yes.</p> <p>11 Q Okay. So did BizRadio then begin operating in late  12 2004?</p> <p>13 A It actually went on the air in early '05.</p> <p>14 BY MR. GORDIMER:</p> <p>15 Q Where was it on the air?</p> <p>16 A Houston.</p> <p>17 Q And what was the frequency?</p> <p>18 A 1320.</p> <p>19 Q And that would be AM, I assume?</p> <p>20 A Yes.</p> <p>21 Q How many hours a day was the programming?</p> <p>22 A All daylight hours.</p> <p>23 Q Daylight hours? So roughly 10, 12 hours a day?</p> <p>24 A 13 average. 12, 13.</p> <p>25 Q And why only daylight hours?</p>	<p style="text-align: right;">Page 92</p> <p>1 more or less money than other times?</p> <p>2 A Yes.</p> <p>3 Q Who has been in charge of keeping up with the  4 revenues and the expenses from the beginning?</p> <p>5 A Well, there was the accounting department and then  6 we hired a corporate CFO.</p> <p>7 Q Who was that?</p> <p>8 A Originally it was John Lunsford. He was a Tatum.  9 Tatum is an agency that you would get that kind of a  10 professional from.</p> <p>11 Q Okay. How long was Johns Lunsford at BizRadio?</p> <p>12 A A few years.</p> <p>13 Q When did he leave?</p> <p>14 A Two or three years. Probably the middle of '07 or  15 early '07.</p> <p>16 Q How many people in the accounting department did  17 you have?</p> <p>18 A Four or five.</p> <p>19 BY MR. GORDIMER:</p> <p>20 Q Is that in the beginning or was that, over time,  21 flexible?</p> <p>22 A It was pretty early because we were much bigger at  23 the beginning than later.</p> <p>24 Q Bigger meaning more personnel or more -- I don't  25 know what you mean by bigger.</p>



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1 A More personnel.  
 2 BY MS. FRANK:  
 3 Q Was Linda Sikes one of those people in the  
 4 accounting department?  
 5 A Not then.  
 6 Q Not then. When did she join?  
 7 A Probably around then, '07.  
 8 Q All right. At the time Mr. Lunsford left?  
 9 A She was there -- he hired her.  
 10 BY MS. YODER:  
 11 Q Mr. Frishberg, what were the duties at that time of  
 12 those four to five people in the accounting department?  
 13 A They were keeping track of advertising, billing  
 14 receivables, a thing called traffic, which is placing which  
 15 commercial where. By this time, there were two stations.  
 16 And so we had to coordinate which advertising went where at  
 17 what time and have lots of them and translate them into  
 18 invoices and then collect the invoices and have -- check  
 19 credit and interface with the sales department and all of  
 20 those things.  
 21 Q How many people actually performed accounting  
 22 duties, bookkeeping duties for BizRadio?  
 23 A I don't know.  
 24 MR. AXELROD: This is at the beginning?  
 25 MS. YODER: Yes, at the beginning.

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1 THE WITNESS: I don't know. At the beginning?  
 2 Probably at the beginning one, but very quickly more than  
 3 that as we needed those -- well, two or three because of  
 4 the -- when you're saying accounting duties, you mean what?  
 5 BY MS. YODER:  
 6 Q The financial books and records related to  
 7 BizRadio. The general ledger.  
 8 A The general ledger. Yeah, there was probably two.  
 9 Q Two? And the others were tasked with these other  
 10 advertising duties and these other duties related to  
 11 financial stuff of BizRadio?  
 12 A Yeah. They would get the raw data that would  
 13 eventually be put into the ledgers and --  
 14 Q Okay.  
 15 BY MS. HARE:  
 16 Q Mr. Frishberg, who were those two people, those  
 17 initial two people?  
 18 A Oh, god, I don't really remember. There was -- I  
 19 don't know. We went through a few before we got a good one.  
 20 So we went through a few trying to find somebody that could  
 21 keep up with it.  
 22 BY MR. GORDIMER:  
 23 Q Who became the good one that you mentioned there  
 24 that could keep up with it?  
 25 A I haven't found them yet.

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1 Q Why did Mr. Lunsford leave?  
 2 A We started out with a model that was -- we needed a  
 3 lot of scale to make it profitable. It never was going to be  
 4 profitable with one station. They were two models that are  
 5 successful in radio. One of them is clusters in one city  
 6 where you have four or five stations in one city. The other  
 7 is network where there are stations all over the country and  
 8 you eventually get enough scale. The cluster type is not  
 9 about content, it's about stations.  
 10 We started out to acquire stations. And the  
 11 acquiring of stations is like a real estate deal, like a  
 12 monopoly deal, where you buy a station, make it more valuable  
 13 by putting content and building up revenues, possibly  
 14 changing the power profile and things like that, and it  
 15 becomes worth more money and then you sell it for a higher  
 16 price.  
 17 That was a model that was very popular back at that  
 18 time in that economy. And we started out with that model,  
 19 but our content became very unique, and as the economy  
 20 changed, we realized that, number one, radio stations were  
 21 not getting more valuable; number two, they were having  
 22 problems supporting themselves because of advertising  
 23 revenues. Before the economy was bad, this was about the  
 24 audience not buying -- not believing that Rush Limbaugh knows  
 25 who is a good distance.

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1 Q Mm-hmm.  
 2 A Those problems. And the value of radio stations  
 3 started to decline. So we -- I learned that -- this CFO,  
 4 John Lunsford, came to me and said, you know, there is really  
 5 not two companies here, Dallas and Houston, there is three  
 6 companies because the important one is a content company. It  
 7 has less infrastructure to carry around with it, and it's  
 8 more valuable and gives more power and has more leverage.  
 9 And that's really where the profit is going to be in the  
 10 future because there are radio stations all over the place  
 11 that are developing the inability to support themselves  
 12 because there is too many country stations. And this  
 13 business content, we were doing it better than anyone.  
 14 And so as a content company, this has a much better  
 15 chance of growing because there are stations in distress all  
 16 over the country. And once we realized that we were going to  
 17 do that, it became a much more centralized thing where you  
 18 needed more outlets, but you didn't need more -- originally  
 19 we started out, when we were going to acquire all these  
 20 stations, we needed a lot of people because you would have to  
 21 go populate all these stations. In order to do one in  
 22 Dallas, you would first have to have duplicate people in  
 23 Houston, and everybody has to know what they're doing.  
 24 And it's like a cell dividing where the nuclear  
 25 stays here, but a new nucleus over there. And so you always

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1 need extra people that are being trained, and you're building  
 2 infrastructure that is very expensive. And so that was the  
 3 original model. But when we, in '07, realized that the  
 4 economy was really starting to become a problem, stations  
 5 were more risky to acquire. And our net -- we had come up  
 6 with -- we had very good content that was becoming very well  
 7 known. We --  
 8 (Interruption to proceedings.)  
 9 BY MS. FRANK:  
 10 Q I'm sorry. Go ahead.  
 11 A -- made the decision to emphasize more being a  
 12 content company.  
 13 BY MR. GORDIMER:  
 14 Q So how did that entail John Lunsford leaving?  
 15 A Because he was there to be raising money and making  
 16 acquisitions all over the country, and we weren't going to be  
 17 doing that. And while he was the one who brought the idea to  
 18 me, eventually it was his demise because he was a very  
 19 high-paid guy and we didn't need him. We didn't need that  
 20 function because content is generated more centrally and you  
 21 don't really have to acquire those assets. You distribute  
 22 air, basically, and it creates revenues without the  
 23 additional major infrastructure investments.  
 24 BY MS. FRANK:  
 25 Q So you let him go?

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1 A Yes.  
 2 Q Okay.  
 3 BY MR. GORDIMER:  
 4 Q So but he was also the chief financial officer; is  
 5 that correct?  
 6 A Yes.  
 7 Q Who took his place?  
 8 A Well, he was, but it turned out that he was a much  
 9 better salesman and negotiator with banks, and he was just a  
 10 better general manager than he was an actual accounting  
 11 person. He really was not an expert accounting person. He  
 12 looked like one and sounded like one, but he wasn't one.  
 13 Q Who took his place?  
 14 A Well, no one took his place, but he always had to  
 15 have a good bookkeeper, which we had one that seemed okay,  
 16 but it didn't work out; it was a lot of friction, and then he  
 17 hired Linda. He conducted a search and hired Linda Sikes,  
 18 who became the controller more than CFO.  
 19 BY MS. YODER:  
 20 Q So what did his duties consist of as a CFO?  
 21 A Well, we -- he was hired with the idea that his  
 22 duties would consist of actually overview of accounting and  
 23 audit and all of that, but he really didn't -- that wasn't  
 24 what he did or knew how to do. And again, it made him  
 25 superfluous, but then he was very good at finding -- looking

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1 for a private -- he had a lot of contacts in private equity.  
 2 He was just a very smart guy.  
 3 He became very active in the actual management of  
 4 the whole thing and the conceptualization, and he became more  
 5 of a COO more than a CFO, but that still left there not being  
 6 a real CFO, and we didn't really need to spend the money for  
 7 the COO. That would just be a convenience like your  
 8 gardener. And so we had to let him go. And we --  
 9 Q Who did the duties of the CFO, even though he was  
 10 titled CFO and he went off selling or finding new business  
 11 for BizRadio.  
 12 A Can you -- I'm not a corporate guy. Tell me what  
 13 kind of duties you mean. Which duties --  
 14 Q The oversight of the finances of BizRadio.  
 15 A Okay. Well, then it became Rick Jordan and Kaleta  
 16 and then later Kaleta.  
 17 Q You had nothing to do with them?  
 18 A Really, no.  
 19 Q Okay.  
 20 BY MR. GORDIMER:  
 21 Q Who handled --  
 22 A When you say nothing, can I -- I would like to  
 23 clarify that more.  
 24 BY MS. YODER:  
 25 Q Sure.

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1 A I'm a strategic person. I'm not there. I don't  
 2 think I ever actually looked at bookkeeping, but I was  
 3 strategically involved in deciding what our move was to be,  
 4 what the direction of our company would be, planning how we  
 5 would move toward profitability.  
 6 Q But in doing that, you were aware of the finances.  
 7 You -- they provided you reports and you were aware of how to  
 8 move the company forward?  
 9 A Yeah. We were doing quarterly -- yes. Yes.  
 10 Q How often did you receive the financial information  
 11 from them?  
 12 A Well, at least quarterly.  
 13 Q Okay. Possibly more?  
 14 A Sometimes.  
 15 Q Anything particular that they would bring to your  
 16 attention or what would the other times be?  
 17 A Well, we -- I was very interested in monitoring  
 18 closely the advertising sales and revenues. That's what I  
 19 was really focusing on at that time.  
 20 Q Right.  
 21 A Monitoring the growth of advertising sales and  
 22 revenues and the strategically how do we -- marketing and  
 23 finding other people to find shows on our station and our  
 24 compensation methods of how to get more advertising  
 25 salespeople effectively.

<p style="text-align: right;">Page 101</p> <p>1 Q But knowing that, you had to also know the expenses 2 related to advertising or the firm so you kind of knew where 3 the firm stood? 4 A Yes. Yes. 5 BY MR. GORDIMER: 6 Q You understood that BizRadio was losing money? 7 A Well, it was investing money to grow. You see it 8 in losing money in looking at the -- the month where you 9 spend more than you make, you lost money, but we were 10 investing to grow to gain the scale to be the business that 11 we wanted to be. We expected to operate at a deficit for a 12 period -- for -- until we got the scale. 13 Q You operated at a deficit from the beginning to 14 most recently, correct? 15 A Until now. 16 Q Right. 17 A Yes. 18 BY MS. YODER: 19 Q Was there a percentage of loss? Were you looking 20 at, like, right now our expenses are a hundred, a hundred and 21 fifty percent to a hundred percent revenue. Were you looking 22 at the ratios in expenses versus -- 23 MR. AXELROD: Are you talking about then? Are you 24 talking about -- what time frame are you talking about? 25 MS. YODER: During this whole period of BizRadio</p>	<p style="text-align: right;">Page 103</p> <p>1 A Investors. 2 Q Were they clients of the RIA? 3 A Yes. 4 Q Did that change over time or did you have equity 5 investors all the way through to the end until now? 6 A It didn't change over time. It changed temporarily 7 when the -- the reason we were doing alternate equity 8 investments in general was because we were looking for things 9 other than the stock market. But when the stock market 10 crashed in early -- in late '08, at that point, you could buy 11 IBM for 40 percent of the value. And it became, from my 12 point of view, not a reasonable -- not a good alternative 13 investment. 14 It would be better to use your equity. If you were 15 going to make an equity investment, to use your equity to buy 16 established companies at 40 percent of the value rather than 17 BizRadio. So at that point, I stopped thinking that it was a 18 good deal for my investors who wanted equity to buy equity in 19 BizRadio. 20 Q So how did BizRadio make up the monthly cash flow 21 shortfall from that point? 22 A Well, during that time, it started to borrow and 23 also I started to look for other private equity and strategic 24 alliances with other firms. But during that time, it was 25 borrowing money temporarily. That was my plan.</p>
<p style="text-align: right;">Page 102</p> <p>1 back -- it started in 2005. 2 MR. AXELROD: Yeah. 3 BY MS. YODER: 4 Q In knowing the finances so you can make the 5 decision of how to proceed as a business, were you comparing 6 revenues to expenses? 7 A No. I was looking at how many outlets do I have to 8 have to be profitable. How many stations have to be 9 carrying? How much activity do we have to have to be 10 profitable. 11 Q But in order to know -- 12 A In order to get there, you would have to spend 13 money and lose money to get there. 14 Q But in order to know that, you had to be aware of 15 the expenses that the radio station was paying out too. 16 A Well, it wasn't that -- not really because they 17 were being summarized. But kind of. Sort of. 18 Q Okay. 19 BY MS. FRANK: 20 Q How did you make up the shortfall in early years. 21 Let's say from the -- 22 A Equity. People invested in the company 23 understanding what the plan was. 24 BY MR. GORDIMER: 25 Q Who were these people?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q And who was it borrowing money from? 2 A It was borrowing money from -- first of all, it 3 borrowed several million dollars from Wallace and Bajjali who 4 created a lender for the purpose of buying a radio station. 5 The purpose of that radio station -- because then it would be 6 debt service, which, number one, wouldn't affect your EBITDA 7 and number two, would be \$30,000 a month instead of \$90,000 a 8 month. 9 And so we purchased that radio station. And 10 Wallace and -- at the time we had a bank that was scheduled 11 to finance that and it didn't and it -- that was the time of 12 the banking crisis. And so I actually had the idea that it 13 would be a good investment vehicle for Wallace and Bajjali to 14 create a lender because it would be able to invest money at 15 relatively high interest rates in things that would be 16 normally done by banks. 17 Q When you say create a lender, what do you mean 18 exactly? I'm not quite sure. 19 A Well, I'm not sure exactly how that's done. I 20 wasn't in the administration or creation of it, but it was my 21 idea in the first place. And they created some kind of a 22 trust or company that lent money and underwrote deals. And 23 lent money. 24 BY MS. FRANK: 25 Q What was the name of that entity?</p>

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<p>1 A Wallace and Bajjali. A division of Wallace and                  2 Bajjali.                  3 Q Division of. Okay. All right.                  4 BY MR. GORDIMER:                  5 Q So the money that that division of Wallace and                  6 Bajjali loaned to BizRadio, was that documented?                  7 A Yeah.                  8 Q How was it documented?                  9 A They had a memorandum and they had documents, loan                  10 documents, and --                  11 Q Okay. Did you sign those on behalf of BizRadio?                  12 A I don't know. Maybe some of them. If I was asked                  13 to, I did. If somebody else was asked to, they did.                  14 Q But you basically, a CEO, though, you authorized or                  15 okayed the borrowed money.                  16 A Yes, I did. I did.                  17 Q Who was funding it, the loans?                  18 A Who -- you mean --                  19 Q The money.                  20 A The source?                  21 Q Yes                  22 MR. AXELROD: The fund.                  23 BY MR. GORDIMER:                  24 Q The funds. The funds that were borrowed by                  25 BizRadio from Wallace Bajjali, where did the funds actually</p>	<p>1 financing of that radio station that I described to you                  2 earlier.                  3 Q Which radio station is that?                  4 A 1110 KTEK. The purchase of that radio station --                  5 Q In Houston.                  6 A -- was financed by that Wallace and Bajjali 11                  7 percent note.                  8 Q That was the one in Houston you bought from Salem;                  9 is that right?                  10 A Yes.                  11 BY MS. YODER:                  12 Q Where did Wallace Bajjali get the money?                  13 A Our clients invested in that.                  14 Q How was it presented to your clients?                  15 A As an alternative investment, as a fixed income                  16 investment, in a -- with a 60 percent loan to value ratio and                  17 a diversified portfolio of real estate and radio station                  18 assets, et cetera.                  19 Q Who introduced it to --                  20 MR. AXELROD: Wait one second.                  21 (The witness conferred with counsel.)                  22 THE WITNESS: Oh, that's true. That's true. Thank                  23 you.                  24 MR. AXELROD: We would like to clarify something if                  25 we could.</p>
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<p>1 come from?                  2 A You're asking --                  3 MR. AXELROD: You're asking the source of the                  4 Wallace Bajjali fund.                  5 MR. GORDIMER: Well, whatever funds it turned out,                  6 but yes, it sounds like the deal was between Wallace Bajjali                  7 and BizRadio.                  8 THE WITNESS: No. It was -- Wallace and Bajjali                  9 was lending money to a lot of its own entities as well. It                  10 was lending money. BizRadio was one of the companies that                  11 borrowed from Wallace and Bajjali. One of the entities.                  12 BY MR. GORDIMER:                  13 Q Okay. But you were -- as we discussed before, you                  14 were on the investment committee for Wallace Bajjali.                  15 A Yeah, but the investment committee was not involved                  16 in that.                  17 BY MS. FRANK:                  18 Q In the notes.                  19 A Right.                  20 BY MR. GORDIMER:                  21 Q Were these the same as the 11 percent notes and the                  22 12 percent?                  23 A That's the ones we're talking about.                  24 Q Okay.                  25 A And that 11 percent note was created for the</p>	<p>1 MR. GORDIMER: Sure.                  2 THE WITNESS: The initial investment -- the \$4                  3 million investment that went to buy that was a non-client of                  4 ours. It was borrowed from a non-client and not a client.                  5 BY MS. YODER:                  6 Q Who was that client?                  7 A Industrial Information.                  8 MR. AXELROD: It was a non-client.                  9 THE WITNESS: It was a non-client.                  10 BY MS. YODER:                  11 Q Right. Right. Okay. Who was that non-client?                  12 A Right. Right. Industrial Info. Industrial                  13 Information Company were -- Ed Lewis is the proprietor.                  14 Q Okay. Now in respect to the loans that --                  15 A Yes.                  16 Q -- the 10 and 11 percent --                  17 A Right.                  18 Q -- 12 percent --                  19 A That's right.                  20 Q -- that money came from the investment advisory                  21 clients?                  22 A No. Well, later it did. But the first investment                  23 was by the non-client, Ed Lewis and others. And then later                  24 we -- our investors, our clients, started to invest in that                  25 too.</p>

<p style="text-align: right;">Page 109</p> <p>1 Q Who introduced your clients to that loan program?  2 A Well, as I said, I wasn't always in the room, but  3 that was something I approved of and knew about.  4 Q But who introduced it to the clients?  5 A Well, probably Kaleta.  6 Q Okay. But you did approve the investment.  7 A I did. Yes.  8 Q Okay. Were there disclosure documents related to  9 that?  10 A Yes. There were.  11 Q Who trained Mr. Kaleta on presenting this program  12 to the clients?  13 A What do you mean trained him?  14 Q How did --  15 BY MS. FRANK:  16 Q -- he know what to say?  17 A Well, we discussed what it was. It was very  18 simple. It was a loan that had a 60 percent, maximum of 60  19 percent loan to value, and it had -- it was securitized by a  20 diversified portfolio of assets, including radio assets and  21 real estate assets.  22 BY MR. GORDIMER:  23 Q The notes were? The notes were.  24 A Yes.  25 MR. GORDIMER: Sorry I interrupted. I just want to</p>	<p style="text-align: right;">Page 111</p> <p>1 THE WITNESS: Wallace and Bajjali were the maker of  2 the note.  3 BY MR. GORDIMER:  4 Q Did BizRadio ever make any of those notes? Were  5 they ever responsible for paying those notes?  6 A Actually, no, but there is some -- there is -- I  7 don't know. Should I -- there's an issue, a discrepancy, in  8 understanding of that. BizRadio was not the maker of those  9 notes. Wallace and Bajjali was the maker of those notes.  10 MS. FRANK: Let me show you what we've marked as  11 Exhibit 36. It's a multi-page document, and I'm going to  12 pull out some of the pages of it, which is a promissory note  13 made by -- huh?  14 MR. GORDIMER: You can make that a separate and  15 I'll make a copy and I'll make a separate exhibit.  16 MS. FRANK: We can.  17 MR. GORDIMER: It's up to you.  18 BY MS. FRANK:  19 Q This is a promissory note made by BizRadio to an  20 individual client.  21 A When was this done? August 19, 2009. I don't know  22 what this actually is, to tell you the truth. Rothenberg.  23 Yeah. This guy called me. I knew nothing about this note;  24 it was nothing that I sanctioned. And he did call me and  25 told me that he had made this thing. And I didn't know about</p>
<p style="text-align: right;">Page 110</p> <p>1 be clear.  2 BY MS. FRANK:  3 Q So he knew what to say based --  4 A The money was. I don't know what the note -- the  5 notes were representing the money, but the loans were  6 securitized by that.  7 Q He knew what to say. He knew what to tell the  8 clients about these loans to BizRadio based on his  9 discussions to you.  10 MR. AXELROD: But wait. I want to interrupt. I  11 want to make it clear. This was a Wallace -- as I understand  12 it, this was a Wallace Bajjali transaction, and the loans  13 weren't being made to BizRadio. The clients, as I understand  14 it, and correct me if I'm wrong, and I just want to get it  15 straight, the funds went to Wallace Bajjali. And Wallace  16 Bajjali, then, allocated or lent those dollars, whether it be  17 to BizRadio or to the real estate; is that correct?  18 THE WITNESS: That's right.  19 MR. AXELROD: I just want to be sure the record is  20 clear on that.  21 MS. FRANK: That's not correct.  22 MR. GORDIMER: Well, you may have clarified what he  23 said, but we have questions about how that actually worked  24 out and we want to know, who were the maker -- who was the  25 maker of the notes?</p>	<p style="text-align: right;">Page 112</p> <p>1 it until the moment that he called me. I am familiar with  2 that client.  3 Q Well, that's not the only time that happened,  4 though.  5 A Well, but I --  6 Q But there's a note from --  7 A That was not the way I sanctioned for it to be  8 done, and I didn't know that that guy even existed.  9 MR. AXELROD: Are you suggesting that this  10 methodology -- you said there's lots of these -- go through  11 an extended period of time or is it a finite period of time  12 that we're dealing with? Because this note may be separate.  13 And I don't know anything about this note, but this note may  14 be separate and apart from what we were doing.  15 THE WITNESS: Well, I knew about this because this  16 guy -- this is not what we were doing.  17 MR. AXELROD: Right.  18 REPORTER: Excuse me. Excuse me. One at a time,  19 please.  20 MR. AXELROD: I'm sorry. This is not what I was  21 referring to.  22 BY MS. FRANK:  23 Q Okay. I understood you to be saying that there  24 were notes. They got started in late 2008 and --  25 A No. '07.</p>

<p style="text-align: right;">Page 113</p> <p>1 Q '07.  2 A I'm not sure what date. I'm sorry. Let me go back  3 to --  4 Q Okay. Because the financial crisis struck in the  5 September of 2008.  6 A Yeah. Yeah. Probably. Yeah. Around then. Yeah.  7 Q So and the notes that we have seen start about that  8 same time.  9 A That's right. The 11 percent.  10 Q That would fit with your description with the  11 financial markets failing, then an alternative investment  12 becomes less of a good idea for your clients.  13 A Yeah. But in '07, the banking crisis actually  14 started. The crash that you're talking about was in '08 when  15 it became what I was describing as cheap to buy stocks and  16 you didn't really -- but the banking crisis wherein the 11  17 percent notes were created to earn 11 percent on something  18 that might have been a 6 or 7 percent deal at the time, that  19 was created in '07. And it was because the banks were in  20 trouble. That was before that big crash.  21 Q Okay. So --  22 A And this is not part of that at all.  23 Q Okay.  24 BY MR. GORDIMER:  25 Q Well, I mean, let me -- I mean, BizRadio was</p>	<p style="text-align: right;">Page 115</p> <p>1 A I don't know the mechanics of it.  2 Q Okay. So what type of investment was Wallace  3 Bajjali, then, making in BizRadio?  4 A That was a debt investment.  5 Q Okay. What was the debt? What was the terms of  6 that debt?  7 A It was secured by the -- all the assets of  8 BizRadio.  9 Q Okay. Then what was the percentage that you were  10 paying Wallace Bajjali?  11 A I'm not sure. I don't know. 11 -- I don't know.  12 11 or 12 percent, I guess.  13 Q Well, our information shows that it was 11 percent  14 notes that were financing that.  15 A Well, they were also 12 percent notes.  16 Q Yes. They were financing that debt.  17 A Right.  18 Q And those were financed by these types of notes to  19 specific clients.  20 A No.  21 Q Well, that's not the --  22 MR. AXELROD: But this document -- I am going to  23 interrupt. This document reflects -- and there may be other  24 parts of this document you haven't shown me. This document  25 shows, which would be consistent with what you're saying,</p>
<p style="text-align: right;">Page 114</p> <p>1 running cash flow short every single month, correct?  2 A Yes.  3 Q Where did you get the money to pay for it? Where  4 did the money actually come from to cover that?  5 A Well, they were coming from investments and then --  6 Q Whose investments?  7 A Equity investments by clients or non-clients and  8 then loans.  9 Q From whom?  10 A Clients and non-clients.  11 Q In fact, you were borrowing money from Wallace  12 Bajjali, were you not?  13 A Right. Yes. Not from clients, but from Wallace  14 Bajjali. That's correct.  15 Q In fact, every month --  16 A Yes.  17 Q -- you would let Mr. Wallace know how much you  18 needed and he would cover the shortfall, correct?  19 A Not exactly, no.  20 Q Well, he covered a lot of it, did he not?  21 A Yes. But I didn't let him know how much -- yes. I  22 asked him how much would be available and he would tell me.  23 Q Okay. And then Linda Sikes would give him  24 direction as to where to send that money to cover the  25 shortfall, correct?</p>	<p style="text-align: right;">Page 116</p> <p>1 Doug, it's a note from BizRadio to Wallace Bajjali. I mean,  2 it says that.  3 MR. GORDIMER: Well, okay.  4 MS. FRANK: As agent for --  5 THE WITNESS: Wallace and Bajjali as agent for it,  6 yeah. Yeah.  7 MR. GORDIMER: So the funds were being provided by  8 Mr. Rothenberg.  9 MR. AXELROD: Well, the source of the money from --  10 that Wallace Bajjali got, I don't know if it came from  11 Rothenberg. It came from others, I'm sure, because as I  12 understand it, which is what I think he testified before,  13 which is what I did try to state, which I'll restate, was  14 that that was pursuant to a private placement memorandum or a  15 debt financing instrument that Wallace Bajjali did that was  16 11 to 12 percent, which some item of the amount of the funds  17 from that fund did, in fact, go to BizRadio. I mean, is  18 there something inconsistent in what we're saying? That's  19 what I'm trying to understand.  20 BY MR. GORDIMER:  21 Q What else did Wallace Bajjali finance through the  22 11 and 12 percent notes?  23 A Real estate.  24 Q What real estate?  25 A They have 300 million worth of real estate. They</p>

<p style="text-align: right;">Page 117</p> <p>1 were providing financing for their various partnerships.  2 Q Who is responsible, under that note, to pay  3 Mr. Rothenberg?  4 A Wallace and Bajjali.  5 Q Under that note?  6 A Yes.  7 Q I don't think so.  8 A That's what my attorney thinks.  9 Q Where is the signature page.  10 MS. FRANK: It says, on the first line, that  11 BizRadio is making a promise to pay Wallace Bajjali as agent  12 for Rothenberg Family Limited Partnership, co-payee. And  13 it's -- the maker is BizRadio Network.  14 MR. AXELROD: BizRadio Network is the obligor. I  15 don't think anyone is suggesting otherwise. You're asking --  16 well, I thought -- I think you're -- I understand you to be  17 asking to whom is BizRadio obligated to pay it to?  18 MR. GORDIMER: Mm-hmm.  19 MR. AXELROD: Is that your -- I think that BizRadio  20 is obligated to pay it to Wallace Bajjali.  21 MR. GORDIMER: But as agent for, in this case,  22 Mr. Rothenberg.  23 MR. AXELROD: In this instance, it reflects as  24 agent for Mr. Rothenberg.  25 MR. GORDIMER: And that's how about 40 of these</p>	<p style="text-align: right;">Page 119</p> <p>1 agreed to and that we approved of and that the clients were  2 explained. And none of them went into this -- I don't know  3 about Rothenberg because I don't know Rothenberg. I did talk  4 to him recently, but I didn't know him at all. And I don't  5 believe that he was my client.  6 But the clients that I did approve of, they  7 received -- I had a term sheet and they were explained an  8 investment that was a diversified investment that was secured  9 by real estate and radio assets and general obligations, all  10 of these things. And that was what I agreed to and that was  11 what the term sheet said. And then later the -- I see that  12 they attributed notes of these clients that had 11 and 12  13 percent notes to one asset.  14 Like this one is BizRadio and this one is the West  15 Houston Partnership. And this -- I don't believe that that  16 was what the clients signed up for; it wasn't what I  17 approved. And I have told that to Wallace and I've got a lot  18 of clients who, after I talked to my attorney about it, to  19 BizRadio's attorney about it, and discussed it with them, the  20 clients understood the same thing, that they were getting a  21 general note that was secured by, in the case of the 11  22 percent, 60 percent loan to value; in the case of the 12  23 percent note, 70 percent loan to value, and that it was  24 backed up securitized by a diversified portfolio, which  25 included real estate and radio assets.</p>
<p style="text-align: right;">Page 118</p> <p>1 notes are.  2 THE WITNESS: Do you have that --  3 MR. AXELROD: What's that? I'm sorry.  4 THE WITNESS: -- term sheet that I approved?  5 MR. AXELROD: I don't know if I do or don't, but  6 you can certainly explain the term sheet.  7 THE WITNESS: I didn't --  8 MR. AXELROD: Can you just give us a second.  9 MS. FRANK: Yeah. We'll go off the record for just  10 a second.  11 (A brief recess was taken.)  12 MS. FRANK: Let's go back on the record.  13 BY MS. FRANK:  14 Q Okay. You said you were going to describe the  15 terms of the --  16 A Yes.  17 Q What was on the term sheet?  18 A Right. Yes.  19 MR. AXELROD: Feel free to -- it was what you said  20 to me. Feel free to -- who did you authorize.  21 THE WITNESS: There was a term sheet that I did  22 authorize, and the term sheet came from -- was created by  23 Wallace and Bajjali, and it was the term sheet for these  24 notes, which is what I authorized. This I never saw. And I  25 think that this is a different deal than the one that we</p>	<p style="text-align: right;">Page 120</p> <p>1 And it says in the term sheet that the -- I forget  2 the wording -- I'm sorry -- but there is a paragraph in it  3 that explains that pro rata, per asset, everybody owns all  4 the assets or everybody is securitized by all the assets.  5 Later, apparently, they segmented them and gave people  6 specific notes that said that it was one asset or another.  7 But that was not what it was.  8 BY MS. FRANK:  9 Q Who explained this to the clients?  10 A Well, probably Kaleta did or Wallace did or some  11 combination of them. But I know that they didn't think that  12 they were getting one asset. And many of them have expressed  13 to me such surprise that they were securitized by one asset,  14 be it West Houston Partnership or BizRadio, and I agreed with  15 them, and still do, that that was not what those notes were  16 supposed to be securitized by.  17 Q So you talked to Eric Rothenberg recently?  18 A Only when he called me.  19 Q What -- tell me about that conversation.  20 A He said, "I have a note and what are you going to  21 do about it? I want to get out of it."  22 Q Okay. That was it? That is all he told you?  23 A Basically. He said -- yeah. And he said, "I was  24 misled because I thought" -- I can't remember exactly what he  25 said. Basically it was what I just said. "I have a note. I</p>

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<p>1 don't like it. I want to be out of it, and I don't like it."                  2 And I said, "There are many people with those notes and we're                  3 doing everything we can to make everyone whole."                  4 Q What are you doing?                  5 A We are working very hard at building this BizRadio                  6 up. We have a plan in place. A group of our -- a group of                  7 investors has independently retained counsel. They proposed                  8 a plan to make it work out, the whole thing. We have made a                  9 contract with Salem Broadcasting to have our programming on                  10 stations all over the country. And there is a plan.                  11 Q So you're --                  12 A When I say in place, I don't mean it is signed,                  13 sealed and delivered. We have a contract that is signed,                  14 sealed and delivered with Salem Broadcasting, but there is a                  15 plan in place that was submitted to me and accepted by me by                  16 our investors. And we are doing everything we can right now                  17 to work that plan out.                  18 Before we ever do anything with it, we intend to --                  19 we have discussed it with the receiver of Kaleta Capital                  20 Management. We would bring it here too. It's not going to                  21 work unless everybody all around is approving it. There is a                  22 plan in place, though, that we believe is likely to generate                  23 the money to make everyone whole and pay back the notes and                  24 do everything else. And many of the group of independent                  25 investors have signaled their desire to convert their notes</p>	<p>1 certainly hasn't been presented at all. It has been                  2 discussed and it is continuing to be discussed and formulated                  3 with Matt and then with the receiver.                  4 We haven't gotten to that point, although we've had                  5 initial dialogue with the receiver about it. And we made it                  6 perfectly clear to the receiver, and let me make it perfectly                  7 clear on the record, that we do not intend to implement any                  8 plan that the receiver is unaware of, that the receiver --                  9 although I don't think he approves or disapproves of                  10 anything -- is fully aware of and that the SEC and the people                  11 in this office are cognizant of before.                  12 We are sensitive to, and he is sensitive to, the                  13 concerns that the Commission has as it relates to any type of                  14 restructuring or additional type of deal with these clients.                  15 And we have not done that. The individuals, Doug -- what's                  16 the last name?                  17 THE WITNESS: Shaffer.                  18 MR. AXELROD: Shaffer has his own independent                  19 counsel and the discussions that we've had are with his                  20 independent counsel. So I want that to be perfectly clear.                  21 I don't want there to be any misunderstanding. And the plan                  22 has got to be fully crystallized. And the hope is, is that                  23 once crystallized and if approved and if fully disclosed to                  24 all the parties involved that want to become involved, that                  25 they will -- that that will occur, and that if this</p>
Page 122	Page 124
<p>1 into equity in this new plan so that that would vastly reduce                  2 the debt of BizRadio.                  3 Q So the plan to make Eric Rothenberg, or others                  4 similarly situated to him, whole is to just make a go of                  5 BizRadio.                  6 A Yes.                  7 Q Not recision of the deal.                  8 A Not what?                  9 Q Recision.                  10 A Right. No recision of the deal whatsoever.                  11 Q Who is this group of individual investors who have                  12 retained separate counsel? Who is leading that group?                  13 A Well, there's several of them.                  14 Q Who are they?                  15 A One of them is Doug Shaffer, one of them is Ron                  16 Ellisor.                  17 Q Who is their counsel?                  18 A Matt --                  19 MR. AXELROD: Haneman. And to be clear, we've had                  20 conversations with Mr. Haneman, we've had conversations with                  21 the receiver, and I believe Matt has had conversations with                  22 the receiver. These have been preliminary conversations. I                  23 don't want there to be any misunderstanding on the record                  24 here today, in terms of investors and all the investors, or                  25 anything else like that, having approved the plan. It</p>	<p>1 gentleman, who I know -- every time I'm up here I hear about                  2 this gentleman -- or others are, you know, unhappy, then this                  3 is an issue we'll have to deal with separately with them.                  4 And we know that all of the parties who are                  5 creditors probably will not participate in this plan. I'm                  6 sure of that, assuming that everybody authorizes us to go                  7 forward with the plan. The goal is to try to preserve                  8 BizRadio and to maintain its viability as the way to getting                  9 these investors their money back or to allowing them to                  10 convert their existing debt that they have, indicated that                  11 they have a desire to, into a new enterprise and to a                  12 reorganized enterprise in order to allow it to try to go                  13 forward to generate dollars through its Salem contract, and                  14 otherwise, in order not only to get them dollars, but also to                  15 deal with the people like Mr. Rothenberg or others.                  16 And I don't know he wouldn't want to participate.                  17 So I shouldn't presume it. Forget him. I apologize for                  18 using his name. Any individual party out there who is an                  19 existing debt holder, whether it's through Wallace Bajjali or                  20 otherwise -- Kaleta, you know, specifically as well -- to                  21 make everybody whole. That is the goal. BizRadio -- I'm                  22 sorry.                  23 MS. FRANK: Can you provide us with a copy of the                  24 Salem contract?                  25 MR. AXELROD: Sure. I'd be happy to. And I will</p>



<p style="text-align: right;">Page 125</p> <p>1 also be happy to provide you a copy with this term sheet.  2 And I do have a copy of it. I'm not going to give it to you  3 because my notes are on it. So I hope you respect that.  4 MS. FRANK: Sure.  5 MR. AXELROD: But I'm more than happy to provide it  6 for you. And it does, in fact, state exactly what -- or I  7 think exactly what has been testified to here before. And  8 that's why, I guess, we have continued to reflect a different  9 perspective.  10 MS. FRANK: Can you tell us what the --  11 MR. AXELROD: You may have that.  12 MS. FRANK: Can you tell us what the date of the  13 term sheet is?  14 MR. AXELROD: I don't know that it has a date on  15 it.  16 BY MR. GORDIMER:  17 Q I have a separate question. When did you first  18 learn that there were these notes out there for BizRadio and  19 the --  20 A When did I learn that those Wallace and Bajjali  21 notes were specifically characterized as one asset?  22 Q Yes.  23 A Probably, what is this March? I first heard about  24 it maybe December of this year.  25 Q Of '09?</p>	<p style="text-align: right;">Page 127</p> <p>1 them." Whatever. And then I would get papers for them. I  2 would ask Wallace and Bajjali, "Could you please reproduce  3 those papers." Or we look in our files and we might have a  4 copy of the papers. And that was the first time that I saw  5 that they had them characterized that way as individual  6 assets, which was exactly the opposite of what I believed  7 them to be.  8 Q So you didn't hear about this separate --  9 A That's right.  10 Q Until after our case, the SEC's case, against Mr.  11 Kaleta was filed?  12 A That's close to correct. Somewhere right in there.  13 When you're -- see, you're talking about your case being  14 filed. I knew about your case when you were negotiating a  15 written settlement with them, which was earlier.  16 Q Mm-hmm.  17 A And I have trouble knowing about -- but certainly  18 it was after the time that the SEC objected to the way he did  19 business and barred him and made a deal with them and that --  20 which was sometime in the late fall. And so that was around  21 the time. And I think most of them came because they read  22 these articles in the newspaper and became concerned or --  23 that was really when I started to hear from clients.  24 Q Because -- I mean, that article that was in the  25 newspaper occurred, what, the end of November?</p>
<p style="text-align: right;">Page 126</p> <p>1 A And most of the clients didn't ever know it either.  2 They assumed that they had what I described to you.  3 MR. GORDIMER: Go ahead.  4 MR. AXELROD: No. I was just going to try to  5 respond to --  6 MR. GORDIMER: Yes.  7 MR. AXELROD: It doesn't have a date on it.  8 THE WITNESS: I would like to broaden that time out  9 because sometime between the fall and the winter of this last  10 year -- I'm not sure if it was December -- there has been a  11 lot of things going on since this issue with Kaleta Capital  12 Management came up. I have trouble sometimes knowing which  13 day. Was it October, November, December. So I would like to  14 broaden the time frame and say that it was in the latter part  15 of last year was the first time I'm familiar with that.  16 BY MR. GORDIMER:  17 Q And how did you learn about it?  18 A Because clients started to come to me. Clients  19 asked -- clients came in and said I have no -- they read  20 about this SEC action against Kaleta. So they started to  21 call me and come in and ask me what is the deal. In many  22 cases, I would say, "Let me see the papers." They would say,  23 "I don't have any papers." I would say, "Well, how could  24 you not have any papers?"  25 "Well, I don't know where they are. I didn't get</p>	<p style="text-align: right;">Page 128</p> <p>1 A November.  2 MS. FRANK: November.  3 THE WITNESS: Right.  4 MR. GORDIMER: Around, was it Thanksgiving?  5 MS. FRANK: 19th.  6 MR. GORDIMER: 19th? Okay.  7 THE WITNESS: In that area.  8 MR. AXELROD: The lawsuit was filed before that.  9 MS. FRANK: Right.  10 MR. AXELROD: On the 13th, I think.  11 MS. FRANK: I think that's right.  12 THE WITNESS: But Kaleta's deal that he signed with  13 you --  14 BY MR. GORDIMER:  15 Q Right.  16 A -- was before that. And I'm having trouble really  17 remembering the order in which things happened.  18 BY MS. FRANK:  19 Q But the clients weren't calling.  20 A Not before that, no.  21 Q Right. They started calling after the newspaper.  22 A That's right. Or after they found -- there was a  23 period where many of these lender clients, these creditor  24 clients, knew about this because when Kaleta was being  25 investigated, he was in contact with these clients. He was</p>

<p style="text-align: right;">Page 129</p> <p>1 asking them -- for example, there was -- anyway. They  2 were -- he was in communication with these clients, and we're  3 in -- remember. We invest their money.  4 And so we were in communication with them anyway.  5 But they started to notice that Kaleta wasn't taking their  6 calls. And so I'm not sure when exactly, but most of them  7 arrived after that newspaper article and most of them said  8 what I'm describing which is, "I didn't know that I had a  9 single asset note. I thought I had a diversified note." And  10 my answer is, "That's exactly how I understand it as well."  11 MR. GORDIMER: Let me hand you Exh bit 40, which is  12 a series of e-mails. The most recent one is the -- it's --  13 the most recent one is from Mr. Wallace on November 10, 2009.  14 The focus on the first one at the bottom, from Sonia, she  15 asks --  16 MR. AXELROD: Do you have your glasses?  17 THE WITNESS: I did have some. I don't know what I  18 did with them. I'm sure I was just reading with them two  19 minutes ago.  20 MR. AXELROD: You had them on the table here.  21 THE WITNESS: I'm sorry.  22 BY MR. GORDIMER:  23 Q That's all right.  24 I want you to focus on the first e-mail at the  25 bottom, which is from Sonia to it looks like Nancy Golan and</p>	<p style="text-align: right;">Page 131</p> <p>1 BY MR. GORDIMER:  2 Q November.  3 A And so Kaleta is a principal. The rest of them are  4 all clerical people.  5 Q Okay.  6 A And Mike Richardson is a service guy.  7 Q Okay. But there are four people from either  8 BizRadio or the RIA, correct, on that e-mail?  9 A Yes.  10 Q Okay. So at least four people were made aware of  11 it at that time.  12 A Yeah, but that doesn't mean -- yes. I agree with  13 you, and there was a lot of -- there was probably a lot of  14 people who were seeing these things and just taking them at  15 face value. But I'm telling you that, number one, I didn't  16 know that they were doing that and number two, when I saw  17 them, I immediately objected to them. And I agree with the  18 clients that what they were presented was what my term sheet  19 said originally. The term sheet goes all the way back a  20 year -- at least a year or two earlier than this. That was  21 when the original notes were approved by me.  22 And the term sheet says it is a pro rata share of  23 all of the assets, and that there is 60 percent loan to value  24 on the 11 and 70 percent loan to value on the 12. And that  25 was what I agreed to and approved of. So I don't think that</p>
<p style="text-align: right;">Page 130</p> <p>1 Pamela Caddell.  2 A Nancy Golan. Yeah.  3 Q And Pamela Caddell. Now who is Pamela Caddell?  4 A Pamela Caddell is our administration person in San  5 Antonio.  6 Q Okay. And who is Nancy? Do you know who Nancy is?  7 A Nancy is the bookkeeper of Wallace.  8 Q Okay. Sonia asks, in the first e-mail, "Can I have  9 a list of all the 11 percent note holders that have money  10 invested in BizRadio, please. We need to contact them  11 immediately."  12 A Right.  13 Q Do you see that?  14 A Yes.  15 Q That indicates to me that Sonia knew there were  16 note holders who were invested in BizRadio.  17 A Well, she may have, but -- that may be the way she  18 was looking at it because she saw notes like that. I can't  19 explain what Sonia was thinking about, but Sonia is not a  20 principal. She's a clerical person.  21 Q Okay. But she copies Mike Richardson, Al Kaleta,  22 and Warren Gunn on that, correct?  23 A Yes. And of whom Kaleta is the principal. What's  24 today. What -- November.  25 MR. AXELROD: It's November.</p>	<p style="text-align: right;">Page 132</p> <p>1 these clerical people necessarily knew whether things were  2 right or wrong. They were just going at face value by what  3 it said. But that -- they were wrong.  4 Q At the top e-mail from Mr. Wallace to Nancy and  5 Costa Bajjali it says, "No. According to Daniel" -- I'm  6 assuming that's you -- "they want to convert them to a new  7 class of stock, BizRadio.  8 A Who is "they?"  9 MS. FRANK: The note holders.  10 BY MR. GORDIMER:  11 Q Well, or the firm. That's what I'm wondering. Did  12 you ever have a --  13 A I don't know.  14 Q Well, it says, "According to Daniel." So did you  15 ever have a plan to convert the 11 percent note holders in  16 BizRadio to a new class of stock in BizRadio?  17 A Actually, I did discuss that with Wallace. I never  18 did it, but my intention was to have more equity and less  19 debt. And so it was my intention to offer that.  20 Q So it appears --  21 A We never did it.  22 Q It appears, at least by November 9th or 10th 2009,  23 you were aware of the 11 percent note holders?  24 A Well, yeah, but that doesn't mean that they would  25 be --</p>

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1 Q I'm just asking the question.  
 2 A -- they didn't have -- yeah, but I'm telling you  
 3 that that doesn't mean that they don't have a general  
 4 security interest in all of those. Look. This is exactly  
 5 identical. Can I answer this --  
 6 MR. AXELROD: Well, you certainly can answer, but I  
 7 don't know what you're going to say, but I mean, the  
 8 answer -- I mean, I don't want to testify for you, but I  
 9 mean, you were aware that there were 11 percent notes, were  
 10 you not?  
 11 THE WITNESS: Yes.  
 12 MR. AXELROD: Yes.  
 13 THE WITNESS: Right.  
 14 BY MR. GORDIMER:  
 15 Q But this one specifically refers to 11 percent note  
 16 holders that have money invested in BizRadio. That's not  
 17 what he was describing in the term sheet.  
 18 A No, it's not. And that's just not correct. That's  
 19 true. That's not consistent with what I said.  
 20 Q All right. And the implication Mr. Wallace is  
 21 talking about was that he discussed them with you and that  
 22 you gave an answer that you wanted to convert them to a new  
 23 class of BizRadio stock. Are you saying you did not have  
 24 that conversation with Mr. Wallace about these 11 percent  
 25 note holders in BizRadio?

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1 A About those specific --  
 2 Q Yes.  
 3 A No. That's a -- not exactly correct. No.  
 4 MR. AXELROD: But there were discussions he's --  
 5 feel free to testify to that. I want to make sure the record  
 6 is clear.  
 7 THE WITNESS: May I clarify.  
 8 MR. AXELROD: Yeah. I think he has a --  
 9 THE WITNESS: I don't want to overstep here.  
 10 MR. AXELROD: Right. Because I think we're almost  
 11 talking past each other because we have a basic perception on  
 12 the foundation. So --  
 13 MR. GORDIMER: I understand what he's saying. He  
 14 is saying that the 11 percent notes that maybe you-all are  
 15 referring to here, he still believes at that time were held  
 16 generally.  
 17 THE WITNESS: Yes. And I -- yes.  
 18 MR. AXELROD: That's exactly right.  
 19 MR. GORDIMER: Okay. I understand what his  
 20 testimony is.  
 21 MR. AXELROD: And I don't want to -- and I want to  
 22 be sure that his testimony is clear that he had -- he did  
 23 have discussions with Mr. Wallace about conversion of the  
 24 debt. Just feel free to testify.  
 25 THE WITNESS: But see, I think the point he's

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1 making is how could they be multi-asset notes if they were  
 2 going to be allowed to convert to BizRadio. That's a good  
 3 point. That's exactly analogous to the 8 or \$10 million of  
 4 money that's in this Kaleta Capital Management in which some  
 5 of those people might, at some point, do that. They would be  
 6 doing it on a proportional basis, but the people who owned --  
 7 who are creditors of Kaleta Capital Management are not direct  
 8 creditors of, well, this one is BizRadio and this one is the  
 9 car company.  
 10 If they did convert, then they would be allowed to  
 11 convert whatever the proportion would be. And if only -- as  
 12 I understand it, when I discussed it with the receiver at the  
 13 beginning, my understanding, his response was that if some  
 14 people wanted to do it and some people didn't want to do it,  
 15 then the ones who wanted to would have a bigger proportion.  
 16 So it doesn't necessarily follow that each person has one  
 17 asset as security.  
 18 And for a person to convert to equity right now,  
 19 there were people now approaching me saying we would like to  
 20 convert these notes into equity and whatever you're going to  
 21 do. And my response to them is this is premature. First of  
 22 all, we're not offering it. Secondly, the note holder has  
 23 seniority. And so for you to do that, you would be losing  
 24 position. Even if it was a good deal, you wouldn't want to  
 25 do it now because the note holders may get paid and the

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1 equity holders may not get paid. And so --  
 2 BY MR. GORDIMER:  
 3 Q The problem with this explanation is that it's  
 4 referring to them as the note holders when I believe your  
 5 understanding at the time was that Wallace Bajjali was  
 6 actually the one that BizRadio had the agreement with --  
 7 A It is true. And this is not my discussion with --  
 8 Q I understand.  
 9 A To tell you the truth, I don't think I was really  
 10 even thinking about those legal details at the time of this.  
 11 I'm very cognizant of every little nuance of it now. Back  
 12 then I wasn't really thinking about it that way. I was  
 13 thinking about investors and how to make them whole and what  
 14 was the best way to handle their money. This is a note not  
 15 from me, but it's from Wallace, and he is characterizing what  
 16 I might or might not want to do.  
 17 And I don't know that that's exactly what I did or  
 18 didn't want to do, but I can tell you that Wallace and I have  
 19 a disagreement, which we have already discussed, about  
 20 exactly this issue that you and I are talking about in  
 21 which -- and Wallace is an honest, high integrity guy whom I  
 22 like, but he's also a very smart guy, and he understands  
 23 paper trails. And he may very well be writing something like  
 24 that to establish something. It doesn't mean that that's  
 25 what I mean. And it doesn't mean that that's actually the

<p style="text-align: right;">Page 137</p> <p>1 legal standing of the lender -- of the creditor.  2 That doesn't -- just because there's an e-mail here  3 characterizing me does not weaken the position of the  4 investor who went into a note believing and having been  5 presented with the idea that he has got a diversified  6 portfolio. And because somebody has a note -- an e-mail that  7 they purport that they talked to me at breakfast and I want  8 to do this, that doesn't weaken the security position of that  9 guy who lent money.  10 And that's my point. I don't know that that's what  11 I had in mind. I don't know that that's what I said. And if  12 I did, I still could have been characterizing it wrong  13 because I wasn't analyzing these notes at that time.  14 BY MS. FRANK:  15 Q Did you ever have a discussion with Mr. Kaleta who,  16 you know -- let me back up. Was -- Mr. Kaleta was the one  17 who presented the term sheet to the clients? Is that  18 correct?  19 A Yes. Right.  20 Q Once this issue became apparent that clients are  21 calling you and saying well, look, I got a specific note in a  22 particular project and not a --  23 A Yes.  24 Q -- more generalized note, did you have a discussion  25 with Mr. Kaleta about how this could have happened, that</p>	<p style="text-align: right;">Page 139</p> <p>1 term sheet.  2 A I did, but that doesn't mean that I have it.  3 Q Okay. So you approved it and then he's now  4 bringing the same term sheet back to you.  5 A To show me --  6 Q To show you.  7 A -- what it was we did back then. Yes.  8 BY MR. GORDIMER:  9 Q Who issued the term sheet? I mean, who is on it?  10 Whose name is on it?  11 A It was issued by Wallace to show --  12 Q Does he sign it?  13 A -- what was being offered. I don't know, but he  14 doesn't dispute the fact, I'm sure, that he sent it. I'm  15 sure there's a record of who sent it. It's e-mail. It's a  16 document attached to an e-mail. So I don't think there's any  17 dispute about whether he wrote it.  18 MS. YODER: Can I ask a couple of questions on  19 this?  20 MS. FRANK: Sure.  21 BY MS. YODER:  22 Q Mr. Frishberg, you talked about that you approved  23 these types of investments for your investment advisory  24 clients.  25 A Yes.</p>
<p style="text-align: right;">Page 138</p> <p>1 there was this breakdown in communication?  2 A Yes. That's where I got a copy of the old term  3 sheet from Kaleta.  4 Q Okay. Did you talk to him about what he  5 specifically told the investors?  6 A Yes.  7 Q What did he say to you?  8 A He said that they were diversified. And according  9 to the term sheet, that was what he explained. And he sent  10 me a copy of the term sheet when I asked him about it.  11 That's where I got the term sheet.  12 Q Your -- the term sheet that you prepared he gave to  13 you?  14 A No, I didn't prepare it.  15 Q He prepared it.  16 A Wallace prepared it.  17 Q Okay. Okay. So Kaleta got it from Wallace.  18 A Yes.  19 Q Okay.  20 A Back when he -- back then. And he just gave it to  21 me as evidence when I questioned him about this. As you just  22 asked, did I question. And he said, "Yes, and I think I can  23 find a term sheet from that time." And he found it and sent  24 it to me.  25 Q Okay. But I thought you said you had approved that</p>	<p style="text-align: right;">Page 140</p> <p>1 Q What was the type of investment this was going to  2 be, meaning short-term, long-term, cash flow. What was the  3 intent of the investment towards the portfolio?  4 A Well, these had terms on them. They're two, three  5 year notes and they have terms on them.  6 Q With the cash flow on a quarterly basis?  7 A Right.  8 Q So it was meant for purposes of cash flow --  9 A Right.  10 Q -- and a short-term investment?  11 A Well, yeah, three years, four years. Yes.  12 Q Three, four years --  13 A Yes.  14 Q -- being the short-term.  15 A Yes.  16 Q How would that be appropriate converting these to  17 stock in a privately held company?  18 A Well, I don't know if it would. It would do -- I  19 don't know if it would.  20 Q Wouldn't that make it long-term, illiquid?  21 A It might.  22 Q Okay. How would that be appropriate to convert --  23 A I don't know if it would.  24 Q Okay. In your professional opinion, you don't  25 know?</p>

<p style="text-align: right;">Page 141</p> <p>1 A In my professional opinion, in some cases it might 2 because there was other fixed income that they were going to 3 do, or for another person it might not be appropriate to do 4 it. It was not at that point where it was offered to anyone. 5 Q But you admit it would be illiquid. 6 A Yeah. Certainly. 7 Q Okay. 8 BY MS. FRANK: 9 Q Was -- 10 A May I just answer that more fully? If somebody was 11 going to do that, it would be use of a document that 12 disclosed all of those kinds of things. Certainly. 13 Q A minute ago you mentioned something about there 14 being some kind of private placement memorandum for the 15 notes, something that would go along with the term sheet? 16 A Yeah. I'm sure there was because Wallace is very 17 thorough. So I'm sure that there was. 18 Q Okay. 19 A Oh, and I asked him that also, "Is there a 20 memorandum. You did do a memorandum for that." And he said, 21 "Yes. Absolutely." 22 Q Would you have gotten a copy of that? 23 A Probably. Possibly. 24 Q Could you look for it? 25 A Oh, I wouldn't have it now. I don't save</p>	<p style="text-align: right;">Page 143</p> <p>1 read the documents. 2 BY MS. YODER: 3 Q Who would you task that to in your organization? 4 A I would task it to Kaleta, I would task it to John 5 Lunsford, I would task it to my lawyer at the time, Deon 6 Warner. I would task it to Richard Jordan. I would task it 7 to someone who is responsible, or I would read it myself. 8 Q But in this case, you don't remember who. 9 A I don't remember. 10 Q Okay. 11 BY MS. FRANK: 12 Q Okay. And I believe you testified that 13 Mr. Lunsford left in early or mid 2007. And was there -- who 14 took over running BizRadio at that point if he was more or 15 less the COO? 16 A Actually in 2007, that was when I became ill and 17 David Wallace actually stepped in and helped me at that time. 18 Q You sure that wasn't 2008? 19 A I'm not sure, no. 20 Q Okay. 21 MR. AXELROD: See, that elevator may not be 22 working. 23 THE WITNESS: And I'm not even sure I got it right 24 on Lunsford. But about the time that Lunsford left was the 25 time that Wallace stepped in and assisted in the management.</p>
<p style="text-align: right;">Page 142</p> <p>1 documents. 2 Q As an investment advisor bringing this type of 3 investment to your clients, would you not have a duty to read 4 it? 5 A I'm sure I did or have a lawyer read it or somebody 6 read it. Yes. 7 Q Do you recall doing that? 8 A I recall having someone, whatever time it was. 9 Either my lawyer was doing it or one of my chief advisors was 10 doing it. Somebody certainly read it, yes. 11 Q But you're not for sure. 12 A Not for sure what? 13 Q That someone read it? 14 A Well, I'm not for -- I don't want to be frivolous 15 or anything. I'm not trying to be disrespectful, but I'm 16 sure of that as I'm sure that that elevator is going up and 17 down in the hallway right now even though I don't see it. 18 I'm saying yes, I'm sure that someone responsible read every 19 memorandum of everything that we've offered, and no, I can't 20 say that I stood there and watched someone read it. I'm not 21 even sure if I was the one who read it or not back then. 22 There are thousands of transactions that I'm part 23 of. I'm telling you that my process would never have a thing 24 that somebody puts hundreds of thousands of dollars into 25 where someone responsible in my organization didn't carefully</p>	<p style="text-align: right;">Page 144</p> <p>1 BY MS. FRANK: 2 Q Okay. 3 A Whichever year that was. 4 Q Okay. Well, let's assume that was 2008. 5 A Okay. 6 Q Did, at some point, Mr. Wallace come to you and say 7 he was not going to accept anymore -- he was not going to 8 have his funds provide BizRadio anymore money? 9 A No. It was quite the contrary. 10 Q Okay. Let me phrase it differently. Was he not 11 going to have his fund -- the Wallace Bajjali Fund or the 12 Laffer Fund -- invest anymore in equity in BizRadio? 13 A As I said, it was the opposite. He called me and 14 asked me -- told me, "Do you have anybody who wants to invest 15 in our partnership because I'm having cash flow problems. 16 I'm having to keep this real estate." And I know where I was 17 at the time. It was April of last year because I was in 18 Washington, D.C., and I remember the hotel room I was in when 19 I took his call. 20 Q Now I'm talking about in 2008, not 2009. 21 A Well, in 2008, he certainly didn't say that. 22 Q Okay. So did, at any time, he tell you he was not 23 going to be putting anymore money into equity in BizRadio? 24 A No. As I said, it was the opposite. The -- he 25 asked me if I had investors who would put equity into his</p>

<p style="text-align: right;">Page 145</p> <p>1 company and I said no. I -- well, what I said specifically  2 was, in view of the economy, in order for an investor of mine  3 to put new money into a real estate-based limited  4 partnership, it would have to be a fire sale. And the  5 existing clients that are in there I know don't want you to  6 have a fire sale and sell assets.  7 And so I just can't help you unless it's a very  8 cheap deal because my clients can get a cheap deal. They can  9 buy real estate at half price. They can buy stocks at half  10 price. They don't -- they're not going to invest money in  11 that at the current book value that you have. And so I can't  12 put money in there. This is the second time I've heard that  13 kind of thing. And the answer is no, he didn't say that.  14 Q So basically what you're telling me is that there  15 was not a point in time in which Wallace quit having his  16 funds investing more money in BizRadio and then began --  17 A He didn't have any.  18 Q And then began the different model of loaning Biz  19 money, BizRadio money.  20 A No, but can I -- I would like to recharacterize  21 what you're saying because now I understand what you're  22 asking me.  23 There was a limit that -- when the Wallace  24 partnerships were written, and I was integral in writing the  25 second -- well, the first -- the one with my name on it.</p>	<p style="text-align: right;">Page 147</p> <p>1 Q No. The -- did, at some point in time, Mr. Wallace  2 present you with a plan for how to go forward with BizRadio?  3 A He presented me with several plans.  4 Q Did he have them all written up or just -- I'm  5 thinking of one that he wrote up in memo.  6 A he presented me with several plans.  7 Q Okay. Did you implement any of those plans?  8 A I implemented parts of it.  9 Q Why wouldn't you have implemented all of it?  10 A You know, I've heard this story about how he had a  11 plan. His plan involved rolling -- I don't -- when he took  12 over the company when I was sick, he made a lot of tactical  13 errors. Much of the plan that he wanted to do completely  14 missed the point and wasn't appropriate. Some of it was  15 appropriate and I did implement it. In fact, the reduction  16 of costs and dropping the expenses by millions of dollars, he  17 gave many suggestions on how to do that. And I did, in fact,  18 implement a lot of those. Some of his suggestions were  19 completely wrong and I didn't implement those.  20 You'll notice that when he did sit in for me as the  21 CEO, you'll notice that the -- we had a new fledgling  22 education arm. During the previous couple of months, we had  23 done a course where we made \$70,000. We did another course  24 which we made \$20,000. We had probably a hundred and twenty  25 thousand dollars worth of advertising revenue coming in per</p>
<p style="text-align: right;">Page 146</p> <p>1 Q Laffer Frishberg Wallace.  2 A Yes, but also even the ones before that. One of  3 the things that I more than suggested, but adamantly  4 suggested, was that there be a limit on how much of the  5 assets could any one asset be. That is --  6 Q You mean what percentage the prime could be.  7 A If you have \$300 million worth of assets and you  8 only have 20 percent allowed in each one, then only 20  9 percent of that 300 million could be invested in any one  10 asset so that you're not too heavily concentrated in one area  11 of risk. And so there were in and out period -- when you  12 first start a partnership, the first money that you put is  13 100 percent in the first asset that you put it in. So  14 there's a period of time allowed to cure one of those  15 deficiencies because otherwise, it's impossible for you to  16 invest in anything because you're only doing one at a time.  17 Q I understand that.  18 A But there were times when Wallace was all invested  19 out and couldn't invest in anything beyond a certain level.  20 And if I wasn't -- if there wasn't new money coming in, then  21 he wouldn't be able to invest more. And so there may have  22 been more than one time when he said I'm not capable of  23 investing more money in BizRadio because he might have had,  24 proportionately -- and I think that may be what you're  25 referring to there.</p>	<p style="text-align: right;">Page 148</p> <p>1 month at that time. And you'll notice that it almost  2 immediately dropped precipitously when he took over because  3 he, what, did not understand how to run that company.  4 He's a turnaround guy and he's a smart guy. And  5 many of the suggestions he gave me were good and I did  6 implement them and I reduced costs over a period of time a  7 lot, by probably half or more. But some of them just weren't  8 good ideas and I didn't do them.  9 MS. FRANK: Okay. Can we take a break for just a  10 few minutes?  11 MR. AXELROD: Sure.  12 MS. FRANK: We'll go off the record.  13 (A brief recess was taken.)  14 MS. FRANK: Okay. Back on the record.  15 THE WITNESS: Can I say something?  16 BY MS. FRANK:  17 Q Sure.  18 A I just want to modify something, that I don't think  19 I was -- I don't think I said clearly what I meant to say.  20 The question you had about the PPM about these notes, did  21 they have a PPM. When I said I'm positive there was a PPM, I  22 was saying that because I was assured by Wallace that there  23 was one, and I don't remember specifically seeing one. I  24 just -- what I was saying I was positive is, that if there is  25 one, that there would be someone who would be appointed to</p>

<p style="text-align: right;">Page 149</p> <p>1 read it. We wouldn't just ignore it.  2 But I don't actually have the ability -- it's not  3 exactly like knowing that the elevator goes up and down. The  4 elevator -- I can tell you that for sure if there is one,  5 someone responsible would read it. But I can't actually --  6 other than the word of Wallace telling me, yes, there is one,  7 that's the most certain I can be about that there is one.  8 Q Okay.  9 A Do you understand?  10 Q Yes. I understand. The note that we were looking  11 at a minute ago for Eric Rothenberg, do you remember that?  12 And it said Wallace Bajjali -- BizRadio is going to pay back  13 Wallace Bajjali as agent for Rothenberg, co-payee.  14 A Yes, ma'am.  15 Q Okay. Wasn't it set up like that because Fidelity  16 would not hold secured notes as custodian to where somebody  17 had to -- they would hold a note, but not a secured note.  18 And wasn't Wallace Bajjali made an agent to work through that  19 issue?  20 A I have no idea.  21 Q No idea. Do you know whether or not Fidelity, as  22 custodian, would hold secured promissory notes?  23 A Don't know.  24 Q You don't know. Do you know whether or not  25 Fidelity would hold unsecured promissory notes?</p>	<p style="text-align: right;">Page 151</p> <p>1 A I don't even know that.  2 Q Okay.  3 A I sign lots of things that people have vetted and  4 screened for, and I don't remember them. I'm not a paper  5 guy. I'm a conceptual person. I'm managing a \$200  6 million -- or I was managing close to a \$200 million  7 portfolio, doing a two hour radio program every day,  8 traveling and doing television appearances, making deals with  9 people. I'm working 10, 12 hours a day, and it's constant  10 transactions. And I really don't remember them, other than  11 when I'm right there with them.  12 Q So were you cutting your time slim on your  13 investment advisory?  14 A No, I wasn't. Everything that I do is involved in  15 the same portfolio management decisions and then the  16 recycling of them. And that's exactly what I did spend my  17 focus on. What you're asking me about is a paper that  18 involved an IRA or what they -- that's the part that I wasn't  19 focusing on. What I was, in fact, focusing on was the  20 strategic investment of my portfolio.  21 Q Well, you were managing the assets, correct?  22 A Yes.  23 Q And the assets were held at a custodian.  24 A Yes.  25 Q So isn't that an important part of the</p>
<p style="text-align: right;">Page 150</p> <p>1 A No. I mean, they hold something because they were  2 in there, but -- they were held by Fidelity, but I don't know  3 what the rules were.  4 Q Okay. Who, in your organization, as it existed  5 before, would have known something like that?  6 A Depending on when it was, it would be either some  7 combination of Kaleta, Mike Richardson, Karl Eggerss, Rick  8 Jordan.  9 Q Okay.  10 A John Lunsford.  11 Q Okay.  12 BY MS. YODER:  13 Q Mr. Frishberg, who entered into the agreement with  14 Fidelity, the original custodial agreement?  15 A Oh, I did.  16 Q Okay.  17 A Some 16 years ago.  18 Q Okay. Was that --  19 A Well, actually, even then I don't remember if it  20 was actually me or Rick Jordan or -- I'm not sure. It was  21 probably me, but I don't remember.  22 Q Okay. Has there been any amendments to that  23 agreement since its inception?  24 A I don't know.  25 Q Have you signed any amendments?</p>	<p style="text-align: right;">Page 152</p> <p>1 investment --  2 A No, it's really not to me. I'm sorry to interrupt  3 you.  4 Q That's okay.  5 Go ahead, Janie.  6 BY MS. FRANK:  7 Q I believe we were talking earlier about BizRadio  8 and the fact that it had a cash shortfall every month. Some  9 of this was made up at some point in time -- say several  10 years ago -- with additional equity investments, right?  11 A Mm-hmm.  12 Q You need to say yes or no.  13 A Yes.  14 Q Okay. And then at some point it begins to be -- or  15 let me just ask you this. Was there a shift away from equity  16 into BizRadio to loaning money to BizRadio? Just broadly  17 speaking.  18 A Well, sitting here knowing the past, I can say yes,  19 I see that there was one. No, I didn't make a strategic  20 decision to do that. I did --  21 Q I'm not saying you did. I'm just saying, just  22 broadly speaking, there was a pattern initially, say up to  23 maybe end of 2007 or sometime in 2008, that the money that  24 came into BizRadio was characterized as equity, and then a  25 shift occurred. I'm not saying you recognized it at the time</p>

<p style="text-align: right;">Page 153</p> <p>1 or anything like that. I'm just saying at some point it  2 began to shift and became debt. It became loans to BizRadio,  3 that the money covering the shortfall for BizRadio became  4 loans.  5 A At some point, looking back on it, that did happen.  6 Q Okay.  7 A Not permanently because it wasn't a strategic  8 decision. It did happen though. I see that there were more  9 notes in before -- yes.  10 Q Now these notes that were -- BizRadio is making to  11 various lenders --  12 A Yes.  13 Q -- they were not covering all of the shortfall,  14 were they, the cash flow shortfall?  15 A They were not covering the --  16 Q Well, okay. Let me -- forget that question. The  17 Wallace Bajjali notes that were -- where they were -- at some  18 point they were loaning money to BizRadio, correct?  19 A Yes.  20 Q The loans that Wallace Bajjali is making to  21 BizRadio is not sufficient to cover the cash flow shortage of  22 BizRadio, is it?  23 A Looking back on that, I know there were some loans  24 that came from Kaleta Capital Management, but yes, the amount  25 that they had to loan was 100 percent dependent on the money</p>	<p style="text-align: right;">Page 155</p> <p>1 Q But you knew that Kaleta Capital Management was  2 loaning funds to BizRadio, did you not?  3 A Yes.  4 BY MS. FRANK:  5 Q And you knew that as far back as early 2008, right?  6 A I don't know that. I don't know if I knew that  7 back -- it's hard for me to know what I knew. I knew that  8 there was some money that came from Kaleta Capital  9 Management.  10 Q In 2008.  11 A 2008. I'm not sure if I knew it in 2008 or not.  12 Q Okay. But he -- now he started his note program at  13 the end of 2007 or early 2008, right?  14 A I'm not sure.  15 Q Well, when did you first find out about Kaleta's  16 company, Kaleta Capital Management?  17 A Well, it was always -- I knew about it always. It  18 was disclosed on my ADV. That was how you found out about it  19 because I disclosed it. That's how the SEC saw it in a  20 routine audit, that it was disclosed on my ADV. I just  21 didn't -- I just don't know about the mechanisms of what it  22 was he was doing.  23 Q When did you first recall that he was loaning money  24 to -- okay. You're saying you don't remember when he first  25 loaned money to BizRadio, right?</p>
<p style="text-align: right;">Page 154</p> <p>1 that my clients put into those notes. And so if they came  2 from there, they could just as easily have come from here.  3 And that's where I thought they were supposed to come from  4 mostly. There was no reason why they should have come from  5 Kaleta Capital Management and not from Wallace and Bajjali.  6 There was no strategic reason that benefitted me or BizRadio  7 for that to happen.  8 Q Okay. Unless maybe Wallace Bajjali wasn't going to  9 do that anymore, and that's why it came from Kaleta Capital  10 Management?  11 A I don't -- no. That's not correct.  12 BY MR. GORDIMER:  13 Q Well, at some point you said -- testified earlier  14 that Wallace Bajjali would not take anymore investment in  15 BizRadio because of the ratios within their own fund.  16 A That's the -- that's equity.  17 Q Okay. So did they not have a similar feeling about  18 the debt? I mean, did they not -- did they want --  19 A I'm sure they had a ratio that they had to -- they  20 couldn't lend too much money to any one asset.  21 Q Okay. So did anybody -- did Mr. Wallace, or  22 anybody at Wallace Bajjali, ever tell you we can't lend  23 anymore. We can't lend -- we can only lend a certain amount  24 to BizRadio?  25 A Not to me, no.</p>	<p style="text-align: right;">Page 156</p> <p>1 A No. I do remember.  2 Q You do remember. You do remember. When did he --  3 okay. When did that happen?  4 A When Industrial Info. had the \$4 million loan  5 through the 11 percent notes, there was an occasion when the  6 CEO of that company was exerting pressure on BizRadio to  7 include them in our programming in a way that I thought was  8 detrimental to BizRadio. And you owe them a lot of money.  9 And so you're in a position where you're weakened. And I  10 said I need to get that -- what I did was I refused to go  11 along with some of the things that he was doing, even though  12 it was an important creditor.  13 And so it -- he said, "I want my money paid back  14 quickly." And so at that time, that was when I believe  15 Kaleta said I have this -- I can make loans to help  16 supplement this. And so he assisted in the paying of the  17 notes to Industrial Info.  18 Q Okay. Did you ask him how he was going to do that?  19 A Well, he had clients at the time. He was already  20 in that business.  21 Q He already had Kaleta Capital Management.  22 A Clients. Yes. Customers.  23 Q What customers did Kaleta Capital Management have?  24 A He had his own customers. He had Ed Lewis for one.  25 He had a lot. He had Jack McKelly. He had several of them.</p>



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1 He had ones that I didn't know even.  
 2 BY MR. GORDIMER:  
 3 Q Well, what was Kaleta Capital Management?  
 4 A It was a basically a mezzanine lender. It was a  
 5 loan company. It's -- he -- it was a corporation that he  
 6 ran, and he did a lot of things with it, but I was not -- one  
 7 of the things he did with it was he had his -- ran his  
 8 business through it. I think he was receiving some of his  
 9 paychecks from us in that company, some of which I said, "I  
 10 don't understand why you were doing that." And it's stupid  
 11 and he has an accountant. And it was not his business. He's  
 12 a grownup guy, he's in his sixties, and I just didn't pay  
 13 attention to it. But he said, "I can help with the paying of  
 14 that back." And I really didn't think about it. I really  
 15 didn't underwrite it. It was a lender.  
 16 BY MS. FRANK:  
 17 Q Did -- when did you find out that he was -- his  
 18 clients included your clients?  
 19 A Well, I think -- I'm not sure, but I think that  
 20 while he was lending money to BizRadio, I knew that my  
 21 clients were among his clients.  
 22 Q Okay. So while he has Kaleta Capital Management  
 23 lending money to BizRadio --  
 24 A Yes.  
 25 Q -- you knew that he's also borrowing the money from

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1 your clients to go into Kaleta Capital Management that he can  
 2 then lend to BizRadio?  
 3 A Well, he was doing a lot of things with it.  
 4 BizRadio was one of the people he was lending it to.  
 5 Q Right.  
 6 A But I had no idea of the -- you know, I thought  
 7 about this a lot. So I sorted it out in my mind. Yes, I  
 8 knew that he was doing that, but I had no idea the extent of  
 9 it. There was really no reason for people to be receiving 11  
 10 percent. Us to be paying 14 percent into that company was  
 11 really -- was not an approved lender. Our company did not  
 12 receive fees for it. It was not affiliated with us, other  
 13 than the fact that there was an officer who owned it.  
 14 And my -- I assumed, and I now know better, but I  
 15 assumed that most of that lending was being done by the  
 16 approved notes of Wallace Bajjali and that there were moments  
 17 in time when there wasn't enough money in there, or in  
 18 Wallace and Bajjali, or they -- and it was not -- they were  
 19 waiting for approval of something, or for some reason they  
 20 couldn't do it where Kaleta Capital Management filled the  
 21 shortfall. I only found out way, way later that there were  
 22 millions and millions of dollars coming that had gone through  
 23 Kaleta. I did not know that.  
 24 Q Okay. So you knew that your clients were  
 25 participating in his note program.

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1 A Yes.  
 2 Q You didn't know the extent of it though --  
 3 A That's right.  
 4 Q -- until I guess the very end.  
 5 A Or the conditions or terms or whatever.  
 6 Q Okay.  
 7 BY MR. GORDIMER:  
 8 Q But you knew that BizRadio was borrowing --  
 9 A Yes.  
 10 Q -- a lot of money from --  
 11 A No, I didn't. I thought BizRadio was borrowing  
 12 most of it from Wallace and Bajjali.  
 13 Q Well, you got -- I mean, didn't Linda Sikes do  
 14 financial statements for BizRadio?  
 15 A Pardon me?  
 16 Q Didn't Linda Sikes do financial statements for  
 17 BizRadio?  
 18 A Yeah.  
 19 Q Did you not see any of those?  
 20 A The only times I saw them -- she didn't do them --  
 21 not really, no. That wasn't -- I didn't really look at  
 22 those, no.  
 23 BY MS. YODER:  
 24 Q But you were provided them quarterly, correct?  
 25 A No. When Wallace, who was one of our equity

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1 holders, when he provided his investors with reports on all  
 2 of his investments that he had, BizRadio would also submit.  
 3 And so that was how I knew it was being done quarterly and  
 4 remembering to you was because we were providing Wallace with  
 5 the figures for him to put into his quarterly report to his  
 6 investors. And at that time I was seeing them. But they  
 7 didn't have -- in answer to your question, they didn't detail  
 8 who the lender was or what -- they did show debt.  
 9 Q You oversaw Mr. Kaleta's note program, though,  
 10 didn't you?  
 11 A No, I did not.  
 12 Q So when you told us, during the examination in the  
 13 opening interview, that you had the intricate details and the  
 14 full knowledge and that it was an open book to his business,  
 15 are you testifying today that that was -- that now that's not  
 16 the case?  
 17 A Yeah. Because I now know four billion other facts  
 18 that I didn't know then. Yes.  
 19 Q But you told us that you oversaw that program.  
 20 A No.  
 21 Q Had intricate detailed knowledge about that  
 22 program.  
 23 A Well, I thought I did, but I didn't.  
 24 Q At that time, what knowledge did you have of the  
 25 program?

<p style="text-align: right;">Page 161</p> <p>1 A Well, I asked about every single part of it. I 2 said, "Are we in compliance? How are you doing this?" 3 "Well, I have an accounting firm. They've looked 4 at every single thing." 5 "Are you sure you are doing this?" How are you -- 6 "How much money of a client is allowed to be put into this, 7 into private equity deals or illiquid deals?" 8 "15 percent." 9 That's where I got that from. 10 Q Was there an offering document for that program? 11 A For -- 12 Q Kaleta's note program. 13 A I now know that there wasn't. 14 Q So did you, as an investment advisor, perform any 15 type of due diligence on that -- 16 A I didn't recommend to anybody. I did -- was not -- 17 that was not one of my approved investments. In fact, it 18 didn't appear on their statements to put money into Kaleta 19 Capital Management to have to take money out of our money 20 that we managed, and we didn't receive any fees on it. It 21 was just as though you had taken it out to go buy Christmas 22 presents. 23 Q But you knew he was doing it. 24 A But I didn't know -- yes. But I didn't know the 25 extent or the amount of it or the details of it.</p>	<p style="text-align: right;">Page 163</p> <p>1 people from San Antonio and looked at how the money was being 2 allocated. The money was not being put into Kaleta Capital 3 Management at that time. 4 Q And how do you know that? 5 A Well, I know now because I've been living with this 6 for months. 7 Q At that time, how did you know that? 8 A I didn't know. Excuse me. 9 BY MS. FRANK: 10 Q How would the client know what hat Mr. Kaleta was 11 wearing? 12 A Well, I now know that in many cases they didn't 13 know that. At the time it didn't -- I didn't know that that 14 was an issue. Now I know that they didn't, in some cases, 15 know which hat he was using. 16 BY MS. YODER: 17 Q But you said you disclosed it in your ADV. 18 A That he had that business. 19 Q What did you disclose about that business? 20 A Everything we knew about it at the time, that he 21 had a separate business that was a lending business, that it 22 was called Kaleta Capital Management. Whatever we knew about 23 it at the time. 24 Q What else did you know about it at the time? 25 A That's about it.</p>
<p style="text-align: right;">Page 162</p> <p>1 Q So on those you did or were aware of, you did 2 approve those. 3 A No. I didn't disapprove them; I didn't approve 4 them. I thought they were okay, but I didn't really have any 5 interest in them. 6 Q But he was doing that partially as an investment 7 advisor on -- as an agent for the investment advisor. 8 A Well, he wasn't doing it as an agent for the 9 investment advisor. He was an agent for the investment 10 advisor and he was doing it, but it was not part of his job 11 as an investment advisor affiliate to do that. 12 Q But he was doing it while working on the investment 13 advisor's premises while meeting with the client on 14 investment advisory time. 15 A Actually -- yes. Yes. Actually in almost ever 16 case that I now know, the client's money would be allocated. 17 And it would not be allocated into Kaleta Capital Management, 18 it would be into all the approved investments. And then 19 later they called the investor and offered to them you have 20 money. Maybe you want to put it into this note. 21 It wasn't in a visible way where we could see it, 22 and it didn't happen -- actually, I described earlier about 23 how we had these layers of where the client's goals were and 24 where would we look at -- where we had these various layers 25 where the client signed up and then he had a meeting with the</p>	<p style="text-align: right;">Page 164</p> <p>1 Q So you did not know that he was potentially 2 offering it to your advisory clients? 3 A I think I knew that he was offering it to my 4 advisory clients, yes. 5 MR. AXELROD: Now what is the time frame of that, 6 Linda, that question, when you -- you talked -- 7 MS. FRANK: From December 2007 forward. 8 THE WITNESS: I don't think I knew about it back 9 then or thought about it at all. I think it was way later 10 that I knew about it. 11 BY MS. FRANK: 12 Q But is that not considered an investment? 13 A No. Actually, I didn't think of it as at all, no. 14 Q Why not? 15 A Because it was just a direct note that he was 16 doing. And in fact, I asked about that. At the time he was 17 assured by his advisors that that was just a direct note with 18 his business and that it wasn't a security. 19 Q Who were his -- 20 A I now know that that's not true. 21 Q Who were his advisors? 22 A GLO, the CPA firm, which styled itself, held itself 23 out as experts in the securities business. 24 BY MR. GORDIMER: 25 Q How was the Kaleta Capital Management note</p>

<p style="text-align: right;">Page 165</p> <p>1 different than the 11 percent and 12 percent notes for  2 Wallace Bajjali?  3 A Because the Wallace and Bajjali notes were  4 diversified, they were approved by us, they were on a whole  5 portfolio of --  6 Q Well, how do you know what the Kaleta Capital  7 Management notes were based on?  8 A Well, I don't know. That's what I --  9 Q Wasn't that worse?  10 A What? That I don't know?  11 Q Yeah, because --  12 A Of course it's worse.  13 Q -- you're allowing your clients to give it to  14 you --  15 A I wasn't part of --  16 Q You're not preventing Mr. Kaleta from soliciting  17 your clients to invest in it. You do nothing or claim to  18 know nothing about it.  19 A Right.  20 Q Even though he was working under your roof at the  21 time and reporting to you directly.  22 A I didn't think of it that way. That's true.  23 BY MS. YODER:  24 Q Well, they were earning interest off the notes --  25 income off the notes.</p>	<p style="text-align: right;">Page 167</p> <p>1 Q How?  2 A Because in every memorandum it showed exactly who  3 the personnel were and everything they did.  4 Q But there was no memorandum for KCM.  5 A I didn't have anything to do with KCM and didn't  6 know that it had one or didn't have one.  7 Q But you were the beneficiary of the loans made by  8 KCM to BizRadio.  9 A I wasn't the beneficiary of the loans made to  10 BizRadio.  11 Q But you owned --  12 A I was -- I had a contingent interest in it that if  13 investors made money, I would also be paid.  14 Q But you also got a salary from BizRadio.  15 A I did get a salary, yeah.  16 Q And that would be part of the expenses every month  17 of BizRadio that had to be paid, right?  18 A Right.  19 Q Did you ever forego any salary because there was a  20 cash shortfall?  21 A Absolutely.  22 Q When?  23 A For the last eight months or so for one.  24 Q Before that. Did you ever forego a salary before  25 because you told us earlier --</p>
<p style="text-align: right;">Page 166</p> <p>1 A They were.  2 Q And it was considered a short-term investment.  3 A I guess. Yes.  4 Q Were you aware that Mr. Kaleta was offering it as  5 an alternative to cash?  6 A No.  7 Q Okay.  8 BY MS. FRANK:  9 Q Did it strike as a conflict of interest that your  10 clients would be loaning money to an entity that then is  11 going to loan money to BizRadio or even if they loaned money  12 directly to BizRadio?  13 A You know, there's a potential conflict of interest  14 in every associated party transaction and almost in --  15 anything that anybody does has a potential conflict of  16 interest. I've always been very aware, in the dealings that  17 I do, of potential conflicts of interest. When you are  18 running one company and it's dealing with another company,  19 you can always potentially have a conflict of interest. And  20 so I've always been extremely careful to be as ethical as I  21 can and to watch that and to make sure that I don't have  22 those kinds of problems. But yes, there is a potential  23 conflict of interest in any associated party transactions.  24 Q Did you disclose those to your clients?  25 A Absolutely.</p>	<p style="text-align: right;">Page 168</p> <p>1 A Before I stopped taking my salary, yes. No.  2 Q Let me finish the question.  3 A Sorry.  4 Q You told us earlier that BizRadio has lost money  5 every single month it has been in existence.  6 A Right.  7 Q Okay. Presumably one of the causes of that cash  8 shortfall would be your salary, right?  9 A Well, yeah. Yeah. That's not the way I look at  10 it. The facts are true; the characterization is wrong. The  11 company was in a growth mode and it was going to -- it was  12 building scale. I started the company and I postponed  13 growing my own company, which was very lucrative, and  14 didn't -- and I started out that company, BizRadio, with the  15 idea that it was going to be run by general manager and by --  16 and other people in the company, and I was just going to  17 watch it.  18 Q So why did you have a salary at that point?  19 A Wait a minute. When it required a lot of care, I  20 took about a \$200,000 salary, which was a very tiny portion  21 of what I was earning. It was taking up about 90 -- well, 80  22 percent, let's say, of my time sitting in there working all  23 the time on BizRadio. It was a very unlucrative thing for me  24 to do, and it was only done out of wanting it to be  25 successful. I never intended to have to spend that much time</p>

<p style="text-align: right;">Page 169</p> <p>1 on it or that much effort on it. But I had to, and I took  2 very little money for doing it.  3 Q So \$200,000 to you is a small salary --  4 A Very.  5 Q -- to run BizRadio?  6 A That's correct.  7 Q Do you know whether or not that's appropriate in  8 the industry, radio industry?  9 A Yes. It's way, way small.  10 Q Okay. Now wasn't your wife also on the payroll of  11 BizRadio?  12 A That's right. She was the --  13 Q What did she do?  14 A -- executive producer.  15 Q Executive producer?  16 A That's right. She produced --  17 Q What was her salary?  18 A -- all the programs. 60.  19 Q 60,000?  20 A Yes.  21 Q Okay. Now wasn't Al Kaleta also on the payroll of  22 BizRadio?  23 A At the time -- yes. He was eventually. When he  24 started to work full-time there, yes.  25 Q When was that?</p>	<p style="text-align: right;">Page 171</p> <p>1 Q So what was your -- did you -- are you paid a  2 salary by the RIA?  3 A I was paid 20 percent of the revenues, and,  4 therefore, when I didn't grow it for years, it cost me many,  5 many hundreds of thousands of dollars.  6 Q Was the RIA shrinking during that time period?  7 A It was probably staying roughly the same, shrinking  8 a little bit.  9 Q So I don't understand how you're making less money  10 if it's -- you're making 20 percent of its --  11 A I was foregoing money that I could have made.  12 Q Because it would have increased.  13 A Because it would have increased, yes.  14 BY MR. GORDIMER:  15 Q Well, what did you receive annually from your --  16 from the Registered Investment Advisor, roughly, by average  17 the last couple of years?  18 A At that time -- well, the last couple of years?  19 Q Well, from '07.  20 A Probably, I don't know, 350 or 400,000 in, oh,  21 around then. Around then. And I -- and it would have been  22 probably double that had I been able to spend the time on it.  23 In --  24 Q I mean, didn't your salary exceed the collections  25 that were made for what was owed to the BizRadio, the</p>
<p style="text-align: right;">Page 170</p> <p>1 A A few years into it.  2 Q Okay. And what was his salary?  3 A Probably around 60.  4 Q Okay. And what was your salary? 200,000?  5 A Yes.  6 Q Was it that the whole time?  7 A No. It was less than that.  8 Q When?  9 A For the first couple of years.  10 Q Okay. So say around 2007 and --  11 A At some point I couldn't live anymore and still  12 continue to do that work. And so I raised it -- or they --  13 actually, I said -- I went to a group of people, who were  14 John Lunsford, David Wallace, a bunch of people who were  15 interested parties, and said, "I can't survive this. I'm not  16 going to be able to keep doing this because I can't live on  17 this money that I'm making." And they suggested to raise the  18 salary to 200. So I did.  19 Q So that wasn't your idea.  20 A Well, it was my idea that I was going to have to  21 either stop working or get more money.  22 Q Okay. Were you making less money from the RIA  23 during that time period?  24 A Yes. I was -- yeah, because I didn't grow the RIA  25 at all for four years.</p>	<p style="text-align: right;">Page 172</p> <p>1 BizRadio salary?  2 A No.  3 Q No?  4 A For what?  5 Q BizRadio.  6 A No. BizRadio had collections of a hundred and  7 twenty thousand dollars a month or so.  8 Q All the speakers of -- all the radio hosts of  9 BizRadio paid for a spot, correct?  10 A No. Some of them did. Arthur Laffer was paid  11 money to be on. The ones who were -- some of them did. The  12 ones that we were able to. My radio show is what gave  13 credibility, and my radio show was the one -- when I did my  14 radio show on the previous station, I probably earned 4 or  15 \$500,000 in that year doing it as a representative. My show  16 was the popular one that made all those people come.  17 The Ray Lucia Company, for example, when they came  18 and went on BizRadio, they were being paid for their  19 programming. And every other station in the country, they  20 paid -- I think they started paying about 9 or \$12,000 a  21 month to be on in Houston. That went up to \$22,000 to be on.  22 They were doing that because of the credibility created by my  23 program. We put a tremendous amount of effort, and there was  24 great value, in my programming. It was what put BizRadio on  25 the map and made it possible for it to do what it did.</p>

<p style="text-align: right;">Page 173</p> <p>1 Subsequently, we -- I actually -- when -- at the  2 time that we were talking about when we started to buy the --  3 became a contact company and we started to buy the education  4 company and do all of that, I actually did start to pay a  5 hundred and eighty thousand dollars a year -- RIA started to  6 pay to be on BizRadio. But at the beginning of it, we were  7 what made BizRadio worth having.  8 BY MR. GORDIMER:  9 Q I think my question was inaccurate. What I meant  10 to say was, did the payroll of BizRadio exceed its  11 collections on a monthly basis, total payroll?  12 A I don't know that.  13 Q Well, I've got a document that seems to show it is  14 about \$30,000 in the whole each month in '09. Does that  15 sound familiar to you?  16 A It's not familiar.  17 Q But you never considered cutting your salary to  18 meet -- to make sure that it matches?  19 A I couldn't be there if they weren't -- I cut my  20 salary to zero.  21 Q When?  22 A Last fall.  23 Q Do you know what month?  24 A No, I don't know what month. Probably September or  25 October.</p>	<p style="text-align: right;">Page 175</p> <p>1 A David Wallace didn't propose --  2 Q Let me finish the question please. David Wallace  3 didn't propose creating some kind of umbrella organization  4 that would bring in the RIA under the same company as  5 BizRadio, bringing in everything under a single umbrella?  6 A No, that's a scam. What he did was he proposed for  7 how he could trade his equity in Wallace and Bajjali for  8 equity in the Registered Investment Advisor. Had he made the  9 suggestion that Doug Shaffer did, which was to combine the  10 radio with the investment advisor, that probably -- I said  11 yes to that. What I didn't say yes to was to take Wallace  12 and Bajjali and put them under that roof.  13 Q No. That's not what I asked. It was not that  14 Wallace Bajjali would be part of --  15 A That was the proposal that Wallace Bajjali made.  16 MR. AXELROD: Wait. Let's -- I'm going to ask you  17 to let her finish and get this even tempered here.  18 BY MS. FRANK:  19 Q So the distinction between the two proposals is  20 that Wallace made one to you that would put the RIA, the  21 radio and Wallace Bajjali under one umbrella?  22 A Yes.  23 Q And then Shaffer's was only to put the RIA and the  24 radio station under one umbrella.  25 A That's right.</p>
<p style="text-align: right;">Page 174</p> <p>1 Q And why did you do that?  2 A Because the company -- because a -- one of the  3 investors came in to consult with me, an experienced  4 investor. I asked him to look at what we think we should do  5 with it.  6 Q Who was that?  7 A Doug Shaffer.  8 Q He looked at the whole thing, went over it in  9 detail, came back and said, "This can make it if we cut all  10 the executives' salaries and if we look at all the ancillary  11 businesses and make them part of BizRadio. And if you share  12 and we create a holding company to take the Registered  13 Investment Advisory business and the education and make it  14 all part of BizRadio, it will be a great deal, and I think I  15 can get private equity people to invest in it, and it will be  16 worth doing. Otherwise, it's probably, in this economy, not  17 going to be able to make it.  18 BY MS. FRANK:  19 Q And when did he make this proposal to you?  20 A Probably in the late, late '09 or early '09. In  21 the fall, late fall of '09, probably.  22 Q Okay. Was that -- wasn't that the same proposal  23 that David Wallace had made to you in the fall of 2008?  24 A No, it wasn't.  25 Q So David Wallace's proposal --</p>	<p style="text-align: right;">Page 176</p> <p>1 Q Okay. Did Mr. Shaffer have a document that made  2 this proposal to you or was it all verbal?  3 A He -- they created a spreadsheet to show me the  4 results of -- the effect of it.  5 Q Okay. And I can't remember what you said earlier.  6 Did David Wallace present something to you in writing?  7 A I don't remember him presenting anything to me in  8 writing.  9 Q Okay. Did -- the financial condition of the RIA,  10 did it have to borrow money at some point in time?  11 A Well, apparently it did, but there was no reason  12 why it should have had to.  13 Q What does that mean?  14 A It -- the Registered Investment Advisor had a  15 credit line of \$280,000. This is what I know about it. It  16 had a credit line of \$280,000. That credit line, at some  17 point -- it was against receivables. And at some point the  18 bank -- I was not involved in negotiating that, but as I  19 understand it, the bank realized that the receivables aren't  20 really receivables. They're prepaid fees because the fees  21 are paid at the beginning of the quarter, not at the end of  22 the quarter, so that there was, in fact, no collateral.  23 And so the bank -- it was set up on a quarter by  24 quarter basis where the money would be paid in and then they  25 would lend it again. And it was just a constantly revolving</p>

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1 deal that was to permit the expansion of the company into  
 2 Dallas and acquisition of some equipment and stuff like that.  
 3 Q Which bank? Who was the bank?  
 4 A Compass.  
 5 Q Okay.  
 6 A I believe.  
 7 Q So you're saying there was a credit line in  
 8 existence.  
 9 A There was.  
 10 Q Okay.  
 11 A It was an expansion credit line. It was a choice  
 12 to make an expansion. And we borrowed \$280,000, I believe.  
 13 Q Okay. What about borrowing from Kaleta Capital  
 14 Management?  
 15 A Well, when the credit line got canceled, Kaleta  
 16 Capital Management said, "I can provide the" -- "I can take  
 17 up that slack."  
 18 Q And when was that?  
 19 A I'm not sure exactly when.  
 20 BY MR. GORDIMER:  
 21 Q So you knew that Kaleta Capital Management was  
 22 loaning money to your RIA?  
 23 A I did know that it lent money to the RIA. That's  
 24 right.  
 25 MS. FRANK: I'm going to hand you what we've marked

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1 as Exhibit 46.  
 2 (SEC Exhibit No. 46 was marked for  
 3 identification.)  
 4 THE WITNESS: Oh. I knew that Kaleta Capital  
 5 Management made up for that credit line, yes.  
 6 BY MS. FRANK:  
 7 Q Okay. Exhibit 46 is a series of notes executed by  
 8 you for DFFS to Kaleta Capital Management. And I just want  
 9 you to take a look at that and see if that rings a bell with  
 10 you.  
 11 A It doesn't ring a bell, but I see my signature on  
 12 it, and I've seen the list of all of those loans. And here's  
 13 what I know about that. When you --  
 14 MR. AXELROD: Was that going to be your question?  
 15 THE WITNESS: -- were here --  
 16 BY MS. FRANK:  
 17 Q Yeah.  
 18 A Oh. Sorry.  
 19 Q That's okay.  
 20 The question was, does it ring any bells and he's  
 21 saying, no, but here's what I know.  
 22 MR. AXELROD: Yeah, okay. I'm just making sure  
 23 that was right.  
 24 MS. FRANK: That's sort of an answer.  
 25 MR. AXELROD: Okay.

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1 MS. FRANK: Okay. Go ahead. I'm sorry.  
 2 MR. AXELROD: Go on.  
 3 THE WITNESS: Well, it doesn't ring a bell.  
 4 MS. FRANK: Okay.  
 5 MR. AXELROD: Okay.  
 6 BY MS. FRANK:  
 7 Q What do you know about this? What do you know  
 8 about Exhibit 46?  
 9 A Well, the -- when I look back on this -- first of  
 10 all, I think when we had that audit, when it brought that  
 11 out, the question was, are -- is the Registered Investment  
 12 Advisor borrowing client money. Or actually, I'm not sure --  
 13 no. I think it was when Jordan retired, he said to me, "I'm  
 14 concerned because the firm has been borrowing money from  
 15 Kaleta Capital Management and it is" -- "and there is client  
 16 money involved, and you're not supposed to be borrowing  
 17 client money in an RIA."  
 18 So I went and looked up the rules in the -- in your  
 19 website and I saw that that was discouraged. I called Kaleta  
 20 that night and I asked him are we borrowing client money.  
 21 Because I believe when we had the audit, it was -- he said  
 22 there was a lot of non-client money there and that we were  
 23 not borrowing client money. Then I was told, by my retiring  
 24 partner, that he was concerned because we were borrowing  
 25 client money.

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1 So I asked are we -- actually, he -- earlier than  
 2 that, I think, he told me that. So I asked Kaleta are we  
 3 borrowing client money. He said, "No, we are not borrowing  
 4 client money." I said, "How do you know that?" He said,  
 5 "Because I keep the money separate. I have two separate  
 6 lists of people. I have non-client money and client money.  
 7 And we're borrowing non-client money." So I believe that I  
 8 went into his office and he showed me the two lists, and  
 9 there was like \$1.8 million worth of non-client money in  
 10 there. And so I didn't really give it a thought.  
 11 When you -- when the audit happened and that was  
 12 disclosed and you-all were looking at that, I, again --  
 13 apparently at that time, there was -- he had paid back the  
 14 non-client money by that time, but I didn't -- he made -- I  
 15 specifically didn't know about that. And I didn't hear about  
 16 that, that he had paid back all the client money -- the  
 17 non-client money until the audit, until the problems with the  
 18 SEC came up.  
 19 BY MS. YODER:  
 20 Q How do you know he paid back the client --  
 21 non-client money?  
 22 A Because he didn't have anymore non-client money.  
 23 He had it and then he didn't have it. He paid it back to the  
 24 non-clients.  
 25 Q How did he get that money to pay back the

<p style="text-align: right;">Page 181</p> <p>1 non-clients?</p> <p>2 A He paid back a lot of people. He was -- he had</p> <p>3 accounts, I assume, going -- well, I know he had clients</p> <p>4 going -- he had money coming in and out all the time.</p> <p>5 Q Who was the money coming from?</p> <p>6 A Well, he -- as I said, people. Clients and</p> <p>7 non-clients.</p> <p>8 Q Who were these people? Clients.</p> <p>9 A Our clients were regular clients.</p> <p>10 Q So was that money being used to pay back the</p> <p>11 previous lenders?</p> <p>12 A I don't know. Yeah. I know it was now. I didn't</p> <p>13 know it then. I didn't know a lot of the stuff that was</p> <p>14 going on in Kaleta Capital Management. Now I understand a</p> <p>15 lot of it. I know a lot of it now.</p> <p>16 Q Other than seeing two lists of one of client</p> <p>17 investors and one of non-client investors in Kaleta Capital</p> <p>18 Management --</p> <p>19 A With the accounts and kept separate --</p> <p>20 Q Did you ever see the account information, the bank</p> <p>21 account information, that showed where these funds were</p> <p>22 deposited?</p> <p>23 A I don't remember. I think he showed me that --</p> <p>24 which accounts they were in, yes.</p> <p>25 Q You mean he showed you bank statements?</p>	<p style="text-align: right;">Page 183</p> <p>1 MR. AXELROD: Okay.</p> <p>2 THE WITNESS: Yeah. Well, you can see that --</p> <p>3 yeah. You know, I saw -- there used to be -- and you may</p> <p>4 have this too. There used to be stacks of stuff. When I</p> <p>5 would come in from out of town or when I would come in, there</p> <p>6 would be stacks of stuff and they would have little things</p> <p>7 with arrows, and somebody would be pointing and say next,</p> <p>8 next. And you can see, even on this -- I did sign it, it is</p> <p>9 my signature, but you can see that the thing that says CEO</p> <p>10 was written by somebody else, this thing was written by</p> <p>11 somebody else, and I did not know that I was borrowing all</p> <p>12 that money. And, in fact, I -- well, I should wait until you</p> <p>13 ask me the question.</p> <p>14 BY MS. FRANK:</p> <p>15 Q So you didn't know that your RIA was borrowing</p> <p>16 money?</p> <p>17 A Actually, I did not know that the RIA was</p> <p>18 continuing to borrow more and more and more money. No.</p> <p>19 BY MR. GORDIMER:</p> <p>20 Q So you didn't read the documents that were placed</p> <p>21 in front of you to sign?</p> <p>22 A Not really. Not really. And the bottom line is</p> <p>23 that I did not know -- there was no reason for our RIA to be</p> <p>24 borrowing money at 14 percent. There were -- I don't know.</p> <p>25 Should I just shut up and wait until you ask a --</p>
<p style="text-align: right;">Page 182</p> <p>1 A I don't remember. I'm sorry. I was satisfied, at</p> <p>2 that time, that they were separate.</p> <p>3 BY MS. YODER:</p> <p>4 Q Separate on paper.</p> <p>5 A I think they were -- I believe they were, actually,</p> <p>6 physically separate.</p> <p>7 Q Separate in the bank?</p> <p>8 A I think so.</p> <p>9 Q How would you know that?</p> <p>10 A Because he told me that.</p> <p>11 Q So he led you to believe that there were two bank</p> <p>12 accounts?</p> <p>13 A Yes.</p> <p>14 Q One for non-client money.</p> <p>15 A That's right, yes.</p> <p>16 Q And one for client money.</p> <p>17 A Correct.</p> <p>18 MS. FRANK: So on Exhibit 46, the first promissory</p> <p>19 note that is in this batch is a hundred thousand dollar note</p> <p>20 where the RIA is borrowing that sum from Kaleta Capital</p> <p>21 Management, and it's dated January 10, 2008.</p> <p>22 MR. AXELROD: That's -- is it backwards?</p> <p>23 MS. FRANK: They're in reverse chronological order.</p> <p>24 MR. AXELROD: Dated January 10th?</p> <p>25 MS. FRANK: Yes.</p>	<p style="text-align: right;">Page 184</p> <p>1 Q Well, you said that you lost out on a credit line</p> <p>2 at Compass bank because they didn't like -- something about</p> <p>3 the way that the receivables that they thought were</p> <p>4 collateral, they didn't like the way it ultimately --</p> <p>5 A Well, it's not that they didn't like it. They</p> <p>6 weren't receivables because they were paying in advance</p> <p>7 rather than in arrears.</p> <p>8 Q Right.</p> <p>9 A It would be a receivable if it was being paid for</p> <p>10 the last quarter. It was just as reliable that the people</p> <p>11 were going to pay, we were debiting it, it just wasn't a</p> <p>12 receivable. So the bank was fine with it for quite a while,</p> <p>13 but then they had an examiner and it wasn't a receivable. So</p> <p>14 it wasn't that they didn't like it. It was that it was what</p> <p>15 it was.</p> <p>16 BY MS. FRANK:</p> <p>17 Q So did the Compass deal terminate like in December</p> <p>18 2007?</p> <p>19 A I'm not sure exactly when. It was at the end of a</p> <p>20 quarter, and we paid it in and they didn't pay it back.</p> <p>21 BY MS. YODER:</p> <p>22 Q Well, Mr. Frishberg, if you were paid in advance,</p> <p>23 why did you need to have a line of credit?</p> <p>24 A Well, that's my point. We really didn't need to</p> <p>25 have that much credit. There were, it turns out -- and I</p>

<p style="text-align: right;">Page 185</p> <p>1 didn't know this, but it turns out that there were people 2 that were making \$500,000 and 400,000. There were so many 3 people getting these astronomical salaries, paying each 4 other, which I had no idea they were getting, and then I was 5 borrowing. 6 I end up with a bunch of debt borrowing money at 14 7 percent a month a year to pay all these astronomical salaries 8 of people, who will never see half that again, who all of 9 them would have gladly worked for half the price. If I would 10 have known that we were running that kind of a deficit, I 11 could have cut their salaries in a minute. 12 Q But who are you talking about? 13 A All of the -- all of my key employees were making 14 astronomical money, hundreds of thousands of dollars each. 15 Not that -- nothing against them, they were -- but they were 16 all making hundreds of thousands of dollars each. Three 17 hundred, four hundred thousand dollars. 18 MR. GORDIMER: Who? 19 BY MS. FRANK: 20 Q Who are you talking about? 21 A Jordan, Egger,ss, Kaleta, Stewart. They were all 22 making astronomical money, and I didn't know that they were 23 all making that much money. And I know, for a fact, that 24 they would have taken much less money than that. And I 25 didn't know that I was borrowing so much money to pay them.</p>	<p style="text-align: right;">Page 187</p> <p>1 Q Were all these notes signed -- 2 A You know, there are thousands of things that were 3 not signed by me. I'm sitting here looking at these things 4 and I'm saying well, why did I be the one -- why were they 5 waiting for me to sign these things when they were signing -- 6 they were officers of the company and they were all signing 7 things all the time. I'm not even a signer on the bank 8 account of BizRadio. I don't know why I had to sign those 9 things. 10 Q Well, but this is DFFS. It's not BizRadio. 11 A Oh, yeah. Right. 12 Q But you're a signer on that account, aren't you? 13 A I don't think I am. 14 Q Well, who would be? 15 A Well, it would be Pamela, it would be -- it would 16 have been Al Kaleta, it would be Rick Jordan. I've never 17 been involved in the banking of anything. 18 BY MS. YODER: 19 Q But you were the majority owner, correct? 20 A Yes, I was. 21 Q And you were the CEO. 22 A Yes. 23 Q And you made the business decisions for the 24 company. 25 A Well, apparently not, but yes.</p>
<p style="text-align: right;">Page 186</p> <p>1 And as soon as they're not there, the company -- 2 the company was making \$2 1/2 million -- close to -- per year 3 in fees with very little real expenses. These were all these 4 astronomical salaries. And I was borrowing money at 14 5 percent a year to pay these salaries. And I had no idea that 6 I was doing that. And if I would have known it, I wouldn't 7 have been doing it. 8 Q Well, who was responsible for putting the notes 9 under your nose to sign? 10 A Well, I guess I'm responsible. 11 Q Well, somebody -- 12 MR. AXELROD: That's not her question. 13 MS. FRANK: Somebody is preparing these notes. 14 MR. AXELROD: Listen to her question, please. 15 THE WITNESS: Sorry. 16 BY MS. FRANK: 17 Q Well, who -- but I mean, I understand. You're 18 saying ultimately you're the CEO and you're responsible, but 19 I mean, somebody has to be making a decision to prepare a 20 note for Kaleta Capital Management to loan the company a 21 hundred thousand dollars. 22 A Yes. I'm sure -- well, I'm sure it was Kaleta. 23 Q Have you ever asked him about this? 24 A I didn't know that it was going on. I was signing 25 papers. And yes, these are promissory notes I signed.</p>	<p style="text-align: right;">Page 188</p> <p>1 BY MS. FRANK: 2 Q Well, like you said -- 3 A I was charged with doing that. 4 MR. AXELROD: Can we go off the record for just one 5 minute. 6 MS. FRANK: Sure. 7 (A brief recess was taken.) 8 MS. FRANK: All right. Back on the record. 9 MR. AXELROD: Yes. 10 BY MS. FRANK: 11 Q Okay. Did you want to -- have something else to 12 add? 13 A No. I'm frustrated. I'm frustrated. 14 Q I meant to ask you about that because I don't have 15 my reading glasses. I can't read it. 16 A Yeah, can I add something? 17 Q Sure. 18 A I had a very strenuous and demanding job. I was 19 the rainmaker. I wrote all of the material for the 20 newsletters. I wrote a two hour radio show every day. I 21 flew to markets to appear on television one and two days per 22 week. I managed the entire portfolio, and successfully, 23 through crashes and all of that stuff, in a time when maybe 24 10 other people in the country managed to navigate that kind 25 of a situation. And I was not charged with -- what -- I</p>



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1 didn't spend time on managing the store, on running the  
 2 store.  
 3 I was the CEO of the company. I had trusted people  
 4 who were in charge of running the store. I had an army type  
 5 structure. I used to have a staff structure where everybody  
 6 had a direct relationship with me and they were all working  
 7 when I had eight employees. At this time, we had 30, 40, 50,  
 8 sometimes 70 employees. The only way to have any  
 9 effectiveness was to have an army type hierarchical  
 10 structure, like you must have here, where each person is in  
 11 charge of three people and those people are in charge of  
 12 their people. And I did a lot of what I did, but I did not  
 13 manage the store on a day-to-day active basis.  
 14 And so I wasn't really focused on how we were --  
 15 what -- who was writing the paycheck and who was getting  
 16 what. I was working already 10 and 12 hours a day doing, I  
 17 believe, everything that made the company valuable and made  
 18 it work. And the rest of it was support stuff, which I had  
 19 trusted people in place to be doing that. Some of them  
 20 turned out not to be doing what I thought they were doing,  
 21 but they were people who I believed were trustworthy and  
 22 capable and were doing a good job. And that is how -- and I  
 23 was doing my job.  
 24 BY MS. YODER:  
 25 Q Who hired Mr. Kaleta?

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1 A I guess I did.  
 2 Q Was there any discussions of salary at that time?  
 3 A Mr. Kaleta. Hired him for what?  
 4 Q To work for the RIA.  
 5 A Oh. Oh, I'm sure I didn't do that.  
 6 Q You did not hire him?  
 7 A No, I'm sure I didn't. No.  
 8 Q Well, how did Mr. Kaleta become --  
 9 A Probably did it in consultation with probably John  
 10 Lunsford and whoever was running the store at that time.  
 11 Q So you did not hire -- you did not bring Al Kaleta  
 12 into the Registered Investment Advisors?  
 13 A No. Oh, I thought you were talking about the  
 14 radio.  
 15 Q No.  
 16 A Oh, I brought him into the Investment Advisors,  
 17 yes.  
 18 Q Okay. You hired him?  
 19 A Yes, I did.  
 20 Q Okay. Was there --  
 21 A I recruited him.  
 22 Q Was there an employment agreement?  
 23 A Yes.  
 24 Q What were the terms of that agreement?  
 25 A He would receive -- at first he received 25 percent

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1 of his clients who he would be in charge of. And then when  
 2 he wasn't able to do the trading, he didn't -- he was, as you  
 3 said, not an investment expert. And so we had to have  
 4 someone in San Antonio do the trades for his accounts. So we  
 5 lowered it to 20 percent. And then I found that he was not  
 6 able to keep up with the existing clients. And so we hired  
 7 Mike Richardson and staff in San Antonio to do all of that.  
 8 And so he was dropped back -- I think he ended up with 20  
 9 percent.  
 10 Q So he was being paid 20 percent of all --  
 11 A His clients.  
 12 Q -- of his clients.  
 13 A Yes.  
 14 Q So his salary was what was negotiated with you.  
 15 A Right.  
 16 Q Okay. So in that negotiation --  
 17 A His compensation.  
 18 Q His compensation.  
 19 A Yes.  
 20 Q Correct. So you were aware of what his 20 percent  
 21 client base was or his client base.  
 22 A Well, I can add, but I wasn't thinking about it.  
 23 No, I didn't have any idea he was making that much money.  
 24 Q Okay. So his salary is no surprise to you.  
 25 A Well, it is a surprise to me. And all of them are

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1 a surprise to me. And the fact that there were 400, 900, 1.4  
 2 million, yeah, it was a surprise to -- it is a surprise to  
 3 me.  
 4 Q But it's what you negotiated with them.  
 5 A Yeah.  
 6 Q Okay.  
 7 MS. YODER: Go ahead.  
 8 MR. GORDIMER: Let me hand you what I've marked as  
 9 Exhibit 47, which is entitled, "Business Radio Network, LP  
 10 Statement of Account."  
 11 (SEC Exhibit No. 47 was marked for  
 12 identification.)  
 13 THE WITNESS: Okay.  
 14 BY MR. GORDIMER:  
 15 Q Do you recognize this?  
 16 A No. I mean, I see what it says.  
 17 Q Right. This is a document that was produced by  
 18 BizRadio.  
 19 A I imagine.  
 20 Q Okay. It appears to be a list of loans made  
 21 through the Wallace Bajjali Fund, the 11 and 12 percent notes  
 22 we referring to earlier. Is that what it appears to be to  
 23 you?  
 24 A Yes.  
 25 Q Okay. Each of these itemized rows have a name

<p style="text-align: right;">Page 193</p> <p>1 attached to them, if you notice. It's got Ron Ellisor at the  2 top, it's got -- is that a client?  3 A Yes.  4 Q What about Robert Resch and the Resch Trust?  5 A I mean, I don't know him, but --  6 Q Okay. Richard Kaduck, K-a-d-u-c-k.  7 A I don't know him, but, I mean, I assume these are  8 all clients.  9 Q Okay. So it appears that the way of -- these  10 Business Radio's statement of account on these notes identify  11 a particular client with each one of these notes.  12 A Yeah, I understand that it says that and I  13 understand that they were doing it that way. I'm just  14 telling you that that wasn't what it was supposed to be, nor  15 was it the way it was explained to any of these people, nor  16 was it what the term sheet said. I understand that a rote  17 clerk wrote it the way it came from them. I agree with that.  18 I'm not saying that they didn't write that there  19 isn't a bunch of documents that say all that. I'm just  20 telling you that that was never what was presented to me or  21 the clients who fronted these things. Nor did the clients  22 have an idea that their money was allocated to one asset like  23 that. I don't know all of these clients, but I know for a  24 fact that many of them had no idea about it because I've  25 discussed it with them.</p>	<p style="text-align: right;">Page 195</p> <p>1 number of errors and oversights.  2 Q Well, as it turns out, these are correct. I mean,  3 it was correctly recorded because there are notes that you've  4 seen now that reflect --  5 A Well, I still don't agree with you.  6 Q Oh. They're not notes that are reflected here in  7 this chart?  8 MR. AXELROD: I think he testified just previously  9 that he acknowledges that there are notes --  10 MR. GORDIMER: Okay.  11 MR. AXELROD: -- because you've shown him that  12 today.  13 MR. GORDIMER: Well, he was blaming Linda Sikes for  14 misrecording it, and I believe that there are documents that  15 support what's recorded here.  16 THE WITNESS: No, I'm saying she just --  17 MR. AXELROD: No. That's --  18 THE WITNESS: -- wrote what came without having any  19 idea what the meaning of it was, is what I said.  20 MR. AXELROD: Exactly. But there --  21 THE WITNESS: I mean, what I meant.  22 MR. AXELROD: It's what he meant. Which is not  23 inconsistent with prior.  24 BY MR. GORDIMER:  25 Q I'm not saying it is. I'm just trying to get an</p>
<p style="text-align: right;">Page 194</p> <p>1 Q Well, the notes go back to, it looks like the  2 earliest is April of '08. The log-ins start in July of '08.  3 A Right.  4 Q So whoever was recording it --  5 A Right.  6 Q -- on behalf of BizRadio, was recording it as a  7 note involving one particular client. Does that appear to be  8 correct?  9 A Yes.  10 Q Okay. So who was recording these?  11 A I have no idea.  12 Q Whose responsibility at BizRadio was it to record  13 debt to the --  14 A Whoever was the bookkeeper.  15 Q Well, during -- from '08 forward, wasn't it Linda?  16 A Yeah. And she mischaracterizes many, many, many  17 things often. That's one of her --  18 Q Why is she still there then?  19 A You know what? The reason she is there is because  20 you're demanding documents and she's the only one that knows  21 where they are. And so she's there because she has to be  22 because I'm having to provide information. And if I didn't  23 have her, it would be almost impossible for me to do what is  24 required. She will be the first to tell you that I -- that  25 she believes that I think that she makes an unbelievable</p>	<p style="text-align: right;">Page 196</p> <p>1 understanding that there are -- I mean, she may have done  2 other things wrong, but at least according to the documents  3 that exists, she has recorded these correctly.  4 A I agree with that.  5 MR. AXELROD: Right.  6 THE WITNESS: But she wasn't paying attention. As  7 a controller, I would hope that she would pay attention to  8 what it was rather than just simply write down any old thing  9 that anybody says.  10 May I go -- I don't know if I should even -- you  11 know, I don't know --  12 MR. AXELROD: If you want to go off the record  13 before you testify on what you're going to say -- I mean, can  14 we go off the record?  15 THE WITNESS: You mean --  16 MR. AXELROD: Let's go off the record.  17 (A brief recess was taken.)  18 MR. AXELROD: Thank you.  19 MR. GORDIMER: Sure. Back on the record.  20 BY MR. GORDIMER:  21 Q Did you want to add something to your testimony,  22 Mr. Frishberg?  23 A Yes. I'm glad we took a moment. It wasn't the way  24 I was going to say it, but I see that there are these  25 recorded notes. I see -- I know that Linda recorded them</p>

<p style="text-align: right;">Page 197</p> <p>1 accurately as they were given to her. My point is, this is  2 not the deal that was presented to me that I approved, nor  3 was it the deal that we presented, that my people presented  4 to the clients. And both my people, I and the clients,  5 remember that it was supposed to be a diversified portfolio.  6 And I have a term sheet to show that that's exactly what it  7 was.  8 And so I agree that these are -- the bookkeeping  9 says this. And it was because she, as one would expect a  10 bookkeeper to do, recorded it as it was given to her. But  11 that doesn't prove -- that doesn't, in my view, weaken the  12 client's position because of that after the fact paperwork  13 that was done that doesn't represent what the client believed  14 he was getting and was told he was getting.  15 Q I understand that.  16 A That's what I -- my frustration.  17 Q And but you were not even involved in any  18 conversations in which this was brought to the client,  19 correct?  20 A That's right. But I was involved in the term sheet  21 that originally I approved that was brought to the client.  22 Q Okay. But it does seem to indicate that even as  23 far back as mid '08, that these notes were not being hidden  24 from your BizRadio personnel? I mean, they were just  25 processing them in the normal course, were they not,</p>	<p style="text-align: right;">Page 199</p> <p>1 weakened that I was addressing.  2 Q Did Mr. Jordan have any position at BizRadio?  3 A He did.  4 Q What was his position?  5 A He was a manager. He assisted in the management of  6 it.  7 Q In what way? What did he do?  8 A Well, he came there all the time. He assisted in  9 personnel. He had a lot to do with the day-to-day running of  10 it, the financing of it, the financial decisions. All of it.  11 Q Okay.  12 A He and Kaleta both did.  13 Q Was that through the end of 2008 when he left your  14 firm --  15 A Yes.  16 Q -- as well?  17 A That's right.  18 Q So he stopped working all together for BizRadio and  19 your firm, the RIA, at that time.  20 A Yes.  21 Q Cut all ties, in effect.  22 A Yes.  23 Q Okay.  24 MR. AXELROD: Can we go off the record for two  25 minutes?</p>
<p style="text-align: right;">Page 198</p> <p>1 apparently, from this document?  2 A Right. Right.  3 Q So it wasn't something that at the end somebody  4 sprung on somebody, you know, six months or a year after the  5 fact.  6 A Well, actually, I think it was because most of  7 these people never received their paperwork until they asked  8 for it way later. And when they got it, it was the first  9 time. Many of them said it was the first time they had seen  10 it. And it didn't reflect what they were told.  11 Q But BizRadio, and certainly BizRadio's controller,  12 had a document which showed precisely what it says here, that  13 each individual had a note from BizRadio.  14 A Apparently. Can I make one more clarification  15 about this? I'm speaking on behalf of the client. And I  16 don't think BizRadio really cared. BizRadio owes the money  17 one way or the other and doesn't really care who it owes it  18 to. It is me being concerned with the client's position  19 being weakened that I'm addressing here.  20 Q But the management of BizRadio overlapped with the  21 management of the firm.  22 A It does. It does. But BizRadio has no real  23 interest in who it owes the money to. It owes the money.  24 Q Mm-hmm.  25 A It is my concern about the client's position being</p>	<p style="text-align: right;">Page 200</p> <p>1 MS. FRANK: Sure.  2 (A brief recess was taken.)  3 MS. FRANK: Back on the record.  4 MR. AXELROD: Thank you.  5 MS. FRANK: Well, just so you know, we're thinking  6 that -- well, you've got the e-mails to produce and there is  7 probably some other records. So what we're thinking is we'll  8 just adjourn in a little while. There are just a few kind of  9 miscellaneous questions that we'll be asking next.  10 MR. GORDIMER: But the bottom line is that after we  11 review the documents yet to be produced, it's possible, and  12 even likely, we would want him back for a couple of hours to  13 finish up.  14 MR. AXELROD: Okay.  15 MS. FRANK: Yeah.  16 MR. AXELROD: As long as we talk about the new  17 timing.  18 THE WITNESS: It couldn't be done by phone?  19 MR. AXELROD: Let's finish today and then we'll --  20 MR. GORDIMER: Yeah.  21 MR. AXELROD: -- structure -- it will depend how  22 long it is. Maybe they won't need any time.  23 BY MS. FRANK:  24 Q Okay. I don't mean to be asking the same  25 questions, but I want to make sure I understand in my head</p>

<p style="text-align: right;">Page 201</p> <p>1 what I've said. If I've asked this before, I apologize. At  2 some point, you became aware that Mr. Kaleta was talking to  3 the RIA clients about them loaning money to KCM, right?  4 A (No audible response.)  5 MR. GORDIMER: Is that yes?  6 THE WITNESS: Yes.  7 BY MS. FRANK:  8 Q That's a yes. Okay. So and you -- my guess is you  9 became aware of that after it was already occurring, not when  10 he first began doing that; is that correct?  11 A Yes.  12 Q Okay. How could he be contacting the RIA clients  13 on this without you knowing about it?  14 A I don't understand the question I don't think.  15 Q Well, he's -- begins making phone calls to them to  16 solicit them to loan money to KCM and that this is a program  17 where they will get a better investment than cash because  18 they'll loan money and they'll get a nice interest rate.  19 Then he loans it back out to somebody else, makes money on  20 the spread. This is a nice little program. He's  21 developed -- I think you called it a mezzanine lender at some  22 point, which I thought was a pretty good description. But so  23 at some point, he begins doing this and yet you know nothing  24 about what he's doing.  25 A Right.</p>	<p style="text-align: right;">Page 203</p> <p>1 A He was.  2 Q What in his background caused you to think he would  3 be a good compliance officer?  4 A He was a finance major who studied the Series 65  5 book carefully and took the tests, studied the thing, knew --  6 it tells you what all the rules are, and the rules are pretty  7 simple. The compliance part of this Registered Investment  8 Advisory business isn't too hard. You have to disclose  9 everything and you have to act on behalf of the clients and  10 act as a fiduciary. It's pretty easy to figure out what the  11 right thing to do is.  12 Q Okay. Did --  13 A We're a small firm. And by the way, I have my  14 attorney, who is the outside consultant on this, with both  15 MGL, which is a compliance consulting firm doing mock audits,  16 and all of that, we had that going on every year. And we  17 also had, as our attorney, the ex-commissioner of the State  18 Securities Board. So I mean, there was a lot of money and  19 people being spent on compliance assisting him.  20 Q So you're saying Deon Warner, as the attorney, was  21 assisting Mr. Kaleta in his compliance duties?  22 A Yes. And so was MGL and so was Rick Jordan. Well,  23 when Rick Jordan was there, he was the compliance officer and  24 there -- and again, there was nothing in -- he's not a lawyer  25 either, but he also studied the Series 65 examination,</p>
<p style="text-align: right;">Page 202</p> <p>1 Q Okay. I'm just -- you-all are partners in this  2 business, though, right, for the RIA?  3 A Yeah.  4 Q And you owe fiduciary duty to those clients, do you  5 not?  6 A Yeah.  7 Q So I'm just wondering how he can be doing this  8 without you knowing about it.  9 A He is a trusted -- he was my compliance officer.  10 I'm not there a lot of the time. I'm on the radio, I'm  11 traveling, I'm at home. I'm there sometimes, my door is  12 closed, I'm on the telephone. He is an almost 70 year old  13 top guy and he -- it wasn't only I who trusted him. I  14 believe that if you were there, you would trust him. And the  15 generals who ran the Vietnam war trusted him to be their  16 aide.  17 And he -- I trusted him completely to be managing  18 the business and acting on my behalf and acting as a  19 fiduciary to me and the clients. And I don't know who he was  20 calling up, but I have no reason to believe that he was  21 calling up anybody wrong or for nefarious purposes. And I  22 assume that he was working 12 hours a day for the benefit of  23 me and our investors and stockholders. I had no idea that he  24 was doing that.  25 Q Did -- now you said he was your compliance officer.</p>	<p style="text-align: right;">Page 204</p> <p>1 complete with all of the compliance rules, and he consulted  2 with MGL, the consulting firm, and had mock audits done  3 and --  4 Q Mr. Frishberg, to your knowledge, what is the  5 purpose of the compliance rule under the Advisor's Act?  6 A To make sure that everybody behaves in a fiduciary  7 manner and that all necessary disclosures are made and that  8 we keep a high level of integrity and behave properly with  9 the -- and maintain the trust of the clients and preserve the  10 trust of the clients.  11 Q Part of the purpose was to identify the conflicts  12 of interest?  13 A Yes.  14 Q And part -- another part is to implement policies  15 and procedures related to those conflicts of interest to  16 minimize them?  17 A Yes.  18 Q Okay. How would MGL or Deon know about the  19 conflicts of interest from the advisor?  20 A Because we were not doing anything to hide them.  21 We were disclosing everything.  22 Q So you would have to tell them.  23 A Yes.  24 Q Okay.  25 A Sure.</p>

<p style="text-align: right;">Page 205</p> <p>1 Q Okay. Did you tell them anything about the KCM 2 loan program? 3 A Did I tell them anything about the KCM loan 4 program? 5 Q Well, who dealt -- 6 A I wasn't working with them, but I had a compliance 7 officer whose job it was to be doing that. I'm sure he did, 8 yeah. 9 Q But he is the one with the conflict of interest. 10 A Well, I see that. I agree. That is a -- it is -- 11 yes, I see that. 12 BY MS. YODER: 13 Q So did you -- 14 A That's why it worked. That's why it fell through 15 the cracks. That's why I missed it because the person in 16 charge of preventing it was the person doing it. That is the 17 hole. 18 Q Yes. Now you -- 19 A However, as I told you earlier, there were all 20 these layers of taking the clients through and having all 21 these layers of people looking at what was going on. Is this 22 consistent with the client's goals. It didn't really cross 23 my mind that somebody would call back later, after all of 24 that was done, and offer another thing. It did happen, yes. 25 Q I'm sorry. You're referring to MGL --</p>	<p style="text-align: right;">Page 207</p> <p>1 you shouldn't have this in the book. You don't really have 2 to do it, but it's in the book. Do you remember that 3 conversation? 4 Q I'm not testifying. 5 A I'm sorry that sounded like that, but that -- yeah. 6 Anyway, I've discussed that with you. 7 Q Did you get copies of their reports? 8 A Actually, no. I was -- no. It was explained to me 9 by whoever was in charge of the compliance what they were 10 doing. 11 Q So how -- 12 A I knew that they were having the mock audit. I 13 knew that they had received stuff. If there was something 14 substantial that was involved, I would be told about it, that 15 we were changing it, and then I would be assured that we had 16 done those things. 17 Q So you were aware of the -- no. Let me rephrase 18 that. Were you aware of the conflict of interest that 19 existed between the KCM notes and the Advisor business? 20 A I was aware that there could be a potential 21 conflict of interest in any deal done with an associated 22 party. 23 Q Okay. What did you -- what did your firm do to 24 mitigate that risk? 25 A It hired people of trust, and it had a policy of</p>
<p style="text-align: right;">Page 206</p> <p>1 A No. 2 Q -- as the doing mock audits? A consultant? 3 A Yes. 4 Q I'm not -- are those initials that stand for 5 something? 6 A Yeah, but I don't know what they stand for. It's a 7 very well known consulting firm. 8 Q It's a company name. 9 MR. AXELROD: And, you know, they're actually in 10 The Woodlands. I think they're actually in The Woodlands. 11 MS. YODER: So that's actually the name, MGL 12 Consulting? 13 MR. AXELROD: It's MGL Consultants. 14 MS. YODER: Consultants. Okay. 15 BY MS. YODER: 16 Q So did MGL ever do a mock audit? 17 A Yeah. They've done a lot of them. Every couple of 18 years. 19 Q What types of findings did they find? 20 A Every finding they've ever found we've implemented. 21 I have records of the findings and we've implemented them 22 all. 23 Q Did you get a copy of the report? 24 A In fact, you found some things that they 25 recommended that we weren't actually doing and you told me</p>	<p style="text-align: right;">Page 208</p> <p>1 disclosing all potential conflicts of interest to people so 2 that they knew exactly what they were involved in. 3 Q And you dictated that order. 4 A Yes. 5 Q And who did you hire to fulfill that position? 6 A Well, everyone. It was always the policy of 7 everyone. And the head of compliance -- which in this case 8 was Kaleta; in the previous years were Jordan -- was charged 9 with making sure that would happen. But it was a small firm, 10 which never had any problems. And so I assumed that 11 everything was working well. 12 Q Was the Investment Advisor profitable? 13 A Well, apparently not, but it didn't have any hard 14 expenses that would make it unprofitable. It wasn't 15 profitable because it was paying out astronomical salaries. 16 It was -- it didn't -- doesn't cost \$2.5 million to run the 17 Investment Advisory firm. It's a fraction of that. 18 Q And when did you become aware of that? 19 A When the assets of Kaleta Capital Management 20 were -- when the receiver or -- when the receiver sent me the 21 thing showing me that I owed all that money, claiming that I 22 owed all that money. I'm not even sure it's accurate, but 23 right now I'm not contesting it. I would have to find out. 24 But when I received the initial bill from the receiver, that 25 was when I knew it, and then I asked for -- and then I</p>

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1 received a schedule of all these notes that I had signed for.  
 2 And that was when I became aware of it.  
 3 Q But why would you need the open credit with the  
 4 bank, the line of credit with the bank --  
 5 A That was \$280,000 and it was to open a new office  
 6 in Dallas, and the expenses associated with that. Buying  
 7 furniture. It takes a little while for you to get  
 8 established. We -- when -- you have to have a guy up there.  
 9 You have to -- he has to stay there. One of my employees  
 10 went up there and rented an apartment so that he could get  
 11 the thing started. And we found somebody to go up there and  
 12 live. And we had to buy furniture. We had to get Internet  
 13 service in there. We had to build a radio studio. We had to  
 14 do a lot of things.  
 15 Q So at no time were you aware that the Investment  
 16 Advisor was losing money.  
 17 A It wasn't losing money. It was paying out too much  
 18 money to its partners and employees.  
 19 Q But --  
 20 A It wasn't an unprofitable business.  
 21 Q But if your expenses exceeds your income, you are  
 22 in a loss; is that correct?  
 23 A Yes.  
 24 Q And that was the situation that the Advisor was in?  
 25 A Yes.

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1 Q So therefore it was losing money?  
 2 A Yes.  
 3 Q Okay. When did you become aware of that?  
 4 A When I found out that we owed -- that I owed --  
 5 MR. AXELROD: I thought he just --  
 6 THE WITNESS: -- \$1.2 million.  
 7 MR. AXELROD: I thought we just --  
 8 BY MS. FRANK:  
 9 Q Are you paying that money back to the receiver?  
 10 A Well, it's not due right now, but I'm current.  
 11 Q When is it due?  
 12 A 2013, or something.  
 13 MR. AXELROD: The notes are --  
 14 MS. FRANK: The notes are current.  
 15 MR. AXELROD: But we have talked to the receiver --  
 16 he would verify that -- as part of our overall potential  
 17 plan.  
 18 BY MR. GORDIMER:  
 19 Q I just want to correct one thing, that didn't you  
 20 learn about it when the staff filed the case and alleged that  
 21 Daniel Frishberg Financial Services took in a certain amount  
 22 of money?  
 23 A Yes. Yes.  
 24 Q So that was before the receiver is the point.  
 25 A Yes. Yes. Excuse me. You're right.

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1 BY MS. FRANK:  
 2 Q The Compass line of credit was 280,000, I think you  
 3 said, per quarter?  
 4 A No. It was 280,000 all together, but it was paid  
 5 back in quarterly and then borrowed out again.  
 6 Q Okay. I just -- I'm confused. Everybody else  
 7 probably understands but me, but so every quarter you were  
 8 borrowing \$280,000 from Compass and then at the end of the  
 9 month paying it back?  
 10 A No. No. Every quarter, when we received our fees,  
 11 we would pay back the 280,000, or 240, or whatever it was at  
 12 that time, and then during the quarter, whatever shortfall it  
 13 was, we would borrow it back.  
 14 Q Okay.  
 15 A And presumably we would be borrowing back less than  
 16 we --  
 17 MR. AXELROD: A line of credit. Was it a line of  
 18 credit?  
 19 THE WITNESS: A line of credit, but presumably it  
 20 would be a shrinking line of credit.  
 21 BY MS. FRANK:  
 22 Q Okay.  
 23 A Should I --  
 24 Q But the maximum was 280,000.  
 25 A At the time.

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1 Q That was the line.  
 2 A Yes.  
 3 Q Okay. Did it go up or went down?  
 4 A I don't know.  
 5 Q Okay. Do you know who was in charge of negotiating  
 6 that?  
 7 A Kaleta.  
 8 Q Do you know why -- why did Rick Jordan leave the  
 9 company. Did he -- you said something about he retired.  
 10 A I called him and said, "I don't see what" -- "how  
 11 you're carrying your weight. You're a good guy. You've been  
 12 my partner for many years, but I don't really see." And I  
 13 assigned him to go -- come back to me in a few days with a  
 14 proposal of how he should spend his time and what he should  
 15 be -- what would be his functions and what would he be doing.  
 16 And he came back about three days later and said, you know,  
 17 "I think I'm going to hang it up."  
 18 He lives seventy miles or eighty miles from the San  
 19 Antonio office and a hundred something miles from the Houston  
 20 office, and he's got a farm and his children are grown up and  
 21 his wife is retiring. And he just said, "I think I'm going  
 22 to hang it up." But it was precipitated by me saying, "We  
 23 need to figure out how you're going to be productive, what it  
 24 is that you want to do now. How do you want to contribute."  
 25 Q So what was -- so he was not being productive

<p style="text-align: right;">Page 213</p> <p>1 before he retired?</p> <p>2 A Actually, you know, it's not -- I don't really</p> <p>3 want to characterize him that way. That's not important for</p> <p>4 this.</p> <p>5 Q But I'm trying to figure out why he left.</p> <p>6 A Well, I'm telling you why he left.</p> <p>7 Q Okay. But you're -- what you're also saying is</p> <p>8 that you didn't think he was being productive or</p> <p>9 contributing, I guess, to the RIA.</p> <p>10 MR. AXELROD: Carrying his load, I think, was what</p> <p>11 he said.</p> <p>12 THE WITNESS: Pardon?</p> <p>13 MR. AXELROD: Carrying his load.</p> <p>14 THE WITNESS: Yeah. Right.</p> <p>15 BY MS. FRANK:</p> <p>16 Q How was he not carrying his load?</p> <p>17 A When he left, nothing missed a beat. There was no</p> <p>18 missing function whatsoever. He was gone, but everything</p> <p>19 carried on exactly as it had been before. Everybody</p> <p>20 continued doing what they were doing, and there was not a</p> <p>21 single scene created there at all.</p> <p>22 Q So he wasn't doing anything beforehand?</p> <p>23 A Apparently, yes.</p> <p>24 Q How long had that been going on?</p> <p>25 A I don't know. But when I felt it, I brought it up.</p>	<p style="text-align: right;">Page 215</p> <p>1 Q Didn't Mr. Kaleta replace him?</p> <p>2 A Pardon me?</p> <p>3 Q Didn't Mr. Kaleta --</p> <p>4 A As compliance officer.</p> <p>5 Q Okay.</p> <p>6 A In a company with six or eight people, compliance</p> <p>7 officer isn't a separate thing that a person does. It's not</p> <p>8 that much. There weren't that many transactions that were</p> <p>9 unusual that needed to be complied with. Jordan ran the mock</p> <p>10 audit with MGL. Actually, there were rumblings of negativity</p> <p>11 and stuff, people saying that they were uncomfortable, that</p> <p>12 there were -- how can I put this -- improper advances being</p> <p>13 made to employees in San Antonio. There were just rumblings</p> <p>14 of things that were not -- that weren't the way it used to be</p> <p>15 with him when he was more active. And I just -- I really</p> <p>16 don't --</p> <p>17 MR. AXELROD: We're not going to do this at this</p> <p>18 point.</p> <p>19 BY MS. FRANK:</p> <p>20 Q Well, when you say improper advances, what do you</p> <p>21 mean by that?</p> <p>22 MR. AXELROD: We're not going to get into it. He's</p> <p>23 obviously uncomfortable. Unless it's -- I don't understand</p> <p>24 the overall materiality. He's testified the way he has.</p> <p>25 MR. GORDIMER: Well, is he talking about advances</p>
<p style="text-align: right;">Page 214</p> <p>1 Q Wasn't he your compliance officer?</p> <p>2 A He was.</p> <p>3 Q So was he not doing anything as a compliance</p> <p>4 officer?</p> <p>5 A Apparently not because all this stuff was going on</p> <p>6 while he was the compliance officer.</p> <p>7 Q Well, how long did you have the sense that he</p> <p>8 wasn't carrying his weight? How long had that been going on?</p> <p>9 A Well, I got the sense of it for -- I don't know. I</p> <p>10 don't remember. But usually when I realize something like</p> <p>11 that, it wouldn't take me long. I might think about it for a</p> <p>12 week how to bring it up with a guy that's been a partner for</p> <p>13 10 years, but it wouldn't take me long. I wouldn't just hold</p> <p>14 it in.</p> <p>15 Q Would -- so if we could find the date that he left</p> <p>16 the company, then we could sort of backtrack from there and</p> <p>17 figure out about the time that you decided --</p> <p>18 A When I had that conversation, yeah.</p> <p>19 Q Yeah.</p> <p>20 A That's right.</p> <p>21 Q Okay. Do you remember when he left, the date?</p> <p>22 A It was probably late December of that year,</p> <p>23 whatever year it was. Maybe the beginning of -- end of '08.</p> <p>24 Q Okay.</p> <p>25 BY MS. YODER:</p>	<p style="text-align: right;">Page 216</p> <p>1 of financial advances or were you talking about something</p> <p>2 else?</p> <p>3 THE WITNESS: No. I was talking about --</p> <p>4 BY MS. FRANK:</p> <p>5 Q Personal relationships.</p> <p>6 A Personal relationships.</p> <p>7 Q Okay.</p> <p>8 A I was getting reports that there is just a negative</p> <p>9 aura. He's depressed, he's not treating people properly.</p> <p>10 These were people that had been his friends and respected him</p> <p>11 for many years saying he's just not himself and it's not</p> <p>12 working.</p> <p>13 BY MR. GORDIMER:</p> <p>14 Q Did he ever tell you that he felt that there was</p> <p>15 something wrong with how the RIA was operating?</p> <p>16 A He -- when he left, he told me he was concerned</p> <p>17 that the RIA was -- well, he always didn't like Kaleta and he</p> <p>18 always didn't like -- he didn't like anybody that was an</p> <p>19 effective salesperson. There was always a conflict going on</p> <p>20 between him and Kaleta. Jordan --</p> <p>21 Q What did he tell you though?</p> <p>22 A He told me that he was concerned about that the RIA</p> <p>23 was borrowing money from clients. I mentioned that earlier.</p> <p>24 Q Okay. Anything else? Did he tell you anything</p> <p>25 else that he was concerned about?</p>

<p style="text-align: right;">Page 217</p> <p>1 A He was always saying that he didn't like Kaleta and 2 that he didn't like the way Kaleta worked. 3 Q But did he give you any example of what Mr. Kaleta 4 did that bothered him about the way the RIA was functioning? 5 A He didn't say he didn't like the way the RIA was 6 functioning. He was a member of the RIA. 7 Q No, not Mr. Kaleta. What was Mr. Kaleta doing that 8 he didn't like? 9 A He thought that he was -- lacked precision and that 10 he was too salsey. 11 Q Lacked precision in what, representation to 12 clients? 13 A Lacked precision in how he explained things, yes. 14 Q Okay. What did you do in response to Mr. Jordan's 15 criticism of Mr. Kaleta? 16 A Checked how he was explaining things. Gave him 17 wording when necessary. 18 Q Did you sit in on any of Mr. Kaleta's 19 presentations? 20 A Sometimes, yes. 21 Q After Mr. Jordan complained to you? 22 A Yes. Yeah. In fact, you're still -- these -- 23 that's why I had these -- there was always strife between one 24 and another. There were complaints about the guy in Dallas 25 who talked too much and talked past the point. There were --</p>	<p style="text-align: right;">Page 219</p> <p>1 A No. Why would I not assign it to Mr. Kaleta? I 2 trusted Mr. Kaleta. 3 BY MS. FRANK: 4 Q But Mr. Jordan is making a point that there might 5 be problems with Mr. Kaleta. The issue -- 6 A Yes, but I thought there were problems with 7 Mr. Jordan, not Mr. Kaleta. 8 Q So you weren't taking Mr. Jordan's -- but you took 9 Mr. Jordan's comments seriously in that decision. 10 A Well, I was also finding that he was being just 11 unagreeable with a lot of people. And I found -- and I also 12 knew that there was always a conflict between them. They 13 were always complaining about each other. Kaleta was 14 complaining that Jordan goes home at 3:00 in the afternoon 15 and what is he accomplishing. And Jordan was complaining 16 about Kaleta because he is a salesman. And they just never 17 liked each other. They always were quibbling. But they 18 worked together all the time. Not with me. They worked 19 together all the time. 20 BY MR. GORDIMER: 21 Q It sounds like you discounted some of the things 22 Mr. Jordan said because you knew of his problems with Mr. 23 Kaleta in general? 24 A You're right. You're right, to some extent, but I 25 did always talked about it. And when there was a -- there</p>
<p style="text-align: right;">Page 218</p> <p>1 and that's why I had the process in San Antonio where when 2 somebody was brought in, that they would go over the whole 3 thing of what they were doing and what they believed and was 4 it congruent to make sure that everybody was receiving the 5 party line, which was the one that -- there were procedures 6 in place to keep that from happening. When Jordan worked 7 there, he was part of that. When he left, Eggerss continued 8 doing exactly what he was doing. 9 Q It sounds like Mr. Jordan was trying to do the job 10 of a compliance officer. 11 A He was doing the job of a compliance officer. 12 Q Okay. Well, isn't that what you expected him to 13 do? Is he -- 14 A Yes. 15 Q Okay. 16 A Yeah, I didn't have a problem with him doing that. 17 I had a problem with the other part, the negativity in San 18 Antonio and things like that. I didn't ask him to leave. I 19 asked him to tell me how he would like to spend his time and 20 how he could be productive. I didn't ask him to stop being 21 the compliance officer. I asked him what can you do -- what 22 do you want to do now to contribute. 23 Q Did you have any thoughts about bringing in someone 24 else to be the compliance officer after Mr. Jordan left, 25 rather than assigning it to Mr. Kaleta?</p>	<p style="text-align: right;">Page 220</p> <p>1 were times when there were incongruent plans done where the 2 guy's disposition wasn't congruent. And when that happened, 3 Mike Richardson would bring it up. He would bring it up to 4 either Jordan or Eggerss. They would correct it. If they 5 weren't able to correct it, they would bring it to me. And I 6 think in every case that that was brought up, it was handled, 7 and I thought it was being handled. 8 But I had just as many complaints about Jordan as I 9 had about each of them. They're just -- you don't carry on 10 this kind of work all the time without having -- there were 11 complaints, I'm sure, about -- that I'm -- something wrong -- 12 that everybody gets complaints about them. 13 BY MS. FRANK: 14 Q Okay. I just have one last small area to ask you 15 about. Did you ever say anything to the employees of 16 BizRadio that it was a loss leader for the RIA? 17 A No. Actually, I was asked about that by people and 18 that's exactly what it was, in fact; however, now the plan 19 that was presented for -- to Doug -- to me, by Doug Shaffer 20 and the other investors, does include the fact that the RIA 21 be mixed with it. It was becoming that, but that was not the 22 intention of it. 23 Q Okay. And you never said that to anybody. 24 A I might have said it looks like it's becoming that; 25 it's a problem because -- yeah, I might have said that. I</p>



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1 never said that that was the goal of it.  
 2 Q Okay. So you never told anybody that you didn't  
 3 care whether or not BizRadio made any money because as long  
 4 as it was on the air and bringing clients in --  
 5 A No.  
 6 Q -- to the RIA, you didn't care if it was  
 7 profitable.  
 8 A No, I didn't say that.  
 9 MS. FRANK: All right. Okay. I think what we'll  
 10 do is we'll adjourn at this point and we will be back in  
 11 touch with you about another day. We will consider whether  
 12 or not -- if we can do it by phone the next time or not. We  
 13 will certainly take that into consideration. Don't get your  
 14 hopes up, though, because it's very difficult to do these  
 15 things by telephone. But we will certainly consider that.  
 16 THE WITNESS: Okay. I appreciate it.  
 17 MS. FRANK: And so we will -- do you have any  
 18 questions you want to ask at this time?  
 19 MR. AXELROD: Not at this time.  
 20 THE WITNESS: The only thing about the loss leader,  
 21 you know --  
 22 MR. AXELROD: Did you --  
 23 THE WITNESS: I mean, I've heard that a thousand  
 24 times.  
 25 BY MS. FRANK:

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1 Q From who?  
 2 A That people that say that they think that or that  
 3 they think I thought that. I've heard that many times. I've  
 4 never thought it. It was never created to do that and it was  
 5 never my intention to do.  
 6 Q Okay.  
 7 BY MR. GORDIMER:  
 8 Q But it sounds like everybody understood that  
 9 BizRadio was losing a lot of money.  
 10 A Well, it was, but it was all in the way -- you keep  
 11 characterizing it as losing money. It's the same money that  
 12 is being lost by somebody who is developing a cure for  
 13 cancer, or I'm sure that developing a lightbulb, that Thomas  
 14 Edison was losing money on it as he tried 4,000 things until  
 15 he got one to work. BizRadio has always been progressing; it  
 16 has always been a good business. It is going to be a good  
 17 business. It has a good business model. The economy keeps  
 18 changing, and we have been adapting to it. And it is a  
 19 difficult economy. And a lot of people's businesses have  
 20 died, but it is a good business and it will be a good  
 21 business, I believe.  
 22 MS. FRANK: Okay. All right. You-all don't have  
 23 anything else?  
 24 (No audible response.)  
 25 MS. FRANK: Okay. All right. We will go off the

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1 record at this time and resume at another date.  
 2 THE WITNESS: Thank you.  
 3 (Whereupon, at 4:16 p.m., the examination was  
 4 adjourned.)  
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1 PROOFREADER'S CERTIFICATE  
 2  
 3 In the Matter of: KALETA CAPITAL MANAGEMENT  
 4 Witness: Daniel Frishberg  
 5 File Number: FW-3435  
 6 Date: Thursday, March 25, 2010  
 7 Location: Fort Worth, TX 76102  
 8  
 9  
 10 This is to certify that I, Donna S. Raya, (the  
 11 undersigned), do hereby swear and affirm that the attached  
 12 proceedings before the U.S. Securities and Exchange  
 13 Commission were held according to the record and that this is  
 14 the original, complete, true and accurate transcript that has  
 15 been compared to the reporting or recording accomplished at  
 16 the hearing.  
 17  
 18  
 19  
 20 \_\_\_\_\_  
 21 (Proofreader's Name) (Date)  
 22  
 23  
 24  
 25