

Exhibit C

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<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION</p> <p>SECURITIES AND EXCHANGE) COMMISSION,) Plaintiff,)) VS.) Civil Action) No. 4:09-cv-3674</p> <p>ALBERT FASE KALETA AND KALETA) CAPITAL MANAGEMENT, INC., AND) BUSINESSRADIO NETWORK, L.P.) d/b/a BIZRADIO AND DANIEL) FRISHBERG FINANCIAL SERVICES,) INC., d/b/a DFFS CAPITAL) MANAGEMENT, INC.,) Defendants.)</p> <p style="text-align: center;">DEPOSITION OF DANIEL FRISHBERG JUNE 4, 2010</p> <p>Called as a witness by counsel for the Receiver, taken before Dorothy A. Rull, CSR, CRR, a Certified Shorthand Reporter and Notary Public in and for the State of Texas, on the 4th day of June, 2010, from 9:53 a.m. to 3:32 p.m., at the law offices of Fuqua & Associates, 2777 Allen Parkway, Suite 480, Houston, Texas 77019 pursuant to Notice and the Federal Rules of Civil Procedure.</p>	<p style="text-align: center;">I N D E X</p> <p style="text-align: right;">Page</p> <p>1</p> <p>2 Stipulations..... 1</p> <p>3 Appearances..... 2</p> <p>4 Exhibit Index..... 4</p> <p>5</p> <p>6 WITNESS: DANIEL FRISHBERG</p> <p>7 Examination By Mr. Besen..... 5</p> <p>8 Examination By Mr. McCole..... 85</p> <p>9 Examination (Continued) By Mr. Besen..... 98</p> <p>10</p> <p>11 Jurat..... 164</p> <p>12 Reporter's Certificate 166</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>
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<p style="text-align: center;">A P P E A R A N C E S</p> <p>COUNSEL FOR THE RECEIVER, THOMAS L. TAYLOR, III: Mr. Gene R. Besen SONNENSCHNEIN NATH & ROSENTHAL, LLP 2000 McKinney Avenue, Suite 1900 Dallas, Texas 75201 Phone: (214) 259-0956 - and - Mr. Thomas L. Taylor, III THE TAYLOR LAW OFFICES, P.C. 4550 Post Oak Place Drive, Suite 241 Houston, Texas 77027 Phone: (713) 626-5300</p> <p>COUNSEL FOR PLAINTIFF, SECURITIES AND EXCHANGE COMMISSION: (Appearing telephonically) Mr. Timothy S. McCole UNITED STATES SECURITIES AND EXCHANGE COMMISSION Burnett Plaza, Suite 1900 801 Cherry Street, Unit 18 Fort Worth, Texas 76102 Phone: (817) 978-6453</p> <p>COUNSEL TO RELIEF DEFENDANTS DANIEL FRISHBERG: Mr. Richard Fuqua FUQUA & KEIM, LLP 2777 Allen Parkway, Suite 480 Houston, Texas 77019 Phone: (713) 960-0277 - and - Mr. Peter J. Stanton LAW OFFICES OF PETER J. STANTON 111 Soledad Street San Antonio, Texas 78205 Phone: (210) 472-0500</p> <p>COUNSEL FOR DEFENDANT FRISHBERG FINANCIAL SERVICES, INC.: Mr. Robert D. Axelrod AXELROD, SMITH & KIRSHBAUM, P.C. 5300 Memorial Drive, Suite 700 Houston, Texas 77007 Phone: (713) 861-1996</p> <p>VIDEOGRAPHER: Mr. Pat Antone Legal Media</p>	<p style="text-align: center;">E X H I B I T I N D E X</p> <p>1 Daniel Frishberg Financial Services, Inc. General Ledger 43</p> <p>2 Securities And Exchange Commission Statement of Financial Condition Of Daniel Frishberg 57</p> <p>3 IBC Statement, 10-13-2009 to 11-15-2009 68</p> <p>4 Bank of America Statement, 6-18-09 through 6-19-09 for Elisea T. Frishberg 77</p> <p>5 Bank of America Statement, 7-23-09 through 8-20-09 for Elisea T. Frishberg 79</p> <p>6 September 25, 2009 E-mail From Nancy Gollan to Warren Gunn, et al. 105</p> <p>7 Typewritten Notes 131</p> <p>8 November 25, 2009 E-mail from Nancy Gollan to Linda Sikes, et al. 156</p> <p>9 Bank of America Statement, 12-22-09 through 1-20-10 for Elisea T. Frishberg 157</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>

<p style="text-align: right;">Page 5</p> <p>1 THE VIDEOGRAPHER: This is the videotaped 2 deposition of Mr. Daniel Frishberg. Today is Friday, 3 June the 4th, 2010. The time is 9:53 a.m. We are on the 4 record.</p> <p>5 DANIEL FRISHBERG, 6 being called as a witness, and having been first duly 7 sworn, testified as follows:</p> <p>8 EXAMINATION</p> <p>9 BY MR. BESEN:</p> <p>10 Q. Good morning, Mr. Frishberg. My name is Gene 11 Besen. I'm from the law firm of Sonnenschein, Nath & 12 Rosenthal. I am counsel to Tom Taylor, who is the 13 Receiver for Kaleta Capital Management.</p> <p>14 And you're here today. You're 15 represented by counsel, are you not?</p> <p>16 A. Yes.</p> <p>17 Q. Can you please just identify the counsel in 18 the room on your behalf for me?</p> <p>19 A. Dick Fuqua. Robert Axelrod. Peter Stanton.</p> <p>20 Q. Okay. Great.</p> <p>21 And have you given your deposition 22 before, Mr. Frishberg?</p> <p>23 A. Pardon me?</p> <p>24 Q. Have you given your deposition before? 25 A. No.</p>	<p style="text-align: right;">Page 7</p> <p>1 A. Could you speak a little louder, please.</p> <p>2 Q. Absolutely.</p> <p>3 What were those discussions about?</p> <p>4 A. He was the -- one of the partners in a real 5 estate project -- a real estate company that were -- was 6 doing projects that I thought were of interest to my 7 investors.</p> <p>8 Q. And that was Perry Properties?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And did he approach you about 11 potentially having some of your clients that were at 12 DFFS; correct?</p> <p>13 A. Yes.</p> <p>14 Q. Did he approach you about having DFFS clients 15 invest in Perry Properties?</p> <p>16 A. I don't remember who initiated that 17 conversation.</p> <p>18 Q. Okay. Did you do any due diligence on Perry 19 Properties?</p> <p>20 A. Yes.</p> <p>21 Q. What did you do?</p> <p>22 A. I looked at all of it, checked them out, 23 looked at the deals they were doing and looked at 24 specific properties that they were doing, talked to them 25 about their plans.</p>
<p style="text-align: right;">Page 6</p> <p>1 Q. Okay. I just want to before we get started 2 establish --</p> <p>3 MR. STANTON: Wait a minute. Not in this 4 case. But you've given your deposition in other cases.</p> <p>5 A. Have I given a deposition, yes, I'm sorry.</p> <p>6 Q. (By Mr. Besen) Yes. Okay.</p> <p>7 So you know the rules and the general lay 8 of the land. I'm going to try not to talk over you, you 9 please try not to talk over me. I'll let you finish; you 10 let me finish; that way the court reporter can get 11 everything down and the record will be clean.</p> <p>12 A. (Moving head up and down.)</p> <p>13 Q. Okay.</p> <p>14 A. Yes.</p> <p>15 Q. Thank you.</p> <p>16 Okay. I'd like to start, if we can, by 17 discussing how you met Mr. Wallace and Wallace and 18 Bajjali. Can you just tell me how you first met 19 Mr. Wallace?</p> <p>20 A. He was introduced to me as somebody who wanted 21 to run for the Senate. He -- many years ago.</p> <p>22 Q. Okay. And did you ultimately have discussions 23 with Mr. Wallace about business opportunities?</p> <p>24 A. Yes.</p> <p>25 Q. And what were those discussions about?</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. And their business was really property 2 development. They would construct and then manage a 3 property; is that accurate?</p> <p>4 A. No.</p> <p>5 Q. Okay. What was their business?</p> <p>6 A. They were largely developing properties to 7 sell to home builders. There was also some development 8 of properties adjacent to those lots.</p> <p>9 Q. Okay. And -- and you said you checked them 10 out.</p> <p>11 What did you do to check out Perry 12 Properties?</p> <p>13 A. Well, I knew of Wallace. He was the major of 14 Sugar Land at the time.</p> <p>15 Q. Okay.</p> <p>16 A. He had some negative publicity about him, and 17 I went through that line by line and went back and 18 checked that out. We had an investigator go back and 19 look at some of those things. My people that handled the 20 compliance for my company also went through the 21 properties they were doing.</p> <p>22 We analyzed the financial projections 23 they had. We met with them several times and talked to 24 them about what their plans were, what their contingent 25 plans were in case of a negative downturn in the economy.</p>

<p style="text-align: right;">Page 9</p> <p>1 And I thought -- I think I was as thorough as I knew how 2 to be.</p> <p>3 Q. Okay. And Perry Properties, did it have 4 existing equity investors into that venture or were they 5 looking for additional equity investors? In other words, 6 was it closely held or did it already have investors and 7 was it already soliciting investment from outside 8 sources?</p> <p>9 A. It already had investors.</p> <p>10 Q. Okay. So was it a limited partnership? An 11 LLC? Do you know the structure?</p> <p>12 A. It was a limited partnership. Perry -- well, 13 there was a general partner that, I think, was corporate; 14 and there was a limited partnership that was a limited 15 partnership.</p> <p>16 Q. And that's how they raised money through the 17 limited partnership to fund their projects and 18 developments?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And did any DFFS client ever invest in 21 Perry Properties?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And at some point, what happened to 24 Perry Properties? Did Mr. Wallace separate from 25 Mr. Perry? What was the nature of that?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. David Wallace.</p> <p>2 Q. David Wallace. I'm sorry. Thank you. 3 And Wallace and Bajjali is a new entity. 4 Does it have any assets when it's first formed?</p> <p>5 A. I don't remember.</p> <p>6 Q. And did it have -- okay. Fair enough. 7 When does Dave Wallace approach you about 8 Wallace and Bajjali? Approximate time frame.</p> <p>9 A. Wallace and Bajjali was the -- grew out of the 10 other one. He didn't approach me about that. 11 I was concerned about the well-being of 12 the clients, so I was always in contact with Perry and 13 with Wallace and Bajjali.</p> <p>14 Q. Okay. But at some point, Perry goes out of 15 the picture?</p> <p>16 A. Yes.</p> <p>17 Q. And what happens to your clients' money that 18 was in Perry Properties? Did the investors get 19 redemption payments? Was that fund shut down and 20 liquidated? What happened?</p> <p>21 A. Eventually, after a lot of legal battles, the 22 agreement they had was reversed. Perry ended up turning 23 over the properties to Wallace and Bajjali.</p> <p>24 Q. Okay. So the assets of Perry Properties -- 25 A. The ones that --</p>
<p style="text-align: right;">Page 10</p> <p>1 A. Yes.</p> <p>2 Q. Can you tell me a little bit more, whatever 3 you know about that separation?</p> <p>4 A. A conflict arose between the partners. They 5 each claimed each other were incompetent and crazy. 6 There were lots of claims thrown around on both sides. 7 And as I understand it, their buy and sell agreement was 8 invoked by both sides and they had a conflict.</p> <p>9 Q. Okay. And do you know what happened to the 10 assets of Perry Properties upon the disposition of that 11 conflict?</p> <p>12 A. Yeah. There was -- there was a buyout of 13 Wallace and Bajjali by Perry in some settlement 14 arrangement.</p> <p>15 Q. Okay. And does that -- I just want to make 16 sure I'm following and we're on the same page. 17 Does that mean that Wallace and Bajjali 18 received cash and Perry received the real estate or the 19 other --</p> <p>20 A. I'm --</p> <p>21 Q. -- way around?</p> <p>22 A. -- I'm not sure. I don't remember.</p> <p>23 Q. Okay. In any event, they separate. 24 And Costa Bajjali and Mike Wallace form 25 Wallace Bajjali; correct?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. -- and presumably their investors all 2 essentially rolled into the Wallace and Bajjali -- 3 A. Yes.</p> <p>4 Q. -- fund?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And do you know -- and I don't expect 7 you to know to the decimal point. 8 But do you have a general sense of what 9 the assets were worth that were transferred from Perry 10 Properties to --</p> <p>11 A. I don't remember that.</p> <p>12 Q. -- Wallace and Bajjali? 13 MR. STANTON: Again, you need to let him 14 finish his question before you answer it so the court 15 reporter can write it down.</p> <p>16 Q. (By Mr. Besen) And when the Perry Properties 17 assets were rolled into the Wallace and Bajjali fund, 18 functionally at DFFS, there was no change in how that 19 product was being sold or pitched to investors, to your 20 clients? It was just same -- same deal, different name?</p> <p>21 A. That product -- there was no product. There 22 was never a pitch, and it was never sold.</p> <p>23 Q. Okay. Well, tell me how that is, then. Your 24 DFFS clients made investments in Wallace and Bajjali but 25 there was not pitch, no products and it was never sold.</p>

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<p>1 A. I have no incentive to have one investment or 2 another personally. My only interest, as a fiduciary, is 3 to find a good way for my clients' money to be invested. 4 I was concerned about the stock market. 5 I looked for other methods of investment. That one was 6 Houston real estate. It involved a lease that was about 7 to be signed for \$10 a year involving millions of dollars 8 worth of property in Waco, Texas that would be developed. 9 It would be a windfall for the investors in that limited 10 partnership. 11 And I made that investment -- I allowed 12 that to be available to clients. I never had the job of 13 raising money for it. It was not a product. I didn't 14 sell it. And had I wanted to do it that way, I had 15 discretion on the accounts, I could have simply allocated 16 the money. I didn't do it that way. 17 What I did instead was allow clients to 18 have the documentation and choose whether or not they 19 thought that was an appropriate. My goal was 20 diversification from the stock market and bond market. 21 MR. FUQUA: Gene, I don't want -- I don't 22 want to interrupt your thought. But from a housekeeping 23 standpoint, I don't think we cleared one thing up. We're 24 doing this under the Federal Rules, one. 25 And, two, we reserve the right to read</p>	<p>1 maybe some other documents to the investors and gave them 2 the choice as to whether or not they were going to invest 3 in the Wallace and Bajjali partnership; correct? 4 A. Yes. 5 Q. Okay. And who would have been the one meeting 6 with those clients to discuss the Wallace and Bajjali 7 opportunity with the DFFS clients? 8 A. There were a number of people who could have 9 been meeting with different clients. Back then, I was 10 one, Kaleta -- Al Kaleta was one. Rick Jordan was one. 11 Carl Eggers was one. I can't remember if Dan Stewart 12 was one. 13 Q. Okay. And what -- and what would have been 14 presented to your clients? 15 A. An opportunity. A potential opportunity. 16 Q. Were there terms for this opportunity? Did 17 you project what a rate of return might be? Did you 18 think about -- discuss potential suitability issues? 19 What -- what was the nature -- 20 A. Yes. 21 Q. -- of the -- 22 MR. FUQUA: Objection to the form. 23 That's -- you only asked him about seven questions, Gene. 24 Could we do it one at a time? 25 MR. BESEN: Absolutely.</p>
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<p>1 and sign before any Notary. 2 MR. BESEN: That's fine. 3 MR. FUQUA: I needed to make sure, that's 4 all. 5 MR. STANTON: There are rules. 6 THE WITNESS: I don't have to know what 7 you did. 8 MR. FUQUA: You don't have to know 9 anything what I said, Mr. Frishberg. 10 MR. STANTON: What rules are you talking 11 about? There are rules that apply to this thing? 12 MR. FUQUA: I like the Federal ones best. 13 MR. BESEN: I'm going to -- I'm going 14 to... 15 MR. STANTON: That's true. 16 Q. (By Mr. Besen) I think, Mr. Frishberg, where 17 we're missing one another is I used the word "product." 18 And I think I'll refrain from using that word going 19 forward and we'll just call it "an investment." 20 And what I heard you just testify to -- 21 and if I'm mischaracterizing it, please correct me -- is 22 that you had discretion to simply allocate funds from 23 your clients' portfolios to the Wallace and Bajjali 24 partnership. But what you did, what DFFS did was instead 25 present presumably a PPM from Wallace and Bajjali and</p>	<p>1 Q. (By Mr. Besen) Did you discuss suitability 2 with clients? 3 A. Yes. 4 Q. Did you explain to them the risks associated 5 with the investment in real estate? 6 A. When you say "you," you mean you collective? 7 Q. Well, you identified yourself as one of the 8 people that would be meeting -- 9 A. When I -- 10 Q. -- with clients? 11 A. -- well, you're asking me about -- yes. 12 Q. Yes. 13 A. I did do that. 14 Q. And you expect that whoever was working for 15 you at DFFS -- 16 A. Yes. 17 Q. -- was doing the same? 18 A. Yes. 19 Q. And you accept that you were the supervisor or 20 ultimate -- the ultimate supervisor of all -- everything 21 that happened at DFFS? 22 A. Yes. 23 Q. Okay. And of the names you gave me, I 24 think -- I believe you gave me Al Kaleta, Mr. Jordan, 25 Mr. Eggers, Mr. Stewart. Were all of those individuals</p>

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1 **officers of DFFS?**
 2 A. I -- I'm not sure.
 3 **Q. What are you not sure about, Mr. Frishberg?**
 4 A. They were operating in their function as
 5 representatives of the registered investment advisors.
 6 At that time, Kaleta was not licensed. He was operating
 7 in his function as my administrative assistant.
 8 **Q. And -- and so you had an administrative**
 9 **assistant meeting with clients to discuss suitability?**
 10 A. No.
 11 **Q. Well, then, I'm confused.**
 12 **Because if Mr. Kaleta was meeting with**
 13 **clients and he was not licensed and just your**
 14 **administrative assistant, what was going on there?**
 15 A. At that time -- at that time, Mr. Kaleta was
 16 acting on my behalf. I was spending a lot of time with
 17 clients at that time. And Kaleta was also helping to
 18 administer those things, passing on my information to
 19 them, and helping to administer the relationship.
 20 He had a staff of people, which included
 21 clerical people. And he was in charge of handling the
 22 paperwork and making sure that the communication was
 23 intact. And I was responsible for all the financial
 24 advice given by anybody, but specifically by me.
 25 **Q. And so Mr. Kaleta was looking at the financial**

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1 **plans that DFFS created for its clients?**
 2 A. He was --
 3 **Q. Is that -- is that accurate?**
 4 A. Yes.
 5 **Q. And what was he looking at those plans for in**
 6 **the context of a potential investment in Wallace and**
 7 **Bajjali?**
 8 A. He wasn't -- he wasn't making those choices at
 9 that time. Ask that question again, please.
 10 MR. BESEN: Can you read it back.
 11 THE REPORTER: QUESTION: "And what was
 12 he looking at those plans for in the context of a
 13 potential investment in Wallace and Bajjali?"
 14 A. I don't think he was looking at those plans in
 15 the context of an investment in Wallace and Bajjali.
 16 **Q. (By Mr. Besen) Okay. But it's your**
 17 **recollection that Mr. Kaleta met with clients about a**
 18 **potential investment in Wallace and Bajjali in his**
 19 **position as your administrative assistant?**
 20 A. That was 2004 or '05 or something. I don't
 21 remember exactly how that was.
 22 The way -- I don't think it was the way
 23 you characterized it, however. Maybe you could say that
 24 again and I'll -- let me think about that.
 25 **Q. You don't think that Mr. Kaleta was meeting**

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1 **with clients specifically about an opportunity --**
 2 A. Correct.
 3 **Q. -- to invest in Wallace and Bajjali?**
 4 A. That's right.
 5 MR. STANTON: Let him finish, Dan, before
 6 you answer.
 7 THE WITNESS: (Moving head up and down.)
 8 **Q. (By Mr. Besen) Did you continue to do due**
 9 **diligence on Wallace and Bajjali and the investments that**
 10 **it was making?**
 11 A. Yes.
 12 **Q. And how did he do that?**
 13 A. I had a -- there was an advisory board, and
 14 they were required to make a package for approval of the
 15 advisory board of all properties that they were
 16 considering buying. And they needed a majority or some
 17 supermajority -- I can't remember what it was, but
 18 they -- they required approval from that advisory board.
 19 **Q. And for the record, I just want to clarify.**
 20 **The advisory board is Wallace and Bajjali's advisory**
 21 **board; correct?**
 22 A. The advisory board created to advise Wallace
 23 and Bajjali.
 24 **Q. Okay. And you were a member of that board?**
 25 A. Yes.

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1 **Q. Do you know who the other members of that**
 2 **board were?**
 3 A. I do, but I don't remember all of their names.
 4 I -- I -- I knew -- I -- I knew who they were at the
 5 time.
 6 **Q. But you don't -- you couldn't identify -- name**
 7 **any right now?**
 8 A. At this moment, I can't tell you their names.
 9 **Q. And as a member of the advisory board of**
 10 **Wallace and Bajjali before Wallace and Bajjali made any**
 11 **investment, it was presented to the board and the board**
 12 **had to approve it by a majority vote?**
 13 A. By some -- whatever the rule was.
 14 **Q. Do you know how many people were on the board?**
 15 A. I think there were five, six, seven.
 16 **Q. Okay. And what would you get as a member of**
 17 **the board for a prospective deal? What -- what materials**
 18 **were you provided before Wallace and Bajjali made an**
 19 **investment?**
 20 A. They put together a package showing
 21 specifically what it was, what the plan was, what they
 22 thought the -- what they anticipated cash flow was, their
 23 plan for disposition, the length of time that it was
 24 going to be, why they thought it was a good deal, what
 25 the problems were.

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1 **Q.** And did you ever dig beyond the projections
 2 that Wallace and Bajjali gave you? Did you ever do any
 3 independent research, ever look at anything other than
 4 what they handed you in making a decision on the advisory
 5 board?
 6 A. I don't remember. Probably -- let me check.
 7 No.
 8 **Q.** And did they ever provide you any information
 9 about the finances of Wallace and Bajjali, the
 10 partnership, about money they've raised, money they have
 11 on hand, cash flows out, expenses, fees, any of those --
 12 that information ever provided to you?
 13 A. Yes.
 14 **Q.** And with every package or is that just
 15 something you were told through the course of your
 16 dealings with Wallace and Bajjali?
 17 A. Yes.
 18 **Q.** Yes, it was something that you just kind of
 19 learned through the course of your dealings?
 20 A. They provided reports, but they were not the
 21 package -- the packages of investment. They had separate
 22 reports of their operation and financial condition.
 23 **Q.** And do you know the management fee that
 24 Wallace and Bajjali charged to your investors?
 25 A. I did at the time. I don't remember what it

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1 was now. But it was a waterfall in which the investors
 2 were required to make a certain profit before Wallace and
 3 Bajjali would be paid.
 4 **Q.** Sort of like a performance fee? You have to
 5 hit the benchmark and then you get 20 percent of the
 6 proceeds after you hit the benchmark?
 7 A. Sort of like that, yes.
 8 **Q.** Okay. And in -- and in the information you
 9 got from Wallace and Bajjali about fundraising, capital
 10 raising, did you have a sense that Wallace and Bajjali
 11 was raising an inordinate amount of money from DFFS
 12 clients?
 13 A. No.
 14 **Q.** Did you know how many of your clients were
 15 investing in DFFS?
 16 A. Yes.
 17 **Q.** And -- and how many do you think did actually
 18 invest in Wallace and Bajjali?
 19 A. I don't remember now, but I would be -- I
 20 would think -- I don't remember.
 21 **Q.** Do you know how much money DFFS clients
 22 invested in Wallace and Bajjali?
 23 A. The -- Wallace and Bajjali, probably in the 15
 24 to \$20 million range.
 25 **Q.** Okay. And do you know what percentage of the

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1 overall Wallace and Bajjali fund that would have --
 2 account that would have been?
 3 A. Am I -- am I supposed to guess?
 4 MR. FUQUA: No. You're not.
 5 **Q.** (By Mr. Besen) No, you're not supposed to
 6 guess.
 7 MR. STANTON: No, you're not.
 8 MR. FUQUA: Was that a quick enough
 9 response from all the lawyers at this table?
 10 **Q.** (By Mr. Besen) And let me just tell you, in
 11 your SEC testimony, you testified you thought that over
 12 50 percent of the Wallace and Bajjali funds came from
 13 DFFS clients. Does that sound accurate to you?
 14 A. Yes.
 15 **Q.** Okay. And as an investment advisor who would,
 16 I would assume, attempt to manage around risk, do you
 17 think it's dangerous to have 50 percent of any one fund
 18 made up of just your clients?
 19 A. No.
 20 **Q.** You don't think that's a risk?
 21 A. I think all investments are a risk.
 22 **Q.** I can't disagree with that.
 23 Are you aware that just by an example in
 24 a comparison, public pension funds when they make into --
 25 investments into private equity funds or real estate

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1 funds or hedge funds often have a rule that their
 2 particular investment can't be more than 10 percent of a
 3 given fund? Are you aware of that policy generally?
 4 A. I'm not a fund. These are separate investors.
 5 They're not an aggregate. Each one of them -- if you're
 6 asking about -- you're asking me about the exposure of my
 7 registered investment advisor, which isn't the point.
 8 Each of those investors are separate
 9 investors, and each one of them made up a tiny
 10 percentage. And they were investing in a diversified
 11 real estate fund with lots of different real estate
 12 projects. And no investor had an inordinate amount of
 13 money in any project.
 14 MR. FUQUA: Mr. Frishberg, would you do
 15 me one favor. Listen to his question and answer his
 16 question. He merely asked you, are you aware that a
 17 money manager or a fund manager has a limitation or a
 18 question that they sometimes raise with regard to having
 19 invested.
 20 You're -- I understand your response. It
 21 was very broad, and I appreciate that. But he just wants
 22 you to answer his question. And we'd kind of like you to
 23 do it that way, too.
 24 THE WITNESS: Can we do that again?
 25 **Q.** (By Mr. Besen) No. Your answer is fine.

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1 MR. AXELROD: Your answer was fine.
 2 MR. FUQUA: It was correct, but...
 3 **Q. (By Mr. Besen) Did you know that Wallace and**
 4 **Bajjali was borrowing money from KCM?**
 5 A. When? When do you mean?
 6 **Q. Well, according to Mr. Kaleta's testimony,**
 7 **Mr. Wallace was coming to him to raise money for Wallace**
 8 **and Bajjali pretty much right out of the box when he**
 9 **started KCM in 2007. Were you aware of that?**
 10 A. No.
 11 **Q. Would that have changed your view of Wallace**
 12 **and Bajjali had you known that, that they were having to**
 13 **take short-term loans from KCM to meet their cash flow**
 14 **needs?**
 15 A. No.
 16 **Q. Why not?**
 17 A. They were a real estate fund doing specific
 18 real estate projects. Financing those things via
 19 borrowing or financing them via equity, having some
 20 leverage is not necessarily a negative. Having excessive
 21 leverage would be a negative. Who they were borrowing it
 22 from was less important.
 23 However, the banks were in the middle of
 24 that proj -- in the middle of the existence of Wallace
 25 and Bajjali, the banks became less willing to loan money

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1 and so their borrowing money to complete projects and to
 2 satisfy their needs for cash wouldn't have bothered me.
 3 I would expect them to do that.
 4 **Q. And knowing that that was the circumstance,**
 5 **you are comfortable continuing to recommend that**
 6 **investment to your clients?**
 7 A. My clients -- I wasn't recommending anything.
 8 **Q. Are you testifying that the decision to invest**
 9 **in Wallace and Bajjali was an entirely nondiscretionary**
 10 **decision?**
 11 A. It was an entirely nondiscretionary decision.
 12 **Q. And you didn't recommend that as an allocation**
 13 **into any client's portfolio?**
 14 A. No. I -- no.
 15 **Q. And are you confident that nobody else from**
 16 **DFFS did that?**
 17 A. I would have -- at that time, I was. Now, I
 18 know much more than I knew then. Now, I'm not confident
 19 in that. At that time, I would have said yes.
 20 **Q. Okay. And what have you learned that has**
 21 **changed that answer?**
 22 A. I learned that some members of my company
 23 misunderstood their role and eventually seemed to take a
 24 personal interest in the Wallace and Bajjali partnership.
 25 That -- that would be my -- it appears that way to me

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1 now.
 2 **Q. Can -- and I just -- I'm not sure I understand**
 3 **your answer completely and no reason to be too cryptic.**
 4 **I presume you're talking about Al Kaleta.**
 5 **And what specific personal interest did you think he took**
 6 **in Wallace and Bajjali?**
 7 A. I think David Wallace is a very persuasive
 8 person who I -- in looking back on this now and seeing
 9 what I know now, I am -- my perception is that Kaleta
 10 wanted people to -- he was rooting for the Wallace fund.
 11 That was not the position of my company or me. And I
 12 didn't know it at the time.
 13 **Q. Well, I'm going to take exception with one**
 14 **thing you said.**
 15 **Al Kaleta was rooting for Wallace and**
 16 **Bajjali as a representative of DFFS; correct?**
 17 A. That was not his assigned role.
 18 **Q. Nevertheless, he was an employee of DFFS at**
 19 **the time; correct?**
 20 A. Yes.
 21 **Q. Okay. So DFFS was recommending investments in**
 22 **Wallace and Bajjali to your clients; correct?**
 23 A. I'm not sure how to answer that.
 24 **Q. It's yes or no.**
 25 **Knowing what you know now --**

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1 A. Knowing what I know now --
 2 **Q. -- DFFS was recommending investments in**
 3 **Wallace and Bajjali to its clients?**
 4 THE WITNESS: Can I ask a legal question
 5 here --
 6 MR. FUQUA: Well, sure.
 7 THE WITNESS: -- about that answer?
 8 MR. FUQUA: Well --
 9 **Q. (By Mr. Besen) Well, I'd like you to answer**
 10 **the question.**
 11 A. Well, I know. But I'm not sure how --
 12 MR. FUQUA: If you need legal advice, you
 13 can ask to visit with your lawyers.
 14 THE WITNESS: May I visit with my lawyer?
 15 MR. FUQUA: Well, sure, of course.
 16 **Q. (By Mr. Besen) Would you like to go off the**
 17 **record and step out and have a conversation with your**
 18 **counsel?**
 19 A. Yes. Thank you.
 20 THE VIDEOGRAPHER: Going off the record,
 21 10:25 a.m.
 22 (Recess.)
 23 THE VIDEOGRAPHER: Back on the record.
 24 10:31 a.m.
 25 MR. BESEN: Do you mind just reading my

<p style="text-align: right;">Page 29</p> <p>1 last question back.</p> <p>2 THE REPORTER: QUESTION: "DFFS was</p> <p>3 recommending investments in Wallace and Bajjali to its</p> <p>4 clients?"</p> <p>5 A. No. That was not his role, nor the position</p> <p>6 of the company.</p> <p>7 Q. (By Mr. Besen) Okay. And we haven't ever</p> <p>8 done this, Mr. Frishberg, and it's my fault. Can we nail</p> <p>9 down -- do you have a sense -- and I don't need a</p> <p>10 specific date, but a time when this was taking place?</p> <p>11 Before Mr. Kaleta was licensed, we know that. Are we</p> <p>12 talking 2006? 2005? Can we try to put a year or a</p> <p>13 range --</p> <p>14 A. I don't --</p> <p>15 Q. -- of years on it?</p> <p>16 A. I don't -- I don't have a way to remember it</p> <p>17 that way.</p> <p>18 Q. Okay. So do you remember the year when Perry</p> <p>19 Properties assets were transferred to Wallace and</p> <p>20 Bajjali, when that lawsuit was settled?</p> <p>21 A. Not exactly.</p> <p>22 Q. If I said 2006, does that sound right to you?</p> <p>23 A. Yes.</p> <p>24 Q. And what was your role at DFFS in 2006?</p> <p>25 A. I was the chief investment strategist. I was</p>	<p style="text-align: right;">Page 31</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And practically speaking, at the firm</p> <p>3 at this time -- at DFFS at this time, you were on the</p> <p>4 road. You were making the overall investment strategy</p> <p>5 decisions. You were serving as the marketing director</p> <p>6 presumably trying to generate new business.</p> <p>7 Who was actually handling and talking and</p> <p>8 communicating with your clients?</p> <p>9 A. Which time are we talking about?</p> <p>10 Q. Well, we're in that 2006 time frame.</p> <p>11 A. In the '06 -- at that time I was meeting with</p> <p>12 clients a lot.</p> <p>13 Q. Okay. Was anybody else meeting with clients?</p> <p>14 A. Yes. Follow-up meetings were done by video</p> <p>15 with Jordan and Eggerss and Kaleta, too.</p> <p>16 Q. Okay. You said follow-up meetings. Is that</p> <p>17 to intimate to me that the initial meeting was always</p> <p>18 with you?</p> <p>19 A. I don't know about always.</p> <p>20 Q. Okay. So it's possible that Jordan, Eggerss</p> <p>21 or Kaleta met with clients --</p> <p>22 A. Yes.</p> <p>23 Q. -- for the first time?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And you said video conference. Why?</p>
<p style="text-align: right;">Page 30</p> <p>1 the CEO. My duties were chief investment strategist and</p> <p>2 marketing director.</p> <p>3 Q. And do you remember how much of the firm you</p> <p>4 owned at that time?</p> <p>5 A. Probably 57 percent. Roughly.</p> <p>6 Q. And do you have your securities license --</p> <p>7 licenses, Mr. Frishberg?</p> <p>8 A. Yes.</p> <p>9 Q. What licenses do you hold?</p> <p>10 A. 65.</p> <p>11 Q. That's it? It's okay. I'm just -- is that</p> <p>12 the only one?</p> <p>13 A. Well, I have -- I -- I don't know how to</p> <p>14 answer that. I have passed and qualified for the</p> <p>15 Series 7, 24, 22. But I am not -- didn't maintain my</p> <p>16 FINRA --</p> <p>17 Q. Okay.</p> <p>18 A. -- licensing.</p> <p>19 Q. Those licenses have expired?</p> <p>20 A. Yes.</p> <p>21 Q. But they weren't revoked, and there's no --</p> <p>22 A. No --</p> <p>23 Q. -- disciplinary issue around that --</p> <p>24 A. Correct.</p> <p>25 Q. -- it's just abandoned essentially?</p>	<p style="text-align: right;">Page 32</p> <p>1 We have investors in different places or people in</p> <p>2 different places that I need to know about?</p> <p>3 A. Jordan and Eggerss were in different places.</p> <p>4 Q. They were in San Antonio?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And so if there was a client in</p> <p>7 San Antonio, presumably, Jordan and Eggerss would have</p> <p>8 met with that client in your San Antonio office?</p> <p>9 A. Also Dallas.</p> <p>10 Q. Okay. Dallas came later, though; correct?</p> <p>11 A. I -- I -- '06. '07. I'm not sure.</p> <p>12 Q. Okay. And did you give Mr. Jordan or</p> <p>13 Mr. Eggerss or Mr. Kaleta any training on how they were</p> <p>14 supposed to be talking and what they were supposed to be</p> <p>15 doing when they met with clients?</p> <p>16 A. Yes.</p> <p>17 Q. And -- and what training did you give them?</p> <p>18 A. Each of them sat with me -- well, we had -- we</p> <p>19 had frequent meetings among all of us. But also each of</p> <p>20 them sat with me for hundreds of hours as I met with</p> <p>21 clients and then debriefed and discussed afterwards what</p> <p>22 was the transaction about and what was the goal and what</p> <p>23 was the -- what did the clients' questions mean, how did</p> <p>24 that apply to the plan. They had hundreds of hours of</p> <p>25 training.</p>

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1 **Q. Hundreds of hours collectively? Hundreds of**
 2 **hours for each individual?**
 3 A. Both.
 4 **Q. And so did DFFS have a policy and procedures**
 5 **manual that would have spelled out who was supposed to be**
 6 **meeting with clients and what they were supposed to and**
 7 **who wasn't supposed to be meeting with clients or what**
 8 **they were supposed to do?**
 9 A. Yes.
 10 **Q. Okay. And did -- was there a compliance**
 11 **system in place at DFFS to make sure that, for example,**
 12 **if Mr. Jordan was meeting with a client that he was**
 13 **authorized and supposed to do that and was doing**
 14 **everything appropriate and correctly when he was doing --**
 15 **when he was meeting with a client?**
 16 A. Yes.
 17 **Q. Well, I'm a little confused. Because if that**
 18 **was the case and this compliance system existed and these**
 19 **policies existed, then how was it that Mr. Kaleta, as**
 20 **you've testified, wasn't authorized or wasn't supposed to**
 21 **be meeting with clients but he did and he apparently**
 22 **recommended investments in Wallace and Bajjali?**
 23 A. I don't understand the question.
 24 **Q. Okay. You just testified that you believe**
 25 **that DFFS had policies and procedures that would have**

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1 **spelled out everybody's role specifically related to**
 2 **client communications and discussions with clients;**
 3 **correct?**
 4 A. Yes.
 5 **Q. Okay. And you also just testified that you**
 6 **believe DFFS had a compliance system in place to make**
 7 **sure everybody was following those procedures?**
 8 A. Yes.
 9 **Q. And you were the one ultimately responsible**
 10 **for that compliance system as the CEO?**
 11 A. Yes.
 12 **Q. And the principal of the firm; correct?**
 13 A. Yes.
 14 **Q. Okay. And so given that testimony, how is it**
 15 **that you're also going to testify that Al Kaleta was**
 16 **acting outside the scope of his authority and wasn't**
 17 **authorized to be making recommendation to clients? How**
 18 **do we square those two points?**
 19 A. I don't -- I don't see any incongruence there.
 20 **Q. Well, the incongruence is your testimony is**
 21 **that Al Kaleta was acting outside the scope of his**
 22 **authority and wasn't supposed to be communicating to --**
 23 **communicating to clients about those investments, but**
 24 **you've also testified you know he did. So at some point,**
 25 **there was a breakdown in the compliance and the**

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1 **procedures of DFFS, otherwise that couldn't have happened**
 2 **and it certainly couldn't have gone undetected until very**
 3 **recently when you've all of a sudden learned all this new**
 4 **information.**
 5 THE WITNESS: Can I have a break, please?
 6 MR. STANTON: (Moving head side to side.)
 7 THE WITNESS: No.
 8 A. Okay. I don't understand --
 9 MR. FUQUA: Wait. Wait a minute.
 10 THE WITNESS: I -- I addressed that. I
 11 didn't say what he cannot do --
 12 MR. FUQUA: There's not a question
 13 pending.
 14 THE WITNESS: Oh.
 15 MR. FUQUA: He's basically telling you --
 16 THE WITNESS: He didn't say it, okay.
 17 MR. FUQUA: He hadn't asked you a
 18 question, I don't think.
 19 THE WITNESS: Oh. I'm sorry.
 20 MR. FUQUA: He was talking at you or to
 21 you --
 22 THE WITNESS: Okay.
 23 MR. FUQUA: -- and -- and saying that he
 24 believes there's an incongruence, and you say I don't
 25 believe there's an incongruence. So when we get a

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1 question, then we can either object to it or -- if -- if
 2 there's a question and you want to talk to your lawyers,
 3 I'm sure he'll let you; and we'll do that. But let's get
 4 a question first as opposed to a debate.
 5 **Q. (By Mr. Besen) How is it possible if the**
 6 **policies and procedures and compliance system at DFFS was**
 7 **functioning properly that you could have not discovered**
 8 **that Al Kaleta was recommending investments in Wallace**
 9 **and Bajjali until long after the SEC started its**
 10 **investigation into Al Kaleta and KCM?**
 11 MR. FUQUA: And if you want to draw, I'll
 12 give you a pad so you can write the sentence down.
 13 Because the question goes a ways, but there is now --
 14 there is now a question pending. I could object to the
 15 form, but do you understand his question?
 16 A. Al Kaleta was allowed to meet with clients and
 17 pass on my positions. Now, many years later, I believe
 18 that he was overstepping my positions and instructions.
 19 **Q. (By Mr. Besen) And what would -- in 2006 as**
 20 **regards to Wallace and Bajjali, what would your**
 21 **instructions to Al Kaleta have been?**
 22 A. We think diversification is important. We're
 23 concerned about the stock and bond market. We think
 24 Houston real estate and other private businesses can be a
 25 good diversification for a small amount of money. Look

<p style="text-align: right;">Page 37</p> <p>1 at this one and see what you think.</p> <p>2 Q. In -- in -- in your answer, Mr. Frishberg, you</p> <p>3 said, "Houston real estate and other small businesses."</p> <p>4 Are -- are the other small businesses</p> <p>5 you're talking about KCM's business model of loaning</p> <p>6 money on a short-term basis to, quote, creditworthy small</p> <p>7 businesses?</p> <p>8 A. I don't understand the question. Wallace and</p> <p>9 Bajjali had leeway to invest in other businesses.</p> <p>10 Q. So it wasn't just investing in real estate.</p> <p>11 It could invest in another -- in a totally different line</p> <p>12 of business?</p> <p>13 A. They could invest in whatever they thought was</p> <p>14 a good deal. They had to secure the approval of their</p> <p>15 board.</p> <p>16 Q. So as a member of the advisory board of</p> <p>17 Wallace and Bajjali, did you -- were you ever told by</p> <p>18 Wallace and Bajjali that it was borrowing money from KCM?</p> <p>19 A. I don't know.</p> <p>20 Q. You don't remember?</p> <p>21 A. No.</p> <p>22 Q. Do you -- let me go at it a different way.</p> <p>23 At some point Al Kaleta gets his</p> <p>24 securities license; correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 39</p> <p>1 is, is that the question?</p> <p>2 Q. I'm asking you, with no time limitation, do</p> <p>3 you think that's something a prudent supervisor would do</p> <p>4 to know the outside business activities of his registered</p> <p>5 advisors?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Will you admit that that's something</p> <p>8 you failed to do?</p> <p>9 A. Yes.</p> <p>10 Q. And had you done so, you would have learned</p> <p>11 that KCM was actually loaning hundreds of thousands of</p> <p>12 dollars to Wallace and Bajjali; correct?</p> <p>13 A. When?</p> <p>14 Q. In 2007 and 2008.</p> <p>15 A. Maybe. I -- I'm not sure what I would have</p> <p>16 known.</p> <p>17 Q. Okay. You certainly, I would presume, would</p> <p>18 have figured out that KCM was loaning hundreds of</p> <p>19 thousands of dollars to DFFS itself?</p> <p>20 A. Pardon me. Say it again.</p> <p>21 Q. You would have learned that DFFS -- that KCM</p> <p>22 was loaning hundreds of thousands of dollars to DFFS?</p> <p>23 A. Yes.</p> <p>24 Q. Right?</p> <p>25 A. I would have, yes.</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. And at that point he's authorized to talk to</p> <p>2 clients and make investment recommendations to clients;</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And are you continuing to supervise him</p> <p>6 during that time?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And while you're supervising Al Kaleta,</p> <p>9 did you know that he had Kaleta Capital Management, this</p> <p>10 entity, KCM, out there?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And what did you understand KCM did?</p> <p>13 A. Well, when he became licensed, KCM was leasing</p> <p>14 airplanes. It was also being used by him as a</p> <p>15 tax-oriented corporate device.</p> <p>16 Q. His paycheck was going there?</p> <p>17 A. I don't know.</p> <p>18 Q. And did you follow up in -- every year, for</p> <p>19 example, maybe an annual compliance audit? Did you ever</p> <p>20 take the time to meet with Al Kaleta and figure out what</p> <p>21 exactly KCM was doing from year to year?</p> <p>22 A. No.</p> <p>23 Q. Do you think that's something that a prudent</p> <p>24 supervisor would have done?</p> <p>25 A. You're asking me now do I think now that that</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Do you know how much KCM loans to DFFS?</p> <p>2 A. Do I now know?</p> <p>3 Q. Do you now know?</p> <p>4 A. I've seen various figures. I -- I know what</p> <p>5 the figures that have been given to me say.</p> <p>6 Q. Okay. So we can agree -- because I recognize</p> <p>7 there's a disagreement over that amount -- but it's in</p> <p>8 excess of \$1 million. We can all agree on that?</p> <p>9 A. I agree that I've seen papers that say that.</p> <p>10 Q. Okay. But you're not agreeing that money was</p> <p>11 actually transferred to DFFS?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. So you are the principal of this firm;</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And you're going to testify to Judge Atlas</p> <p>17 that you don't know whether or not your firm received</p> <p>18 over a million dollars from KCM?</p> <p>19 A. I'm -- I just don't know how to answer that.</p> <p>20 I -- you're asking me what does "know" mean. I've --</p> <p>21 I've seen convincing evidence that that is true.</p> <p>22 Q. Okay. And, Mr. Frishberg, you're hedging on</p> <p>23 me and that's why I'm trying to --</p> <p>24 A. I have to.</p> <p>25 Q. -- pin you down. Well, sir, respectively,</p>

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<p>1 it's your firm. The money either hit your firm's account 2 or not.</p> <p>3 Have you done any investigation to 4 determine the extent to which KCM pervade through all of 5 the finances of DFFS?</p> <p>6 A. Now, yes.</p> <p>7 Q. Okay. And what has your investigation shown 8 you?</p> <p>9 A. It's showing that there are lists of money 10 that was paid out, but they don't keep track of how much 11 was paid back. And I've seen figures that go all the way 12 from 1.1 million to 1.7 million. Then I see them at 13 2.4 million.</p> <p>14 I know some of them are wrong, and I know 15 that there were payments back and interest payments and 16 all of that that were made. And I don't believe any of 17 those numbers are really accurate, but I do believe that 18 there was -- I believe that there was money advanced from 19 Kaleta Capital Management to my firm.</p> <p>20 Q. Okay. And I -- having heard that answer, I 21 understand where we're missing each other.</p> <p>22 Regardless of what was or wasn't paid 23 back or what interest payments are made, you will admit 24 that over a million dollars from KCM was transferred to 25 DFFS? I'm not talking about the total value of what it</p>	<p>1 (Exhibit No. 1 marked.)</p> <p>2 Q. (By Mr. Besen) Okay. Sir, if you could just 3 take this document. Peek at it for me. I will represent 4 to you this was produced by counsel for DFFS, 5 Mr. Axelrod. It's a copy of DFFS's general ledger. 6 Something you've ever seen before, 7 Mr. Frishberg?</p> <p>8 A. No.</p> <p>9 Q. Okay. I want you to go ahead and turn to 10 page 6 of 241.</p> <p>11 MR. BESEN: If you-all want -- if you 12 want to go make a quick copy, I'm happy to take a break. 13 MR. AXELROD: That's fine.</p> <p>14 Q. (By Mr. Besen) Okay. And the easy way to 15 find what I want you to look at, sir, is if you start 16 from the bottom where it identifies "checks, transfers, 17 deposit" all the way on the left side of the page. When 18 you come up from the bottom, the first deposit -- it's 19 about 10 or 12 entries up -- it says, "Loan from Greaves. 20 \$75,000." Have you found that, sir?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Then if we go to page 8 of 241, in the 23 middle of the page, it says another deposit from the 24 Alvin Greaves Family Limited Partnership for \$55,000. 25 Do you see that, sir?</p>
<p>1 nets out to.</p> <p>2 A. I'm having trouble with the factual way. I 3 admit that it looks that way to me.</p> <p>4 Q. Okay.</p> <p>5 A. You're asking me what if --</p> <p>6 Q. I'm just trying to under -- I'm not -- I'm not 7 trying to ask you that.</p> <p>8 What I'm trying to get to is for you to 9 simply cleanly say I admit that DFFS received over 10 \$1 million from KCM.</p> <p>11 MR. STANTON: If you don't know, Dan, 12 just tell him you don't know.</p> <p>13 A. I don't know.</p> <p>14 Q. (By Mr. Besen) Okay. Do you know who Alvin 15 Greaves is?</p> <p>16 A. No.</p> <p>17 Q. Alvin Greaves?</p> <p>18 A. No, I don't.</p> <p>19 Q. The Grieves Family Limited Partnership?</p> <p>20 A. I don't know who they are.</p> <p>21 Q. Okay.</p> <p>22 MR. BESEN: Sorry, guys, this one is a 23 little big, so I only have one copy of this one. It's 24 just the general ledger.</p> <p>25 Mark that as Exhibit 1.</p>	<p>1 A. Yes.</p> <p>2 Q. And then at the bottom of that, stay on that 3 page 8 for me, the second-to-last entry is a loan from 4 Greaves. Again, can you tell me the amount of that loan?</p> <p>5 A. 52,000.</p> <p>6 Q. Okay. And -- and you don't know --</p> <p>7 MR. AXELROD: Excuse me. Because I don't 8 have a copy of that. What -- can you give me the time 9 frame? Is this 2007? 2008?</p> <p>10 MR. BESEN: This is 2007. It is the -- 11 it looks like it starts in...</p> <p>12 MR. AXELROD: 2007 is fine.</p> <p>13 MR. BESEN: June of '07.</p> <p>14 MR. AXELROD: Thank you.</p> <p>15 MR. BESEN: Okay.</p> <p>16 Q. (By Mr. Besen) And -- and I'll --</p> <p>17 A. Oh. Go ahead. Go ahead.</p> <p>18 Q. No. I mean, I was -- my question was going to 19 be: Does any of this refresh your recollection of who 20 Greaves is or who the Alvin Greaves Family Limited 21 Partnership is?</p> <p>22 A. I have an idea who it is now. I'm not sure if 23 I'm right. I have to say that the answer is I don't 24 know.</p> <p>25 MR. STANTON: Don't guess. That's</p>
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1 correct.

2 **Q. (By Mr. Besen) And I'll -- okay. Well, then,**

3 **let's keep going.**

4 **If you go to page 10 of 241, the fifth**

5 **entry from the bottom is another loan from Greaves. Can**

6 **you just read aloud the amount of that loan?**

7 A. 160,000.

8 **Q. Okay.**

9 A. That would have to be Richard Jordan's family

10 in 2007. I -- I know who that is now.

11 **Q. Okay. Alvin Greaves is a relative of**

12 **Mr. Jordan?**

13 A. I -- I think that's true.

14 **Q. That's your belief?**

15 A. Yes.

16 **Q. And do you know why DFFS is borrowing hundreds**

17 **of thousands of dollars from Mr. Jordan's family?**

18 A. I believe if -- if I'm correct about that,

19 that it -- that it was borrowing money to make it through

20 the quarter and then paying it back at the end of each

21 quarter; and that that was money that was being advanced

22 by Richard Jordan from his family to supplement the

23 quarter at that time.

24 **Q. And in 2007 on an annual basis, how much did**

25 **DFFS make in fees, management fees?**

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1 A. Probably around \$2 million.

2 **Q. And fees were paid quarterly; correct?**

3 A. I shouldn't have said.

4 Yes.

5 **Q. And so DFFS couldn't pay its bills off of half**

6 **a million dollars a quarter?**

7 A. I -- I -- I don't know.

8 **Q. Well, you're the CEO of the firm; correct?**

9 A. Yes.

10 **Q. Were you aware of the firm's financial**

11 **situation?**

12 A. No.

13 **Q. Why not?**

14 A. My duties are -- have always been to be the

15 head of the investment committee and to do the marketing

16 of the company, which I was not doing much of at the time

17 because I was spending all of my time trying to run

18 BizRadio. And between -- between managing the portfolio

19 and the research and the trading and running BizRadio and

20 having to travel quite a bit, I was not doing the

21 accounting.

22 **Q. Fair.**

23 **Although this is more than merely an**

24 **accounting issue. This is a firm that makes \$2 million a**

25 **year borrowing hundreds of thousands of dollars a year to**

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1 **make it through. That -- that -- that's more than just**

2 **an accounting glitch. That's a colossal mismanagement of**

3 **funds.**

4 MR. STANTON: That's not quite true.

5 MR. FUQUA: Objection to form.

6 MR. STANTON: Wait until he asks a

7 question, Dan.

8 **Q. (By Mr. Besen) Did you always get the money**

9 **you expected to get in terms of the management fee**

10 **distribution from DFFS?**

11 A. Yes.

12 **Q. Always came on time when it was supposed to**

13 **come?**

14 A. Yes.

15 **Q. So you didn't really care about the finances**

16 **of DFFS, did you, beyond that?**

17 A. Is there a question?

18 **Q. Yeah.**

19 **Did you -- did you pay attention or care**

20 **about the finances of your firm?**

21 A. I cared.

22 **Q. Not enough to know how they were actually**

23 **doing, though; correct?**

24 A. I cared a lot.

25 **Q. Okay. How did you manifest your great care**

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1 **for the financial condition of DFFS?**

2 A. By doing my job the best way I knew how.

3 **Q. Okay. And as CEO you were responsible for the**

4 **whole firm; correct?**

5 A. Yes.

6 **Q. You were the top dog?**

7 A. Yes.

8 **Q. And part of doing your job as CEO the best you**

9 **could was just not paying attention to the firm's**

10 **quarterly finances? Is that -- is that what you're**

11 **testifying to?**

12 A. Yes.

13 **Q. Okay. And -- and who would have been**

14 **responsible for the --**

15 A. I -- I -- I -- you're -- you're characterizing

16 this as not paying attention to. The company was paying

17 its bills. I didn't know that all this was happening

18 that you've shown me, but the company was paying its

19 bills and I would have cared if it wasn't.

20 **Q. So you would have cared greatly if you had**

21 **known your clients' own money was being loaned to DFFS so**

22 **it could pay its bills?**

23 A. I don't believe Greaves is a client.

24 **Q. Okay. But KCM certainly raised money from**

25 **DFFS clients, and KCM certainly advanced significant**

<p style="text-align: right;">Page 49</p> <p>1 funds so DFFS could pay its bills. I'm happy to show it 2 to you in here and we will go through it. 3 A. Yeah, excuse me. 4 I specifically know that at the time that 5 the money was being advanced from Kaleta Capital 6 Management to DFFS -- I know this now. I didn't really 7 know the mechanics of it back then, but I know now -- 8 and -- and I discussed it in part back then. I don't 9 remember the exact time. But I -- specifically, money 10 that was advanced to Frishberg Financial Services from 11 Kaleta Capital Management was nonclient money, kept 12 segregated and -- and accounted for separately. And 13 client money was not lent to DFFS. 14 Q. And you're testifying that you know that now 15 or you're testifying that -- 16 A. I'm testifying that when it came to light that 17 money had been advanced from Kaleta Capital Management 18 that I asked specifically, "Are we borrowing client 19 money?" And re -- and the answer was the monies are -- 20 there's \$1.8 million or \$2 million in nonclient fees. It 21 is kept separately. And our borrowing was significantly 22 less than that and we were not borrowing client money. 23 Q. And you asked this question in the fall of 24 2009 when you knew that Al Kaleta was under investigation 25 by the SEC; correct?</p>	<p style="text-align: right;">Page 51</p> <p>1 went and asked Kaleta, "Is that true, are we borrowing 2 client money?" 3 He said, "No, we are not borrowing client 4 money. We have 1.9 or \$2 million in nonclient money. 5 Our -- we are borrowing much less than that and we are 6 not using client money." 7 Q. And when Rick Jordan brought this to your 8 attention in December of 2008, did you know at that time 9 that KCM was loaning money to DFFS? 10 A. When? Before or after what? 11 Q. Well, Mr. Jordan comes to you and says, "I'm 12 concerned about borrowing client money." 13 A. Well -- 14 Q. We've established that. 15 A. At that time, he told me who we were borrowing 16 it from, yes. 17 Q. So that's when you learned -- 18 A. Yes. 19 Q. -- for the first time that KCM was loaning 20 money to DFFS? 21 A. I don't remember. 22 Q. That's the first time you recollect learning? 23 A. Yes. 24 Q. And did you know or did Mr. Kaleta tell you 25 the magnitude of the amount of money being borrowed from</p>
<p style="text-align: right;">Page 50</p> <p>1 A. No. 2 Q. When did you ask that question? 3 A. Much earlier. 4 The -- one time that I asked that I know 5 was when Richard Jordan brought it up to me in around 6 December of 2008. 7 Q. When he told you he was -- 8 A. Concerned. 9 Q. -- about borrowing client money to fund the 10 firm -- 11 A. Right. 12 Q. -- correct? 13 A. Yes. 14 Q. Is that -- is that an accurate representation 15 of what he told you? 16 A. He told me he was concerned about borrowing 17 client money to fund the firm. 18 Q. Okay. And that would be a pretty alarming bit 19 of news if I were the CEO of an investment advisor. 20 A. Yes, correct. 21 Q. So what did you do to follow up on that? 22 A. I asked specifically of Kaleta, "Are we doing 23 that?" Up until that time it was Jordan's job to 24 supervise that and make sure about the financing. 25 When he expressed that concern to me, I</p>	<p style="text-align: right;">Page 52</p> <p>1 KCM by DFFS? 2 A. I don't remember. 3 Q. Sitting here today, sir, does it -- do you 4 have an understanding of why the firm was borrowing 5 hundreds of thousands of dollars a year when it was 6 making 2, \$3 million a year in fees? 7 A. Yes. 8 Q. Okay. Can you explain that to me, please. 9 A. It was paying wildly above-market salaries and 10 paychecks to the principals who were running the 11 day-to-day operation of the firm. It was buying 12 expensive -- outrageously expensive furnishings and 13 things like that. It was wasting money that it didn't 14 have to waste. 15 Q. Car payments maybe? Was it making car 16 payments for people? 17 A. There was a lease payment that was made on 18 behalf of my car. It was deducted from my fees that I 19 was supposed to get contractually, and it did not 20 increase the expenses of the firm. Money would have 21 either been paid to me and I paid the car payment. But 22 for tax reasons, it was advised that the car be leased by 23 the company. 24 Q. Okay. So that's the -- the 935 -- 25 A. That did not reduce the --</p>

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1 **Q. Okay.**
 2 A. -- revenues of the firm.
 3 **Q. Not arguing with you about that, sir.**
 4 **But that's the \$935 a month Mercedes**
 5 **loan that --**
 6 A. Right.
 7 **Q. -- appears --**
 8 A. Correct.
 9 **Q. -- throughout the general ledger?**
 10 **And then the car payment to IBC Bank on**
 11 **behalf of your wife, I assume, came out of your --**
 12 A. Correct.
 13 **Q. -- management fee also --**
 14 A. That's correct.
 15 **Q. -- one or the other?**
 16 A. That's right.
 17 **Q. And what did --**
 18 A. Came out of it. My management fee was reduced
 19 by the amount of expense on my behalf that the -- yes.
 20 **Q. And while her name is on my mind, what did**
 21 **Mrs. Frishberg do at DFFS?**
 22 A. She was always watching, always helping,
 23 always supervising. She was the producer of my radio
 24 program. She was involved in creating the events that
 25 DFFS held and many other things.

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1 **Q. So always watching, always present, always**
 2 **helping. What does -- I get it was a small office. Can**
 3 **you put a little color on that for me? Was she kind of**
 4 **your eyes and ears around the office?**
 5 A. Yes. Eyes, ears, and mouth.
 6 **Q. And -- and she would plan the events, the**
 7 **talks or whatever you would do, kind of that was part of**
 8 **the marketing plan, right --**
 9 A. Help.
 10 **Q. -- you'd host a dinner?**
 11 A. Yes.
 12 **Q. And then the radio program, was that an**
 13 **expense -- was that ever considered an expense or a part**
 14 **of DFFS or was that really a BizRadio?**
 15 **You said she was the producer of your --**
 16 **your radio show. I'm just trying to figure out how that**
 17 **interacts with DFFS.**
 18 A. My being well-known and having esteem in the
 19 community was good for DFFS. It created good public
 20 relations. It was in the interest of DFFS to put on the
 21 best radio program it could.
 22 **Q. And did Mrs. Frishberg always work at DFFS?**
 23 A. I don't know --
 24 **Q. I mean, I -- that's a bad question. I**
 25 **apologize.**

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1 **From 2005 through 2010, did**
 2 **Mrs. Frishberg always work at DFFS? Was she always an**
 3 **employee?**
 4 A. I don't think she was an employee of DFFS.
 5 **Q. Okay. Well, what was she an employee of?**
 6 A. BizRadio.
 7 **Q. So it's your testimony that she never received**
 8 **a salary from DFFS?**
 9 A. I'm not sure.
 10 **Q. Okay. You just don't know?**
 11 A. I don't know.
 12 **Q. Okay. Would it surprise you to learn that she**
 13 **received a salary from DFFS and BizRadio?**
 14 A. Not particularly.
 15 **Q. Would it surprise you --**
 16 A. No.
 17 **Q. No.**
 18 **But in your mind she was only an employee**
 19 **of BizRadio?**
 20 A. I'm not sure how to answer that. She -- she
 21 helped in every area. She was -- helped -- helped in
 22 every area she could.
 23 **Q. And as your eyes and ears, would she tell you**
 24 **if there was something abnormal or not right or hinky or**
 25 **funny going on in the office?**

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1 A. She would try to, we would hope. That's a
 2 "yes."
 3 **Q. But there was nothing abnormal about Al Kaleta**
 4 **meeting with clients that would have raised her awareness**
 5 **of the KCM note offering?**
 6 A. No.
 7 **Q. Because Al Kaleta was, you know, eventually**
 8 **part owner of the firm, DFFS; correct?**
 9 A. Yes.
 10 **Q. And was --**
 11 A. Yes.
 12 **Q. And was meeting with DFFS clients about their**
 13 **investments --**
 14 A. Yes.
 15 **Q. -- regularly?**
 16 A. Yes.
 17 **Q. That was his role and function within the**
 18 **firm, correct, to --**
 19 A. Yes.
 20 **Q. -- meet with the clients?**
 21 A. Yes.
 22 **Q. After he was licensed, he reviewed their**
 23 **financial plans; correct?**
 24 A. Yes.
 25 **Q. And would meet with them about allocations**

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1 **within their investments?**
 2 A. Yes.
 3 MR. BESEN: Can we take a little break?
 4 MR. FUQUA: Sure.
 5 MR. BESEN: Go off the record for a
 6 second.
 7 THE VIDEOGRAPHER: Off the record,
 8 11:10 a.m.
 9 (Recess.)
 10 THE VIDEOGRAPHER: Back on the record,
 11 1:19 p.m.
 12 MR. BESEN: I'm going to hand you what
 13 I'm going to mark as Exhibit No. 2, Mr. Frishberg. Ask
 14 the reporter to mark it.
 15 (Exhibit No. 2 marked.)
 16 **Q. (By Mr. Besen) Mr. Frishberg, have you seen**
 17 **this document before?**
 18 A. Pardon me?
 19 **Q. Have you seen this document before?**
 20 MR. FUQUA: Oh, no.
 21 MR. STANTON: Before we start, it has
 22 been brought to my attention that there's an asset that
 23 is not on this list.
 24 MR. BESEN: Okay.
 25 MR. STANTON: And I can -- the reason

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1 it's not on this list is that it's an unliquidated
 2 contingent claim for property damage to a house that was
 3 previously owned by the Frishbergs that I'm handling on
 4 their behalf.
 5 MR. BESEN: It's an insurance claim?
 6 MR. STANTON: It's an insurance claim for
 7 Ike damage.
 8 MR. BESEN: For what damage? I'm sorry.
 9 MR. STANTON: Hurricane Ike.
 10 MR. BESEN: Okay.
 11 MR. STANTON: You're not from Houston.
 12 MR. BESEN: That's right.
 13 THE WITNESS: It also came to my
 14 attention that there are two \$500 credit cards charged by
 15 my daughter in California that are also -- I'm the
 16 guarantor for that are not on here.
 17 MR. STANTON: The -- the estimated amount
 18 of that claim --
 19 MR. BESEN: Yeah.
 20 MR. STANTON: -- that I've given to
 21 Farmers, I think, is 37,000. But it's -- it's contingent
 22 and unliquidated. Very.
 23 **Q. (By Mr. Besen) And, Mr. Frishberg, you were**
 24 **saying there's...**
 25 MR. FUQUA: Thanks, Pete.

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1 A. Two \$500 charges to furniture and department
 2 store from my daughter in California.
 3 **Q. (By Mr. Besen) Okay. So that would go under?**
 4 A. Liability.
 5 **Q. Well, yeah. And under "H" in the -- Section H**
 6 **in the asset statement on page 4, we would add those two**
 7 **charge cards on there for under \$1,000, 500 apiece --**
 8 A. Yes.
 9 **Q. -- ballpark?**
 10 A. 500 each roughly.
 11 **Q. Okay. With -- with those adjustments, sir,**
 12 **are you confident that this asset statement is accurate**
 13 **and complete to the best of your ability?**
 14 A. I'm never -- well, you're asking me am I
 15 confident. I'm never confident about accounting stuff,
 16 but I -- to the best of my ability, yes.
 17 **Q. Okay. And if we have a hearing on June 22nd**
 18 **in front of Judge Atlas, you're going to take the --**
 19 **you're going to take the stand and you're going to**
 20 **testify under oath that information in this statement is**
 21 **accurate?**
 22 A. To the best of my ability, yes.
 23 MR. BESEN: And I don't know whether this
 24 was produced inadvertently or intentionally, Dick, but
 25 the very last page of this statement when it came to me

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1 looks like a balance sheet from September of 2008. I
 2 don't know whether that was meant to be included or was
 3 just something else that was provided.
 4 MR. FUQUA: No. I think it was meant to
 5 be included.
 6 MR. BESEN: Okay. I'm just making sure
 7 before I asked about it.
 8 MR. FUQUA: Because what we were
 9 trying -- because what we were trying to do is give you
 10 as good and accurate a picture as we could come up with.
 11 MR. BESEN: Okay. Okay.
 12 **Q. (By Mr. Besen) And, Mr. Frishberg, we're**
 13 **going to take a little jaunt into this asset statement**
 14 **and some of your financials.**
 15 **Tell me first before we get started --**
 16 A. Could I -- this date is not --
 17 MR. FUQUA: I know. It's 2009.
 18 THE WITNESS: This carried over. I know,
 19 but this date was carried over on the form. I believe
 20 that this is the one that I prepared for you recently,
 21 not 2008. I think I took a form that came from 2008 and
 22 put correct numbers in it.
 23 MR. FUQUA: Oh. That's good.
 24 THE WITNESS: I think -- I think this is
 25 talking about now because this is talking about deferred

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<p>1 salary from BizRadio, which is in the last year. 2 MR. FUQUA: Okay. 3 THE WITNESS: So I -- I think that that 4 September 2008 is -- 5 MR. FUQUA: -- the document -- 6 THE WITNESS: September 2008 is a typo. 7 MR. BESEN: Yeah. We'll nail it down. 8 That's very helpful. 9 Q. (By Mr. Besen) So before -- before we get 10 into this, I just want to understand a little more from a 11 background standpoint. You are -- you are married; 12 correct? 13 A. Yeah. 14 Q. Okay. And were there any separate property 15 that came into the marriage with you or with your wife 16 that we need to be aware of? 17 A. Yeah. My wife had the belongings of her 18 family. 19 Q. Okay. And -- and -- 20 A. Father and mother. 21 Q. Okay. And would that be anything of 22 significant value or is that the ordinary furniture, home 23 furnishings, that type of stuff? 24 A. I don't know what the values are. 25 Q. Okay. But -- fair enough.</p>	<p>1 Q. And you believe that this reflects your 2 financial situation presently or... 3 A. A month or so ago. 4 Q. Okay. Okay. Go ahead and turn back to the 5 very first page of your asset statement, Exhibit 2 under 6 "Assets." 7 A. Yes. 8 Q. Okay. "Loans or Notes Receivable, BizRadio," 9 \$317,000, what does that consist of, sir? 10 A. Money that I specifically lent to BizRadio on 11 behalf of them, paid payrolls and things, lent money on 12 behalf of BizRadio and deferred pay. 13 Q. Okay. And now if you turn to the last page of 14 your asset statement, sir, it says, "Note receivable one 15 year. \$125,000. Amount advanced to BizRadio." 16 And then if we go down, the next entry is 17 a deferred salary for you of \$110,000. So that's 225. 18 And we've got 317 on your asset statement. 19 Were you including -- 20 A. This was prepared at that time -- I'm sorry. 21 Ask the question. 22 Q. I'm sorry. I should have let you answer the 23 question, but let me just go ahead and ask. 24 Does -- do you think that 317 includes 25 the amount owed to your wife as well?</p>
<p>1 What types of belongings did she have? 2 Did she have, for example, a diamond ring? Or was it 3 more furniture and those types of things? 4 A. Yeah. It was some jewelry -- I'm not sure 5 what else. 6 Q. Okay. And post-nuptials, have there been any 7 agreements or any -- any documents entered that create 8 separate property or -- or section off your assets from 9 your wife's? 10 A. No. 11 Q. So all the accounts are held jointly? 12 A. No. 13 Q. No, they're not? 14 A. No, they're not. 15 Q. Okay. But even if it were your wife's 16 account, solely in her name, it would be community 17 property? 18 A. I -- I don't know. 19 Q. Okay. Okay. Well, let's -- let's -- 20 Mr. Frishberg, since you brought it up, let's turn to the 21 last page of Exhibit 2, which is the balance sheet. 22 And it's -- it's your testimony, sir, 23 that that September 2008 date is a carryover from a prior 24 form? 25 A. Yes.</p>	<p>1 A. Yes. 2 Q. Then if you stay on the back page, under Other 3 Assets, you have "Personal property, \$250,000." Do you 4 believe that's accurate? 5 A. No. 6 Q. Okay. Why do you believe it's not accurate? 7 A. Because I don't think I could sell the 8 property for that amount. 9 Q. Okay. And so -- well, if you turn to the 10 first page under your Assets where you've got furniture 11 and household goods at 43,000, automobiles at 32 -- I 12 believe the only personal property on here. 13 A. Uh-huh. 14 Q. So you believe your personal property is 15 actually worth \$74,000? 16 A. Yeah -- yes. 17 Q. Have you disposed of any property, sir? 18 A. No. 19 Q. Have you transferred any property? 20 A. No. 21 MR. STANTON: Since when? 22 A. Oh. Have I disposed of any property? Not in 23 the last six months, I would say. 24 Q. (By Mr. Besen) And you have two children at 25 home with you still, sir?</p>
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1 A. Yes.
 2 **Q. And how old are they?**
 3 A. 16 and 11.
 4 **Q. And do they both attend private schools?**
 5 A. Yes.
 6 **Q. And how much do you pay monthly in tuition for**
 7 **their schools?**
 8 A. Probably 1500 each.
 9 **Q. Sir, I don't need exact numbers, but can you**
 10 **tell me approximately how much money you made in 2007?**
 11 A. 600,000. I -- I -- more or less.
 12 **Q. Okay. And you derived income from --**
 13 A. Or 500,000. I -- I mean, I --
 14 **Q. Yeah. And I'm not -- I'm not trying to nail**
 15 **you on a specific number.**
 16 **But you derived your income from DFFS;**
 17 **correct?**
 18 A. Yes.
 19 **Q. From BizRadio --**
 20 A. Yes.
 21 **Q. -- correct?**
 22 **Any other sources of income in 2007?**
 23 A. No.
 24 **Q. Okay. In 2008 do you think you made around**
 25 **the same?**

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1 A. Something like that.
 2 **Q. Okay. And again from DFFS?**
 3 A. (Moving head up and down.)
 4 **Q. I need you to say "yes." I'm sorry.**
 5 A. Yes.
 6 **Q. And from BizRadio; correct?**
 7 A. Yes.
 8 **Q. Any other sources of income in 2008?**
 9 A. No. Not that I can think of.
 10 **Q. Okay.**
 11 **Okay. And then you also -- do you still**
 12 **own a personal residence?**
 13 A. No.
 14 **Q. Okay. When did you sell it?**
 15 A. Oh. I sold -- I sold one.
 16 **Q. Okay. And --**
 17 A. Somewhere in there, there was a profit so --
 18 in my answer about other income.
 19 **Q. And that was in 2009. I didn't ask about this**
 20 **earlier. Right, you actually sold your --**
 21 A. I believe we sold the house '08 or '09 or '07
 22 or something.
 23 **Q. And that was the property at 6634 Voss Road?**
 24 A. Yes.
 25 **Q. And where do you live now, sir?**

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1 A. 3019 Rosemary Park Lane.
 2 **Q. And you're renting?**
 3 A. Yes.
 4 **Q. Okay. And what's your rent?**
 5 A. 9,000.
 6 **Q. A month?**
 7 A. Yes.
 8 **Q. Mind if I ask how big your apartment is?**
 9 A. My apartment?
 10 **Q. Or a condominium or home, whatever you're**
 11 **renting.**
 12 A. Home. I'm sorry.
 13 **Q. How many square feet is your home?**
 14 A. It's almost 6,000.
 15 **Q. Do you have knowledge of the Receiver's**
 16 **attempt to serve your wife with a subpoena?**
 17 A. No.
 18 **Q. You don't have any knowledge of anybody**
 19 **attempting to serve Mrs. Frishberg at all?**
 20 A. (Moving head side to side.)
 21 MR. STANTON: Answer his question --
 22 A. No.
 23 MR. STANTON: -- yes or no.
 24 THE WITNESS: No.
 25 **Q. (By Mr. Besen) Okay. Never heard about an**

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1 **attempt of service from a doorman?**
 2 A. No.
 3 MR. BESEN: I'm going to hand you what
 4 I'm going to have marked as Exhibit 3.
 5 (Exhibit No. 3 marked.)
 6 **Q. (By Mr. Besen) Mr. Frishberg, for the record,**
 7 **can you just tell me what Exhibit 3 is?**
 8 A. Pardon me?
 9 **Q. Can you just tell me what Exhibit 3 is?**
 10 A. It is a bank statement.
 11 **Q. From the International Bank of Commerce?**
 12 A. Yes.
 13 **Q. And the customer number is 6000617933; is that**
 14 **correct? It's in the upper, right-hand corner.**
 15 A. Yes.
 16 **Q. And the account is styled Elisea T. Frishberg.**
 17 **Am I saying that right, Elisea? What is it?**
 18 A. Elisea T. Frishberg.
 19 **Q. Elisea T. Frishberg. Thank you.**
 20 **Or Daniel S. Frishberg or Stephanie P.**
 21 **Frishberg.**
 22 **Stephanie is your daughter; correct?**
 23 A. Yes.
 24 **Q. Okay. And if we go into the electronic**
 25 **activity section of the statement, we see an incoming**

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1 wire from Daniel Frishberg Financial Services in the
 2 amount of 52,288.56; correct?
 3 A. Pardon me? 52,000, yeah. 53,000, yeah.
 4 **Q. Okay. And -- and do you know what that wire**
 5 **was for?**
 6 A. 10/14? I'm not sure. No, I don't.
 7 10? 11/12. Yeah. It would be for my --
 8 probably my -- it would be fees.
 9 **Q. Your portion of the management fees from DFFS?**
 10 A. Part of -- yeah, some portion of my -- of my
 11 share, yes.
 12 **Q. Okay. And then right underneath that on**
 13 **October 30th, there's another incoming wire from Stewart**
 14 **Title Company.**
 15 A. Right.
 16 **Q. Do you see that?**
 17 A. Uh-huh.
 18 **Q. Can you tell me the amount of that wire?**
 19 A. Yes.
 20 **Q. Okay. Could you just read it out loud so the**
 21 **court reporter can record that?**
 22 A. Pardon me?
 23 **Q. Can you just read the amount of that wire**
 24 **transfer?**
 25 A. \$238,910.

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1 **Q. Okay. Do you believe that's the profit from**
 2 **the sale of your home on Voss Road?**
 3 A. I believe so.
 4 **Q. And do you know or have any existing or prior**
 5 **relationship with the purchaser of your home on Voss**
 6 **Road?**
 7 A. Did I have a prior relationship?
 8 **Q. Yes.**
 9 A. I rented from them before I bought it.
 10 **Q. So you bought the property on Voss Road from**
 11 **the landlord?**
 12 A. Yes.
 13 **Q. Okay. And what had you purchased the home**
 14 **for? What was the price you purchased the home for?**
 15 A. 600-something-thousand.
 16 **Q. Okay. And you sold it to them for --**
 17 A. Sold it.
 18 **Q. -- you sold to -- back to the landlord?**
 19 A. No.
 20 **Q. Okay. I think we missed each other.**
 21 **Who did you sell your home to?**
 22 A. A lady whose name I don't remember.
 23 **Q. Okay. You didn't --**
 24 A. Not related to the landlord.
 25 **Q. Not related to the landlord.**

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1 **And did you -- Rhonda Hartman is her**
 2 **name. Did you know Mrs. Hartman in any way before you**
 3 **sold --**
 4 A. No.
 5 **Q. -- the home to her?**
 6 A. No.
 7 **Q. Do you have any ongoing or existing**
 8 **relationship with her right now?**
 9 A. She came as a surrogate grandmother for my son
 10 at school to a part -- to a grandparents' event.
 11 **Q. So is she close with your family?**
 12 A. Not -- not really, no.
 13 **Q. You so had a stranger go to your son's --**
 14 A. Yeah.
 15 **Q. -- grandfather day?**
 16 A. Kind of, yeah.
 17 **Q. I assume that was so he wouldn't -- not have a**
 18 **grand-person there?**
 19 A. His grandparents just died in the last couple
 20 of years. He was crying on the way to school because
 21 there was grandparents' day and he was afraid to tell me
 22 about it. So we got a couple of different old people to
 23 go with him.
 24 **Q. Okay. And was that your only contact outside**
 25 **of the purchase or sale of the home with -- with**

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1 **Ms. Hartman?**
 2 A. Yes.
 3 **Q. And Ms. Hartman is elderly, I presume, she**
 4 **went to grandparents' day?**
 5 A. Grandmother type.
 6 **Q. Grandmother type.**
 7 **Okay. And Ms. Hartman had the resources**
 8 **to purchase and an \$800,000-plus home?**
 9 A. Yes.
 10 **Q. If we go back to Exhibit 3, still under the**
 11 **Electronic Activity section, on November 12th, there's an**
 12 **outgoing wire to your wife in the amount of \$230,000. Do**
 13 **you see that?**
 14 A. Yes.
 15 **Q. I don't have any records of the account to**
 16 **which that money was wired to. Do you know what account**
 17 **that money would have been wired to?**
 18 A. No.
 19 **Q. Do you know what your wife did with that**
 20 **money?**
 21 A. No.
 22 **Q. Do you know if your wife still has that money?**
 23 A. She does not. I -- I know she doesn't have
 24 it.
 25 **Q. Okay. What was done with that \$230,000?**

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<p>1 A. I'm sure it was used to pay debts and to live.</p> <p>2 Q. Okay. More importantly, can you point to me</p> <p>3 on Exhibit 2 which account that \$230,000 would have been</p> <p>4 wired to?</p> <p>5 A. I -- I don't know.</p> <p>6 Q. Do you think any of them?</p> <p>7 A. I -- I don't know anything about any of them.</p> <p>8 Q. You don't know anything about any of the bank</p> <p>9 accounts you've identified in your asset statement?</p> <p>10 A. No.</p> <p>11 Q. That's your testimony?</p> <p>12 A. That's correct.</p> <p>13 Q. Who would know the answers to all these</p> <p>14 questions about the bank accounts on your asset</p> <p>15 statement?</p> <p>16 A. I guess my wife would.</p> <p>17 Q. Okay. Is she going to accept service of the</p> <p>18 subpoena when we serve her next time for her deposition?</p> <p>19 MR. FUQUA: Objection to the form of the</p> <p>20 question. That's speculation, number one. And I'm not</p> <p>21 aware, other than your question, that anybody is trying</p> <p>22 to serve her.</p> <p>23 MR. BESEN: Well, I believe there's a</p> <p>24 proof of service on file.</p> <p>25 MR. FUQUA: Is there?</p>	<p>1 instructed not to received it. And accordingly, there is</p> <p>2 a proof of sub service filed by the licensed process</p> <p>3 server. That's all I can say about it.</p> <p>4 MR. FUQUA: Well, but my point is --</p> <p>5 MR. TAYLOR: Yeah.</p> <p>6 MR. FUQUA: -- I don't know anything</p> <p>7 about it and -- and --</p> <p>8 MR. BESEN: That's okay. We'll --</p> <p>9 we'll -- we'll reach out and we'll schedule a time and --</p> <p>10 MR. FUQUA: That's fine.</p> <p>11 MR. BESEN: -- we'll talk to</p> <p>12 Ms. Frishberg -- Mrs. Frishberg, all right?</p> <p>13 MR. FUQUA: Okay.</p> <p>14 MR. BESEN: It's not even an issue.</p> <p>15 Q. (By Mr. Besen) Mr. Frishberg, I want you to</p> <p>16 turn to the next page on Exhibit 3.</p> <p>17 MR. STANTON: There's nothing showing on</p> <p>18 the electronic filing that you filed any proof of service</p> <p>19 or even that there is anything.</p> <p>20 MR. TAYLOR: Now, I think there's --</p> <p>21 MR. BESEN: Gentlemen, you know what,</p> <p>22 I've got limited time. We all have limited time. Let's</p> <p>23 deal with this afterwards, please.</p> <p>24 Q. (By Mr. Besen) The last page of the bank</p> <p>25 statement, Exhibit 3, sorry.</p>
<p>1 MR. TAYLOR: Yes.</p> <p>2 MR. FUQUA: I haven't seen it.</p> <p>3 MR. STANTON: You served her with a</p> <p>4 deposition notice or what did you serve her with?</p> <p>5 MR. BESEN: Subpoena.</p> <p>6 MR. STANTON: To do what?</p> <p>7 MR. BESEN: Produce records, I believe.</p> <p>8 MR. TAYLOR: And appear for a deposition.</p> <p>9 MR. STANTON: And do we have a copy of</p> <p>10 that?</p> <p>11 MR. FUQUA: I don't. I mean, I've never</p> <p>12 seen it. That's why I asked the question.</p> <p>13 MR. STANTON: How could you serve her --</p> <p>14 yeah. How could you serve her with something that we</p> <p>15 didn't even have a copy of?</p> <p>16 MR. TAYLOR: Well --</p> <p>17 MR. STANTON: And even if we did, did you</p> <p>18 ask whether we would produce her voluntarily for a</p> <p>19 deposition?</p> <p>20 MR. TAYLOR: You know, I'm not here to</p> <p>21 argue with you, Mr. Stanton. I will tell you that a</p> <p>22 licensed process server attempted to serve a deposition</p> <p>23 subpoena on Mrs. Frishberg at their garden home</p> <p>24 community. The attendant, an adult of appropriate legal</p> <p>25 age, kicked the subpoena into the street and said he was</p>	<p>1 There's some copies of some handwritten</p> <p>2 entries into the account; correct? Okay. And I -- I'm</p> <p>3 going to focus on the middle two. The title of those</p> <p>4 documents is called an "Affiliate Debit." Do you see</p> <p>5 those -- those two forms?</p> <p>6 Is that your wife's handwriting on those</p> <p>7 forms?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And if you -- if you look down in the</p> <p>10 bottom, the account number is there handwritten by your</p> <p>11 wife. And then there's a little section that says "to"</p> <p>12 and then it says "147." And the amount is \$30,000. Do</p> <p>13 you see what I'm talking about, sir?</p> <p>14 A. I do. I see it.</p> <p>15 Q. Okay. And if you go up under the transaction</p> <p>16 codes on that same document, 147 is a teller cash</p> <p>17 withdrawal. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So your wife withdrew \$30,000 in cash</p> <p>20 on October 17th, 2009. Do you know why she would have</p> <p>21 done that?</p> <p>22 A. No.</p> <p>23 Q. Is that normal activity?</p> <p>24 A. Yes. Yes.</p> <p>25 Q. Your wife would have routinely withdrawn</p>

Page 77	Page 79
<p>1 \$30,000 from the bank account. That would be normal</p> <p>2 activity for her?</p> <p>3 A. Yes.</p> <p>4 Q. What would she possibly need \$30,000 in cash</p> <p>5 for, Mr. Frishberg?</p> <p>6 A. She does a lot of things in cash. She gets --</p> <p>7 she does a lot of things in cash. She's Filipino.</p> <p>8 Q. Okay. And then on October 8, 2009, \$28,008,</p> <p>9 do you see that, sir?</p> <p>10 A. Yes.</p> <p>11 Q. And you don't know what she was using that</p> <p>12 money for?</p> <p>13 A. No.</p> <p>14 Q. But the transaction doesn't surprise you or</p> <p>15 alarm you in any way?</p> <p>16 A. No.</p> <p>17 MR. BESEN: Mark this Exhibit 4.</p> <p>18 (Exhibit No. 4 marked.)</p> <p>19 Q. (By Mr. Besen) Can you identify Exhibit 4 for</p> <p>20 the record, please, Mr. Frishberg.</p> <p>21 A. Bank of America statement.</p> <p>22 Q. Okay. And the account number is</p> <p>23 5860 1617 3076. It's in the upper right-hand corner.</p> <p>24 (Indicating.)</p> <p>25 A. Yes.</p>	<p>1 out the asset statement?</p> <p>2 A. Yes. She sat down and spent a long time on</p> <p>3 this and went through all of her papers and gave every</p> <p>4 account that she could probably think of, and I don't</p> <p>5 know what that other account is.</p> <p>6 Q. Would you presume that that has to be an</p> <p>7 account in your or your wife's name?</p> <p>8 A. I don't know.</p> <p>9 MR. STANTON: Don't presume anything.</p> <p>10 MR. FUQUA: Don't -- don't be guessing.</p> <p>11 We've already agreed you won't be guessing. So tell him</p> <p>12 you don't know.</p> <p>13 A. I don't know.</p> <p>14 Q. (By Mr. Besen) Mr. Frishberg, I'm going to</p> <p>15 hand you what's been marked as Exhibit 5.</p> <p>16 (Exhibit No. 5 marked.)</p> <p>17 A. Where -- where is that overdraft?</p> <p>18 Q. (By Mr. Besen) It's in the italics under that</p> <p>19 item.</p> <p>20 A. Okay.</p> <p>21 Q. Okay. And I'm handing you, Mr. Frishberg,</p> <p>22 what's been marked as Exhibit 5.</p> <p>23 A. Yeah.</p> <p>24 Q. Exhibit 5 is a bank statement from Bank of</p> <p>25 America for Account Number 5860 1617 3076 for the period</p>
<p>Page 78</p> <p>1 Q. And the account is styled in your wife's name</p> <p>2 only?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And if we turn the next page --</p> <p>5 A. Yes.</p> <p>6 Q. -- it looks like -- my review of this</p> <p>7 statement -- I'm just asking you to please confirm</p> <p>8 this -- this was the opening statement of this account.</p> <p>9 There was \$6,000 deposited into this account. This is</p> <p>10 the first statement. There was no balance before this</p> <p>11 account was opened?</p> <p>12 A. Beginning balance, yes.</p> <p>13 Q. And if you look -- if you look -- stay on that</p> <p>14 second page in the Your Account At a Glance section, it</p> <p>15 says, "Your account has overdraft protection provided by</p> <p>16 deposit account number 5860 1236 5383."</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Can you show me on your asset statement</p> <p>19 where account 5860 1236 5383 is disclosed?</p> <p>20 A. I -- I don't know anything about any of these</p> <p>21 accounts to tell you the truth. I think we have done</p> <p>22 everything we could to disclose every account that we</p> <p>23 know about, and I don't know what that account is, that</p> <p>24 583 whatever. I don't know the answer to that.</p> <p>25 Q. Did you ask your wife when you were filling</p>	<p>Page 80</p> <p>1 July 23rd, 2009 through August 20th, 2009. And if you</p> <p>2 look on the second page of that statement under the</p> <p>3 MyAccess Checking Additions, in the middle there, there's</p> <p>4 a wire in from BusinessRadio Network, LP, in the amount</p> <p>5 of \$10,510. Do you see that, sir?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Okay. And in the note it says, "Reimbursement</p> <p>8 for Latesha" -- I'm not even going to try to say that</p> <p>9 name. I'll spell it -- "B-U-R-R-O-U-G-H-S-A-P-R-I-L</p> <p>10 payment." Do you know what that's about, Mr. Frishberg?</p> <p>11 A. No.</p> <p>12 "Latesha Burroughs, April payment," I --</p> <p>13 I don't know what that would be.</p> <p>14 Q. Okay. Okay. And if you go to page 5 of 8 of</p> <p>15 the statement.</p> <p>16 A. Page 5.</p> <p>17 Q. There's a \$25,000 wire out to Albert Kaleta on</p> <p>18 July 31st. Do you see that, sir?</p> <p>19 A. Page 5. I'm not finding page 5.</p> <p>20 Q. One more to go. (Indicating.)</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Do you know what you were paying</p> <p>23 Mr. Kaleta \$25,000 for on July 31st of 2008 --</p> <p>24 A. Yes.</p> <p>25 Q. -- 2009? Excuse me.</p>

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<p>1 A. Yes.</p> <p>2 Q. What was that?</p> <p>3 A. It was, I'm sure, for -- he has -- we used his</p> <p>4 personal Platinum American Express card paying our</p> <p>5 personal bills, and we kept that payment current. And</p> <p>6 this would be payment for that. Probably for two months'</p> <p>7 worth.</p> <p>8 Q. And the American Express card, that was in</p> <p>9 Mr. Kaleta's name; correct?</p> <p>10 A. Yes.</p> <p>11 Q. And that card was not just used for your</p> <p>12 personal expenses. It was also used for the expenses of</p> <p>13 DFFS; correct?</p> <p>14 A. It was used for also the expense -- yes.</p> <p>15 Q. And --</p> <p>16 A. Well, I'm not sure if it was used for the</p> <p>17 expenses of BizRadio and DFFS probably and personal</p> <p>18 expenses.</p> <p>19 Q. Okay. Everybody -- all those expenses -- each</p> <p>20 one of those entities you just identified used</p> <p>21 Mr. Kaleta's American Express card to pay their expenses,</p> <p>22 yourself, DFFS and BizRadio?</p> <p>23 A. Yes.</p> <p>24 Q. And was the card in Mr. Kaleta's name or was</p> <p>25 it in KCM's name?</p>	<p>1 A. Personal expenses.</p> <p>2 Q. -- entertainment, shopping, clothes --</p> <p>3 A. Yes.</p> <p>4 Q. -- whatever --</p> <p>5 A. Yes.</p> <p>6 Q. -- the need of the day was?</p> <p>7 A. Right.</p> <p>8 Q. Why were you using KCM's card?</p> <p>9 A. It wasn't KCM's card. It was Al Kaleta's</p> <p>10 personal card.</p> <p>11 Q. Even a better question.</p> <p>12 Why were you using Al Kaleta's personal</p> <p>13 card?</p> <p>14 A. Because Al Kaleta had a platinum card with a</p> <p>15 good credit card and he was providing assistance in</p> <p>16 financing to all these different entities by using his</p> <p>17 platinum card, which made it convenient and easy. The</p> <p>18 accounting was good, and they kept everything separate,</p> <p>19 and it was convenient.</p> <p>20 Q. Easier than just having your own card and not</p> <p>21 having any of your personal expenses interwoven with all</p> <p>22 these other business expenses?</p> <p>23 A. Easier than that, yes.</p> <p>24 Q. Did you have the ability to get your own</p> <p>25 credit card?</p>
<p>Page 82</p> <p>1 A. It was actually -- said KCM on it, but it went</p> <p>2 by his social security number and it was his personal</p> <p>3 card.</p> <p>4 Q. And you don't know whether or not KCM used it</p> <p>5 to pay its expenses?</p> <p>6 A. I -- I -- not -- not the card I had with the</p> <p>7 number that I had. I never have any -- any dealings with</p> <p>8 KCM.</p> <p>9 Q. And -- and the card you had, did it say KCM on</p> <p>10 it as like the corporate --</p> <p>11 A. It said that on it --</p> <p>12 Q. -- and then it had your name --</p> <p>13 A. -- yes. It said that on it, but it</p> <p>14 specifically was his social security -- I'm sorry.</p> <p>15 MR. FUQUA: Promise me that you'll let</p> <p>16 him finish and then you'll answer because this reporter</p> <p>17 has asked you twice to not overrun each other.</p> <p>18 THE WITNESS: Sorry. Go ahead.</p> <p>19 Q. (By Mr. Besen) The American Express card you</p> <p>20 used for your personal expenses had your name on it as</p> <p>21 well as KCM's name; correct?</p> <p>22 A. Yes.</p> <p>23 Q. And what did you use the card for personally?</p> <p>24 A. Anything. Food.</p> <p>25 Q. For anything --</p>	<p>Page 84</p> <p>1 A. Not the platinum card.</p> <p>2 Q. You -- okay.</p> <p>3 Okay. And if we go back to Exhibit 5,</p> <p>4 underneath the wire to Al Kaleta, there's another wire</p> <p>5 out to National Financial Service.</p> <p>6 A. Yes.</p> <p>7 Q. And in the note it says for the benefit of</p> <p>8 your wife in the amount of \$10,000.</p> <p>9 A. Okay.</p> <p>10 Q. Do you know anything about an account at</p> <p>11 National Financial Service or JP Morgan Chase Bank?</p> <p>12 A. National Financial Service is a Fidelity</p> <p>13 account.</p> <p>14 Q. Okay. Does your wife have an account at</p> <p>15 Fidelity?</p> <p>16 A. I -- apparently.</p> <p>17 Q. Is that something you wouldn't know about,</p> <p>18 whether or not your wife has an account the at Fidelity?</p> <p>19 A. I -- I wouldn't know. It is something I would</p> <p>20 not know about, yes.</p> <p>21 Q. And then real quick, I just want to stay on</p> <p>22 that same page. The very last electronic transaction is</p> <p>23 to the Kinkaid School in the amount of 3,432.50. Is</p> <p>24 that -- I just want to lock us into that's your -- that's</p> <p>25 your children's school?</p>

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1 A. Yes.

2 **Q. They both go to the same school?**

3 A. Yes.

4 **Q. Okay. And that's probably pretty close to an**

5 **approximate monthly payment for their schooling?**

6 A. Maybe. I'm not sure. I think -- I think it's

7 probably some other payments in there, too.

8 **Q. Okay. Do you handle any of the finances at**

9 **your home, Mr. Frishberg?**

10 A. No. No.

11 **Q. Okay.**

12 THE VIDEOGRAPHER: If this is a good

13 time, may we have a brief break to change the tape?

14 MR. BESEN: Sure.

15 THE VIDEOGRAPHER: Off the record at

16 11:56 a.m.

17 (Recess.)

18 THE VIDEOGRAPHER: Back on the record.

19 1:24 p.m.

20 EXAMINATION

21 BY MR. MCCOLE:

22 **Q. Hi, Mr. Frishberg. My name is Timothy McCole.**

23 **I represent the United States Security and Exchange**

24 **Commission in this matter.**

25 **Can you hear me okay?**

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1 A. Somewhat, yeah.

2 MR. STANTON: Do you want to move here?

3 **Q. (By Mr. McCole) First of all, let me --**

4 THE WITNESS: Maybe I should come over

5 there.

6 MR. STANTON: Well, you're fine. You're

7 fine. You're fine because he can hear.

8 THE WITNESS: Can you talk louder, sir.

9 MR. STANTON: He's at the end of the

10 table and he's got a little hearing problem, Tim. If you

11 could just speak up.

12 MR. MCCOLE: Yes. Let me pick up the

13 receiver. Is that any better?

14 THE WITNESS: Yes.

15 **Q. (By Mr. McCole) Okay. Very good.**

16 **First of all, let me begin by thanking**

17 **you and thanking your attorneys for their --**

18 **accommodating my appearance today by phone. I apologize**

19 **for not being able to participate there in person, but I**

20 **do -- what I'd like to do is just begin by asking a few**

21 **questions --**

22 A. You quieted down again, sir.

23 **Q. -- about DFFS and sort of focus on that entity**

24 **if we could for a moment.**

25 **How did DFFS --**

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1 MR. AXELROD: Hold on for just a second.

2 MR. STANTON: Hang on, Tim. We're having

3 some technical problems here.

4 MR. AXELROD: Is it possible --

5 MR. STANTON: It's okay. I'm not worried

6 about it.

7 Mr. Frishberg, do you want to come sit

8 over here so you're closer to the phone.

9 THE REPORTER: And he needs to speak up

10 anyway because I need to hear.

11 MR. BESEN: Okay. Okay. Yeah, Tim, you

12 need to be loud, too.

13 MR. MCCOLE: Is that any better?

14 MR. BESEN: Much better.

15 **Q. (By Mr. McCole) Mr. Frishberg, can you hear**

16 **me okay?**

17 A. Yes.

18 **Q. Okay. And I can hear you as well. Thank you.**

19 **If you would, please, describe how DFFS**

20 **got its start, sir.**

21 A. We -- I was a broker with Kegler Morgan and I

22 learned that it would be better or decided that in view

23 of the way the economy was going, it would be better to

24 be a fee-based advisor. I could perform my services

25 better.

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1 So I was duly licensed for awhile. My

2 company was. It was -- it was not a corporation. I

3 applied for and received the RAA registration. And then

4 I spent a year without anything but fees to see if it

5 would work, and -- and it did. And so I gave up the NASD

6 licensing.

7 **Q. And what was the firm you were with before**

8 **DFFS was founded?**

9 A. I was with Prudential, and then I was with

10 Kegler Morgan.

11 **Q. And when was the DFFS founded?**

12 A. Well, it was -- it was at first a d/b/a. Then

13 it was incorporated sometime in early '90, mid '90s.

14 **Q. Okay. And who incorporated the entity?**

15 A. You mean what lawyer or...

16 I was the proprietor of it.

17 **Q. Well, no, not really.**

18 **Actually, who was responsible for having**

19 **the entity formed and incorporated?**

20 A. I was.

21 **Q. Okay. Who, if anyone else, played a role in**

22 **the incorporation of the entity?**

23 A. Rick Jordan and Daniel Stewart.

24 **Q. Okay. What was Mr. Jordan's role in that?**

25 A. Well, they -- they were employees of the --

<p style="text-align: right;">Page 89</p> <p>1 they were my employees when it was just a sole 2 proprietorship. And they became investors and partners 3 and -- and then we incorporated -- 4 Q. Okay. 5 A. -- as they joined it. 6 Q. Describe for me the -- the ownership structure 7 of the corporation at the time it was formed. 8 A. I think it was roughly -- I can't remember 9 exactly. 80 -- 80 percent me and 10 percent each of them 10 maybe at first. 11 Q. And what was your position at the company when 12 it was initially created? 13 A. Chief investment strategist and CEO. 14 Q. And what was Mr. Jordan's? 15 A. Account executive and member of the 16 investment committee and -- handling the office and 17 financing. At the time, it was only a few people, three 18 or four people. So the roles were kind of overlapped. 19 Q. Okay. And what about Mr. Stewart? 20 A. The same. 21 Q. He was an account executive? 22 A. Yes. 23 Q. Who was on the -- I'm sorry. It was the 24 investment advisory committee, is that what you called 25 it?</p>	<p style="text-align: right;">Page 91</p> <p>1 A. Yes. 2 Q. Okay. Were they the -- were the three of you, 3 then, after its incorporation, the sole shareholders of 4 the entity? 5 A. I think so. 6 Q. Okay. How, if at all, did that ownership 7 structure change over time? 8 A. They invested more money and became bigger 9 partners, so to speak, bigger shareholders. 10 Q. Okay. When did that take place? 11 A. Over time. A couple of -- a year or two later 12 from the time that we first incorporated, one or both of 13 them added to their equity in the company. I don't 14 remember exactly the timing. 15 Q. Okay. How -- how did your equity -- equity 16 position in the company change as a result of -- of -- of 17 their purchasing additional shares of equity in the 18 company? 19 A. Well, it has to add up to 100 percent. So 20 when they owned more, I owned less. 21 Q. Okay. And what -- what amounts specifically? 22 A. I think one of them bought another 10 percent. 23 I -- I don't remember exactly. 24 Q. Since its inception, what -- what other 25 shareholders has the entity had apart from the three</p>
<p style="text-align: right;">Page 90</p> <p>1 A. Well... 2 Q. Investment committee? 3 A. Yes. But all of the principals were in it at 4 the time. 5 Q. Okay. And what was the -- what was the role 6 of that committee? 7 A. To discuss. To discuss what we should do and 8 bring as much information and wisdom to bear as possible. 9 Q. Okay. Discuss what who should do with respect 10 to what? 11 A. To discuss what we should decide to buy and 12 sell as investments. 13 Q. Okay. The company was -- it was a 14 corporation; correct? 15 A. It -- it -- yes. It became one. 16 Q. And at the time of its inception, as I 17 understand your testimony, you and Mr. Stewart and 18 Mr. Jordan were the company's three shareholders; 19 correct? 20 A. No. At the time of its inception, I was the 21 only owner and it was a sole proprietorship. 22 Q. Okay. But that's -- once it became 23 incorporated, though, the capital structure became you 24 were an 80 percent owner and -- approximately and then 25 they were approximately 10 apiece; correct?</p>	<p style="text-align: right;">Page 92</p> <p>1 you've just named? 2 A. Al Kaleta. 3 Q. Anyone else? 4 A. Not that I can recall right now. We -- we 5 entertained the idea of some others. I don't think we 6 ever had another one. 7 Q. Describe the circumstances, please, under 8 which Mr. Kaleta became a shareholders of DFFS. 9 A. I recruited him as an account executive and 10 then I -- he wanted to buy shares, which I sold to him. 11 And then I forgave the initial purchase amount of the 12 shares, which he owed me. 13 And then I think when he -- when Stewart 14 had an alcohol problem and we had to terminate Stewart, 15 Kaleta wanted to buy his shares. And I believe that -- 16 I -- I don't remember the exact sequence. Jordan bought 17 them instead and Kaleta made a deal with Jordan. I'm -- 18 I'm not sure. 19 Q. How many shares did Mr. Kaleta acquire or what 20 percentage of the entity did Mr. Kaleta acquire when he 21 initially bought in? 22 A. About five, I think. 23 Q. And when was that? 24 A. 1999, 2000, 2001, right in there. 25 Q. Then he acquired more shares; correct?</p>

<p style="text-align: right;">Page 93</p> <p>1 A. Yes.</p> <p>2 Q. Okay. When did he acquire more shares?</p> <p>3 A. I -- I -- I'm not sure.</p> <p>4 Q. Approximately when?</p> <p>5 A. Over the next few years.</p> <p>6 Q. And -- and how many more shares did he</p> <p>7 acquire?</p> <p>8 A. I -- I don't recall.</p> <p>9 Q. Approximately how many more?</p> <p>10 A. It was always a minority interest.</p> <p>11 Q. What was the maximum amount of shares or --</p> <p>12 well, let me put it this way: What was the -- the</p> <p>13 maximum equity position that Mr. Kaleta came to hold in</p> <p>14 DFFS?</p> <p>15 A. He -- I think around 43 or something percent.</p> <p>16 Q. Okay. What leads you to believe that he held</p> <p>17 around 43 percent of DFFS?</p> <p>18 A. Well, because he theoretically purchased the</p> <p>19 shares of Jordan and --</p> <p>20 Q. What do you mean theoretically?</p> <p>21 A. Well, he didn't actually pay for it. There</p> <p>22 was a note, which he never paid for, which I was actually</p> <p>23 the guarantor of.</p> <p>24 Q. Okay. So with respect...</p> <p>25 What has your -- what was your role as a</p>	<p style="text-align: right;">Page 95</p> <p>1 Mr. Jordan's claims.</p> <p>2 MR. MCCOLE: Okay.</p> <p>3 Q. (By Mr. McCole) Have you as guarantor paid</p> <p>4 the balance?</p> <p>5 A. No.</p> <p>6 Q. Why not?</p> <p>7 A. Well, for one thing it's not all due. For</p> <p>8 another thing, I have other liabilities. And for the</p> <p>9 third thing, what my lawyer just said.</p> <p>10 Q. Is that to the extent you owe it it's offset</p> <p>11 by monies Mr. Stewart owes you, is that what I'm to</p> <p>12 understand?</p> <p>13 A. Jordan, yes.</p> <p>14 Q. Oh, Jordan. Excuse me. I'm sorry.</p> <p>15 A. Well, there are -- there are other claims,</p> <p>16 yes.</p> <p>17 Q. Okay. So...</p> <p>18 So how much does -- how much equity</p> <p>19 position in the company does Mr. Kaleta own?</p> <p>20 A. None.</p> <p>21 Q. When did his 43 percent equity position become</p> <p>22 a zero percent equity position?</p> <p>23 A. When he was required to divest and the company</p> <p>24 was required to separate him.</p> <p>25 Q. And -- and when did that take place?</p>
<p style="text-align: right;">Page 94</p> <p>1 guarantor of that note?</p> <p>2 A. I don't understand the question.</p> <p>3 Q. You guaranteed the note wherein Mr. Kaleta</p> <p>4 acquired shares from another -- another shareholder;</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And -- and as a guarantor, what was your --</p> <p>8 what were your duties?</p> <p>9 A. If Kaleta didn't pay, I would pay.</p> <p>10 Q. Did he -- did Mr. Kaleta pay?</p> <p>11 A. He paid \$250,000. That was his first</p> <p>12 scheduled payment.</p> <p>13 Q. And what was the total amount he owed?</p> <p>14 A. Total 750.</p> <p>15 Q. And how much of the 750 has he paid in total?</p> <p>16 A. 250.</p> <p>17 Q. And how much have you paid toward the 750 as</p> <p>18 guarantor?</p> <p>19 A. None.</p> <p>20 Q. Is the -- is the balance of the 750 due and</p> <p>21 owing?</p> <p>22 A. In theory, yes.</p> <p>23 MR. STANTON: He's saying that because --</p> <p>24 this is Peter Stanton speaking. We have claims that we</p> <p>25 believe are subject to offset and recoupment against</p>	<p style="text-align: right;">Page 96</p> <p>1 A. The fall of '09.</p> <p>2 Q. Okay. And what, if anything, did the company</p> <p>3 give to Mr. Kaleta in exchange for the equity position</p> <p>4 that he gave up?</p> <p>5 A. Nothing.</p> <p>6 Q. And why not?</p> <p>7 A. Because while we were negotiating how that</p> <p>8 would be done, the -- it became moot as the company</p> <p>9 became worthless.</p> <p>10 Q. The company became worthless?</p> <p>11 A. Yes.</p> <p>12 Q. What -- what caused the company to become</p> <p>13 worthless?</p> <p>14 A. The custodian -- in view of the case against</p> <p>15 Mr. Kaleta, the custodian wouldn't continue to provide</p> <p>16 custody services. And so there was no way to continue to</p> <p>17 provide those services anymore.</p> <p>18 Q. Up until the time of his separation at DFFS,</p> <p>19 what was Mr. Kaleta's position at DFFS?</p> <p>20 A. He was a -- the compliance officer and an</p> <p>21 account representative and the business manager.</p> <p>22 Q. What were his duties and responsibilities as</p> <p>23 the compliance officer?</p> <p>24 A. To make sure that the rules were followed and</p> <p>25 that the policies were followed.</p>

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1 **Q. Who did he report to?**
 2 A. Me.
 3 **Q. Who was responsible for ensuring that he**
 4 **carried out his responsibilities as the compliance**
 5 **officer?**
 6 A. Me.
 7 **Q. What were his duties as a -- as the business**
 8 **manager?**
 9 A. Paying and approving bills. Personnel, hiring
 10 and firing. Making sure the paperwork was done. Making
 11 sure the phones were answered and the trains run on time.
 12 Day-to-day operations.
 13 **Q. And who did he report to with respect to his**
 14 **role as business manager of DFFS?**
 15 A. Me.
 16 **Q. You were his supervisor?**
 17 A. Yes.
 18 MR. MCCOLE: You know, I'd love to
 19 continue this, but unfortunately I have a -- I have
 20 another hearing that I have got to go to. So I'm going
 21 to have to discontinue my participation in the deposition
 22 and ask that when it's reconvened that I be given notice.
 23 Mr. Frishberg, I -- I truly appreciate
 24 your willingness to accommodate me today by phone and
 25 thank your attorneys for the courtesies that they've

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1 A. It was a process that extended over --
 2 **Q. Over the change of the year? Okay.**
 3 **Do you believe Mr. Kaleta was entitled to**
 4 **his percentage of the management fees that were paid out**
 5 **in January of 2010?**
 6 A. I don't think he was allowed to receive them.
 7 **Q. You think the SEC prohibited him from --**
 8 A. Pardon me?
 9 **Q. Do you think the SEC prohibited him from**
 10 **receiving them?**
 11 A. Yes.
 12 **Q. Okay. Did DFFS have an errors and omission**
 13 **insurance policy in place?**
 14 A. Yes.
 15 **Q. Does it still have an errors and omissions**
 16 **insurance policy in place?**
 17 A. No.
 18 **Q. When did that policy lapse?**
 19 MR. STANTON: It didn't lapse.
 20 A. April, I think.
 21 MR. STANTON: It expired as of April
 22 10th. And as of May 10th, it was extended for another 30
 23 days. The final day to make a claim under the errors --
 24 it was a professional liability policy -- was April 10th
 25 of 2010.

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1 extended me today as well. Thank you, sir.
 2 THE WITNESS: Thank you.
 3 MR. MCCOLE: I have no further questions
 4 and I will be signing off. So thank you. Bye.
 5 MR. BESEN: Thanks, Tim.
 6 MR. FUQUA: Now you may go back there.
 7 THE WITNESS: Does it matter?
 8 MR. FUQUA: It may matter to her because
 9 it's easier for her to hear you if you're adjacent to
 10 her.
 11 EXAMINATION (Continued)
 12 BY MR. BESEN:
 13 **Q. Mr. Frishberg, you stated in response to**
 14 **questions from Mr. McCole that during your negotiations**
 15 **with Mr. Kaleta, the value of DFFS became zero; correct?**
 16 A. Yes.
 17 **Q. Do you recall the approximate time when that**
 18 **took place?**
 19 A. When I was unable to get another custodian and
 20 I was unable to find a purchaser that would meet my
 21 requirements.
 22 **Q. And was that in the fall of 2009?**
 23 A. Winter of 2009, '10.
 24 **Q. Okay. And do you remember whether it happened**
 25 **in 2009 or 2010?**

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1 MR. BESEN: And it's been extended or has
 2 not been extended?
 3 MR. STANTON: Has not been extended and
 4 won't be. There are a number of claims being made under
 5 that policy.
 6 MR. BESEN: Okay. Can -- can we have an
 7 agreement to produce a copy of that policy?
 8 MR. STANTON: Absolutely.
 9 MR. FUQUA: Sure.
 10 **Q. (By Mr. Besen) Can you describe for me who**
 11 **was in the office suite where DFFS conducted its**
 12 **business, just the general lay of the land?**
 13 A. My office was in the corner. Kaleta's office
 14 was in the next room. My wife's office or utility office
 15 was in the next room. Sonia Joao was in the following
 16 room. Conference room came next. And there was an entry
 17 desk, which was shared by clerical people.
 18 **Q. Okay. What about Warren Gunn?**
 19 A. He sat at the utility desk and traveled in and
 20 out of Sonia Joao's office.
 21 **Q. Okay. And what about Mr. Wallace and**
 22 **Mr. Bajjali?**
 23 A. They had another suite that they subleased.
 24 **Q. Was that space connected to --**
 25 A. No.

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<p>1 Q. -- your space?</p> <p>2 A. No. It -- it shared a wall, but there was no</p> <p>3 door to go in.</p> <p>4 Q. Okay. And what about the BizRadio staff, was</p> <p>5 Linda Sikes in that office suite?</p> <p>6 A. No. That was an adjacent suite as well.</p> <p>7 Q. Okay. And who else was in the BizRadio suite?</p> <p>8 A. Well, the radio staff, salespeople, broadcast</p> <p>9 people, engineering people, management people,</p> <p>10 bookkeeping people.</p> <p>11 Q. And when you say these are different suites,</p> <p>12 they had separate and distinct entrances --</p> <p>13 A. Yes.</p> <p>14 Q. -- and you could not go in between them</p> <p>15 without going out into the hallway?</p> <p>16 A. You could go into the radio suite, but not</p> <p>17 Wallace's suite.</p> <p>18 Q. Okay. So BizRadio and DFFS suites were</p> <p>19 together?</p> <p>20 A. Were adjacent.</p> <p>21 Q. Connected? Can we say "connected"?</p> <p>22 A. They had entries. Yes.</p> <p>23 Q. Okay. And as the CEO of DFFS, did you have an</p> <p>24 understanding that Sonia -- how do you say her last name?</p> <p>25 I'm sorry --</p>	<p>1 deficient in keeping track of everything. And his</p> <p>2 attorney asked for help. And, I believe, then at that</p> <p>3 point, Linda Sikes helped him to unravel it, but I -- I</p> <p>4 would doubt that she was involved before that. But I</p> <p>5 don't know for sure.</p> <p>6 Q. Okay. So if Mr. Kaleta swore under oath that</p> <p>7 she was helping him before that?</p> <p>8 A. I don't have enough evidence to prove him</p> <p>9 wrong.</p> <p>10 Q. Okay. Okay. And same thing for Warren Gunn,</p> <p>11 no reason to dispute that Warren Gunn was talking to</p> <p>12 clients about purchasing KCM notes on behalf of</p> <p>13 Mr. Kaleta?</p> <p>14 MR. STANTON: Warren answered the phone</p> <p>15 when anybody called in.</p> <p>16 A. Yeah. And -- and I would find that very hard</p> <p>17 to believe because he's a kid that doesn't know anything.</p> <p>18 I can't imagine that you or I would lend money to anybody</p> <p>19 based upon that kid who answered the phone. So I -- I --</p> <p>20 I just don't -- it's like the hot dog stand guy saving</p> <p>21 your kid at the pool or just...</p> <p>22 Q. (By Mr. Besen) Fair enough.</p> <p>23 But it wouldn't be surprising if Warren</p> <p>24 Gunn was handling the administrative side of KCM and</p> <p>25 coordinating whether or not notes were going to, for</p>
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<p>1 A. Joao.</p> <p>2 Q. -- Joao, Warren Gunn, and then as the CEO of</p> <p>3 BizRadio Linda Sikes were all helping Al Kaleta manage</p> <p>4 the books and records of KCM?</p> <p>5 A. No.</p> <p>6 Q. Do you dispute that that happened?</p> <p>7 A. No.</p> <p>8 Q. So you -- would you be inclined to believe</p> <p>9 Mr. Kaleta's testimony that that indeed happened?</p> <p>10 A. That what?</p> <p>11 Q. That that did happen, that Ms. Joao assisted</p> <p>12 his conversations with investors and papering and</p> <p>13 documenting and selling KCM notes to DFFS clients?</p> <p>14 A. Am I...</p> <p>15 Q. I'm just asking if you would believe</p> <p>16 Mr. Kaleta's testimony or not. Mr. Kaleta has testified</p> <p>17 to that under oath.</p> <p>18 A. I guess. I don't -- I don't dispute it.</p> <p>19 Q. Okay. And you can't dispute that Linda Sikes</p> <p>20 helped Al Kaleta do the books and records of KCM?</p> <p>21 A. Well, that I can dispute because, see, he had</p> <p>22 his own accounting firm. I think that that changed when</p> <p>23 he got into problems with the SEC, they required</p> <p>24 information. It turned out that the -- his accounting</p> <p>25 firm that was supposed to be keeping track of it all was</p>	<p>1 example, the accounting firm and making sure all that was</p> <p>2 getting done for Mr. Kaleta?</p> <p>3 A. Shouldn't have been, but possible.</p> <p>4 Q. And then what about...</p> <p>5 Did you know that Wallace and Bajjali had</p> <p>6 used KCM funds to make a redemption payment to an</p> <p>7 investor?</p> <p>8 A. No.</p> <p>9 Q. Would that surprise you?</p> <p>10 A. What does a redemption payment mean?</p> <p>11 Q. Well, an investor asked for their money back.</p> <p>12 They don't like the investment. They want out.</p> <p>13 A. That would surprise me.</p> <p>14 Q. If you knew that Wallace and Bajjali or any</p> <p>15 other investment didn't have sufficient resources to make</p> <p>16 that payment, would that concern you?</p> <p>17 A. No.</p> <p>18 Q. Why not?</p> <p>19 A. They were a real estate partnership caught up</p> <p>20 in a very difficult real estate environment in which</p> <p>21 their financing commitments dried up. All real estate</p> <p>22 deals were having trouble with cash flow during the</p> <p>23 period that Wallace was having problems.</p> <p>24 Q. Do you know who Doug Shaffer is?</p> <p>25 A. Yes.</p>

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1 Q. Is he one of your clients?
 2 A. Yeah. He was.
 3 Q. Okay. You said he was.
 4 Is he -- did he terminate his
 5 relationship with DFFS, or is that a result of all the
 6 accounts moving away -- migrating away from DFFS that
 7 he's no longer your client?
 8 A. Both.
 9 Q. Okay.
 10 MR. BESEN: 6.
 11 (Exhibit No. 6 marked.)
 12 Q. (By Mr. Besen) I hand you what's marked as
 13 Exhibit 6. Okay. Exhibit 6 is an e-mail from Nancy
 14 Gollan to Warren Gunn, Sonia Joao, Pamela Caddell, Linda
 15 Sikes, and it looks like that is an e-mail address for
 16 Mr. Wallace. It talks about a payoff letter from
 17 Mr. Shaffer.
 18 Do you see that, sir? Is that all
 19 accurate?
 20 A. Pardon me?
 21 Q. Is that all correct? Is that what the
 22 document reflects?
 23 A. I have no idea.
 24 Q. Is that what the document reflects?
 25 A. Yes.

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1 Q. Okay. And in it she's talking about a
 2 promissory note and security agreement to KCM on behalf
 3 of a \$215,000 payment to Doug Shaffer. Do you see that?
 4 A. Yes.
 5 Q. Okay. Do you have any idea why KCM is making
 6 a \$215,000 payment to one of DFFS's clients?
 7 A. No.
 8 Q. If you had seen this e-mail on September 25th
 9 of 2009, would it have been troubling to you?
 10 A. I don't know.
 11 Q. Is the idea that -- well, let's back up.
 12 You know now that KCM raised money from
 13 your clients at DFFS; correct?
 14 A. I know that now.
 15 Q. Okay. And if KCM is loaning money to repay
 16 Mr. Shaffer \$215,000, that would mean that perhaps your
 17 clients are investing money in KCM to repay another one
 18 of your clients, would it not, Mr. Frishberg?
 19 A. Who is my other client?
 20 No. This seems to indicate that it was
 21 used to pay him back from Wallace and Bajjali, which was
 22 not my affiliate or I -- I had no -- no -- that was not a
 23 company that I owned or controlled.
 24 Q. Do you know whether or not -- well,
 25 Mr. Shaffer is a client of DFFS; correct?

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1 A. Was.
 2 Q. Was.
 3 And Mr. Shaffer obviously invested in
 4 Wallace and Bajjali; correct?
 5 A. Yes.
 6 Q. Okay. And KCM raised money from DFFS clients;
 7 correct?
 8 A. Yes.
 9 Q. So presumably, clients of DFFS funded Wallace
 10 and Bajjali's redemption payment to Mr. Shaffer; correct?
 11 A. Possible -- excuse me.
 12 (Phone rings.)
 13 I don't know.
 14 MR. BESEN: The ring I have assigned to
 15 my mother in law.
 16 MR. FUQUA: Is that right?
 17 THE WITNESS: I can't -- I can't hear
 18 them any other way. I'm sorry.
 19 THE VIDEOGRAPHER: Is that on the record?
 20 MR. BESEN: It's okay. Not officially.
 21 Q. (By Mr. Besen) Mr. Frishberg, and I'm not --
 22 I'm not trying to insinuate there's some giant Ponzi
 23 scheme. I'm merely trying to get us to the point that
 24 this should have raised some flags, had you seen it. And
 25 I don't think you saw this e-mail. You're not copied on

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1 it on September 25th, 2009.
 2 But had you known on March 30th, 2009
 3 that KCM was advancing funds from Mr. Shaffer, would that
 4 have been a concern?
 5 A. I don't know.
 6 Q. Okay. Can we agree that BizRadio and DFFS
 7 have common officers -- had common officers? Let me say
 8 that correctly.
 9 A. Yes.
 10 Q. And that both you and Al Kaleta owned DFFS and
 11 a portion of BizRadio?
 12 A. A -- a portion of the -- we owned the general
 13 partner.
 14 Q. Okay. Both you and Mr. Kaleta owned interest
 15 in DFFS --
 16 A. A share of the general partner.
 17 Q. -- and BizRadio?
 18 A. Yes. A share of --
 19 Q. Yes.
 20 A. -- BizRadio's general partner.
 21 Q. Okay. Understood.
 22 And that Mr. Kaleta was also an officer
 23 and the owner of KCM, the sole officer and owner of KCM
 24 as far as we know; correct?
 25 A. Yes.

<p style="text-align: right;">Page 109</p> <p>1 Q. And will you agree with me that KCM and DFFS 2 shared employees?</p> <p>3 A. No.</p> <p>4 Q. Okay. Why not?</p> <p>5 A. Because they didn't.</p> <p>6 Q. Well, you -- we just agreed earlier that you 7 couldn't dispute that Warren Gunn and Sonia Joao were 8 assisting Mr. Kaleta in his fundraising and activities 9 related to KCM?</p> <p>10 A. I didn't know they were doing that. They 11 didn't share employees. I don't believe they ever 12 received a paycheck, filled out a form or did anything 13 with Kaleta Capital Management. I don't -- I don't 14 believe any of that happened. And it was -- if he did do 15 that, it was improper and unauthorized.</p> <p>16 Q. Okay. Well, regardless of whether or not it's 17 improper or unauthorized, it happened and you've already 18 testified today that you had no basis to dispute that. 19 Are you now changing your testimony so that you -- 20 A. No.</p> <p>21 Q. -- dispute that that happened?</p> <p>22 A. No, I'm not.</p> <p>23 Q. Okay. So we can agree that that happened. 24 Ms. -- Ms. Joao and Mr. Gunn and others of DFFS assisted 25 Mr. Kaleta in undertaking the KCM note offerings?</p>	<p style="text-align: right;">Page 111</p> <p>1 fund the purchase of BizRadio -- the purchase of the 2 station from Salem?</p> <p>3 A. Fund the purchase of the radio station from 4 Salem? That was done via a -- it's -- I don't -- I don't 5 know the exact amounts, but it was done via a loan from 6 Industrial Information, a second lien -- second mortgage, 7 second financing from Salem, and a cash payment by 8 BizRadio.</p> <p>9 Q. Who funded the cash payment by BizRadio?</p> <p>10 A. I don't know.</p> <p>11 Q. You don't -- you don't know whether it was KCM 12 or some other form of payment?</p> <p>13 A. I -- I -- I -- I think it was probably cash 14 from BizRadio itself, but I don't know.</p> <p>15 Q. And BizRadio was raising money directly from 16 investors at that point; correct?</p> <p>17 A. I don't think so. I don't know.</p> <p>18 Q. Did BizRadio ever --</p> <p>19 A. It was -- it had operations. It had money 20 that it was bringing in. I don't know how the -- the -- 21 the majority of the money I know came from Industrial 22 Information and a second lien from Salem. There's an 23 additional million dollars, I don't know where it came 24 from.</p> <p>25 Q. And is Industrial Information, is that -- is</p>
<p style="text-align: right;">Page 110</p> <p>1 A. May have assisted Kaleta in note offering.</p> <p>2 Q. And your testimony is you don't have --</p> <p>3 A. Yeah, I'm not denying -- denying that.</p> <p>4 Q. -- evidence to refute Mr. Kaleta's testimony?</p> <p>5 A. That's right.</p> <p>6 MR. FUQUA: One at a time.</p> <p>7 Q. (By Mr. Besen) So if Mr. Kaleta gets on the 8 stand in front of Judge Atlas and testified that DFFS -- 9 I always put an extra F in there. I'm sorry -- DFFS 10 employees were assisting in the KCM note offering, you 11 have no basis to get on the witness stand and dispute 12 Mr. Kaleta's claims?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. When -- tell me about BizRadio. 15 What -- what -- terrible question. 16 When did you first launch BizRadio? I 17 know you had had a radio program before. But when did 18 you start BizRadio, the entity in its current form?</p> <p>19 A. Late '04.</p> <p>20 Q. And -- and how did you purchase the station 21 from Salem?</p> <p>22 A. That was years later.</p> <p>23 Q. Okay. Years later, 2006?</p> <p>24 A. '06, '07, something like that.</p> <p>25 Q. Okay. Well, let's pick up there. How did you</p>	<p style="text-align: right;">Page 112</p> <p>1 that Mr. Lewis's company?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And there was a point in time where 4 BizRadio was raising money from investors directly; 5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And who under -- who -- who was responsible 8 for that offering?</p> <p>9 A. What do you mean?</p> <p>10 Q. Who -- who actually was the one talking to 11 clients about making an investment in BizRadio?</p> <p>12 A. I did.</p> <p>13 Q. Were you the only one?</p> <p>14 A. No. Jordan probably -- Jordan did. I -- I 15 can't remember who spoke to who, but I was very active in 16 it.</p> <p>17 Q. Did Mr. Kaleta speak to anybody?</p> <p>18 A. Kaleta was my administrative assistant. I'm 19 sure he was in meetings and filled paperwork, covered -- 20 we talked about that earlier under the -- under the -- he 21 was not licensed at that time to be dispensing anything.</p> <p>22 Q. Okay. You have a clear recollection of the 23 fact that he was not licensed at the time --</p> <p>24 A. Yes.</p> <p>25 Q. -- you initially were offering equity in</p>

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<p>1 BizRadio?</p> <p>2 A. That's right.</p> <p>3 Q. Was he ever licensed while you were offering</p> <p>4 equity in BizRadio?</p> <p>5 A. I don't remember. I don't think -- I don't</p> <p>6 remember.</p> <p>7 Q. Did that go on for a long time when you were</p> <p>8 giving investors an opportunity to invest equity into</p> <p>9 BizRadio?</p> <p>10 A. It went on -- what's a long time?</p> <p>11 Q. Two years.</p> <p>12 A. More than a year, let's say.</p> <p>13 Q. Okay. And Mr. Kaleta would have been talking</p> <p>14 to investors as your administrative assistant about</p> <p>15 investing in BizRadio?</p> <p>16 A. He was probably continuing any conversation</p> <p>17 that I was having with investors.</p> <p>18 Q. Okay. And when he's doing that or for that</p> <p>19 matter when -- let me just back up. Scratch that.</p> <p>20 When you're talking to investors about</p> <p>21 making an equity investment into BizRadio, are you</p> <p>22 wearing your BizRadio hat or are you wearing your CEO of</p> <p>23 the investment advisor hat?</p> <p>24 A. I am clearly delineating to clients the fact</p> <p>25 that I'm partial; that I can't give them specific advice</p>	<p>1 Q. (By Mr. Besen) Okay. Let me just nail that</p> <p>2 down.</p> <p>3 You spoke to investors about making</p> <p>4 equity investments into BizRadio in both capacities, as</p> <p>5 the CEO of BizRadio, as the CEO of DFFS, but always</p> <p>6 identifying to the client whichever hat you were wearing,</p> <p>7 whichever role you were in?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And when Mr. Jordan or Mr. Eggerss or</p> <p>10 Mr. Kaleta were speaking to investors, do you know</p> <p>11 whether they were calling and talking to investors on</p> <p>12 behalf of BizRadio or were they talking to investors as</p> <p>13 employees of DFFS?</p> <p>14 A. I think they were doing both. But, again, the</p> <p>15 registered investment advisory firm has discretion. It</p> <p>16 can allocate resources to whatever it thinks is the best</p> <p>17 thing for the clients. If it doesn't do that and it</p> <p>18 instead brings a memorandum describing risks and lack of</p> <p>19 liquidity and everything to a client and specifically</p> <p>20 says, "This is a business that's an associated party and</p> <p>21 I have to disqualify myself as your advisor on this, read</p> <p>22 it and decide what you want to do," I know that all --</p> <p>23 that -- that Eggerss and Jordan did the same. And Kaleta</p> <p>24 was an administrative assistant not rendering advice of</p> <p>25 any kind.</p>
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<p>1 on whether they should do it or not; and that I am</p> <p>2 specifically not using my discretion to make that</p> <p>3 investment; that it was something that they have to look</p> <p>4 at, decide if they want; it's illiquid. Specifically and</p> <p>5 clearly explaining that to each one, "Do what you want."</p> <p>6 Q. Okay. And I appreciate that and I believe</p> <p>7 you, sir.</p> <p>8 But I'm trying to figure out whether when</p> <p>9 you were having that candid or proper, appropriate</p> <p>10 conversation you were wearing your hat as the CEO of</p> <p>11 BizRadio or you were wearing your hat as the CEO of your</p> <p>12 registered investment advisors?</p> <p>13 A. At times either one, but always identifying</p> <p>14 which one it was.</p> <p>15 Q. Okay. So you had conversations as, A, I'm the</p> <p>16 CEO -- I'm wearing my BizRadio hat but I'm --</p> <p>17 A. But I'm partial to this, yes.</p> <p>18 MR. STANTON: Tell him you don't wear any</p> <p>19 hats. I've never seen you with a hat on. And as -- I'm</p> <p>20 going to tell Mr. Fuqua to object to the form of the</p> <p>21 question as it's vague.</p> <p>22 MR. FUQUA: Okay.</p> <p>23 THE WITNESS: Am I paying for this?</p> <p>24 MR. FUQUA: All of it.</p> <p>25 MR. BESEN: We'll get to that.</p>	<p>1 Q. Okay. But you believe that Eggerss and Jordan</p> <p>2 and Kaleta all talked to investors on behalf of both</p> <p>3 BizRadio and DFFS?</p> <p>4 A. Kaleta talked to investors on behalf of me.</p> <p>5 Jordan and Eggerss did it on behalf of both BizRadio and</p> <p>6 DFFS.</p> <p>7 Q. And for the record, Mr. Jordan is an employee</p> <p>8 of both BizRadio and DFFS?</p> <p>9 A. Was.</p> <p>10 Q. Was.</p> <p>11 And Mr. Eggerss was an employee of both</p> <p>12 DFFS --</p> <p>13 A. No.</p> <p>14 Q. -- and BizRadio?</p> <p>15 A. No. He was only an employee of BizRadio -- of</p> <p>16 DFFS. Excuse me. He was not an employee of BizRadio.</p> <p>17 Q. And Mr. Kaleta was an employee of both DFFS</p> <p>18 and BizRadio?</p> <p>19 A. At that time, he was not.</p> <p>20 Q. But he ultimately became an employee of both</p> <p>21 DFFS and BizRadio?</p> <p>22 A. Ultimately he became.</p> <p>23 Q. Okay. And BizRadio has not yet been</p> <p>24 profitable; correct?</p> <p>25 A. Yes.</p>

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1 **Q. As a result, DFFS has continued to -- excuse**
 2 **me.**
 3 **As a result, BizRadio has continued to**
 4 **need to raise funds to continue to operate and grow?**
 5 A. Did.
 6 **Q. Did.**
 7 **Does it -- is BizRadio still no longer**
 8 **trying to raise money?**
 9 A. It has not been raising money for a year -- a
 10 long time. Not a year. A long time.
 11 **Q. Okay. From '06 through '09, it was raising**
 12 **money?**
 13 A. Through part of '09, yes.
 14 **Q. And initially -- I'm just trying to make sure**
 15 **I got my facts straight.**
 16 **Initially, BizRadio was raising money by**
 17 **selling equity investments to outside folks like DFFS's**
 18 **clients; correct?**
 19 A. Yes.
 20 **Q. And at some point, BizRadio's funding source**
 21 **changes away from DFFS clients. Why was that? Why --**
 22 **why did you stop offering your clients an equity**
 23 **investment into BizRadio?**
 24 A. I didn't stop offering clients an equity
 25 investment. It was several years later the situation

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1 changed and the story changed and it required more and
 2 different documents and there was no money being raised
 3 in equity by anyone in '08, '07. And -- and so how to
 4 exactly do it was a strategic question that I was dealing
 5 with.
 6 I also had a change of management where
 7 the CFO left. We had a change of personnel. And so for
 8 administrative reasons, we didn't have proper
 9 documentation. And so in the interim, we did debt
 10 financing with the plan to replace that with longer term
 11 equity, better terms.
 12 **Q. Okay. And where did that kind of short-term**
 13 **financing, as you described it, come from?**
 14 A. Well, it was Wallace Bajjali issued notes.
 15 **Q. And -- and who did Wallace and Bajjali raise**
 16 **money from for those notes?**
 17 A. Investors, including my clients.
 18 **Q. Okay. And do you have an idea of how much of**
 19 **the money Wallace and Bajjali raised for BizRadio came**
 20 **from your clients as opposed to other sources?**
 21 A. They didn't raise money for BizRadio. They
 22 were a lender to replace the bank. They had a
 23 diversified portfolio of real estate and other assets
 24 that they were lending money on. It was a -- the terms
 25 of it were that the security was a -- to use their term,

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1 "pari passu" interest in all of the collateral that
 2 they -- of all of their lenders. And they -- they lent
 3 money to companies that they controlled and to BizRadio
 4 as well, and the collateral was supposed to be all of
 5 that.
 6 **Q. Do you know if Wallace and Bajjali disclosed**
 7 **to DFFS clients when they were raising money that they**
 8 **were going to be loaning money to BizRadio?**
 9 A. I -- I -- I thought that they did -- well,
 10 yes. They certainly -- well, they started out by lending
 11 money to acquire -- yes, they did. Because in the terms
 12 sheet that I have that they submitted to me under which I
 13 approved that as a possible thing to be offered to
 14 clients.
 15 MR. FUQUA: Listen to his question. He
 16 said, "Do you know." Were you at every conversation?
 17 THE WITNESS: Pardon me? No.
 18 MR. FUQUA: Then the answer to his
 19 question is, "I don't know."
 20 THE WITNESS: Sorry.
 21 MR. FUQUA: I mean, I'm trying. I
 22 apologize.
 23 MR. BESEN: That's okay.
 24 MR. FUQUA: I know you only --
 25 MR. BESEN: I'd do the same if I was in

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1 your chair. It's all good.
 2 **Q. (By Mr. Besen) Let's talk about the terms**
 3 **sheet you got from BizRadio -- from Wallace and Bajjali.**
 4 A. Sure.
 5 **Q. Let's talk about the terms sheet you got from**
 6 **Wallace and Bajjali. They submitted a term sheet to you**
 7 **to approve the presenting of an investment in the Wallace**
 8 **and Bajjali partnership to your clients; correct?**
 9 A. Into the Wallace and Bajjali partnership
 10 lending facility, yes.
 11 **Q. Okay. Was -- was the Wallace and Bajjali**
 12 **partnership lending facility something different than the**
 13 **Wallace and Bajjali fund?**
 14 A. It was -- my -- yes. I think it was.
 15 **Q. Are you sure?**
 16 A. It was a separately created trust that was --
 17 yes. It was a separate CUSIP number and separate...
 18 **Q. Okay. So then what was the security for --**
 19 **well, let me not go there first.**
 20 **What's the instrument? Are they -- are**
 21 **they getting a promissory note? Are your clients getting**
 22 **a promissory note from -- back from this Wallace and**
 23 **Bajjali promissory --**
 24 A. They're supposed to be getting that, yes.
 25 **Q. Okay. So there would be a promissory note**

<p style="text-align: right;">Page 121</p> <p>1 from your -- from the DFFS client to the Wallace and 2 Bajjali financing -- 3 A. There would be a -- 4 Q. Or from them? 5 MR. FUQUA: The other way. 6 A. The other way around. 7 Q. (By Mr. Besen) Yes. 8 Okay. And the Wallace and Bajjali 9 financing facility would then make loans to whoever, 10 creditworthy small businesses? 11 A. Yes. 12 Q. And the security for the promissory note to 13 your RIA client is the security on all of the Wallace and 14 Bajjali promissory notes out to all these small 15 businesses? 16 A. To -- well, up until you said "small 17 businesses." Can you rephrase that, please. I don't 18 know what small business is. 19 Q. Okay. Fair enough. 20 As I understand it, the credit -- the 21 Wallace and Bajjali financing lending facility was there 22 to lend money to small businesses; correct? 23 A. Yes. 24 Q. Okay. It's not connected to the Wallace and 25 Bajjali fund; right? It's a different and distinct</p>	<p style="text-align: right;">Page 123</p> <p>1 Q. Here's -- here's -- 2 A. No. I don't understand the issue. 3 Q. Okay. Wallace and Bajjali has a fund that 4 owns real estate; correct? 5 A. And other assets, too. 6 Q. And other assets. 7 And they sold equity interests -- 8 A. Right. 9 Q. -- in those assets? 10 A. Right. 11 Q. So their investors really are the ones who own 12 those assets? 13 A. Right. 14 Q. Okay. Then they create a separate lending 15 facility? 16 A. Yes. 17 Q. Okay. And presumably they should be telling 18 the people that own these assets that these assets are 19 now being pledged as security for the promissory notes 20 the financing facility is giving to DFFS clients? 21 A. Yes. 22 Q. Do you agree with all that? 23 A. Yes. 24 Q. I know that was a mouthful. 25 Okay.</p>
<p style="text-align: right;">Page 122</p> <p>1 entity? 2 A. To my understanding, yes. 3 Q. Okay. So what assets -- what security can 4 that finance lending facility provide to your RIA client 5 so that your RIA client knows it's going to be repaid? 6 A. All of the real estate and all of the radio 7 assets and all of the stock in the Children's Educational 8 Network and all the assets that are controlled. And it 9 was required to be an 11 percent note, 60 percent loan to 10 value or better and in a 12 percent note, 70 percent loan 11 to value or better. And it was all of the assets 12 combined. 13 Q. Okay. So Wallace and Bajjali, the partnership 14 that owns the real estate, put up its assets as 15 collateral for the lending facility to secure the lending 16 facility's notes to DFFS's clients? 17 A. And others, yes. 18 Q. Okay. And was that disclosed to your clients 19 that had invested in the Wallace and Bajjali partnership, 20 that the assets that partnership owned are now being used 21 as collateral for a separate promissory note? 22 A. I don't know. 23 Q. Do you understand the issue there? Does that 24 make sense to you? 25 A. I --</p>	<p style="text-align: right;">Page 124</p> <p>1 A. Well, they were already authorized to do that 2 to start with, but I'm sure that they were very open 3 about it. But they already were authorized to do that. 4 They didn't have an additional disclosure to make, I 5 don't believe, if that's your question. I should make 6 sure that's your question. 7 Q. Well, and that's helpful. And if you think 8 that's the terms of the agreement they had with the 9 investors in the partnership, then that's -- that's a 10 different story. 11 A. I -- I -- I do. 12 Q. How did BizRadio ultimately pay back the loan 13 from Mr. Lewis? 14 A. I -- I -- I presume by some combination of 15 borrowing and its own money. 16 Q. Did BizRadio really have its own money to be 17 spending on that? 18 A. Yes. 19 Q. But its -- its -- its income never exceeded 20 its expenses in any period; correct? 21 A. Yes. 22 Q. So it's always been operating in the red, so 23 to speak; correct? 24 A. Yes. 25 Q. Okay. But yet it had extra capital on hand to</p>

<p style="text-align: right;">Page 125</p> <p>1 pay back a purchase loan? 2 A. I don't know what extra capital means. 3 Q. Okay. Did it have any capital to pay back a 4 loan? 5 A. It -- it received -- 6 MR. STANTON: Wait a minute. Wait a 7 minute. That question has been asked and answered. He 8 already told you they paid it out of BizRadio. Are you 9 saying -- I mean, it's the same question. BizRadio's 10 capital. Well, if it paid it out of BizRadio, it's 11 BizRadio's capital. You're just asking the same 12 question. Ask another question. 13 MR. FUQUA: Wait a minute. 14 MR. BESEN: I'm going to ask the question 15 I want to ask. 16 MR. FUQUA: You're going to do that 17 anyway. But it's a form question. And I don't think 18 you're understanding his question. 19 MR. BESEN: No. I don't think he is 20 either, but we'll get there. 21 MR. FUQUA: Okay. 22 MR. BESEN: Yeah. 23 MR. FUQUA: I mean, I'm trying. 24 MR. BESEN: We'll get there. 25 MR. FUQUA: He needs to explain what</p>	<p style="text-align: right;">Page 127</p> <p>1 the e-mails. I don't have the records. I just don't 2 know. 3 MR. AXELROD: Because wasn't there a 4 period of time where BizRadio was raising equity? 5 MR. BESEN: Yeah. 6 MR. AXELROD: So you shouldn't speculate 7 on the answer. Because if there was a point in time when 8 there was -- if we don't know the point in time Mr. Lewis 9 has been paid back and there was prior testimony that 10 there was equity being raised, there's also a debt 11 subsequent. 12 MR. BESEN: I know the answer to who paid 13 it back, who loaned the money. I'm just -- I'm just 14 seeing if he does before I tell him. 15 MR. AXELROD: That's fair. That's more 16 than fair. 17 Q. (By Mr. Besen) Okay. Would it surprise you 18 to learn that Mr. Kaleta's testified he loaned the money 19 to BizRadio to pay back Mr. Lewis, KCM? 20 A. Would it surprise me? 21 Q. Yeah. 22 A. Now? 23 Q. Well, at any time. I mean, you're the CEO of 24 BizRadio paying off your purchase loan from Mr. Lewis. 25 You had to ask for the money; right?</p>
<p style="text-align: right;">Page 126</p> <p>1 "capital" is or you need to agree what capital is. 2 THE WITNESS: Thank you. I -- I -- 3 right. That's where I'm at. 4 Q. (By Mr. Besen) BizRadio brings in a certain 5 amount of revenue every month. Whatever that amount of 6 revenue is, its liabilities exceed the amount of revenue 7 that come in every month? 8 A. The money it spends exceeds the revenue. 9 Q. Okay. So if BizRadio is using its own money, 10 quote, to pay back the purchase loan from Mr. Lewis, it 11 has to get money from another source to pay its expenses? 12 A. Yes. 13 Q. Okay. Or it just had to borrow the money to 14 pay back Mr. Lewis? 15 A. Is there a question? 16 Q. Did it have to borrow the money to pay back 17 Mr. Lewis? 18 A. I suppose. I don't know. 19 Q. Okay. Who did it borrow the money from to pay 20 back Mr. Lewis? 21 A. Wallace Bajjali. 22 MR. AXELROD: What was the time frame 23 that the loan -- that we're talking about that Mr. Lewis 24 was paid back? 25 MR. BESEN: I don't know. I don't have</p>	<p style="text-align: right;">Page 128</p> <p>1 A. No. 2 Q. You had to ask Mr. Kaleta for the money? 3 A. No. I did not have to ask Mr. Kaleta for the 4 money. 5 Q. Who would have been the one asking for money 6 to pay back Ed Lewis' loan? 7 A. I don't know. 8 Q. Would you have had concerns or second thoughts 9 if you knew that KCM was going to be the source of the 10 money to repay Mr. -- Mr. Lewis? 11 A. No. 12 Q. Because you knew about the KCM note offering; 13 correct? 14 A. No. 15 Q. Well, now I'm confused. 16 If KCM loaned the money to BizRadio to 17 make the payment, it wouldn't have concerned you, but you 18 didn't know about the KCM note offering at all. How did 19 does -- 20 A. At that time, I didn't know. And at that 21 time, it wouldn't have concerned me. Is that what you're 22 asking me? 23 Q. That's -- that's what I'm asking you. 24 Do you think as the CEO of BizRadio you 25 should know where the money is coming from that you're</p>

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1 **using to repay a loan?**
 2 A. You're asking me do I know -- do I think now
 3 that I should have known then?
 4 **Q. Yes. You're the CEO of the company. Do you**
 5 **think you should know where you're getting money to -- to**
 6 **pay back a loan?**
 7 A. I'm not sure how to answer that. No.
 8 **Q. Okay. So you're comfortable with the fact**
 9 **that you were the CEO of a company that paid back a**
 10 **multimillion dollar loan and you don't know the source of**
 11 **the funds used to repay that loan? You're okay with**
 12 **that?**
 13 A. I'm not comfortable at all.
 14 **Q. I appreciate it. I can appreciate that. I**
 15 **can, truly.**
 16 MR. STANTON: And that's -- that's the
 17 right answer, Dan. Just leave it like that.
 18 **Q. (By Mr. Besen) You're serving as the chief**
 19 **investment strategist for DFFS. Do you look at a lot of**
 20 **publically traded companies, stocks to make investments**
 21 **in?**
 22 A. Yes.
 23 **Q. And you're a pretty active trader, aren't you,**
 24 **Mr. Frishberg?**
 25 A. What --

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1 Can we go off the record, please.
 2 THE VIDEOGRAPHER: Off the record,
 3 2:28 p.m.
 4 (Recess.)
 5 THE VIDEOGRAPHER: Back on the record,
 6 2:36 p.m. Beginning Tape Number 3.
 7 MR. BESEN: I'm going to hand you what's
 8 going to be marked as Exhibit 7.
 9 (Exhibit No. 7 marked.)
 10 **Q. (By Mr. Besen) Mr. Frishberg, this is a**
 11 **document that was recovered from a computer that the**
 12 **Receiver is in possession of.**
 13 **It appears to us, the Receiver and I,**
 14 **that this was a document authored by you. But I'd like**
 15 **you to read it and let me know if you believe it was.**
 16 A. (Reading document.)
 17 Yes.
 18 **Q. Do you have a recollection of drafting this**
 19 **document?**
 20 A. Yes.
 21 **Q. Do you know what it's for?**
 22 A. Yes.
 23 **Q. Can you tell me what that is, sir?**
 24 A. It was the negotiation about the purchase of
 25 the On-Line Trading Academy.

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1 **Q. You look at -- you trade in and out of**
 2 **companies pretty often?**
 3 A. What does that mean? I would not describe
 4 myself as an active trader.
 5 **Q. Okay. How would you describe your investment**
 6 **strategy?**
 7 A. As an investor, not an active trader.
 8 **Q. Okay. Do you look for growth stocks? Do you**
 9 **invest long-term or short-term or both?**
 10 A. Both.
 11 **Q. Okay. When you're --**
 12 A. Short-term meaning weeks and months.
 13 Long-term meaning years.
 14 **Q. And when you're looking at a company to invest**
 15 **in, if the CEO of that company didn't know that company's**
 16 **finances, would you invest in that company?**
 17 A. I don't think that's -- yes.
 18 **Q. You would?**
 19 A. Yes.
 20 **Q. You'd have faith in management of that company**
 21 **if the CEO didn't know the finances of the company?**
 22 A. Yes.
 23 THE WITNESS: Can I -- can I take a
 24 break?
 25 MR. BESEN: Sure. Absolutely.

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1 **Q. Okay. And -- and who was this being drafted**
 2 **to?**
 3 A. I don't know if it was ever sent. I write
 4 things to blow off steam that I sometimes feel better
 5 after I write it and don't send it. I don't believe that
 6 this probably was ever sent.
 7 **Q. Fair enough.**
 8 **But do you know who would have been the**
 9 **recipient had you sent it? I recognize --**
 10 A. Yes. It would have been the management of
 11 On-Line Trading Academy.
 12 **Q. And did either BizRadio or DFFS own an**
 13 **interest in On-Line Trading Academy?**
 14 A. BizRadio was negotiating to purchase an
 15 interest in On-Line Trading Academy.
 16 **Q. Then that purchase never happened, is that**
 17 **what I'm to understand?**
 18 A. It did happen.
 19 **Q. Okay. And -- and when did that happen**
 20 **approximately?**
 21 A. Spring of '09 maybe.
 22 **Q. And who actually bought the interest in**
 23 **On-Line Trading Academy, what entity?**
 24 A. BizRadio.
 25 **Q. Okay. And how did BizRadio fund the**

<p style="text-align: right;">Page 133</p> <p>1 acquisition of its interest in the On-Line Trading 2 Academy? 3 A. This would be probably the -- wait a minute. 4 (Reading document.) Almost all creditors 5 are agreeing... 6 This would have been in negotiating. 7 This was not for the purchase of it. This was for the -- 8 I'm -- I think this was more like for the recision of it, 9 getting them to give back the money to -- to end that 10 deal. 11 Q. Okay. And do -- 12 A. Yeah. This was -- that's what this was about. 13 This was me getting them to pay back the money because of 14 the purchase that we made that -- that was wrong. And 15 we -- I made them pay the money back. This was at the 16 end of '09. 17 Q. Okay. And how much money did they pay back to 18 BizRadio? 19 A. Total of \$600,000. 20 Q. Okay. And why did you have them pay that 21 back? 22 A. Because the company -- we relied on their 23 financials about how much the company made. And under 24 the management that they -- they obligated us to hire the 25 CEO of that company to run it, and the money that they</p>	<p style="text-align: right;">Page 135</p> <p>1 Q. Is that from new clients or is that from 2 appreciation? 3 A. Both. But mostly new clients. 4 Q. Okay. And how are you getting and generating 5 new clients? 6 A. They see me on television or hear me do 7 something or read my material on my website or receive my 8 newsletter. And they come to hear me speak, and then 9 they have a -- they -- they ask for additional contact 10 with us. And then they are -- some of them, many of them 11 become clients. 12 Q. And then on the investment growth side of the 13 equation, Mr. Frishberg, did you ever mark up the value 14 of your clients' interest in either Wallace and Bajjali 15 or BizRadio? 16 A. No. Actually, no. The -- I believe that 17 Wallace and Bajjali had some imputed interest or 18 something in it, but I never did any of that. 19 Q. And -- and you may or may not know the answer 20 to this. 21 But your clients that invested in Wallace 22 and Bajjali would have received K-1s from the 23 partnership; correct? 24 A. Yes. 25 Q. And you would have used that to adjust the</p>
<p style="text-align: right;">Page 134</p> <p>1 were -- that we were making on it monthly was about the 2 same as what they were paying us to advertise on BizRadio 3 before. There was no gain for buying the company. It 4 was a bad deal. 5 Q. Okay. How did you fund your purchase of the 6 On-Line Training Academy? 7 A. It was funded. At that time, that was -- that 8 was funded from a combination of Wallace and Bajjali and 9 Kaleta, I believe. I guess. I know now. 10 Q. Okay. And -- and it was -- and I know you've 11 said it. I just want to make sure I'm straight on it. 12 It was BizRadio, not DFFS that was 13 purchasing the interest in On-Line Trading Academy? 14 A. Yes. 15 Q. Okay. If you go to the second paragraph of 16 Exhibit 7, you say, "We own two companies. After 17 purchasing Kaleta's interest, I have a highly profitable, 18 solely owned investment advisor firm." 19 Did you purchase Mr. Kaleta's interest? 20 A. Well, that was the plan. However, I never 21 paid him for it. 22 Q. And then you say the IA earns 3 million in 23 fees this year and you increased its assets under 24 management by \$90 million this year? 25 A. Yes.</p>	<p style="text-align: right;">Page 136</p> <p>1 value of their investment -- 2 A. Pardon me? 3 Q. And you would have used that K-1 to have 4 adjusted the value of their investment within their 5 portfolio that you managed; correct? 6 A. You're saying "you would have"? 7 Q. You, DFFS, would have -- well, your client -- 8 you get a percentage of fees of assets under management. 9 So the value of your clients' portfolio going up or down 10 impacts the amount of fees you earn; correct? 11 A. Yes. 12 Q. Okay. And so what I'm trying to determine -- 13 and I don't believe you did anything wrong. I'm just 14 trying to figure out how it was done factually -- is how 15 your clients' investment in a partnership like Wallace 16 and Bajjali or an equity investment in BizRadio were 17 valued within that portfolio. Can you explain that to 18 me? 19 A. Yes. Each of these things, the ones that are 20 publically traded are easy. Bonds are sent out by a -- 21 to a pricing service by the custodian. The limited 22 partnerships receive a valuation from their management, 23 which is passed onto Fidelity, who carries it there and 24 that's what it is. 25 Q. Yeah. So Wallace and Bajjali would tell</p>

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1 **Fidelity whatever --**
 2 A. What it was worth.
 3 **Q. -- the value was of --**
 4 A. That's correct.
 5 **Q. -- two units of limited partnership interest**
 6 **were?**
 7 A. Right.
 8 **Q. Okay. What about the equity investments that**
 9 **were made into BizRadio?**
 10 A. I don't believe that there was ever such a
 11 valuation change done.
 12 **Q. How was the value --**
 13 A. I don't know.
 14 **Q. Okay. Do you know, if at all, how it was**
 15 **valued when the initial investment was made? What was**
 16 **reflected in the client's portfolio?**
 17 A. Probably the initial investment --
 18 **Q. Okay.**
 19 A. -- would be my guess. Again, I don't know.
 20 **Q. Okay. Is it -- and if you're not comfortable**
 21 **doing this, please don't say "yes" to this. But -- well,**
 22 **this is pretty serious stuff, so I don't...**
 23 **You would be surprised if somebody made a**
 24 **\$25,000 investment in BizRadio and it was in their**
 25 **portfolio as, let's say, \$50,000?**

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1 A. Yes. I'd be surprised.
 2 **Q. Okay.**
 3 A. Did that happen?
 4 **Q. I -- I don't think so.**
 5 A. Oh, okay.
 6 **Q. That's why -- that's why I am cautioning you**
 7 **before I asked.**
 8 A. I would be shocked.
 9 **Q. Okay. Later on in the third paragraph, really**
 10 **the last sentence of the third paragraph here, it says,**
 11 **"Combined with the IA, it is an excellent business model**
 12 **and has the assets to grow. Money is not hard for us to**
 13 **come by to finance that growth, though it took a**
 14 **transition to get past losing the credit line of KCM."**
 15 **Can you explain that statement to me?**
 16 A. Well, again, you're -- it's like you're
 17 looking in my diary at what I said in the middle of the
 18 night when I was angry and asking me this to explain to
 19 you a year later in a group of adults. I'm not sure,
 20 but --
 21 MR. FUQUA: I never thought of you as an
 22 adult.
 23 MR. BESEN: He's pouting like a child.
 24 A. Prior to the time that Fidelity terminated the
 25 relationship with my company and I didn't have a

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1 custodian, it was true that the IA was an excellent
 2 business and had assets to grow and money was not hard to
 3 come by to finance the growth. And I had -- could see no
 4 difficulty raising direct equity or convertible debt for
 5 BizRadio to complete its expansion.
 6 **Q. (By Mr. Besen) Okay.**
 7 A. However, again, this thing is just the random
 8 angry musings of a person not wanting to confront people.
 9 **Q. I understand. I understand it's just venting,**
 10 **musings, however you'd like to phrase it.**
 11 **Nevertheless, you were conscious when you**
 12 **wrote this and you refer to KCM as a credit line. And**
 13 **the way I read this paragraph, you're referring to KCM as**
 14 **a credit line for both the IA and BizRadio. And I'm just**
 15 **wondering if that's how you viewed KCM.**
 16 **Was KCM a credit line?**
 17 A. No. I was referring to BizRadio. IA business
 18 had nothing to do with On-Line Training Academy.
 19 **Q. Okay. The first sentence says, "Combined with**
 20 **the IA," -- presumably we're talking about BizRadio --**
 21 **"it's an excellent business model and has assets to**
 22 **grow." The radio station has assets to grow. "Money is**
 23 **not hard for us to come by to finance that growth, though**
 24 **it took a transition to get past losing the credit line**
 25 **of KCM."**

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1 **Did KCM finance the growth of BizRadio?**
 2 A. Well, I know -- at the end of that year,
 3 obviously, it did because Kaleta was already out of
 4 business, had settled with the SEC. And, yes, that was
 5 all known.
 6 And -- and by the way, all of it was
 7 reported in the newspapers. And the SEC was having press
 8 conferences about it. And it was impeding my ability to
 9 get my money back from the On-Line Trading Academy for
 10 BizRadio because they were asserting that the problem was
 11 not that their product was faulty, but that it was just a
 12 problem -- an internal problem that was making me want to
 13 rescind.
 14 And I'm not even sure that I had any
 15 obligation in this rambling to be telling them the truth.
 16 My goal was to, not under oath, get back money for
 17 BizRadio that it had been cheated out of, and I really
 18 didn't have any obligation to be that forthcoming with
 19 them.
 20 **Q. Okay.**
 21 MR. STANTON: If you even were to send
 22 it.
 23 THE WITNESS: You were the lawyer in
 24 that. We were trying to get the money back from them --
 25 MR. AXELROD: No, no, no.

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<p>1 MR. BESEN: Yeah, please don't get 2 into -- 3 MR. AXELROD: No attorney/client 4 privilege. 5 MR. BESEN: -- any attorney/client 6 privileged stuff. 7 Q. (By Mr. Besen) And -- and my question is 8 very, very narrow. I really candidly don't care much 9 what the purpose of this overall document was. I'm more 10 interested in your statement that KCM was a credit line 11 for BizRadio and whether or not you think that was the 12 case and that's what you considered KCM to be. 13 Was KCM a credit line for BizRadio, 14 Mr. Frishberg? 15 A. KCM was not a credit line, but BizRadio had a 16 credit line. 17 Q. With who? 18 A. Had one with Wallace and Bajjali. And then by 19 this time, it was with -- we knew that there was also one 20 with KCM. 21 Q. Okay. And when we look through or we look at 22 how BizRadio got its money through its existence, it 23 starts with a direct equity investment from your RIA 24 clients -- 25 A. Uh-huh.</p>	<p>1 And I wasn't -- my job was to manage a 2 portfolio of assets, do a two-hour-a-day radio show, 3 which takes another two hours to prepare, travel to New 4 York and Chicago to be on national television, meet with 5 people and make deals. And it was a 10- to 12-hour-a-day 6 job, which includes taking care of three kids, et cetera. 7 So the -- it was not possible for me to 8 do every single thing that involved all of these 9 companies without delegating some of that to trusted 10 employees, who -- who were capable and experienced enough 11 to do this. Those employees, who they were, changed over 12 time. Some of them turned out to not be competent and 13 had to be replaced. But it was not possible for me to 14 personally do every single task and monitor every single 15 penny that went in in every single deal. 16 Figuring out which -- who was going to 17 finance what was just not in my job description. It was 18 done by the CFO, John Lundsford. It was done by Rick 19 Jordan. It was done by trusted people who were capable 20 of doing it. 21 There was a period of almost a year where 22 I was so sick that I could barely move. David Wallace 23 took over unofficially and did my duties as the CEO of 24 the company because they had a big investment in it. But 25 there were a lot of people that were in charge of doing</p>
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<p>1 Q. -- correct? 2 A. Yes. 3 Q. And then it becomes investments and notes from 4 Wallace and Bajjali's partnership -- 5 A. Yes. 6 Q. -- correct? 7 A. Uh-huh. 8 Q. And then that stops for some reason. 9 Why -- why does Wallace and Bajjali stop 10 investing in BizRadio -- 11 A. I don't think -- 12 Q. -- or loaning money to BizRadio? 13 A. I don't think it stopped. 14 Q. Okay. I also thought we just covered that, at 15 some point, it did transition from Wallace and Bajjali to 16 KCM? 17 A. There was no such transition that I was aware 18 of. 19 Q. Okay. So there's never a point where Wallace 20 and Bajjali stopped loaning money to BizRadio? 21 A. I don't think that they're -- I -- I -- look, 22 sitting here right now, I have been told actually in Fort 23 Worth by the SEC that Wallace says that there was a time 24 when he said, "I'm no longer going to lend money." I 25 don't remember any such moment occurring.</p>	<p>1 that who I believed to be capable. 2 MR. STANTON: Let the record reflect that 3 I just went like this (motioning). 4 Q. (By Mr. Besen) Was one of those trusted 5 people Al Kaleta? 6 A. Pardon me? 7 Q. Was one of the people you trusted -- 8 A. Yes. 9 Q. -- to secure financing Al Kaleta? 10 A. Yes. 11 Q. Okay. And let me just say, Mr. Frishberg, I 12 appreciate your candor. My question wasn't really geared 13 toward what Wallace has told the SEC. 14 I know as a matter of fact, just from 15 looking at the general ledgers and seeing how money 16 moved, that Wallace and Bajjali as a matter of fact, not 17 reasons, fact, stopped putting money into BizRadio. 18 Do -- do you have that same 19 understanding? 20 A. I have a different -- no. 21 Q. Okay. Was there ever a time where you did not 22 think that an investment into the Wallace and Bajjali 23 partnership was a good thing for your RIA clients? 24 A. Yes. 25 Q. Okay. And -- and when was that and why was</p>

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1 **that?**
 2 MR. BESEN: That was two questions,
 3 but...
 4 A. The economy turned south, creating bargains
 5 available. Wallace and Bajjali would have been a fine
 6 investment if they sold their investment at the current
 7 prices. They were trying to raise money at the original
 8 book value prices, which I didn't believe were
 9 appropriate at the time.
 10 And so I told them that in order for my
 11 current clients to be able to put money into any of their
 12 deals, their argument was our properties are good and
 13 worth money. My argument was, "the current market value
 14 of it is lower than what you're asking for it and so my
 15 current clients can't invest. I recommend that you go
 16 back to your old investors and recapitalize."
 17 **Q. (By Mr. Besen) And, in fact, Mr. Wallace**
 18 **asked you if you had -- if DFFS had any more clients that**
 19 **could invest in Wallace and Bajjali?**
 20 A. And I said, yes, but they have to be at a much
 21 lower price.
 22 **Q. Okay. I'm going to ask that one more time**
 23 **just because I want it to be clear on the record.**
 24 **There was a point in time where**
 25 **Mr. Wallace approached you about having more investments**

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1 **into the Wallace and Bajjali partnership from your RIA**
 2 **clients and you told him "no"; correct?**
 3 A. I told him you would have to reduce the price.
 4 I didn't say "no". I said not -- I said it has to be
 5 cheaper.
 6 **Q. Okay. And he was unwilling to do it at a**
 7 **lower price?**
 8 A. Not exactly true. He -- he tried to raise
 9 money a different way first.
 10 **Q. Okay. And we established this earlier, but**
 11 **let me just go back to it.**
 12 **Do you have a sense of how much of the**
 13 **Wallace and Bajjali partnership came from DFFS clients?**
 14 A. I think more than 50 percent would be still
 15 correct.
 16 **Q. Okay. Okay. When -- scratch that.**
 17 **And so at a certain point -- I just want**
 18 **to make sure I understand. I think I do.**
 19 **When the market crashes in 2008, there's**
 20 **significant value in the conventional equity markets that**
 21 **could provide a better return for your IRA clients than**
 22 **an investment in a partnership like Wallace and Bajjali.**
 23 **Is that true?**
 24 A. Yes.
 25 **Q. Okay. And so as part of that, what you -- you**

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1 **said to Mr. Wallace, "I'm happy to have my clients invest**
 2 **in your fund, but it needs to make sense. And there's**
 3 **these bargains out here in the equities market and it's**
 4 **hard for me to justify putting them in there when they**
 5 **could just go into the equity market" and -- I think as**
 6 **you said in your SEC testimony -- "buy IBM for half the**
 7 **price"?**
 8 A. Yes. Or another rela --
 9 **Q. Or any other stock?**
 10 A. Or REIT.
 11 **Q. Okay. And so that all makes perfect sense to**
 12 **me.**
 13 **And at some point as a result of that,**
 14 **Wallace and Bajjali don't have money to continue to put**
 15 **into BizRadio. They're having trouble raising money on**
 16 **their own. There's no money for BizRadio. BizRadio**
 17 **starts getting its money from KCM. Correct?**
 18 A. Now, I know this.
 19 **Q. Okay. So it's your testimony that you didn't**
 20 **know how BizRadio was getting its money until recently,**
 21 **after Wallace and Bajjali stopped putting money in?**
 22 A. Yes.
 23 **Q. Okay. And for presumably the same reasons you**
 24 **were trusting Mr. Jordan or Mr. Kaleta or Mr. Lundsford**
 25 **or somebody else to figure out how to finance BizRadio's**

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1 **operations?**
 2 A. Yes.
 3 **Q. And would you agree with me that if KCM was**
 4 **loaning money to BizRadio, it was functionally no**
 5 **different than -- scratch that.**
 6 **Would you agree that an investment by**
 7 **your RIA client into KCM would be functionally the same**
 8 **as an investment into Wallace and Bajjali?**
 9 A. No.
 10 **Q. Don't they do the same things?**
 11 A. No.
 12 **Q. What makes them different?**
 13 A. Wallace and Bajjali has a diversified
 14 portfolio of lots of different assets with a loan to
 15 value of 60 or 70 percent with a lot of equity and a much
 16 larger asset base and much more diversified, administered
 17 by a company that's organized to do that.
 18 **Q. Who -- who determines the 60 to 70 percent**
 19 **loan to value?**
 20 A. It's in the terms sheet. It's required.
 21 **Q. Okay. But who actually checks to make sure**
 22 **that's the case?**
 23 A. There was an appraisal done, demanded by me.
 24 **Q. Was there an appraisal of BizRadio?**
 25 A. There was an appraisal of the real estate

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<p>1 assets.</p> <p>2 Q. Okay. So the 60 to 70 percent loan to value</p> <p>3 had nothing to do with the value of BizRadio. It was all</p> <p>4 about the assets that supposedly secured these notes?</p> <p>5 A. That and the value of the tower and the 1110</p> <p>6 radio station versus the purchase price.</p> <p>7 Q. Okay. And KCM, therefore, would be a less</p> <p>8 desirable investment than an investment in Wallace and</p> <p>9 Bajjali?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And yet as you sit here today, you know</p> <p>12 that your RIA clients invested in KCM even after Wallace</p> <p>13 and Bajjali stopped investing money into BizRadio;</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And that those -- that KCM was raising</p> <p>17 money from your clients to loan money to BizRadio;</p> <p>18 correct?</p> <p>19 A. As I sit here today, I know this.</p> <p>20 Q. Okay. And as you sit here today, you'll agree</p> <p>21 with me that the same logic applies to investments in</p> <p>22 KCM. It was historically cheap in the market and those</p> <p>23 investors should have been invested in equities instead</p> <p>24 of investing money into KCM?</p> <p>25 A. No. No. There's a -- I -- I -- without</p>	<p>1 A. That is not using client money was what you</p> <p>2 asked.</p> <p>3 Q. Okay. And so your understanding is -- and</p> <p>4 that was when in '08, do you think?</p> <p>5 A. The same time as the credit line, whatever</p> <p>6 that was.</p> <p>7 Q. Okay. Before Jordan left? Before Mr. Jordan</p> <p>8 left?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So from that time until the time</p> <p>11 Mr. Jordan leaves, it's your understanding that KCM is</p> <p>12 loaning money to DFFS with only nonclient money?</p> <p>13 A. Yes.</p> <p>14 Q. And -- and what did you do to ensure that was</p> <p>15 the case?</p> <p>16 A. I asked who that money was coming from.</p> <p>17 Q. Is that it?</p> <p>18 A. I know who that money came from. So yes.</p> <p>19 Q. As you sit here today, you know who the money</p> <p>20 came from --</p> <p>21 A. Yes, I do.</p> <p>22 Q. -- that was loaned to DFFS?</p> <p>23 A. I do.</p> <p>24 Q. Who is that?</p> <p>25 A. It came from Ed Lewis and it came from Jack</p>
<p>Page 150</p> <p>1 regard to underwriting Kaleta Capital Management and the</p> <p>2 quality of it as a debt instrument, I do not agree that</p> <p>3 my clients should have put 100 percent of their money</p> <p>4 into equities instead of debt instruments --</p> <p>5 Q. Okay.</p> <p>6 A. -- because it was a bargain. Cheap things get</p> <p>7 cheaper sometimes. It'd still need to have some debt</p> <p>8 instruments and some equity. I don't agree.</p> <p>9 Q. Okay. Fair enough.</p> <p>10 And can we try -- and I don't -- when did</p> <p>11 you first have an understanding that Al Kaleta was</p> <p>12 soliciting DFFS's clients for an invest -- for</p> <p>13 investments into KCM?</p> <p>14 A. I'm not sure.</p> <p>15 Q. Was there a time when DFFS lost its credit</p> <p>16 line from IBC Bank?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you know when that was?</p> <p>19 A. I -- I knew it at the time. It was -- I don't</p> <p>20 know. '08 maybe.</p> <p>21 Q. Okay. And who made up for the loss of that</p> <p>22 credit line when that happened?</p> <p>23 A. Kaleta Capital Management.</p> <p>24 Q. Okay. So we knew at least in '08 that KCM</p> <p>25 was --</p>	<p>Page 152</p> <p>1 McKagligot and it came from Kaleta's next door neighbor</p> <p>2 and a couple of others.</p> <p>3 Q. And how did you verify that that was the case?</p> <p>4 A. Well, I know it was the case.</p> <p>5 Q. Okay. How would you know it was the case?</p> <p>6 Did you actually sit in a room with these gentlemen --</p> <p>7 A. No.</p> <p>8 Q. -- when they wrote checks?</p> <p>9 A. No, I didn't.</p> <p>10 Q. Did you ever see a KCM bank account?</p> <p>11 A. No.</p> <p>12 Q. So you don't really know that the money came</p> <p>13 from them?</p> <p>14 A. We're back to the thing about the elevator</p> <p>15 going up and down.</p> <p>16 No. I don't -- I don't know.</p> <p>17 Q. You were led to believe that?</p> <p>18 A. Yes.</p> <p>19 MR. BESEN: Why don't we go off the</p> <p>20 record.</p> <p>21 MR. FUQUA: Sure.</p> <p>22 THE VIDEOGRAPHER: Off the record,</p> <p>23 3:05 p.m.</p> <p>24 (Recess.)</p> <p>25 THE VIDEOGRAPHER: Back on the record,</p>

Daniel Frishberg

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<p>1 3:09 p.m.</p> <p>2 Q. (By Mr. Besen) Mr. Frishberg, did you know</p> <p>3 that KCM has loaned money to David Wallace and Costa</p> <p>4 Bajjali to pay their personal income taxes?</p> <p>5 A. I do now.</p> <p>6 Q. When did you first learn that?</p> <p>7 A. I -- I don't -- I don't know.</p> <p>8 Q. Recently in the last few months?</p> <p>9 A. I'm -- I'm not sure. I didn't know when he</p> <p>10 did it.</p> <p>11 Q. When did you decide to form the Laffer</p> <p>12 Frishberg Wallace Fund?</p> <p>13 A. When did I decide? I didn't.</p> <p>14 Q. Well, when was the fund formed?</p> <p>15 A. I don't know. Sometime in '08 or '09.</p> <p>16 Q. And what was the extent of Mr. Laffer's</p> <p>17 involvement in that fund?</p> <p>18 A. He provided economic projections and</p> <p>19 nonbinding consultation.</p> <p>20 Q. What does nonbinding consultation mean?</p> <p>21 A. Meaning he didn't have a vote on the board and</p> <p>22 he was not part of the -- he had no binding authority.</p> <p>23 Q. Did he own a portion of the general partner?</p> <p>24 A. He had a -- no. But he had a fee arrangement.</p> <p>25 Q. Okay. What was his fee arrangement with the</p>	<p>1 A. I don't think he made any transaction at my --</p> <p>2 out of Kaleta Capital Management at my instructions. But</p> <p>3 I did agree that the deal with Arthur Laffer was a good</p> <p>4 deal.</p> <p>5 Q. Okay. Did -- did the Laffer Frishberg Wallace</p> <p>6 Fund ever borrow money from KCM?</p> <p>7 A. I don't know.</p> <p>8 Q. What was your role at the Laffer Frishberg</p> <p>9 Wallace Fund?</p> <p>10 A. I was supposed to be -- I was supposed to be</p> <p>11 on the advisory board and watching the money, but that</p> <p>12 never happened. I never -- I never did have a role in</p> <p>13 it.</p> <p>14 Q. You are a member of the general partner, are</p> <p>15 you not?</p> <p>16 A. Yes.</p> <p>17 Q. And you own what percentage of the general</p> <p>18 partner?</p> <p>19 A. 35.</p> <p>20 Q. And as the general partner, aren't you --</p> <p>21 A. Well, I or -- I'm not sure whether it is me or</p> <p>22 Frishberg Financial Services that owns it. I -- I don't</p> <p>23 know the answer to that. I disclosed it on my thing as,</p> <p>24 I think --</p> <p>25 Q. Okay. For -- for our purposes whether it is</p>
<p>Page 154</p> <p>1 fund?</p> <p>2 A. I'm not sure exactly. Some few percent of</p> <p>3 profit that the company would earn, that the general</p> <p>4 partner would earn.</p> <p>5 Q. And did you pay him any other fees for his</p> <p>6 name and his association with your fund?</p> <p>7 A. Yes.</p> <p>8 Q. What did you pay him?</p> <p>9 A. I'm not sure exactly what it was. I think in</p> <p>10 the -- I think it came to \$25,000 for one quarter that I</p> <p>11 knew about, but...</p> <p>12 Q. Okay. And -- and did KCM make that \$25,000</p> <p>13 payment?</p> <p>14 A. I don't know.</p> <p>15 Q. Is it possible?</p> <p>16 A. Is it possible?</p> <p>17 MR. STANTON: Tell him anything is</p> <p>18 possible.</p> <p>19 Q. (By Mr. Besen) Would you like to take your</p> <p>20 counsel's advice?</p> <p>21 A. Yes, it's possible.</p> <p>22 Q. If Mr. Kaleta testifies on the stand in front</p> <p>23 of Judge Atlas that he transferred \$25,000 to Art Laffer</p> <p>24 at your instruction, is that -- are you going to have any</p> <p>25 basis to dispute his testimony?</p>	<p>Page 156</p> <p>1 actually owned by you individually or Daniel Frishberg</p> <p>2 Financial Services, can we agree the person who would</p> <p>3 have represented that interest would have been you?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And do you understand as the general</p> <p>6 partner that you owe a fiduciary duty to your limited</p> <p>7 partners?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And are you telling me that you don't</p> <p>10 know how Laffer Frishberg Wallace raised money and</p> <p>11 operated as a fund?</p> <p>12 A. No.</p> <p>13 Q. Okay. But you don't know whether or not</p> <p>14 Laffer Frishberg Wallace took money from KCM?</p> <p>15 A. I don't know that.</p> <p>16 MR. BESEN: Okay. I'm going to hand you</p> <p>17 what I'm going to mark as Exhibit 8.</p> <p>18 (Exhibit No. 8 marked.)</p> <p>19 Q. (By Mr. Besen) Exhibit 8 is an e-mail from</p> <p>20 Nancy Gollan to Linda Sikes and Al Kaleta, copying Sonia</p> <p>21 Joao, Warren Gunn, Pamela Caddell and Mr. Wallace.</p> <p>22 It's referencing a promissory note</p> <p>23 between KCM and LFW for \$25,000. Do you see that in the</p> <p>24 e-mail, sir?</p> <p>25 A. I see that.</p>

39 (Pages 153 to 156)

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<p>1 Q. Okay. Do you have any knowledge of this at 2 all?</p> <p>3 A. Pardon me?</p> <p>4 Q. Do you have any knowledge of the transaction 5 whereby KCM advanced \$25,000 --</p> <p>6 A. No.</p> <p>7 Q. -- to LFW Economic Opportunity Fund?</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 MR. BESEN: Okay. I'll hand you what I'm 11 going to have marked as Exhibit No. 9. 12 (Exhibit No. 9 marked.)</p> <p>13 Q. (By Mr. Besen) Exhibit No. 9 is a bank 14 statement from Bank of America, Account Number 15 5860 1617 3076 for the period December 22nd, 2009 through 16 January 20th, 2010.</p> <p>17 A. Yes.</p> <p>18 Q. If you look in the addition section on the 19 second page of the statement, there's a \$151,000 wire 20 transfer and a \$91,000 from JP Morgan Chase Bank.</p> <p>21 I presume -- I'd like for you to confirm 22 for me if you can -- that those are management fee 23 payments from DFFS?</p> <p>24 A. What -- what date was that?</p> <p>25 Q. It's on, it looks like, the 13th and the 14th</p>	<p>1 Mr. Frishberg?</p> <p>2 A. Probably '08 or '09 or '07, right -- right in 3 there somewhere. '08 maybe.</p> <p>4 Q. Okay. Well, we know you sold it in the fall 5 of 2009 because we saw that wire transfer earlier; 6 correct?</p> <p>7 A. Right.</p> <p>8 Q. Did you own your property for more than a 9 year?</p> <p>10 A. I'm not sure. Maybe a year, year and a half. 11 Not long -- not long.</p> <p>12 Q. Okay. And then if you look right at the end 13 of the detail on that wire transfer, it says a "counter 14 debit, \$15,000."</p> <p>15 A. Sorry. It said what?</p> <p>16 Q. It says "counter debit, \$15,000."</p> <p>17 A. I don't know what that means.</p> <p>18 Q. Okay. A counter debit is when somebody goes 19 to the teller and withdraws money.</p> <p>20 A. Okay.</p> <p>21 Q. Okay. So based off your earlier testimony, 22 can I presume that that was your wife taking out \$15,000 23 in cash?</p> <p>24 A. Yes. It could be, I -- I assume.</p> <p>25 Q. Okay. And if you flip the page to page 4 or</p>
Page 158	Page 160
<p>1 that those two wires are coming in?</p> <p>2 A. Possibly. Probably.</p> <p>3 Q. Okay. And if we turn one more page to the 4 subtraction section, the bottom of the page there's a 5 \$122,000 wire transfer to my client, Mr. Taylor, as the 6 Receiver for Kaleta Capital Management. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Who was that wire transfer for?</p> <p>9 A. That was for the personal -- that was for 10 the -- the Kaleta Capital Management made an investment 11 in -- when I purchased that house on 634 Voss Road. And 12 I realized that that was characterized as a loan by the 13 Receiver.</p> <p>14 But in any case, it was -- my 15 understanding of it was that it was an investment. But 16 this was the amount that the Receiver said would pay that 17 off.</p> <p>18 Q. How much money did KCM provide you to purchase 19 your home?</p> <p>20 A. I -- probably one -- 106 or -- I'm not sure 21 what the exact amount was.</p> <p>22 Q. And --</p> <p>23 A. It would be this minus whatever interest the 24 Receiver calculated.</p> <p>25 Q. And when did you purchase your home,</p>	<p>1 5, the fourth entry on January 19th is a transfer to 2 checking account ending in 4454 of \$50,000.</p> <p>3 A. Yes.</p> <p>4 Q. Do you know whose account that is?</p> <p>5 A. No.</p> <p>6 Q. I'll -- I'll represent to you, Mr. Frishberg, 7 that account is also not disclosed in your asset 8 statement.</p> <p>9 A. I don't know if it's my account or not.</p> <p>10 Q. Do you know when you stopped receiving your 11 management fees from the DFFS client base?</p> <p>12 Like when -- I understand that it phased 13 out. The accounts were moved. It phased out, and they 14 went away.</p> <p>15 Do you know for how long you received 16 your management fees? Was January the last time you were 17 paid a management fee?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And did you yourself personally retain 20 the entire portion of the last management fee because 21 Mr. Kaleta no longer owned an interest in the firm?</p> <p>22 A. No. Some large amount of money was paid to 23 Kaleta to settle debt, credit card debt and expense debt. 24 A large amount of money was paid on behalf of BizRadio 25 for payroll, legal fees, et cetera. A large amount of</p>

40 (Pages 157 to 160)

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1 money was also paid to settle IRS -- to -- to pay taxes.
 2 **Q. Okay. Well, Mr. -- Mr. Frishberg, all of that**
 3 **sounds like it was for your benefit.**
 4 A. Well, no. BizRadio was not for my benefit.
 5 Paying Kaleta Capital Management -- paying Kaleta was a
 6 DFFS debt to Kaleta.
 7 **Q. Are you -- are you testifying that Al Kaleta**
 8 **received money in January of 2010?**
 9 A. Yes.
 10 **Q. Personally?**
 11 A. Yes. As a repayment of debt that the company
 12 owed him.
 13 MR. BESEN: Okay. I'd like to request
 14 that we get a copy of records of that payment because
 15 that would be a pretty large issue, given that his assets
 16 were frozen by the order of the Court and that money
 17 should have been reported to us. Just put that out for
 18 everybody. If you-all can track down those payments from
 19 DFFS.
 20 THE WITNESS: I'm sure we can.
 21 You understand that that was a repayment
 22 of actual money.
 23 MR. BESEN: But that --
 24 THE WITNESS: -- that he was owed.
 25 **Q. (By Mr. Besen) Fair enough.**

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1 A. That's fine.
 2 **Q. But it's separate from what you paid to the**
 3 **Receiver?**
 4 A. Yes.
 5 MR. FUQUA: Oh, yeah.
 6 **Q. (By Mr. Besen) I just want to make sure. I**
 7 **just want to make sure I'm understanding.**
 8 A. Separate from what I paid to the Receiver --
 9 **Q. Okay.**
 10 A. -- that's correct.
 11 **Q. Mr. Frishberg, how are you paying your legal**
 12 **fees?**
 13 A. Well, I'm actually not. I'm way behind on
 14 them. I'm paying them out of whatever I can get.
 15 **Q. Okay. Okay.**
 16 MR. BESEN: Gentlemen, do we still have
 17 an agreement we're going to adjourn and reschedule
 18 another mutually agreeable time when some of these bank
 19 statements and e-mails are produced?
 20 MR. FUQUA: I'm okay with that.
 21 MR. BESEN: Okay. I have no further
 22 questions at this time.
 23 MR. FUQUA: And we'd love for you -- we
 24 have been honoring a commitment about not liquidating.
 25 We'd love for the Receiver to allow us to liquidate your

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1 IRA. I think it's 38,000. But we haven't done that
 2 because we have been trying to honor our courtroom
 3 statements to you guys.
 4 MR. BESEN: Now, when you say "we" you
 5 mean the three of you-all, not Mr. Frishberg; correct?
 6 MR. FUQUA: Yeah. That's correct.
 7 MR. BESEN: Okay.
 8 MR. FUQUA: You're absolutely right.
 9 THE VIDEOGRAPHER: Are we off?
 10 MR. BESEN: Yes. Yes. We're off the
 11 record.
 12 THE VIDEOGRAPHER: Off the record,
 13 3:32 p.m.
 14 (Off the record.)
 15 * * * * *
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 25 * * * * *

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1 SEC VS. KALETA
 2 VIDEOTAPED DEPOSITION OF
 3 DANIEL FRISHBERG
 4 JUNE 4, 2010
 5 CHANGES AND SIGNATURE
 6 PAGE/LINE CHANGE REASON
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 _____

Daniel Frishberg

June 4, 2010

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1 PAGE/LINE CHANGE REASON
2 _____
3 _____
4 _____
5
6 I, DANIEL FRISHBERG, have read the foregoing
7 deposition and hereby affix my signature that same is
8 true and correct, except as noted above.

9 DANIEL FRISHBERG

10
11 THE STATE OF TEXAS :
12 COUNTY OF _____:
13
14 BEFORE ME, _____,
15 on this day personally appeared DANIEL FRISHBERG, who
16 _____ a) is personally known to me, or
17 _____ b) proved to me on the oath of
18 _____ or
19 _____ c) proved to me on the basis of
20 satisfactory evidence
21 to be the person whose name is subscribed to the
22 foregoing instrument and acknowledged to me that he/she
23 executed the same for the purposes and consideration
24 therein expressed.

25 Given under my hand and seal of office
this _____ day of _____, 2010.

Notary Public in and for
the State of _____

My Commission Expires:

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1 I further certify that charges for the
2 preparation of the foregoing completed deposition were
3 \$_____ for the original thereof, charged to the
4 Attorney(s) for Receiver.
5 GIVEN UNDER MY HAND AND SEAL OF OFFICE on this
6 18th day of June, 2010.
7
8
9
10 _____
11 Dorothy A. Rull
12 C.S.R. No. 3978, Expires 12/31/10
13 Notary Public, State of Texas
14 Commission Expires: 06/12/2012

15 Allied Advanced Reporting, Inc.
16 Texas CRCB Firm Registration No. 252
17 1647 Colquitt
18 Houston, Texas 77006
19 Ph 713.524.6777 Toll Free 1.800.223.9409
20 Fax 713.524.6888
21 aari@alliedadvancedreporting.com
22
23
24
25

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1 THE STATE OF TEXAS :
2 COUNTY OF HARRIS :
3
4 I, Dorothy A. Rull, a Certified Shorthand
5 Reporter in and for the State of Texas, do hereby certify
6 that the facts stated by me in the caption hereto are
7 true; that the foregoing deposition of DANIEL FRISHBERG,
8 the witness hereinbefore named, was taken by me in
9 machine shorthand, the said witness having been by me
10 first duly sworn under oath, and later transcribed from
11 machine shorthand to typewritten form by me.

12 I further certify that the above and foregoing
13 deposition, as set forth in typewriting, is a full, true
14 and correct transcript of the proceedings had at the time
15 of taking said deposition.

16 I further certify that I am neither attorney
17 or counsel for, nor related to or employed by any of the
18 parties to the action in which this deposition is taken;
19 and, further, that I am not a relative or employee of any
20 attorney or counsel employed by the parties hereto or
21 financially interested in the action.
22
23
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