

# Exhibit P

**In The Matter Of:**  
*Securities & Exchange Commission v.*  
*Kaleta, Albert Fase, et al.*

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*Willian C. Heath, CFP*  
*May 25, 2010*

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1 WILLIAM C. HEATH, CFP,  
2 being called as a witness, and having been first duly  
3 sworn, testified as follows:  
4 EXAMINATION  
5 BY MR. TAYLOR:  
6 Q. I am the receiver in the case of the  
7 Securities and Exchange Commission versus KCM, and I  
8 understand that you are appearing today pursuant to a  
9 subpoena served upon you a week or so ago. Is that  
10 correct?  
11 A. (Moving head up and down.)  
12 Q. And you have -- you have to give an audible  
13 answer each time or --  
14 A. Yes, yes, yes.  
15 Q. -- the court reporter will not be able to  
16 record it.  
17 A. Thank you.  
18 Q. Thank you for coming in today. We'll try to  
19 minimize the imposition on your time this morning and get  
20 this done as expeditiously as possible.  
21 You have produced certain documents.  
22 We're having those copied right now. But I thought we  
23 might go ahead and handle some preliminaries while we're  
24 waiting for the documents.  
25 I don't want to get -- go too far back,

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1 but I would like to get your background and history in  
2 the securities industry.  
3 A. I was a registered rep for probably, oh, gosh,  
4 30 years, a registered investment advisor for probably 25  
5 years. I started my firm, Barrington Financial Advisors,  
6 in 1972 right after I left PriceWaterhouse. We were a  
7 tax preparation and an accounting firm.  
8 And in the '80s, late '70s, saw the  
9 financial planning industry begin to bloom and got my CFP  
10 designation and sold the tax and accounting to my CPA  
11 partner. And we went forward as a financial planning  
12 organization, specializing in the management of net  
13 worth.  
14 Q. And have you always done business under the  
15 Barrington financial name?  
16 A. It started out as William C. Heath &  
17 Associates and then we changed the name to Barrington.  
18 Q. Approximately what time?  
19 A. Oh, gosh, we've been Barrington probably 20  
20 years.  
21 Q. Has the Barrington Financial Group or its  
22 predecessor ever been disciplined by the SEC?  
23 A. Never.  
24 Q. Or by any self-regulatory body?  
25 A. Never.

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1 Q. How about you personally?  
2 A. Never.  
3 Q. Have there been any client or customer claims  
4 against the firm?  
5 A. None.  
6 Q. Or against you personally?  
7 A. None.  
8 Q. Prior to starting Barrington, you mentioned  
9 you were with PriceWaterhouse.  
10 Was your service as a registered rep?  
11 A. No. I wasn't a registered rep with them.  
12 Q. Did you have any securities experience prior  
13 to PriceWaterhouse?  
14 A. No.  
15 Q. So you did PriceWaterhouse on the tax side, so  
16 during --  
17 A. I was an accountant, yes.  
18 Q. Have you ever worked for any other firms,  
19 other than your own -- other than the firm of which you  
20 are a principal?  
21 A. In the last 38 years?  
22 Q. Yes.  
23 A. Well, prior -- 40 years ago, I was with  
24 PriceWaterhouse, as with Haskins & Sells and Finger  
25 Office Furniture.

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1 Q. No other securities --  
2 A. No.  
3 Q. -- no other securities firm?  
4 A. No.  
5 Q. Okay. Can you describe the business base of  
6 Barrington Financial during the past, let's call it, two  
7 to three years?  
8 A. Barrington Financial Advisors, okay, the  
9 business base over the past two or three years?  
10 Q. Yes.  
11 A. What do you mean by "business base"?  
12 Q. What is the -- what are the assets under  
13 management approximately?  
14 A. At the end of '09, it was approximately  
15 20 million.  
16 Q. 20 million?  
17 A. Yeah.  
18 Q. How many clients approximately --  
19 A. Two, three years before that, it was probably,  
20 oh, I'd say, 80 million.  
21 Q. Any particular reason why the asset base --  
22 A. Declined?  
23 Q. -- declined?  
24 A. Market.  
25 Q. The market. Since the crash?

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1 A. Yup, yup.  
2 Q. During the past two to three years, how many  
3 clients have comprised the asset -- the client base?  
4 A. We probably have around 200 clients. When I  
5 say "clients," these are people we charge fees to on a  
6 quarterly basis and we have two types of fees we charge.  
7 Q. Okay.  
8 A. One is for assets under management --  
9 Q. All right.  
10 A. -- and the other is for net worth management,  
11 which is financial planning.  
12 Q. Do you charge the same fees to the same  
13 clients?  
14 A. No. We charge financial planning fees to the  
15 same clients, and we charge asset management fees to the  
16 same clients, not all of the clients but some of the  
17 clients.  
18 Q. Right.  
19 A. There's 30 net worth management clients that  
20 we charge financial planning fees to.  
21 Q. Okay. What is the rate structure?  
22 A. The rate?  
23 Q. Right.  
24 A. It's 70 basis points of assets scaled down  
25 after they get over a million.

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1 Q. And that is on your planning side?  
2 A. Right.  
3 Q. And what about the other side of the business?  
4 A. The other side of the business, it's assets  
5 under management; and we typically charge somewhere  
6 between 1 to 1 1/2 percent depending on the size of the  
7 accounts.  
8 Q. Okay. And through whom do you clear your  
9 transactions? Again, I'm talking --  
10 A. Schwab.  
11 Q. -- about in the last two to three years.  
12 You've had a relationship with Schwab  
13 doing your clearing?  
14 A. Yes. Since --  
15 Q. Executing broker?  
16 A. Since the beginning of the year.  
17 Q. Just the beginning of this year?  
18 A. Uh-huh.  
19 Q. How about prior to?  
20 A. Prior to that, I was basically with Financial  
21 Network. That's when I was associated with a  
22 broker-dealer, which I severed that association with all  
23 broker-dealers, oh, gosh, I guess it was, in February or  
24 March.  
25 Q. Of --

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1 A. Since --  
2 Q. -- '10?  
3 A. Of this year, yeah. Since we were not earning  
4 commissions anymore, I saw no need for a broker.  
5 Q. All right. Is Financial Network a registered  
6 broker-dealer?  
7 A. Uh-huh.  
8 Q. And you were an associated person of it?  
9 A. Uh-huh.  
10 Q. Okay. During what -- what years? I have to  
11 ask you, I'm going to go --  
12 A. Okay. It's probably 15 years prior to...  
13 Q. And you initiated a relationship with Charles  
14 Schwab in the beginning of this year?  
15 A. Actually, it was the end of '09. I left  
16 Financial Network toward the end of '09 and...  
17 Q. What is the financial arrangement with Schwab?  
18 A. What is my financial relationship with them?  
19 Q. Right.  
20 A. They clear custody, but I don't get paid  
21 anything from them.  
22 Q. And what are their fees for clearing and  
23 custody?  
24 A. \$8, \$9 a trade.  
25 Q. Okay. That's for equities?

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1 A. Uh-huh.  
2 Q. ETFs?  
3 A. Bonds are like 10, 20 bucks a bond, I think.  
4 Q. Did your initiation of relationship with  
5 Schwab have anything to do with Mr. Frishberg?  
6 A. No. Didn't even know him at the time.  
7 Q. How did you come to know Daniel Frishberg? I  
8 assume you did.  
9 A. Yeah. In February, he was introduced to me,  
10 and sat down and we visited over a cup of coffee. And he  
11 told me of his problems and that he needed to move his  
12 clients because Fidelity had told him to -- he had to  
13 move all his clients, and so he was looking for an RIA  
14 that he could transfer his clients to.  
15 Q. Is that the first time you met Mr. Frishberg?  
16 A. Yeah.  
17 Q. So you didn't have a prior relationship with  
18 him?  
19 A. No. I heard him on the radio many years.  
20 Q. You belong to the same country club?  
21 A. Used to.  
22 Q. Is that Royal Oaks?  
23 A. Yes. I used to be the -- on the board there.  
24 Q. All right. Did you know Frishberg --  
25 A. No.

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1 Q. -- at that time?  
2 A. He didn't live when I was there.  
3 Q. Okay. And you're still a member of Royal  
4 Oaks?  
5 A. No.  
6 Q. Is he --  
7 A. I think he is.  
8 Q. -- if you know?  
9 Have you ever met with Mr. Frishberg at  
10 Royal Oaks Country Club?  
11 A. Yes.  
12 Q. Once or more than once?  
13 A. Oh, I'd say two or three times.  
14 Q. Okay. During what time frame?  
15 A. During February, March when we were going  
16 through this transaction.  
17 Q. Okay. Is it fair to say then that your only  
18 substantive communications with Mr. Frishberg were  
19 concerning some kind of business arrangement?  
20 A. He needed to move his clients, and I was  
21 willing to accept them. Obviously, it's a great  
22 opportunity for Barrington because we thought  
23 \$175 million was going to come over.  
24 The deal I told Dan was -- and it's in  
25 the term sheets and every place else. I said, "Daniel,

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1 I'll be happy to help you, but I'm not paying one cent  
2 out of my pocket. It's a non-cash deal. You will -- it  
3 will be an earn-out. And whatever the revenues are, you  
4 get your portfolio management fee out of it, which is  
5 approximately a 1/2 a percent," which we pay all of our  
6 other portfolio managers. We probably have probably, I'd  
7 say, upwards of 10 other portfolio managers.  
8 Q. Is this based on the accounts that moved  
9 over -- were expected to move over?  
10 A. It's based on the assets under management that  
11 we end up billing for and collecting for. And that's  
12 what he gets paid on.  
13 Q. And are his fees related strictly to the  
14 assets that moved over from Daniel Frishberg Financial --  
15 A. Uh-huh.  
16 Q. -- correct?  
17 A. That's -- yeah.  
18 Q. And you entered into this -- we'll talk more  
19 about it later.  
20 But you entered into the arrangement  
21 based upon your understanding that he would move  
22 175 million in assets; correct?  
23 A. That's what we thought we were coming over,  
24 yeah.  
25 Q. And how many clients were supposed to come

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1 over?  
2 A. It's probably upwards of 500 with probably  
3 closer to 1,000 accounts. Each client could have  
4 multiple accounts.  
5 Q. Right.  
6 What sort of documentation did he show  
7 you when he made these representations?  
8 A. Well, I looked at -- you know, I did my due  
9 diligence on his company as best I could. I looked at  
10 his financial statements. I looked at his billings. I  
11 looked at his tax returns.  
12 Q. Okay. You looked at the financial statements  
13 of what entity?  
14 A. The one that charged the fees --  
15 Q. That's --  
16 A. -- Daniel Frishberg.  
17 Q. Daniel Frishberg Financial Services?  
18 A. Yes.  
19 Q. Did you understand that Daniel Frishberg  
20 Financial Services had previously done business under  
21 different variations of the name?  
22 A. Yeah. There's a BizRadio and a bunch of other  
23 different names, which I wasn't concerned with. I was  
24 concerned with the company that was doing the billings --  
25 Q. Right.

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1 A. -- okay. And I looked at their tax returns  
2 and I looked at their financial statements to satisfy  
3 myself that what he was saying was true. And they were  
4 generating upwards of \$2 million in revenues a year.  
5 Q. Do you have -- amongst the documents you  
6 produced, do you have the documents that he gave you?  
7 A. He didn't give me anything. I got them on my  
8 own. Well, I got the tax return; but you have access to  
9 that.  
10 Q. How did you -- how did you do that?  
11 A. How did I get the tax return?  
12 Q. Right.  
13 A. Well, you understand when you buy a company or  
14 get involved with them, you do due diligence.  
15 Q. Of course.  
16 A. And a couple of things you look at -- I  
17 checked their -- any problems with the SEC. I looked at  
18 their ADV. All this is on-line.  
19 Q. Okay.  
20 A. I requested and got their last two years tax  
21 returns.  
22 Q. Okay. That's what I was getting at.  
23 I understood that you would look at all  
24 these things, but did you get the tax returns from  
25 Mr. Frishberg?

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1 A. Yeah.  
2 Q. And those were the tax returns of Daniel  
3 Frishberg Financial Services?  
4 A. That were filed, signed by the accountant and  
5 so forth.  
6 Q. Did you get his personal tax returns?  
7 A. No. Not interested in it.  
8 Q. Because you were buying his business; correct?  
9 A. Yeah. I don't compare what happens to him.  
10 MR. TABER: Objection, form. He didn't  
11 say he was buying his business.  
12 Q. (By Mr. Taylor) You can answer. That's a form  
13 objection. You can go ahead and answer.  
14 MR. THOMAS: Can I have the question  
15 back.  
16 (The record was read as requested.)  
17 A. I -- I -- well, I'm taking over his clients.  
18 I don't know what you mean by "buying," okay.  
19 Q. (By Mr. Taylor) Okay. You're acquiring the  
20 Daniel Frishberg Financial Services business; is that  
21 right?  
22 A. No. I am acquiring clients that were  
23 affiliated with him that are now -- had to leave.  
24 Fidelity said, "Move them."  
25 Q. But you looked at the tax returns of Daniel

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1 Frishberg Financial Services; correct?  
2 A. That's who billed those clients prior to.  
3 Q. Right.  
4 What did you want to learn from the tax  
5 returns?  
6 A. I wanted to make sure that the revenues that I  
7 was understanding that were being billed were, in fact,  
8 billed. And, yes, they were.  
9 Q. Okay. Did the tax returns disclose amounts by  
10 client or did it just give you the net worth?  
11 A. Total. Total.  
12 Q. It gave you net revenues of Daniel Frishberg  
13 Financial Services; correct?  
14 A. Total fees, yes.  
15 Q. And by looking at those tax returns, you  
16 wouldn't get any information on any individual client,  
17 would you?  
18 A. No.  
19 Q. Okay. So you got basically the net income,  
20 taxable income of Daniel Frishberg Financial Services?  
21 A. Uh-huh.  
22 Q. Did you also look at the financial statements  
23 of Daniel Frishberg Financial Services?  
24 A. Yes. I said that.  
25 Q. For what purpose?

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1 A. For the same purpose that anybody else  
2 entering into a transaction would look at financial  
3 statements.  
4 Q. Okay. And what information did you gather  
5 from the financial statements?  
6 A. I wanted to make sure that those fees that  
7 were charged were, in fact, on there. Because I was  
8 looking at 2009 financial information --  
9 Q. All right.  
10 A. -- but I was looking at '08 and '07 tax  
11 returns. So the natural follow-through would see that  
12 it's consistent, and it was.  
13 Q. The financial statements did not disclose any  
14 information about individual clients, did it?  
15 A. No.  
16 Q. It, again, gave you the income statement of  
17 Daniel Frishberg Financial Services; correct?  
18 A. Uh-huh.  
19 Q. And the balance sheet of Daniel Frishberg  
20 Financial Services?  
21 A. Uh-huh. At 2009, December.  
22 Q. 2009, December?  
23 A. Yeah.  
24 Q. Again --  
25 A. Now, I have a list of their clients, okay.

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1 Because in the first quarter, they billed all their  
2 clients, all right, and I looked at that billing. I  
3 looked at that list of it, and it was consistent with all  
4 of his other billings.  
5 Q. Okay. Have you -- we can go through the  
6 documents here in a moment.  
7 But have you produced the financial  
8 statements that he gave you?  
9 A. Have I produced the financial...  
10 Q. Brought them here today?  
11 A. No. I figured you'd have them.  
12 Q. Okay. I would like to have those, the ones  
13 that he gave you.  
14 A. Well, get them from him.  
15 Q. Well, I'm asking you to produce them. I want  
16 to --  
17 A. Well, I think you ought to get them from him.  
18 Why do I need to provide them? If you want them from  
19 him, ask him for them. He'll be happy to give them to  
20 you.  
21 Q. Well, you know, you're not represented and I  
22 don't want to get into a legal argument but I want to  
23 know what you had and what was presented to you in  
24 connection with the transaction and I want it to be an  
25 exhibit to this deposition.

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1 THE WITNESS: Do you have any problems  
2 with that?  
3 MR. TABER: No.  
4 MR. TAYLOR: Are you representing -- are  
5 you representing Mister --  
6 MR. TABER: No, I'm not. I'm sorry.  
7 What was your question?  
8 MR. TAYLOR: Are you representing the  
9 witness today?  
10 MR. TABER: I am not.  
11 Q. (By Mr. Taylor) Okay. Have you ever met this  
12 gentleman before?  
13 A. No.  
14 Q. Have you ever met any legal representative --  
15 A. I know his boss. Yes, I met him.  
16 Q. Who is that?  
17 A. Bobby Axelrod.  
18 Q. Okay. When did you first meet Bobby Axelrod?  
19 MR. TABER: Objection, form. Relevance.  
20 Q. (By Mr. Taylor) Have you met Bobby Axelrod?  
21 A. Yeah, I met him.  
22 Q. When?  
23 A. Oh, gosh, it was a couple of months ago, I  
24 guess.  
25 Q. And what was the purpose of your meeting with

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1 Mr. Axelrod?  
2 A. I think we were talking about this  
3 transaction, okay, and -- and we just went through a  
4 discussion of that.  
5 Q. Who was --  
6 A. I had my attorneys prepare the terms of the  
7 transaction and what we were trying to agree upon, the  
8 terms of the transaction. That if and when we get  
9 satisfied clearance from the SEC and all the different  
10 things that I required, then we would reduce our  
11 understanding to a contract and move forward.  
12 Q. What clearance from the SEC would you -- would  
13 be required as far as you know?  
14 A. Well, I'm not sure I want to -- how involved I  
15 want to get if somebody has a problem with the SEC. I  
16 don't want that to reflect on me. I have no reason for  
17 it to reflect on me and I wouldn't want it to.  
18 Q. You --  
19 A. When I say "me," I'm talking about Barrington  
20 Financial.  
21 Q. All right. Are you talking about some kind  
22 clearance of the transaction?  
23 A. I'm talking about the clearance of the people  
24 involved.  
25 Q. The people who --

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1 A. The parties to the transaction. I want to  
2 know who I'm doing business with.  
3 Q. Right.  
4 A. Okay.  
5 Q. Did you contact the SEC concerning this --  
6 A. They contacted me and we talked.  
7 Q. Okay. Who at the SEC contacted you?  
8 A. I don't know. It's probably -- Tim, were you  
9 one of the guys I talked to?  
10 MR. MCCOLE: No.  
11 THE WITNESS: Well, it was one of your  
12 associates, then; right?  
13 MR. MCCOLE: Okay. Was it perhaps  
14 Ms. Frank or Mr. Gortemer?  
15 THE WITNESS: I don't remember which, but  
16 I talked to somebody there twice. Aren't you in Dallas  
17 or Fort Worth?  
18 MR. MCCOLE: Fort Worth.  
19 THE WITNESS: Yeah. Somebody out of your  
20 office.  
21 MR. TABER: Okay. What, if any,  
22 clearance did you receive from the SEC regarding the  
23 transaction?  
24 THE WITNESS: I didn't receive any  
25 clearance at all. I'm waiting for that. That's why we

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1 don't have a contract.  
2 MR. MCCOLE: Okay.  
3 Q. (By Mr. Taylor) What exactly are you --  
4 describe for me the clearance that you are waiting for.  
5 A. Well, I'm not anticipating anything. I want  
6 to see what happens, and then I'll make my judgment.  
7 Q. In other words, you want to see what happens  
8 in the enforcement actions?  
9 A. Yeah. I want to see what the final thing is  
10 going to look like before I contract with anybody.  
11 Q. But there's no official clearance that you are  
12 seeking; right?  
13 A. Not really. Not really. I just -- I just  
14 want to see the outcome of all this mess that's going on.  
15 Q. Have you made any changes to your ADV because  
16 of these arrangements?  
17 A. Well, of course. I had to. Yes.  
18 Q. What did you do to change the ADV?  
19 A. I reflected Dan as a portfolio manager, in  
20 addition to all the other portfolio managers we have.  
21 Q. And who else was present at the meeting with  
22 Mr. Axelrod?  
23 A. Fuqua, attorney.  
24 Q. And who does Mister --  
25 A. Isn't it Dick or Richard --



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1 Q. It's Dick. Dick Fuqua?  
2 A. He's a bankruptcy attorney.  
3 Q. All right. And you were present at a meeting  
4 with those two?  
5 A. Those two and Dan.  
6 Q. And Dan Frishberg was there?  
7 A. Uh-huh.  
8 Q. Who represented you in this meeting?  
9 A. Me.  
10 Q. You didn't bring an attorney; right?  
11 A. I don't need an attorney to talk business.  
12 Q. Okay.  
13 A. They just get in the way.  
14 Q. So it was just Axelrod, Fuqua and you; right?  
15 A. Yes.  
16 Q. Probably so?  
17 A. No. I'm...  
18 Q. Probably so?  
19 A. I respect your profession. I do.  
20 Q. Was there any discussion of the Securities and  
21 Exchange Commission versus KCM litigation?  
22 A. No. No. I'm not interested in that at all.  
23 I've had my attorneys to go through and review all the  
24 litigation, and that that could be pertaining to me,  
25 which is the clients that are transferring over --

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1 Q. Right?  
2 A. -- none of that has anything to do with it.  
3 So I was okay with that and they were okay with that.  
4 Q. Who are they?  
5 A. Her name is Tripp. I think it's Annette  
6 Tripp, and she's with -- oh, gosh. A big firm downtown.  
7 I don't know if I got that name of it here or not. Let  
8 me see for you.  
9 Sutherland.  
10 Q. Sutherland Asbill?  
11 A. Yeah.  
12 Q. Okay. Was there any discussion at this  
13 meeting of your potentially assuming any liabilities of  
14 Daniel Frishberg Financial Services?  
15 A. Absolutely not. I mean, there wasn't any  
16 discussion. I just said, "I'm not assuming any of that,  
17 period."  
18 Q. Was there any suggestion that you should?  
19 A. No.  
20 Q. Was there any request that you do so?  
21 A. No.  
22 Q. Was there any discussion of how the financial  
23 terms that would -- how the financial payments would be  
24 calculated?  
25 A. Yeah.

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1 Q. What was the discussion?  
2 A. I mean, it's in the terms sheet. It's one  
3 half of 1 percent of the assets under management paid  
4 quarterly. So one-fourth of that.  
5 Q. Of the assets under management of Daniel  
6 Frishberg Financial Services?  
7 A. Of the assets under management that he's  
8 managing, okay, which would be those assets, his clients  
9 that come over.  
10 Q. Okay. Do you know whether any assets remained  
11 behind with Daniel Frishberg Financial Services, in other  
12 words, didn't transfer over?  
13 A. Yeah. Yeah. There was -- and may still be  
14 quite a bit at Fidelity that we don't have access to, any  
15 information on, and neither does Dan.  
16 Q. So there are accounts that were housed at  
17 Fidelity that didn't transfer; right?  
18 A. Uh-huh.  
19 Q. Do you know who manages those accounts at this  
20 time?  
21 A. Nobody. As a matter of fact, I got a client  
22 that's a big attorney and he's very hopping mad at  
23 Fidelity and probably going to sue them.  
24 Q. Because why?  
25 A. Because we don't have any information. I

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1 don't have cost basis. I don't have carry-through. They  
2 just cut Dan off and, you know, we didn't get any  
3 information until we got them at Schwab and started  
4 accumulating the information.  
5 Q. Okay. I thought we were talking about clients  
6 that remained at Fidelity that did not come over to your  
7 firm.  
8 A. Yeah. Well, I'm talking about clients that  
9 came over. And the problem of those that are still  
10 there --  
11 Q. Right.  
12 A. -- they're floating in the water. Nobody is  
13 managing doing anything, charging anything, collecting  
14 anything.  
15 Q. Have you reached out to those clients?  
16 A. I don't even know who the heck they are.  
17 Q. How do you know about them?  
18 A. How do I know they're still there?  
19 Q. Right.  
20 A. Well, we have a list of, you know, clients  
21 that were with Fidelity that were supposed to move over  
22 and what we're trying to do is go through all those that  
23 haven't -- we don't see over at Schwab.  
24 Q. Right.  
25 A. And by deduction, try to figure out who is

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1 still over there and contact them. Because we don't get  
2 information unless they call us or we're working through  
3 this list of 300-and-something accounts.  
4 Q. All right. What else was something discussed  
5 at your meeting with Mr. Axelrod and Mr. Fuqua?  
6 A. Just the terms of the transaction.  
7 Q. Was there any discussion of claims by the  
8 KCM receivership estate?  
9 A. No.  
10 Q. Potential claims against Mr. Frishberg by the  
11 KCM receivership estate?  
12 A. Not really. I wasn't interested in discussing  
13 that, okay. That -- that's part of that outcome, where  
14 once I know the outcome of everything, then I'll know  
15 whether...  
16 Q. Did you become aware at this meeting that the  
17 Daniel Frishberg Financial Services owed a bunch of money  
18 to KCM?  
19 A. I don't know the financial dealings between  
20 the two. I -- I know that there's some money that Daniel  
21 owes, okay.  
22 Q. Daniel or his firm?  
23 A. I think it's his firm.  
24 Q. All right.  
25 A. I'm not really sure because I'm not interested

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1 in that. Understand, my only interest in Daniel  
2 Frishberg is he stay on the radio, you know, he manages  
3 the portfolios we've engaged him to until such time as I  
4 fire him, which I can do at any time, and move forward.  
5 Those are my only points of interest.  
6 Q. What do you mean by "stay on the radio"?  
7 A. Well, if he's on the radio station, okay, and  
8 he has his strategic meetings, which I sponsor for him,  
9 clients come in and that's our access to new people,  
10 which I can sit down with and visit.  
11 Q. And he's doing that through the BizRadio  
12 connection?  
13 A. He's doing that through the radio, yeah.  
14 Q. All right. It's much the same way he operated  
15 previously; right?  
16 A. Yeah. The difference is we're the IRA now.  
17 It's not anything that he owns.  
18 Understand when I went to Schwab, okay,  
19 to accept these clients --  
20 Q. Right.  
21 A. -- I first went to Fidelity. I said, "You  
22 know what, guys, if we just change it to Barrington these  
23 clients won't have to move. They can just stay there."  
24 And they said, "No." Because of all the  
25 problems that's going on here and the SEC and so forth,

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1 they didn't want any affiliation with him.  
2 They said, "You have to move everybody."  
3 I said, "Well, okay." I was already at  
4 Schwab. So I went to Schwab and I said, "You know, I'm  
5 thinking of moving these accounts over here. Would it be  
6 okay with you guys?"  
7 And they said, "On one condition."  
8 I said, "Fine. What's that? I'll do it  
9 however you like."  
10 They said, "You can move all the clients  
11 but Daniel cannot have access to any clients' accounts.  
12 He is a portfolio manager, a third party, arm's length."  
13 I have to approve any recommendations he makes. And they  
14 said, "You can do it on that basis." And that's how we  
15 proceeded.  
16 Q. So the original intent was to merge Daniel  
17 Frishberg Financial Services into Barrington?  
18 A. No. I wasn't going to merge anything. I'm  
19 only moving his clients. I'm buying a particular set of  
20 assets off his balance sheet, if you will.  
21 MR. TAYLOR: Can I go back three  
22 questions, get the question and answer.  
23 THE WITNESS: Uh-huh.  
24 THE REPORTER: QUESTION: "And he's doing  
25 that through the BizRadio connection?"

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1 ANSWER: "He's doing that through the  
2 radio, yeah."  
3 QUESTION: "All right. It's much the  
4 same way he operated previously; right?"  
5 ANSWER: "Yeah. The difference is we're  
6 the IRA now. It's not anything that he owns.  
7 Understand when I went to Schwab, okay,  
8 to accept these clients I first went to Fidelity. I  
9 said, 'You know what, guys, if we just change it to  
10 Barrington these clients won't have to move. They can  
11 just stay there.'"  
12 MR. TAYLOR: That's good.  
13 Q. (By Mr. Taylor) What did you mean by the  
14 phrase "change it to Barrington"?  
15 A. Same thing I've been saying since we sat down  
16 here.  
17 Q. And what does "change it to Barrington" mean?  
18 A. It means change the clients under our --  
19 there's two different IRAs, and you have to have one,  
20 okay, to manage clients. The change is from where they  
21 were at Frishberg or Fidelity or whomever to Barrington  
22 at Schwab as custodian with our firm, Barrington, being  
23 the managers.  
24 Q. Okay. Did you ever send out any written  
25 communication to Daniel Frishberg Financial Services'

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1 investors?  
2 A. No. I sent out to Barrington people when they  
3 come over to Schwab.  
4 MR. TAYLOR: Let's mark -- this is going  
5 to be Exhibit No. 1.  
6 (Exhibit No. 1 marked.)  
7 THE WITNESS: Can I get a copy?  
8 MR. TAYLOR: You get the real deal.  
9 (Exhibit No. 1 marked.)  
10 Q. (By Mr. Taylor) Let me ask you to look at  
11 Exhibit No. 1, Mr. Heath --  
12 A. Yeah.  
13 Q. -- have you ever seen that document before?  
14 A. Something Daniel put together.  
15 Q. Does that refresh your recollection that a  
16 document was sent out to the clients of Daniel Frishberg  
17 Financial Services?  
18 A. That's not what you asked me. You said did  
19 Barrington send anything to them, and I said "No."  
20 Daniel Frishberg did. Not me.  
21 Q. And you saw this at some point in time, I  
22 assume?  
23 A. Yeah.  
24 Q. When did you see it?  
25 A. Oh, I guess right after he sent it. I don't

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1 know what the date of this is.  
2 Q. Are you sure you didn't look at it before he  
3 sent it out?  
4 A. Did I look at it before?  
5 Q. Right.  
6 A. I don't think so.  
7 Q. You pretty sure about that?  
8 A. Well, I'm not sure, okay.  
9 Q. Okay. Why don't you read it. Go ahead and  
10 read it and see if it helps you to refresh your  
11 recollection.  
12 A. (Reading document.)  
13 He uses a term that, you know --  
14 that's -- it's pretty much what I -- okay. Schwab.  
15 Okay. What's your -- what's your  
16 question about this?  
17 Q. Go ahead and finish. There will be several  
18 questions.  
19 A. Okay. I've read it.  
20 Q. Now, did you produce a copy of this among the  
21 papers that you produced here today?  
22 A. No. Because it's not something Barrington  
23 did.  
24 Q. Do you have it in your files?  
25 A. I don't know if I do or not to tell you the

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1 truth.  
2 Q. Okay. We're going to go over your documents,  
3 but I want to make sure that we have all the documents  
4 that were called for in the subpoena and I assume that  
5 this document would be among those and I haven't seen it  
6 in the production.  
7 A. Well, it's not a document that I produced.  
8 Q. Well, that was not the -- it's -- you didn't  
9 produce it. If it's in your files, it's called for by a  
10 subpoena. The same applies to the financial --  
11 A. Well, it isn't in my files. If you'd like to  
12 go through here and look, it's not here in here. I  
13 wouldn't keep something like that. It's something he  
14 sent to the clients.  
15 Q. The same applies to the financial statements  
16 of Daniel Frishberg Financial Services and the tax  
17 returns that you referred to earlier --  
18 A. Yeah.  
19 Q. -- if you have them, I want them produced.  
20 A. Okay.  
21 Q. And any document related to this Exhibit 1, I  
22 would like produced as well.  
23 A. Okay.  
24 Q. Now, directing your attention to the fifth  
25 paragraph of the document, Mr. Frishberg writes, "i have

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1 found the man that I believe is exactly the right person  
2 to serve as CEO, compliance director, and to manage the  
3 operations of our investment advisory business."  
4 A. Uh-huh. Meaning his old one.  
5 Q. Correct.  
6 Did you have any discussion with Daniel  
7 Frishberg about your becoming the CEO, compliance  
8 director, and the manager of operations of the Daniel  
9 Frishberg Financial Services part?  
10 A. No. No. That's not what he means here.  
11 Q. Well --  
12 A. I'm already the CEO and all these other things  
13 of Barrington.  
14 Q. He says, "Our investment advisory business."  
15 A. Well...  
16 Q. And he captioned -- you just testified about  
17 three questions ago that this was a document not related  
18 to your firm; is that correct?  
19 A. Yeah. I didn't produce it.  
20 Q. No. It's for Daniel --  
21 A. So if he makes misstatements, that's his  
22 problem.  
23 Q. Is that a misstatement?  
24 A. Well, of course.  
25 Q. Did you have any --

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1 A. I'm not working for his company.  
2 Q. Did you have any discussions with him about  
3 your being CEO, compliance director, and the manager of  
4 operations of the DFFS investment advisory business?  
5 A. We never had that conversation.  
6 Q. Okay. He goes on to say, "He is Bill Heath  
7 CEO of Barrington Financial Advisors, Inc., named as one  
8 of the 250 financial advisors by WORTH magazine for a  
9 number of years." Is that a true statement?  
10 A. Yeah.  
11 Q. "Barrington is a 37-year old firm focusing on  
12 net worth management and asset management for his  
13 clients"; correct?  
14 A. Correct.  
15 Q. Where do you suppose Mr. Frishberg got that  
16 information?  
17 A. Where did he get it from?  
18 Q. Yes. Uh-huh.  
19 A. Probably from either our website, the  
20 information that he got on our firm.  
21 Q. Did you have any discussion with him about  
22 putting that information --  
23 A. This brochure.  
24 Q. Did you have any discussion with him about  
25 putting this information in this document transmitted to

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1 the DFFS client base?  
2 A. I think it would only be wise if he did  
3 something like that. If he's moving all of his clients,  
4 I think they're entitled to know where they're going.  
5 Q. In the next paragraph, he writes, "Beginning  
6 immediately, we will be merging our accounts and clients.  
7 Barrington will take over the job of registered  
8 investment advisor, and I will serve as portfolio manager  
9 and consultant on all issues."  
10 A. Uh-huh.  
11 Q. Is that correct, you were merging your  
12 accounts and clients?  
13 A. Well, how do you interpret "merge"?  
14 Q. I'm just asking you.  
15 A. I got my client base here and they're coming  
16 over and merging here.  
17 Q. It sounds pretty much --  
18 A. Well, I know how you interpret it.  
19 Q. Right.  
20 A. But that's incorrect, okay. Why don't you  
21 change "merge" to "transfer." Will that make you feel  
22 better?  
23 Q. No. I'm dealing with the document as it is.  
24 A. Well, I can't control what somebody else  
25 writes.

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1 Q. Did you authorize him --  
2 A. He's wrong.  
3 Q. These were going to become --  
4 A. I didn't authorize any of this.  
5 Q. You're going to have to stop interrupting.  
6 I'll make sure I don't interrupt you.  
7 A. I get a little excited.  
8 Q. I know. But we're speaking too quickly here.  
9 I'll do my best not to interrupt you, and I'll appreciate  
10 it if you do the same.  
11 A. Uh-huh.  
12 Q. Did you review a draft of this document before  
13 it was transmitted to the DFFS client base?  
14 A. I'm not sure. I don't -- you know, I didn't  
15 tell him what to write. I may have come in and when he  
16 said, "Barrington," I may have made "Advisors, Inc.," you  
17 know, minor things like that.  
18 Q. You did do some editing on this document?  
19 A. I can't remember.  
20 Q. Do you have any --  
21 A. There were so many documents, I don't know.  
22 Q. There are so many documents referring to what?  
23 A. Daniel is very verbose. He produces lots of  
24 documents and sends out to a lot of people. He writes  
25 his newsletter weekly, et cetera, et cetera.

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1 Q. Do you have all of those documents?  
2 A. I don't keep them.  
3 Q. Do you have any of the documents you just  
4 described in your files?  
5 A. I don't keep any of his newsletters. I don't  
6 keep a lot of the stuff that he produces.  
7 Q. Well, did you keep any iteration of this  
8 document which I have marked as Exhibit 1?  
9 A. I don't know that I would have reason to keep  
10 it.  
11 Q. Well, that's not the question.  
12 Do you have it?  
13 MR. TABER: Objection, form.  
14 Q. (By Mr. Taylor) Do you have any drafts of the  
15 document?  
16 A. Drafts? I don't think so. I don't have any  
17 in my files. And when I say "my files," I'm talking  
18 about my personal files.  
19 Q. How about your firm's files?  
20 A. They're maintained in San Antonio.  
21 Q. Did you -- did you review those files in  
22 connection with your appearance here today?  
23 A. No. Huh-uh.  
24 Q. You did not?  
25 A. They're Barrington files, okay.

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1 Q. You're interpreting me --  
2 A. You're welcome to go over and look at the  
3 probably 2,000 files that are over there, but I couldn't  
4 make a copy of those and bring them to you realistically.  
5 Q. Okay. So you're saying that there are files  
6 in San Antonio that you didn't review in connection with  
7 your appearance here today?  
8 A. Right. That's correct.  
9 Q. Okay. And what is in those files?  
10 A. My understanding is and my instructions to  
11 those people in each client's file, there's the advisory  
12 agreement, okay, with Barrington; there's any pertinent  
13 communication with clients; and that's basically what  
14 makes up the client file.  
15 Q. And you're talking about client files of DFFS  
16 clients that have come over?  
17 A. Which I consider to be Barrington clients now.  
18 Q. But they have come over; correct?  
19 A. Yes.  
20 Q. And you got the agreement in there.  
21 What are these communications with the  
22 clients that are in those files?  
23 A. E-mails back and forth from the client. They  
24 haven't -- you know, they need to sign certain documents,  
25 Schwab documents, to open their accounts.

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1 Q. Are there any substantive communications in  
2 the form of e-mails between you, your firm and the  
3 clients, the DFFS clients?  
4 A. E-mails? The only thing I've communicated to  
5 client, I send out a quarterly report --  
6 Q. Right.  
7 A. -- okay, which was sent out a week or two ago.  
8 Q. Are there any e-mails between Mr. Frishberg  
9 and these clients?  
10 A. Well, there could be. I don't know.  
11 Q. Okay. Well, you know all these documents have  
12 been requested pursuant to the subpoena?  
13 A. Yeah. But how I would know if he sent e-mails  
14 to the clients?  
15 Q. Well, you would know by searching the  
16 documents in connection with your response to the  
17 subpoena.  
18 A. I'm sorry. I'm not following you. How would  
19 I know that he e-mailed somebody?  
20 Q. Well, you wouldn't. But if they were in your  
21 file, they would be in your file.  
22 A. Well, if I didn't know about them, how could  
23 they be in my file? If there's something that's  
24 pertinent to the client, Barrington communicating with  
25 the client, yes, they are kept in the files.

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1 Q. Okay. Well, that's what I want. I'm not  
2 trying to --  
3 A. That's part of the compliance.  
4 Q. I'm not trying to create documents that don't  
5 exist in your files. I'm just trying to get what is  
6 there. It very easily could be documents, e-mails  
7 between Frishberg and the clients in those files. It  
8 would not be unusual at all.  
9 A. Well, it could be, okay. But not since  
10 April 1st. See, this whole change occurred April 1st.  
11 Q. What change do you mean by that?  
12 A. The beginning of the client transfer -- well,  
13 actually, the transfer over began in March. We started  
14 moving. We had Schwab come in and produce all the  
15 documents that have to be signed by clients.  
16 We started moving them over, but the  
17 first time that Barrington billed any of these clients  
18 was in April for the second quarter.  
19 Q. So the DFFS documents, -- clients started  
20 transferring over in March, but your first billing was  
21 for April?  
22 A. Uh-huh.  
23 Q. Do you bill in advance or in arrears?  
24 A. In advance quarterly.  
25 Q. You bill your fees in advance quarterly?

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1 A. Asset management fees, yes.  
2 Q. Did Mr. Frishberg at the DFFS firm do the  
3 same?  
4 A. I believe that's how they do theirs. Most  
5 everybody does, yeah, I would guess.  
6 Q. So is it correct, then, that he would have  
7 billed looking forward, he would have billed fees --  
8 A. First quarter 2010.  
9 Q. January 1, 2010?  
10 A. Yeah.  
11 Q. Do you know for a fact that he did that?  
12 A. Do I know for a fact that he billed...  
13 Well, that's -- that first billing, I  
14 told you I looked at --  
15 Q. Right.  
16 A. -- I looked at that, yeah, so he did.  
17 Q. So you looked at the January 2010 billing,  
18 which was forward looking through the first quarter of  
19 the year?  
20 A. Exactly.  
21 Q. And do you have copies of those?  
22 A. Copies of what?  
23 Q. The billings.  
24 A. No. Not the individual billings.  
25 Q. They're not in the individual client files?

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1 A. No. They do it -- they do it in summary,  
2 en masse -- I don't know if you know that -- with Schwab.  
3 You indicate which accounts to charge and then they do  
4 that.  
5 Q. Do you know for a fact that DFFS -- do you  
6 know whether DFFS charged any clients for the second  
7 quarter, in other words, April 1 looking forward?  
8 A. I know -- well, I don't know what they did,  
9 but I can tell you what we did. We charge all the  
10 clients that had moved over to Schwab. And I know he did  
11 not charge any of those clients, okay.  
12 Q. How much -- how much approximately was billed  
13 for those clients on April 1, looking forward?  
14 A. One-fourth of the asset management fees, which  
15 average about 1.2 percent.  
16 Q. Why one-fourth?  
17 A. Because it's done quarterly. You divide the  
18 fees up quarterly, and they're charged quarterly in  
19 advance.  
20 Q. You're talking about chronologically, a  
21 quarter of the annual fee?  
22 A. Yeah. That's standard in the industry.  
23 Q. So that was a quarter of approximately  
24 1.2 percent looking forward. Do you know what -- how  
25 much money that was?

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1 A. About 200-and-something-thousand dollars.  
2 Q. And did Barrington keep all that --  
3 A. Probably 220 to -- 220, 225, probably.  
4 Q. And again we're talking --  
5 A. It all went to Barrington, yes.  
6 Q. We're talking about the fees on the DFFS  
7 clients that had came over; right?  
8 A. That are now Barrington clients.  
9 Q. And how much of that was paid to  
10 Mr. Frishberg?  
11 A. I gave you a schedule of that.  
12 Q. Okay. Was it paid to DFFS or Mr. Frishberg?  
13 A. I'm not sure how the checks were made out --  
14 Q. Do you have copies of the checks?  
15 A. -- DFFS -- I don't have copies, but I can  
16 produce those.  
17 Q. I would definitely want those.  
18 A. Sure.  
19 Q. And those were checks payable to DFFS;  
20 correct?  
21 A. As far as I know.  
22 Q. Why is that?  
23 A. Because I don't write the checks. I mean,  
24 I -- I don't remember.  
25 Q. They were supposed to have been?

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1 A. Yes.  
2 Q. In other words, that was what was  
3 contemplated?  
4 A. Well, not necessarily, okay, because I'm not  
5 sure where Daniel is housing his portfolio management  
6 company. That's who we're paying.  
7 Q. You're paying DFFS?  
8 A. We're paying the portfolio manager, which is  
9 Dan. How he does business, what entity is still  
10 confusing to us because he hadn't decided. So we may  
11 have paid Dan. We may have paid DFFS.  
12 Q. Well, I mean, there's no speculation about it?  
13 A. There is no contract with DFFS.  
14 Q. I mean, there's no speculation about how the  
15 check was made out. You have a check; right?  
16 A. I have that.  
17 Q. You can produce that?  
18 A. Sure.  
19 Q. It's your best recollection it was made out to  
20 DFFS?  
21 A. I'm not -- it could be either one of them, Dan  
22 or DFFS. The problem is we have no contract with  
23 Frishberg Services. It's his -- his portfolio management  
24 operation, I think, is an entity to be named. While in  
25 the interim, I'm saying, "Okay. We'll pay Frishberg and

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1 you do what you want with it."  
2 Q. Why would you pay DFFS?  
3 A. Why would we?  
4 Q. Right.  
5 A. Who else would I pay? Either pay Dan or it.  
6 There is no nobody else.  
7 Q. And why would you pay DFFS instead of Dan?  
8 A. I don't know.  
9 Q. Is any other money, other than the percentage  
10 of these fees, these first quarter fees --  
11 A. There's no other money paid to him except that  
12 and you have that schedule.  
13 Q. Okay.  
14 A. Which amounts to -- now, understand in the  
15 schedule, when I'm paying the first quarter fees back,  
16 refunding --  
17 Q. Right.  
18 A. -- I charge it against Dan because  
19 he collect --  
20 Q. Explain that to me. When you pay what?  
21 A. All right. The client, in the first quarter,  
22 was billed that he collected -- DFFS collected the money,  
23 all right?  
24 Q. So starting on January 1 presumably?  
25 A. Yes. And the client subsequently says, "I

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1 didn't move to Schwab with you. You owe me part of my  
2 fees back for the first quarter."  
3 And I say, "Well, we didn't collect  
4 them." But I don't want to make the client unhappy, so  
5 we go ahead and pay it. And I charged it against Dan or  
6 Frishberg or whoever we're paying.  
7 Q. Well, it would be Daniel Frishberg Financial  
8 Services --  
9 A. I guess.  
10 Q. -- the fees would have been paid to?  
11 A. Yeah. That's who we deduct.  
12 Q. So you are paying an obligation of Daniel  
13 Frishberg Financial Services?  
14 A. Yeah, basically.  
15 Q. Okay. So previously when I asked you if you  
16 had assumed any liabilities or responsibility of DFFS --  
17 A. Well --  
18 Q. -- you misspoke; is that right?  
19 A. Well, that's an unknown liability, okay. And  
20 when you don't refund client's fees, that's pretty much a  
21 violation of the SEC or just good business practice.  
22 Q. Right. But the fees --  
23 A. People are deserving their fees. Dan didn't  
24 have any money to pay them, so we had to pay them.  
25 Q. Well, the fees were owed back, if at all, by

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1 Daniel Frishberg Financial Services; correct?  
2 A. Yes.  
3 Q. And you wrote checks or you credited people  
4 with those fees?  
5 A. Sent them a check and charged them against --  
6 yeah.  
7 Q. Against Daniel Frishberg Financial Services  
8 presumably?  
9 A. Right.  
10 Q. Because that's who was getting paid according  
11 to the document?  
12 A. Yeah. Okay.  
13 Q. Let me just finish off looking at Exhibit 1.  
14 If you look at the next-to-the-last paragraph, this says,  
15 "Most of the staff you were used to working with will be  
16 joining us as employees of Barrington and we are  
17 confident you will also enjoy working with the existing,  
18 highly experienced and friendly Barrington staff who have  
19 been extremely helpful in planning this move."  
20 A. Uh-huh.  
21 Q. My question to you is: Did DFFS staff move  
22 over? Which staff?  
23 A. Yeah. We hired all of them, yeah.  
24 Q. All of the Barrington -- all of the DFFS  
25 employees were brought over?

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1 A. They were hired.  
2 Q. Who are they, if you can remember? How many  
3 were there?  
4 A. I think there's 10. There's -- at the time I  
5 think there were seven in San Antonio and three in  
6 Houston.  
7 Q. And each and every one of them came over?  
8 A. Yup.  
9 Q. How did that come about? Did you recruit them  
10 or was it just a part of the agreement?  
11 A. Well, I talked to them all and said, "Well,  
12 you guys can either be fired or you can go to work for  
13 me. Which would you prefer?"  
14 Q. And all 10 came over; right?  
15 A. Yeah. Well, it's in our clients' best  
16 interest because they knew the clients, knew all the  
17 files. So it was a very logical thing.  
18 Q. Now, tell me about the seven in San Antonio.  
19 A. Uh-huh.  
20 Q. They worked at the DFFS -- I guess it's really  
21 their headquarters, isn't it, San Antonio?  
22 A. No. That's where the paperwork --  
23 Q. Back office?  
24 A. -- that's where the back office is because  
25 cheaper rent.

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1 Q. Okay. And all of those San Antonio employees  
2 worked in the DFFS premises; correct?  
3 A. Uh-huh.  
4 Q. Do they continue to work in those premises?  
5 A. Well, we downsized. But, yes, they're in --  
6 they're in a Barrington office now.  
7 Q. Did you change the sign on the door --  
8 A. Yeah.  
9 Q. -- because you moved them?  
10 A. Yup. No. Changed the sign, signed a new  
11 lease.  
12 Q. Physically, they're sitting in exactly the  
13 same desks?  
14 A. No. No.  
15 Q. Are they sitting in the same space?  
16 A. No.  
17 Q. You moved them out of the space?  
18 A. Yes.  
19 Q. What was the address of the former space?  
20 A. We downsized. They went from Suite 800, I  
21 think, to 810 or 820. We downsized.  
22 Q. They're in the same building; right?  
23 A. Yeah.  
24 Q. And you moved next door to a smaller suite, is  
25 that it?

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1 A. That's right. That's correct.  
2 Q. And they moved the office equipment, did they?  
3 A. Everything.  
4 Q. They moved the computers?  
5 A. Telephones, computer, everything.  
6 Q. The telephones.  
7 Everything if it was in the DFFS office  
8 moved next door into the suite next door and continued  
9 doing business; is that right?  
10 A. Uh-huh.  
11 Q. And that includes the employees?  
12 A. Uh-huh.  
13 Q. The equipment?  
14 A. Whatever equipment there was, yes.  
15 Q. What happened to the DFFS lease?  
16 A. There's still an obligation on it.  
17 Q. And it's still a DFFS lease, is it not?  
18 A. Yeah. Yeah.  
19 Q. And you assumed the obligation on that lease,  
20 did you?  
21 A. No. No. No. No.  
22 Q. Who has the obligation on the lease?  
23 A. DFFS, I guess. I signed a new lease with  
24 them.  
25 Q. Did you sign a sublease?

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1 A. No. I signed a lease, a six-year lease, I  
2 believe.  
3 Q. On that building?  
4 A. Yes. For that space, the smaller space.  
5 Q. And what is the obligation remaining on the  
6 other space?  
7 A. I have no -- I don't know. 7,000. 5,000. I  
8 don't know.  
9 Q. Per month, you mean?  
10 A. Total.  
11 Q. Total.  
12 And who is going to pay that obligation?  
13 A. (Shrugs.) I don't know. That's between the  
14 building and DFFS and if they have any money and... I'm  
15 sure --  
16 Q. Have you discussed --  
17 A. -- they're going to look to me, but I don't  
18 have to pay it.  
19 Q. Have they looked to you?  
20 A. Have they looked to me?  
21 Q. Do they look to you?  
22 A. They haven't said anything.  
23 Q. Who is the landlord?  
24 A. I have to get you that information. It's  
25 Sterling Bank building in San Antonio.

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1 Q. Is that on, what, Soledad, is it?  
2 A. I don't know where it is. I've driven there,  
3 but I don't know exactly.  
4 Q. Now, what gives you the impression that  
5 they're going to look to you and try to get you to pay  
6 it?  
7 A. Well, when you are owed some money, you look  
8 to everybody that's around.  
9 Q. Why would they look to -- by "you," we're  
10 talking about Barrington?  
11 A. I'm probably the only one that has any money.  
12 Q. On what basis -- has there been -- let's --  
13 let's look at this from a different angle.  
14 Has there been any discussion of their  
15 seeking to have you pay those amounts, any discussion at  
16 all?  
17 A. Of me paying the amounts?  
18 Q. You, including Barrington.  
19 A. Well, I guess in fairness, you would say my  
20 new lease was a renegotiation of what they had --  
21 Q. Right.  
22 A. -- okay and extended with reduced payments.  
23 So I guess on that basis, you'd probably say yes.  
24 Q. Okay. We'd like to have those documents.  
25 A. You want the lease?

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1 Q. Yes. In which you renegotiated the DFFS  
2 lease.  
3 A. I can just give you the lease, you bet you.  
4 Q. Okay.  
5 A. Let me make some notes here.  
6 Q. And any associated documents.  
7 A. You want the financial statements. You want  
8 the tax returns.  
9 Q. Right. And we want, at minimum, access to all  
10 of the client files.  
11 A. You got access to them, that's fine.  
12 San Antonio lease. Okay.  
13 Q. Okay. It says, "Highly experienced and  
14 friendly Barrington staff who have been extremely helpful  
15 in planning this move."  
16 Who on your staff was involved -- excuse  
17 me -- in helping to plan the move that he's referring to?  
18 A. What do you mean by move? Move of clients?  
19 Q. Right.  
20 A. Basically, myself and my staff. We had to  
21 provide Schwab the information of the account, the last  
22 account information we had at Fidelity so they could move  
23 over. So Schwab created new account applications for  
24 every client.  
25 Q. All right. So you had the DFFS files, right,



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1 to work with?  
2 A. Their people did it. We didn't actually do  
3 it. San Antonio did it.  
4 Q. The back office people in San Antonio of  
5 DFFS...  
6 A. Provided it to Schwab who put all that stuff  
7 together for us.  
8 Q. Okay. So that's the DFFS staff doing the  
9 transition to Schwab; correct?  
10 A. I think that would be.  
11 Q. Okay.  
12 A. But at the time, they were employees of  
13 Barrington. Well, no. We didn't start paying them until  
14 April 1, okay, so they would still be DFFS.  
15 Q. Let me just go through and identify the  
16 documents here that you have brought this morning. And I  
17 want to get these numbered, so I guess we need to have  
18 the set -- you have a set here.  
19 MR. TAYLOR: Just off the record for a  
20 moment and we'll number these.  
21 (Recess, 10:57 to 11:00.)  
22 (Exhibit Nos. 2-6 marked.)  
23 Q. (By Mr. Taylor) Okay. Before the witness is  
24 Exhibit No. 2.  
25 A. Uh-huh.

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1 Q. This is just your resume, I assume. This  
2 appears on the website?  
3 A. Yes. Basically.  
4 Q. Was this transmitted to DFFS clients in  
5 connection with the transaction we're talking about  
6 today?  
7 A. I -- this particular thing was not sent to  
8 them. But Barrington did send some communications to  
9 them after they came to Schwab.  
10 Q. What communications were there?  
11 A. Well, that quarterly report is probably the  
12 first thing.  
13 Q. And are there other things as well?  
14 A. I'll provide you a copy of that.  
15 Q. What else was transmitted to them en masse?  
16 And I'm sure individual clients got various things,  
17 but...  
18 A. We didn't send out any mass mailings or  
19 whatever. As a matter of fact, one of the biggest  
20 problems I had was communication with these new clients  
21 because of all the restrictions or what was going on with  
22 DFFS and Dan and the SEC and so forth. So I didn't...  
23 Q. Who handled the contacts with the clients in  
24 connection with these transfers?  
25 A. Basically, Mike Richardson who is director of

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1 client relations in San Antonio.  
2 Q. Did Mr. Frishberg have any role in that?  
3 A. In talking to clients on the transition?  
4 Q. Yes.  
5 A. Yeah. I'm sure he spoke to some clients  
6 explaining --  
7 Q. He spoke to all of them?  
8 A. I don't know if he spoke to all of them, but  
9 he spoke to some of them about what was happening.  
10 Q. Right. And the intent was for him to talk to  
11 as many of them as possible; right?  
12 A. Probably as many as called in.  
13 Q. Anyone else involved in communicating with the  
14 clients?  
15 A. I think another employee, DFF employee, was  
16 Sonia.  
17 Q. Okay. Sonia. She works for everybody. She  
18 works for BizRadio. She works for DFFS; right?  
19 A. Well, when you're a small company, people work  
20 for a lot of places. Her payroll is DFFS -- was. Now  
21 it's Barrington.  
22 Q. So Sonia moved over in connection with the  
23 transaction we're talking about, she's one of them?  
24 A. Uh-huh. Yes.  
25 Q. Did you interview her at all?

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1 A. Did I interview her?  
2 Q. Right.  
3 A. Before we made all the moves and everything?  
4 Q. Right.  
5 A. No. But during the move, I had occasion to  
6 work with her and talk with her.  
7 Q. Working with her but not interviewing her in  
8 connection with the position; right?  
9 A. No. No.  
10 Q. She just made the transition?  
11 A. Right.  
12 Q. Did she tell you that she worked on KCM  
13 matters?  
14 A. Yeah. I knew she worked with Al Kaleta.  
15 Q. Okay. What did she do with Al Kaleta?  
16 A. I have no idea. I'll tell you what she does  
17 for me.  
18 Q. What does she do?  
19 A. She deals with clients. She sets up meetings.  
20 She has clearly been instructed not to discuss any kind  
21 of investments with any clients.  
22 Q. Does she work on financial statements?  
23 A. No.  
24 Q. Accounting at all?  
25 A. No. No.

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1 Q. This is what she does.  
2 A. She's -- she's called the director of  
3 marketing. So she schedules strategic meetings. She  
4 schedules client meetings for me.  
5 Q. She's director of marketing of the whole firm?  
6 A. Of Barrington.  
7 Q. And she moved over from DFFS but she became  
8 director of marketing for the entire combined operation?  
9 A. At Barrington.  
10 Q. She works here in Houston?  
11 A. Uh-huh.  
12 Q. Had they moved --  
13 A. Yes.  
14 Q. -- out of their suite?  
15 A. Who? The old DFFS suite?  
16 Q. Right.  
17 A. Yeah.  
18 Q. Where are they located now?  
19 A. In Dan's home, I guess. I don't know where.  
20 I mean, where is the company -- the company doesn't have  
21 to have a domicile to exist.  
22 Q. Okay. Well, you told me there were three  
23 Houston employees that came over; right?  
24 A. Yeah. They are all -- well, two of them are  
25 gone. And the last one, Sonia, is in my office.

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1 Q. Who were the other two?  
2 A. Terry and Warren. Terry was a receptionist.  
3 Warren was a -- kind of an assistant. You know he was  
4 kind of a go-fer in the office, young boy.  
5 Q. Sonia remains --  
6 A. Right.  
7 Q. -- and you don't know where she works?  
8 A. Do I know where she works?  
9 Q. Right.  
10 A. Yeah. She's in my office.  
11 Q. In Houston?  
12 A. In Houston --  
13 Q. Okay.  
14 A. -- at 9800 Richmond.  
15 Q. Any of the other Houston employees?  
16 A. No.  
17 Q. Okay.  
18 A. They're gone.  
19 Q. Did you have an office in San Antonio  
20 previously?  
21 A. No.  
22 Q. So you had some of the -- Barrington had no  
23 presence in San Antonio at all?  
24 A. None.  
25 Q. And its presence now is basically the old DFFS

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1 operation in the Sterling Bank building; correct?  
2 A. Over there, yeah. In San Antonio, yes.  
3 Q. Do you go to San Antonio now from time to  
4 time?  
5 A. Yup. Getting ready to go over there within  
6 the next few weeks.  
7 Q. Does Mr. Frishberg go over there, too?  
8 A. He hadn't that I know of.  
9 Q. Okay. Let me ask you to look at Exhibit 3.  
10 And would you just identify for the record, please, what  
11 Exhibit 3 represents.  
12 A. This is basically what Barrington has paid Dan  
13 against portfolio management fees for the second quarter.  
14 Q. April 1 period going forward?  
15 A. Yeah. That's April to June 30.  
16 The second column is the carryover, if  
17 any.  
18 Q. What do you mean by the carryover?  
19 A. Well, when we get to the end of the second  
20 quarter, if we have not paid everything because we don't  
21 have the cash to pay it, it will carry over and we'll  
22 still owe it to them.  
23 Q. What has been paid to DFFS to date?  
24 A. You could see all the minus numbers.  
25 Q. These are all payments to DFFS?

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1 A. Well, the 25,000 is, okay. The 15,000 is.  
2 And the 12,000 is, okay. The another things were paid to  
3 third parties on behalf of. For instance Linda Sikes --  
4 Q. Right.  
5 A. -- that's a business -- a BizRadio employee  
6 that, you know, we had to pay her salary so we could  
7 terminate her, let her go.  
8 Q. You paid the Post Oak rent?  
9 A. I made a payment to it. I gave him \$7,000 to  
10 help on the Post Oak rent.  
11 Q. That's the 3550 building; right?  
12 A. Yeah, yeah. That's what we called the Post  
13 Oak, right.  
14 Q. Okay. And the fee refund multiple is --  
15 A. Those are all -- that just means there's  
16 multiple clients that that money was paid out to.  
17 Q. DFFS clients?  
18 A. Yup.  
19 Q. And those are refunds that DFFS owed; right?  
20 A. Yup. Now, with the exception of the second  
21 quarter.  
22 Q. Okay.  
23 A. Okay. That's -- that's a Barrington  
24 responsibility, but it's a reduction of what's owed for  
25 portfolio management.

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1 Q. Now, have any other monies been transferred in  
2 any way from Barrington to DFFS?  
3 A. No.  
4 Q. Are any contemplated?  
5 A. If we collect any. The problem is there --  
6 I'm not paying anything unless there's cash to pay it.  
7 And I told Daniel right up front, I says, "We will have  
8 the payroll set aside. We'll have the rent set aside.  
9 And if there's anything left for you, fine."  
10 And right now, there isn't anything left  
11 for June until the next billing, which is third quarter.  
12 Q. The rent on what?  
13 A. On the office building.  
14 Q. Which office building?  
15 A. The one in San Antonio.  
16 Q. Okay.  
17 A. So basically what I've done, in trying to  
18 manage cash in this thing, is all the obligations I  
19 anticipate until the end of the quarter, I've set funds  
20 aside to make sure we can meet those. If there's  
21 anything left, I've been paying these refunds or prior  
22 bills. I've paid for a lot of bills of DFFS and  
23 BizRadio, et cetera, et cetera, because we needed those  
24 facilities to move forward.  
25 Q. What bills were those?

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1 A. Such things as Infusion, which is a database  
2 manager. Telephone, okay, expense --  
3 Q. Again, this is --  
4 A. -- computer and equipment expense.  
5 Q. In other words, these are assumptions of DFFS  
6 obligations on these items; correct?  
7 A. Yeah. I don't know if "assumption" is a good  
8 way to state it.  
9 Q. Well, you're paying it?  
10 A. Yeah. We paid them because if we didn't pay  
11 them we wouldn't have those services to go forward and we  
12 needed those to operate.  
13 Q. Okay. So let me just get a list of those and  
14 then I can ask you to produce the documents concerning  
15 those.  
16 Infusion, that's the database?  
17 A. Uh-huh.  
18 Q. What is Infusion, exactly? Can you describe  
19 it for me?  
20 A. Do you know what a database is?  
21 Q. Yeah, yeah.  
22 A. Okay. Well, it's how you get clients'  
23 addresses and so forth. And then if you're going to send  
24 out a mass mailing to them, you have the address.  
25 Q. Infusion is just a proprietary name for the...

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1 A. Yeah. It's -- it's -- right.  
2 Q. And the telephone system?  
3 A. Yeah. We've had a lot of problems with that,  
4 both the telephone, the Internet which computer based and  
5 all that.  
6 Q. And those are DFFS bills that you paid; right?  
7 A. Probably the best thing for me to do is just  
8 produce the checks that I paid all these things.  
9 Q. That would be ideal.  
10 A. Okay.  
11 Q. That would be ideal.  
12 A. And then you can --  
13 Q. I would appreciate that.  
14 A. And you can -- I will try to identify who they  
15 are to or for.  
16 Q. Okay.  
17 A. On DFFS and BizRadio.  
18 MR. TAYLOR: I'll tell you what, can we  
19 take a 10 minute break here? Is that okay with you?  
20 MR. TABER: That's fine. I would like to  
21 read this document before we talk about it, so...  
22 THE WITNESS: Yeah.  
23 (Recess, 11:11 to 11:18.)  
24 Q. (By Mr. Taylor) Exhibit 4 before the witness,  
25 that's the term sheet here, I think. Do you have it in

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1 front of you?  
2 A. Uh-huh.  
3 Q. Why do you describe it for the record. Tell  
4 us what that is?  
5 A. You're asking me to describe it?  
6 Q. Yes. What is it?  
7 A. Basically, what I wanted in writing is kind of  
8 an understanding that if we go to written contract, these  
9 terms need to be in it. And he could agree to it and I  
10 could agree to it. So we could move forward without a  
11 formal contract, because of all the -- all the legal  
12 issues that were going on at the time and even now.  
13 Q. Okay.  
14 A. Does that help?  
15 Q. Sure.  
16 There is a reference in here to  
17 Barrington Financial Advisors Post Oak?  
18 A. That's what we've called the clients that are  
19 moved over. I have to keep those separate from my  
20 existing company.  
21 Q. Why is that?  
22 A. Because I charge -- you know, things are  
23 charged in there. You know, my clients are not charged  
24 for his portfolio management fee.  
25 Q. Right.

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1 A. I use another portfolio. Now I can opt to and  
2 have -- have hired him to -- on certain clients to  
3 manage.  
4 Q. I see.  
5 So Barrington Financial Advisors Post Oak  
6 is an entity -- refers to the DFFS client base?  
7 A. It's a division of Barrington, if you will.  
8 Q. Okay.  
9 A. It's not an entity.  
10 Q. It's the old DFFS?  
11 A. It would be an -- it's our way in our  
12 financial accounting to separate the two Barrington --  
13 old, you know, existing clients and Barrington new  
14 clients.  
15 Q. Okay. Now, what does the executive management  
16 agreement refer to in paragraph 3?  
17 A. This is what I get paid for managing all of  
18 this umbrella thing.  
19 Q. So you're going to be paid 300,000 for  
20 managing --  
21 A. Supposed to.  
22 Q. -- the combined business; correct?  
23 A. Yeah.  
24 Q. And that could be increased by 10 percent to  
25 350 and that's basically just your --

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1 A. Compensation.  
2 Q. -- your compensation?  
3 A. Right.  
4 Q. Not to be part of the purchase payments.  
5 What does purchase payments refer to?  
6 A. Well, when we actually have a contract, the  
7 way he's going to get paid for whatever it is that's been  
8 transferred over -- in other words, there's some economic  
9 value for those clients transferring over.  
10 Q. Of course. Right.  
11 A. Okay. The way I said I would pay for it is we  
12 pay all the bills. After tax, we split that revenue on,  
13 you know -- I think the first year is a 70/30 basis.  
14 Q. You mean pay all the bills on Barrington  
15 Financial Advisors Post Oak, which you just referred to?  
16 A. Uh-huh. Uh-huh.  
17 Q. Operating it like a division?  
18 A. Exactly.  
19 Q. Okay.  
20 A. And the problem is there probably won't be  
21 any.  
22 Q. Okay. Well, paragraph 5 says, "The new RIA  
23 will be called Barrington Financial Advisors Post Oak"?  
24 You already described that.  
25 A. Right. That's a division thing.

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1 Q. And that's the new RIA; right?  
2 A. Yeah.  
3 Q. Which embodies the old DFFS?  
4 A. It's basically the clients from the old, yes.  
5 Q. In the -- paragraph 6 describes the financial  
6 terms, I gather; right?  
7 A. Yeah.  
8 Q. And that's a percentage of new RIA. It would  
9 be "at a percentage of new RIA [Barrington Financial  
10 Advisors - Post Oak] net income after income taxes"?  
11 A. That's what we just said.  
12 Q. Okay. Does that correctly describe the  
13 arrangement?  
14 A. Yes.  
15 Q. And then the numbers are what they are; right?  
16 These are just --  
17 A. Yeah.  
18 Q. -- various numbers for different periods?  
19 A. Right. And nothing has been paid against that  
20 and probably won't until we get into the, you know, 12  
21 months or so. It might not be paid for 12 months.  
22 Q. So how is that distinct from the monies that  
23 were paid?  
24 A. He gets a portfolio management fee, which is  
25 an operating expense.

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1 Q. Right.  
2 A. Okay. I get an executive management fee,  
3 which is an operating expense.  
4 Q. Right.  
5 A. After that, plus all the rent and telephone  
6 and everything else, when it comes down to the bottom, we  
7 pay taxes on the net income. And then net after tax,  
8 whatever is left, which is basically cash flow, is split  
9 30/50 if there is anything.  
10 Q. Okay. That's a very explicit description of  
11 it. I won't go through this line by line.  
12 A. The whole idea -- my concept behind this whole  
13 thing is, "Dan, I'll be happy to help you; but I'm not  
14 going to pay out of my pocket for anything."  
15 Q. Okay.  
16 A. It has to pay for itself.  
17 Q. Paragraph 10 says, "The new RIA meaning  
18 Barrington Financial Advisors - Post Oak."  
19 A. We actually didn't do that. We had our  
20 attorneys modify it and used our own.  
21 What I was trying to say, we used the  
22 language in it, okay. But in fact, you have to go to  
23 every single client and have them sign a new one under  
24 Barrington.  
25 Q. And your attorneys have already done this?

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1 A. Yeah. They prepared an advisory agreement  
2 that each of these clients had to sign.  
3 Q. Is that the Sutherland Asbill firm that did  
4 that?  
5 A. Uh-huh.  
6 Q. Is that -- and is the agreement titled  
7 "Barrington Financial Advisors /Post Oak"?  
8 A. Yes, yes -- no. It's titled "Barrington  
9 Financial Advisors, Inc."  
10 Q. Okay.  
11 A. The Post Oak is an internal division.  
12 Q. Okay. Paragraph 15 says, "A sign will be  
13 installed in the Post Oak office and the building  
14 directory identifying new RIA Barrington Financial  
15 Advisors - Post Oak."  
16 A. There is no more office building than the Post  
17 Oak office. That's been closed. San Antonio, I think,  
18 this has been done.  
19 Q. It has been done in San Antonio?  
20 A. Uh-huh.  
21 Q. At the time, I guess, the intent would have  
22 been to change the signage at 3550 Post Oak?  
23 A. Yeah.  
24 Q. All right. Now, is -- these are your  
25 initials. I take it, this is a copy of the document that

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1 was actually executed; correct?  
2 A. Yes. This is Dan's initials and my initials.  
3 Q. Was March 11, 2010, the date upon which you  
4 gentlemen signed it or is that the date when --  
5 A. It's March 29. I don't know where you got  
6 March 11.  
7 Q. Well, at the top -- where is March 29?  
8 A. The last page where we signed.  
9 There (indicating).  
10 Q. So the March 11, 2010, is on the caption on  
11 the first page. What is that, the date --  
12 A. That's probably the date it was put together.  
13 Q. Was that the date of the meeting between you  
14 and Mr. Axelrod and others?  
15 A. No. This is -- this is the date, okay, that  
16 my attorneys finalized, you know, their adjustments to  
17 this and I presented them.  
18 Q. So the discussions --  
19 A. And I gave them to Axelrod and to, you know,  
20 Dan's attorneys and Dan.  
21 Q. Okay. So meetings -- there has been some  
22 meetings prior to March 11th; correct?  
23 A. Yeah. There were discussions with Dan about  
24 this.  
25 Q. Starting with a meeting at the Royal Oaks

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1 Country Club?  
2 A. That's when it started, yes.  
3 Q. Now, Mr. Kaleta was present for that, too;  
4 right?  
5 A. Yeah. The first -- I think at the first two  
6 meeting he was and not so after that.  
7 Q. Why was Mr. Kaleta present at the meetings?  
8 A. Mr. Kaleta knew me from 15 years previous when  
9 he was representing a mutual fund company that was just  
10 started. And the company -- he brought the owner, the  
11 developer of it into my office and we visited for a  
12 couple of hours.  
13 And when we were finished, I thought the  
14 young man that started this company was very brilliant.  
15 You know, he's a Wharton guy, graduate and so forth. And  
16 when we got finished, they asked me, "Can we get some  
17 business from you?" Because that was the purpose of the  
18 meeting.  
19 I said, "Gentlemen, I would like very  
20 much to give you some business. Go out and get some  
21 experience and come back and then I'll look at you." I  
22 don't do business with new startups or new things, you  
23 know. They had to have some track record.  
24 And from that, they were so impressed  
25 with the meeting and the questions I asked and so forth,

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1 Al never forget me. And I guess when this came up, they  
2 needed to register an investment advisor, he thought of  
3 me and called and asked if I'd be interested in meeting  
4 Dan.  
5 Q. So Al Kaleta was actually the introducing  
6 person?  
7 A. Yeah. He's the one that -- I didn't know Dan  
8 directly. Al was the introductory party.  
9 Q. Okay. And what role was Al supposed to have  
10 in this?  
11 A. Introduced me to Dan, that's it.  
12 Q. Well, he was a principal of the DFFS firm,  
13 wasn't he?  
14 A. I don't know. At the time I talked to him, I  
15 didn't know. I don't even know today where he is.  
16 Q. Well, it had been Frishberg Kaleta Capital  
17 Management for, at least, part of the time frame, hadn't  
18 it?  
19 A. I thought it was Frishberg Financial Services.  
20 Q. Daniel Frishberg Financial Services has also  
21 gone under the d/b/a Frishberg Kaleta Financial Services?  
22 A. They had so many partners and different names.  
23 That wasn't my concern. All my concern is, his client  
24 base, that's all I'm interested in. I don't care about  
25 all the rest of it.

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1 Q. Did Mr. -- was Mr. Kaleta supposed to be  
2 compensated in any way in connection with this  
3 arrangement?  
4 A. Not from me.  
5 Q. Well, do you know if he was --  
6 A. Not directly from me and I don't know about  
7 anything else.  
8 Q. Did you hear he was going to be compensated by  
9 Mr. Frishberg?  
10 A. I didn't hear anything like that.  
11 Q. Did you hear that he at some point owned an  
12 equity position in DFFS?  
13 A. Oh, I'm sure I was aware of, you know, Jordan,  
14 Stewart, all those guys who everybody had, you know, a  
15 part of it. I don't know about all that. I don't know  
16 ownership. I don't know compensation. I don't care.  
17 It's not my business.  
18 Q. But were you -- did you become aware in the  
19 course of these meetings that Mr. Kaleta had owned an  
20 equity interest in Daniel Frishberg Financial Services?  
21 A. As I said before, Tom, I am not interested in  
22 that because all I was -- I wasn't buying the  
23 corporation.  
24 Q. I understand.  
25 A. All I'm buying is -- and I wasn't even buying

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1 them. I was facilitating these clients being transferred  
2 someplace because they had to be. And if I wasn't there,  
3 those clients would be, you know, just left out in the  
4 cold and I didn't think that was very fair for those  
5 clients.  
6 Q. When is the last time you talked to  
7 Mr. Axelrod?  
8 A. Maybe a month ago or so. I think he was in  
9 Dan's office coming in when I was leaving and I said  
10 hello.  
11 Q. What was the purpose? Were you there for a  
12 meeting?  
13 A. Was I?  
14 Q. Yes.  
15 A. Yes. I was meeting with new clients.  
16 Q. And Mr. Axelrod was there?  
17 A. He was coming in when I was leaving. I think  
18 to meet with Dan.  
19 Q. And you're talking about at 3050 Post Oak;  
20 right?  
21 A. Yeah.  
22 Q. Did you ever have any discussion with  
23 Mr. Axelrod concerning the Motion to Expand the  
24 Receivership to include DFFS?  
25 A. No.

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1 Q. Did you ever have any conversations with  
2 Mr. Axelrod concerning the subpoena for your deposition?  
3 A. I told Dan, uh-huh.  
4 Q. What did you tell him?  
5 A. I told him I was being deposed --  
6 Q. Okay. Did you ask him --  
7 A. -- because all of his mess.  
8 Q. Did he tell you anything about what was going  
9 on in the case?  
10 A. Did who tell me anything?  
11 Q. Frishberg.  
12 A. Well, I was -- you know I'm pretty aware of  
13 kind of what's going on, obviously. You know Dan's  
14 managing my clients' money. I have conversations with  
15 Dan all the time.  
16 Q. Did you have a conversation with him  
17 concerning the Motion to Expand the Receivership?  
18 A. No, not specifically. I was aware of  
19 something like that, and I think that -- didn't he just  
20 go to court sometime back for that purpose?  
21 Q. Right. Did he tell you --  
22 A. Okay.  
23 Q. Did he tell you the Barrington firm had been  
24 discussed at a court hearing?  
25 A. No.

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1 Q. And you told him that you had been subpoenaed  
2 to testify; right?  
3 A. Uh-huh.  
4 Q. Did you ask him what information was being  
5 sought as far as he knew?  
6 A. No. That's why I asked you.  
7 Q. All right. What else did you discuss with  
8 Mr. Frishberg concerning the deposition?  
9 A. I didn't discuss anything. I told him how mad  
10 I was that I'm getting drug into this thing.  
11 Q. And what did he say?  
12 A. He apologized.  
13 Q. Was Mr. Axelrod --  
14 A. He said you're the villain.  
15 Q. Was Mr. Axelrod involved in that discussion?  
16 A. No. I haven't talked to him directly about  
17 any of this.  
18 Q. Have you talked to Mr. Fuqua about the  
19 deposition?  
20 A. No, no.  
21 Q. Have you had any conversation with him  
22 concerning your being subpoenaed?  
23 A. Not since the time I saw him and first met  
24 him.  
25 Q. Since you first met him in connection with --

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1 A. Back in February, March, whenever it was.  
2 Q. Is Exhibit 4 -- was Exhibit 4 being discussed  
3 at that meeting?  
4 A. It was somewhere around this March 11th date  
5 is when I met him.  
6 Q. When is the last time you talked to  
7 Mr. Frishberg about the fact that you were being deposed  
8 today?  
9 A. I think I talked to him yesterday. He knew I  
10 was coming down here.  
11 Q. What did he say to you and what did you say to  
12 him?  
13 A. I don't know. He said, "Answer the  
14 questions." And I said, "You can bet your hiney I will."  
15 Q. Did he give you any information? Did he give  
16 any thoughts about what the substance of this deposition  
17 would be?  
18 A. No. He had no idea, but I -- you know, we  
19 surmised what a receiver would be interested in talking  
20 about.  
21 Q. What was that?  
22 A. Well, what -- what -- you just answered my  
23 question earlier, didn't you? What are you interested  
24 in? Assets, aren't you?  
25 Q. Right.

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1 A. I don't have any. So...  
2 Q. Take a look please at Exhibit 5, if you would.  
3 A. Hmm. Okay.  
4 Q. Would you just tell me what it is and what it  
5 represents.  
6 A. This is a list -- I don't have a date on it,  
7 but I presume this is probably somewhere between January  
8 and March. This is a list of clients that -- you know,  
9 this is kind of how we track whether these clients came  
10 over because these account numbers are all Fidelity's.  
11 Q. Okay.  
12 A. And so this is kind of a listing of how many  
13 they had. And, good Lord, you could see how it shrunk to  
14 149 approximately March 15th. I don't know exactly the  
15 date of this.  
16 Q. Okay.  
17 A. It was produced by San Antonio for me.  
18 Q. And what of these accounts that do not have  
19 Short Names? What does that mean?  
20 A. What do you mean, "short names"?  
21 Q. Well?  
22 A. Oh, here in the first column.  
23 Q. Yeah. The second block of information, "Short  
24 Name."  
25 A. I have no idea. They're -- you know, for

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1 instance, I see things in here that I -- I didn't even  
2 know existed.  
3 Q. There's some --  
4 A. Like Kaleta Capital Management, that didn't  
5 come over to us.  
6 Q. "Name 1" would be the title of the account;  
7 right?  
8 A. Yeah.  
9 Q. You got three Kaleta accounts. Kaleta Capital  
10 Management.  
11 A. Yeah. This -- they're still at Fidelity.  
12 Obviously we wouldn't bring those over. So they're in  
13 limbo.  
14 Q. And these are all the accounts of DFFS; right?  
15 A. Uh-huh. At that particular time.  
16 Q. At that time.  
17 So it was anticipated -- I mean, the  
18 objective here was to bring all of the accounts; correct?  
19 A. Yes. Uh-huh.  
20 Q. And there were communications with all of the  
21 accounts holders here listed in --  
22 A. Yes. There was an application, a Schwab  
23 application, sent out to them and that's how they were  
24 advised that they needed to sign this in order to make  
25 the transition to Barrington.

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1 Q. Again, that Net Worth I assume means the  
2 account value; right?  
3 A. Yeah.  
4 Q. The value of the specific --  
5 A. Yeah. I think that's how they -- yes.  
6 Q. Specific numbered account?  
7 A. Yeah, yeah.  
8 Q. And this was the -- as far as you know, this  
9 would have been the asset base as whenever -- was there a  
10 computer run to generate this?  
11 A. Yeah. It was, by San Antonio. And  
12 unfortunately they don't date things very well.  
13 Q. Right.  
14 A. That was somewhere around March.  
15 Q. Is there -- are there updates of this  
16 Exhibit 5? In other words --  
17 A. That's the next exhibit I gave you.  
18 Q. Okay. Exhibit 6.  
19 A. Okay. See, that's kind of what we're looking  
20 at to come over. I think this is like the last Fidelity  
21 run.  
22 Q. Okay.  
23 A. So we're trying to match that with this, and  
24 these -- this is the Schwab run, clients at Schwab.  
25 Q. So Exhibit 6 for the record is what? Can you

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1 describe it for the record?  
2 A. It's a list of clients that are at Schwab that  
3 are now basically what's left.  
4 Q. And they're in the Post Oak?  
5 A. Yeah. They're in Barrington.  
6 Q. Post Oak?  
7 A. They're custodian at Schwab, okay.  
8 Q. Right.  
9 A. Managed by Barrington, with investment advice  
10 being provided by Dan Frishberg, portfolio manager, okay.  
11 Q. And who communicates with these clients under  
12 the new regime?  
13 A. Barrington, director of client communications,  
14 Mike Richardson, myself, Sonia.  
15 Q. Mr. Frishberg communicate with these clients?  
16 A. No. Not unless they call him. There was poor  
17 communication during this transition.  
18 Q. Right.  
19 A. And what I'm trying to do now with all these  
20 clients is say, "Hey, when you have a question, call me."  
21 They used to call Dan.  
22 Q. Right.  
23 A. And so that transition has been a little slow,  
24 but they're finally starting to get the message.  
25 Q. Are there efforts ongoing to bring more of

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1 these clients in Exhibit 5 over to the Exhibit 6 list?  
2 A. Yeah, yeah.  
3 Q. So that's an ongoing thing?  
4 A. Yeah. We haven't been real successful at it  
5 because they're all pretty mad.  
6 Q. I didn't -- let's see.  
7 Is there a total here?  
8 A. I gave you a total.  
9 Q. Yeah.  
10 The total on the Exhibit 5 is  
11 149 million, right, and change?  
12 A. Uh-huh.  
13 Q. Okay.  
14 A. The total on Exhibit 6 -- it's the last one  
15 here -- 65 million.  
16 MR. TAYLOR: Did you have any questions.  
17 MR. TABER: Are you finished?  
18 MR. TAYLOR: Yeah. Subject to discussing  
19 some document issues with him.  
20 MR. TABER: I don't have any questions.  
21 MR. TAYLOR: Tim, do you have questions?  
22 EXAMINATION  
23 BY MR. MCCOLE:  
24 Q. I just want to make sure I understand exactly  
25 what it is this transaction accomplished.

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1 As I understand your testimony, you made  
2 an arrangement with Daniel Frishberg for approximately  
3 \$150 million in assets to come over to the Barrington  
4 firm from DFFS; is that correct?  
5 A. Daniel had to find a place for his clients to  
6 move to. Fidelity had kicked him out, okay. So he was  
7 scrambling to find a registered investment advisor who  
8 could accept those clients. And that's what Barrington  
9 became.  
10 Q. Okay.  
11 A. Did that answer your question?  
12 Q. And what, if anything, did you give him in  
13 exchange for those clients coming over for that -- for  
14 those assets under management coming over to Barrington?  
15 A. He's to be paid a percentage of the net after  
16 tax cash flow. To date, there isn't any.  
17 My agreement with Dan when we started was  
18 Barrington, myself or anything that I owned or controlled  
19 would not pay anything in cash. It would not be out of  
20 our pocket to acquire this, make the change or do  
21 whatever it is that's done. It has to pay for itself.  
22 Q. Uh-huh.  
23 And as I understand your testimony, in  
24 effect, Mr. Frishberg continues to manage that money;  
25 right?

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1 A. He's a portfolio manager. One of probably 10  
2 that I have in my firm.  
3 Q. But he manages the accounts that he brought  
4 over; right?  
5 A. Yes. We haven't made any change in that.  
6 MR. MCCOLE: Okay. That's all I have.  
7 MR. TAYLOR: Okay. We can talk about  
8 these documents off the record if you would like. Maybe  
9 we should go over it on the record.  
10 FURTHER EXAMINATION  
11 BY MR. TAYLOR:  
12 Q. In terms of the agreements, are there any  
13 other drafts or notes of conversations concerning the  
14 agreements? If so, we request them.  
15 A. No. This is the final thing.  
16 Q. Well, but are there drafts or other notes  
17 concerning this?  
18 A. You want my drafts that the attorneys gave me?  
19 Q. Sure.  
20 A. I'll ask her if I can.  
21 Q. Okay. Are there any notes of the  
22 conversations you had with Mr. Frishberg and his counsel?  
23 A. Any notes from them? No, I don't have any  
24 notes from them.  
25 Q. Okay. We want any e-mail communications



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1 between you and Mr. Frishberg concerning the transactions  
2 we've been talking about, if there are any.  
3 A. You're welcome to look at Live Office.  
4 There's probably I don't know how many thousand e-mails  
5 you can go through. We have to screen all of our e-mails  
6 as an SEC requirement.  
7 Q. Okay. I'll reserve on how we're going to  
8 address that.  
9 A. Because that's monumental.  
10 Q. Any documents concerning communications with  
11 the DFFS clients, we talked about that on the record.  
12 A. Yeah. I told you what I would get you.  
13 Q. We would like to have access to the  
14 San Antonio client files --  
15 A. Fine.  
16 Q. -- for all the DFFS clients.  
17 A. Uh-huh.  
18 Q. Any other documents concerning calculation of  
19 fees if there are any, all right?  
20 A. There are.  
21 Q. And documents concerning any of the payments  
22 we discussed on the record today, I think the check  
23 register, general ledger entries, whatever, concerning --  
24 A. You want a copy of the check or you want the  
25 check register?

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1 Q. Both. We want to make sure we can see on the  
2 document who the payee was and we're presuming --  
3 A. Yeah. But I don't -- I don't know if I want  
4 to give you Barrington's cash and cash flow. None of  
5 your business.  
6 Q. You can certainly -- you can certainly --  
7 A. Block it out.  
8 Q. Of course. I'm just interested in any  
9 payments or transfers to DFFS or Daniel Frishberg.  
10 A. Uh-huh.  
11 Q. And that would include -- include within that  
12 payments to third parties that we discussed today --  
13 A. Yeah.  
14 Q. -- various, Internet, telephone, rent, leases.  
15 A. I got that.  
16 Q. And the documents on the San Antonio lease.  
17 A. I got that.  
18 Q. That's what I remember from the discussion on  
19 the record today --  
20 A. Financial statements. Tax returns.  
21 Q. Right.  
22 A. This is 2007 and '08.  
23 Q. Whatever they gave you. I want to see what  
24 they gave you.  
25 Of course, the subpoena stands. If you

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1 think of other documents, categories of documents that  
2 would be within the subpoena, but which we didn't just  
3 enumerate, then I would like to have any such documents.  
4 A. Well, I hope I made myself clear that I am not  
5 interested in DFFS. I'm not interested in any of those  
6 other organizations. My only interest was in those  
7 clients --  
8 Q. I understand.  
9 A. -- the list of clients.  
10 Q. Okay.  
11 MR. TAYLOR: Then off the record at this  
12 point.  
13 (Off the record at 11:44 a.m.)  
14  
15  
16 \* \* \* \* \*  
17  
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19  
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24  
25

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1 SEC VS. KALETA, ET AL.  
2 DEPOSITION OF  
3 WILLIAM C. HEATH, CFP  
4 MAY 25, 2010  
5 CHANGES AND SIGNATURE  
6 PAGE/LINE CHANGE REASON  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
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1 PAGE/LINE CHANGE REASON  
 2 \_\_\_\_\_  
 3 \_\_\_\_\_  
 4 \_\_\_\_\_  
 5  
 6 I, WILLIAM C. HEATH, CFP, have read the  
 7 foregoing deposition and hereby affix my signature that  
 8 same is true and correct, except as noted above.  
 9  
 10  
 11  
 12 THE STATE OF TEXAS :  
 13 COUNTY OF \_\_\_\_\_:  
 14 BEFORE ME, \_\_\_\_\_,  
 15 on this day personally appeared WILLIAM C. HEATH, CFP,  
 16 who  
 17 a) is personally known to me, or  
 18 b) proved to me on the oath of \_\_\_\_\_ 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 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 WILLIAM C. HEATH,  
 8 CFP, 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  
 24  
 25

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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 4th day of June, 2010.  
 7  
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\_\_\_\_\_  
 Dorothy A. Rull  
 C.S.R. No. 3978, Expires 12/31/10  
 Notary Public, State of Texas  
 Commission Expires: 06/12/2012

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