UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DISTRICT

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	:	Case No. CV-11-1309-R (JCx)
v.	:	
MICHAEL W. PERRY and A. SCOTT KEYS, Defendants.	:	

Los Angeles, California
Wednesday, April 18, 2012

Deposition of MICHAEL PERRY, Volume 2, a witness herein, called for examination by counsel for Plaintiff, pursuant to Notice, taken at 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California, beginning at 8:33 a.m. and ending at 5:51 p.m., Wednesday, April 18, 2012, before Lisa Moskowitz, California Certified Shorthand Reporter No, 10816, RPR.

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APPEARANCES:
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Also Present:
EALAN OSBORNE, Videographer

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I N D E X

WITNESS
MICHAEL PERRY PAGE NO.
By Mr. Searles 294

E X H I B I T S

PLAINTIFF'S EXHIBIT NO. PAGE NO.
930 - Form 8-K, dated 1/16/07 325
931 - E-mail Chain from Michael Perry, dated 3/25/08 409
932 - IndyMac's Q207 Earnings Presentation and Press Release, dated 7/31/07 552
933 - Q3 2007 IndyMac Bancorp, Inc., Earnings Conference Call, dated 11/5/07 554
934 - IndyMac Announces Return to the Prime Jumbo Home Loan Market, dated 8/22/07 555

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PLAINTIFF'S EXHIBIT NO. PAGE NO.
521 - E-mail from Cecilia Conde, dated 5/5/08 376
533 - E-mail from Cecilia Conde, dated 5/12/08 379
538 - Approval of Acquisition of a Federal Savings Association and Rebuttal of Control, dated 6/20/00 373
574 - E-mail Chain from Michael Perry, dated 2/21/08 351
580 - E-mail from Michael Perry, dated 3/21/08 395
581 - E-mail Chain from Michael Perry, dated 3/25/08 403
595 - E-mail from Michael Perry, dated 5/5/08 390
600 - E-mail from Michael Perry, dated 4/4/08 443
631 - E-mail from Michael Perry, dated 5/6/08 520
639 - Board of Directors Meeting Minutes, dated 3/25/08 297
641 - Board of Directors Meeting Minutes, dated 4/3/08 427
642 - Minutes of Joint Special Telephonic Committee Meeting, dated 4/4/08 432
645 - Forecast Scenarios, dated 4/24/08 493
668 - Minutes of Joint Special Telephonic Committee Meeting, dated 4/24/08 493

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EXHIBITS PREVIOUSLY MARKED (Cont'd)

PLAINTIFF'S EXHIBIT NO.	PAGE NO.
701 - E-mail from Lisa Wu, dated 12/31/05	368
708 - E-mail from Cecilia Conde, dated 10/30/07	371
710 - E-mail Chain from Cecilia Conde, dated 2/11/08	372
712 - Form 10-Q, dated 3/31/07	341
713 - Form 10-Q, dated 6/30/07	343
714 Form 10-Q, dated 9/30/07	344
721 - Form 8-K, dated 3/11/08	337
725 - Form 8-K, dated 4/25/08	537
728 - E-mail Chain from Brett Cooper, dated 5/2/08	518
729 - E-mail from Dennis Sison, dated 5/5/08	519
730 - E-mail Chain from Christina Ching, dated 5/2/08	520
741 - E-mail Chain from Francisco Nebot, dated 11/15/07	388
745 - E-mail from Andrew Millward, dated 3/11/08	393
747 - E-mail from Michael Perry, dated 3/26/08	407
748 - E-mail from Andrew Millward, dated 3/11/08	408
750 - E-mail from Francisco Nebot, dated 4/25/08	467
751 - E-mail Chain from Christina Ching, dated 4/25/08	499

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EXHIBITS PREVIOUSLY MARKED (Cont'd)

PLAINTIFF'S EXHIBIT NO.	PAGE NO.
754 - E-mail Chain from Christina Ching, dated 5/5/08	519
757 - E-mail Chain from Michael Perry, dated 5/8/08	523
773 - E-mail Chain from Pam Marsh, dated 1/4/08	454
794 - E-mail Chain from Michael Perry, dated 3/30/08	421
799 - E-mail from Michael Perry, dated 4/9/08	456
800 - E-mail Chain from Michael Perry, dated 4/11/08	462
804 - E-mail from Pam Marsh, dated 4/30/08	537
816 - E-mail from Michael Perry, dated 3/7/08	329
820 - E-mail Chain from John Seymour, dated 3/28/08	411
821 - E-mail Chain from Christina Ching, dated 4/4/08	440
822 - E-mail Chain from Michael Perry, dated 4/18/08	464
839 - E-mail Chain from Francisco Nebot, dated 5/2/08	516
861 - Handwritten Notes, dated 4/24/08	484
862 - E-mail Chain from Francisco Nebot, dated 5/1/08	505

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PLAINTIFF'S EXHIBIT NO.	PAGE NO.
868 - Executive Committee Meeting Agenda, dated 3/26/08	417
913 - E-mail Chain from Scott Keys, dated 3/28/08	562
916 - Form 10-K, dated 12/31/03	363
917 - Form 10-Q, dated 3/31/05	917

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PROCEEDINGS

THE VIDEOGRAPHER: We are now on the record in the matter of the Securities & Exchange Commission versus Michael W. Perry and A. Scott Keys. Today's date is April 18, 2012, and the time is 8:33 a.m. This is the video recorded deposition of Michael W. Perry being taken at 5670 Wilshire Boulevard, 11th Floor in Los Angeles, California. I am the camera operator. My name is Ealan Osborne in association with Alderson Reporting, located at 1155 Connecticut Avenue, Northwest, Washington, D.C. The court reporter is Lisa Moskowitz, also in association with Alderson Reporting.

Will all attorneys please identify themselves and the parties they represent beginning with the party noticing this proceeding.

MR. SEARLES: Donald Searles on behalf of the Commission.

MS. SMITH: Julie Smith, Willkie, Farr & Gallagher, representing Scott Keys.

MS. MATELIS: Jessica Matelis, Willkie, Farr & Gallagher, representing Scott Keys.

MR. RAZI: Benjamin Razi for Michael Perry.

MS. VETA: Jean Veta, Covington & Burling, on behalf of Mr. Perry.

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THE VIDEOGRAPHER: Will the court reporter please administer the oath.
whereupon,
MICHAEL PERRY,
was called as a witness by counsel for Plaintiff and having been duly sworn by the court reporter, was examined and testified as follows:
EXAMINATION
BY MR. SEARLES:
Q. Good morning, Mr. Perry.
A. Good morning.
Q. In the spring of 2008, April, prior to May 12 time period, did you believe that the decision to suspend IndyMac's preferred dividends both at the bank and at the Bancorp level was material information to investors?
MS. VETA: Object to the form.
THE WITNESS: Can you repeat that for me again?
BY MR. SEARLES:
Q. Did you believe in the April prior to May 12 time period, 2008, whether the decision by IndyMac to suspend the preferred dividends and interest payments both at the bank and Bancorp level was material information to investors?

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MS. VETA: Object to the form.
THE WITNESS: You know, I don't recall specifically in April that I was thinking about that issue if that's what you're asking.
BY MR. SEARLES:
Q. Well, were you thinking about that issue -- the decision to announce the suspension was made to the public on May 12, 2008; right?
MS. VETA: Object to the form.
THE WITNESS: The board's approval of that was announced -- which was a few days earlier was announced on May 12.
BY MR. SEARLES:
Q. Did you believe that announcement was material information to investors?
A. Yes. At that point, yes.
Q. There's a stock -- I showed you yesterday Exhibit 919, which is the summary of DSPP sales. It indicates they completed on May 9. I believe May 14 -- was that a Monday to your recollection?
A. I'm sorry. Which one?
Q. Exhibit 919 reflects the --
A. May 12 was a Monday to my recollection.
Q. I'm sorry. May 12. All right.
Do you have an understanding of why DSPP sales

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ceased on May 9, 2008?
A. I don't recall specifically. I think, you know, we had just released earnings. We were also -- you know, I discussed yesterday I headed out on the road to try to raise a significant amount of capital. The stock reacted negatively to the earnings release that we did on May 1. I'm just not sure. I don't recall specifically, if you have a document, why we suspended at that moment in time or not.
Q. Do you recall whether it was an inability to continue to raise capital under the DSPP because the stock price dropped on May 12 in response to the information released by IndyMac on that day?
MS. VETA: Object to the form.
MS. MATELIS: Join.
THE WITNESS: I don't recall it in that -- I mean I just have a vague recollection that maybe the stock price was down, and we just kind of wanted to wait for a while and see what happened. We were out on the road to go raise a big slug of capital. That's kind of my recollection, not that we couldn't do it, but I could be wrong about that. My recollection could be wrong.
BY MR. SEARLES:
Q. Do you have a recollection of a voluntary decision by IndyMac to no longer seek capital through

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the DSPP after the release of the 10-Q on May 12?
MS. VETA: Object to the form.
THE WITNESS: I would maybe state it a different way. My recollection is that there was no reason that we couldn't still do it.
BY MR. SEARLES:
Q. Okay. Notwithstanding the drop in the stock price on May 12?
A. Correct.
Q. But you don't have any recollection of why, then, IndyMac didn't continue to seek capital under the DSPP?
A. Sitting here today, I don't.
Q. Okay. You don't dispute the fact that no further funds were raised through the DSPP after May 9?
A. No.
Q. I'd like to show you what's been previously marked as Exhibit 639.
A. Okay.
Q. Do you recognize this exhibit?
A. I do.
Q. All right. These are, correct me if I'm wrong, minutes of a joint special telephonic committee meeting of the board of directors of both the Bancorp and the bank held on March 25, 2008?

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A. That's correct.
Q. Did you call that meeting?
A. No, I didn't read this whole thing; so I don't know if it says that. Probably --
Q. I didn't mean it to be a trick question.
A. Yeah, probably.
Q. What was the purpose of your calling the meeting?
A. I think it looks like -- I'm just refreshing myself from reading this. It looks like the purpose was to inform the board of directors about a call that I had with the head of the western region of the OTS regarding our CAMELS ratings.
Q. That's Mr. Darrell Dochow?
A. That's correct.
Q. Do you recall when that call was?
A. Unless it's referenced in here, I would expect, you know, that it would have been shortly before this time period, you know, the same day or the next day or the following day.
Q. Okay.
A. Within a few days.
Q. Within a few days. All right.
So this is an example of your ability to call a board meeting within a very short period of time --

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A. Actually this is --
MS. VETA: Excuse me, Mr. Perry. Object to the form.
MS. MATELIS: Join.
THE WITNESS: Actually this isn't a board meeting.
BY MR. SEARLES:
Q. Oh, I'm sorry. It's a telephonic committee meeting of the board.
A. And that's because -- I'm not going to be a lawyer here, but I'll point out that I think the reason it says that is there's a notice period that's required to hold a board meeting, and so we didn't have the notice period, and so we had to call it a committee meeting, or we were advised by counsel to call it a committee meeting.
Q. I see.
A. There's some notice period, I think.
Q. But the committee, then, that met on this day --
A. Was just an informal committee --
Q. Right.
A. -- of the board.
Q. But it represented the members of the board? It was the same individuals as who would be present at a

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properly noticed meeting of the board?
A. I don't know. I didn't count them up and whether we have a quorum here in this or not.
Q. Okay.
A. But my understanding is that you couldn't call a board meeting without some sort of notice provision. That's why I think there's the title, but I'm not a hundred percent sure on that.
Q. By my count there are 12 members of the board attending this meeting. Yourself, Mr. Wohl, Mr. Caldera, Mr. Grant, Mr. Haden, Mr. Hodel, Mr. Hunt Mr. Kennard, Mr. Seymour, Mr. Willison, and then Mr. Gabriel and Mr. Greene by phone.
A. That would be of the bank board.
Q. I see. The bank board is the same as the Bancorp board?
A. With the exception of Mr. Gabriel and Ms. Greene and Mr. Wohl of those three. You counted 12 here. Those three -- it would be nine at the holding company.
Q. Does that represent a quorum?
A. I believe it does, but, you know, I'm not the governance expert there.
Q. What's your understanding --
A. I think it looks like, just off the top of my

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head, we're missing Lyle Gramley here. I don't know because of the notice period whether you can, you know -- the board can still vote. Even if they have a quorum, there might be a requirement to have a notice period because Mr. Gramley didn't have the opportunity to attend this call.
Q. I see. And he's just one member of the board; correct?
A. That's correct.
Q. Is he the only one missing?
A. I didn't -- you know, it's been four years; right? So it looks like it to me, but I'm just quickly looking at it.
Q. A quorum doesn't require 100 percent of the board to be present; correct?
MS. VETA: Object to form.
THE WITNESS: Right. I'm saying I don't know. The board can't take a vote, I think, without the notice period having been effected even if you do have a quorum. I think that might be the case, and that's why this is a committee meeting.
BY MR. SEARLES:
Q. I see. And what is the notice period for a board meeting? Do you have any idea?
A. No.

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Q. I assume at some point you knew in the past?
A. Only probably when we tried to call some of these meetings and were told by counsel you couldn't do it that quickly.
Q. As you sit here today, you have no idea what the notice period is?
A. That's right.
Q. Can board action be taken through unanimous written consents?
MS. VETA: Object to the form.
THE WITNESS: I believe that certain board actions could because we -- my recollection is that we had some unanimous written consents.
BY MR. SEARLES:
Q. You'll see attached to that exhibit are unanimous written consents authorizing the raising of an additional 10 million shares under the DSPP of -- leading to the April 3 prospectus. Do you see that?
A. I do.
Q. These are sequentially Bates-numbered pages produced by IndyMac. Do you recall whether these unanimous written consents were physically attached to the minutes of the special telephonic committee at the time?
A. I don't recall.

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Q. The minutes are dated May 25. You see your signature on the page -- second page of the UWC Bates No. 471663?
A. I do.
Q. That is your signature?
A. Yes.
Q. You didn't date this one as an effective date. That is blank, but I notice the other ones signed by Mr. Caldera, Mr. Gramley, Mr. Grant, Mr. Haden, Mr. Hodel, and Mr. Hunt are all dated March 31 even though the special joint telephonic committee occurred six days earlier on March 25. Do you have an understanding why the UWCs are not dated on the date of the meeting?
MS. VETA: Object to the form.
THE WITNESS: I don't. It might be related to the issue we were just discussing. It looks like the 31 was not filled out by them. It looks like somebody with the same handwriting filled it out.
BY MR. SEARLES:
Q. Oh, I see.
A. Just, you know, noticing it here.
Q. I see you're correct. Do you have any idea whose handwriting that is?
A. I could guess. It might be the corporate

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secretary, Christina Ching, who sent these out.
Q. Do you recall any conversation with Ms. Ching about what date should be placed on these UWCs?
A. No.
Q. Do you know whether it was common practice by her to fill in the UWCs signed by board directors?
A. I don't.
Q. In the minutes after you've called the meeting to order, it states that "Mr. Perry began by updating the members on the call I received from Darrell Dochow, regional director, where Mr. Dochow indicated the bank may receive a composite CAMELS rating of 4."
Was that a source of concern to you on this date?
MS. VETA: Object to the form.
MS. MATELIS: Join.
THE WITNESS: It couldn't be anything other than a source of some concern.
BY MR. SEARLES:
Q. Okay. That's why you called the board meeting to --
A. Sure.
Q. -- convey this potential development?
A. Sure.
Q. On the second page on the back, double-sided

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again, this is again a paragraph beginning by "Mr. Perry continued," and you're explaining what he said. In the third sentence of that paragraph you state, "Mr. Dochow did point out we should not expect a waiver of the limitation to raise brokered deposits."
Do you have an understanding of what would trigger a limitation on the bank's ability to raise brokered deposits? Would that be a CAMELS 4 rating?
MS. VETA: Object to the form.
THE WITNESS: I think it says later on in this Mr. Smith, who was IndyMac's outside regulatory counsel, says very clearly that no, a CAMELS 4 wouldn't trigger the issue alone, the brokered deposit issue.
BY MR. SEARLES:
Q. Well, you're relating here at least in this paragraph Mr. Dochow –
(Interruption in the proceedings.)
BY MR. SEARLES:
Q. Well, in this paragraph I read to you, this sentence, did you have an understanding what Mr. Dochow is referring to regarding you should not expect a waiver of the limitation to raise brokered deposits?
A. I mean did I have an understanding what he was saying?
Q. Yes. You're conveying this information to the

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board. Apparently that's reflected --
A. Yeah, I think at some point in this time period I was gaining an understanding that if your capital ratio fell below well capitalized, there could be this restriction placed on rates that you pay for brokered deposits and that you might need to seek a waiver from the FDIC. But this is specifically addressing a CAMELS 4 rating, and Mr. Smith makes clear later on that a CAMELS 4 alone does not trigger the brokered deposit restrictions.
Q. Did you have any understanding between the relationship between whether IndyMac, if it fell to a CAMELS 4, as a result of that, it may just by virtue of of that event affect the bank's status as a well-capitalized institution?
MS. VETA: Object to the form.
THE WITNESS: I think Mr. Smith also makes clear later that it doesn't affect their well-capitalized status, that a CAMELS 4 alone does not. He says that, you know, by implication here where he says, "He further noted the company is not undercapitalized, and this is goes a long way" --
BY MR. SEARLES:
Q. I'm sorry. Which paragraph are you reading from?

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A. The second from the bottom. So, you know, my understanding, you know, from advice from Mr. Smith during this time period and, you know, my memory refreshed from reviewing the documents is that a CAMELS 4 alone would neither -- a downgrade to a CAMELS 4 alone would neither trigger the brokered deposit restriction nor us being deemed no longer well capitalized. In fact, we were well capitalized until our regulator deemed us not well capitalized in July of 2008. They sent us a notice.
Q. What Mr. Smith is advising in the paragraph you pointed to is if the bank were rated a CAMELS 4 with a formal enforcement order, that would result in a limitation on brokered deposits absent a waiver being granted; correct?
A. Right, but the OTS in this time period was telling us that if we were to receive a 4, that they didn't think it would include an enforcement order.
Q. I see. And the paragraph that I was pointing you to at the top of the second page with respect to the limitation on brokered deposits, you conclude that paragraph -- you're also referencing with a 4 rating the Federal Home Loan Bank would also lower the bank's maximum borrowing amount from 50 to 30 percent of bank's assets, and you conclude that paragraph both these

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actions, one being the limitation on brokered deposits, the second being the limitation on the maximum borrowing amounts, would constrain the bank's liquidity. Is that your understanding on March 25, 2008?
MS. VETA: Object to the form.
THE WITNESS: I'm sorry. Can you repeat that question for me?
BY MR. SEARLES:
Q. Well, was it your understanding -- you conclude this paragraph that I was focusing on that "Both these actions would restrain our liquidity." Do you see that?
A. I do.
Q. One of those actions is the limitation on brokered deposits. The other action is the limitation on the maximum borrowing amount from the FHLB; correct?
A. That's correct.
Q. Was it your understanding as reflected in this document on May 25 that both of those actions would constrain the bank's liquidity?
MS. VETA: Object to the form.
THE WITNESS: Well, no, because three paragraphs later Mr. Smith, who was our regulatory counsel at Alston & Bird, clarified that the brokered deposits rule would not come into play. So it had only

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been -- you know, my understanding after this meeting was we had the FHLB risk of being, you know, having our borrowing capacity with them being reduced.
BY MR. SEARLES:
Q. Well, if the bank's ability to raise brokered deposits were limited either through a CAMELS rating of a 4 with a formal enforcement order or through some other mechanism, was it your understanding that a limitation on the bank's ability to raise brokered deposits would constrain its liquidity?
MS. VETA: Object to the form.
THE WITNESS: Yeah, I mean with those theoretical, you know, assumptions which were not considered at this time, right, we weren't -- they were telling us that we wouldn't receive an enforcement order, but with the theoretical points you're making there, yes, if we had a restriction on brokered deposits, it would constrain liquidity.
BY MR. SEARLES:
Q. On same page, the second full paragraph, you continue, "Mr. Perry pointed out that he believed the FDIC's position is not coming from the examiner in charge but from higher levels of the FDIC. He also shared" -- and this is referring to Mr. Perry -- correct me if I'm wrong -- "He also shared that Mr. Keys

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explained to Mr. Dochow that if we were to cease payments on the trust preferred and perpetual preferred stocks, this may cause market concerns and put pressure on the Bancorp common stock."

Did you concur in Mr. Keys' statement to Mr. Dochow?

MS. VETA: Object to the form.

BY MR. SEARLES:

Q. Do you believe that to be an accurate representation?

A. I think there were views both ways with respect to that. I think you have to -- you're putting that in the context. If you just take an institution that has no issues and doesn't have continuing issues like IndyMac had -- right? -- we had continuing disclosures and problems and losses, and things changed. And so you're trying to say, you know, a statement on March 25. I think that this statement is more accurate to March 25, more likely to March 25. It would have been more of a surprise by May 12 when we actually made the decision a couple days earlier.

It's not the same because there was so much information that had come out in between those periods, significant information, that by that point in time I didn't think it should be a surprise to anyone. In

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fact, I felt it was a positive because we were preserving capital and keeping the bank safe and sound. So I think, you know -- you know, at this time and probably, you know, I probably agreed with that statement more but by May, not so much.

Q. I see. So at least as of the time you're relating this to the board on March 25, given the conditions on that date, you agreed with Mr. Keys' position as he explained it to Mr. Dochow as reflected in these minutes?

A. Yeah, I think, you know, clearly we had a contractual right in those preferred documents, and we had pointed that out in both our disclosures and in -- as I recall in Q&A that I did in the 2/12 earnings call conference where someone asked me about this. I pointed out, "Look, you know, we don't think it's likely that we're going to have to cut those dividends. You know, I don't see a scenario, realistic scenario, that we're going to have to cut those dividends, but we have the right to do it."

The reality -- you know, and we can cut them for up to five years, and the reality is the situation worsened from that point in time to May 12 where we were -- I felt it was a judgment call even then, but I felt it was the right judgment to make, and it was a

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recommendation I made to the board the week before that May 12, and the board approved it, and two days later we disclosed it.

Q. All right. But the answer to my question with respect to whether on March 25, 2008, did you agree with Mr. Keys' statement to Mr. Dochow that if you were to cease payments on the trust preferred and perpetual preferred stock, this may cause market concerns and put pressure on the Bancorp common stock?

A. I don't think I thought of it.

Q. Well, you say --

A. I think that's stronger, you know, that question did I agree. Did I think that was a reasonable view that could be wrong? Yes.

Q. All right. As these minutes reflect, it's a view that you communicated to the board on March 25, 2008; correct?

MS. VETA: Object to the form.

MS. MATELIS: Join.

THE WITNESS: It's a view that I -- yes.

BY MR. SEARLES:

Q. All right. And prior to May 12 when IndyMac announced the cessation of the bank and Bancorp preferred dividends and the stock drop in price on that date, what negative information in your view did IndyMac

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disclose to the market prior to that date?

A. From what date to what date? From this March --

Q. From this date -- you said as of this date you felt that this view -- you at least expressed this view to the board on March 25.

A. Yeah.

Q. I believe you said in your testimony moments ago that by May 12 situations had changed and you viewed the suspension of the preferred as a positive development. And I'm asking you do you --

A. Well, I --

Q. Well, let me ask you two steps.

A. Okay.

Q. Did you consider IndyMac's disclosure to the market on March 12 and the suspension of the preferred dividends a surprise to the market?

MS. VETA: Wait a minute. You just said March 12.

MR. SEARLES: May 12. Thank you.

MS. VETA: Object to the form even with the date correction.

THE WITNESS: I considered lots of things, you know. You have a situation where things are changing and the environment is tough. You're getting bad news,

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you know, all the time, and, you know, we made that clear, you know, as we discussed yesterday.

We, you know, on a few -- you know, a week or two before this meeting we issued an 8-K on March 11, disclosing that market conditions were incredibly severe in the mortgage-backed securities market and that our 2/12 forecast would be negatively impacted as a result of that and that it was difficult to quantify that negative impact at that point in time because of the illiquidity in the marketplace and the difficulty in valuing assets like mortgage-backed securities.

You know, and then a week later, which is a week before this meeting, Bear Stearns fails. Okay? So you have a lot of enormous volatility going on, you know, in this time period. And so, you know, from March 25 through May 12, you know, we're, you know, beginning to kind of really get a handle on the quarter -- the quarterly loss, my recollection is, coming in worse than, you know, than the 2/12 projection which we had warned on 3/11 was going to come in worse. Right? It's coming in worse than we had projected. So, you know, that's, you know, information that's coming to me after 3/25 that's changing the view.

BY MR. SEARLES:

Q. My question, though, to you is did you

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consider the announcement by IndyMac on May 12 of the cessation of the bank and Bancorp preferred dividends and interest payments to be a surprise to the market?

MS. VETA: Object to the form.

THE WITNESS: Well, actually my recollection is one of the things that we did in preparation for that because you can't just go out and go, oh, we're -- first of all, I didn't have any authority to cut that dividend, those dividends. I'm the CEO. I had no authority. It wasn't in my authority document to do that. It's not in the documents. You had to go -- they say in those documents you have to get board approval to do it. So I may have had a view, but the board may have had an entirely different view with respect to whether that was material or not.

But we had to go through a whole process to determine whether we had the legal right to do it and also to make sure that the way we did it didn't breach any of the covenants in those agreements because even though we had a contractual right to eliminate those for up to five years, we had to make sure that how we did it -- you know, we went through it in detail with counsel to make sure we did it the right way so it didn't cause us to breach our debt covenants in those transactions.

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Part of that process -- my recollection is we also got some advice from JPMorgan, who was our investment advisor. One of the preferreds -- I can't remember which one -- was publicly traded. JPMorgan -- my recollection is in some document JPMorgan said our view is based on the price of that preferred already than it's priced -- elimination of the dividend is priced in.

So that's kind of, you know, my answer to your question is. You know, here's JPMorgan, our investment bank advisor, telling us that the trust preferred dividend cuts were priced into the price of the publicly traded preferred.

BY MR. SEARLES:

Q. Did you consider the announcement by IndyMac on May 12 to suspend the Bancorp and bank preferred dividends new news to the market?

MS. VETA: Object to the form.

THE WITNESS: Of course, it was new news.

BY MR. SEARLES:

Q. All right. And prior to that time, between March 25 and May 12, we talked about the decline in the forecast, the forecasting of losses. I believe by the end of April there was a forecasted loss for every single quarter for the remainder of the year whereas

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that was not the case on May 12.

What negative information do you remember IndyMac providing to the market prior to May 12 --

MS. VETA: Object to the form.

BY MR. SEARLES:

Q. -- other than Mr. Keys' departure?

MS. VETA: Object to the form.

THE WITNESS: Prior to May 12, well, we issued a prospectus on 4/3, a DSPP prospectus.

BY MR. SEARLES:

Q. You viewed that as negative news?

A. I viewed it that it showed we were raising capital.

Q. And that would be negative news?

A. No, I'm just saying that it showed that we were raising capital --

Q. Well, my question is --

MS. VETA: Let him answer your question.

MR. SEARLES: I'd like to have him answer my question.

MS. VETA: Okay. Try it again.

BY MR. SEARLES:

Q. And my question is what negative news, in your opinion --

A. Okay.

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Q. -- did IndyMac release to the market between May 25 and prior -- excuse me, March 25 and prior to May 12?
MS. VETA: Object to the form.
THE WITNESS: We released -- there was lots of news both -- you know, we really -- we had our -- in terms of negative news, I don't recall specifically any negative news that we released other than we provided an update on May 1. It was very -- we had warned that our forecast for 2/12 was off the table. Investors were aware that we were raising capital when we filed that 4/3 prospectus because there would have been no reason to file it but for the fact that we were running out of room in the previous prospectus, and there were just enormous issues. As I said, Bear Stearns failed the week before this telephonic meeting --
BY MR. SEARLES:
Q. I understand --
A. -- and had to be rescued by the Fed, and so you have -- and then you have another -- you know, negative news wasn't released by us but was disclosed on bond downgrades on MBS securities that IndyMac owned. And, you know, while we only owned a small piece of those, you could -- you know, an investor could have made the assumption that we owned all of them and had a

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more negative view based upon the rating agency's views than the actual impact of that that we disclosed on May 12 once we had the opportunity to digest that and calculate that information.
Q. I believe you testified before the Commission with respect to the MBS downgrades that it was your testimony that investors would not know what, if any, bonds still were held by IndyMac. Do you recall that testimony?
MS. VETA: Object to the form.
THE WITNESS: No, I don't recall that testimony.
BY MR. SEARLES:
Q. All right. Does that sound accurate to you?
A. It doesn't sound inaccurate.
Q. It doesn't sound inaccurate?
A. I mean I haven't -- you haven't shown me the testimony, but I'm taking you at your word on that so I'm -- it doesn't -- I don't disagree with that statement.
Q. Okay. That's fine.
I understand there's macro news to the market. There's Bear Stearns failing. There's various things happening out there. But my question to you is what news did IndyMac disclose between March 25 and prior to

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May 12 that you considered to be negative news?
MS. VETA: Object to the form.
THE WITNESS: Well, I mean I think you're being unfair and, like, locking it to this March 25 date. We disclosed two weeks earlier that our 2/12 forecast was going to be negatively impacted as a result of all the problems in the mortgage market. You know, I think that's a big disclosure; right? It basically is saying that that 2/1 forecast is going to be material -- is going to be affected in a negative -- material, negative way. That's why you file an 8-K. It's material. Okay? And I think that's, you know, clear information that's out there. I think, you know, you're trying to put an obligation on us that we don't have.
BY MR. SEARLES:
Q. No, I'm just --
A. We had a forward-looking statement in all of our disclosures that warned about all of the possible risk, problems that could occur, and we -- in that forward-looking statement we had a sentence that said, "We have no obligation to update our forecast in between." And yet even with those statements, we updated the market on 3/11 and warned that that 2/12 forecast will be negatively impacted by market conditions.

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There's not an obligation here every day to update the market as things change, and yes, it was an extremely volatile period of time, but there was no obligation to sit there and update the market every day, and you're trying to imply that there is.
Q. No, I'm not. I'm just trying to get an answer to my question. We'll get in the March 11 8-K in a few moment.
My question to you, though, is from the date of these board minutes on March 25, 2008, prior to May 12, 2008, what negative information, in your opinion -- well, what in your opinion was negative information that IndyMac disclosed to the market in that period of time?
MS. VETA: Object to the form.
THE WITNESS: We lost our CFO. I think that's negative information.
BY MR. SEARLES:
Q. Okay.
A. We disclosed our -- gave an update on the results for the first quarter. They were worse than the 2/12 forecast on May 1. I mean they were improved substantially from the third quarter, but they were worse than the 2/12 forecast.
Q. We'll get into that 5/1 8-K also, but do you

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recall with respect to that 8-K you're prefacing all of the financial data disclosed in that 8-K with your opinion, your statement that we've turned the corner?
MS. VETA: Object to the form.
THE WITNESS: I absolutely recall that statement. It was evidenced by the fact -- and all of the facts I used to back up that statement actually were true statements that we released and disclosed on 5/12.
BY MR. SEARLES:
Q. And collectively they supported your opinion, which was a positive opinion, that the bank it turned the corner; correct?
MS. VETA: Object to the form.
THE WITNESS: Yes.
BY MR. SEARLES:
Q. If I understand your testimony, the bank or IndyMac had no obligation to update the market on March 11 but did so anyway?
MS. VETA: Object to the form.
BY MR. SEARLES:
Q. Is that your position?
A. That's my view.
Q. And on May 1, 2008, the bank had an obligation to disclose Mr. Keys' departure from the company; correct?

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MS. VETA: Object to the form.
THE WITNESS: That's correct.
BY MR. SEARLES:
Q. Okay. It had no obligation to disclose the financial update that it did provide on that date, did it?
MS. VETA: Object to the form.
THE WITNESS: It did not.
BY MR. SEARLES:
Q. When IndyMac does choose --
A. And I believe it did not.
Q. All right. When IndyMac does choose to update the market as it did on March 11 and on May 1, did you believe IndyMac had a duty to be candid with the market and disclose all material information and not just certain material information?
MS. VETA: Object to the form.
THE WITNESS: It would be -- it would be impossible -- we had an 8-K. The obligation was to disclose any material information that's required under the 8-K, you know, some sort of material -- you know, some SEC rule that describes what the material items are in the 8-K, and that's one of the items that's very explicitly spelled out.
BY MR. SEARLES:

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Q. Which is what? I'm sorry.
A. The departure -- I can't recall the exact one but it's a departure of an executive officer.
Q. Other than Mr. Keys, when IndyMac chooses to, in your opinion, voluntarily go to the market with an update as it did on March 11 and May 1 of 2008, was it your opinion that IndyMac had a duty to be complete in its update?
MS. VETA: Object to the form. This calls for a legal conclusion.
THE WITNESS: No.
BY MR. SEARLES:
Q. It could cherry-pick information to update the market with?
MS. VETA: Object to the form. Calls for a legal conclusion.
THE WITNESS: I mean you're -- I mean it's unbelievable to me that you would be trying to spin the idea that we make a voluntary 8-K update and spin that as a bad thing to do.
BY MR. SEARLES:
Q. No, I'm not saying it's a bad thing to do. My question to you is whether it was your understanding that, when IndyMac does choose to update the market, that it should do so in a fair and complete and accurate

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manner?
MS. VETA: Object to the form.
THE WITNESS: And I believe we did that.
BY MR. SEARLES:
Q. And that's your understanding of the obligation of the company?
A. That was not my understanding of the obligation. My understanding of the obligation of the company was to follow the securities laws, and we did.
Q. All right. I'd like to show you what will soon be marked as Exhibit 930.
(Exhibit No. 930 was marked for identification.)
BY MR. SEARLES:
Q. Do you recognize this exhibit?
A. I do.
Q. And, for the record, it's a Form 8-K, date of report January 16, 2007.
Do you recall the purpose of issuing this report on that date or this form on that date?
A. I don't recall the specific reason why we chose to do this, but it is an update on our fourth quarter results. Fourth quarter of '06 results.
Q. Okay. When would -- do you recall when those were formally announced to the market? Is this looking

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in anticipation to that formal announcement, prior to the formal announcement?
MS. VETA: Object to the form.
THE WITNESS: I think it says in here it's January 25. So it's about nine days before -- nine total days before, not nine business days.
BY MR. SEARLES:
Q. Do you recall the circumstances of why the decision was made to preannounce earnings?
MS. VETA: Object to the form.
THE WITNESS: I don't recall specifically what the reason was, no.
BY MR. SEARLES:
Q. And this -- the page 2 of 5, this appears to be -- it says, "Dear Shareholders and Other IndyMac Stakeholders." Then page 4 of 5 it appears to bear your signature, Michael W. Perry. Do you see that?
A. I do.
Q. Is this in the form of a shareholder letter, then?
A. I mean it looks like -- it looks like it.
Q. On page 3 of 5 in the third full paragraph in the middle with the line stating "making it a challenge," are you with me there?
MS. VETA: I'm not with you. Tell me again.

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BY MR. SEARLES:
Q. Third full paragraph, five lines down. "Making it a challenge." Do you see that?
A. Yeah.
Q. The sentence that follows that is in your words, "Nonetheless we feel strongly that management has a responsibility to provide earnings forecasts to its shareholders to the best of its ability."
Did you believe that at the time?
A. I did believe that. We discussed that yesterday in my testimony.
Q. Did you continue to believe that during your tenure at IndyMac?
A. I did believe that, but I think, you know, what you're trying to imply is the interim. We did this on a quarterly basis where we went through and got board approval and review on those forecasts. Subsequent to missing this forecast here, we substantially increased our procedures for the quarterly forecast. The interim ones that we had did not meet the standards for disclosability because they were not forecasts that went through the rigor because you couldn't do that. You couldn't practically be sitting there going through a whole Sarbannes bottom-up forecasting process, which is what we did once a quarter when we disclosed it to

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shareholders, and then not only did the bottoms-up process but had it audited to a SOX level to make sure the forecasts were very accurate.
Q. Do you recall a concern around this time period of early 2007 that IndyMac's forecasts weren't accurate?
MS. VETA: Object to the form.
THE WITNESS: I recall a concern that as a result of missing this forecast -- and this is kind of before we had an understanding that people are missing forecasts because forecasts are based on immediately historical results. That's how everybody, including the government, does forecasting. Okay? They base it on, you know, recent history with some extrapolation from that, and the problem with everyone's forecasting in this environment is recent history.
You know, you kind of found this out with the benefit of hindsight after this whole period of time is that that method of forecasting, which is the only method -- it's still the only method -- didn't work as well in this period because of the unprecedented future that was facing financial institutions and really the economy during this crisis period.
BY MR. SEARLES:
Q. I see. So IndyMac, subsequent to this

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forecast in January, '07, undertook an effort to make its forecasting process more reliable. Is that accurate?
MS. VETA: Object to the form.
THE WITNESS: More robust and substantial -- you know, there -- you can't do anything about the future being so different than the past. As I said, forecasting is based on that. What we did do is made the forecasting process as rigorous and detailed, and as I said, we implemented, which is not required, a SOX kind of certification process for our forecasting. And we even had our audit committee review those and make a determination, as I recall, documented even in the minutes, that they had reviewed the forecast, the audit committee of the board of directors, and make a determination that that forecast is reasonable and makes sense before we would release it to the public.
BY MR. SEARLES:
Q. I see. I'd like to show you what's been previously marked as Exhibit 816.
A. Okay.
Q. Do you recognize this exhibit?
A. I do.
Q. All right. And it's an e-mail from you dated March 7, 2008, on the subject of an 8-K confidential

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potential draft disclosure; correct?
A. Yes.
Q. Sent to Mr. Keys, Ms. Marsh, Mr. Smith, a number of members of the board, correct, as well as other individuals?
A. Yes.
Q. Was it your idea? Were you the originator of the idea of filing what eventually became the March 11 8-K?
A. It looks like it from this e-mail, but sitting here today, I don't remember.
Q. This is all I have to go off. That's why I asked the question.
A. Yeah, it looks like it.
Q. And you have no recollection?
A. No.
Q. It's fair to say you at least endorse the idea because --
A. Absolutely.
Q. What was the circumstances behind the decision to update the market?
A. Well, I think we went through an e-mail yesterday that we talked about where -- was it like on 3/5 there was an e-mail or document talking about where our financial team was telling us that they're, you

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know, not getting any bids for mortgage-backed securities, and, you know, there's a difficulty getting even priced discovery for mortgage-backed securities, and, you know, we talked about Thornburg, you know, going bankrupt during this time period, getting, you know, $50 billion mortgage REIT going bankrupt. This is, you know, ten days before Bear Stearns fails.
So, you know, this is kind of probably all of that news and information I felt we needed to basically say, look, you know, that 2/12 forecast -- things have changed. We need to alert the market that while we can't quantify that because it's illiquid and we can't get a handle on exactly where it is yet and we have to kind of even work with our auditors to determine what value is under, you know, fair value accounting for mortgage-backed securities, we at least need to warn the market that it's going to have a negative impact, that all of these activities are going to have a negative impact as it relates to our 2/12 forecast.
Q. Do you recall what happened to IndyMac's stock price in response to the issuance of the March 11 8-K?
A. I don't.
Q. Do you still have Exhibit 918 before you?
A. I do.
Q. Just by way of background, did you review

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Mr. Ken Lane's expert report?
A. I'm bad with names. Is that my guy or your guy?
Q. That's your guy.
A. Okay.
Q. He's an economist with the University of Pittsburgh and --
A. I reviewed one draft --
THE REPORTER: I need one at a time.
THE WITNESS: Sorry.
BY MR. SEARLES:
Q. Do you recall him addressing the March 11 8-K in that report?
A. Not that specifically. I recall him doing some regression analysis around stock prices and drawing some general conclusions.
Q. Okay. But looking at the exhibit before you, the stock price chart, if you look at the prices on March 10 and then March 11, are you with me? 2008.
A. Yes.
Q. And do you see on March 10 the stock price is $4.70. Then on March 11 it increases over a dollar --
A. Uh-huh.
Q. -- to $5.78?
A. Correct.

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Q. Does that refresh your recollection as to the market reaction to your release -- to IndyMac's release of the 3/11 8-K?
A. Well, I just know --
MS. VETA: Object to the form.
THE WITNESS: You'd have to tell me what time of the day this was released because I get confused on the SEC filings, whether they're -- you know, when they're filed on 3/11, are they filed in the morning, or are they filed at the end of the day? I think, you know, that would -- you know, to me that would trigger, you know, when the time would trigger -- some things come out during the trading day sometimes when they get filed. I would just need to know that to be able to tell you which day I thought was the first trading day after the information was out on the market.
BY MR. SEARLES:
Q. I think your expert report indicates the March 11 8-K was released during trading hours.
A. So early in the morning?
Q. Yes.
A. Okay.
Q. Knowing that and seeing this stock price chart, do you have any recollection on how the market greeted this so-called negative news that was introduced

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into the market by IndyMac on March 11?
MS. VETA: Object to the form.
MS. MATELIS: Join.
THE WITNESS: This is pretty ridiculous to look at one day. You know, there could be like a million factors. First of all, this is to the whole point of this whole disclosure stuff. The market already knew what I was saying. Okay?
BY MR. SEARLES:
Q. Why issue an 8-K?
A. Because you guys think -- you don't give anybody credit for the fact that there's all this industry news that anybody would know how difficult it was for IndyMac during this period of time. Do you see what I'm saying? So you don't give us any credit.
Q. Is that why you released the March 11 --
A. No, I'm just saying --
MS. VETA: Wait. Excuse me one second. Object to the form.
You may answer Mr. Searles' question.
THE WITNESS: I mean this 8-K is negative. I don't care what the stock did, okay, in one day. You can see the next day the stock goes back down to five bucks and the next day -- the stock was very volatile because we had short sellers. We were one of -- go look

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at the data. You don't have that data here. But we had short sellers in IndyMac -- we were, like, the top short financial institution. How you could say that people didn't understand the risk that IndyMac when we were the most shorted financial institution out there which later the SEC and the government banned short selling of financial institutions to protect them because they're all going down because of short sells. But the market got the risk at IndyMac because of our short position.
BY MR. SEARLES:
Q. So if the market reacted positively to your news announcement, would you consider this an example of irrational exuberance?
MS. VETA: Object to the form.
THE WITNESS: I have no idea. I can't even answer that question because I'm not -- you're asking me to comment on one day's stock price, and I'm not even sure when this 8-K got released during the day, whether it got -- generally when you see a date on an 8-K, it got filed at the end of that day.
BY MR. SEARLES:
Q. Well, you understand your expert, Mr. Ken Lane, has been hired for probably many thousands of dollars to opine on single-day event -- on stock price movements; correct?

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MS. VETA: Object to the form.
MS. MATELIS: Join.
THE WITNESS: I thought he did a little more than just a daily analysis. My recollection is that he did statistical regression analysis.
BY MR. SEARLES:
Q. Okay.
A. Something your expert didn't even bother to do. He didn't do any stock price analysis.
Q. Well, nonetheless you're aware of Mr. Lane attempting to analyze the stock on a daily price -- on a daily movement as to what is influencing the stock price on particular days; right?
MS. VETA: Object to the form.
THE WITNESS: I mean I think his report speaks for itself.
BY MR. SEARLES:
Q. All right. And, in your opinion, if the market were to react positively to the release of the March 11 8-K, you would consider that to be irrational?
MS. VETA: Object to the form.
MS. MATELIS: Join.
THE WITNESS: I think, as I discussed yesterday, there are a myriad of factors that affect stock prices. You guys think that the only thing that

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affects stock prices are public disclosures. Theres lots of things that affect stock prices.
BY MR. SEARLES:
Q. I'm not sure who "you guys" are, but I'll leave your editorial comment aside.
In answer to my question, if the market reacted positively to the release of the March 11 8-K, would you consider that to be irrational?
MS. VETA: Object to the form.
THE WITNESS: What I'm saying -- what I said is I don't know what the market is reacting to. It could be reacting to that. It could be reacting to some other positive news for the industry that day that overwhelmed the 8-K. Who knows? I don't know.
BY MR. SEARLES:
Q. With respect to the so-called negative aspect of this March 11 announcement, let's turn to what I guess ultimately became the March 11 8-K, which has previously been marked as Exhibit 721, which largely paraphrases -- large tracks Exhibit 816, but I don't think it perfectly does. I'm not interested in the differences.
Focusing on Exhibit 721, you state in the middle of the -- well, this is an 8-K that you signed, correct me if I'm wrong? On page 4 of 5 it appears

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again, your signature?
A. Yes.
Q. All right. And on Exhibit 816 the paragraph that we discussed here as to what should be disclosed, is this your draftsmanship in Exhibit 816?
A. It's pretty good. I'm surprised I wrote something that good. It looks like it to me.
Q. It looks like it to me. I wasn't there. I'm asking the question.
A. Yeah, I don't recall specifically writing it, but it looks like I did.
Q. Okay. And it largely became what was the March 11 8-K. The documents speak for themselves. I don't want to get into it.
A. Right.
Q. And when you're talking about the spread widening, you say as a result -- and this is in the middle of the March 11 8-K -- "As a result the financial impact of this spread widening on IndyMac is difficult to estimate at this time but is expected to have a negative affect on the value of IMB's MBS portfolio and therefore on the first quarter 2008 forecast presented to shareholders on February 12, 2008."
Do you see that?
A. I do.

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Q. You didn't stop there, did you?
A. I didn't.
Q. You go on to state, "We believe most of any potential negative financial impact of the first quarter is not warranted by the present underlying performance and/or rating of these assets, and therefore any unrealized losses will likely reverse and have a positive financial impact in subsequent quarters." It goes on from there, and then you distinguish between the amounts of the MBS portfolio held for sale or available for sale versus classified as trading.
So the projection here is not unrelentingly negative, is it?
MS. VETA: Object to the form.
THE WITNESS: I think it's incredibly negative. You know, we're basically saying that sentence, "As a result the financial impact of this spread widening, while it's difficult to estimate, is expected to have a negative affect on the value of the IMB's MBS portfolio and therefore on," which means a negative effect on the first quarter 2008 results. I mean that's to my point.
I mean this was not required under the securities laws in my viewpoint based upon the warnings we provided on our forecast and our pattern and practice

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of providing forecasts on a quarterly basis after we completed a thorough review of them, and yet we voluntary go out and basically say, look, even though investors were aware of all of the things going on in the marketplace and we voluntary go out and do this and you're trying to portray this as some sort of evil document.
BY MR. SEARLES:
Q. No, I'm just questioning. Your expert attributes some positive but potentially immaterial upward tick in the stock price as a result of this filing, and I'm just exploring with you whether that market reaction, that positive market reaction, to this 3/11 8-K was warranted and/or intended. That's why I'm asking you these questions because the 3/11 8-K doesn't end with the sentence ending "February 12, 2008," does it?
A. It does not.
Q. All right.
MS. VETA: Mr. Searles, when you are moving to a different subject or something, can we take a break?
MR. SEARLES: We can do it now.
MS. VETA: Okay.
THE VIDEOGRAPHER: We are going off the record at 9:37 a.m.

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(Recess taken from 9:37 a.m. to 9:44 a.m.)
THE VIDEOGRAPHER: We are now back on the record, and the time is 9:44 a.m.
BY MR. SEARLES:
Q. I'd like to show you what's been previously marked as Exhibit 712.
A. Okay.
Q. I'm sorry. I'm just trying to find the page.
A. Page 31?
Q. You're looking at the bottom of the page or the top?
A. I think there were two page numbering sections. Yeah, I've got it wrong.
Q. What I'm looking at is 78 of 97 is the page I'd like to direct your attention to. Are you with me? Using the numbers in the top right-hand corner.
A. Okay.
Q. What we're looking at here is IndyMac's Form 10-Q for the period ending March 31, 2007; correct?
A. Okay.
Q. What role, if any, did you have in preparing the 10-Q?
A. I didn't prepare the 10-Q.
Q. Did you have any role in reviewing it?
A. I reviewed the 10-Q, at least the final

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version.
Q. Okay. And then you also signed the stock certifications in connection with it as well as the Q itself; correct?
A. That's correct.
Q. On the section we're looking at, regulatory capital requirements beginning on page 76 of 97 through 78 of 97, were you familiar at the time, March, for this period of 2007 that was the manner in which IndyMac would report its regulatory capital requirements including breaking out its capital ratios as reported on both a pre-subprime adjusted basis as well as a post-subprime adjusted basis?
MS. VETA: Object to the form.
THE WITNESS: Yes, I was generally familiar with that.
BY MR. SEARLES:
Q. What I wanted to walk you through is 78 of 97, at the end of the top paragraph where you're discussing the impact of double-risk weighting subprime assets. "The impact of additional risk-weighted criteria related to subprime loans had the effect of reducing IndyMac's total risk-based capital by nine basis points." Do you see that?
A. I do.

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Q. Keeping that in mind, I'd like to show you the next Q, which is Exhibit 713, and going to the same section. I apologize for not having the page previously marked. This would be on page 37 of 89.
A. Mine for some reason doesn't seem to have the numbers on it.
MS. VETA: Nor does mine.
BY MR. SEARLES:
Q. Let me give you my copy, then.
A. What's the -- if you give me the page number on the --
Q. I'm looking at the top right-hand corner which I have as -- if you turn to page 38 of 39 which the page number embedded in the document is page 31 of 32, if you look at the bottom of the page.
A. The section that starts "Capital"?
Q. Right.
A. Okay. Page 31 of 32. Got it.
Q. Again, this is, just for the record, the 10-Q of IndyMac for the period ending June 30 of 2007. Again, this is a document you would have -- you signed; correct?
A. Yes.
Q. And you would have reviewed the final draft of it?

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A. Yes.
Q. And, again, you see the reporting of the capital ratios both on a pre-subprime adjusted basis and a post-subprime adjusted basis is reflected here?
A. Yes.
Q. That was your understanding at the time of how generally the bank reported its capital ratios?
A. Yes.
Q. Again, directing your attention to the same piece of information at the top of page 38 of 39, the 10-Q states, "The subprime loans totaled" -- excuse me. The final sentence. "The impact of additional risk-weighting criteria related to subprime loans have the effect of reducing our total risk-based capital by 15 basis points from 12.24 percent to 12.09."
Do you see that?
A. I do.
Q. In the prior period it had the effect of nine basis points?
A. Right.
Q. Continuing with this theme, the next quarter Q, I'd like to show you what's been previously marked as Exhibit 714. If you turn to pages 44 of 120.
A. Got it.
Q. I'm getting better at this. And this exhibit,

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if I haven't already stated, is the 10-Q for IndyMac for the period ending September 30, 2007; correct?
A. Yes.
Q. And, again, this is a document you would have signed?
A. Yes.
Q. And a document you would have reviewed --
A. Yes.
Q. -- the final draft of?
A. Yes.
Q. And, again, you see the bank reporting the capital ratios in the same format as the prior two quarters?
A. I do.
Q. Directing your attention again to that same section of capital, the final sentence of the paragraph reads here, "The impact of the additional risk-weighting criteria related to subprime loans had the effect of reducing our total risk-based capital by 22 basis points from 12.01 to 11.79."
Do you see that?
A. I do.
Q. So it's gone from 9 to 15 to now 22?
A. Yes.
Q. You have a copy of Exhibit 711, which I showed

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you yesterday. I believe you identified this yesterday, but this is the Form 8-K, date of report February 12, 2008; correct?
A. Right.
Q. And if you could turn to page 46 of 95 using the numbers in the top right-hand corner.
A. Yes.
Q. There's a section on capital. Again, you see the reporting of the capital ratios both on a pre- and post-subprime adjusted basis which is the same manner in which the prior three quarters was reported?
A. Yes.
Q. And you understood at this time that's how IndyMac was reporting its capital ratios?
A. Yeah, as of 2/12, yes.
Q. And, again, getting to that same last sentence of the paragraph, it reads, "The impact of the additional risk-weighting criteria related to subprime loans had the effect of reducing our total risk-based capital by 31 basis points from 10.81 percent to 10.5 percent."
Do you see that?
A. I do.
Q. Do you have an understanding of why the effect of the double-risk weighting of subprime assets was

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having an increasing effect on IndyMac's -- or an increasing negative effect on IndyMac's capital ratios going from 9 to 15 to 22 to 31?
MS. VETA: Object to the form.
THE WITNESS: I think I have a general recollection of why.
BY MR. SEARLES:
Q. Which is?
A. That the subprime double-risk weighting, when it was originally put in place, applied to all subprime loans. Then at a point we and the OTS worked together, and the definition of subprime loans was changed; so that was kind of the first change, defining subprime loans in a different way.
And then the second change that occurred -- and I don't remember exactly when -- the OTS waived the right to double-risk weight subprime loans that were held for sale, and that was defined to keep it objective because you could just call a loan held for sale -- I think my recollection is held for sale 90 days or less. In other words, that -- you know, those loans were turning through.
So I think the main reason that this grew wasn't that we were doing more subprime loans. In fact, we were doing less, but what happened is when the

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secondary markets for subprime loans collapsed completely in, like, August, September, we got stuck with some subprime loans in portfolio, and they moved from held for sale where they were not double-risk weighted, you know, under 90 days and held for investment over 90 days, and that was the reason that the percentage increased.
Q. And that's your understanding as you sit here today?
A. That's my general understanding.
Q. The two changes you mentioned regarding how subprime loans are defined, those changes occurred prior to 2007; right?
MS. VETA: Object to the form.
THE WITNESS: The two changes, yes. My recollection is they occurred prior to 2007.
BY MR. SEARLES:
Q. Were you involved in facilitating those changes with the OTS?
A. I don't recall specifically. If you have a document, I'd be happy to comment on that but a long, long time ago.
Q. Do you recall when those changes occurred?
A. Well, we became a thrift in 2000; so it would have been some time between 2000 and -- as we discussed,

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they didn't occur in 2007. So my recollection is the definition of subprime loans, changing that definition, you know, occurred earlier towards 2000, and the held for sale, the 90-day waiving the requirement for double-risk weighting of those loans occurred closer to 2007. But I don't have a -- if you have a document, I'd be happy to address that.
Q. No, I was just exploring your general recollection at this point.
And this 31-basis point effect of the subprime risk weighting as of February 12 of 2008, did you consider that to be -- have a material effect on IndyMac's reported capital ratios?
MS. VETA: Object to the form.
THE WITNESS: Well, it was as of 12/31/07.
BY MR. SEARLES:
Q. I understand.
A. As of 12/31/07 --
MS. VETA: Same objections.
THE WITNESS: -- I don't think I considered it one way or another at that point in time.
BY MR. SEARLES:
Q. Whether it was material in any amount?
MS. VETA: Object to the form.
THE WITNESS: It didn't come in my mind to

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consider the materiality difference between those two numbers at that point in time.
BY MR. SEARLES:
Q. When, if ever, did it enter your mind to consider that difference?
A. Well, I mean as we were doing our best in 2008 to keep IndyMac well capitalized, we were doing everything that was appropriate to keep the institution well capitalized in terms of -- including addressing regulatory requirements as it related to our risk-based capital ratio.
Q. Okay. So at some point in time in 2008, did you consider the impact of subprime risk weighting on IndyMac's reported capital ratio to have a material effect on its capital ratios?
MS. VETA: Object to the form.
BY MR. SEARLES:
Q. On its reported capital ratios?
A. I considered -- at some point in time, I considered the one that really came up was the cap on counting capitalized servicing as part of your risk-based capital. That had a material effect and was extremely volatile because of interest rates, and we were butting up against that cap. So that was the one that, in particular, that I very much focused on as

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something that was having a material impact on that total risk-based capital.
Q. Did you focus on the subprime risk weighting impact at all?
A. I did focus on that as a lesser issue.
Q. I'd like to show you Exhibit 574. The marking on the exhibits can be obscured.
Do you recognize this exhibit?
A. I do.
Q. This is an e-mail from you, dated February 21, 2008, to Darrell Dochow at OTS. He's the regional director; correct?
A. Yeah, with a copy to other OTS officials and several of my key senior managers on the board.
Q. The purpose of this e-mail is what?
A. The purpose of this e-mail is to begin the discussions with Mr. Dochow about -- and, first of all, to alert him to the fact that this unusual situation is occurring because of the environment that we found ourselves in in IndyMac's business model which creates -- as a mortgage banker created a lot of capitalized servicing and to bring to his attention, which just got brought to my attention a few days earlier, the volatility of our total risk-based capital being caused by this artificial servicing cap

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limitation.
Q. I see. On the second page of the e-mail in the third full paragraph you describe the effect, at least your understanding of the effect, of this servicing limit. You say, "If we received a waiver on the servicing rights capital limit, our capital ratios today would go from roughly 5.99 percent and 10.15 percent to roughly 6.60 percent and 10.66 percent, a material difference."
Do you see that?
A. Yeah, I just want to get it in the chart because I know what your next question will be. Okay.
Q. Okay. And the reference to the numbers 10.15 percent and 10.66 percent -- do you have an understanding of what those numbers refer to?
A. They're an estimate of what the current ratios are.
Q. I guess my question was are these numbers reflective of the total risk-based capital ratio?
A. Which one?
Q. The paragraph I directed you to, the third paragraph where you're referring to certain percentages -- 5.99, 10.15, 6.60, 10.66 -- the ones 10.15 and 10.66, do they refer to the total risk-based capital ratio?

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A. It appears that they do, yes.
Q. Was it your understanding at the time you wrote this e-mail that that .51 percent difference was, in your words, a material difference?
A. The difference of the -- you're talking about the -- let's see. 51 basis points difference?
Q. Right.
A. Yeah, I mean I don't think I'm using the word "material" in the scope of the securities laws here. Maybe that's not exactly -- I'm, you know, a former accountant, and the word "material" comes out of your mouth a lot; right? So I mean it's an important difference.
Q. Okay. Important, significant --
A. When we're close; right?
Q. Okay. I just want to -- because you know my next question --
A. Yeah, yeah.
Q. -- which is with respect to the effect of subprime risk weighting of 31 basis points, did you view that as similarly important particularly when you're close?
A. I think, you know, you're -- so to kind of separate this just a little bit, on 2/12, right, when we filed our 12/31/07 8-K -- you know, the 8-K that we did

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for the fourth quarter with the -- and you went through the 10.81 and the 10.50.
Q. Right.
A. Right. I didn't focus on that as being a material difference in any way, and, you know, sitting here with the benefit of hindsight, I don't really see that as a material difference. I think the issue that I'm kind of -- now what we're focusing on is, oh, my gosh. This capitalized servicing asset -- the volatility of it caused by interest rate changes is creating -- and this arbitrary cap because you can see kind of in the discussion that there were -- you know, that this cap just was an arbitrary cap that regulators put that had nothing to do with risk. It just was an arbitrary cap.
There were other people who thought it should be two times your net worth and others who thought it should be unlimited. But that cap is causing fluctuations in a two-day period causing our capital ratio total risk base to go from 9.82 to 10.15 in two days with no change in our GAAP net worth. That is nonsensical. We need to get -- we need to address -- we need to alert our regulators as soon as we found out, right, within a day or two -- and I can quantify it -- and talk to them about how can we address this unique

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issue that's coming up because of our mortgage banking business model and the unprecedented environment we find ourselves in.
Q. I see it's very difficult to predict what's going to happen because of the interest rate fluctuation.
A. Right.
Q. And the effect of the subprime risk weighting is more easy to predict?
A. It's done because we're not doing any new subprime loans.
Q. Okay. I understand the distinction you're drawing.
But then with respect to the effect of 31 basis points particularly, in your words, when you're close, would you consider a 31-basis point change in your capital ratio to be important?
MS. VETA: Object to the form.
THE WITNESS: Well, what we found out -- and we'll discuss this later; right? What I found -- you know, I'm a former auditor, and what we found out is that, you know, if you're close on your capital ratio, everything is important.
BY MR. SEARLES:
Q. Okay. Well, I'm just trying to get an answer

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to my question.
So did you consider a 31-basis point effect from the subprime risk weighting during this time period to be important or, in your words, material?
A. No, I didn't consider it -- well, first of all, I didn't say the 31 basis points was material here.
Q. No, I didn't --
A. I said the difference that this was a material -- I said here -- I used the word "material," and I'm not using it in the context of the securities language but 51 basis -- a 51 basis -- excuse me. Yeah, a 51-basis point change and really the -- and when I'm using that word "material," I'm talking about the idea of getting out the volatility of this issue, the enormous volatility of this issue on our capital ratios, you know, which made it, you know, highly unpredictable. You know, that -- that was the issue I was addressing. You could see that the sub -- that the -- you know, if I felt the subprime was material, I wouldn't have put it in a P.S. I mean I have that kind of like -- and also we have these two other issues.
Q. So is it your testimony that you did not view the relief, this purported relief from subprime risk weighting, to be welcome news?
MS. VETA: Object to the form.

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MR. SEARLES: Join.
THE WITNESS: No, that's not my testimony. I viewed it to be welcome news.
BY MR. SEARLES:
Q. All right. And you viewed it to be welcome news because it helped the bank remain well capitalized?
A. Like hundreds of other things.
Q. All right. It served to increase the -- IndyMac's reported capital ratios, the purported relief from that requirement of double-risk weighting subprime assets; right?
MS. VETA: Object to the form.
MS. MATELIS: Join.
THE WITNESS: As I stated earlier in my testimony, I was charged and responsible with doing everything I could as CEO to keep the bank safe and sound and well capitalized and that -- you know, under the rules and regulations. And if this was something that we could get as a waiver, you know, we had an obligation to do that.
BY MR. SEARLES:
Q. Okay. Did you actually ask for a waiver from Mr. Dochow on the double-risk weighting of subprime assets? From the P.S. it looks like you state you're discussing the subprime risk weighting and a cap on

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accounting general loan loss reserves, and you say, well, I'm not asking for a waiver on either of these. You're kind of tossing it in there for the mix.
So did you ever have a conversation with Mr. Dochow where you actually affirmatively asked for a waiver on the subprime risk weighting, or was this just manna from heaven?
MS. VETA: Object to the form.
MS. MATELIS: Join.
THE WITNESS: I don't have a strong recollection of this, but kind of as I reread this and refreshed my memory, you want my view on that P.S. a little bit or no?
BY MR. SEARLES:
Q. Well, I remember from your testimony before the Commission that Mr. Chung took he asked you about the circumstances surrounding the waiver. I assume your memory today is no better than it was at the time you provided that testimony; correct?
MS. VETA: Object to the form.
THE WITNESS: I'm not sure. I'm not sure I reviewed all of that testimony.
BY MR. SEARLES:
Q. All right. All right. Give me your -- in answer to my question, do you recall affirmatively

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asking Mr. Dochow for a waiver of the requirement to double-risk weight subprime assets?
A. I don't have a recollection of that, no.
Q. Do you have a recollection of him giving you a waiver on that subject?
A. I did not -- when I kind of first began my preparation of this with my attorneys back before the investigation, I did not have a recollection of it until certain documents refreshed my memory.
Q. Okay. Those documents are when you're telling the board about it; right? Obviously you must have known about it?
A. Right. And other people saying that they were aware of it.
Q. Okay. All right. Your memory today -- is it any better two years ago when you testified before the Commission about this?
A. No.
MS. VETA: Object to the form.
THE WITNESS: In terms of remembering him -- a call with him like I do with the 18 million?
BY MR. SEARLES:
Q. Right.
A. No.
Q. So you don't recall any of the specifics of

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the conversation -- was it a conversation you had with Mr. Dochow or was it --
A. I think so just based on the documents.
Q. Okay.
A. I didn't remember it.
Q. And you don't recall any of the specifics of the conversation?
A. No.
Q. Okay. So I guess you wanted to tell me the background to this P.S.?
A. You know, my attorneys probably think that's volunteering too much information but --
Q. Consider it a question, and you won't be volunteering.
A. The reason that I worded it, I believe, you know, in reading this and thinking about it, the worded -- I wanted -- I wanted the servicing line. If I had put all of those in the body of the letter, they -- they would probably have given me the one I didn't want. The servicing one was the important one. I wanted that to be -- have that be the highlight. I wanted them to have to say yes or no on that one because that one had the volatility. The other two did not. They were fixed, you know, and declining as loans paid off.
Q. As we saw, the effect of subprime risk

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weighting's effect not declining but the effect --
A. No, no, no. It was only because of that situation that I talked about where we had a portfolio of loans in the fourth quarter, but we weren't doing any new subprime loans; so it was declining from -- from 12/31/07 on, it would be declining.
Q. Right. But you don't dispute the exercise you just walked through --
A. Don't do --
MS. VETA: Let him finish his question --
BY MR. SEARLES:
Q. -- that the effect --
MS. VETA: Excuse me. Give me an opportunity to object if I have an objection. Then you answer the question, and that way the court reporter can keep it all straight.
BY MR. SEARLES:
Q. You don't dispute through the exercise you walked through with the different 10-Ks ending with the 8-K on -- not 10-Ks. 10-Qs -- ending with the 8-K on February 12 that the effect of the subprime risk weighting was actually increasing, the 9 to 15 to 22 --
A. It had --
Q. -- to 31?
A. It increased historically through 12/31/07.

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It would decrease going forward because we weren't doing any new subprime loans.
BY MR. SEARLES:
Q. Okay.
A. And those loans would prepay. Some of those loans -- and did prepay.
Q. All right. But you don't dispute through the documents we just walked through --
A. Don't dispute what we walked through.
THE REPORTER: I need you to let him finish the question.
THE WITNESS: Sorry.
BY MR. SEARLES:
Q. I'm not sure if you're done answering my question regarding the background of the P.S.
A. So, you know, we were trying to get, you know, an affirmative decision on that, but the P.S. was designed, well, okay, if they're going to give us a no, you know, even though we want to make them aware of these other two because well take whatever we can get, but what we really want is the servicing waiver.
Q. Okay. And that waiver you never got from OTS; correct?
A. That's correct. Although my recollection is they were still considering reverse mortgage servicing

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rights not to be a servicing asset at all because they're structured differently, and my recollection is that that item was still open.
Q. Yes, but that never benefitted the bank because the waiver was never granted; correct?
A. Versus the other was a no. My recollection is the cap was a no, but a definitional change that reversed mortgage servicing rights were not servicing rights was still open is my recollection.
Q. Okay. If nothing else, by the end of the day I will bury you with paper. I'm handing you what's been previously marked as Exhibit 916. Do you recognize this document?
A. I do.
Q. And, for the record, this is IndyMac's Form 10-K for the fiscal year ending December 31, 2003. Again, this is a document you would have signed?
A. Yes.
Q. And is this a document you would have reviewed the final draft of?
A. Yes.
Q. Okay. I'd like to direct your attention to -- if you use the page numbers at the bottom, if you go to page 67, the section "Regulatory Capital Requirements."
A. Okay.

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Q. In the second paragraph on the regulatory capital requirement section, the second sentence says, "During the fourth quarter of 2003 the company revised its approach to conform to this guidance," regarding subprime lending -- subprime risk weighting, "and this revised approach was accepted by the OTS," and it goes on to explain the change. This is one of the changes you were just previously referring to; correct?
A. Yes.
Q. Do you recall what process IndyMac went through in its dialogue with OTS to obtain approval for that change?
A. I don't.
Q. Do you know if it was anything more than a phone call from Mr. Dochow?
A. I don't recall.
Q. Do you have any idea who would have been involved in obtaining that change?
A. I mean I definitely recall being aware of this because -- the only reason is because I had the convoluted definition before. I had the subprime definition before this more simple definition.
Q. I see.
A. I had developed it.
Q. I see. To your regret, I take it?

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A. No, it was just a different way to do it.
Q. I see. And the second sentence to the end of this paragraph states, "We report our subprime loan calculation in an addendum to the thrift financial report that we filed with the OTS."
Do you see that?
A. Yes.
Q. And was that your understanding of how the subprime loan calculation was reported to the OTS?
MS. VETA: Object to the form.
BY MR. SEARLES:
Q. At the time?
A. I mean I don't know -- I don't recall what my -- you know, what my view was at the time.
Q. You may have reviewed it at the time, but you just forgot it as you sit here nine years later?
A. Yes.
Q. Assuming you read this as you did before signing it, it would have -- does this at least serve to refresh your recollection as to how IndyMac reported its subprime risk-weighted numbers to the OTS?
A. I mean I didn't read this document cover to cover, but I mean I don't agree with the wording here.
Q. And you understood in some fashion IndyMac reported a subprime risk-weighted number to the OTS at

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least during this period of time?
A. Yes.
Q. Okay. I'd like to show you what's previously been marked as Exhibit 917. Just preliminarily, do you recognize this document?
A. It looks like it's the 10-Q for the period ended March 31, 2005.
Q. I'd like to direct your attention to page 53 using the page numbers at the bottom of the document. Under the "Regulatory Capital Requirement" section on that page, does this -- is this the second change that you were testifying to earlier?
A. I'm sorry. Where are you saying?
Q. In the "Regulatory Capital Requirement" section on page 53, second paragraph.
A. Where does it refer to a change?
Q. Well, it doesn't refer to a change, but it talks about the calculation. Subprime loans held for sale which are either delinquent or more than 90 days old.
A. Okay.
Q. Is that the second change you're referring to?
A. Well, that's the definition of how we calculated the subprime double-risk weighting at this time. As you said, it's not a change here.

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Q. What was the second change you recall occurring with respect to the calculation of the subprime ratio?
A. No, I said -- I'm being kind of formal about my response on this. This is the change. I'm saying it's not highlighted as a change.
Q. Okay. I understand now. Even though it's not highlighted as a change, it's the second change you spoke about earlier?
A. Correct.
Q. And, again, you see --
A. I mean I'm not sure that this is the period, right, because you'd have to see period before this; right?
Q. All right. Well, let me turn to a slightly different subject then. Again, this is a document you would have signed; correct?
A. Yes.
Q. You would have reviewed the final draft of it before signing it?
A. Yes.
Q. And, again, the same language as we saw in Exhibit 916 in the second paragraph, third sentence, "We report our subprime loan calculation in an addendum to the thrift financial report we filed with the OTS."

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Do you see that on page 53, last paragraph on the page, middle of the paragraph?
A. We report our subprime loan addendum to the thrift report we filed -- blah, blah, blah. Yes.
Q. As of 2005 was that your understanding of how it was reported?
MS. VETA: Object to the form. Are you talking about the TFR or the addendum?
THE WITNESS: I don't recall, you know --
BY MR. SEARLES:
Q. I'm talk about the language that's reflected --
A. I mean I don't recall specifically, you know, at that date that was my understanding, but that was my general understanding of where it was reported.
Q. Okay. I'd like to show you what's been previously marked as Exhibit 701.
A. Can we refresh my memory on what was the Q we were just looking at? What was the date of that?
Q. 3/31/05.
A. 3/31/05. I'm trying to get my time frame so between this e-mail and --
Q. I can bring out more 10-Qs if you'd like.
A. No. Okay.
Q. Do you recognize this exhibit?

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A. I mean not this -- are you saying just generally do I recognize the CCR addendum here or the e-mail?
Q. Well, let me ask you perhaps an easier question. Do you recognize generally the format by which IndyMac reported its subprime adjusted numbers to the OTS?
A. I recognize it. I don't recall whether I had looked at this, you know, subsequent to -- I mean before 2000 -- you know, whether I had ever reviewed this addendum when I was at IndyMac.
Q. Okay. When you say "this addendum," you're referring to the exhibit before you?
A. Just this -- the thrift report addendum.
Q. All right. You may not have reviewed any of them in any course of time?
A. I just don't recall.
Q. I see. All right. But this -- the e-mail that's attached as a cc or addendum and in the Q that we were just looking at for period ending March 31, '07, it talks about an addendum to the thrift financial report. It's your understanding we're talking about the same thing here? This is the addendum by which IndyMac reported its --
A. Yeah, that's my general understanding.

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Q. You see at the last page of this exhibit there's a CCR addendum towards the right? Do you see that at the top of the page? The very last page is what I'm focused on. Feel free to spend as much time as you like.
A. The last page of this document?
Q. Yes.
A. Okay.
Q. You see towards the right half portion of the page at the top, "CCR Addendum"?
A. I do.
Q. Okay. And then there's one column "Subprime new definition" and then to the right "Subprime old definition"?
A. Okay.
Q. And then numbers reported there including, towards the bottom of the page looking to the left, "Tier one risk-based capital ratio." So it's reporting IndyMac's total risk-based capital ratio both as under the new definition and the old new definition of subprime assets; right?
A. Yes. Which by the way -- I mean on this last page, just looking at this, you can see it was 30 basis points difference under the new definition between total risk-based capital here at this stage. So, you know, it

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was higher, you know, in prior periods.
Q. You know my next question. Do you consider that 30 basis points important?
MS. VETA: Object to the form.
THE WITNESS: No, not at -- no.
BY MR. SEARLES:
Q. Let me show you another similar document, Exhibit 708. Do you generally recognize this document, Exhibit 708?
A. It looks like this one's got the old definition cut off for some reason. The columns aren't here.
Q. Yeah, I see that.
A. Even though it says on the cover of it.
Q. All right. But do you generally recognize this exhibit?
A. I mean I just -- I don't recall ever seeing these documents.
Q. Okay.
A. Okay. But I recognize it because I'm -- you know, was the CEO of IndyMac, and I recognize what the document is.
Q. Okay. What is the document?
A. It looks like it's a formal addendum that we send to mid-level managers at the OTS that's not part of

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our formal thrift report.
Q. The e-mail on 708 is directed to Mark Reiley at OTS; correct?
A. Yes.
Q. And Mark attaches the September 30, 2007, CCR addendum calculated under the following definitions, and it provides --
A. Yeah.
Q. -- for the two definitions even though for some reason the addendum doesn't include both?
A. I'm just saying just the process to me -- because these are -- you know, this is really -- looks very informal to me.
Q. Yes. But it looks no less formal than Exhibit 701; correct?
A. Right. I'm just saying just as I see these I'm commenting on that.
Q. Okay. And Exhibit 710, similar document?
A. Yeah, this one they've got both definitions here.
Q. Meaning the old and new definition of subprime?
A. Yes.
Q. What are we looking at here?
A. It looks like the addendum for the 12/31/07

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TFR.
Q. Just like the other two exhibits we looked at?
A. Yes.
Q. Okay. Just while we're on the subject of whether these are formal or informal, I'd like to show you Exhibit 538.
A. Okay.
Q. Do you recognize this exhibit?
A. Yes, I do.
Q. And what are we looking at here?
A. I don't know the formal definition of it, but it was, I think, the approval document related to us becoming a thrift back in -- on, you know, just before July 1, 2000, when we became a thrift.
Q. Okay. Now, you see one of the conditions for the approval of IndyMac becoming a thrift in paragraph 11?
A. I do.
Q. All right. And this imposes the requirement for double-risk weighting subprime assets; correct? Paragraph 11?
MS. VETA: Object to the form.
THE WITNESS: Yes, but, you know, I would point out that all of the conditions in here are, you know, subject to the, you know, satisfactory review of

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the western region director and, you know, kind of within his control, it says here.
BY MR. SEARLES:
Q. Well, in the second paragraph, is that what you're referring to of the document? What it says in that paragraph is "provided that the conditions set forth below are satisfied in a manner satisfactory to the western regional director or his designee. Accordingly, the holding company application is hereby approved subject to the following conditions."
Do you see that?
A. I do.
Q. Was it your understanding that the manner in which the western regional director would be satisfied with respect to the reporting of subprime risk weighting of its assets would be through an addendum to the TFR report?
MS. VETA: Object to the form.
THE WITNESS: In terms of how he would be satisfied with respect to that? Yeah, I don't know that I had an understanding of that issue.
BY MR. SEARLES:
Q. I see. But the document we just went through, the CCR addendum, that is the manner in which IndyMac did report its subprime adjusted total risk-weighted

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number?
MS. VETA: Object to the form.
THE WITNESS: Right.
BY MR. SEARLES:
Q. So is it your understanding from this phone call that you had or some communication you had with Mr. Dochow, it was sometime late February, 2008, where you obtained to your understanding a waiver of the requirement of reporting subprime assets?
A. My recollection is that sometime in 2008, and, you know, it's enhanced because there's some discussion of it in some of the board minutes and in communications around that time.
Q. All right. I'd like to show you the TFR addendum that IndyMac submitted to the OTS after the so-called purported waiver.
Have you seen those documents before?
MS. VETA: Object to the form.
MS. MATELIS: Join.
THE WITNESS: I don't think I saw them at the time, but I've seen this subsequent.
BY MR. SEARLES:
Q. And you know where I'm going to be going with this.
A. Yes.

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Q. I'd like to show you what's been previously marked as Exhibit 521.
A. Yeah.
Q. Do you recognize this exhibit?
A. I do generally.
Q. This is an e-mail dated May 5, 2008, to Mark Reiley again, the same individual we saw before in the earlier exhibits at OTS. "Mark, attached is the March 31, 2008, CCR addendum which is subject to amendment."
And attached to that do you recognize the format of the document?
A. I do.
Q. It's the same as the earlier exhibits we saw?
A. It is.
Q. And you see that on the last page of the addendum IndyMac is continuing to report, as it has historically reported, to the OTS a total risk-based capital ratio adjusted both under the new and old subprime definitions?
A. I think --
Q. Do you see that?
A. I do.
Q. Okay. Were you aware that IndyMac was continuing to report its subprime adjusted numbers to

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the OTS in the same manner as it had historically done in May of 2008?
A. No. And I also wasn't aware that we had continued to report under the old and new definition either, and I think that that really cuts to your point and destroys your point which is we kept reporting this information. And so, you know -- I mean when you look at it, you know, I think the OTS, even though they granted these changes, wanted to see them going forward to see how they were affecting our capital so that at some point in the future they might decide to change it if it became a more material item to them.
Q. Change what?
A. Change it back.
Q. Change what back?
A. The waiver they had granted us on double-risk weighting. If subprime loans -- we started originating subprime loans in the future at some point in time, they wand to keep seeing this even though they had granted the waiver just like they wanted to keep seeing it under the old and new definition of subprime.
Q. Was this where -- your testimony, is that based on any conversation you had with the OTS?
MS. VETA: Object to the form.
THE WITNESS: That's based on my experience in

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dealing with the regulators for a long period of time.
BY MR. SEARLES:
Q. It's not based on any conversation you had with the OTS, is it?
A. No, it's an educated guess.
Q. It's just a guess?
MS. VETA: Object to the form.
THE WITNESS: It's an educated guess.
BY MR. SEARLES:
Q. It's speculation.
MS. VETA: Object to the form.
THE WITNESS: Well, I've been told -- I think it's an educated guess. We can debate that.
BY MR. SEARLES:
Q. All right. I'd like to show you -- oh, tape time.
THE VIDEOGRAPHER: This is the end disk 1 of deposition of Michael W. Perry. We're going off the record at 10:40 a.m.
(Recess taken from 10:40 a.m. to 10:48 a.m.)
THE VIDEOGRAPHER: This begins disk No. 2 in the deposition of Michael W. Perry. We are now officially back on the record at 10:48 a.m.
BY MR. SEARLES:

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Q. Mr. Perry, I'd like to show you -- I don't believe I have already -- Exhibit 533. Do you recognize this exhibit?
A. I don't recall seeing it at the time, but I recognize it now.
Q. And this is another -- it's the revised CCR addendum filed with OTS filed on May 12, 2008; correct?
A. Correct.
Q. All right. When you signed -- reviewed and signed IndyMac's May 12 10-Q, did you know that IndyMac was continuing to report as it had historically to the OTS as total risk-based capital ratio based on a subprime adjusted basis?
A. No.
MS. VETA: Object to the form.
BY MR. SEARLES:
Q. And the IndyMac's 10-Q that was filed on May 12, 2008, no longer contained the disclosures we saw in the prior 10-Qs about how it reports its subprime adjusted basis points total capital ratio both on a pre- and post-subprime adjusted basis; correct?
A. Say that again.
Q. Sorry about the lack of clarity on that question.
The IndyMac's May 12, 2008, 10-Q no longer

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reports a capital ratio adjusted on a pre- and post-subprime adjusted basis; correct?
MS. VETA: Object to the form.
THE WITNESS: I believe that's correct, yes.
BY MR. SEARLES:
Q. All right. Knowing that IndyMac, in fact, continued as Exhibits 521 and 533 demonstrate -- that IndyMac continued to report a subprime adjusted ratio to to the OTS, do you believe the 10-Q was inaccurate that was filed on May 12, 2008, that no longer disclosed what, in fact, IndyMac was doing?
A. Absolutely not. It was completely accurate with respect to this issue. As I discussed in my testimony, I believe that based on my experience, even though I hadn't seen these, and based upon the track record where you can see that they continued to -- we had to report the old and the new subprime in the addendum and that I believe that they just wanted to continue to see what this was even though they had granted this waiver.
Q. And this is an understanding you obtained after May 12, 2008; correct?
MS. VETA: Object to the form.
THE WITNESS: Yes.
BY MR. SEARLES:

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Q. Because you were not aware of what IndyMac was doing, in fact, during that period of time with respect to what it was reporting to the OTS?
MS. VETA: Object to the form.
THE WITNESS: On this addendum, that's correct.
BY MR. SEARLES:
Q. So it's your testimony you don't think IndyMac should have continued to report, as it had previously done, a subprime adjusted number as it was reporting to the OTS?
MS. VETA: Object to the form.
THE WITNESS: It was no longer a regulatory requirement at that point. The disclosure was accurate.
BY MR. SEARLES:
Q. How do you know it was no longer a regulatory requirement?
A. Because we got an approval from the OTS to not require it.
Q. To not require reporting it?
A. To not require a double-risk weighting of our subprime loans in calculating our total risk-based capital on our TFR.
Q. How do you explain that IndyMac continued to report it as it had historically done on a subprime

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adjusted basis?
MS. VETA: Objection. Asked and answered.
THE WITNESS: I mean I'll repeat it for a third time. I think they still wanted to see it just to make sure that in the future if we -- if somehow it changed -- that's what regulators do. They wanted -- they had -- we had an old definition of subprime that they had granted us a waiver on, and we didn't know to change when that waiver was done in our public disclosures.
All we did is put how it was to be calculated going forward. I think that's what the team did -- and they continued to ask us to report under the old and new in that TFR addendum, and I'm sure that they just continued to say, well, we'd like to continue to see this because this isn't part of the TFR. This is just really an informal document that is giving them supplemental information for their -- you know, that they requested all the time. The OTS can request any kind of supplemental information.
BY MR. SEARLES:
Q. All right. Well, we saw in the earlier filings in 2003 and 2005 IndyMac stating to the market that it reports this number in an addendum to the TFR, which you now call an informal document, but it's

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stating to the market we reported an addendum to the TFR. Do you remember those disclosures?
A. We reported it in an addendum.
Q. And the exhibit before you is an addendum, correct, Exhibit 533?
A. I think the point that you're trying to get at is in those situation where you had the disclosures that you were referring to, we had a requirement to double-risk weight subprime loans. As of some date in February of 2008, we had no requirement going forward to double-risk weight subprime loans in calculating our total risk-based capital. That was a waiver that was given to us by the OTS.
This TFR -- which, you know, you're right. I was not aware of this addendum, this addendum to the TFR, this informal supplemental information -- is just supplemental information. It's not our total risk-based capital calculation, and we didn't include any language about how to calculate the subprime double-risk weighting because we were no longer subject to it.
Q. I'm curious as to why you call the CCR addendum informal. Where is that coming from?
A. Look, Cecelia Conde is a staff person, and it's going to a middle manager at the OTS in an e-mail. I mean it's not a formal part of our TFR.

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Q. Do you know how the TFR is communicated to the OTS? Who sends it, and who receives it at the OTS?
A. I don't know how, but I do know that the TFR is publicly failed. The addendum is not part of our -- all TFRs for a financial institutions are in public file. You can access the entire document. This addendum is not.
Q. And you knew that -- did you know that, that the TFR addendum is not publicly filed when you disclosed in the 2003 10-Q and 2005 10-Q when you're discussing how IndyMac discloses the subprime risk-weighted number in an addendum and then discloses those numbers in its Q?
MS. VETA: Object to the form.
BY MR. SEARLES:
Q. You were aware of that practice; correct?
MS. VETA: Object to the form.
THE WITNESS: I'm sorry. Which?
BY MR. SEARLES:
Q. The historical practice of how IndyMac reported its subprime adjusted numbers in its public filings with the SEC even though those numbers were not publicly available in a TFR; right?
MS. VETA: Same objections.
THE WITNESS: As I said earlier, the reason

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that we reported it in prior periods is because it was a requirement. The OTS required us to double-risk weight subprime loans. It was no longer a requirement based upon the approval that we received in February of 2008.
BY MR. SEARLES:
Q. But you can't recall the exact words of Mr. Dochow's conversation with you in terms of this waiver; correct?
A. Well, I mean you can get into all that that you want, but there is an enormous amount of documentation around supporting that we got that approval from Mr. Dochow and that multiple people internally, externally at the OTS all knew about it, and I'm sure the OTS internal documentation confirms that.
Q. Are you aware of any internal OTS documentation that you've seen that confirms that?
A. I can't recall specifically, but I'm sure there is.
Q. Were you aware that IndyMac in May of 2008, according to both Exhibit 521 and 533, the CCR addendums filed on May 5 and May 12, was reporting on a subprime adjusted basis a capital ratio of below 10 percent?
A. Can you repeat that question for me, please.
Q. Were you aware in May of 2008 that IndyMac was reporting to the OTS in its CCR addendums a subprime

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adjusted total risk-based capital ratio that was below 10 percent, i.e., no longer well capitalized?
MS. VETA: Object to the form.
THE WITNESS: As I previously testified, I wasn't aware that we were continuing to file this addendum and hadn't seen these addendums. So no, I wasn't aware of that.
BY MR. SEARLES:
Q. And that clearly wasn't disclosed in IndyMac's May 12 10-Q, was it, that on a subprime adjusted basis it was now below 10 percent?
MS. VETA: Object to the form.
THE WITNESS: It wasn't disclosed because it was no longer required. We were no longer required to double-risk weight subprime assets by that time.
BY MR. SEARLES:
Q. And you have no explanation as to why IndyMac, even though it supposedly had no requirement, continued through these documents to report a subprime adjusted capital ratio?
MS. VETA: Object to the form, asked and answered.
BY MR. SEARLES:
Q. Other than your educated guess, you don't have an understanding why IndyMac continued to report in the

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same manner as it had historically done?
MS. VETA: Same objection. Mischaracterizes the witness' testimony.
THE WITNESS: You know, for the fourth time I would just say it is my strong view and educated guess that just as they continued to report an old and new subprime addendum because I'm sure that the OTS wanted to see what the capital ratios would be under their old and new definition of subprime loans where they gave us, you know, the exemption for the loans that were held for sale 90 days or less.
And we continued to report that even though after they granted that waiver, you know, all the way through May, I am sure and I'm highly confident that the reason that we continued to file this addendum is they just wanted to see it even though they had granted the waiver for us. So I mean I think we did the right disclosure here, the right thing, and I think you're -- I think you're misinterpreting what this document is all about.
BY MR. SEARLES:
Q. It's your understanding, your educated guess, that the subprime adjusted number is still a number that the OTS is interested in knowing?
A. Yes.

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MR. SEARLES: Can we take a one-minute break?
MS. VETA: Sure.
THE VIDEOGRAPHER: We're going off the record at 11:00 a.m.
(Recess taken from 11:00 a.m. to 11:02 a.m.)
THE VIDEOGRAPHER: The time is 11:02, and we are now back on the record.
BY MR. SEARLES:
Q. I'd like to show you what's been previously marked as Exhibit 741.
A. Okay.
Q. Do you recognize this exhibit?
A. Vaguely, but I have no doubt that it's accurate.
Q. Just for the record, it's an e-mail from Francisco Nebot to yourself and a number of other individuals within IndyMac, dated November 15, 2007. Mr. Nebot is reporting to you and Mr. Keys, first sentence, "We've done some preliminary numbers about the safe harbor rule."
Do you have an understanding of what he's referring to by the "safe harbor rule"?
A. I think it had something to do with a rule requiring whether you could pay dividends from the bank

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to the holding company by, you know, notifying the OTS that you've done it or you have to apply and get an approval on it.
Q. And the bank's payment of dividends, would they only be to the holding company or would they be to any other entity or person?
A. No, it would be -- it was a wholly owned subsidiary of the holding company.
Q. I see. Do you have an understanding of what would be -- what would happen if IndyMac fell outside the so-called safe harbor?
A. If we fell outside the safe harbor, you would be required to apply to make those dividend payments.
Q. I see. And apply to the OTS?
A. Yeah, I don't know the exact form but some sort of application or process.
Q. I see. And according to Mr. Nebot's calculations here, it appears that IndyMac would need to report a profit of approximately $113 million to fall within the safe harbor for Q4 '08 -- or Q4 '07. Do you see that?
A. I do.
Q. And IndyMac came nowhere close to making a profit that quarter; correct?
A. In the first quarter?

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Q. In the last quarter of '07.
A. In the last quarter, correct.
Q. It reported a $509 million --
A. Right, right.
Q. -- loss?
MS. VETA: Let him finish his question, and then you respond.
BY MR. SEARLES:
Q. Did you have an understanding then that, as a result of that loss, IndyMac fell out of this so-called safe harbor?
A. I mean I didn't really focus on it. I didn't see it as a big issue one way or the other because, you know, the bottom line is we submitted our plans to the OTS. Those plans included, you know, dividend payments in them. They approved those plans. If they didn't want to us pay a dividend from the holding company -- from the bank to the holding company, even if we hadn't have been, you know, in this situation, we wouldn't have paid it.
Q. Okay. Do you have Exhibit 595? It's one we looked at yesterday.
MS. VETA: What is it?
BY MR. SEARLES:
Q. It's an e-mail, March 5. This is an exhibit

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we looked at yesterday.
A. Okay.
Q. I wanted to -- this is an e-mail dated March 5, 2008, from you to the executive committee, members of the board, and others within IndyMac. I wanted to direct your attention to the second page. This is an e-mail that's sort of discussing the impact of the Thornburg news on the market, at least in part. Thornburg's recent troubles; correct?
A. Yes.
Q. Turning to the second page, Roman numeral No. 5, you're reporting in this e-mail that "We are exploring suspending both the trust preferred dividends in the holding company and the bank preferred dividends starting in Q2 '07," and you go on to explain that.
What were the circumstances giving rise to your decision to explore suspending those payments?
A. I don't think there were -- I mean I think the circumstances were what you have in this note, that conditions had worsened in the mortgage markets and the capital markets. This is, you know, as we discussed as a result of kind of these issues. We issued that 8-K on March 11, six days later, talking about the fact that conditions in the mortgage market, even though it was well known, talking about conditions in the mortgage

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market and the fact they were going to negatively impact our 2/12 forecast, you know, and then, you know, a few -- you know, week later, week-and-a-half later Bear Stearns failed. So I mean I think what we're doing is what companies to in times of crisis. You plan for all events.
And one of the things that definitely was on my mind is the -- and we had disclosed, I believe, in the 2/12 8-K -- in the 2/12 earnings call that I did, I believe somebody asked me about the dividends on the trust preferred, you know, on the preferreds -- I get the preferred and trust preferred confused; so I'm just going to call them preferreds.
You know, and I expressed confidence in those payments, and I had confidence at that time in those payments, but I also pointed them out very clearly in one of them that we had the contractual right to suspend those payments for up to five years. So that's in the back of my mind that that was a safety valve for us in this time of crisis. You know, what other time, other than a time like this, would you even consider that?
So all we were doing at this point was -- that was one of, you know, seven options on this one particular e-mail that we were exploring.
Q. All right. Do you recall what IndyMac did to

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explore that possibility?
A. Well, I mean I don't recall specifically on March 5, but, you know, later we did, you know -- my recollection is we had consulted extensively with outside counsel. We consulted, as I noted in my previously testimony, with JPMorgan about what they felt the markets' view about it would be and where I noted JPMorgan had noted on the publicly traded piece of the preferred that they felt the price had already reflected the fact that the dividend was likely to be suspended, you know, in the near future.
So we consulted with, you know, outside counsel in terms of how to do it. We consulted with investment bankers at a point in time. We consulted with our board. We consulted with our management team, and we built some projections that we were looking at around that issue.
Q. So your paragraph 5 talks about Alston -- includes Alston & Bird as exploring this matter for us. Do you recall what Alston & Bird did in connection with that?
A. I don't.
Q. I'd like to show you what's been previously marked as Exhibit 745.
A. Okay.

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Q. Do you recognize this exhibit?
A. Just generally.
Q. And what is – what are we looking at here?
A. It's a document that went to a number of senior managers at IndyMac. It doesn't look like I'm included on that list regarding the requirements for the payment of the bank preferred dividend payments which were being paid on March 17, it looks like.
Q. And you notice on the first page one of the four requirements for the issuance of the payment, No. 3, is approval from the OTS for the payment?
A. I do.
Q. And that was your understanding? OTS would need to approve such a payment?
A. I don't think I had an understanding of that.
Q. Okay. The series A preferred stock dividend payment, who is the recipient of that? You mentioned earlier that certain payments go from the bank up to the holding company. Do you know where these payments go?
A. Yeah, when we were talking earlier, we were talking about common equity dividend payments to the holding company, not this bank preferred which was a privately placed transaction with outside investors at the bank level.
Q. Okay. All right. Thank you for the

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clarification.
So these payments go to outside investors?
A. Right.
Q. Do you recall whether this was a discussion in connection with this application made on March 11, 2008, to update the P&L summary detail that's provided? This appears to be – I haven't actually compared the document; so I could be wrong but very similar to the P&L statement attached to the February 12 8-K that is now increasing the dilutive shares outstanding in the quarter, forecasting a loss in the first quarter, and profits in each subsequent quarter.
MS. VETA: So what's the question?
BY MR. SEARLES:
Q. Do you recall any discussion about whether that P&L statement should be updated to reflect those current events?
MS. VETA: Object to the form.
THE WITNESS: I think you can see that I wasn't copied on this; so I mean I don't recall a discussion of it. This group may have had a discussion of that.
BY MR. SEARLES:
Q. I see. I'd like to show you what's been previously marked as Exhibit 580.

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A. Okay.
Q. Do you recognize this exhibit?
A. I do generally.
Q. And, for the record, it's an e-mail from you, dated March 21, 2008, to Darrell Dochow, David Hewes of the OTS, cc'ing a number of individuals within IndyMac; correct?
A. That's correct.
Q. And this is on the updated forecast?
A. That's correct.
Q. And you state, "Attached you will find our current forecast for Q1 '08 in 2008."
Now, this is a different forecast than the one that was presented to the public on February 12; correct?
MS. VETA: Object to the form.
THE WITNESS: Yeah, I don't think it's, you know, materially different. The loss for the quarter may be a little higher. It looks like the total risk-based capital ratio is better. So the loss is higher, but the total risk-based capital is a little better than that one. I wouldn't characterize – you may, but I wouldn't characterize it as materially than the 2/12 one.
BY MR. SEARLES:

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Q. No, I just wanted to distinguish it as something different –
A. Yeah.
Q. – from the 2/12 –
A. Right.
MS. VETA: Let him finish his question and then answer.
BY MR. SEARLES:
Q. And this, unlike the 2/12 one, indicates an increase in dilutive shares through the quarter. Do you see that at least it's different in that fashion, the P&L?
A. Right. It shows a projection that shares will grow during the quarter by about, you know, 2 1/2 percent from the fourth quarter.
Q. Do you recall the circumstances of why you were providing to the OTS an updated forecast for Q1 '08 and for the remainder of the year?
A. You know, beyond the general comment that I've made before which is, you know – you know, I had a pattern and practice of keeping everyone informed both internally and externally and especially in this period of time, you know, 2007 and 2008, keeping our regulators very informed. Every time, you know, we had new information, I would keep them informed.

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Q. I see. Was it pursuant to a request from them --
A. It's possible.
Q. -- do you recall?
A. I don't remember.
Q. And I assume you reviewed this before you sent it to OTS?
A. I mean I didn't -- I mean, again, this is one of those forecasts -- it's better than some of them, some of the interim ones that you see, and it's more formally done, but this, again, is not one that rises to the level of where we've done our kind of SOX certification process of the forecast.
Q. My question to you, though, is just did you review it before you sent it to --
A. Yeah, I --
Q. -- OTS?
A. -- mean just on a high level I reviewed it.
Q. Did you have any involvement in the preparation of the forecast update, dated March 20, 2008, reflected on the second page of this exhibit?
A. I might have had involvement on that first page, that first cover page of bullet points, but I don't remember.
Q. Okay. Is it at least something you would have

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reviewed before sending on to OTS?
A. Yes.
Q. With respect to point four under the current forecast assumptions --
A. Right.
Q. -- "Payment of both the trust preferred dividends and perpetual preferred dividends is continued all year as we believe that suspending these could have negative ramifications on our ability to both raise new capital through the DSPP and to raise deposits."
As of the date you sent this on May 21, 2008, did you concur in that statement?
A. I would say that that was the consensus view. I'm not sure that I concurred one way or the other. Remember, as we discussed yesterday, I think that reasonable people -- my viewpoint was at some point the market, given all of the information that was so negative for the industry, would be -- would be discounting the chance going forward of the dividend being paid on the preferred. And, in fact, JPMorgan opined to that later on before we did suspend the dividend. They thought that that was already priced into the stock of the preferred -- into the stock price of the preferred.
Q. But on this date you said this was -- as of

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March 5 this was the consensus -- or excuse me, March 21, the consensus view what's reflected in point four?
A. Yeah, I'm not sure it was my view, though.
Q. I see. But it's the view at least IndyMac presented to OTS?
A. Yeah, I mean it was definitely -- I'm not trying to be misleading or anything with what I'm saying here. I'm just saying I don't recall focusing on that, you know, in sending this on to them, and I'm not disputing it in any way either.
Q. It's one of only four assumptions --
A. I'm not disputing it in any way.
Q. Okay.
A. It was certainly the consensus view, but it wasn't like it wasn't a view that I -- I was repeating someone else's view is what I would tell you.
Q. I see.
A. That's the truth. I was repeating someone else's view here.
Q. Do you recall who --
A. You know, I don't know. It was our finance people or something.
Q. At point five on the current forecast assumptions, it states, "Book value per share declines

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from 18.34 before the OCI charge to 13.77 over the course of the year."
What's the OCI charge?
A. That's what we were talking about yesterday when I was reconciling shareholders' equity for you at the end of the day, other comprehensive income, is the unrealized losses that reduce retained earnings and don't flow through the net income or net loss per share.
Q. Here, the second sentence goes on, "55 cents of this decline is due to the loss per share, and $4.02 is the dilutive impact of raising new capital."
The dilutive impact of raising new capital is a reference to the DSPP; correct?
A. That's correct.
Q. Was it your understanding at the time you sent this document to OTS on March 25 that the -- those numbers were correct?
A. Yes, but let me just clarify a point on that. This forecast had a loss of 76 million for the first quarter, and I think the loss actually ended up being more than two -- between two and three times this loss when it actually occurred. So it went from being 94 cents a share to like -- what did we say? 2.25. And then I'm not sure what the loss was through other comprehensive income because at this point in time, you

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know, we were starting to experience those spread widening and valuation, and, you know, as we discussed, it was difficult to get a handle on in a timely fashion, and those ended up having a bigger effect on reducing book value than our loss did for the quarter.

Q. But as of March 21, 2008, the date of this document, you understood that the vast majority of the dilution to book value would be attributable to dilutive stock raising under the DSPP?

A. That was -- and that was something that was occurring in periods subsequent to the first quarter of 2008 because in the first quarter of 2008 we were only issuing -- this plan only showed us issuing less than 2 million shares. So it was -- you know, we were issuing only about 2 percent of the shares in the first quarter. You can see that the plan has shares growing from there, from the end of the first quarter, from 81 million to, at the end of the first quarter, to 116 million by the end of the year.

But, you know, as we discussed yesterday, we also were exploring raising a significant amount of capital in one amount during various points in time during 2008, and we'd made those disclosures that -- very, you know, significant disclosures about the risks that our plans may not -- you know, in the 2/29 10-K

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that our plans in terms of shrinking the balance sheet and losses my not come to fruition. We may have to raise highly dilutive capital. So I think, you know, we felt very appropriately that we had already disclosed very clearly the risk that we might have to raise highly dilutive capital.

Q. My question, though, is at this point in time of March 3 -- March 21, 2008, was it your understanding that the vast majority of the dilutive impact -- the dilution to the book value of the company at the first of the year would be due to dilutive capital raising under the DSPP?

MR. SEARLES: Object to the form.

THE WITNESS: Over the course of year.

BY MR. SEARLES:

Q. Yes.

A. The bulk of which would be occurring in quarters subsequent to the first quarter.

Q. I'd like to show you what's been previously marked as Exhibit 581.

A. Okay.

Q. Do you recognize this exhibit?

A. I do.

Q. For the record, this is an e-mail from you, dated March 25, 2008, to Ms. Marsh, Mr. Keys, members of

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the board, and other individuals within IndyMac; is that correct?

A. That's correct. It probably included bcc's to regulators and the whole nine yards, but you don't have it. Yeah, it includes the OTS here and then bcc's to outside counsel. Okay.

Q. And you state here, "Attached you'll find a quick and dirty forecast for 2008 assuming we're not a CAMELS 3."

Do you recall the circumstances of why you were now providing a forecast based on that assumption?

A. I don't.

Q. The e-mail appears to indicate that if IndyMac were not a CAMELS 3 -- i.e., that you'd be a CAMELS 4 or something less -- in the middle of this paragraph you say "offset by the fact that we would not pay preferred dividends at the bank, nor would we pay the trust preferred at the holding company."

What in your mind at this time was the connection between a downgrade from a CAMELS 3 and the decision to pay preferred dividends at both the bank and Bancorp level?

A. It would be helpful in answering that question if you could get me back to those minutes of that meeting where both Dwight Smith issued his -- you know,

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gave his feedback because then I could give you -- I would just like to see what the date of that was versus this.

Q. I think it's Exhibit 639. It might be. I have an extra copy if you want. Is that what you were referring to?

A. Yes. Okay. So I apologize. Can you ask me that question again, please?

Q. I was just wondering what the connection between -- assuming the bank is not a CAMELS 3 as reflected in Exhibit 581, it appears to be one of the consequences is the bank would not pay the preferred dividend and the Bancorp would not pay its trust preferred.

A. Yeah, I think, you know --

Q. What's the connection?

A. So if you look at these two documents -- and, you know, I'm just kind of off the cuff, you know, responding to this; so I'm not a hundred percent without some greater study. But this was kind of issued at 12:19 in the morning.

Q. When you say "this," what are you referring to?

A. Your document 581 was issued at -- and, you know, obviously it wasn't -- the preparation for it was

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done before, you know, the e-mail was sent on March 25 at 12:19. And then there was a board meeting, you know, 45 minutes later to, you know, telephonic -- it wasn't a board meeting. Excuse me. A telephonic committee meeting of the board on March 15 at 1:09 -- at 1:05.

I think my recollection, just in seeing these documents and reading these previous minutes and I testified earlier today is that I had kind of a view that a CAMELS 4 meant public disclosure, meant that you had the brokered deposit rule came into play, blah, blah, blah. So we made kind of a worst-case assumption that all that would happen, and if all that happened, you might as well go all the way and suspend the trust preferred because that builds capital for the institution. Okay?

So we kind of built a worst-case plan here under that assumption and then had our meeting, and regulatory counsel clarified for us in that meeting that no, no, no, a CAMELS 4 doesn't mean that you have a formal enforcement order. It's not allowed to be publicly disclosed because your CAMELS ratings are not allowed to be publicly disclosed, and if you're well capitalized, it doesn't mean that the brokered deposit rule even comes into play. So I think that's what kind of changed between this document prepared before this

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meeting. Does that make sense?

Q. Yes. And that's your recollection of the advice you received from Mr. Smith at Alston & Bird?

A. That's my recollection, yes.

Q. I'd like to show you Exhibit 747.

A. Okay.

Q. Do you recognize this exhibit?

A. Just generally, yes.

Q. All right. For the record, it's an e-mail from you to the IMB executive committee, dated March 26, 2008, subject, CAMELS rating confidential. At least at the top of the page, and the next e-mail previous in time is an e-mail dated March 24, 6:27 p.m. Do you see that at least for yourself?

A. I do.

Q. In the third paragraph you're stating at the end of the paragraph, "Darrell," referring to Darrell Dochow, "told me on Friday the FDIC is there, and I'm calling you because it looks like we're going to be there also."

And this is with respect to a downgrade to a CAMELS 4; correct?

A. Correct.

Q. Do you recall that conversation with Mr. Dochow?

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A. No.

Q. I believe that would be Friday, March 19; is that correct?

A. 23rd, 22nd, 21st. Right.

Q. March 21?

A. I think so, right.

Q. I'd like to show you what's been previously marked as Exhibit 748. Do you recognize this document?

A. I don't recall that I -- you know, I don't recall that I ever saw this document. I may have. I just don't recall it.

Q. I see. You were referencing earlier some advice that Alston & Bird, Mr. Smith, provided to IndyMac with respect to the effect of a CAMELS 4 downgrade. Are you in your mind thinking of a document different than the one that's before you, Exhibit 748?

A. No, I was referencing the verbal advice he was giving in that ad hoc committee meeting of the board in March.

Q. The telephonic board committee notes?

A. Yes.

Q. So this document you're not sure whether you've ever seen before?

A. I'm not sure whether I saw this or not before.

Q. Can I take two minutes, and I'll re-arm myself

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with ammunition?

MS. VETA: Sure.

THE VIDEOGRAPHER: Going off the record at 11:40 a.m.

(Recess taken from 11:40 a.m. to 11:49 a.m.)

THE VIDEOGRAPHER: We are now back on the record, and the time is 11:49 a.m.

BY MR. SEARLES:

Q. I'd like to show you what will soon be marked Exhibit 931.

(Exhibit No. 931 was marked for identification.)

THE WITNESS: Okay.

BY MR. SEARLES:

Q. Do you recognize this exhibit?

A. I do.

Q. And, for the record, it's a series of e-mails last in time at the top of page on the exhibit is one from Michael Perry to a Mr. Albinson at JPMorgan, dated March 25, 2008.

What I wanted to focus your attention to is on the second page, which is another e-mail from you on the same date, earlier in the morning, third paragraph. You're commenting, "The bottom line being that raising a

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big slug of capital is not very realistic at any level until there is some good news about mortgages and IMB, IndyMac, shows it's well on its way to achieving our financial projections."
Was that your view as of March 25, 2008?
A. It was becoming my view.
Q. I see. Okay. I think we discussed this yesterday. You had this view, and it was getting confirmed by your negative experiences trying to raise capital?
A. Correct.
MS. VETA: Object to the form.
THE WITNESS: Generally speaking, I think that's an accurate statement.
BY MR. SEARLES:
Q. Okay.
A. And just the experience of knowing all the uncertainty of where things were going to in the industry and the economy.
Q. And your comment that it's not very realistic until in part IMB shows its well on its way to achieving our financial projections, what financial projections are you referring to, if you can recall, in writing this e-mail?
A. I don't think I was referring to anything

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specific, just kind of saying -- you know, showing that we're meeting our financial projections. I felt that was important to do.
Q. And the only financial projections at this time that were publicly disclosed to the market were the ones set forth on February 12; correct?
MS. VETA: Object to the form.
MS. MATELIS: Join.
THE WITNESS: Which by this date -- I mean you may not feel as strongly as I do about it, but I would say by this date we had warned the market those financial projections with the 8-K we filed on March 11 were going to be worse.
BY MR. SEARLES:
Q. This is reference to the last financial projections disclosed to the public?
A. I don't think it was a reference to any specific projection, just generally the idea of financial projections.
Q. Okay. I'll show you what's been previously marked as Exhibit 820.
A. Okay.
Q. Do you recognize this exhibit?
A. Just generally.
Q. Directing your attention to the second page of

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the exhibit, it's an e-mail from Brian Carter, dated March 28, 2008, sent to a number of individuals including yourself.
Do you see that?
A. I do.
Q. In the second paragraph Mr. Carter -- he was your chief of staff at the time?
A. And he was also involved in financial planning as I recall, too.
Q. What was his title?
A. I don't recall what his title specifically was at this point in time.
Q. Okay.
A. He was an -- either a senior manager or he might have been an executive committee member; so he was a senior manager.
Q. Okay. In this e-mail he's reporting the OTS has also indicated -- this is in the second paragraph, sort of in the middle of paragraph. The's OTS has also indicated a desire to have the board formally approve our current financial plan prior to this meeting," referencing a meeting with the board on Friday, April 4.
Do you recall that request by the OTS for the board to formally approve the current financial plan?
A. I do.

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Q. And this current financial plan is different than the financial forecast presented to the public on February 12; correct?
MS. VETA: Object to the form.
MS. MATELIS: Join.
THE WITNESS: Yes.
BY MR. SEARLES:
Q. Okay. And you've drawn a distinction in your testimony regarding formal board approval versus something less, Sarbannes-Oxley approval and all of that?
A. Yes.
Q. Do you recall what process the board went through to formally approve the current financial plan prior to the board meeting on April 4?
A. I don't. I don't.
Q. Okay. You don't know if it was the same as what you described earlier as this formal SOX certification --
A. No, it wouldn't have been that high of a level. I think to that point -- and I would draw your attention to the fact, you know, that we talked about yesterday where Mr. Dochow at one point in April had said, you know, "Mike, I want you to go out" -- you know, after WAMU raised its capital, "Mike, I want you

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guys to go out and try to raise a big slug of capital"; right? You'll recall in my testimony I said, after thinking about it a while and getting back to him, I said we can't do that. We need to get clarity on the first quarter, and we really need to get that done and from that build a credible plan for the next year, and we need to go out to the market with both of those documents in hand.

So to my point on that -- and I know what you're trying to get at with this point, but this forecast here -- I mean we're in the middle of a period where we've already disclosed to the market that we're having a difficult time determining the impact of spread widening and other issues and valuing securities and the like. And so while the OTS may have directed us to get this forecast approved by the board, this forecast did not, you know, go to the level of detail and rigor that we did in completing the forecast that we released on 5/12. Nowhere near.

Q. Do you recall why --

A. It just couldn't.

Q. Did the OTS -- did you have -- well, did you speak with the OTS regarding their request for board approval of the current financial plan?

A. No. I thought it was, you know -- you know,

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they ask for things, and sometimes you ask -- it's like asking a parent, "Why are you asking for this?" It was just, like, okay, fine. We'll get it done. I don't know why they asked for that. It may be some part of their pattern and practice at the OTS. It may be part of Darrell's pattern and practice that when he meets with the board, he has them approve the latest plan. I don't know.

Q. Did the board ultimately approve the plan prior to the board meeting --

A. I believe they did.

Q. So you weren't totally dismissive of the OTS's request?

A. No.

MS. VETA: Object to the form.

BY MR. SEARLES:

Q. In Mr. Carter's e-mail on the same page we were looking at, the bottom of the page, unfortunately the letter from the OTS is not attached to this document. But Mr. Carter is stating at the end of that first paragraph referencing this OTS letter, "Since the letter also appropriately states that the OTS will continue to consider requests to make dividend payments on the bank's perpetual and preferred stock so long as the holding company raises and provides capital to the

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bank to cover these payments consistent with our plan and that our performance does not adversely vary materially from the projections in our plan."

Do you recall -- does that from your recollection accurately describe the OTS letter?

A. I don't -- I mean I don't have that letter in front of me. So I -- you know, if you produce it --

Q. Unfortunately I don't have a copy of it sitting immediately next to me.

When IndyMac did disclose its result for Q1 '08 on May 12, did you believe the results that were finally reported for that quarter varied adversely from the projections in the plan as approved by the board on or about April 3?

MS. VETA: Object to the form.

THE WITNESS: Do you have that plan?

BY MR. SEARLES:

Q. Perhaps. Without looking at it, you can't recall?

A. I can't recall without looking at it.

Q. You do recall the results for the quarter, the loss for that quarter, being much greater than originally forecast, though; correct?

A. At various points, yes.

Q. Okay.

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A. I think it would be greater than at 3/28, but I'm not sure.

Q. Let me show you what's been previously marked as Exhibit 868.

A. Okay.

Q. Do you recognize this document?

A. You know, I don't remember it, but I have no doubt that it's accurate.

Q. Okay.

A. At this date.

Q. Do you have any recollection of speaking at an executive committee meeting on March 26 on the subjects of the bank's forecast and the regulatory update?

A. I don't have a recollection of speaking there, but it looks like I did.

Q. If you look at the second page at the back of this document --

A. Second to last?

Q. I'm sorry. If you turn to the second page, the back side of that page, "Current Forecast Assumptions," items 4 and 5, this is what we saw in an earlier exhibit a few minutes ago, No. 4 being the potential connection between suspending the preferred dividends and the ability to raise the DSPP capital.

MS. VETA: Mr. Searles, I don't think

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Mr. Perry is looking at that part yet.
MR. SEARLES:
BY MR. SEARLES:
Q. Oh, go back one page. Up here.
A. I'm sorry. Yes.
Q. So you see 4 and 5 is a reiteration of what we saw from an earlier exhibit; correct?
A. Correct.
Q. If you turn to the third page, backside, P&L, if you go to the blind net income per common share or net income per common share?
A. Yes.
Q. That's the line that reflects the forecasted loss for each quarter; correct?
A. That's correct.
Q. And as of this date the forecast is 76 million?
A. That's correct.
Q. Do you recall what the actual loss was that was reported on May 12 for the quarter?
A. For the first quarter I think it was -- as we discussed, I think it's somewhere between 150 and $200 million loss.
Q. Would you consider that --
A. Maybe close to 175 million, something like

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that.
Q. Would you consider that difference to be an -- how to phrase this -- to be adversely varied materially from the first forecast?
MS. VETA: Object to the form.
THE WITNESS: From this forecast?
BY MR. SEARLES:
Q. Yes.
A. Yeah, I mean all of our forecasts, just like everybody in the whole financial services sector, their forecasts varied -- you know, varied significantly from their actual results to the downside during this period of time.
Q. Okay. Varied materially adversely in a negative way; correct?
A. Correct.
Q. Knowing that, did you have any expectation of OTS's likelihood of approving a continued payment of preferred dividends at either the bank or the Bancorp level?
MS. VETA: Object to the form.
BY MR. SEARLES:
Q. As of May 12, 2008, when you were reporting this much larger loss than forecasted?
MS. VETA: Object to the form.

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THE WITNESS: Okay. I think -- I don't need you to repeat it. I think I can answer the question. So you're saying as of May 12?
BY MR. SEARLES:
Q. Yes.
A. I'll answer it a little more generally speaking. At some point in that time, I had a recollection that as long as we kept raising capital at the holding company, the OTS was comfortable with us continuing paying the dividend -- the preferred dividend at the bank. I don't recall specifically, you know, when I, you know, had that recollection. Okay? But probably sometime -- you know, sometime in March through May that I gained that general recollection. Okay?
And then the other is, you know, that I think it was clear that we could continue paying that preferred dividend and, in fact, our CFO the week before we -- the week that we voted to suspend the dividend, that I made a recommendation to the board that first week of May or whatever that ended May 9, he was advocating continuing the preferred dividend payments because we had not -- because the OTS had continued to support our ability to pay that at that point in time. So I mean it was a judgment call on my part even that first week of May to recommend to the board, you know,

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eliminating -- you know, suspending those dividend payments.
Q. Let me show you Exhibit 794 previously marked. If you look at the backside of that, I think you'll see the OTS letter that Mr. Carter is summarizing in the exhibit we were just looking at.
A. Okay.
Q. All right. Do you recognize the letter from the OTS, dated March 27, 2008, that's reflected on the second page of Exhibit 794?
A. I do.
Q. All right. And this appears to be the same language that's being quoted by Mr. Carter in his e-mail of -- reflected in Exhibit 820 on the following day. I'd like to focus your attention to the OTS letter itself in the third paragraph where it states in the second sentence, "OTS will entertain receiving such requests" -- and this is in reference to the continued payment of bank series A preferred stock dividends -- "for possible approval as long as the bank's parent holding company" -- Bancorp -- "continues to provide equivalent capital to the bank that more than offsets the dividends the bank proposes to pay on this series A preferred dividend and the bank's performance, including capital ratios, does not adversely vary materially from

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projections contained in its most recent approved business plan."
In light of the -- I believe the estimate at this time showed -- the forecast showed a loss of approximately 76 million for the quarter. It's your understanding that by May 12 that number approximately doubled, I believe; correct?
A. No, it more than doubled.
Q. More than doubled. I believe it is your testimony you would consider that to be a material difference from the forecast in a negative or adverse manner; correct?
A. Our actual results versus this plan that's here --
Q. Right.
A. -- would be a material difference. I think it would be -- you know, that's, you know, kind of up to someone to decide. I think the issue is yes, I would consider it to be -- our actual results for the first quarter to be materially worse than this plan.
Q. So notwithstanding Mr. Abernathy's commentary in early May about questioning the decision to suspend preferred dividends, given this letter and the actual performance of the bank, did you have any thought in early May on the likelihood that the Office of Thrift

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Supervision would approve the payment by the bank of a preferred dividend?
MS. VETA: Object to the form.
THE WITNESS: There were so many things that I was dealing with; right? I didn't give any thought to this letter on March 27. I would not have recalled that letter without somebody else bringing it to my attention that first week of May. I don't recall being -- even thinking about it.
BY MR. SEARLES:
Q. Okay. And you ultimately recommended to the board that the preferreds at both the bank and the Bancorp level should be suspended; correct?
A. That's correct.
Q. Did the likelihood of the OTS not approving the payment of bank preferreds factor into your decision?
A. My strong recollection is it didn't factor in at all.
Q. I see. What did factor into that decision?
A. As I said, I think it was a judgment call on my part that given the deterioration in our business, that I didn't feel it was prudent to pay that going forward, and I felt it was the most conservative position to take.

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In other words, I can eliminate the payment of this, and it preserves capital for the bank, and capital raising is not a certainty. This is a certainty, and I have a contractual right to do this. And very much in my mind was my ability to -- having that contractual right to do it.
And, you know, if you're thinking about it saying what other time other than the worst financial crisis -- Greenspan said even worse than the great depression's financial crisis -- and that you would have -- we had disclosed that we were at the center of this crisis being in mortgage lending. What other time would you ever suspend it if it wasn't during a time period like that?
So those were the factors in my mind. I had -- I'm confident I had long forgotten about this March 27, you know, sentence in this memo.
Q. Okay. Given the fact that you were -- IndyMac was forecasting losses for each quarter in 2008 as of May 12, would there be any limitation placed simply by virtue of the finances of the bank or the holding company on its ability to continue to pay preferred dividends either at the bank or at the holding company level?
MS. VETA: Object to the form.

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BY MR. SEARLES:
Q. I understand you made the decision when you felt it was prudent, but I'm wondering if the financial situation of the bank kind of dictated your conclusion?
A. Not --
MS. VETA: Object to the form.
THE WITNESS: No, not the bank.
BY MR. SEARLES:
Q. The holding company?
A. Possibly --
MS. VETA: Object to the form.
THE WITNESS: Possibly the holding company.
BY MR. SEARLES:
Q. When you say "possibly," what's your thought process on that?
A. The thought process -- the thought process on the holding company would be, you know, you would have to assess the liquidity position of the holding company going forward.
Q. And how would you do that? What would you look at?
A. You would look at the current liquidity position as of, you know, May 12 and project out that liquidity going forward as to whether you had the liquidity capabilities at the holding company to do

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that.
Q. I see. And would the 10-Q reflect the numbers by which one could go through that liquidity analysis?
A. I don't think it would because that would have been as of May 12, not as of 3/31. Do you see what I'm saying? So, in other words, you'd be looking at current holding company liquidity as of or around May 12, not what it was at 3/31.
Q. Do you recall conducting any type of analysis of the financial liquidity of the holding company in terms of its ability to continue to pay preferred dividends?
A. I know our team did that.
Q. Do you recall what conclusion they reached?
A. I don't.
Q. Did it support the decision to suspend the preferred at the Bancorp level?
MS. VETA: Object to the form.
THE WITNESS: You know, I don't recall that. I would, you know, say that, you know, my -- you know, towards the end of April, early May, you know, my mind was heading towards I think we're going to need to do this.
BY MR. SEARLES:
Q. Because of the financial condition of both the

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bank and the holding company?
MS. VETA: Object to the form.
THE WITNESS: Because of the deterioration in it, and I felt that it was the conservative, prudent measure to take.
BY MR. SEARLES:
Q. All right. I'd like to show you what's been previously marked as Exhibit 641.
A. Okay.
Q. Do you recognize this exhibit?
A. I believe I do, yes.
Q. This is another minutes of the joint special telephonic committee meeting of the board of directors, dated April 3, 2008; correct?
A. That's right. So it wasn't a board meeting because I think of that notice issue that we discussed earlier.
Q. Okay. Actually it could still be taken at a meeting such as this, couldn't it?
MS. VETA: Object to the form. Calls for a legal conclusion.
THE WITNESS: My layman's understanding is no.
BY MR. SEARLES:
Q. And you understood that at the time of 2008?
A. Yes.

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Q. The -- on the third page of this exhibit is attached a resolution of the board concerning approval of the 2008 financial plan, dated April 3, 2008. Do you see that?
A. I do.
Q. Would you consider that to be board action?
MS. VETA: Object to the form.
THE WITNESS: Normally what you see -- okay. So there's a resolution here attached. Yeah, I don't know how that all works to be honest with you.
BY MR. SEARLES:
Q. Okay.
A. I just don't. I'm not the governance expert. My layman's understanding is it was a committee meeting, and the reason behind that is that there wasn't adequate notice or something, but I don't know.
Q. All right. You don't dispute there appears to be a board resolution approving the business plan current --
A. Yes.
Q. -- as of April --
MS. VETA: Let him finish his question, and then you give your answer.
BY MR. SEARLES:
Q. On the second page of the exhibit, point five,

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review of the 2008 financial plan, if you go back to the beginning of the exhibit and then the second page. No, no, no. Go back to the beginning of the exhibit. There you go. Turn one page over.
A. Yeah.
Q. On the -- to your right, Section 5, review of the financial plan.
A. Yeah.
Q. It states, "Mr. Perry introduced the review of the 2008 financial plan by noting that the company needs to execute on its financial plan to justify a CAMELS 3 rating."
That was your understanding at the time; correct?
A. I don't think that was a formal understanding. That was just my informal judgment that we needed to, you know, hit our plans to keep our CAMELS 3.
Q. Okay. And that's based on your discussions with the OTS how you came to that understanding?
MS. VETA: Object to the form.
THE WITNESS: Or discussions, you know, through others involving the OTS and outside counsel. I don't -- outside counsel. Just general discussions.
BY MR. SEARLES:
Q. Would you at least consider the sentence to be

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at the time a true statement?
A. No, I would say it's a judgment. It's not a statement of fact. It's a statement of judgment.
Q. All right. One that you held?
A. Yes.
Q. Okay. And four paragraphs -- the fourth paragraph in this section, "Mr. Gramley" -- he's one of the members of the board; correct?
A. Yes.
Q. -- "inquired whether the base case scenario is most realistic. Mr. Perry believed scenario No. 2 to be most realistic."
Do you see that?
A. Yes.
Q. Do you recall whether one or both scenarios were presented to the OTS?
A. I don't recall.
Q. Turning to the summary of the forecast scenarios, there's the base case. If you're with me on page Bates-numbered -- it's the first page after the cover page with forecast update.
A. Yeah, I'm with you.
Q. Base case. $78.5 million loss for Q1, 57.3 million loss for full year. What does "base case" refer to?

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A. It's the bottoms-up, best estimates approach of the team that put together this forecast.
Q. And your view is scenario No. 2 is the most likely outcome for IndyMac?
A. A little more pessimistic view, yes.
Q. And you believe that to be most realistic according to the minutes here?
A. Correct.
Q. Do you recall why you were -- came to that conclusion as opposed to the base case that apparently had been worked from a bottoms-up perspective from within the company?
A. I don't.
Q. And the base case -- if you turn to the P&L, the first P&L, this -- again, it appears to reflect the $78 million loss for the first quarter and $6 million loss for the second quarter and then profits for the next two?
A. Yes, small profits, yes.
Q. And then the scenario No. 2 that you felt was most realistic reflected a few pages in reflected larger losses and losses for each quarter throughout the year; correct?
A. Yeah, and declining losses to almost break even by the end of the year.

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Q. Well, resulting in a $135 million loss, correct, for the end of the year?
A. Right, but I mean in relation to the losses that we had already disclosed, you know, in the third and fourth quarter of '07, it was a tiny fraction of those.
MS. VETA: Mr. Searles, would now be a good time to break for lunch?
MR. SEARLES: We can do so.
MS. VETA: Great.
(Lunch recess taken from 12:29 p.m. 1:50 p.m.)
THE VIDEOGRAPHER: We are now back on the record, and the time is 1:50 p.m.
BY MR. SEARLES:
Q. Mr. Perry, I'd like to show you what's been previously marked as Exhibit 642.
A. Okay.
Q. Mr. Perry, do you recognize this exhibit?
A. Just generally, yes.
Q. Okay. For the record, this is another minutes of a joint special telephonic committee meeting of the board of both the bank and Bancorp, dated April 4, 2008; correct?
A. Yes.

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Q. Okay. Similar to what we had just seen. I think the last exhibit we were looking at was similar minutes of the joint special telephonic committee meeting just one day earlier on April 3, Exhibit 641.
A. Okay.
Q. Did the board meet telephonically with this frequency? I know we had two examples of one on April 3 and again on April 4.
A. You're asking typically?
Q. Yes.
A. No.
Q. And the reasons for doing so here were regulatory in nature, the OTS, the potential downgrades to a CAMELS 4?
MS. VETA: Object to the form.
THE WITNESS: I don't know. Definitely they asked us to have -- they asked for the meeting is my recollection, and they asked us to prepare scenarios as a CAMELS 3 and 4.
BY MR. SEARLES:
Q. I wanted to direct your attention to the second page. Well, on page 1, Roman numeral -- not Roman numeral but the No. 1, "Review of the Forecast Update CAMELS 3 and CAMELS 4," where it appears you're providing commentary, and the last paragraph on the

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second page beginning with the OTS then asking questions about the likelihood of raising capital, are you with me?
A. Yes.
Q. And then you describe these meetings in New York with certain investors, and you go on, "The company will continue to raise capital through the direct stock purchase program." Is this a reporting of what you said at the meeting? Is that your understanding of these minutes?
A. Yeah, it appears that's the case, yes.
Q. You go on reporting about the direct stock purchase program. You say, "Though it is diluted to shareholders, Mr. Perry expressed that management will continue to do this to ensure the company's safety and soundness."
Would it be fair to say that at least of April 4, 2008, you understood that capital raising through the DSPP was dilutive to stockholders?
MS. VETA: Object to the form.
MS. MATELIS: Join.
THE WITNESS: Well, what we talked about yesterday extensively was on the margin it was dilutive. So in other words, each share issued below book value has some dilution. The question is is the number of

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shares you issue in a period and the difference between that book value and market value priced enough that when you accumulate it up, is it material? And as we discussed yesterday, it wasn't material at all in 2007 or the first quarter of 2008. It started to become more material in the second quarter of 2008.
BY MR. SEARLES:
Q. All right. But do you dispute saying that it is dilutive to shareholders?
A. No.
Q. And then it says, "He," referring to you, Mr. Perry, "added the company is being careful to avoid overwhelming the stock on any given day and perhaps hopes to raise more per day as the stock price hopefully rises."
What did you mean by hoping -- or being careful to avoid overwhelming the stock on any given day?
A. Well, I mean I didn't draft these minutes. I don't quibble with the accuracy of this. I might not have used the word "overwhelming." I think what we're talking about here is the mechanism of what we were talking about yesterday about the percentage of shares you would issue in a day relative to the shares that trade. I think the reason I was bringing this up wasn't

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so much that I was concerned about this issue but trying to explain to the OTS that, look, this isn't like we can raise half a billion dollars or a billion dollars through this program. There is some limit as to what we can raise on a daily basis.
Q. And part of that limit is if you were to overwhelm the stock, you would introduce so many shares into the market and reduce the price of -- the trading price of the stock?
MS. VETA: Object to the form.
THE WITNESS: Well, I mean as we discussed yesterday, I think that the program just in general at any level has, all other things being equal, places some temporary pressure on the stock when you're raising capital through this program because of the shorting mechanism of the arbitrage players in it. I think what -- so there's always a little bit of pressure down. I think the issue is, you know, -- and it's a judgment call. How much pressure do you want to have?
BY MR. SEARLES:
Q. I see. And on the following page, page 3 of the minutes, last paragraph, final sentence, the paragraph begins in response to Senator Seymour. Do you see that? Are you with me?
A. Yes.

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Q. The final sentence reads, "Mr. Perry pointed out that a 4 rating, the CAMELS 4 rating, would make it harder to raise a significant amount of capital as well as such rating would restrict our access to capital."
Was that an accurate reflection of your understanding on April 4 of 2008?
A. Well, I don't think it's accurate to take that sentence out of context without taking it in response to what Mr. Gregovich is saying and also giving it little bit -- an even bigger context. He's kind of saying, right --
Q. Who? Mr. Gregovich?
A. Mr. Gregovich at the OTS is saying it's no big deal. If you have a 4 without a formal enforcement order, it's not public. No one knows. Blah, blah, blah. No big deal. I'm trying to say I don't want a 4. Okay? So that's the bigger picture issue; right? I'm trying to, you know, paint a worse position for a 4 because I don't want a 4. I want to stay at 3; right? It's in the company's interest to be a 3; so I'm pushing that issue with him in this meeting with the statement that I'm making here.
I'm also talking not about from a public standpoint. I'm talking about with private investors because at some point in the process with private

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investors, even though your CAMELS ratings are confidential -- and this was something I vaguely recall just as I'm saying this now. There was a point where you go, okay, when do these investors -- these private investors you're trying to raise capital get to know about our CAMELS report and our CAMELS ratings?

And I was surprised, you know, when I started to talk about this with -- and I think I talked about it with Mr. Dochow, but I don't recall specifically if it was him. He kind of said, well, they don't get to see it. And I'm, like, I don't see how they can invest as private investors without getting to see our safety and soundness reports and our CAMELS rating. That was my opinion.

Q. Was that ever resolved between you and Mr. Dochow?

A. Not completely because we never got to the point where somebody was, you know, that close to committing to provide IndyMac with a big slug of capital. But he kind of hemmed and hawed on it and kind of said, you know, at some point we'll give them some comfort, but he never really specifically, as I recall, answered that question for me.

Q. All right. Well, given --

A. That's what I was talking about here was, you

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know, if those guys see a 4, you know, if you allow us to show that to them, that could cause us to not get the capital.

Q. In that broader context as you've explained it, that was your understanding that a 4 would make it harder to raise a significant amount of capital for the reasons you just explained?

A. I think we need to be very precise on this; right? They're talking about a 4 without an enforcement order; so that would be a nonpublic 4 would make it harder to raise nonpublic capital.

Q. That was your understanding. You weren't just embellishing the situation for dramatic effect. That was --

THE WITNESS: Well, I mean --

(Simultaneous cross-talk.)

BY MR. SEARLES:

Q. -- dramatic effect. You actually believed you were a CAMELS 4 even without a public enforcement order would make it more difficult to raise the private capital to the extent you felt compelled to disclose the CAMELS 4 rating to a would-be investor?

MS. VETA: Object to the form.

THE WITNESS: Generally I agree with that.

BY MR. SEARLES:

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Q. The second point, "as well as such a rating would restrict our access to capital." What did you mean by that?

A. Just what -- I'm talking about private capital here.

Q. Oh, I was viewing it as two different things, one, raising a significant amount of capital and then a second thing of restricting our access to capital. That's the same thing in your mind?

A. Yeah, I mean you have to remember these minutes are prepared by someone else other than me, and generally you're not editing them unless it's something hugely that you disagree with or it's material in nature.

Q. Do you actually go through the process of reviewing the minutes before they become somehow embedded in history --

(Simultaneous cross-talk.)

THE WITNESS: At times I had time to do that, and other times I didn't.

BY MR. SEARLES:

Q. Okay. I'd like to show you what's been previously marked as Exhibit 821.

A. Okay.

Q. Do you recognize this exhibit?

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A. Not really. I don't recall this one specifically.

Q. Do you recall a further updated forecast being provided to the OTS? There was one updated forecast --

A. Yeah, it's kind of hard to get all these dates that are so close together all in the same time frame. I'm really having a hard time -- and maybe it's just post-lunch -- connecting this with that board meeting forecast. Is this one -- this post that forecast different than that forecast?

Q. Well, from the e-mail it appears that it's somewhat different. There have been some changes to it. Let me direct your attention to a particular page which is -- if you go to the bates number at the bottom right-hand corner ending in 45339, it's a base case CAMELS 4 P&L.

A. Okay.

Q. Sort of at the -- a little above the middle of the page, there's perpetual preferred dividend. Do you see that line?

A. I do.

Q. And that reflects in the event the forecast, being IndyMac, were downgraded to a CAMELS 4, there would be no continued payment of perpetual preferred dividends at least according to this document.

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A. Right. But I saw in some other document that you just showed me some -- one of the regulators was saying, hey, why are you showing no capital raising? This is a nonpublic 4, and I said we just made the assumption the 4 was public. I think that's probably why this forecast is the way it is. This is kind of assuming more the worst case. It's a 4 with an enforcement order. In other words, it's made public.
Q. You didn't know for certain which way OTS would be leaning with respect to whether it's a CAMELS 4 with or without a formal enforcement order; correct?
A. Some of the documents you showed me this morning said that a 3 was still on the table and obviously sounding less likely although they were talking a split rating, the OTS being a 3 and FDIC being a 4. That was also on the table. And then you had a 4 alone where both the OTS and the FDIC agreed on that, and then you had a 4 with an enforcement order, and of those scenarios -- so that's four possible scenarios. -- the 4 with the enforcement order, based upon the feedback we were receiving from the OTS, was the least likely of those at this time, I believe.
Q. Do you know what assumptions were made with respect to the base case CAMELS 4 forecast that we're looking at here --

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MS. VETA: Object to the form.
BY MR. SEARLES:
Q. -- where there's a suspension of the perpetual preferred dividends?
A. I think I just testified to that, and I recall commenting to the regulator when he asked why are you assuming no more capital raising, and I said, look, we're just assuming the worst case, the public 4.
Q. That's your belief as to what is supporting the suspension of preferred --
A. Yes, that's my best recollection.
Q. You also see with respect to the diluted shares, just a few lines down, the remaining static 86 million for each of the three quarters?
A. That's right.
Q. That's reflecting a forecast of a suspension of capital raising under the DSPP; correct?
A. That's right.
Q. I'd like to show you what's been previously marked as Exhibit 600.
A. Let me --
Q. Would you like to volunteer something? Consider that a question.
A. Well, my recollection, kind of in thinking about that and looking at that forecast, is -- there was

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some thought in my mind and others' mind that a 4 without an enforcement order might be the best alternative for IndyMac because it still showed we were well capitalized in that forecast, and we weren't having to get back up to those 7 and 11 and, you know, capital levels.
Q. Whereas you would need to get to 7 and 11 if you were a CAMELS 3?
A. Their goal, right, was to have us, you know -- we wouldn't be -- that assumption there, right, was we weren't raising capital on a go-forward basis.
Q. And how would that be the best outcome from your perspective? I'm not sure if I follow you.
A. Well, just that we weren't having to raise capital below -- on the margin below book value per share.
Q. So CAMELS 4 rating with a cessation of capital raising under the DSPP -- you'd no longer be issuing dilutive shares?
MS. VETA: Object to the form.
THE WITNESS: Yeah, if it was public.
BY MR. SEARLES:
Q. If it were public, if the CAMELS 4 were public?
A. Yes.

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Q. Just so I understand your testimony, you didn't believe at the time a public CAMELS 4 would be --
A. Yeah, I've got --
Q. -- the best outcome, was it?
A. My attorney's going I just fell down the mountain. In terms of --
(Simultaneous cross-talk.)
THE WITNESS: Look, I think that if you look that, a 4 -- I'm saying something that can't happen because, you know -- and I'm getting confused by the document because the document is a forecast that assumes a public enforcement. That would be a negative situation.
BY MR. SEARLES:
Q. So your thought as you're sitting here now is a nonpublic 4 would be the best outcome?
A. No.
Q. Okay. I'm sorry. I was confused by your earlier testimony.
A. And I apologize for confusing you on that.
Q. All right. So either a CAMELS 4 with or without an enforcement order you would not view as a positive development in the spring of 2008 for IndyMac?
MS. VETA: Object to the form.
THE WITNESS: Because -- I would not.

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BY MR. SEARLES:
Q. All right.
A. Complicated stuff.
Q. I'm sure.
With respect to Exhibit 600, have a look at that for a moment and let me know when you're ready.
Do you recognize this exhibit?
A. I do.
Q. And, for the record, it's an e-mail from yourself, dated April 4, 2008, to members of the board, the executive committee, and others at IndyMac; correct?
A. That's correct.
Q. And the e-mail states -- you're starting out, "FYI, Pam Marsh proposed a good idea this afternoon. Subject to board concurrence we're going to separate the shareholders meeting on May 1 from our Q1 '08 earnings release date which we'll move to Monday, May 12."
Do you see that?
A. I do.
Q. And then you explain why it's a good idea in the next paragraph. "This will give us the maximum time possible to resolve regulatory issues, accounting and auditing issues, and continue to raise capital through the DSPP and pursue a more significant capital raise."
What, if anything, were you expecting to occur

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on May 12 that would prevent you from continuing to raise capital through the DSPP?
A. Well, that was -- I mean I know that's what you're trying to imply here but --
Q. It seems obvious from the e-mail.
A. No, I would say -- I mean so let's dissect this e-mail here.
Q. That's fine.
A. First of all, we -- the fact of the matter is we weren't even ready the week before we released earnings. We didn't have our financial statements certified, working night and day to do that. In fact, that last week we had to postpone a board or an audit committee meeting because we still didn't have our auditor's sign-off. The bottom line is, you know, as I discussed in my previous testimony, the markets were tremendously illiquid. There were tremendous questions surrounding how you valued mortgage-backed securities under the accounting rules.
In fact, the SEC itself a year later had to issue clarifying guidance to help the entire financial services sector on that very issue. This was emerging as a very challenging and difficult issue in this time frame, and the closing process was the number one reason why we had to separate these two dates. We were still

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within, you know, our time frame that we had that we were allowed to file under the law, under the securities law in terms of filing on a timely basis our quarterly earnings. This date -- the March 1 date was actually too early --
Q. You mean May 1?
A. The May 1 date, excuse me, was too early a date just because we were trying to tie it with the shareholder's meeting. You can't change your shareholder's meeting. So we had set it to try to have those be on the same date and earlier than normal. I think the quarter before -- when did we report? We reported on February 12. Here we reported on May 12. Exactly the same time frame. We just -- it was an error -- it was aggressive in the first place in a normal time frame to be reporting on May 1 let alone in a time frame with all of these issues, and that was the reason that we separated these two dates.
You know, what trumps your argument on this completely is the 8-K that we filed own May 1 where we disclosed exactly what we raised in terms of direct stock purchase plan capital. There was no intent to hide the capital raising we were doing. We disclosed it on May 1, the very date that we're talking about here.
Q. I wasn't trying to suggest through your

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commentary on this exhibit that you were trying to hide DSPP fundraising. My question to you was --
A. No, no, you didn't --
MS. VETA: Wait, wait. Let him finish his question and give me an opportunity to object in case I have an objection, and then you answer.
MR. SEARLES: Do we still have time on the tape?
THE VIDEOGRAPHER: About a minute.
MR. SEARLES: Why don't we switch the tape.
THE VIDEOGRAPHER: This is the end of disk 2 in the deposition of Michael W. Perry, and we are going off the record at 2:18 p.m.
(Recess taken from 2:18 p.m. to 2:24 p.m.)
THE VIDEOGRAPHER: This begins disk No. 3 in the deposition of Michael W. Perry. We are back on the record at 2:24 p.m.
BY MR. SEARLES:
Q. Mr. Perry, again, directing your attention to Exhibit 600, I'm only using your words here. You appear to make a connection between delaying the earnings release date from May 1 to May 12 and from that being able to continue to raise capital through the DSPP. Could you explain what the connection is?
A. Well, I think, you know, as I was saying in my

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previous testimony, the primary reason we were delaying the date -- first of all, it wasn't my idea. It was Pam Marsh's idea, and the reason that we had this view is we were coming to the realization that that may -- and coming to it fairly early, April 4, that that May 1 date of having the shareholder's meeting and the quarterly earnings meeting on the same date which was early because you can see that the prior quarter we released on February 12, which is, what, 42 days afterwards.

Here we're talking about releasing 30 days, and the reality is there were just too many issues going on, especially the uncertainty surrounding how we value our mortgage-backed securities portfolio, how we do loan loss reserves. By this time we were on a special-monitored account with Ernst & Young. We had a lot of issues, and as I said in my testimony earlier, we couldn't even get it done -- we barely got it done in time to do May 12. We had to postpone a board meeting that week before May 12 because we still weren't ready because the auditors hadn't signed off on our numbers yet even at that point.

To answer your -- I know I'm giving a long-winded answer there, but what I was trying to do is put the best positive spin on that in saying there's some reasons. There's some positives to that. One is

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we'll be able to announce we raised more capital through our direct stock purchase plan which is a key goal to protect the bank and keep it safe and sound. So I viewed that as a positive to be able to announce more capital that we raised.

As I said, whether this date was May 1 or May 12, we told the market on May 1 not only how much capital we raised, but we also told them what our loss was which was substantially -- you know, we had warned that the 2/12 forecast we were going to have negative results to that on March 11 in that 8-K filing, and here we're announcing a tripling -- you know, or two to three times higher loss on March 1. So we didn't delay announcing that information on March 1, that very, you know, negative information. We also said in that --

Q. You mean May 1?

A. May 1, excuse me.

-- in that May 1 8-K that we still remained at the center of the storm.

Q. We've gone through a series of exhibits of telephonic board minutes, forecasts associated with those minutes, forecasting the potential downgrade to a CAMELS 4 resulting in a cessation of the preferred dividends resulting in a cessation of raising capital under the DSPP. Do you recall those?

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A. I wouldn't word it exactly like that. CAMELS 4 with a formal enforcement order which then would cause us to have to publicly announce that enforcement order was the assumption that was made in terms of suspending dividends going forward and suspending stock raising. We kind of assumed the worst case scenario. We didn't know.

Q. And then on May 12 you did announce a cessation of the dividends. After May 12 there was no further capital raising under the DSPP that will be seen through these documents; correct?

MS. VETA: Object to the form.

THE WITNESS: I don't have a strong memory why that was. I don't think there was any restriction from us doing that. I think I said in my previous testimony I was immediately out on the road one or two days after that May 12 earnings release on the East coast, trying to raise a significant amount of capital, which we were later unsuccessful in doing. But it might have been we just -- at that point we basically were saying, look, let's see how the capital raising goes first. I don't know.

BY MR. SEARLES:

Q. Weren't you concerned at this time on April 4 that the possible announcement by IndyMac of a downgrade

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in the CAMELS rating, a cessation of DSPP fundraising, and because of those concerns at least in part, you believe that by extending the earnings release date to May 12 it would allow you to be able to continue to raise capital up until the 12th?

MS. VETA: Object to the form.

THE WITNESS: Absolutely not. That was not what I was saying here. What I was saying was it would allow us more time to raise capital, and we'd be able to announce a bigger amount of capital that we had raised to keep the bank safe and sound. So I viewed raising more as a positive. Announcing more was a positive.

BY MR. SEARLES:

Q. Not that you would not be able to do so if you made an announcement earlier?

A. That's correct. In fact, you know, we made an announcement in that May 1 8-K of the capital we raised, and we raised capital after that before the May 12 date.

Q. You didn't announce a cessation of the preferred dividends on May 1, did you?

MS. VETA: Object to the form.

THE WITNESS: We didn't have -- that had not been an item that had been approved, and I hadn't made a decision on that yet. I was still debating whether we were going to -- whether I was going to recommend that

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to the board or not for approval.
BY MR. SEARLES:
Q. I'd like to show you what's been previously marked as Exhibit 773. I believe you said in the context of Exhibit 600 that this was Pam Marsh's idea to delay the earnings release date and disconnect it from the shareholder's meeting.
A. Yeah, I'm basing that just on my refreshment from the title of the memo.
Q. All right. Well, have a look at Exhibit 773.
A. I'm having a hard time with this second page. What's the information? It looks like there's a second set of e-mails there. Am I supposed to look at that, too?
Q. No, it's just a -- I believe it's just a duplicate of the original e-mail. It just provides additional information from our concordance database as to the Bates numbers and who receives it and the metadata associated with the e-mail.
A. Oh, I see.
Q. Do you recognize any of these e-mails?
A. I don't believe I was copied on them, no.
Q. Directing your attention to the -- on the first page, lower portion of the page, it's an e-mail from Pam Marsh, dated January 4, 2008, to Scott Keys,

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Meg Wade, Christina Ching, cc Brian Carter.
Do you see that?
A. I do.
Q. In this e-mail she's reporting, "We need to discuss the earnings release date on Monday. Mike expressed today that he would not mind pushing the date out even further than February 5 by like another week not to give us extra time to close the books but to give us extra time to potentially raise the capital and tighten up our 2008 forecast."
Do you recall having a discussion with Ms. Marsh in early January where it was your idea to push the earnings release date for the purpose of attempting to raise additional capital?
A. Well, just to be clear, we're talking about a different earnings release date than the one we just previously --
Q. Right. We're now in the prior quarter.
A. Prior quarter. I don't recall that, but I'm not doubting the statement here. I'm not disputing this statement in any way.
Q. Do you recall any discussion with Exhibit 600 that we were just looking on April 4 where you're reporting Ms. Marsh had a good idea? Were you having any discussion with her where you're actually the one

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suggesting delaying the release date as you appear to have done on January 4, 2008?
A. I don't have a recollection. If it was my idea, I would have said it was my idea. I'm not trying to hide anything here. I would have said it was my idea if it was my idea. I think it was her idea. I thought it was a good idea. So whether it was her idea or my idea, it didn't matter.
Q. And the earnings release date was delayed?
MS. VETA: Object to the form. Object to the form.
THE WITNESS: The earnings release date was changed from May 1, but we filed an 8-K on May 1 with the information that you have said that, in suing me, that we somehow didn't disclose. We disclosed on May 1 in that 8-K filing. You said the reason that we delayed the date was to raise more -- to not disclose that we raised more capital. We disclosed we raised more capital on May 1 in that 8-K.
BY MR. SEARLES:
Q. Okay. I'd like to show you, again, previously marked as Exhibit 799.
A. Okay.
Q. Do you recall this exhibit, this e-mail?
A. I vaguely or generally do.

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Q. Okay. For the record, it's an e-mail from you, dated April 9, 2008, to Mr. Smith at Alston & Bird and a number of other individuals both inside and outside IndyMac; correct?
A. Correct.
Q. Directing your attention to the second page of your e-mail, down at the bottom, last paragraph, reading "Lastly we've been asking the OTS consistently since last fall whether they thought we needed to raise more capital." And then it goes on, "Up until the past few weeks it's been either 'No' or 'We don't know.' The past few weeks with more FDIC pressure and issues at other thrifts, they had hinted about it. And then last Friday it was 'Raise it now or you are a 4.'"
Do you recall having a conversation with -- who would the conversation have been with at the OTS where it was stated, "Raise it now or you're a 4"?
MS. VETA: I'm going to object to the form because I think you left out -- by leaving out the parenthetical, it's going to leave the record unclear.
MR. SEARLES: I was just trying to do so for the sake of time.
MS. VETA: Typically I think that makes since, but this is one place where I think --
MR. SEARLES: All right. Let me read the

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whole paragraph then.
BY MR. SEARLES:
Q. So the final paragraph on the second page reads, "Lastly we've been asking the OTS consistently since early last fall whether they thought we needed to raise more capital and the 650-plus million we raised last year and the amounts we have been raising and plan to raise through the direct stock purchase plan. Up until the past few weeks it's either been no or we don't know. The past few weeks with more FDIC pressure and issues at other thrifts, they had hinted about it, and then last Friday it was 'Raise it now or you are a 4.'"
Do you recall having a conversation with someone at OTS where it was expressed to you in so many words "Raise it now or you are a 4"?
A. I think there are some other documents surrounding this issue, and I think I even wrote some other e-mail is my recollection just in preparing here, you know, where we're discussing kind of, you know, a good cop, bad cop, something along those lines. Just generally I recall them -- you know, I recall this generally.
Q. Okay. So it is an accurate summary of what the OTS position was --
MS. VETA: Object to the form.

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BY MR. SEARLES:
Q. I'm not sure in terms of your good cop, bad cop whether you understood that's really where OTS was at or whether they were just posturing, or what's your understanding at this time if you can clarify that for me?
A. My understanding is I can't speak for them; right?
Q. But you have an impression.
A. Yeah. I think that's the impression that we got --
Q. Which is what?
A. But then I think there were -- you know, we were just -- and I don't remember the timing of some of the other documents, but there was, as we were discussing, four possible CAMELS scenarios for us: Remaining a 3, a split rating between the FDIC and OTS with the FDIC being a 4 and the OTS being a 3, a 4 without an enforcement order, and a 4 with an enforcement order. And I -- you know, I would say it seemed to me like the least likely was the 4 with the enforcement order. The second least likely was probably the 3, and the other two, the split rating and the 4, were probably -- without an enforcement order were probably the most realistic ones, but that's just my

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judgment.
Q. All right. We're now moving a little bit into April. It's now April 9 whereas earlier exhibits were April 4. Wednesday, April 9 -- Friday, April 4 if my math is correct --
A. Yeah.
Q. -- it appears from this e-mail that you had a conversation with someone at the OTS on Friday, April 4 where it was expressed you raise it now or you are a 4, and you said that was your impression. I'm wondering if you can clarify what your impression was. Was your impression that they were serious or just playing good cop, bad cop?
A. Well, I mean isn't it even in June of 2008 that they, you know, where we got our informal memorandum of understanding, and in that document they weren't specific like that. My recollection is they just said keep doing what you're doing in terms of trying to raise capital.
Q. All right. I'm just trying to get the progression of --
A. And during the time --
MS. VETA: Let him finish.
MR. SEARLES: Let me ask my question.
BY MR. SEARLES:

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Q. I'm trying to get a sense of the progression of the dialogue between IndyMac and OTS during the month of April. Let me direct your attention to the first page of this exhibit, paragraph numbered 5. This is an e-mail you drafted. On the second line it reads, "If we don't raise this capital, they are likely to give us a 4." When you're referring to "this capital," are you referring to a significant or big slug of capital in the in order of 500 million or so?
A. Yes.
Q. Okay. So is it fair to say as of April 9 that it was your impression that OTS was in the position that if IndyMac doesn't raise a big slug of capital, they are likely to give IndyMac a CAMELS 4 rating?
MS. VETA: Object to the form.
THE WITNESS: No, I don't think that's what I'm saying here. I think what I'm saying is that's what they were saying to me. In fact, the reality is we released our first quarter earnings on May 12. They didn't give us a CAMELS 4 then. You know, we were out on the road and came back unsuccessful at the end of May. We weren't a CAMELS 4 then. So I mean if -- so, you know, my impression is your regulator, especially in a challenging time, is always going to put pressure on you to do your best to try to raise capital, and we were

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going to do our best to try to raise capital.
BY MR. SEARLES:
Q. I'm trying to get a sense of what your understanding was of OTS's position vis-à-vis the bank in April, not based on subsequent events in June but your mind-set in April based on --
A. My mind --
MS. VETA: Let him finish his question.
Are you finished, Mr. Searles?
MR. SEARLES: Yes.
MS. VETA: Object to the form.
THE WITNESS: My mind-set -- it's hard to remember what my mind-set was. But to the best of my recollection, my mind-set was I didn't know exactly what the -- whether the OTS was posturing or serious.
BY MR. SEARLES:
Q. Let me show you another e-mail previously marked as Exhibit 800, two days later, April 11.
A. Okay.
Q. Do you recognize this exhibit?
A. I do.
Q. Just for the record, this is an e-mail from you, dated April 11, 2008, to the executive committee and others within IndyMac as well as an individual at Paul, Hastings. And below that is a further commentary

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e-mail exchange between you and Mr. Grant, and then at the bottom of the page is an e-mail from you dated April 11, 2008, subject draft letter. And the draft letter is addressed to "Dear Director Reich and Chairman Bair." Do you know who those individuals are?
A. Yeah, they were the heads of the Office of Thrift Supervision and Federal Deposit Insurance Corporation.
Q. Okay. And do you recall drafting this draft letter?
A. I generally do, yes.
Q. Do you know if it was actually sent to either agency?
A. My recollection is someone -- it might have been Dwight Smith who was our regulatory counsel at Alston & Bird advised that I not send it to them directly and that I send it to the western region head, Darrell Dochow, and ask him to forward it on.
Q. And do you recall whether that's, in fact, what happened?
A. It's a little vague. My recollection -- my recollection is he -- my recollection -- I don't -- I have a vague recollection that he expressed some concern about forwarding that on to those individuals.
Q. I see. The reason I asked you about this

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e-mail is on April 11, 2008, in your draft letter to Director Reich and Chairman Bair on the third page of your letter, third full paragraph, it reads, "We understand from our discussions with the OTS staff that absent this significant capital raise being completed before the CAMELS examination is concluded and the report issued, we will likely be classified as a CAMELS 4 and also likely receive a formal enforcement order."
Do you see that language?
A. I do.
Q. In the context of your evolution of your dialogue with the OTS from late March leading into April, is it fair to say that as of the date you wrote this letter that was your best understanding of the position that OTS had with respect to the likely outcome of their examination?
MS. VETA: Object to the form.
THE WITNESS: I mean I don't remember that, but it says it here so -- I mean I must have gotten that at some point. Someone had told me that or communicated that to me.
BY MR. SEARLES:
Q. Okay. I'll show you what's been previously marked as Exhibit 822.

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A. Do you want me to take the time to read this whole letter, or do you want to maybe ask me a question about it first and then --
Q. That's fine.
A. It's a pretty lengthy letter.
Q. No, I agree. Whenever you like, I'm happy to jump to my question. I'm just allowing you the opportunity to read it, but let me jump to my question. This is Exhibit 822. Do you recognize this document?
A. I do.
Q. And this is a further draft of the letter to Director Reich and Chairman Bair; correct?
A. I believe it is, yes.
Q. Yes. This one now dated -- the letter itself is dated April 21, 2008. The e-mail that it's attached to is dated April 18, 2008. So another week after the first draft we were just looking at, Exhibit 800, and it continues to contain the same language we saw in that earlier draft at page 5 of the draft letter regarding the understanding that without a significant capital raise, IndyMac would be classified as a CAMELS 4 with a formal enforcement order. Do you see that?
MS. VETA: I'm sorry, Mr. Searles. Where is that language, please?
MR. SEARLES: On page 15 of the draft letter

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under appropriate regulatory responses.
THE WITNESS: Okay.
BY MR. SEARLES:
Q. So based on this draft letter at this time period now, a week after the prior exhibit as of April 18, did it remain your understanding that that was the position of the OTS staff that absent a significant --
A. It appears --
MS. VETA: Object to the form.
THE WITNESS: It appears as though that is the case.
BY MR. SEARLES:
Q. And on following page, page 6, the first full paragraph, it begins, "We strongly believe a 4 rating with an informal agreement is the appropriate course of action at this time."
Do you recall was -- is that the sort of outcome that you were hoping to negotiate with the OTS and the FDIC?
MS. VETA: Object to the form. Time frame.
THE WITNESS: I'm just recalling it from reading this just now like you are. In other words, I --
BY MR. SEARLES:

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Q. Okay.
MS. VETA: I'm sorry, Mr. Searles --
(Simultaneous cross-talk.)
BY MR. SEARLES:
Q. -- recollection of what happened in 2008. I'm wondering if this refreshes your recollection as to --
A. I mean it sounds like familiar.
Q. It's almost 3:00. Do you want to break now?
MS. VETA: That would be great.
THE VIDEOGRAPHER: Going off the record at 2:58 p.m.
(Recess taken from 2:57 p.m. to 3:09 p.m.)
(Ms. Veta exits the proceedings.)
THE VIDEOGRAPHER: We are now back on the record. The time is 3:10 p.m.
BY MR. SEARLES:
Q. I'd like to show you what's been previously marked as Exhibit 750.
A. Okay.
Q. Do you recognize this exhibit?
A. I don't recognize the e-mail or the -- I possibly saw this, the Moody's press release with the bond downgrades. The last piece is this memo dated April 24 from Kurt Johnson and Yun-ni Chen, and I'm not sure if I saw that or not. I don't recall seeing it.

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I've seen schedules like this; so it's vaguely familiar, but I don't recall seeing this one.
Q. Okay. Do you recall Moody's downgrades on April 23 as reflected in the second page of this exhibit?
A. You know, it's been so long. I don't recall -- there were two, Moody's and S&P. I just generally recall rating agency downgrades during this time period.
Q. Okay. That was not positive news to IndyMac, either of those downgrades, was it?
A. No.
Q. The memo that's attached to this, do you recall generally in response to the downgrades by Moody's an attempt to calculate the effect on IndyMac's either P&L or capital ratio as a result of those downgrades?
A. My vague recollection is that we were -- once -- the downgrades were on a much larger list of IndyMac bonds; right? We generally sold the bulk of our bonds into the secondary market, and you can see that this press release from Moody's -- what has 165 different bonds from 46 different Alt A transactions involved, and I believe we only owned a small minority of that piece, like 20 bonds. The bulk of the negative

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impact was affecting other investors, you know, in the marketplace other than IndyMac.
We were taking -- my recollection is that we were addressing this issue trying to figure out how to value these bonds and then also trying to address whether the loss that was related to them which could be -- there were components that were trading losses and available-for-sale losses, and there's a big difference between those two in terms of how the accounting and also how the regulatory capital is treated.
Then you had just the overall also impact on risk-based capital of the ratings downgrades, and we were working with our auditors and with our regulatory counsel in terms of determining what periods that they impacted. Did some impact the first quarter? This is a second quarter event, second quarter of 2008 event. What, if anything, did the impact the first quarter, and what, if anything, did it impact the second quarter? We knew it impacted the second quarter but parceling it between the two quarters.
Q. I see. The memo that's attached to this exhibit on April 24 -- do you recall analysis being done the week of the downgrades as to the potential effect on either the P&L or risk-based capital of the bank?
A. I don't recall it being done that quickly is

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my recollection.
Q. This exhibit here, the memo, appears to reflect an analysis done just one day later.
MR. RAZI: Object to the form.
BY MR. SEARLES:
Q. Correct?
A. Yeah, I think, you know -- but the cover memo -- and I'm not copied on these -- says, you know, this memo needs more work. My recollection -- they might have done some preliminary, you know, guesstimate of the impact of this. My recollection was that there was a lot more work done, and even some of that work going into the week before we released the May 12 earnings about exactly how to apply fair value accounting under level 3 methodology which was a change in methodology, right, because of the illiquid markets in the marketplace; right?
These assets had been level 2 or level 1 prior to the illiquidity in the market occurring in the first quarter of 2008. So we were grappling with, like the whole industry was, issues with level 3 accounting and how to do fair value accounting. Everyone addressed that. You guys even had to issue some guidance to the industry on that later on. But we were having to grapple with it because we were at the early end of this

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crisis.
My recollection is that we were still grappling with those issues the week before -- the week of the -- that ended Friday, May 9. Then I saw at some point during that week a schedule was presented to me that addressed this issue. You know, that's just my recollection.
Q. I see. In the memo that's dated April 24, there's a chart titled "IndyMac Retained Bonds Downgraded by Moody's, April 23, 2008."
A. I'm sorry. At the end?
Q. It looks like this.
A. Okay. And as the column states, "Required increase in RB capital."
Q. RB is risk base; correct?
A. That's right.
Q. Indicating a grand total of $151 million under that column.
A. 54; right.
Q. I'm sorry. 154 million and change; right?
A. Yes.
MR. RAZI: I'm just going to object to the question as lacking foundation. The witness has testified he doesn't recall seeing the document, but if you want to continue to examine him about it, you're

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free to.
BY MR. SEARLES:
Q. Do you recall any assessments of the impact of Moody's downgrades on the required increase and risk-based capital being conducted in the week of April 23?
A. I mean I think, you know, this downgrade occurred, what, on --
Q. I'm not sure which day of the week it is.
A. Yeah, this downgrade occurred on April 23 which, it looks like from Francisco's memo, Friday was the 25th. I don't recall that we had command of this issue this rapidly. Maybe they had a rough estimate of it, but I don't recall us having command of this issue in any way that would warrant disclosure that early in the process.
Q. I see. Do you recall in the 10-Q filed on May 12 a discussion in that document to the effect that if the downgrades had occurred as of March 31 or should be accounted for as of the end of the first quarter, that it would reduce the capital ratio -- the total risk-based capital ratio of the bank to about -- my recollection could be wrong, but I think it was 9.27 percent?
A. It was somewhere in there. 9.27. My

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recollection would have been 9.40 but somewhere in that range.
Q. Whatever that number is.
A. Yes. I recall that footnote disclosure, yes.
Q. Do you have any sense -- I'm not sure how quickly you could do the math, but with the effect of the increase of risk-based capital of $154 million, if the capital were not increased by that amount, what the total risk-based capital ratio of the bank would be?
MR. RAZI: Object to form.
THE WITNESS: I'm sorry. I didn't understand that question.
BY MR. SEARLES:
Q. I'm not sure how quickly you can do the math or approximate the math, but this indicates -- this memo indicates an increase in risk-based capital that's required of $154 million. If that capital is not raised, what would be the resulting total risk-based capital ratio of the bank?
MR. RAZI: Object to the form of the question and lacks foundation.
BY MR. SEARLES:
Q. Would it be approximately 9.27 or whatever is reflected in that 10-Q?
A. Well, my -- I wasn't aware of that 9.27 number

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until -- in my recollection no one pointed it out to me, and in my review I didn't catch that number, and it was pointed out to me subsequent to May 12. So from my perspective we still didn't even have the 3/31 numbers done. My recollection is -- for valuing mortgage-backed securities. So how could we -- we're sitting here, you know, struggling to get the value under level 3 accounting for mortgage-backed securities at 3/31 done by May 12; right? And we had to, as I said, delay that board meeting that week because the auditor still had yet to sign off on those issues.

Our regulators also were reviewing how we valued our mortgage backed securities portfolio. My recollection is that one of the things our auditors wanted to see was because we were under level 3 accounting for the mortgage-backed securities, fair value accounting -- they wanted to see how other institutions, other public institutions who had private label mortgage-backed securities were valuing their securities in their disclosure documents before they signed off on ours.

My recollection is that week before May 12, the first week of May there -- I call it the first week because I think there were two weekends in between but the week ending May 9. My recollection is that a group

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had to go through -- went through a PowerPoint presentation with me that week on how we were valuing the mortgage-backed securities portfolio at 3/31 under level 3 which included reviewing how issuers like, my recollection is, Washington Mutual, maybe even Fannie Mae, some other public issuers were valuing private label securities.

So I just really find it hard to believe that when we had a hard time valuing a portfolio of securities that were not downgraded at 3/31, by May 12 that somehow we were able to take these bonds that were downgraded and value them faster than that. Do you see what I'm saying?

Q. It's your testimony that you weren't even aware, when the 10-Q was filed, that that analysis had been conducted and was actually disclosed in the 10-Q?

MR. RAZI: Object to form.

THE WITNESS: I was aware that the analysis had -- that we had valued our securities under -- mortgage-backed securities portfolio under level 3 accounting. I was also aware that we had properly applied the bond downgrades to the -- to the first quarter if they -- even though they were second quarter events, well into the second quarter events, that there is some argument that some of the negative

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impact -- and there's a discussion of that kind of in the back of this memo about the accounting theory behind that, but some piece of it gets applied to the first quarter. It's complicated, right, but it's in here. So I was aware of all of that.

What I'm saying is I wasn't aware that we had disclosed in that footnote the adequately capitalized ratio. At least that's my recollection because I think that was an addition that one of our audit committee -- I think one of our audit committee or one of the audit committee members suggested that we do -- provide.

BY MR. SEARLES:

Q. And your knowledge -- as you sit here today, it's your recollection that you were surprised by that -- the disclosures regarding the effect in Q2 of these downgrades. You were not aware at the time of the filing that the 10-Q contained that footnote and that analysis?

MR. RAZI: Object to form.

THE WITNESS: My recollection is I was not aware -- it's really not an effecting Q2 because they did something that is kind of a hybrid of almost a subsequent events disclosure; right? They said if these bond downgrades had occurred at 3/31, this is what our regulatory capital ratios would be and brought the total

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risk-based capital ratio to the number we were talking about, that 9.27 or 9.40 adequately capitalized.

BY MR. SEARLES:

Q. Right. We're both familiar with what the 10-Q states. What I'm trying to explore with you is as to the time of the filing of that 10-Q whether you were aware it contained that type of a -- sort of a subsequent event analysis?

A. I don't recall being aware of that.

Q. So that -- would it be fair to say you were not involved in any of the discussions leading to the decision to disclose that information; correct?

A. To disclose that particular footnote?

Q. Yes.

A. I don't recall being involved in that.

Q. All right. I'd like to show you what's been previously marked as Exhibit 668. Do you recognize this exhibit?

A. I do.

Q. For the record, these are minutes of a joint special telephonic committee meeting of the board of directors of IndyMac Bancorp and IndyMac Bank, dated April 24, 2008; correct?

A. I'm sorry. Can you repeat that?

Q. I'm just reading the title of the document

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just for the record. It's minutes of the joint special telephonic committee meeting of the board of directors IndyMac Bancorp, Inc., and IndyMac Bank, FSB; correct?
A. Correct.
Q. Dated April 24, 2008?
A. Correct.
Q. And this is a meeting that occurred at 2:00 p.m. on April 24 according to the minutes; correct?
A. That's correct.
Q. And that would have been -- based on Exhibit 750 if Friday is April 25, this would be Thursday?
A. Correct.
Q. So this is a telephonic committee meeting called within one day of the downgrades of the MBS; correct?
A. Correct.
Q. For the purpose of discussing, in part, the MBS downgrades by Moody's?
A. I would say it slightly differently. The minutes to me, you know, when you read them and just the size of them give, like, complete opposite shrift of what this meeting was called for.
Q. I see. Well, the minutes reflect, number one, it was an update of the Moody's downgrade of bonds and

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capital-raising efforts; correct?
A. Yeah, I'm not disputing that. I'm just talking about what really the purpose of the meeting was for.
Q. Okay. And the purpose was to discuss the employee matter?
A. Yes.
Q. And that's Mr. Keys' departure?
A. Yes.
Q. All right.
A. My strong recollection was I just threw this on the agenda.
Q. Well, according to the minutes it appears that in the hierarchy of events --
A. I know what --
Q. -- you discuss the bond downgrades first and Mr. Keys' departure second?
A. I don't recall it one way or the other.
Q. All right. And do you recall Mr. Keys -- this was a departure on April 24? When did he leave the company? Do you recall?
A. I think maybe the day before.
Q. The 23rd?
A. Right around there.
Q. The same day as the Moody downgrades?

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A. Possibly. I'm not sure.
Q. All right. From your impression of Mr. Keys and being there on that day, do you have any sense of any connection between Mr. Keys' nervous breakdown and the MBS downgrades, whether the downgrades contributed to this panic attack?
MR. RAZI: Object to form.
MS. MATELIS: Join.
THE WITNESS: I'm speculating a little bit, but I think they probably did.
BY MR. SEARLES:
Q. In the minutes on No. 1 under the update on the Moody's downgrades, in the second paragraph you stated that "Mr. Perry informed the members that Moody's downgraded 165 bonds to non-investment grade yesterday of which the company owns 20. And then Mr. Perry further explained the extent of the downgrades and the potential resulting impact to capital."
I know with the earlier exhibit we were looking at with Mr. Hymel's analysis of the memo, you don't recall seeing it, but do you recall having any information on April 24 by which you explained to the board the extent of the downgrades and the potential resulting impact to capital?
A. I must have had something. I just don't

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recall it.
Q. Okay. I'm looking at these minutes and looking again at the exhibit we just had.
A. It's possible that I had that schedule, yes.
Q. Okay. And then attached to the minutes are another action by unanimous written consent of the board of directors authorizing the issuance of another 10 million shares of stock under the DSPP. Do you see that?
A. I do.
Q. And the first -- do you recognize your signature on page Bates No. 471754?
A. I do.
Q. And do you recall that being discussed at this telephonic committee meeting?
A. You know, I don't recall it being discussed at the meeting, but it might have or it might not. I'm not sure.
Q. Would the exhibit we're looking at suggest that they were?
MR. RAZI: Object to form.
THE WITNESS: I'm not sure about that. I'm just not -- I just don't recall.
BY MR. SEARLES:
Q. Okay. Do you recall any discussion in

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connection with the -- what became the May 2 prospectus for 10 million shares, any discussion about how many shares to register, whether it should be 10 million or some greater or lesser number?
A. No, I don't recall that.
Q. Or any concern about telegraphing to the market IndyMac's intent to issue a lot of shares to the market or being concerned about the effect of such a message to the market?
A. I absolutely have no -- I feel confident that there was no -- I would have remembered something like that. So there would have been -- there was no discussion like that with me or with the board.
Q. That you recall?
A. Something like that I think I would have remembered.
Q. Okay. Well, I showed you yesterday -- I think it was --
A. I mean that's kind of --
Q. You've got to let me ask my question.
A. I apologize.
Q. I showed you yesterday I believe it was an e-mail from Ms. Ching where she was at least sensitive to this messaging to the market based on how many shares are issued, a dialogue between herself and Mr. Ventura

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of Alston & Bird. Do you recall that exhibit?
A. I do.
Q. Do you recall any discussion by anyone in this time period with respect to the May 2 prospectus about what might be telegraphed to the market by virtue of the number of shares being issued under the prospectus?
A. As I testified yesterday, I wasn't aware of that discussion by Ms. Ching and Mr. Ventura. I think I would have remembered it if someone had mentioned that to me or it was discussed with the board.
Q. And the minutes that we're looking at in Exhibit 668, they're signed, "Respectfully submitted, Christina Ching, secretary." Do you see that?
A. I do.
Q. Was she the person responsible for preparing the minutes, typing them up, taking notes at the time of the meeting?
A. There were certain management liaisons to various board committees. I think generally she was for the corporate board or committee meetings, but there were, like, the enterprise risk management committee. The minutes might have been prepared by the management liaison for that committee. I can't speak to all of the various committee minutes. But generally she was corporate secretary and handled the general corporate

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ones.
Q. I just realize the next exhibit I have is -- oh, no, I'm sorry. I do have multiple copies. Double-sided. Let me show you what has been marked previously as Exhibit 861. I can direct you to a particular entry in the notes but let me know when you're ready.
A. Okay.
Q. Before turning to those, if you can go back briefly to Exhibit 668, which are the minutes of the telephonic committee meeting on the 24th. On the first page, last paragraph, it reads, "In response to the request from Mr. Gabriel, Mr. Perry also provided an update on the company's capital-raising efforts. He indicated" -- and I believe the "he" refers to Mr. -- to you, Mr. Perry -- "indicated that updated first quarter financials along with the 2008 forecast will be distributed to the members as soon as possible."
Do you remember making that statement at the time of this board meeting?
MR. RAZI: Object to form.
THE WITNESS: I don't remember making that statement, but I have no doubt that I did.
BY MR. SEARLES:
Q. And do you recall providing an updated first

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quarter financials along with the 2008 forecast shortly after this meeting?
A. I doubt that I complied with that. I was probably working under the assumption that we were almost done, and so my recollection would be based on the fact in my previous testimony that, again, that week that ended May 9, we had to postpone a board or audit committee meeting because our financial statements still weren't prepared. I doubt -- what I was referring to, I believe, here was the actual SOX-certified numbers and a SOX-certified, you know, forecast, and they weren't done.
Q. In the notes of Exhibit 861, do you recognize the handwriting?
A. It's not my handwriting.
Q. Okay. I'll represent to you these are the notes by Ms. Ching of the telephonic committee meeting held on April 24, 2008 at 2:00 p.m.
A. Okay.
Q. And then if you turn to the second page, in the middle of the page you'll see a line, "I'll send updated financials first quarter and forecast 2008 ASAP."
Do you see that?
A. I'm sorry. Say that again. Which piece?

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Q. On the backside of Exhibit 861, middle of the page, just slightly above the middle of the page, handwriting reads, "I'll send out updated financials first quarter and forecast 2008 ASAP."
A. Yeah.
Q. That's reflected in the minutes that we were just looking at, Exhibit 668?
A. That's correct.
Q. Okay. On the first page the first entry is "Why cancel the meeting?" Do you have any idea what that refers to?
A. No. I mean unless -- I mean I don't know.
Q. Okay. And then under paren one, it reads, "2 percent capital to need to hold 100 percent capital."
Do you know what that refers to?
A. I think I can make an educated guess on that.
Q. Okay.
A. And this shows you kind of the extreme nature of these kind of downgrades on -- and on the artificial nature of this total risk-based capital ratio that we've been discussing for so long and why analysts, you know, started getting away from discussing risk-based capital, discussing core capital which we were way over well capitalized on that one.
Here you had AAA private mortgage-backed

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securities that required only 2 percent risk-based capital. Okay? So they -- you know, for every hundred dollars of bonds, they only required $2 of risk-based capital. And the rating agencies went from classifying the overnight -- went from classifying those bonds as AAA to non-investment grade, and the capital requirement went from 2 million -- 2 percent to 100 percent. And that's what you're seeing in those 20 bonds in that schedule. So that's what this is referring to.
Q. All right. A dramatic change of events?
A. A significant change in the regulatory capital requirement for the second quarter of 2008.
Q. I see. On the notes to the side, my reading of it, it looks like as if an additional 120 million in capital required?
A. Where is that? I'm sorry.
Q. First page of Exhibit 861, left-hand margin of the page -- of the note, the handwritten notes.
A. Yeah, I see that. Yeah, it looks like that's what it says.
Q. All right. Does that refresh your recollection of your understanding of the effect of the downgrades during this board call on April 24? An additional 120 million in capital would be required?
MR. RAZI: Object to form.

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THE WITNESS: I think, you know, you're also excluding some things here that are positive; right? One, it says, "We got a call that we can take our reverse board servicing rights out of the servicing asset. This may take us up to well capitalized." So this was that question, you know, where I was telling you that reverse mortgage servicing are not -- they're not structured the same as normal servicing fees.
They have none of the interest rate risks associated with normal servicing rights, and it sounds like here that the OTS or our regulator is saying, "Look, we may decide that that is not a servicing right for the one-time servicing cap," and that would lead us in the other direction. The point being that these points, the 120 million in capital here, whether that's the number, our second quarter events.
BY MR. SEARLES:
Q. Okay. And what you're talking about this servicing right, this is the MSR cap that we talked about earlier that was referenced in --
A. That's right.
Q. -- your e-mail of February 20 to Mr. Dochow?
A. Right. And there's also -- you know, when reviewing the held for investment portfolio, we found a positive mark error need to review with someone there.

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I can't read that. Accounting or something.
Q. With respect to the entry, I'm just trying to get a sense because it's not reflected in the minutes. So I'm relying on Ms. Ching's notes of what was said in this meeting. It appears that you stated that additional 120 million in capital is required. Does that sound about right to you as to what you said at this meeting in terms of the --
A. I had --
MR. RAZI: Object to form and object that it's been asked and answered lacks foundation.
THE WITNESS: I previously testified that my strong recollection of this meeting was it was all about the departure of our CFO and that I threw the mortgage-backed securities issue on just because it was something that had recently happened, and we had the board together, and I might as well give them an update.
I'm not trying to diminish the significance of the bond downgrades in any way, shape, or form. But what I'm telling you is that we did not have a handle on this matter just like we -- because of the level 3 accounting, the regulatory issues, my strong recollection is that they were still working on this the week before we disclosed earnings on May 12.
My other strong recollection is that our

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team -- well, actually let me correct that. In preparing for this whole process, you know, I now understand that our team consulted with outside counsel with respect to these MBS downgrades as to whether we had an obligation to disclose them before we released earnings on May 12, and counsel opined that we did not as long as we were issuing our quarterly financial statement in a timely basis.
BY MR. SEARLES:
Q. You were not aware of that solicitation of advice at the time, were you?
A. That's what I just said, yes.
Q. Okay. I'm just trying to explore. The minutes that we're looking at in Exhibit 668 simply state that Mr. Perry further explained the extent of the downgrades, the potential resulting impact to capital. I'm just trying to get a sense if you can recall, perhaps through reviewing these notes, a little more detail on that subject and whether you recall advising the board or stating at this telephonic committee meeting that as a result of the downgrades, an additional $120 million in capital would be required as the notes appear indicate?
MR. RAZI: Objection. Asked and answered.
THE WITNESS: I mean I think just to be clear,

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I would say that this was a rough estimate, that -- and that's all we were trying to do is give them a quick and dirty rough estimate of this issue and its impact on primarily on regulatory capital as it related to the second quarter. We still had yet to close our books for the first quarter.
BY MR. SEARLES:
Q. Do you recall providing them with this estimate of the impact of additional capital being required in the range of $120 million as these notes indicate?
A. I don't recall providing them that.
Q. Okay.
A. But I'm not saying I didn't. I just don't recall it.
Q. You have no reason to doubt the notes are inaccurate?
A. I have -- no.
Q. You didn't have any prior complaints with Ms. Ching about the accuracy of her minutes that she prepared as a result of the board meetings; correct?
A. No. I mean, you know, when you have someone else draft minutes of a meeting for you, they're not -- never going to be how you would draft them if you were drafting them yourself. As, you know, I discussed in my

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earlier testimony, in certain times I had times to review them, and other times, especially during this period, I didn't have time to review and edit them the way I did maybe in earlier period. But in general, since Christina Ching was an incredibly professional corporate secretary, I have no doubt these minutes are accurate and to her views about what was said at the meeting.
Q. And the same with respect to her notes?
A. Yes.
Q. All right. What's not reflected in the minutes but what's reflected in Ms. Ching's notes on the second page of Exhibit 861 is an entry at the top third of the page which reads, "Suspend trust preferred and preferred stock here on out."
Do you see that?
A. I do.
Q. Do you recall making a comment to that effect at the April 24 telephonic committee meeting?
A. I don't recall that, but I wouldn't say -- I wouldn't disagree with that. I probably was leaning towards that direction that I was telling the board, you know, this is -- you know, this is where I'm headed with this issue. We're getting all of the -- our Ts crossed and Is dotted and preparing to look at that, and that's

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the direction that I'm leaning.
Q. Do you recall stating it in that sort of qualified way at the board meeting as opposed to just stating they're going to be suspended here on out?
A. I might have -- I don't recall specifically. I could have stated it either way.
Q. All right. I'd like to show you next in order Exhibit 645.
A. Okay.
Q. The minutes that we were looking at in Exhibit 668, as I read previously, reflects that Mr. Perry indicated that "The updated first quarter financials along with the 2008 forecast would be distributed to the members as soon as possible." Looking at Exhibit 645, this is a forecast scenario, dated April 24, 2008. Do you recognize this document?
A. I don't recognize this document. I don't recall seeing it. It's possible I did, but I just don't recall seeing it.
Q. Is it possibly the updated first quarter financials along with the 2008 forecast that you advised the board would be distributed to them as soon as possible?
A. It's clearly not the updated financials for the first quarter; right? This is a forecast. The

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updated financials would be the Q, the actual -- that's -- why would you give anything else right around the time we're trying to get our Q done? I think, as I testified earlier, I believe what I'm referring to here, "He indicated the updated first quarter financials along with the 2008 forecast" -- I'm talking about the ones that are getting ready to be publicly released is what I believe.

Q. The ones that would be publicly released on May 12?

A. That's correct. A draft of those.

Q. Okay. Do you recall --

A. I mean it's Friday April 24; right? So you go 25th, 26th, 27th. I mean we're getting down where board meetings have to occur to release public information. Do you see what I'm saying? So that's what I believe I'm referring to here. The first time I recall seeing this forecast was this week.

Q. In preparation for your testimony?

A. Yes.

Q. I see.

A. And the reason behind that that I express surprise about this forecast is because my strong recollection because of the issues that we had with respect to the level 3 accounting and valuing our

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mortgage-backed securities portfolio and how difficult and challenging that was to do even for the portfolio at 3/31 that hadn't been downgraded, I know for a fact that that portfolio was not valued until the week of -- that ended May 9. I know they didn't go through that valuation with me until that week.

I can remember clearly that Mr. Abernathy and Mr. Scribner went through that MBS valuation and maybe Yun-ni Chen, and I also remember clearly Ernst & Young had yet to sign off on that even that week. Those issues were part of the reason that we had to postpone a board meeting that week that was to review the financial information because we weren't done yet.

So the idea that we can take downgrades that occurred on a portfolio on 4/23 and the next day know for certain the impact, especially when the impact had to be spread between two quarters based on GAAP accounting and regulatory capital restraints, I mean the only thing I can foresee is this was some rough and dirty forecast that someone did related to that issue.

Q. Is it fair to say that, at least during the week of April 23, you're reporting to the board as reflected in Ms. Ching's notes of additional capital that the expectation would be that these bond downgrades would have a negative effect on the bank, and you knew

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that during the week of April -- shortly -- within days of the downgrades?

MR. RAZI: Object to form.

MS. MATELIS: Join.

THE WITNESS: We knew there would be a negative impact to the bond downgrades.

BY MR. SEARLES:

Q. With respect to the forecast scenario, this you say you just saw the first time last week; is that correct?

A. No, this week.

Q. This week.

A. On -- what's today? Wednesday? On Monday.

Q. You saw it for the first time on Monday?

A. That's my recollection.

Q. Okay. All right. In this forecast dated April 24, 2008, it indicates at the bottom of the page, "Additional assumptions included. No dividend payments common and preferred," and you'll see on the P&L line with respect to perpetual preferred dividends there's no contemplated issuance or payment of those dividends in the subsequent starting with Q2 and the rest of the year; correct?

MR. RAZI: Objection. Lacks foundation. The witness has testified he didn't see the document

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contemporaneously. He saw it with counsel preparing for the testimony. We can all read what it says. I don't think it's productive for you to just read the document into the record.

MR. SEARLES: Just make a statement -- just object to form without a long winded objection, and it will shorten our day here.

MR. RAZI: Yeah, I'll object as I think appropriate.

MR. SEARLES: Thank you. And I'll conduct my questioning as I think appropriate.

MR. RAZI: Go for it.

MR. SEARLES: Thank you.

BY MR. SEARLES:

Q. Do you recall any discussion in the week of April 24, April 25, before the end of April, where there were forecasts being created contemplating the cessation of the payment of preferred dividends at the bank and the Bancorp level?

A. I would expect that there would be some forecasts. My refreshed recollection is there were because we were -- my mind was starting to form around the idea that I was going to make a recommendation to the board to suspend the preferred and trust-preferred dividends towards the end of April. That was where, you

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know, I testified yesterday talking about it that my mind was forming in that direction. You know, I said it was a judgment call, and that was my judgment that I was leaning that direction.

But it's not something -- you can't do something like that -- you don't just -- first of all, I didn't have the authority to suspend the preferred payments. I didn't have the authority under my CEO authorities document, and I didn't have the authority in those documents, but there was a lot of work that needed to be done in terms of getting, you know, counseled opinion to make sure we did it in the right way so we didn't violate debt covenants.

My recollection is we didn't even get counseled opinion that we could suspend the trust preferred legally until the Thursday or Friday before we released -- before we released earnings on May 12. So yeah, we were -- I was leaning this direction definitely towards the end of April. But we had work to do in terms of building forecasts to see -- to show board members to get their approval; right?

You can't just go into the board and go, "I want to do this." You have to build a forecast around it. You have to get outside counsel opinion. You have to you discuss it with your management team. So we were

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having all of those types of discussions. I didn't actually make a formal recommendation until that last week of May 9, and then even then our CFO, who's been with us a long time, a super smart guy, is saying, "I don't agree with you, Mike. I change my mind. I think we should continue this payment," and I heard him out, and I still felt it was a judgment call. It was not an easy judgment call, but I made that recommendation to the board. They approved it, and two days later -- and in between we got -- the board approving it, we got the counsel's opinion confirming we could do it, and we disclosed it.

Q. Let me show you Exhibit 751 while we're on the issue of the opinion of counsel.

A. Okay.

Q. Do you recognize this exhibit?

A. I don't. I wasn't copied on it.

Q. All right. And this is, for the record, an e-mail from Christina Ching, dated April 25, 2008, to attorneys at a law firm called Orrick along with an e-mail forwarded -- well, it's also sent to Francisco Nebot.

When you were just describing your testimony moments ago that you were soliciting attorney -- outside counsel's advice on how and whether you could suspend

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the preferred dividends, did you know that IndyMac on April 15 had already obtained a written memo on that very subject?

A. I'm not sure that I --

MR. RAZI: Object to form.

THE WITNESS: As I said, I wasn't copied on this. I don't think the law firm copied me on this. I don't recall being aware of this, and I don't recall anybody making me aware of it. And I think there's a little different -- we had two legal counsel that we were working with, and we were -- had transitioned most of our corporate work to Orrick by this time. So Orrick was more of our corporate counsel, and Alston & Bird was more of our regulatory counsel by this time.

But that being said, we probably wanted to get the opinion from Orrick, who was our corporate counsel, but it looks to me, just in reading this quickly -- and I could be wrong about this -- that there's a little different reason that Francisco and Andrew got this opinion from Alston & Bird in mid-April versus the one that we're getting to suspend the dividend that didn't come until, I believe, May 7, 8, or 9, something like that.

BY MR. SEARLES:

Q. This memo dated April 15 from Alston & Bird to

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IndyMac Bancorp Corporation begins with, "You've' asked us to examine the implications of the proposed deferral of the quarterly dividend on the 8 1/2 percent series A perpetual non-cumulative fixed-rate preferred stock, the bank preferred issued on a particular date, the preferred securities issued in connection with capital trust of IndyMac Bancorp, and the units issued in November, 2001," the wires, just to summarize this.

A. Yeah.

Q. Were there any other --

A. Well, I --

Q. Wait, wait. Let me ask my question.

A. I'm sorry.

Q. Were there any other preferred dividends or payments that were on the table that were being considered to be suspended or stopped other than these three?

MR. RAZI: Object to form.

THE WITNESS: I'm not sure. I don't think so, but that's not what -- that's not the point I think that -- that these individuals are making here. First of all, as I said, I'm not -- wasn't aware -- I don't believe I was aware of any of this. Okay? But secondly I think what Francisco and Andrew, who are in the treasury group, are focussed on is doing some

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contingency planning from a liquidity standpoint at the holding company. They're focused on notice. You can see that in their e-mail.

So they're not focused on all the mechanics, Francisco and Andrew are. Maybe Alston & Bird included all the mechanics in their memo. I don't know. I haven't read this cover to cover. But you can see that Alston & Bird, in their executive summary, was focused on the same thing. "Dividend payments on the bank preferred may be suspended indefinitely with no required notice to holders." So it seems to me like that was the focus, the notice to holders. In other words, they didn't want to be -- cause -- from a liquidity standpoint they wanted to make sure they didn't -- if things got really tough, that they didn't have to give notice before saying, "No, we're not going to pay this."

BY MR. SEARLES:

Q. Well, you see the memo itself goes on to describe not just the issue in the executive summary, the notice, but it goes on to describe the bank preferred, the trust preferred, and the wires, the process to be followed for deferral of those distributions or dividends. Do you see that?

MR. RAZI: Object to form.

THE WITNESS: Yeah, I mean I think the point

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of this is all moot anyways because the real point is I have testified that I was leaning towards recommending to the board to suspend the preferred dividends by the end of -- sometime around the end of April. We were making plans in that direction. I was reviewing it with management team. We were getting forecasts done. I was communicating with managers and directors that I was strongly leaning in that direction, maybe even said it more affirmatively.

But I didn't have the authority as CEO under my CEO authorities document, and I did not have the authority in the legal documents based on the opinions that these counsel -- I don't know. I haven't read this opinion. I'm sure they said in the opinion somewhere that it required board approval. So I was still -- you know, I was leaning very strongly to eliminating those dividends, okay, as a prudent step. I had not made a final recommendation until the last week.

I heard out the CFO who had a different opinion, and I still made a decision, a judgment call. He felt we should continue paying it. I made a judgment call to recommend to the board and presented it to the board and got the board approval, and two days later we disclosed that to the shareholders.

BY MR. SEARLES:

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Q. When you say you were leaning very strongly towards the recommendation to the board of suspending these payments, when did you come to that position of very strongly? The minutes taken by Ms. Ching on April 24 potentially indicate that you had adopted that position as of that date.

A. It's possible that I did. I mean it's hard to remember that long ago.

Q. With respect to this document we're looking at here and the memo dated April 15, I understand you know of that now as you sit here today because you prepared for your deposition here --

A. Yes.

Q. -- but did you have contemporaneous knowledge in April or early May of the existence of this advice memo?

A. It's possible I did. I just don't recall.

Q. All right. You don't recall any conversations with anyone at Alston & Bird that you personally had on the subject of whether and how IndyMac could suspend the bank and Bancorp preferred instruments, did you?

A. It's possible I did. I just don't recall it.

Q. With respect to soliciting advice from Orrick in preparation for your testimony here today, you've seen other documents again; correct?

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A. I have.

Q. With respect to those documents, did you have any contemporaneous knowledge of the existence of those communications in April or early May of 2008?

MR. RAZI: Object to form.

THE WITNESS: In terms of our group, Christina communicating with them and asking for another opinion from Orrick on this issue?

BY MR. SEARLES:

Q. Right.

A. I don't recall.

Q. Okay. I'd like to show you what's been previously marked as Exhibit 862.

A. Can I see the previous document too, please? Okay.

Q. Do you have any recollection of Exhibit 862?

A. I don't.

Q. This is a, just for the record, in part an e-mail from Christina Ching to Brett Cooper, who's an attorney at Orrick in San Francisco, where she's asking the question to him regarding the subject of board approval required to defer distributions on Bancorp trust preferred and wires where she's stating, "Brett we've not normally obtained board approval to make payments on the above instruments. Do we need the

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Bancorp board to approve our deferring payments on that?"
And, again, you weren't aware of this communication contemporaneously at the time between Ms. Ching and Orrick, were you?
MR. RAZI: Object to form.
THE WITNESS: I was not.
BY MR. SEARLES:
Q. With respect to her statement about "We've not normally obtained board approval to make payments on the above instruments," is that an accurate statement from your recollection?
MR. RAZI: Object to form.
THE WITNESS: I think if you give me that document where we have that, you can refresh my memory on that. I just -- I don't recall specifically without -- I mean I know we talked about it earlier today.
BY MR. SEARLES:
Q. All right. But in terms of your position at IndyMac and making payments -- IndyMac making -- the Bancorp making payments on the trust preferred and its wires instruments, do you recall ever going to the board seeking their permission to make those payments?
A. I don't recall. It would be -- that would be

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a clear item in that document that we had discussed earlier today if you want to refresh my memory on that.
Q. Which document are you --
A. It was talking about the dividend payment. It had the amount on it. Do you know remember --
Q. Oh, this is the one where in the middle of March where --
A. Yeah, it was the bank preferred -- do you remember that, talking about 8 1/2 million and the conditions? That might have said one of the conditions is board approval or not. Do you see what I'm saying?
Q. Okay.
A. That's all I'm saying is that might help refresh my memory on that first point that you're making.
Q. All right.
Are you, Mr. Razi, looking for that exhibit?
MR. RAZI: I'm looking for it, but to be honest you've piled up so much paper here over the past two days that I don't think I'll be successful in finding it.
MS. SMITH: Which exhibit number are we looking for?
THE WITNESS: The one that was talking about --

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MR. SEARLES: I might be able to find it. I think I know what you're talking about. I'm not sure if this is the Exhibit 745, the one you're thinking of.
THE WITNESS: Yes, this is the one.
BY MR. SEARLES:
Q. And this relates to a IndyMac Bank dividend payment; correct?
A. Correct.
Q. Exhibit 745?
A. Yes.
Q. Whereas Ms. Ching's commentary relates to payments made by the Bancorp; correct?
MR. RAZI: Object to form.
THE WITNESS: Yeah, I mean it's interesting why one -- this one, the bank preferred, has board approval and declaration required. Maybe that was a regulatory matter, and this one, because it's the holding company, is not. I don't know.
BY MR. SEARLES:
Q. So as you sit here today, do you know whether board approval is, in fact, required for payments of the Bancorp trust preferred and wires?
A. I don't.
MR. SEARLES: Ben, can you find Exhibit 727? This is an exhibit we used yesterday.

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MR. RAZI: Sure.
MR. SEARLES: Thank you.
MR. RAZI: I will try.
MR. SEARLES: Thank you. It looks like this.
(Discussion off the record.)
MR. RAZI: Mr. Perry has it now.
THE WITNESS: Okay.
BY MR. SEARLES:
Q. This is an exhibit we looked at briefly yesterday. It's an e-mail from Brian Carter to the IMB senior managers, dated May 1, 2008, including a senior manager meeting agenda for Friday, May 2 along with a forecast update, dated the same date.
Do you see the agenda apparently calls for you to discuss the update on capital raising activities as well as you and Ms. Marsh to comment on the preliminary first quarter '08 earnings and 2008 forecast.
Do you see that?
A. I do.
Q. Is this document here when we were looking at Exhibit 668 and you were talking about providing to the board as soon as possible a --
A. That 4/24 one?
MR. RAZI: Just let him finish the question.
BY MR. SEARLES:

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Q. Yes, that 4/24 one. Exhibit 668, where you stated that you'd provide updated first quarter financials along with a 2008 forecast as soon as possible, whether the forecast that we're looking at here is that document that you stated you tried to provide to the board as soon as possible.
A. I'm not a hundred percent sure, but I don't think so yet. Because I think we're -- the board had -- we were getting close to releasing earnings, and I think what I was talking about was I was expecting us to have a draft, you know, 10-Q and projections for them to review. I think that's my opinion of what I was talking about there. I mean I could be wrong because I'm recalling four years later but . . . .
Q. No, I understand. The minutes apparently -- the note reflects you'll indicate you'll provide a draft Form 10-Q as soon as possible. You use the words, according to Ms. Ching in her minutes, of updated first quarter financials along with a 2008 forecast, which according to the agenda here is a preliminary first quarter earnings and 2008 forecast --
A. Yeah.
Q. -- using the same words. So I'm just wondering if the document here is what it is you intended to tell the board what you --

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A. I mean maybe I'm --
Q. -- would provide?
A. Maybe I'm parsing words, but the title of this is "Forecast Update." Normally when I use the words "indicated and updated first quarter financials," financials are -- I wouldn't refer to a forecast as financials. Do you see what I'm saying?
Q. I know. Unfortunately we're left arguing over the meaning of words, but that's the state of the record.
A. Yeah.
Q. But there is a similarity between the 2008 forecast and the minutes of Exhibit 668 and the exact same word "2008" --
A. Yeah.
Q. -- "forecast" here?
A. Yeah.
Q. Updated first quarter financials, would you consider what's attached to this forecast and IndyMac Bancorp P&L -- balance sheet, capital ratios, capital, goes on from there -- to be first quarter financials?
MR. RAZI: Objection. Asked and answered.
THE WITNESS: I can see how you would have that view. I'm just reading this literally what she said here. I just honestly don't remember. My view is

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when I see the word "quarterly financials," I'm talking about real financial statements, you know, with footnotes and all of that, not just the numbers. And these numbers I know -- still based on the date we didn't have final numbers for the first quarter yet. Our auditors had not signed off yet. We still, as I discussed, had not gotten the level 3 fair value accounting on our mortgage-backed securities portfolio resolved yet.
BY MR. SEARLES:
Q. Looking at the P&L in Exhibit 727 -- and this is dated May 2 of 2008. With respect to the line item for preferred perpetual dividends, again, do you see there's no contemplated payment of preferred dividends in the Q2, Q3, Q4 of '08; correct?
A. Yeah, I believe you. I'm just tying to find that column here.
Q. It's on page 2 of the slide deck which I think is the page you were on.
A. Okay.
Q. About a third of the way down, slightly indented. Preferred perpetual dividend?
A. I see it.
Q. Okay. And that according to this forecast contemplates a forecast no payment of preferred for

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those three quarters; correct?
A. Yeah. I mean that would jibe with my testimony and my recollection which is I was coming to the strong view that I was going to recommend to the board suspending that trust preferred, and we were building financial projections around that along with getting counsel's opinion and getting all the steps necessary to not only recommend it to the board for approval but to execute on it.
Q. The footnote 1 on this page that we're on, it says, "Includes securities mark-to-market adjustments due to downgrades, 12 million in Q1, 14.7 million in Q2." What does that refer to? Do you have an understanding of that entry?
A. It's interesting that you raise that issue because that 4/24 forecast -- you know, it goes to my point about making this was just a very rough and dirty one because this shows, you know, a loss for the first quarter of 194 million, and one of the things that caught my eyes -- it showed a total risk-based capital ratio of 9.85.
Q. Just for the record, what exhibit are you referring to?
A. This is that one I didn't recognize, 645.
Q. Exhibit 645.

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A. One of the things that very much caught my eye on that was this total risk-based capital at 9.85, which is below well capitalized, and you can see here -- that's why I'm saying I don't recall seeing this because I don't recall seeing a forecast during this period of time that had us not well capitalized.
Q. Just, again, so the record is clear, when you don't recall seeing this, you don't recall seeing what?
A. Exhibit 645. Because you can see here we're at 10/12, you know, in this forecast that's here. The fact of the matter is our actual number was 10.26, you know, when we filed our financial statements, you know -- you know -- you know, less than a few, you know, six or seven or eight business days later.
Q. Again, going back to Exhibit 861, which is Ms. Ching's notes of the board meeting?
A. Yes.
Q. I can give you another copy if you'd like. Okay. There we go.
You say you don't recall seeing Exhibit 645, which showed a capital ratio falling to 9.85 percent, but if you look at Ms. Ching's notes in Exhibit 861 on the first page, there's an entry a little less than half the way down. "Will take capital from 10.10 percent to 9.85 percent (Go from well to adequately capitalized.)"

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Seeing that, does that refresh your recollection as to whether you, in fact, saw Exhibit 645 that forecasted exactly those numbers?
A. I think that's a good point, but what it would say, though, is, again, this forecast -- and you have a point. I must have seen this, but that's just a recollection issue four years later. I think my point is a bigger one which is this rough and dirty forecast on 4/24 was not accurate in any way, shape, or form. You can see that after we're getting more accurate information about how to properly spread and value those mortgage-backed securities, which still were not completed on May 2, we're back up to 10.12 already in terms of total risk-based capital.
Q. Okay. With respect to this exhibit, the forecast reflected in Exhibit 727, do you have any doubt that you saw this forecast?
A. No.
Q. Okay. In fact, you at the meeting spoke to it; correct?
A. Yes. I mean I just would point out one point on this forecast which is we probably -- just to be precise we have an error in the first quarter column title. It should not be titled "Actual." Right? Just so we all understand it ourselves. An actual number is

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an actual number. We didn't have certified financial statements as of May 2.
Q. All right. Did you note that --
A. No, I'm just noting it here after getting cross-examined for two days.
Q. It's been fun, hasn't it?
(Discussion off the record.)
MR. SEARLES: Do you want to take two?
THE WITNESS: That would be great.
THE VIDEOGRAPHER: This is the end of disk No. 3 at the deposition of Michael W. Perry. We're going off the record at 4:26 p.m.
(Recess taken from 4:26 p.m. to 4:37 p.m.)
THE VIDEOGRAPHER: This begins disk No. 4 in the deposition of Michael W. Perry, and we are back on the record at 4:37 p.m.
BY MR. SEARLES:
Q. I'd like to show you what's been previously marked as Exhibit 839. This is not an e-mail that you are cc'd on. I'd like to ask you a question with respect to it.
Mr. Nebot, what is his position at IndyMac as of May, 2008?
A. He was -- his title, I believe, was corporate treasurer.

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Q. Okay. And this is a -- this e-mail -- this series of e-mails depicted in this exhibit is communications between Mr. Nebot and Brett Cooper at Orrick Herrington in San Francisco. Again, did you have any contemporaneous knowledge of these communications at the time in May of 2008?
A. And Christina Ching, our corporate secretary too.
Q. Okay. But in terms of being cc'd on these e-mails.
A. I don't believe I had any contemporaneous knowledge.
Q. Okay.
A. I don't recall --
Q. All right.
A. -- being aware of this, and I wasn't copied on this.
Q. All right.
A. I don't believe.
Q. And did you commission Mr. Nebot or Ms. Ching to finalize the next steps on how to suspend the bank and Bancorp preferred dividends?
MR. RAZI: Object to form.
THE WITNESS: Yeah, that's a pretty formal question. I mean I think that we had charge -- I had

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charged our team with taking all the steps necessary to be prepared to do that in case the board approved my recommendation.
BY MR. SEARLES:
Q. I see. We saw with respect to the board approval of the various prospectuses, the April 3 prospectus, the May 2 prospectus -- do you recall those exhibits where they're telephonic committee meeting minutes of the board and attached to them are UWCs authorizing the issuance of another prospectus? Do you recall those exhibits?
A. I do.
Q. Do you recall how the board ultimately approved the suspension of the bank and Bancorp preferred instruments?
A. Unless you provide me with a document, I don't know just off the top of --
Q. You don't recall if it was done by UWC?
A. I don't remember.
Q. I'd like to show you what's been previously marked as Exhibit 728.
A. Okay.
Q. Does this -- this is an e-mail dated -- or couple of e-mails dated May 2, 2008, between Christina Ching and others at IndyMac and Orrick Herrington.

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Again, does this refresh your recollection at all as to how the board acted -- in what manner it acted to approve the suspension of the preferred payments by the bank and Bancorp?
A. As you noted, I wasn't -- it doesn't look like I was privy to these e-mails or copied on them. But it looks like it probably wasn't an unanimous written consent and more was at a board meeting than a resolution. Just an educated guess on my part.
Q. Again, you had no contemporaneous knowledge of these communications reflected in Exhibit 728?
A. Not that I recall.
Q. I'm showing you Exhibit 754.
A. Okay.
Q. 754 is, again, communications between Orrick and Christina Ching, Francisco Nebot, and potentially others within IndyMac enclosing draft board resolutions for the deferral of the preferred instruments. This is dated Sunday, May 4, 2008.
Again, you weren't aware -- had any contemporaneous knowledge of these communications, did you?
A. I don't believe so.
Q. Exhibit 729.
A. Okay.

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Q. Again, this is another e-mail communication between -- no, excuse me. I take that back. Do you recognize this exhibit?
A. I don't recall seeing this before.
Q. All right. And Dennis Sison, who is he at IndyMac?
A. That's a name I don't -- you know, I just only recognize by title here. I'm not sure that I've ever met Dennis.
Q. Did you have any contemporaneous knowledge as of May 5, 2008, that drafts of the disclosure of IndyMac's decision to suspend the preferred dividends to be included in the 10-Q were being circulated?
A. Not that I recall.
Q. And Exhibit 730.
A. Okay.
Q. Again, this is a collection of e-mails dated May 2, 2008, between Orrick and IndyMac, Mr. Sosnovich, Ms. Ching, and others.
Again, did you have any contemporaneous knowledge of these communications?
A. I don't believe so.
Q. I'm showing you Exhibit 631.
A. Okay.
Q. Do you recognize this exhibit?

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A. I have a vague recollection of it, yes. It's an e-mail that I wrote.
Q. Okay. It's an e-mail from you, dated May 6, 2008, to members of the board as well as others within IndyMac; correct?
A. That's correct.
Q. And on this date you conclude, "P.S. Christina Ching will be" -- first, take that back. On the second paragraph you say you've decided to cancel the board meeting tomorrow. Do you recall doing that?
A. Yeah, we didn't have a choice. The purpose of the board meeting was to go through the quarterly results, and we didn't have them completed yet because Ernst & Young hadn't sign off yet.
Q. At the bottom, "P.S. Christina Ching will be circulating a unanimous written consent along with our formal materials recommending a suspend payment of a trust preferred and preferred dividends indefinitely."
Do you see that?
A. I do.
Q. You've drawn this distinction in the past between these telephonic committee minutes of the board versus a formal board meeting. Do you recall soliciting any legal advice as to whether the board could act solely through its unanimous written consent to approve

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the suspension of the preferred dividends?
A. I don't recall personally doing that, no.
Q. It was your understanding that at least at this time that was an appropriate manner in which to achieve that authorization?
A. I'm not sure -- I don't recall whether I gave that formal consideration or I expected my team to raise that with me if it was a problem.
Q. I see. If you could go back just briefly to Exhibit 730. At the bottom of the page, Ms. Ching is reporting as of May 2, 2008, 11:27 a.m. "Although we won't be requesting a certification of the first quarter 10-Q, we'd like Orrick to review the document in support of the transition process. I believe you have a draft already."
We were discussing earlier whether the financial forecast and that board minutes of April 24 reflected the kind of more informal forecast updates or reflected an actual draft of the 10-Q. Do you recall drafts of the 10-Q being available for circulation and review as early as prior to May 2, 2008?
A. I mean it's definitely possible that -- you know, the 10-Q is a big document. There were a lot of people who were reviewing it for issues besides, you know, numbers, the final numbers; right? The real key

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issues that were holding us up weren't, per else, disclosure issues. They were, you know, valuation issues given the illiquidity in the marketplace so that someone could review a draft, and then the numbers could drop in later -- for disclosure issues, and the numbers could drop in later. And that happened -- from time to time I'm aware that that was the practice at our company like it was at many different companies.
Q. I'd like to show you what's been marked as Exhibit 757.
A. Okay.
Q. Do you recognize this exhibit?
A. Yes, I do.
Q. And this is an e-mail from yourself, dated May 8, 2008, to members of the board, certain individuals within IndyMac, and certain individuals at JPMorgan Chase; correct? At least at the top of the page.
A. It doesn't have the bcc's. Yes, it's in response to Ms. Ching, the corporate secretary's -- on top of her e-mail to the board of directors requesting their approval for suspension of these various preferred dividends.
Q. Okay. And I think the bcc's, to the extent there are any, would be reflected on the last page of

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the exhibit. Is that what you're -- if you turn to -- flip it over. The last page. On the backside. Is that what you were looking for?
A. Okay.
Q. And then you see attached to this exhibit unanimous written consents for the approval of the suspension.
A. Okay.
Q. Seeing these, does this refresh your recollection as to how the board ultimately authorized the suspension of the preferred dividends?
A. Yeah, I think what happened, right, is we had planned to do this in a board meeting, just refreshing my memory here, and because our financial statements weren't completed and certified under Sarbannes-Oxley, we didn't feel just for this one issue alone -- the primary purpose of the meeting, you know, beyond -- this was an important purpose of the meeting too, but the bigger time purpose would have been to review the financials and that was not something that we were prepared to do because we weren't completed with our Sarbannes-Oxley process and our auditors hadn't signed off. So it looks like what we did is we changed them from being board resolutions to unanimous written consents because there was no purpose to have that

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physical board meeting.
Q. I see.
A. But I think, you know, the e-mail that I put on top of this shows that my view is I didn't have the authority to make this decision alone. In other words, I was justifying my recommendation to the board here. That's how I interpret what I'm doing here with this e-mail.
Q. Do you recall the e-mail from Ms. Ching where she's questioning Orrick on the subject of is there actually any requirement for board approval since in the past with respect to the Bancorp preferred instruments those payments were made without board approval? Do you recall any communication with counsel that you were personally aware of where it was determined that board approval was, in fact, required to suspend those payments as opposed to it just being perhaps an element of good governance?
MR. RAZI: Object to form.
THE WITNESS: Well, I mean I think one of the things that you said in there was not correct. It was -- I think that you said that -- well, can you repeat the question for me and I'll --
BY MR. SEARLES:
Q. Well, we saw that exhibit that you weren't

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cc'd on but a communication with Ms. Ching and Orrick where she's questioning Orrick do we need board approval to suspend these payments because in the past we've never --
A. Okay. Yeah, let me --
Q. Wait. Let me ask my question. Let me repeat it, and then please don't interrupt --
A. Can I respond --
Q. Let me just ask my question, and then the court reporter will be able to get this down, and the transcript will be, to the extent it can be, accurate.
Ms. Ching is asking Orrick do we need board approval to suspend the Bancorp preferred dividends and wires interest payments because in the past the Bancorp has never required board approval to make the payments.
Do you recall that exhibit?
MR. RAZI: Objection. Lacks foundation.
THE WITNESS: I recall testifying to you that I wasn't sure that she was accurate one way or the other whether the Bancorp board approved those dividends or not.
BY MR. SEARLES:
Q. No, my --
A. You were saying -- you said in your first question to me that as a fact that they were -- didn't

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require board approval, and we had concluded earlier in our conversation that it was -- that we didn't know. I didn't know, and you didn't present me with any evidence to the contrary.
Q. All right. I understand.
A. That's the point that I'm trying to make first. It wasn't --
Q. My --
A. You presented it as a fact in your question.
Q. No, I just -- let me ask my question and then pay attention to my question. All I was asking in my initial question to you was do you recall the exhibit?
MR. RAZI: Object to form.
THE WITNESS: No, your initial question was not do you recall the exhibit. It had --
BY MR. SEARLES:
Q. It's a new question.
A. -- considerably more wording.
Q. Okay. Just so that we can -- just pay attention to my question. Do you recall the exhibit where I showed you a few minutes ago where Ms. Ching is communicating with Orrick, questioning whether Bancorp requires board approval to suspend payments because in the past Bancorp has not required board approval to make payments on the preferred dividends or interest

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payments? Do you recall that exhibit?
MR. RAZI: Object to form.
THE WITNESS: I recall that form generally. I'm not sure I agree with -- I need to see that form again in terms of whether she said in the past Bancorp didn't require board approval.
BY MR. SEARLES:
Q. Okay. With respect to the issue of whether you knew for a fact that Bancorp required board approval to make those payments, your earlier testimony was you didn't know?
A. That's correct.
Q. With respect to the issue of whether Bancorp required board approval to suspend those payments, did you know as a fact whether board approval was required to suspend those payments?
A. I don't know for a fact in the document, other than, you know, what I've been told in preparation, that there was a requirement. Okay? Except for one issue which is I did not have the authority under my CEO authorities document to suspend those.
Q. Did you have the authority under your CEO authorization to make those payments? I'm talking about the Bancorp preferred payments.
A. I don't recall specifically.

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Q. Well, do you recall specifically, then, whether your authorization spoke one way or another whether you had the authorization to either make the payments or to suspend those payments?
A. My recollection is that I did not have the authority to take action on capital markets type transactions over -- I only had the authority on certain debt at a certain level. So this was a large -- these were large capital markets transactions that the board reserved powers under those. But I think the point is moot because my understanding is the documents required board approval. My further understanding is that New York Stock Exchange required board approval on the public piece of the preferred.
Q. When did you come to that understanding?
A. In my preparations.
Q. Okay. You didn't have that understanding contemporaneously at the time in May of 2008?
A. Well, in May of 2008, without having kind of a, you know, legalized understanding, I had a layman's businessmen understanding that these -- I was operating under a layman's businessmen's understanding that these dividend payments required board approval to suspend.
Q. Regardless whether the board approval was required, the board ultimately approved the suspension

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of these preferred payments by the bank and Bancorp; correct?
A. They did.
Q. By unanimous written consent; correct?
A. They did.
Q. All right. I guess my ultimate question to you is from the documents we saw on April 24, the board minutes and Ms. Ching's notes, where her notes indicate that you said that these preferred instruments will be suspended here on out and you'd come to the conclusion in your own mind, a very firm conclusion, that these payments should be suspended and as reflected in earlier exhibits of calling board meetings within a day and obtaining unanimous written consents within a day to do issuing prospectuses, for example, why didn't you act more quickly in obtaining board approval to suspend those preferred instruments?
MR. RAZI: Object to form.
THE WITNESS: I mean, first of all, I think you're kind of misconstruing that. We were -- I didn't even have -- you can see that the reason that we had to delay the board meeting is I didn't even have first quarter numbers yet. Okay? We didn't even know where we were yet in terms of our final numbers for the first quarter. We were still putting together all of that

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information. You know, we didn't -- you know, we didn't have enough information, in my opinion -- I didn't have enough information to make a judgment call on that.
As I discussed earlier, I had previously told the regulators, "Look, I can't go out and raise capital because any investor is going to want to know first what is our first quarter numbers and what does our projection look like?" We were very focussed on getting those numbers done, getting it resolved, determining whether we were well capitalized or not, what our results were for the first quarter, what our financial projection was going forward.
There was no doubt in my mind that I was strongly leaning towards recommending to the board in late April and we were making plans to make a recommendation to suspend those preferred dividends. You're basically going we should have done this two or three days earlier or one or two days earlier. You know, that's a very tough hindsight issue.
I think you can see here the evidence of my e-mail on top of Christina Ching's on Thursday. So two business days before we announced to the public we suspended this dividend, I'm writing an e-mail justifying my recommendation. So I didn't take it for granted that the board was going to approve that, but I

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also discussed with the board and laid some groundwork with them because you don't just drop on a board some unanimous written consent to suspend dividends. You have to have some discussions with them. What do you think? So yeah, I had a -- by this time I had a high confidence level that they were going to approve it, but it wasn't a certainty.
BY MR. SEARLES:
Q. My question was --
A. Because I had had some discuss with them.
Q. Right. And the discussions reflected in Ms. Ching's notes -- those discussions at least began one day after the MBS Moody's downgrades on April 24 where her notes reflect that you said that the preferred dividends will be suspended from here on out.
MR. RAZI: Object to form and misstates the evidence.
BY MR. SEARLES:
Q. The notes will speak for themselves --
A. Yeah, I might have said that, but I didn't have the authority to say that -- if they said that they're saying my view is I think we should suspend them from here on out. I might have said it on April 24. I might have said it earlier than that. My recollection is we had some discussions about suspending the trust

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preferred dividends before the bond downgrades.
I also recall that I told shareholders back when I was questioned on this in, you know, the beginning of your allegation period around 2/12 in the earnings call -- well, I said I thought it was highly likely that we would not suspend those. Things changed, but I also pointed out to them during that meeting that we had the contractual right to do this, to defer these.
Q. And as chairman of the board of Bancorp and the bank, you had authority to call a board meeting; correct?
MR. RAZI: Objection. Calls for a legal conclusion.
THE WITNESS: Yeah, I think so.
BY MR. SEARLES:
Q. You hope so at least?
A. Yeah, I think so.
Q. Again, given that power and given your strong viewpoint that appears to have been formed as early potentially as April 24, why didn't you call a board meeting sooner to have them through a unanimous written consent or telephonic board meeting or some other means to suspend the preferreds? Why did you wait nearly three weeks?
MR. RAZI: Objection. Asked and answered.

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THE WITNESS: I think we were getting -- we were doing our groundwork as we said. We were putting financial projections together. I wanted to talk to managers about it. Hear them out. I was still hearing the CFO out, you know, a day or two before I made this recommendation to the board. And so we were -- there was a lot of groundwork that had to be laid in terms of explaining to the management team, explaining it to your board.

I'm probably sure I talked to the OTS about it. I don't know. We certainly talked -- you know, we had to talk to outside counsel about it. We had to make sure we did it in the right way so that we didn't violate our debt covenants and create a default. All those Ts had to be crossed and Is had to be dotted.

Also, because it was a judgment call on my part, it was not a for sure thing, and the CFO is -- you know, having a different view makes that very clear. Okay? The OTS was not directing us to do this. Okay? So it was a judgment call on my part. Okay? I thought it was the right judgment at the time. I thought it was the conservative judgment at the time, but it was a judgment call. Because it was a judgment call -- could I have made that judgment in my mind earlier? Possibly, but that's just, you know, all hypothetical.

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BY MR. SEARLES:

Q. Did you --

A. I mean I didn't intentionally delay this. I did not intentionally delay this if that's what you're asking me. In my mind somehow I intentionally delayed this for some lack -- because I didn't want to disclose this to shareholders? That's just baloney.

Q. We saw in Exhibit 600 the e-mail from Ms. Marsh -- actually from you on April 4 of 2008 where you're stating that she had a good idea to delay the earnings release date from May 1 to May 12 in part to be able to raise -- continue to raise stock under the DSPP.

Do you recall that exhibit?

A. I do.

Q. Did you -- in the context of this decision you came to in your mind as potentially as early as April 24 to suspend the preferred dividends, did you personally solicit any legal advice from any outside or inside lawyer on whether IndyMac should continue to sell stock under the DSPP program in light of the likelihood or decision in your mind that preferred dividends should be suspended?

MR. RAZI: Object to form.

THE WITNESS: Well, I mean it was -- the likelihood that I would recommend to the board?

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BY MR. SEARLES:

Q. Well, I'm wondering personally -- did you personally solicit any legal advice from any inside or outside counsel on the proprietary of continuing to raise capital under the DSPP in the face of the looming board decision of suspending the preferred dividends?

MR. RAZI: Object to form.

THE WITNESS: I didn't solicit counsel opinion on -- that my views to -- were becoming strong to recommend to the board that they approve dividend suspensions and that because my strong view to recommend this to the board for approval that that would -- I wouldn't have never thought that my strong view to recommend something to the board would constitute a disclosure item.

BY MR. SEARLES:

Q. And are you aware of any -- did you have any contemporaneous knowledge of any communication by anyone else within IndyMac on the propriety of continuing to raise capital under the DSPP in light of your strong view as chairman of the board that the preferred dividends should be suspended?

MR. RAZI: Object to form.

THE WITNESS: I don't know.

BY MR. SEARLES:

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Q. All right. I'd like to show you what's been marked as Exhibit 725.

A. Okay.

Q. Do you recognize this exhibit?

A. I do.

Q. What are we looking at here?

A. We're looking at the 8-K we filed on May 1.

Q. This, in part, disclosed, as you were legally required to disclose, the departure of Mr. Keys from the company; correct?

MR. RAZI: Object to form.

THE WITNESS: That's correct.

BY MR. SEARLES:

Q. I'd like to show you Exhibit 804.

A. Okay. I mean is the difference between this just the --

Q. Oh, no, I assume -- but I may be wrong -- that the Form 8-Ks are the same. That's not the purpose of my question.

A. Okay.

Q. But in 804, Exhibit 804, this is an e-mail from Pam Marsh, dated April 30, 2008, at 7:51 p.m. After the markets close; correct?

A. That's correct.

Q. And she states here, "Members of the board,

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attached please find the Form 8-K that was filed this evening related to the change in our CFO. In addition to the disclosure on the CFO change, we've also added as an exhibit our communication to our employees which will be published on the blog this evening as well. We bring this to your attention as this communication also provides a confirmation that we'll be on schedule to report our first quarter reports on May 12 and a preliminary update on our first quarter results with a high-level overview of where we presently stand."

She says, "We felt it was very important to provide this additional information given the uncertainty in the market with respect to IndyMac at this time." She concludes, "Let me know if you have any questions. And this e-mail is cc'd to yourself.

Do you see that?

A. I see that.

Q. Or sent to you?

A. Yes.

Q. I'm curious as to the phrasing of her statement "We felt it was very important to provide this additional information given the uncertainty in the market with respect to IndyMac at this time."

Do you know what she's referring to?

MR. RAZI: Object to form.

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THE WITNESS: You know, I mean other than it's, you know, a negative thing to have your CFO leave, you know, in the middle of a financial crisis. I don't recall specifically why -- you'd have to ask her specifically that question.

BY MR. SEARLES:

Q. Well, she's using the collective "we."

A. Yeah.

Q. It infers potentially in my mind communications potentially involving you on the subject --

A. Right.

Q. -- of providing some additional information other than the negative information that Mr. Keys left the company. Do you recall any discussions about wanting to add some additional information other than just simply making the announcement that your CFO departed --

A. Yeah, I think one of the things that just kind of hit me that I think caused us to provide an additional update and I think may have been -- may have been -- I'm not saying it was but may have been the primary reason we gave this business update -- you know, I'd kind of forgotten this, but it just kind of hit me that we had a shareholder's meeting the next day. We

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had originally planned to give the whole earnings update at the shareholder's meeting. So you're sitting there going, "What are we going to talk about at the shareholder's meeting? Can't we give them a little bit of information about -- you know, preliminary information about the quarter?"

And that's, you know, I think what we were trying to do here was to try to give them some preliminary information but still knowing that our numbers were not certified. And that's why I think you see here that we didn't -- my recollection now is -- and just kind of getting refreshed as we're talking -- is we didn't put an exact dollar amount, I think, right, because we didn't have an exact dollar amount.

Q. Dollar amount of what?

A. The earnings -- the loss for the quarter.

Q. I see.

A. Our loss for the Q1 will decline by roughly 50 to 60 percent. We're kind of saying we think that's the range. We haven't even got it certified yet. But I think that my recollection is that we had the shareholder's meeting the next day.

Q. Right. And --

A. And so we wanted to have some updated information to provide them. And I know that you think

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that this is somehow just because of the one statement where I said I believe we turned the corner, but there are other statements in here talking about the fact that some people have questioned IndyMac's survivability.

And then I conclude with in this section, "With all of the above said, our stock remains under pressure because, as the last major independent home lender, we're at the center of this storm in the housing and mortgage markets, and to sustain sufficient capital levels to keep IndyMac safe and sound through this crisis period, we've been raising capital every day through the DSPP, which itself puts pressure on the stock price.

I mean the bottom line is I think we presented a balanced, fair, and accurate 8-K on May 1 -- filed on the night of 4/30, and we reviewed this with our shareholders the next day.

Q. Getting back to the sentence I'm interested in which Ms. Marsh -- where she states, "We felt it was very important to provide this additional information per any uncertainty in the market with respect to IndyMac at this time."

Did you feel that Mr. Keys' departure from IndyMac created a certain level of uncertainty within the market with respect to the company?

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A. Absolutely. It always does when you have a CFO departure.
Q. Okay. Particularly an unplanned one like the one you had; right?
A. Any time -- unless you have a requirement. Even if you have one where the purpose is leaving for another job, that creates some uncertainty.
Q. I'm reading this, and all I can do is read this and interpret it. I'm not trying to insinuate anything, but just the words to me suggest that there's a certainly level of uncertainty in the market created by Mr. Keys' departure and we, Ms. Marsh and perhaps others, including yourself, felt it was very important to provide additional information to calm the market and to calm the uncertainty in the market --
MR. RAZI: Object to the form. That misstates what's in the document.
THE WITNESS: I think your timing is off on that; right? The market didn't know about Scott Keys yet.
BY MR. SEARLES:
Q. No, but it soon would.
A. No, no, no. When she's talking about uncertainty, she's not talking about the uncertainty created by our CFO leaving because he hasn't -- they

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don't know the CFO has left yet when she's writing this.
Q. Okay.
A. Do you see that what I'm saying?
Q. All right.
A. The uncertainty is yes. There's a significant uncertainty about IndyMac as of May 1 like there was for lots of financial players.
Q. And was the objective -- when she says, "It's very important to provide this additional information," is that additional information meant to calm the uncertainty in the point market concerning IndyMac?
MR. RAZI: Object to form.
THE WITNESS: I think that what we were trying to do here, as I said with a refreshed recollection, is we had scheduled the May 1 shareholder's meeting and the earnings to be the same day. We unfortunately could not do that realistically with all the accounting and valuation issues and the illiquid markets to have those be on the same date. We were trying to provide those shareholders on May 1 with at least some idea so we'd have something to discuss with them in the shareholder's meeting that was being held the next day.
Certainly having your CFO leave under these circumstances and in this time period is a negative. Okay? No doubt about it. It creates more uncertainty

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than the uncertainty she's talking about here. All we tried to do is present a balanced set of facts for the quarter. Those facts include a loss that was substantially above the 2/12 projections projection. That was absorbed by the market in the marketplace, you know; right? The loss we're talking about here is substantially higher than that. The 2/12 forecast.
BY MR. SEARLES:
Q. Do you recall any discussion in connection with the issuance of this 8-K announcing Mr. Keys' departure given the negative impact that that announcement would have of the CFO leaving the company of providing some positive counterweight news in response to that?
A. I'm sorry. Say that again.
Q. In the context of issuing this 8-K, do you recall any discussions with Ms. Marsh or others within IndyMac that you're going to have to announce Mr. Keys' departure. You recognize it to be negative news. Do you recall any discussion that can we provide some counterweight, some positive news to the market to counterweight the negative news of announcing the snow's departure?
A. I wouldn't characterize it in that away I. We talked about uncertainty; right? What we were trying to

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do is provide certainty, greater certainty to the uncertainty, by issuing facts about what we thought our results were going to be for the first quarter. Okay? And that's what we did here.
Q. I asked you earlier in this 8-K you preface the bullet points by -- I'm stating, "I am here to tell you that I believe we have turned the corner and that our business is improving," and then you have six different items in support of that broad statement.
I asked you earlier today whether you believe that from March 25 prior to May 12 whether IndyMac disclosed any negative news to the market, and your earlier testimony was no, during that period.
MR. RAZI: Object to form. That misstates the testimony.
BY MR. SEARLES:
Q. Do you recall that?
A. I -- can you repeat that question for me, please?
Q. Do you recall earlier today I asked you the question I believe it was on some document dated March 25 and then going forward through prior to the announcement on May 12, whether in your opinion IndyMac affirmatively disclosed any negative information during that six- to seven-week period, and your testimony was

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no.
Do you recall that?
MR. RAZI: Objection. That misstates the testimony. The prior testimony will speak for itself.
THE WITNESS: I think you cherry-picked a particular period where we didn't have a lot of announcements.
BY MR. SEARLES:
Q. And you were going back to March 11?
A. Yes.
Q. You remember that discussion?
A. With that caveat and also the caveat there was plenty of other information about IndyMac by equity analysts and others out there in general, yes. I would agree with that. So here we're releasing on May 1 a loss that is substantially above the 2/12 forecast in terms of this first line item here. Substantially. And the market does not react negatively to that because they're not surprised because we warned on March 11 that it would be negative to that 2/12 forecast.
Q. Let me ask you with respect to your prior testimony, which I believe in the course of the transcript will speak for itself, but my understanding of what you said was between March 25 and prior to May 12 IndyMac did not affirmatively disclose any

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negative information to the market.
Did you consider your 8-K on May 1 stating that apart from Mr. Keys' departure -- did you consider the statement to the market "I am here to tell you that I believe we have turned a corner and that our business is improving" to be a negative statement?
MR. RAZI: Objection to the extent of the preface to the question.
THE WITNESS: I don't believe that that's a negative statement, but I said just before that some people have questioned our ability to survive, and then I concluded with "With the above said, our stock remains under pressure because as the last major independent home lender, we're at the center of the storm in the housing and mortgage markets."
I mean if we're staying that one sentence drives people and shareholders, sophisticated investors, unsophisticated investors, I don't think that one sentence drove anybody for anything. All of the bullet points here are factual. They were factual when I made them. They were factual when we reported results on May 12.
BY MR. SEARLES:
Q. All right. But what I'm trying to get to the point of is, in your opinion, through the issuance of

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this 8-K on this date, do you believe the update on the quarter was negative news to the market?
A. I believe that this update, the CFO portion of this update, was factual and negative news.
Q. But that's not my question --
A. I believe the remaining update on the quarter was factual information updating the quarter which some investors may interpret as positive and others may interpret as negative and did.
Q. And, in your opinion, was it negative or positive information where you're providing this financial update on the market where you're prefacing your commentary -- with paraphrasing it again -- "I'm here to tell you that we've turned the corner"?
MR. RAZI: Same objection.
THE WITNESS: I also said we're at the center of the storm. I think it was factual information. In terms of looking at the numbers, I think it's positive -- the results are positive relative to the fourth quarter.
BY MR. SEARLES:
Q. And did you believe IndyMac had, in fact, turned the corner on May 12, 2008, in light of your firm opinion that you developed on or around April 24 or shortly therefore that IndyMac would suspend its

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preferred dividends, and as one of the consequences of suspending preferred dividends, it would not be able to raise capital through the DSPP, and the likelihood of raising a significant slug of capital in the way of $500 million was not likely.
MR. RAZI: Objection.
BY MR. SEARLES:
Q. How can you say in light of those facts that IndyMac, in your opinion, turned the corner?
MR. RAZI: Objection. Compound, argumentative. You can answer.
THE WITNESS: I think there was a document you showed me reflect -- actually it's right here. My belief with respect to the suspending of the dividend is right here in this May 8 e-mail on Exhibit 757 where I say that "As we've discussed with JPMorgan and they concur, generally speaking, this should be seen, the preferred dividend cut, should be seen as a positive economic move for shareholders." Right? Because they're not getting the preferred dividends, and those are senior to them. No one knows for sure perceptionwise how the market could interpret this. In other words, there is a risk that this move could cause our stock to decline to a level that makes it difficult to raise capital through the DSPP. We don't think so,

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but it could. Okay? That was my view on May 8.
And JPMorgan in this document that I didn't write -- Christina Ching wrote on May 8 that she sent to the board said, "Given that the preferred securities are currently trading" -- "Given where the preferred securities are currently trading, JPMorgan believes the price already reflects the holder's anticipation of the interest deferral."
BY MR. SEARLES:
Q. And not with -- you understood at this time through the document we went through in April of '08 as we progressed through that month that the likely outcome of your dialogue with the OTS would be a downgrade to a CAMELS 4 with a formal enforcement action that would result in the suspension of the DSPP because of the effect on the stock price, that the CAMELS 4 downgrade would result in an inability to find investors for a big slug of capital. Do you recall that sequence of communications and development of your thought?
MR. RAZI: Objection. More compound questions.
MS. MATELIS: Join.
MR. RAZI: You can answer if understand the argument.
THE WITNESS: I'm having a hard time following

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that. I think that's the whole deal here is this is such a volatile period it's hard four years later studying for hours, even in hindsight, to follow the sequence of events. Do you see what I'm saying?
BY MR. SEARLES:
Q. Let's get back to the Exhibit 725, the Form 8-K. The MBS downgrades for Moody's had occurred on the 23rd, about one week before this; correct?
A. That's correct.
Q. Was there any discussion that you were a part of with respect to issuing this 8-K as to whether the effect of the MBS downgrades and effect on P&L and the effect of 120 million or even more on the capital ratios of those downgrades should be disclosed? You didn't upgrade the market with respect to the MBS downgrades, and I'm wondering why not?
MS. VETA: Object to form.
THE WITNESS: Because as I had previously testified, my recollection is we didn't have that buttoned down until the week just before we disclosed our earnings on May 12 because we still -- as I previously testified, we didn't have valuations of the mortgage-backed securities portfolio at 3/31 done even the week before the May 12 earnings release.
BY MR. SEARLES:

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Q. All right. Are you aware of IndyMac's past practice of promptly updating the market on the effect of MBS downgrades?
MR. RAZI: Object to form.
MS. MATELIS: Join.
BY MR. SEARLES:
Q. Prior to May 1, 2008?
A. I think that's -- I mean if you're talking about a one-time notification of the market or a couple time notification of the market -- I mean bond downgrades were a new phenomenon in either 2007 or 2008. I'd be happy to look at that with you.
Q. Let me show you what will soon be marked as Exhibit 932.
(Exhibit No. 932 was marked for identification.)
MR. RAZI: While that exhibit is being prepared if I could just ask the videographer to give me the elapsed time. We're going to be here for seven hours.
THE VIDEOGRAPHER: Just under six hours, 50 minutes.
MR. RAZI: Is that your understanding of the rule also, Mr. Searles?
MR. SEARLES: It's often waived. It depends

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on our opposing counsel's insistence on requirement to it. I have inferred from your commentary that they will be insisting on that. I have maybe 20 minutes worth of question. It's up to you.
MR. RAZI: So you have ten minutes of time, it looks like.
BY MR. SEARLES:
Q. Do you recognize Exhibit 932?
A. Is this our blog, the IMB report, this document?
Q. Yes. I direct your attention to page 5 of 13. There's an S&P and Moody's downgrades bonds backed by subprime mortgages, date of report July 12, 2007, where it's being reported that two days earlier on July 10 S&P and Moody's collectively downgraded certain bonds, and you're providing an update to the market that of those 20 bonds that were downgraded IndyMac owns one.
MR. RAZI: I'll note, for the record, my copy of the exhibit -- I don't know about other people's -- doesn't have any page numbers on it.
MR. SEARLES: 5 of 13.
MR. RAZI: The copy you gave me and the copy you gave Mr. Perry doesn't have page numbers.
THE WITNESS: I see that.
BY MR. SEARLES:

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Q. Do you recall updating the market to the effect of the downgrades in the summer of 2007?
A. Vaguely. But I think there's a big difference here between the --
Q. Just answer my question given the fact we only have ten minutes here so if you can just answer my question. Do you recall updating the market in 2007?
A. In a much more liquid market where you weren't doing level 3 accounting.
Q. All right. Let me show you what's soon to be marked as Exhibit 933.
(Exhibit No. 933 was marked for identification.)
BY MR. SEARLES:
Q. Directing your attention to -- it's on my 9 of 13. I don't know if your pages are similarly marked or not -- where on September 7, 2007, IndyMac was providing an update on current performance mid quarter. The press release is not attached.
A. Where is this? I'm sorry.
Q. September 7, 2007.
A. Okay.
Q. Do you recall that being a practice of IndyMac issuing mid-quarter guidance at least at that time, updating on guidance?

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A. I mean it's possible this was on our blog. I mean I just find it particularly offensive that this blog that we -- that I established that has a tremendous amount of contemporary data in it that no one in the industry disclosed, that you're going to use it against us as some -- and cite it negatively.
Q. No, my only question to you is given the impact of --
A. I'm just going to make that statement.
Q. All right. I don't mean to be offensive. My question to you, though, is with respect to the impact of the MBS downgrades in April, that affected 20 bonds, not one or two, why that wasn't disclosed in the 518-K?
A. Because we didn't have -- as I previously testified, we didn't have command of the financial implications of that related to the first and second quarter as I previously testified. We didn't even have our value, our mortgage-backed securities portfolio that wasn't downgraded as of March 31, 2008, yet completed and that's why we had to suspend that board meeting the week before May 12.
Q. I'd like to mark Exhibit 934.
(Exhibit No. 934 was marked for identification.)
MR. SEARLES: Mr. Razi, do you have any

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knowledge of how long we were on the record yesterday?
MR. RAZI: Yeah, I do.
MR. SEARLES: How long was it according to the videographer were we on the record yesterday?
MR. RAZI: I don't know according to the videographer. We were here all day.
MR. SEARLES: But you don't know if we used up seven hours or not?
MR. RAZI: No, but you're not entitled to 14 hours. Is that what you're suggesting?
MR. SEARLES: Seven hours a day. I'm just wondering why --
MR. RAZI: Mr. Searles, it's actually seven hours of deposition -- if you want to go off the record, I'd be happy to show you the federal rule.
MR. SEARLES: No, I'm quite familiar with it. Thank you.
BY MR. SEARLES:
Q. On this blog if you turn to the entry on August 7, 2007, IndyMac is, again, providing an update on bond downgrades. Do you see that?
A. On which date? I'm sorry.
Q. August 7, 2007.
A. Yeah, but I think, you know, these updates were not doing -- providing any financial information of

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the impact of these.
Q. You're at least disclosing they occurred and how many bonds in at least one of these examples -- how many bonds IndyMac --
A. That's already publicly out there.
Q. What's not publicly out there is which bonds are currently held by IndyMac; correct?
A. But you can -- that would only serve to help us with respect to those downgrades. As I pointed out, there were about 90 percent of the Bonds, maybe it was like 85 to 90, were owned by others. So any Claire -- an unsophisticated investor would assume that the worst that we owned all those bonds. A sophisticated investor would assume something else, but they probably wouldn't assume we only owned 10 or 15 percent.
Q. You're just speculating as to what an investor might assume --
A. No, no, I'm using an educated guess there.
Q. All right.
A. Based on my experience in running a company that issued bonds.
Q. You previously testified before the Commission with Mr. Chung that you agreed that an investor would not know which of the downgraded bonds are held as a matter of fact by IndyMac?

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A. Yes.
Q. Okay. With respect to the disclosure of the waiver of subprime risk weighting that occurred on March 12, 2008, did you solicit any advice from counsel on how that waiver should be disclosed?
MR. RAZI: Object to the form.
THE WITNESS: Did I personally?
BY MR. SEARLES:
Q. Yes.
A. No.
Q. Are you aware of anyone within IndyMac soliciting advice from counsel on that disclosure?
A. I'm not aware one way or the other.
Q. With respect to the disclosure that backdated the $18 million contribution that occurred on May 9, did you solicit advice from counsel on how -- if that contribution, that backdated contribution, should be disclosed?
MR. RAZI: Object to form.
THE WITNESS: There was no backdated contribution.
BY MR. SEARLES:
Q. But you know what I'm talking about, the $18 million contribution that occurred on May 9 that would be accrued to the books as of March 31?

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A. It was an $18 million accrual of a receivable. We were making accrual adjustments to IndyMac's March 31 books for a variety of issues that week that ended May 9 including over the weekend.
Q. With respect to soliciting advice of counsel that's one of the defenses that have been set forth in the papers here, did you solicit advice of counsel on whether to disclose that?
A. We informed counsel, and they were involved in and understood that issue. So they were aware of that issue. I don't think we specifically affirmatively said would you give us an opinion with respect to that issue because it wasn't an issue that anybody thought was a material disclosure item.
Q. And did you have contemporaneous knowledge in May of 2008 of any communications with counsel on the subject of this 18 million contribution?
A. Did I have contemporaneous knowledge of what?
Q. Of communications with counsel on the subject of the $18 million contribution?
A. Yes.
Q. What were those communications? Were they personal to you?
A. They were -- they participated in the audit committee meeting for sure the next day on May -- on

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May 10, a Saturday audit committee meeting. They were on that call where that item was discussed. So were our auditors and legal counsel were both on the phone with respect to that issue.
Q. All right. And on --
A. And it's possible -- I have a vague recollection that I might have talked to regulatory counsel the night of May 9, but I don't have a strong recollection of that, just a vague one.
Q. And on the calendar date of March 31, 2008, was there anything accrued on IndyMac Bank's books with respect to that $18 million contribution?
MR. RAZI: Object to form.
THE WITNESS: That's not required under generally accepted accounting principles to -- in accrual accounting, you accrue for things -- I mean can we stop for just a second?
BY MR. SEARLES:
Q. We're running out of time. I'm wondering with respect to the calendar date -- we can argue about the accounting principles. I'm wondering on the calendar date of March 31 was there anything accrued on IndyMac's books regarding an $18 million contribution on that calendar date?
A. No, of course. You know that that was accrued

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for on May 9.
Q. Was there any account receivable on IndyMac bank's books on the calendar date of March 31, regarding that $18 million contribution?
A. No.
Q. Was there any account payable recorded on IndyMac Bankcorp's books on the calendar date of March 31 regarding that contribution?
A. No, and there's not required to be under generally accepted accounting principles.
Q. Was there any commitment to pay on the calendar date of March 31 by the Bancorp to the bank on that $18 million contribution?
MR. RAZI: Object to form.
THE WITNESS: No. On the 18 million specifically, no.
BY MR. SEARLES:
Q. Do you recall any communications between Mr. Keys and Mr. Smith at Alston & Bird about the propriety of recording a capital contribution after the close of -- after March 31?
A. No, I don't.
MR. RAZI: Mr. Searles, we're now over seven hours; so are you about done?
MR. SEARLES: Yeah, I have two exhibits, and

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then we'll be done.
MR. RAZI: Are they exhibits the witness saw contemporaneously because you spent a lot of time today showing him documents he's never seen before.
MR. SEARLES: Well, let me just give him one.
MR. RAZI: This is very wasteful.
BY MR. SEARLES:
Q. This is Exhibit 913. E-mail between Mr. Smith and Mr. Scott regarding a receivable as capital, dated March 28, 2008.
MS. MATELIS: I think you mean Mr. Keys.
MR. SEARLES: I'm sorry. Mr. Keys, not Mr. Scott.
BY MR. SEARLES:
Q. Were you aware of these communications between Mr. Keys and Mr. Smith on this subject of recording a receivable and Mr. Smith's general sentiment that it could be problematic?
A. I wasn't, but subsequent to this I'm aware of his testimony in another legal matter where he confirms the validity of this receivable in his legal opinion.
Q. And that's -- in what other legal matter is that testimony you're referring to?
A. The trustee's case.
Q. All right. Thank you Mr. Razi.

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MR. RAZI: Thank you.
MR. SEARLES: Thank you, Mr. Perry.
THE WITNESS: Thank you.
THE VIDEOGRAPHER: This end today's proceedings in the deposition of Michael W. Perry. The number of disks used was four. We are officially going off the record at 5:51 p.m.
(Whereupon at 5:51 p.m. the taking of the instant deposition ceased.)

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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me. Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

_____
Signature of Deponent

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this _____ day of _____, 2012, and executed the above certificate in my presence.

_____
NOTARY PUBLIC IN AND FOR

_____
County Name

MY COMMISSION EXPIRES:

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DEPOSITION OFFICER'S CERTIFICATION
I, Lisa Moskowitz, a Certified Shorthand Reporter in the State of California, certify:
That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me.
That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed.
That the foregoing is a true and correct transcript of my shorthand notes so taken.
I further certify that I am not a relative or employee of any attorney or of any of the parties, nor financially interested in the action.
I declared under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Dated this date: April 20, 2012.

_____
LISA MOSKOWITZ, CA CSR No. 10816
Registered Professional Reporter

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