UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. LA-03517-A

INDYMAC BANCORP, INC.)

WITNESS: Michael W. Perry

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PLACE: Securities and Exchange Commission

5670 Wilshire Boulevard

Los Angeles, California

DATE: Wednesday, December 16, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 8:59 a.m.

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PROCEEDINGS

MR. TERCERO: We are on the record at 8:59 a.m. on Wednesday, December 16th, 2009.

Could you please raise your right hand?

Whereupon,

MICHAEL W. PERRY

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. TERCERO:

Q Could you please state and spell your full name?

A Michael Wayne Perry, M-i-c-h-a-e-l, W-a-y-n-e P-e-r-r-y.

Q My name is Roberto Tercero, and I am with Cindy Eson, Nicholas Chung, Lorraine Pearson, and Christopher Martinez.

We are officers of the Commission for purposes of this proceeding. This is an investigation by the United States Securities and Exchange Commission In the Matter of IndyMac Bancorp, Incorporated, which is Matter No. LA-3517.

The investigation is to determine whether there have been violations of the federal securities laws. However, the facts developed during the course of the investigation may constitute violations of other federal or state civil or criminal laws.

Before going on the record this morning, the staff provided you with a copy of the Formal Order of Investigation in this matter, as it has been amended. The Formal Order will be available to you here in this room throughout the proceedings.

Have you had an opportunity to review the Formal Order of Investigation, as amended, Mr. Perry?

A I have.

Q Also before going on the record this morning, the staff provided you with a copy of the Commission's Supplemental Information Form, which is Form SEC-1662. A copy of that form was previously marked as Government Exhibit 1.

(SEC Exhibit No. 1 was referred to.)

BY MR. TERCERO:

Q Sir, have you had an opportunity to review Government Exhibit 1?

A I have.

Q Do you have any questions about it?

A I don't.

Q Mr. Perry, are you represented by counsel?

A I am.

MR. TERCERO: Would counsel please identify themselves?

MS. VETA: Good morning. Jean Veta from Covington

and Burling.
MR. RAZI: Benjamin Razi from Covington and Burling.
MR. TERCERO: And, counsel, are you representing Mr. Perry in his individual capacity today?
MS. VETA: We are.
(SEC Exhibit No. 210 was marked for identification.)
BY MR. TERCERO:
Q Let me now hand you what today has been marked as Government Exhibit 210.
Government Exhibit 210 is a copy of a subpoena with a date of September 17th, 2009.
Mr. Perry, is this a copy of the subpoena pursuant to which you are appearing here today?
A It is.
Q I will be asking you a number of questions today, as will other members of the staff. Everything that is said today will be reduced down into written form in a booklet called a transcript by the court reporter who is sitting to my left.
In order for the transcript to be clear, please abide by the following. First, please respond verbally and also in words to the questions that I pose to you. The court reporter is not able to record accurately nods of the head,

shrugs of the shoulder, or to take down accurately colloquialisms, like uh-huh to mean yes. Do you understand?
A I do.
Q Please let me finish speaking before you begin to answer and I will do my level best to not ask my next question until you are finished with your answer, as the court reporter cannot record two people speaking at the same time. Do you understand?
A I do.
Q If you don't understand or hear a question, please let me know and I will either repeat it or rephrase it. Do you understand?
A Yes, I do.
Q If you do respond to a question, the staff will assume that you understood the question and thereafter responded truthfully. Do you understand?
A Yes, I do.
Q Since this is a fact-finding inquiry, there is nothing wrong with your providing estimates, understandings, or beliefs, and you can provide a belief, even if you're not absolutely certain that something is true.
However, when you do any of those, please let me know what the basis of your estimate, approximation, understanding, or belief is, and then I will follow up and find out what the basis of it is. Do you understand?

A Yes, I do.
Q If you do not know the answer to a question, it's perfectly fine to say that you don't know. However, we are trying to obtain your best recollection of events. Do you understand?
A Yes, I do.
Q However, under no circumstances should you guess. Do you understand?
A Yes, I do.
Q Even though we are in a conference room today, the oath that you have taken is the one that is used in court. The testimony transcript can be used in later proceedings, including administrative and District Court proceedings.
Accordingly, you're obligated to make every effort to give the best, most complete and accurate answer to each question. Do you understand?
A Yes, I do.
Q Is there any reason why you cannot testify as required by your oath?
A No, there is not.
Q And has anything occurred in the last 72 hours that would impair your ability to recall events?
A No, there hasn't.
Q In addition, I want to advise you and counsel that the court reporter will not go off the record until one of

the members of the staff says we are off the record and therefore any statements that are made until the statement we are off the record is made will be recorded and will appear in the written transcript of your testimony. Do you understand?
A Yes, I do.
Q Finally, this is not an endurance test. If, for any reason, you need to take a break, whether it is to stretch your legs, to confer with counsel, whatever reason it may be, please let the staff know and we will go off the record as quickly as is appropriate. Do you understand?
A Yes, I do.
Q Are you known by any other names, other than the name that you gave at the beginning of this morning's proceeding, including any nicknames?
A Well, I mean, people call me Mike. Other than that, no.
Q What is your date of birth?
A October 13th, 1962.
Q And what is your place of birth?
A Sacramento, California.
Q What city and county do you live, sir?
A I live in San Marino, California, in Los Angeles, County.
Q And briefly, could you state what your post-high

school education is?

A I'm a graduate of California State University of Sacramento, with a Bachelor of Science degree in Business Administration.

Q What year did you obtain the degree?

A 1984.

Q Following your receipt of a Bachelor's degree, what, if any, employment did you then have?

A I -- I went to work for Peat, Marwick, Mitchell and Company, you know, now called KPMG, in Sacramento.

Q And what kind of work did you do at Peat, Marwick?

A I was an accountant and auditor.

Q Any particular type of clients?

A Various types of clients, from financial services to agribusiness to pension -- pension funds, local -- local governments, school districts, television stations.

Q How long were you at Peat, Marwick?

A From -- I think it was roughly August of 1984 to -- I believe it was May of 1987.

Q What work did you do after you were finished at Peat, Marwick?

A I went to work for a savings and loan in Sacramento called -- at that time called Commerce Savings Bank.

Q What work did you do at Commerce Savings Bank?

A Initially, I was hired as the controller and then

became the chief financial officer and then ultimately senior executive vice president in charge of their Mortgage Banking Division.

Q When you say mortgage banking, what do you mean?

A You know, the traditional mortgage banking business where you are originating home loans and selling those loans or -- or securitizing them and selling them to Fannie Mae and Freddie Mac, primarily FHA, VA, and to some private investors.

Q How long were you at Commerce Savings Bank?

A From -- from that May -- I believe it was from that May of '87 time frame until the end of -- until the end of 1992, till some time in December of 1992.

Q And what work, if any, did you do after that, sir?

A Then, you know, I came down to Southern California and became Chief Operating Officer of -- of a publicly-traded firm that was a predecessor to IndyMac called Countrywide Mortgage Investments, Inc. It was a mortgage REIT traded on the New York Stock Exchange.

I was also -- there was a management company that managed the REIT. The employees did not reside in the REIT and I believe that company's name was Countrywide Asset Management Corp., and I can't remember if my title was chief operating officer or president, but it was something like that.

Q And what did you do in your capacity of either chief operating officer or president?

A Well, I was essentially responsible for the day to day operations of the publicly-traded mortgage REIT.

Q And what work did the -- strike that. What business did the REIT engage in?

A It engaged in mortgage lending and mortgage securitization.

Q When you say mortgage securitization, what do you mean?

A Issuing mortgage-backed securities.

Q Now when you say issuing mortgage-backed securities, was this under some label of the Countrywide REIT you've identified?

A I believe there was a shelf registration that we issued, you know, CMO securities.

Q Other than the securitizations that you just identified, were there any other forms of methods by which mortgages were sold by the REIT?

A Well, actually, I don't think they were sold within the REIT. They were -- we had a taxable subsidiary and I think they were sold out of that entity, as I recall, and -- and yes, we -- we not only sold loans in securitized form but sold loans in whole loan form.

Q And were these loans to private purchasers,

government agencies, or something else?

A I mean, ultimately, we were selling to government agencies. I don't recall in those early -- you know, those first few years that we were selling to the government agencies. It's possible that we could have been.

Q Now how long were you the COO or president of the REIT?

A I haven't gone back and looked at the exact, you know, date, you know, the date that changed, but at some later point I became -- I'm trying to remember if I became president or just became CEO. Ultimately, at a point I became the CEO.

Q And at some point was there a change in the form of business of the REIT?

A Yeah. In -- in 1999, as a result of the global liquidity crisis that occurred in 1998, we developed a strategic plan that had us de-REITing and becoming a federal thrift, and we took that strategy to our shareholders and got approval to de-REIT and then became a thrift in July -- I believe it was July of 2000, federally-chartered thrift holding company in July of 2000.

Q What was the name of the entity at that point in time?

A I believe by that point in time, the name was IndyMac Bancorp and then the subsidiary was IndyMac Bank.

Q And the subsidiary was the regulated thrift?
A Correct.
Q During the course of the proceedings, I'm going to refer to the holding company as Bancorp. Will you understand that?
A Yes, I will.
Q And I will refer to the regulated thrift as either IndyMac Bank or IndyMac. Will you understand that?
A Yes.
Q What was your position, if any, at Bancorp?
A I was chairman and CEO.
Q In the July 2000 time frame, once it became a regulated thrift, did you have a position at IndyMac Bank?
A Yes, I believe I was also CEO of IndyMac Bank and -- and also chairman of that board, too.
Q Thank you for the clarification. How long did you remain the CEO of IndyMac Bank?
A Well, through -- through July 11th -- well, until I got a notice from the FDIC, essentially, and then there was a date when I also -- when my attorneys advised me to resign my position at the holding company. So I don't remember those exact dates.
Q Okay. But were they both in mid 2008?
A The holding company one might have been a few months after -- after that July date. I don't recall the

exact date.
Q Generally, as CEO of the Bancorp, what were your duties?
A Well, as -- as CEO of Bancorp, you know, I had the traditional duties of a public company, regulated holding company, regulated financial institution CEO, from, you know, strategic planning through, you know, risk management, through business strategy, you know, all of -- all of the functions that a normal CEO would have.
Q When you say risk management, what do you mean?
A Well, within risk management, you know, as a regulated financial institution, our primary regulator used a terminology CAMELS, which -- which we adopted, you know, at IndyMac as so that we would be in sync with them from a risk management standpoint and that had everything from capital adequacy, which is the C, to asset quality to management to earnings to liquidity to sensitivity to market risk, and -- and so, you know, and then, you know, there were numerous subcategories under each one of those overall categories that we dealt with from a risk management standpoint.
Q Turning to the 2006 to the mid 2008 time frame, did risk management incorporate anything else, other than as you've just testified?
A Not -- you know, not that I can recall. I mean, as I said, there were a lot of subcategories that would fall

under those categories.
Q Are you familiar with the term "post purchase quality control?"
A Yes, I am.
Q How are you familiar with that term?
A Well, it's an industry term that, you know, most mortgage lenders in the industry adopted and have an operating department that -- that performs post purchase quality control audits.
Q And could you describe your understanding of what those audits are?
A Yeah. The -- the audits are individual loan file reviews that are, you know, a sample of the loans that are produced or -- or other loans, could be delinquent loans, could be loans that are repurchased, and it's a file review that occurs on those individuals loans.
Q When you say file review, what do you mean?
A They're viewing the file to determine whether there are any issues related to that file and those -- those issues could be a number of factors.
Q What factors?
A Could be that the loan file, you know, someone made an error in accumulating the documentation in the file. It could be that the loan file -- you know, someone made an error in accumulating the documentation in the file. It

could be that the loan doesn't meet our internal guidelines. It could be more substantive issues where there are concerns about whether the borrower qualifies for the loan or not and potentially even fraud in some loans.
Q When you say fraud in some loans, what do you mean?
A Well, where someone made a material -- intentionally made a material misrepresentation to obtain that loan.
Q What type of material misrepresentation?
A You know, the -- probably the -- the most dangerous one would be someone who made a fraudulent appraisal, where, you know, either -- or -- or -- where -- where you had -- where you had value -- your smile is really distracting me.
Q I'm sorry.
A Where -- you know, where you would have the property being appraised for a value that was not an accurate market value of that property in a material way.
Q What other types of fraud?
A You know, another one would be having a straw buyer, someone who is put up as a buyer for a home when they have, you know, no intention of -- of -- of being the true buyer behind the loan.
Q Any others?
A I mean, I'm -- there's hundreds of, you know, types of unique frauds and I'm not familiar with all of them and I

could do my best to try to list more, if you would like.

Q Are there -- at least in the 2006 to mid 2007 time frame, were you aware of any of the most common types of frauds?

A Well, in the industry, yes. The industry published a lot of reports about the most common types of frauds. Fannie and Freddie, you know, published reports about the most common types of frauds, and, you know, the most common didn't necessarily mean the biggest losses either.

Q What were those most common types of frauds?

A The -- probably the most common type of fraud that you saw was a borrower who was claiming they were going to occupy the home as their primary residence and then -- in order to get a higher loan-to-value and put less down on the home and they would -- and get better pricing on the loan and they were not actually occupying the property as their primary residence.

Q Any others in the most common category?

A You -- you could have, you know, a borrower who misrepresented their income.

Q Any others, sir?

A Those would probably be the -- probably the two biggest ones, the most common ones that you would see.

Q Other than as you've already testified up until this point in time, were there any other factors that the

file review sought to determine?

A Well, you know, I mean, I wasn't involved in our quality control function for several years. It reported many layers down from me. So I'm probably not as familiar with all of the procedures that we were doing in that area, you know. As we got to be a much larger organization, I had a very deep management team and so I -- I -- I couldn't say for sure all -- all of the procedures we were doing in the quality control area.

Q Do you recall, however, any others, beyond the ones that you've just listed a few moments ago?

A In -- in terms of any other?

Q Any other matters that the loan file review sought to determine? You mentioned whether the loan file had all the documentation it required, whether internal guidelines had been met, whether the borrower qualified for the loan, as well as the fraud issues that we discussed.

I'm trying to determine whether the file review determined any other factors beyond those.

A I think at one point we had combined Quality Control and Compliance. So they might have been doing a compliance -- you know, Consumer Compliance Review at the time, but I'm not 100 percent sure on that.

Q And is that to determine compliance with some type of consumer law?

A Yes.

(SEC Exhibit No. 211 was marked for identification.)

BY MR. TERCERO:

Q Sir, let me now hand you what today has been marked as Government Exhibit No. 211.

For the record, Government Exhibit 211 is a multipage document, appears to be an Outlook Meeting Entry. It has a date of 7/16/2003 on it, and the very last page has a Production Identifier. Throughout the proceeding I will refer to the production identifiers as the beginning Bates Number on that page, and it states Perry_M_00085404.

Sir, I -- I doubt that you've seen the last page of the exhibit and you'll see documents in that form throughout the proceeding. That is to help the staff and others determine where in the production of documents the document appeared.

But the question to you is whether you recognize the document?

A I don't recall it specifically, no.

Q There is a reference on the very last page which says Meeting Overview to those. It states Requesting Meeting and then it says Grove Nichols and Rick Lieber.

Who is Grove Nichols?

A Grove Nichols was a senior manager and Executive

Committee manager at IndyMac who at this time, it appears, as the head of Enterprise Risk Management.

Q Okay. When you say senior manager, what do you mean?

A Well, we had two levels of top management at IndyMac. There was a Senior Management Group that, you know, in the later years, when we were a much larger organization, was, as I recall, over a hundred people and then we had an Executive Committee Group which was the most senior of that Senior Management Group and there were roughly 25, plus or minus, in that group.

Q What was the purpose, if any, of the Senior Management Group?

A Well, this was the key group of managers who were running various business units or departments with -- within IndyMac.

Q And what was the purpose of the Executive Committee?

A Well, as we got to be a larger group, that Senior Management Team got to be relatively unwieldy and -- and so at senior management meetings didn't have a lot of, you know, give and take because of the size of that and we wanted to have a smaller group that you could have, you know, a more informal give and take session with.

Q You mentioned meetings. How frequently did the

Executive Committee meet? Let's take again the 2006-mid 2008 time frame.

A Well, during that time frame, I would say the meetings were less regimented because of the, you know, challenges that, you know, that IndyMac was facing as a result of the market conditions that were out there. So, I mean, we generally liked to try to have the Executive Committee meet every quarter and the Senior Management Team roughly to do the same, but the meetings were sometimes more or less frequently than that.

Q You mentioned in your last answer the market conditions at the time. What market conditions are you referring to, sir?

A Well, I think, you know, from about 2007 on, the market conditions for housing and mortgage finance, you know, were -- were pretty bad and well known out in the industry and something we discussed extensively in -- in all of our filings.

Q At least at the time of this document, it appears to be, on the front page, July 16th, 2003, so in that time frame, who -- who was Rick Lieber in terms of job duties?

A Well, I probably wouldn't have recalled that he was Chief Credit Officer in July of 2003 because he had several different roles, but it appears from this document that that was his role during this time frame.

Q The very page that we've been talking about, Meeting Overview, has various agenda items and one agenda item is Number 8, PPQC Update, Findings Ratings and DQ Scope.

Do you have an understanding as to what Findings Ratings refers to?

A No, I mean, I don't specifically recall that, what that refers to, no.

Q Generally, then, what is it you recall?

A Well, I mean, -- I mean, as much -- I'm not much help on this one. I -- I would think that it refers to findings that are coming from the quality control reviews.

Q Now, is that an actual recollection or just an understanding of how the business was operating at that time or something else? So the question is what is the basis of your last answer?

A It's really more of the latter. It's more based on my experience. It's not a recollection.

(SEC Exhibit No. 212 was marked for identification.)

BY MR. TERCERO:

Q Sir, I'm going to hand you what today has been marked as Government Exhibit 212.

Could you take a look at it and let me know if you recognize it?

For the record, Government Exhibit 212 appears to

be a multipage document and appears to be an e-mail. It states at the top that it is from Michael Perry, has a date of December 1st, 2003, and is addressed to Rick Lieber and Grove Nichols. There is also a copy to _IndyMac Risk Managers. The subject is Re: Definition of "High Risk" in Quality Control Review Findings. The Production Identifier at the end is Perry_M_00038028.

And the question to you, sir, once you've had an opportunity to look through the exhibit, is do you recognize it?

(The witness reviewed the document.)

MS. VETA: Mr. Tercero, just so the record is clear, when you ask Mr. Perry whether he recognizes the document or recalls something, our understanding is that he recognizes separate and apart from any documents that may have been shown to him by counsel?

MR. TERCERO: Yes.

MS. VETA: Okay.

MR. TERCERO: But I believe in terms of understanding recollection, it's appropriate to ask when he last saw the document, not necessarily the context in which he saw it.

MS. VETA: I'm not sure that's appropriate or not, but let's go through and see if I've got a problem as you go forward.

MR. TERCERO: Okay.

THE WITNESS: I'm sorry. What was the question again?

BY MR. TERCERO:

Q Do you recognize the exhibit, sir? We're on Number 212.

A Yes, I do.

Q Is this an exhibit -- is this a document that you authored on or about December 1st, 2003?

A Well, the two pieces that I -- that show my authorship, yes.

Q Fair enough. Taking a look at the second page of the document, there appears to be an e-mail with the date of April 15th, 2003, and then it states, "Rick, I think we are materially overstating our "high risk" quality control findings as a result of your group finding "high risk" more broadly than industry standards" and that's the end of the phrase.

Do you recall on or about the time of the e-mail discussing, separate and apart from the e-mail, with Mr. Lieber high risk quality control findings, at least as a concept?

A I mean, I was going to say yes, and then you said separate and apart from the e-mail, and no, the answer is no. I mean, I recall -- I mean, I definitely recall this e-mail.

Q All right. Why did you write the e-mail that appears on the second page with the date and time of Tuesday, April 15th, 2003, 2:05 p.m.?

A I don't -- I mean, I don't recall specifically why I wrote it at that time.

Q Do you recall in or about this time frame having any questions concerning the findings used in the quality control context at IndyMac Bank?

A No. No, I don't recall that.

Q What is it that you recall about the e-mail? You said that you recalled it.

A Well, just as I read it, I recall the issue just in reading it and -- and -- and the issues that I raised, I -- I recall.

Q Okay. What is it that you recall about the issue?

A Well, I mean everything specifically here, I recall.

Q So does that include the definition of high risk?

A No, I don't recall specifically what the definition of high risk was at that point. The definitions changed many times over the years, but I'm just expressing the general view that the percentage was high and that -- that that -- there's either one of two things. Either we've got a definitional problem or we've got a quality control problem.

Q And how was it that you measured whether or not the high risk percentage was high or not?

A Well, I mean, I don't recall exactly how we -- we would measure that it was high, the percentage of findings were high. I think that's a judgmental area.

Q I'm asking how you defined it to determine whether or not the high risk findings were high or not.

A Well, what I was -- as you can read in this e-mail, I was saying that the percentage that was being expressed during that time period of high risk findings had no bearing on the loans that we were selling into the secondary market or on our repurchase level which was much lower than one percent.

Q When you say repurchase, what do you mean?

A Where an investor does their own QC work and then asks us to repurchase the loan because of some issue that's -- that's involved in that loan.

Q There is a phrase in the third paragraph -- well, a sentence that says, "Either we are doing the kind of business we should not be doing or your definition is too broad," and then the next sentence is, "It seems to me on the surface that your definition is too broad because your definition should mirror true risk which is the repurchase of a loan for representation and warranty breaches and were we cannot take that repurchase loan and very promptly sell it for a relatively small loss."

Did that statement as to what true risk is, did that continue to be your understanding of that phrase from the time of April 2003 onwards?

A I mean, generally, yes. I mean, I felt that the best measure of true risk was an investor asking us to repurchase the loan as a result of a rep and warranty violation or an early payment default.

Q When you say rep and warranty violation, what do you mean?

A When we sold loans to various investors, we made representations and warranties in contractual form and, you know, when you sell thousands of loans, there's going to be some that slip through the cracks that you end up selling that don't meet those reps and warranties and you have to repurchase them. That's why we, you know, accrued for in millions of dollars and disclosed a rep and warranty or secondary market reserve for that very issue.

Q Now towards the bottom of the e-mail, it states, "With discussion in mind, I would propose to modify your current definitions to the following," and then it lists three things, high risk, moderate risk, and low risk.

Under high risk, it states, "The loan is clearly unsaleable or saleable but at a price where IndyMac will suffer greater than a 5.5 percentage loss."

Do you recall why you chose that percentage?

A Well, again, there was no standard industry definitions of, you know, high, moderate, and low risk, and I was using my business experience and judgment to -- to -- to make a cutoff that I felt was an appropriate one for those categories.

Q Why did you feel that five percent was appropriate for high risk?

A Because I felt it was -- you know, it was a big enough loss that, you know, it -- you know, it was a bite. We were making generally a percent and a half gain on sale. So now we were not only losing our gain but we were losing five percent of the loan and it wasn't like the type of loss that you would lose if a loan defaulted but it was still, you know, in my opinion, five percent was a reasonable -- you know, somebody could argue it should be 10, you know, somebody could argue it should be less, but I felt that was kind of a reasonable range for a high risk finding.

BY MR. MARTINEZ:

Q Can you clarify how you defined loss in this context? Your purchase price, your origination costs, the par value of the loan?

A Yeah. I probably didn't define it that precisely because the purchase price of the loan generally would be between, you know, 98.5 and 102 or 3. So five percent of any of those numbers is roughly the same number. You know,

that -- that would have probably been a detail, you know, for them to work out whether they defined it as just the loan, par loan or the premium or discount we paid in originating that loan.

BY MR. TERCERO:

Q The next phrase is "moderate risk," and it says, "The loan has some deficiencies but is clearly saleable possibly at a discount no greater than a five point or five percent loss."

Why did you set that as the moderate risk level?

A You know, again, I -- I would just say it was my business judgment that that was a moderate risk.

Q And is that the same for low risk?

A Yes.

Q Now, when were the determinations to be made as to whether or not a loan was high, moderate, or low risk?

A Well, they would have -- they would be making it as a result of their quality control review.

Q In the context of this particular discussion, when did the quality control review occur?

A Well, it was a post purchase quality control review, so it was after the loan was funded.

Q Without regard to whether there was a repurchase or not?

A That's -- that's correct. They -- they did a

sample of all the loans that we funded.

Q When you say funded, what do you mean?

A You can use the term "funded, originated." They all mean closed the loan.

Q In this time frame, did IndyMac Bank actually purchase loans that had already been closed?

A I'm not sure about this time frame specifically, but definitely before this time frame and definitely after this time frame, but I couldn't say exactly in -- in April of 2003 we were purchasing loans.

Q If you look at the very first e-mail at the top of the very first page of the exhibit, it appears to be from you with a date of December 1st, 2003, and the time of 3:32 p.m., and the second paragraph says, "I do not agree at all that an act of omission or error that does not affect the saleability of a loan should be a "high risk" finding. "High risk" is the LOAN not our actions or lack thereof." Why was that your belief?

A Well, I mean probably the best way to explain it would be, you know, with an example.

Q Okay.

A You know, let's say that our procedures required us to do an appraisal review and the IndyMac operating staff did not -- failed to do that appraisal review. That certainly is a finding, but the -- it's not a high risk finding in my

viewpoint, unless they found that the -- when they went in and did the appraisal review, that there was actually a material problem with the appraisal. If they -- you know, if they -- you know, if there were no problem with the appraisal, to me, that's not a high risk finding involving the loan because that wouldn't have resulted in these -- these loss parameters that we're talking about on the second -- on the second page.

Q Now, was your conception of high, moderate, and low risk adopted by the quality -- by the Post Quality -- by the Post Purchase Quality Control Group?

A I'm not sure if it was or not.

Q Do you have an understanding as to what a lifetime loan loss estimate is?

A Yes, I do.

Q And what is your understanding?

A Well, it -- it actually is, ironically, something that you can't do at the loan level. Either a loan is a loss or it's not a loss. So at the pool level, you can, based on the characteristics of the loans, there are various industry tools that estimate the lifetime loss of -- of a pool or type or categories of loans.

Q And what does lifetime loss mean in your last response?

A Well, it's a -- it's a curve that -- on a pool of

loans that, you know, starts very low with -- with very low losses and then grows as the loan portfolio seasons and, you know, historically and typically in normal markets, it would peak in about year five and then decline from there and then cumulatively you would add up that curve in terms of its actual dollar losses and compare it to the original pool before prepayments and come up with a lifetime loss factor.

Q Are you familiar with the term "S&P Levels?"

A Yes, I am.

Q What is S&P Levels?

A It was a loan level pool that Standard & Poor's developed that estimated -- that treated an individual loan like a pool of loans and estimated -- it sized the bonds from AAA all the way down to unrated and the unrated bond was a proxy for lifetime loss.

MR. TERCERO: Could you play that back, please?

(The reporter read back the record.)

BY MR. TERCERO:

Q In your answer, you talked about sizing bonds. How does that fit in, as you understood it, to the S&P levels tool?

A I'm sorry. I'm not understanding that question.

Q When you say sized the bonds, what do you mean?

A Well, so for example, we could take, you know, if you were applying for a loan, we could take your borrower

information and the property information and I think it was something like over 50 data fields and run it through the S&P Levels Model and they would tell you on your individual loan, treat it like a pool and would be able to tell you what percentage of your loan could be issued in AAA securities, AA securities, all the way down to the unrated security.

Q And what's the lowest rating before the unrated security?

A I think it was single B, as I recall. That actually wouldn't necessarily -- in normal structure, there might be a single B. There sometimes might be -- it might go unrated or in an asset-backed structure and then the bond above that might be a BBB that's been wrapped. Some it wouldn't necessarily be a single B bond above the unrated.

Q When you say wrapped, what do you mean?

A A bond -- a bond insurer would wrap some of the investment grade bonds in -- in -- which would increase their rating.

Q In a previous answer regarding the lifetime loan loss estimates, you used the term "seasoned." What is your understanding of the word "seasoned?" It was in connection with the word "loans."

A Yeah. Just as a pool of loans seasons, in a -- in a loss curve, lifetime loss curve, the losses typically and not to say that's the case in this housing bubble and bust,

but typically would have peaked in roughly year five, in a typical lifetime loss curve.

Q So seasoning is half of the time frame that a loan gets older?

A Yes, how many years -- how many months or years that the borrower has been making payments.

Q Back to the 2006 to mid 2008 time frame, did IndyMac Bank use the S&P Levels Model?

A Yes, we did.

Q For what purpose?

A It was used for our risk-based pricing system for loans that didn't meet Fannie and Freddie criteria. For example, jumbo loans, Alt-A loans, you know, other types of non-conforming loans.

Q Now when you say jumbo loans, what do you mean?

A A loan that has a loan balance above the -- the Fannie and Freddie conforming limits.

Q When you say Alt-A, what do you mean?

A Alt-A was a label. I don't think I said it yet, but -- but Alt-A is a label that is used -- was used by the industry and the secondary market to describe a number of types of loans that -- that were non-conforming.

Q And what was that -- what type of loans fell into the ALT-A category?

A You know, as I said, they -- they were home loans

that generally typically had high FICO scores, you know, so prime credit quality FICO scores, but were non-conforming for a variety of reasons. It could have been for documentation. It could have been for -- you know, it could have been ARM-type loans. It could have been a jumbo loan.

Q Are you familiar with the term -- actually, with regard to description of ALT-A loans that you've just provided, was that how IndyMac Bank used that term, if it used it at all in the 2006 to mid 2008 time frame?

A Well, I think, you know, it was kind of separated in that we disclosed in great detail the types of products and parameters, the other key credit parameters that we were -- on the loans that we were originating and so -- and -- and generally we disclosed that we were an ALT-A lender, but I don't recall specifically these are Alt-A loans and these are some other type of loan.

Q You said that there was disclosure of the parameters. Where was that disclosure made?

A In all of our public filings.

Q Any place else?

A Well, in multiple places in our public filings.

Q Any place else, other than the public filings?

A The parameters of our loans?

Q Yes.

A Well, certainly would have been on, you know,

scores of management reports.

Q Externally, was it disclosed in any other place?

A We -- we had -- in the last few years, we had a blog called the IMB Report that was -- we viewed as a -- as an additional tool to disclose to shareholders and other interested parties.

Q Any other place, sir?

A To -- to outside parties?

Q Yes, sir.

A I mean, we disclosed to bond investors, you know, information certainly and to other secondary market investors, to the rating agencies.

Q Any other external investors?

A HMDA disclosure, Home Mortgage Disclosure Act disclosures. I'm probably missing some external disclosures that we -- that we did as a result of our secondary market and regulatory activities, but that -- that -- those are the big ones.

Q When you say public filings, do you mean filings with the Securities and Exchange Commission?

A Yes.

Q Are you familiar with the term "Alt-B?"

A I've heard the term. This is the first time I've heard it in a long time but I've heard the term.

Q Was that a term used at IndyMac Bank?

A I don't recall -- I don't recall specifically that term being used, you know, much at IndyMac. I think there was an effort to kind of carve out of Alt-A some of the lower quality Alt-A loans and call them Alt-B in the industry, not at -- not at IndyMac. Maybe at IndyMac. I shouldn't say.

Q But is it fair to say that as you sit here now you don't recall?

A Yes.

Q Are you familiar with the term "Performance Evaluation Tool?"

A If you'd asked me that, I would have probably said not -- no, but, I mean, that's -- I would have probably -- PET I'm familiar with, the term "PET."

Q And how are you familiar with the term "PET?"

A You know, I'm, you know, just generally familiar that that was a tool that we used at IndyMac, an internal model.

Q Over what time frame was the PET Model used, as you recall?

A Hmm. I -- I don't recall specifically.

Q What kind of a model was PET?

A I believe it was an internal model to predict lifetime losses on pools of loans.

Q Did the PET Model also have the ability to determine the lifetime loss estimate on a single loan?

A I'm not -- I don't know about that. I'm not sure.

Q Was the S&P Levels Model a lifetime loan loss estimate model?

A Yes, as I said, the -- the unrated bond was considered a proxy of lifetime losses, the size of the unrated bond.

Q But if I understand your testimony correctly, S&P Levels was a loan by loan model, is that correct?

A The S&P Levels was a loan by loan model. Correct.

Q But if I also understand your testimony correctly, you do not know whether the PET Model was a loan by loan model?

A That's correct.

Q Other than as you've already testified, was the S&P Model used in any other way at IndyMac Bank?

A It was used extensively to monitor production credit quality. It was one of the key tools that I used to monitor our new production credit quality and we disclosed that new production credit quality in all of the loans that got evaluated by S&P Levels. We disclosed the aggregate average lifetime loss for all of the loans originated in our SEC filings.

Q When you say credit quality in your last response, what do you mean?

A Well, I mean, there's -- if you have to -- when you look at the parameters of a loan, the -- you know, you have loan to value, FICO, what -- you know, cash out, no cash out, all these different parameters. The beauty of the S&P Levels for -- for investors and for a CEO is it boiled the risk of the loans you were doing down to one number and -- and you could track that lifetime loss of the new loans you were originating and track whether you were doing more or less risky business over time.

Q Now was credit quality a measure to likelihood that a loan would be repaid?

A I'm sorry?

Q Was credit quality a measure of the likelihood that a loan would be repaid?

A Well, there were -- there were two factors in -- in calculating loss. There's the probability of default and the severity of the loss when a loan does default, and both of those factors were incorporated into the S&P Levels Model and they took into account all of the parameters of the loan in -- in calculating those two numbers and coming up with a lifetime loss calculation.

Q Was fraud a factor in the S&P Levels Model?

A You know, I don't know for sure whether there was a base level of fraud built into that model or not, but it certainly did not take into account a unique originator or, you know, a unique originating entity's propensity to have more or less fraud. There might have been a base level. There might not have been. I don't know.

Q When else -- well, where was the PET Model used? Again, let's use the 2006 to mid 2008 time frame. Where was the PET Model used at IndyMac Bank?

A Well, I -- I don't know every area that it was used for, but the primary area that it was used for is that S&P did not have -- you know, when you did your initial pool with them, you would come up with an initial lifetime loss curve from the S&P Levels Model and from the S&P ratings of a pool, and -- and if S&P had had a tool to then take your actual performance month by month and build an actual curve and reproject the lifetime loss curve, we would have used that but they didn't have that tool.

So PET -- my understanding is PET was developed to -- to basically take the actual performance on a pool and then readjust the lifetime loss curve better or worse than the original S&P curve and that -- we needed to do that for two primary purposes: to revalue securities on a quarterly basis, based on that, and then also to track our performance relative to the initial curve that investors bought those bonds off of and to see whether we were performing better or worse.

Q Now, what divisions or units of the bank used the PET Model as you've just described?

A Well, the -- the primary one would be the Mortgage-Backed Securities Group and in particular the group that held non-investment grade and residual securities where the change in that lifetime loss has a material impact on the valuation of those -- those types of securities.

Q Any other groups or divisions of IndyMac Bank? Did any other divisions or groups of IndyMac Bank use the PET Model in terms of tracking performance?

A I think -- I'm pretty sure Secondary Marketing did, too, because they dealt with bond investors, you know, who wanted to under -- you know, who wanted to track our original expectation of loss curve to the actual loss curve.

Q Any other divisions or units?

A I'm -- I'm not sure. Those would be the primary ones.

Q Did you have an understanding as to whether Post Purchase Quality Control used the PET Model to track performance?

A Not until I saw it in a document in preparation for this.

Q Other than to track the performance, was the PET Model used in any other way? Again 2006 to mid 2008.

A Well, I think there was some unique accounting surrounding when we had to transfer loans held -- that big group of loans held for sale to held for investment and I

think there had to be like a lifetime loss calculation on that pool because, you know, it wasn't loan loss reserve accounting, it was mark to market accounting and so I think that they used -- they might have used the PET Model for that, but I'm -- I couldn't be sure on that.

Q And, I'm sorry, did you say held for investment?

A Yeah. From held for sale to held for investment when the -- you know, in the second half of 2007, you know, after the secondary markets had collapsed.

Q At any other time, other than that time frame you just identified, was it used for that purpose?

A I -- I'm not sure.

Q How is it that you know that the model was used for that purpose, again in that time frame, you said when the secondary market collapsed? How do you know that they used that model?

A Well, I didn't -- I said I didn't know. I said I thought they might have used it for that.

Q What is the basis for your belief?

A I'm an accountant by training and I know that the accounting is not loan loss reserve. Loan loss reserve accounting, you don't use lifetime loss and so the accounting was unique in that it was mark to marketing accounting and -- and -- and I vaguely recall that we talked about the fact that when those loans were transferred, they were -- there

was a lifetime loss calculation done.

Q So you vaguely recall discussion with whom?

A I vaguely recall that being in our accounting information and discussing it with our CFO and others.

Q Who were the others?

A I'm not sure.

Q And when you say the CFO, which person do you mean?

A Scott Keys.

MS. VETA: Mr. Tercero, when you get to a good stopping point, can we take a break?

MR. TERCERO: Absolutely. Why don't we take a break at 10:15? We're off the record.

(A brief recess was taken.)

MR. TERCERO: Why don't we go back on the record at 10:18 a.m., and during the course of our break, there were no communications of substance concerning the investigation between the staff of the Commission on the one hand and the witness and counsel on the other. Would you agree, counsel?

MS. VETA: Yes, I would.

BY MR. TERCERO:

Q Sir, do you have an understanding as to whether the PET Model tracked the performance of IndyMac's loans, other than new loan production and other than the transfer in the 2000 time frame that you described in the previous answer?

A Well, the first part I didn't say tracked new loan

production.

Q Did you have an understanding that IndyMac Bank used the PET Model for that purpose?

A For which purpose? I'm sorry.

Q To track the performance of IndyMac Bank's new loan production.

A I had an understanding that it tracked the performance of the loans that we securitized and -- and it helped us and was a tool in valuing our mortgage-backed securities portfolio. It was a tool used in valuing our mortgage-backed securities portfolio.

As I said, I -- I think we used it in that -- that large transfer that occurred in -- in -- I think it was in the fourth quarter of '07.

I don't have an understanding of -- of how else we used it, no.

Q Did the PET Model take into account the presence of fraud within a mortgage loan, whether it's borrower or non-borrower fraud?

A I'm not sure.

Q Now, do you have an understanding as to whether or not S&P Levels would update -- whether it would be updated?

A Well, it was updated and -- and we disclosed those updates in some of our public filings.

Q Do you know if the PET Model was updated over time?

A Well, it would, you know, be updated, I believe, for actual loan performance, but, you know, I -- I wasn't involved in the details of maintaining that model.

Q Okay. So then is your answer that you do not know or recall that -- is your answer then that you don't recall whether the PET Model itself was updated or not?

A That's right.

Q Okay.

(SEC Exhibit No. 20 was referred to.)

BY MR. TERCERO:

Q Let me now hand you what previously was marked as Government Exhibit 20.

Could you please take a look at it and let me know if you recognize it?

For the record, Government Exhibit 20 appears to be a PowerPoint Presentation or DECK with a date of August 2nd, 2006, in the upper right-hand corner. The title appears to be Mortgage Fraud: Detection and Prevention. The IndyMac Bank Service Mark appears in the lower right-hand corner. The Production Number is 683046 through 683099.

A I'm sorry. What was the question?

Q Do you recognize Exhibit 20?

A No, I don't recall ever seeing this document.

Q In or about the Summer of 2006, did you request

some type of presentation concerning the methods by which IndyMac Bank detected fraud in the origination of the loan?

A Say the first part of that question again.

Q In or about August of -- or in or about the Summer of 2006, did you request some type of presentation concerning how IndyMac Bank detected fraud in the origination of a loan either by a borrower or third party, like an appraiser?

A Yeah. I mean, I -- you know, at various points over the years, I -- and in the 2006 to 2008 time frame, you know, I definitely, you know, requested an update on what we were doing in the fraud area and was interested in how we were organized and things like that, but I don't remember specific -- I couldn't specifically tell you August 2006.

Q If I were to -- if I broaden that out to the Summer of 2006, does that change your answer?

A No, that wouldn't help.

Q Okay. What was the purpose of your asking for updates about IndyMac Bank activities in the fraud area, to use your term?

A Well, the primary focus was the fact that the models that we used to price loans and assess risk were largely for what I would call statistical credit risk, the -- the, you know, probability of default loss severity.

The, what I would call, non-statistical credit risk is -- is fraud risk and so, you know, I knew that -- that we

needed to have and I wanted to see us have a separate focus, apart from the statistical credit risk management, in the non-statistical risk.

Q Where was your understanding -- where did IndyMac Bank have any procedures or mechanisms to detect non-statistical or fraud risk in the 2006 time frame?

A I don't -- I don't know specifically. I wasn't -- you know, I had a number of layers of really strong managers who reported to me who managed these areas and so I don't know specifically what procedures they were doing, but I do know, in general, they were doing procedures to detect and prevent fraud.

Q Which managers were doing that?

A Well, I mean, if you look, we had a president of the bank, Richard Wohl, who was in charge of most of the lending units, and reporting to him was the CEO of the Mortgage Bank Frank Sillman, and reporting to him was generally the head of Mortgage Banking Operations and -- and so it was kind within and housed under that kind of reporting structure, along with some oversight by our Enterprise Risk Management Group.

Q Now, if we switch to the 2007 time frame, who were the individuals, if any, at IndyMac that were working on detecting fraud in the origination of loans?

A I don't remember specifically who the individual --

who the individuals were. I mean, at one point I -- I -- it was kind of clear in my mind we should have a chief fraud officer and I pushed our team to get that role put in place and I believe we filled it and that reported up through our Chief Risk Officer Ruthann Melbourne.

Q Other than that, and if you don't recall specific individuals, if you recall the title or the job function or the group that was charged with detecting fraud in the origination of loans, who -- who were those people or groups?

A Well, you know, in looking at this document which was shown to me by my attorneys, too, you can see that Jules Vogel was -- was doing that at one point in time and then -- and then the Chief Fraud Officer also at one point in time was doing it, reporting to Ruthann Melbourne.

Q And again, just for the 2000 time frame, --

MS. VETA: You said 2000. Did you mean that?

MR. TERCERO: 2007 time frame.

MS. VETA: Thank you.

MR. TERCERO: Thank you, counsel.

BY MR. TERCERO:

Q For the 2007 time frame, who were the individuals or groups that were detecting fraud in the origination of loans? You've already talked about a chief fraud officer. You've talked about Mr. Vogel.

But for the 2007 time frame, who were those

individuals or what were the groups?

A Well, I mean, I know embedded in our Mortgage Banking Operation the group as a whole had procedures to detect and prevent fraud and there were numerous operating staff that were working on that with oversight from the Mortgage Banking Operations and oversight from our Enterprise Risk Management Group who had this Chief Fraud Officer role in place at some point roughly in that time frame.

Q For the 2007 time frame, did that include Post Purchase Quality Control?

A As part of -- as part of the fraud effort?

Q Yes, to detect fraud.

A Well, Post Purchase Quality Control performed the file reviews which made a determination and helped make a determination as to whether there was fraud, yes.

Q Are you familiar with the name Michelle Leigh?

A Yes.

Q How are you familiar with that name?

A My attorney --

MS. VETA: Wait a minute. Mr. Perry, you need to stop referring to your discussions with counsel --

THE WITNESS: Okay.

MS. VETA: -- and answer only on the basis of your recollection. Okay? If your recollection has been refreshed, then --

THE WITNESS: Okay.

MS. VETA: -- Mr. Tercero is entitled to your refreshed recollection.

THE WITNESS: Okay.

BY MR. TERCERO:

Q Okay. So how are you familiar with the name Michelle Leigh?

A I first became familiar when she filed the complaint with some -- with our regulators and some outside parties.

Q Which regulators?

A I believe she filed her complaint with the Office of Thrift Supervision and -- and I believe with Fannie Mae.

Q Did you read the complaint at any time?

A I don't believe I did read the complaint. I can't recall for sure.

(SEC Exhibit No. 71 was referred to.)

BY MR. TERCERO:

Q Let me now hand you what previously had been marked as Government Exhibit 71.

Could you take a look at Government Exhibit 71, please, and let me know if you recognize it or any parts?

For the record, Government Exhibit 71 is a multipage document. It bears Production Number 02430615 and

it goes until 02430723.

A Yeah. I recognize the -- the first letter which is the response to Mr. Dochow.

Q Okay. And that's the very first page, going through and including, what, Page 6 or using the last three digits of the Production Number 620?

A Correct.

Q When did you first see that document?

A I'm not sure when I first saw it, but I -- I read it back during the time period that this was submitted.

Q Did you play any role in the preparation of the letter you've just identified? And by preparation, I mean drafting, revising, editing or reviewing.

A I don't believe I did.

Q Did you have any discussions with anyone concerning the complaint that Ms. Leigh had sent, as you've identified it?

A You know, I don't recall having any specific discussions, no.

Q Generally, what do you recall?

A Well, with a refreshed recollection, I recall reading this letter and responding to our General Counsel about how he wrote the letter.

Q Anything else?

A No.

Q Did you at any time have any discussions with the Office of Thrift Supervision concerning the Michelle Leigh complaint?

A I don't recall ever having any discussions with the OTS, no.

Q As a result of having read the letter in Exhibit 71 that you identified, did you take any action with regard to the operations of Post Purchase Quality Control?

A As a result of reading this six-page letter?

Q Yes.

A No, I did not.

Q Did you take any action with regard to the activities of Central Mortgage Operations or CMO?

A No, I didn't, and the reason I didn't was the letter, you know, clearly concluded that her -- that -- that they conducted an independent investigation and concluded that her claims were meritless, and I also didn't receive any feedback, negative feedback from either the OTS or Fannie Mae regarding our response to them on this matter.

Q So then is -- based upon your previous answer, let me point out just a few documents to you.

Could you please take a look at Page -- just using the last three digits of the Production Number 643. There's a document there that says Exhibit 3 in the upper right-hand corner, then it says, "Mr. Vogel's and Mr. Nyland's final

report," and then it has IndyMac Service Mark. It says, "Post Purchase Quality Control (PPQC) Quarterly Update Report" and then it provides some time frames and certain items related to that, to those time frames.

Have you ever seen this specific document with or without the Exhibit 3 and reference to Mr. Vogel and Nyland on the first page?

A I don't recall ever seeing this specific document, no.

(SEC Exhibit No. 77 was referred to.)

BY MR. TERCERO:

Q Let me now hand you what previously was marked as Government Exhibit No. 77.

Could you take a look at it and let me know if you recognize it?

For the record, Government Exhibit 77 is a multipage document and appears to be a PowerPoint presentation or DECK. It has IndyMac Service Mark in the lower right-hand corner. In the upper left-hand corner, it says Central Mortgage Operations, Q3 2006, Management Accountability. There is a Production Identifier at the end which reads Hitchcock_L_00197431.

So if you could take a look at the exhibit, sir, generally, and let me know if you recognize it?

A Could you clarify what you mean by recognize?

Q Have you ever seen the document before?

A No, not that I recall.

Q Do you have an understanding of management accountability reports?

A Yes.

Q Okay. And what is your understanding of management accountability reports?

A Well, it was a system that -- that I started and developed which was that we would have monthly or quarterly accountability reports for each business unit or department and they would produce a PowerPoint package like this and which would include their key statistics for their area, along with some of the key activities that they were performing, and that there would be either a monthly or quarterly review with their team and -- and some of their superiors.

Q With whom did the review take place?

A I just said that. It was either their team -- you know, their team and potentially some superiors or other interested managers.

Q I see. Did that meeting include you, sir?

A For this group?

Q Yes, for Central Mortgage Operations.

A No.

Q Why not?

A Because there were literally scores of these management accountability packages and if you looked at the reporting, right, as I said earlier, you had Richard Wohl, Frank Sillman, and then Mortgage Operations. So, you know, it was several -- you know, a few layers down from my reports and I dealt primarily with an Executive Committee Group and dealt with their management accountability packages, generally speaking.

Q And how many management accountability packages was it that you dealt with in the, let's say, second half of 2006 going on through the end of 2007?

A Primarily just -- my recollection is primarily just the overall Corporate Management Accountability package.

Q And what did that package cover?

A It covered everything that I thought was important. It was all of the key financial information and included things like credit quality in it.

Q Well, what did it include about credit quality?

A Information regarding delinquencies, non-performing assets, loan repurchases, how we, you know, valued assets, those -- those types of things, and it had by business unit, by product and channel, our profitability, very similar to the segment reporting that you'll see in our SEC filings. In fact, it took that exact same format.

Q When you say business unit, to what do you refer?

A Well, there -- there -- you know, in -- three types of -- of -- of units in most companies and we kind of use the term "profit center." There were some quasi-profit operating centers that we called co-ops and then there were cost -- cost centers which included administrative, financial, technology, risk management functions. So we had kind of those three different types of activities and then subunits within those had management accountability packages. This would have been a subunit of the mortgage bank.

Q And you're referring to Central Mortgage Operations?

A Correct.

Q So am I right in understanding your testimony that you would review the overall corporate management accountability package but no other management accountability packages?

A That was generally in the last several years because of the size of the organization, along with also just -- it was a challenging period and I didn't have the time to sit in on the individual meetings any longer and I had a very strong management team who did.

Q And when you say the last several years, does that include the 2006, 2007 and 2008 time frame?

A Generally, it would, you know, more specifically

2007 and 8, and it's not to say that I didn't sit in on some management accountability meetings of something during that time frame. I just can't recall specifically, you know, which -- which I would have, but the point being that I would take that overall one and if I saw something that was important, I would want to dig in which could lead to another package.

(SEC Exhibit No. 34 was referred to.)

BY MR. TERCERO:

Q Let me now show you what's previously been marked as Government Exhibit No. 34.

Could you take a look at it and let me know if you recognize it?

For the record, Government Exhibit 34 is a multipage document and appears to have, on top of it, a memo of two pages, and it says in the upper right-hand corner the IndyMac Bank Service Mark with the date of January 23rd, 2007, addressed to various individuals. It does not include Mr. Perry. It's from an individual identified as Mark Moore, and the subject is PPQC Results for the September 2006 Current Sample.

Following the two-page memorandum is a series of spreadsheets on 8.5X14 paper.

Sir, could you take a look at Exhibit No. 34 and let me know if you recognize it?

A I don't recall ever seeing this.

Q Did you have an understanding in or about the January 2007 time frame that the Post Purchase Quality Control Unit did a monthly audit of the bank's loan production for a given month?

A You know, I probably didn't have that level of understanding whether it was a monthly report, an every-other-month report, or a quarterly report, no.

Q Did you have an understanding that there was an audit of the bank's loan production for -- for a given time frame?

A I mean, I had an understanding that PPQC was operating and they were producing reports. Absolutely.

Q Did you have an understanding whether it -- one of -- one of those reports covered a review of IndyMac Bank's loan production?

A That's what they always covered.

Q Did you have an understanding --

A A sample.

Q Did you have an understanding as to how the sample was selected?

A Not -- I mean not specifically, generally.

Q What did you generally understand?

A My general understanding is that QC was selecting a statistically -- a statistical sample, random sample, along with reviewing other types of loans, delinquencies, you know, repurchases, other types of loans like that in a non-statistical, non-random manner.

Q What was the basis of your understanding that the sample -- that there was a sample selected that was a random sample?

A Because that -- one of the -- the key reasons for -- for doing the whole quality control function was investors, in particular Fannie and Freddie, demanded -- demanded these reports. It was an industry standard and they require a random or statistical sample.

Q Was there any other basis that you had for your understanding that the sample was a random sample?

A No.

Q And is that the same for your understanding that it was a statistical sample but it was limited to your understanding as to what Fannie Mae and Freddie Mac required?

A Yes. Well, and also, my general experience that it would have been of no value if it wasn't in making, you know, an overall assessment.

Q Now, in or about the January to March 2007 time frame, did you in any way gain an understanding that, based upon the statistical random sample, that IndyMac's loan production had -- had a percentage of loans with misrepresentation north of 10 percent?

A No. During that time frame, you know, I, you know, became aware that, as a result of us missing our fourth quarter of '06 earnings and digging into that, that repurchases were increasing and I dug into the issues involved in that and disclosed all those issues, too.

Q Okay. Now you say that there was a miss of fourth quarter earnings. Did you learn that in terms of the preparation of the year-end financial statements and/or Commission filings and the like?

A Yes, in January of '07.

Q Okay. You said that you delved into the issue insofar as repurchases were concerned. What is it that you did?

A Well, with respect to when -- when we -- our CFO came to me in early 2007 and said, "Mike, it looks like we're going to miss the earnings forecast for the fourth quarter of 2006," you know, I'm like, okay, well, let's, you know, put our numbers together and -- and then I started to dig into, well, what are the reasons that we missed it and there were many reasons, but one of the reasons was there was an increase in the fourth quarter in loan repurchases and -- and so I dug into that specific issue, in working with our chief risk officer and others found out where that increase was coming from, and it was generally product types, and we went

in and tightened our guidelines and dramatically reduced loan repurchase demands going forward from that point on, and we disclosed kind of all of that activity to our shareholders.

Q And was that in the context of the report on Form 10-K for IndyMac Bancorp?

A Also -- also even I would say in -- I -- I don't know if it was in the 10-K or the 8-K filing. You know, we did an 8-K filing for the fourth quarter, but somewhere in that context of that time frame, in kind of digging in to why we missed that forecast, we did start to see repurchases spike and a lot of those were from early payment defaults which -- and -- and so we dug into that and found that, you know, we could eliminate 80 percent of those early payment defaults by tightening our guidelines by X and eliminating certain of our production. We did that and disclosed that and our repurchases dramatically came down.

Now, one thing I'd point out is that our repurchases in the worst quarter were not even one percent of our production.

Q You -- you used the term "repurchases." Are you talking about actual repurchases or repurchase demands?

A Actual repurchases to -- we did it as a percentage of loans sold during that quarter.

Q Now you mentioned that you delved into why there was an increase in repurchases and that many of the

repurchases came in the form of early payment defaults or EPDS. You mentioned that product type was a reason. What type of products were those?

A I don't remember specifically, but it basically would have been, you know, -- generally, it had to do with loan-to-value ratio and, you know, having loan-to-value ratios that were too high relative to the other risk components in those categories and -- and so by looking at that statistically, we were able to reduce, you know, this -- this risk by a dramatic amount.

Q Who worked with you to determine the reason or reasons for the increase in repurchases?

A My recollection is Ruthann Melbourne got me, you know, the statistics to -- to do that.

Q Did anyone else --

A And her -- and she used an extensive partner for Risk Management Team to do it.

Q And that was Enterprise Risk Management?

A Yes.

Q Was it any other component of IndyMac Bank?

A I'm not sure. I -- I interfaced with her in -- in working on it.

Q At this time, did this analysis as to why there was an increase in repurchases in any way identify fraud in the origination of loans as a reason for the increase in

repurchases?

A Not that I can recall. It was again really just focused more on the statistical credit risk side. That's the non-statistical side. The -- the bulk of the repurchases, in my viewpoint, had to do with guidelines, not underwriting or fraud.

Q And when you say guidelines, you mean the parameters by which a loan in a given product type would be extended to a borrower?

A Yes.

Q Was there any effort to see whether non-statistical risk accounted for the increase in repurchases that you have identified?

A It was -- let me say -- try to explain it.

Q Sure.

A The -- when we were able to look at it, you could clearly see that the early payment defaults and the repurchases were coming from particular products and particularly LTV segments in particular products and so we were able to go in, and I don't recall the exact percentage, and cut out, you know, you know, 10 percent or so of our production and eliminate 80 percent of the early payment defaults and repurchases and that -- you know, we kind of showed that and disclosed that to our shareholders and -- and in effect, it wasn't just that we statistically could look at

that.

After we implemented that, the repurchase demands and repurchases dramatically declined back down to, you know, you know, very low levels, like three-tenths of one percent, and so -- you know, so that's an indicator it was not fraud-related repurchases and -- and early payment defaults but guideline -- guideline issues.

Q Did you or any of the others working with you to determine the increase in repurchases do anything to determine why the LTV information that you identified resulted in early payment default?

A I -- I'm not sure if they did. From my level, I was satisfied that we had taken the steps that we needed to do in terms of, you know, tightening our -- our guidelines well ahead of really everybody in the industry and -- and disclosing what had -- what was occurring to our shareholders in a very timely fashion.

(SEC Exhibit No. 197 was referred to.)

BY MR. TERCERO:

Q Let me now hand you, sir, what previously was marked as Government Exhibit No. 197.

Could you take a look at Government Exhibit 197 and let me know if you recognize it or any part of it?

For the record, Government 197 appears to be an

e-mail. The top e-mail says that it's from Jim Banks, dated January 29th, 2007, and addressed to Blair Abernathy. The subject is Re: Investor Repurchases. There's a series of e-mails that follow. The document bears a Production Identifier at the end of Abernathy_B_00049262.

So once you've had an opportunity to take a look at the exhibit, sir, could you let me know if you recognize it?

(The witness reviewed the document.)

THE WITNESS: I don't recognize it, but I don't doubt that I wrote it.

BY MR. TERCERO:

Q And are you referring to the e-mail at the very bottom of the first page?

A Yes.

Q Do you -- even if you don't recognize the actual e-mail, do you recall in or about this time giving an instruction to someone at IndyMac not to trade with the bottom 25 percent of investors on repurchases?

A Very vaguely.

Q What is it that you recall?

A Just very vaguely what this e-mail -- e-mail says.

Q Why did you give the instruction?

A My recollection is what I was trying to do was accomplish things from both sides. One, we dealt with loss of investors and one of my pet peeves was, you know, I'm

selling a loan to you at 103 and you're willing to pay 103 and a quarter and you negotiate reps and warranties that essentially puts back a point and a half loss to me through tighter reps and warranties and my pet peeve was that Secondary Marketing wouldn't pay attention to those contractual provisions and realize that they were economically just as important as the price, you know, that economic terms. Do you see what I'm saying? And so what I was focused on is saying two things.

One, if you -- the -- the investors who are making us buy back a lot of loans percentage-wise, the bottom 25 percent, it could be because they are doing exactly what I just described or it could be that we have loan quality issues. Either way, I fixed the problem by saying you can't trade with the bottom 25 percent.

Q Other than as you've just said --

A And this was in that time frame right where I was becoming away for the first time that repurchases were growing.

Q Other than as you've just testified, were there any other reasons why you gave the instruction?

A Not that I can recall, no.

(SEC Exhibit No. 117 was referred to.)

BY MR. TERCERO:

Q Sir, let me now hand you what previously was marked as Government Exhibit 117.

Could you take a look at the exhibit and let me know if you recognize it for me, please?

For the record, Government Exhibit 117 appears to be an e-mail from Mr. Perry with a date of February 16, 2007, and addressed to _IMB-Senior Managers. The subject is Update on Secondary Marketplace. It has Production Numbers IMB-03-0446603 to 04.

(The witness reviewed the document.)

THE WITNESS: Yes, I do recognize it.

BY MR. TERCERO:

Q And is this an e-mail that you wrote, sir, on or about February 16th, 2007?

A Sounds -- sounds the right time frame, yes.

Q Why did you write the e-mail?

A Well, one thing I'd probably point out is I do a lot of bcc copying and I probably copied my board on this, too. I was doing a lot of that or if I didn't, I copied my board on a -- on a lot of things during this time period that you won't see on -- on these print-outs and also regulators and outside counsel and auditors, too, in a lot of bccs.

You know, what I was telling them, you know, essentially was the secondary market for private label securitizations was getting less liquid and that -- and we

were doing 90 billion a year production through a $35 billion a year -- $35 billion balance sheet. That meant you couldn't hold that production in your balance sheet. You had to cell or securitize it in the market or stop doing that production and so I was saying the market is getting choppier, be careful, tighten product guidelines, widen out spreads, assume that more risk is coming and that things are going to get worse, be careful, and it was kind of widely known, like in that first quarter, that the private market -- private securities market was disrupting. Spreads were widening out. I mean, there was a lot of things going on during that time period.

Q Now you're referring to securitizations. What was the market like in or about this time as you saw it for whole loan sale transactions?

A I -- I don't recall specifically. It wouldn't have been dissimilar, you know, if -- if the private securitization market is being disrupted, the whole loan market for the same types of collateral are going to get disrupted, too, maybe not exactly perfectly in sync, but they -- they tend to go in the same direction.

Q At or about this time frame of the e-mail, February 16th of 2007, plus or minus a month, did you have any concern that IndyMac Bancorp's balance sheet would begin to grow because of mortgage loans it would not be able to sell?

A You know, I mean, I obviously expressed that at the bottom of this -- this e-mail where I'm saying -- talking about the size of our production relative to our balance sheet and it's something that we disclosed extensively in our SEC filings, that we would heavily rely on our business model as a hybrid thrift mortgage banker, was heavily relying on our ability to access the secondary market, and -- and so if that secondary market, you know, was disrupted or closed, you know, there were things we could do in the short run, but if that continued, you know, we -- we had to eliminate that production which is what in fact we did when the markets collapsed in -- in the Summer of '07, late Summer of '07.

(SEC Exhibit No. 167 was referred to.)

BY MR. TERCERO:

Q Let me now hand you what previously has been marked as Government Exhibit 167.

Would you please take a look at Government Exhibit 167 and let me know if you recognize it?

For the record, Government Exhibit 167 appears to be an e-mail from Mr. Perry and addressed to Mr. Wohl, Ms. Mathoda, Mr. Nelson, and Mr. Barbour, with a date of February 18th, 2007. The subject is Re: Call Me. There is a Production Identifier at the end of the document which reads Perry_M_00065649.

And the question is have you seen the document before, not including 2009?

(The witness reviewed the document.)

THE WITNESS: Yes, I recall, definitely recall this e-mail exchange.

BY MR. TERCERO:

Q And do you recall sending the e-mail on the very first page on or about February 18th of 2007? I'm sorry. The very first page at the top.

A The last e-mail?

Q Yes, the most recent e-mail, the one on the very first page at the top. Do you recall sending that e-mail on or about February 18th of 2007?

A I recall the initial one more. I vaguely, vaguely recall this one, yes.

Q All right. In the very initial e-mail which has a Page 3 on the very bottom of it, it seems to be an e-mail to Mr. Ebers and discussion about him become the bank's chief operating officer.

In this time frame of the e-mail, which is February 16th of 2007, what, if any, reasons did you have for creating a position of chief operating officer?

A Well, I mean, as I -- we talked about, right, in my mind the first time I started to see credit becoming a problem was when we were rolling up the fourth quarter of '06

numbers in the first quarter of '07 and one of the factors that caused us to miss earnings in the fourth quarter was credit for the first time and really, in particular, an increase in loan repurchases and so, in addition to addressing immediately, as quickly as I possibly could, the guideline issues that were causing the repurchases, I wanted to address the organizational structure issues to improve and bolster our operations.

Q And why did creating chief operating officer position fill that role?

A Well, Tony was one of our strongest managers, very experienced, and - and I wanted to have someone who was at an Executive Committee level running Operations on the front end. He was already running it on the back end, but we didn't have an Executive Committee-level person on the front end. We had a strong senior manager, a former B of A head of Operations was running Operations during this time frame, but Tony was, you know, a CEO-caliber individual that I -- that we put in in charge of Operations during this time period.

Q Now, you -- you mentioned the front end you wanted an Executive Committee member. Who was the person running Operations before him?

A Well, there was various people over the years.

Q Sorry.

A But -- but as my -- my --

MS. VETA: Wait a minute. I'm not sure you understood.

MR. TERCERO: My bad. I didn't -- I interrupted you. So that's my first apology, and the second one is I should probably rephrase my question.

THE WITNESS: Okay.

MR. TERCERO: All right.

BY MR. TERCERO:

Q In or about the February 2007 time frame, who was in charge of the Operations activities at IndyMac Bank?

A Well, my recollection is the head of Central Mortgage Operations was Linda Hitchcock who was a senior vice president, a former senior manager with Bank of America, and she reported, my recollection is, up to Frank Sillman, and I wanted -- who was the CEO of the Mortgage Bank, and I wanted, you know, given that credit was becoming an issue and I wanted an Executive Committee-caliber person in charge of Operations from front to back end and so, you know, I talked Tony into taking on that role.

Q Now, Mr. Sillman, did he report to you or to someone else in this time frame of February 2007?

A My recollection is he reported to Richard Wohl during that time -- time period.

Q Now with regard to Exhibit 167 also makes reference to a change in Mr. Abernathy's role. Prior to this proposed

change identified in the e-mail, what was Mr. Abernathy's role?

MS. VETA: I'm sorry. I didn't hear the question. You asked what his role was prior to what's proposed here?

MR. TERCERO: Yes.

MS. VETA: Thank you. Sorry.

THE WITNESS: You know, I don't recall specifically.

BY MR. TERCERO:

Q Do you have a general recollection?

A Blair was there so long, the roles blend together in my mind a little bit. If I saw org charts, I could -- I could do it.

Q Okay. Why was Mr. Abernathy proposed to go into a Specialty Products position?

A Well, I mean, our -- our Specialty Products -- and I don't recall accurately what all our Specialty Products were at this point, but, you know, they were important profit centers to us. He was a long time leader who had extensive knowledge about our business and at points had been the head of Capital Markets and at points had been the chief investment officer. He was very capable to run those areas.

Q There is reference in the very second page of the exhibit to John Olinski and if you look at the second-to-last paragraph of the e-mail that begins on that page, there's a

statement about people's reactions to the organizational change and then it says, "The one person who probably will not be thrilled is John Olinski (on vacation or I would have talked to him) -- but as you know I have concerns about him being in such a critical role -- especially in these volatile times." And then the sentence continues.

What, if any, concerns did you have concerning Mr. Olinski?

A Well, I -- I don't remember the specific concerns, but he had been running Capital Markets. I believe he took over from Blair who had run Capital Markets before and so he was running Capital Markets during, you know, the good times and when things were easy and securitizations were easy and now the -- the road was getting bumpy and -- and I could see some -- I don't recall specifically the deficiencies but there were some -- some concerns that I had that he could -- you know, he wasn't -- didn't have every skill to be able to -- to resolve that bumpy period and so I was putting another manager in to co-manage his area with him and I felt that would provide some added support and also back-up if, you know, at some point down the line, you know, any of those -- those relatively minor concerns at this point became bigger concerns and I had to make -- make a change.

Q Do you recall if, in the 2007 time frame, Mr. Abernathy had any role with regard to the sale of IndyMac

loans, either agency transactions to government-sponsored entities, whole loan sales transactions, or private label securitizations?

A You know, I don't -- you know, I don't know specifically. You know, as I said, he was -- he was definitely in charge of almost all those areas that you just mentioned, if not all of them, prior to John Olinski, and then my recollection is he -- I -- I -- I was more comfortable with him being kind of the, you know, challenging market period and I think I put him back in charge of Capital Markets, you know, within months after this. I don't know how many months it was. I don't know if it was -- I don't recall whether it was later in 2007 or in 2008, but -- but he ended up being back in charge of Capital Markets before he, you know, helped us out by becoming CFO after Scott had left.

Q If you look at the third paragraph on the second page of the e-mail that begins and ends there, the second line -- this is in the middle apparently of the sentence, it says, "I would lean to the treasurer/CFO (Scott wants to take on a business since he has dropped off Brian)" --

A I'm sorry. I'm not following you.

Q Oh, I'm sorry. So let me show that to you. Let's see. Starting right here, sir.

A Okay.

Q Okay. And that phrase reads, "I would lean to the

treasurer/CFO (Scott wants to take on a business since he has dropped off Brian and Financial Planning and Management Accounting to me)," and the sentence goes on but that's the end of the quote. Is Scott Scott Keys?

A Yes.

Q In or about this time frame, did you take on responsibilities for Financial Planning?

A Well, I -- Scott dropped off the Financial Planning responsibilities. I was always very involved in the Management Accounting side because it was part of that whole management accountability package that we had built. I'm a former CPA. I, you know, helped build that whole product and channel system and segment reporting that you see in our SEC filings. So that -- that kind of mostly always reported to me.

The Financial Planning, I had Scott dropped that off and Brian and Pam Marsh kind of took that on and they reported to me and worked on that from I don't know exactly. Some time in, you know, 2007 onward. You know, obviously we didn't do a great job for the first time in forecasting that fourth quarter of '06 number. We took that very seriously and built kind of a SOX financial planning process.

You know, it would all flow up from the business units and they would have to kind of certify their numbers into a very formalized process after that point in time.

Q And by Brian, do you mean Brian Carter?
A Yes.
Q Now, the -- the Management Accounting and the reporting to you, who from Management Accounting, at least in the beginning of 2007, was the person directly reporting to you from the Management Accounting component of the bank?
A I -- again, I get a little confused on the -- on the people who are doing what, but Pam Marsh and Brian Carter, who were two Executive Committee members, had Financial Planning and Management Accounting and -- and they both -- and Investor Relations and -- and they both reported to me for -- for most of that time is my recollection, if not all of that time, but I'm not sure.
Q Now, the last few Exhibits 117 and, the current one in front of you, 167 and, the one beforehand, which is 197 are all within the late January to mid February 2007 time frame.
In that time frame, do you recall having any discussions with your executives concerning the possibility of putting sunset provisions on warranties made either in the context of GSE sales or agency sales, whole loan sales transactions or private label securitizations?
A I don't recall during that time frame, but I recall having -- just generally having discussions about that over the years.

Q And -- and does that include the 2006, 2007 and first half of 2008 time frame?
A I -- it's hard -- it would be -- I don't know. I mean, as I said, I mean possibly, but I'm not sure.
Q What were the reasons for these discussions?
A Well, you know, there's -- again, you know, like a lot of managers and leaders have a lot of pet peeves and one of my pet peeves was the power that Fannie Mae and Freddie Mac had over our industry and our business and their contract being a contract of adhesion and -- and, you know, no independent parties would be able to negotiate a warranty provision with an unlimited term and so that was my basic issue regarding why and I constantly -- you know, Richard served on the Mortgage Bankers Association's Board and I'm like work on that one, you know, you know, get, you know, a sunset provision. This is ridiculous, automobiles have them, everything has them. There should be an end period to this warranty. They shouldn't be able to do this for 30 years, you know, a 30-year mortgage. That was -- that was the basic concept behind the discussion behind a sunset provision.
Q Now, what, if any, reasons were there for sunset provisions in the context of whole loan sales transactions?
A Well, my -- same issue, you know, that -- that, you know, the unfortunate thing was those contracts of adhesion in all of Fannie Mae's business practices permeated the --

the private label side of the -- well, this is what Fannie Mae requires. So we should obviously get an unlimited warranty period. Well, no, you shouldn't.
So, I mean, a reasonable warranty period, several years is fine, but, you know, shouldn't be a lifetime warranty on the loan.
(SEC Exhibit No. 31 was referred to.)
BY MR. TERCERO:
Q So let me now hand you what previously was marked as Government Exhibit No. 31.
Could you take a look at the exhibit and let me know if you recognize it?
Government Exhibit 31 appears to be a multipage exhibit. It has the IndyMac Bank Service Mark in the top portion of the first page and then says Post Purchase Quality Control (PPQC) Quarterly Update Report, Inclusive of January to September 2006-Statistically Valid Sample January to September 2006-Delinquent Loans." It does bear Production Number 1287202 and it goes until 229.
So the question is, sir, if you've seen this document before?
A I don't recall ever seeing it before, no.
Q Do you recall ever seeing documents, if not this particular one, but the same topic covering different time

frames?
A I mean, I vaguely recall, you know, when we were a smaller enterprise in earlier years and there were less layers of management seeing PPQC reports, but I don't recall reviewing PPQC reports for -- for years.
Q And when you say years, can you place even an estimate as to when you ceased to see PPQC reports?
A Well, I think, you know, that e-mail that you showed me early on where I was talking about the -- that was kind of the time frame where Richard -- you know, we started to build the layers of infrastructure and management and where I started to pull back from the day to day management of the business. So I don't know the exact time frame but that e-mail was -- you know, would have been in the time frame where I started to pull back as we built a bigger organization.
Q And just to make sure that we're all operating on the same page, are you referring to Exhibit 212, 211, both, something else?
A Yeah. It was -- yeah. It was this one. I was referring to the Exhibit 212.
Q Okay. Thank you.
MR. TERCERO: Why don't we go off the record at 11:42 a.m.?
(A brief recess was taken.)

MR. TERCERO: All right. Let's go back on the record and during the course of our break, there were no communications of substance concerning the investigation between the staff of the Commission on the one hand and the witness and counsel on the other. Would you agree, counsel?

MS. VETA: Yes, I would.

MR. TERCERO: All right.

(SEC Exhibit No. 171 was referred to.)

BY MR. TERCERO:

Q Sir, let me now hand you what previously was marked as Government Exhibit 171.

Could you take a look at the exhibit, sir, and let me know if you recognize it?

For the record, Government Exhibit 171 is a multipage document and it bears Production Number ATE-SEC 00544 and goes until 606. It says in the upper left Central Mortgage Operations, then below that Q4 2006, and then it says Management Accountability. In the upper right-hand corner, it says March 5th, 2007, and in the lower right-hand corner, it says IndyMac Bank, the Service Mark.

(The witness reviewed the document.)

THE WITNESS: I don't recall, you know, seeing this Management Accountability package from Central Mortgage Services.

(SEC Exhibit No. 140 was referred to.)

BY MR. TERCERO:

Q All right. Sir, let me now hand you what previously was marked as Government Exhibit 140.

And could you take a look at the exhibit and let me know if you recognize it?

For the record, Government Exhibit 140 appears to be an e-mail and a multipage document. It states that it's an e-mail from Mr. Perry with the date of March 14th, 2007, and it's addressed to _IMB Managers. The copy is to the Board, Board and Others. The subject is Mortgage Bank and Credit Risk, Part 2. There is a Production Identifier at the very end which is says Abernathy_B_00055684.

(The witness reviewed the document.)

THE WITNESS: I'm sorry for taking so long here.

MR. TERCERO: Take your time.

THE WITNESS: I just haven't seen this in awhile.

MR. TERCERO: Okay. Take -- take the time that you need for any exhibit that I show you sufficiently so that you can let me know if you recognize it.

BY MR. TERCERO:

Q Is this an e-mail that you prepared?

A Yes.

Q And did you do so on or about March 14th, 2007?

A I have no reason to believe not. Right. Yes, I would say yes.

Q Okay. And what was the -- what was your purpose in -- in writing this e-mail?

A Well, like we've been discussing, you know, that I became aware that, you know, credit was now becoming an issue in -- in -- in the first quarter of '07 and I had taken a number of steps, you know, first, you know, stemming repurchases and -- and cutting guidelines and, second, you know, dealing with some of the organizational structure issues, like putting Tony Ebers in as Chief Operating Officer, and then, third, laying out, you know, my views on how to manage credit risk from a high-level perspective to -- this is -- this memo is addressed to about 500 managers. That's how many managers were at IndyMac. It's not the senior management group. It's the 500 managers and our Board of Directors.

So, you know, what I was doing is laying out, you know, my vision for how we could do a better job in the loss prevention area, credit loss prevention area, now that we have data really that -- that -- where we're seeing, you know, credit trends deteriorate.

Q Now, would you take a look, please, at the very -- the very last page of the e-mail where it says Page 4 of 4 in the upper right-hand corner. You'll see that there are

various numbers and I'd like to talk to you about Number 4 which says, "Feedback in accountability to the Mortgage Bank Operations should focus on the following in the order of importance: (1) repurchases, (2) EPDS, (3) investor kick-outs, (4) losses and delinquencies, and (5) QC and compliance findings."

My question to you is why focus on those particular matters and then why focus upon them in that order of importance? So I guess the first question is why focus on those matters listed there?

A Well, those are the key indicators of credit risk and I focused on them in that particular order because that's the -- I focused for most objective to least objective.

Q And why is it that you found quality control and compliance findings to be the least objective?

A Well, as I said, there was no industry standard for the definitions in quality control and our definitions of the various categories changed many times over the years and there was really no direct correlation between QC findings and losses. You know, to me that's -- you know, that's what you want. You want data that has the most direct correlation to losses because that's ultimately what we're -- what we're trying to -- to deal with here and we -- we did not have that direct correlation with QC findings for -- you know, we just didn't have it.

Q How did you know that there was no correlation between QC findings and losses?

A Well, from experience. You know, what we were seeing is the most objective data was coming from repurchases and -- and our repurchases were our investors who were third parties, not part of our firm at all, demand -- doing their own QC work on our loans which they had a financial interest to do and making us repurchase those loans for violations of reps and warranties which we had, as I discussed, a reserve for.

So I felt those were the most objective measure of credit -- of the quality of our loan production and a subset of those were early payment defaults and those were the very quick problems that were occurring and were a sign and a symptom if you went too far in terms of your guidelines, generally speaking, or if you were having, you know, some other -- some other issue affecting them.

Investor kick-outs were similar where, you know, you would pool loans and then an underwriting firm would come in, a firm that was underwriting the securitization would hire a due diligence firm and they would do a sample of the loans, but some of those kick-outs were for quality issues and some of them were just we don't want any loans with these characteristics, you know, in the pool. So you had to kind of sort through those a little bit, but -- but it was still

an objective measure.

And then, you know, delinquencies, you know, just normal early payment defaults, 30-60-90 delinquencies, those to me were the best and most objective measures from, you know, highest to lowest, and I'm not saying for loan delinquencies. That's very objective. Loan -- but it wasn't as timely as repurchases and early payment defaults.

So you -- you had kind of those two feedback loops, timeliness and objectivity were the importance and generally QC had -- was flawed on both of those ends.

Q And to be clear, those ends that you've been referring to were objectivity and timeliness, is that correct?

A Correct.

Q How did you know that QC information was not timely?

A Well, I mean, I had -- it wasn't when I was involved, you know, back in, you know, the '02-03, you know, that time period. It was not timely and we had lots of definitional problems.

BY MS. ESON:

Q Was there any other way that you knew there were problems with objectivity and timeliness with respect to QC findings, besides your experience in the 2002-2003 time frame?

A You know, I don't recall specifically. I do recall, you know, in preparing to refresh my memory, that in one of the OTS exams, they mentioned some issues about -- about QC. I don't -- it was -- I don't believe it was about the level of findings, but it was just about the -- you know, the -- the procedures in that area or something.

So, I mean, it -- it just didn't have a high confidence level with top management and in -- in our ability to predict loss and wasn't driven -- you know, as a result wasn't the focus. I wanted more objective data to be -- you know, and that's the data that we focused on and focused on disclosing.

BY MR. TERCERO:

Q Now, you said that the QC findings did not have a high confidence level with top management. When you say top management, what -- to whom are you referring?

A Well, I probably shouldn't speak for others. It definitely didn't have a confidence level with me and, you know, that was my historical experience when I was more directly involved in the business and -- and, you know, continuing to struggle with definitional issues and then even if you have the definitions, you struggle with how is the individual QC underwriter of a loan file interpreting those definitions which are not incredibly objective either, generally speaking, and -- and everybody's interpretation can

be a little different.

To me, the most objective was you had an investor who says repurchase this loan. There's a problem, okay, and then we would -- if we hadn't QC'd that loan already, we would QC it and even when they asked us to repurchase loans, they rescinded those, I don't know the percentage, but it was a significant percentage of time, you know, half, you know, you know, something along those lines, where, you know, their initial findings, they -- after we responded back, they agreed with our -- our response.

So it was a tool. QC findings were absolutely a tool, but it was a downward tool to improve the operating performance of the mortgage unit, to improve the underwriting performance, and it was a tool that was lacking in perfection and precision to be something that would flow up into your reporting structure.

Q In the 2006 through mid 2008 time frame, did you communicate your view of quality control to any of your Executive Committee, any member?

A Not -- not that I can recall.

Q Same question but now your senior managers.

A Not that I can recall. Well, other than, you know, by implicit, you know, here, right, in 4, right, I said here's the order of importance.

Q And the witness was referring to Exhibit No. 140.

(SEC Exhibit No. 120 was referred to.)

BY MR. TERCERO:

Q Now, let me show you the next exhibit. Let me show you what previously was marked as Government Exhibit 120.

Would you take a look at 120 and let me know if you recognize it?

For the record, Government Exhibit 120 appears to be an e-mail from Mr. Perry with a date of April 11th, 2007, addressed to Mr. Lieber, Mr. Wohl, Mr. Nichols, Mr. Olinski, Dr. Melbourne, and Mr. Hurley. The subject is Re: Community Development Services, Q1 of 2007. It is the last e-mail in an e-mail string. The Production Identifier at the end is Hurley_T_00022414.

And the question again, sir, is if you recognize it?

(The witness reviewed the document.)

THE WITNESS: Yes. Yes, I do.

BY MR. TERCERO:

Q And is this an e-mail you wrote on or about April 11th of 2007?

A Yes. Yes, it appears to be.

Q Okay. The series of e-mails, at least in part, discuss Mr. Lieber having a new title of Chief Credit Officer of the Mortgage Bank. Was that your idea?

A I don't remember specifically, but I certainly was leading -- you can see it from all the communications. I was focused on Credit Risk Management and, you know, from that initial signal that I got in -- in the early part of '07 on, you know, I was focused on constantly improving and all of our controls, policies, procedures, infrastructure, and people associated with Credit Risk Management, and this was, you know, part of that effort.

Q Why did you choose Mr. Lieber?

A Well, Mr. Lieber hadn't been Chief Credit Officer at previously, you know, -- one of the things we had fortunately was a lot of long-time experienced managers and he was one of them.

Q Was there any other reason?

A No. I thought he would do an effective job.

Q Now, in the bottom e-mail on the very first page of Exhibit 120, there is an outline that says, "I would think," and then it continues onwards about apparently the new role and it lists various items. QC is one of them.

At the time, why was QC one of the roles at least contemplated for Mr. Lieber?

A You know, this was one of the components of managing credit risk within the -- within the Mortgage Bank.

Q When you say QC, did that include Post Purchase Quality Control?

A Yes. Yes, I mean that was part the larger part, the largest part of our QC function.

Q Did you, in or about this time, communicate to anyone that Mr. Lieber should have Quality Control under set of responsibilities, other than this e-mail?

A Did I communicate that Quality Control should be under Mr. Lieber during our -- this time frame?

Q Yes.

A I -- I don't recall.

Q Now, did Mr. Lieber in fact become the Mortgage Bank Chief Credit Officer?

A My recollection is he did.

Q Did you have any direct communications with Mr. Lieber concerning what he was finding in his capacity of Mortgage Bank Chief Credit Officer?

A I -- I don't recall any -- during this time period, like '07, you know, '07-08, I don't recall having any discussion with him about that, but it's possible that I did.

Q Same question and same time frame, 2007 and 2008. Do you recall having any discussions with Mr. Ebers concerning credit risk issues?

A You know, I was communicating extensively and my pattern and practice was extensively via e-mail and you can see that in my extensive e-mail record. The -- you know, so, I mean, my -- my pattern, you know, when I had an important

issue was to kind of tell everyone, you know, managers, Board, shareholders, whatever the issue was, regulators, auditors, and, you know, I mean the e-mail was a powerful tool to do that.

I don't recall a specific, you know, discussion that I had with -- with Tony about Credit Risk Management. He knew, as Chief Operating Officer, in this time frame how -- you know, that -- that that had become a very important issue.

(SEC Exhibit No. 37 was referred to.)

BY MR. TERCERO:

Q Let me now hand you, sir, what previously was marked as Government Exhibit 37.

Could you take a look at Government Exhibit 37 and let me know if you recognize it?

For the record, Government Exhibit 37 appears to be a two-page memo with a series of legal-sized pages or charts and spreadsheets thereafter. On the memo, on the first page, in the upper right it has the IndyMac Bank Service Mark with the date of April 13th. It is addressed to various individuals but not Mr. Perry. It is -- it states that it's from Mark Moore. The subject is Results for the December 2006 Current Sample Audit.

Sir, have you ever seen Government Exhibit 37

before?
A I don't recall seeing it, no.
Q In or about the April 13th, 2007, time frame, so a month on or either side, did you learn in any way that the PPQC Current Audit had found in its random sample that the percentage of loans with misrepresentation was north of 16 percent?
A No, I don't recall learning of that during that time frame.
Q Did you learn of that fact at any time? And apparently this report covers the December 2006 time frame.
A I don't recall -- you know, I don't recall learning of that during -- during any of that time frame, and I think if you'll look back at how I expressed concern back in the '03 time period at a much lower level, you know, and said, look, you have a definitional problem, we shouldn't be doing this production, I think if I'd have been made aware of it, right -- it's possible I was made aware of it. I don't recall, but, I mean, I just don't, and -- and so -- but if I was, I would have dug into it further to resolve whether there was a quality issue or a definitional issue.
Q Before we're finished with the exhibit, sir, could you take a look --
A I'm sorry.
Q Not a problem. Could you take a look at the fifth page, fifth page of the exhibit, so it's one -- there you go.
A The third long page?
Q I think it is, yes. There's a series of charts on that page. In the upper left-hand corner is a chart entitled Current Audit - Percent of Loans with Misrepresentation. Have you ever seen that chart before?
A I don't recall ever seeing that, no.
Q Okay. And have you ever seen a chart in that form before?
A Well, I've seen line charts.
Q I'm sorry, I'm sorry. When I say in that form, that's actually a vague question.
Have you ever seen a chart in that form covering the substance that's identified at the top of the chart?
A I don't recall seeing that, no.
Q Okay. Now the second chart on the left-hand side is entitled Percent of Loans with Misrepresentation Last Six Months. Have you ever seen that chart before?
A I don't recall seeing it, no.
Q Okay. And have you ever seen a chart in that form covering that substance as set forth on the top of that chart?
A No, I don't recall seeing that.
Q All right. And then there is a table beneath that which says Misrepresentation Findings that again is on the left-hand side of the page. Do you recall seeing that table before?
A No, I don't recall seeing that table before.
Q Okay. And have you ever seen a table that covers that information and all of this information that apparently comes from Post Purchase Quality Control?
A You know, I -- I don't recall seeing that.
Q All right. Now, one other thing on the document. You look at the second page of the memo. There is a description at the very top about the Ratings Methodology. In fact, there's a heading or at least part of a heading that's in all caps that says RATINGS METHODOLOGY.
Could you read that to yourself, please, and let me know if you were familiar with that methodology in the April 2007 time frame?
(The witness reviewed the document.)
THE WITNESS: I'm sorry. What was the question?
BY MR. TERCERO:
Q Did -- did you have an understanding of that methodology in the context of these Post Purchase Quality Control reports of the random sample in or about the time of April 2007?
A No, I wasn't aware that they were using PET in -- in making their -- in their methodology for determining the severity of QC Findings.
Q And is that true for all of 2006?
A It's true --
MR. RAZI: You mean 2007?
THE WITNESS: It's true --
MR. TERCERO: No. I'm actually going back --
THE WITNESS: -- over time.
MR. TERCERO: -- to 2006.
MS. VETA: So answer Mr. Tercero's question.
BY MR. TERCERO:
Q So for the 2006 time frame, is that in fact the case?
A Yes.
Q Okay. And up until April of 2007, is that in fact the case?
A Yes.
MR. TERCERO: All right. Well, why don't we go off the record at 12:27 p.m.?
(Whereupon, at 12:27 p.m., a lunch recess was taken.)
AFTERNOON SESSION
MR. TERCERO: Why don't we go back on the record at 1:27 p.m. and during the course of our lunch break, there were no communications of substance concerning the investigation between the staff of the Commission on the one hand and the witness and counsel on the other. Would you

agree, counsel?
MS. VETA: I would.
(SEC Exhibit No. 175 was referred to.)
BY MR. TERCERO:
Q Sir, let me now hand you what previously was marked as Government Exhibit 175.
Could you take a look at the exhibit and let me know if you recognize it?
For the record, Government Exhibit 175 appears to be an e-mail, states at the top on the front page that it's from carranza@comcast.net with the date of April 14th, 2007, addressed to Mr. Perry and cc Toni with an I Carranza, C-a-r-r-a-n-z-a. There is a Production Identifier on the document and that is Perry_M_00066714.
And the question again, sir, is whether you recognize the exhibit?
(The witness reviewed the document.)
THE WITNESS: Yes, I do recall this set of e-mails here.
BY MR. TERCERO:
Q All right. And is the top e-mail an e-mail that you received on or about April 14th, 2007? It's the very first e-mail on the very first page of the exhibit.
A Yes, it is.

Q Now, do you recall Toni Carranza bringing to your attention via one of the e-mails various issues that she had concerning IndyMac Bank Chicago office?
A Yes, I do.
Q And the e-mail that begins on the bottom of the first page and that continues onwards on the second page says at the top, "Here are some of my initial thoughts that I've relayed to Frank and Richard:." Then if you go down, there's a Number 5 and it's about five lines down in the middle, it begins, "Our Central Operations should have caught these problems through communications with the Operations Groups in each regions. Our Quality Control Group should have caught these problems. Our Secondary Marketing Group who deals with kick-outs and repurchases should have caught these problems, and our Internal Audit and Enterprise Risk Management Groups should also have caught these problems."
Did you do anything to determine whether or not any -- excuse me. Let's start again.
Did you do anything to determine whether these components of IndyMac Bank had any issue that resulted in not identifying the issues that Ms. Carranza identified in the e-mail?
A You lost me a little bit on that question.
Q I think I lost myself and that's because it's after lunch. Let me try again.

A Okay.
Q Did you do anything to determine whether Central Operations had any issue that resulted in their not catching the problems identified by Ms. Carranza?
A No, I didn't. You know, if you -- I was just basically saying this came to me directly from this employee in the Chicago Region. None of these other control groups or risk management groups had brought this matter to my attention and so I was, you know, saying generally, you know, somehow they should have caught -- they should have caught these problems and -- and rose them up through the chain of command and -- and -- and didn't and then I didn't get anybody challenging me, oh, well, you're wrong, Mike, we did.
Q Did you instruct anyone to look into how to improve Quality Control in light of Ms. Carranza's statements in her initial e-mail to you?
A I wouldn't have -- I wouldn't say how to improve Quality Control. You know, I had -- you know, I read Ms. Carranza's note and, you know, it rang true to me, you know, that this was, you know, an employee who had legitimate concerns that -- that were concerning and, you know, I kind of got our top management team involved in Richard, Frank, and Tony and -- and, you know, made sure, which is culturally what I want to do when someone has a complaint, is I want to protect the complainer, especially someone who's lower in the

organizational structure and -- and I, you know, encouraged us to do that with Ms. Carranza, encouraged these managers to follow up and address and resolve these issues.
Q Did there in fact -- was there in fact some issue brought to your attention concerning Central Mortgage Operations as -- by any of the people that you asked to look into Ms. Carranza's statements?
A Not that I can recall.
Q Same question but Quality Control?
A With respect to Ms. Carranza's -- them digging into this -- no, not that I can recall.
Q Now, in the 2007 time frame, did you make any presentations to either prospective or actual bond investors or any of the securitizations under an IndyMac Bank shelf?
A Not -- not that I can recall. I hadn't handled, you know, bond investor relations on mortgage-backed securities in years.
Q Let me ask you another question but this time in the context of rating agency presentations.
In the 2007 time frame, did you make any presentations to rating agencies concerning IndyMac Bancorp?
A I don't recall specifically, but, you know, I was still involved in the corporate rating agency presentations, not all of them because Scott Keys did some and maybe even Pam Marsh and Francisco Nebot, our treasurer, did some, but

unlike the mortgage-backed securities where I'm highly confident, you know, I wasn't involved in that during those latter years, I -- I was probably doing half or more of the presentations on the corporate level. I don't recall, though, specifically when in 2007.

Q You don't recall when in 2007?

A I don't specifically recall when in 2007. It's not to say there wasn't one, I just, you know, don't recall it.

Q With regard to rating agency presentations regarding IndyMac Bancorp, you mentioned Ms. Marsh, Mr. Nebot, and Mr. Keys.

For the 2007 time frame, do you have an understanding as to who participated in actually making presentations, actually speaking to representatives of rating agencies?

A From a corporate level standpoint?

Q Yes, sir.

A I don't recall specifically, but that was also the year that we issued the half a billion dollar preferred at the bank level and I'm -- I'm sure there was some rating agency involvement in that and my vague recollection is that -- that Scott and Francisco handled that communication with the rating agencies.

Q And do you recall any others participating in presentations to rating agencies, again at the corporate

level?

A I don't specifically recall. I -- I'd recall it better, you know, if you were traveling to New York to meet with the rating agencies. If they had traveled to our offices, it's possible that I participated in a portion of one of those meetings, but I just -- I don't recall specifically.

Q Insofar as traveling for purposes of making a rating agency presentation, do you have any recollection of doing so in the 2007 time frame?

A I don't have any recollection of doing so in the 2007 time frame.

One other thing I would point out on that document is that I bcc'd -- you don't see it on here -- the Board and our -- and our senior management team, you know, on that issue and I believe we discussed it and Richard and -- and a group gave an update to the Enterprise Risk Management Committee of the Board on those issues.

BY MS. ESON:

Q Was there ever a position created for Ms. Carranza?

A Yes, I encouraged our Chief Audit Executive, you know, head of Internal Audit, who reported to the Audit Committee, to hire her to do audits just like on the issues that she raised, and she did hire Ms. Carranza to do -- to perform those types of audits.

BY MR. TERCERO:

Q And is that Ms. Arredondo, when you say the Chief Audit Executive?

A Yes.

(SEC Exhibit No. 84 was referred to.)

BY MR. TERCERO:

Q Sir, let me hand you what previously was marked as Government Exhibit No. 84.

Would you please take a look at the exhibit and let me know if you recognize it?

For the record, Government Exhibit 84 is a multipage document and appears to be a PowerPoint Presentation or DECK. It has a date in the upper right-hand corner of May 27th -- I'm sorry -- May 22, 2007. In the upper left, it says Central Mortgage Operations Q1 2007, Management Accountability. The IndyMac Bank Service Mark appears in the lower right-hand corner. The Production Number for Government Exhibit 84 is 01066582 and it goes all the way until 652.

Sir, do you recognize the exhibit?

A I don't recall seeing this document.

Q Now, in or about the mid 2007 period, so beginning with -- with May and going through the end of July, do you recall that there was a reduction in force at IndyMac Bank?

A You know, I don't recall the specific time frame, but, you know, one of the issues that -- that we were doing was obviously right sizing our workforce, especially our workforce within the Production and Mortgage Banking Unit to the fact that we were trimming production volumes and tightening guidelines and so, I mean, that would be logical around that time frame that we were reducing force.

Q And did you play a role in determining the nature of that right sizing?

A I mean, yes, you know, generally, a high-level role in that, guys, you need to -- we need to, you know, get our production and operations right sized to the -- the new product mix that we're originating now.

Q Do you have an understanding that, as part of the changes in IndyMac Bank's activities, that there was a change in the Post Purchase Quality Control Group insofar as the type of audits that were to be conducted?

A No, I don't.

Q In the 2007 time frame, up until the end of September of 2007, did you have an understanding that the Post Purchase Quality Control Unit no longer conducted these random sample audits?

A No, I didn't.

Q Did you ever learn that there was -- strike that. Did you ever learn that the Post Purchase Quality Control

Unit ceased to perform the random sample audit in the 2007 time frame?

A I don't -- I don't recall ever hearing about that, no.

(SEC Exhibit No. 44 was referred to.)

BY MR. TERCERO:

Q Let me now hand you what's previously been marked as Government Exhibit No. 44.

Could you take a look at it and let me know if you recognize it?

For the record, Government Exhibit 44 is a multipage document. It bears Production Number Nyland_N_00112876. It appears to be a PowerPoint Presentation and it says in the upper left-hand corner IMB Mortgage Fraud Update June 2007. It has the IndyMac Bank Service Mark in the lower right-hand corner.

When you've had a chance, sir, and you're comfortable answering the question, just let me know if you recognize that document.

(The witness reviewed the document.)

THE WITNESS: I don't recall seeing this document, no.

BY MR. TERCERO:

Q Do you recall in the June or July 2007 time frame

receiving a presentation concerning mortgage fraud at IndyMac Bank?

A Well, I recall discussing in general during the last -- you know, the last several years of IndyMac my goal to be able to delineate between statistical credit risk and non-statistical or fraud credit risk, so that we could track those separately and measure and monitor them, so we could put procedures in place to prevent them, but I don't -- I don't recall specifically a meeting on that during that time frame.

Q I see. If you look at the document, more specifically at Page 8, there is a heading up at the top that says, "42.2 Percent of Audited Early Default Loans Contain Fraud, Suggesting Roughly 28 Percent of the Total Q1 Credit Loss Was Fraud-Related."

Just looking at this specific page, have you seen this page or something substantially similar to it, again in the 2007 time frame?

A Yeah. Not that I can recall, no.

Q Do you recall learning at some point in 2007 that approximately 42 percent of the audited early default loans contained fraud?

A I don't recall learning that, no.

Q Do you recall learning in or about -- well, in the 2000 time frame that --

MS. ESON: 2007.

MR. TERCERO: I'm sorry.

BY MR. TERCERO:

Q In the 2007 time frame that approximately 28 percent of the Q1 2007 credit loss was fraud-related?

A No, I don't recall that.

(SEC Exhibit No. 151 was referred to.)

BY MR. TERCERO:

Q Sir, let me now hand you what previously has been marked as Government Exhibit 151.

Please take a look at it and let me know if you recognize it.

For the record, Government Exhibit 151 appears to be a multipage document with the IndyMac Bank Service Mark in the lower left-hand corner. It is entitled Contract Management: Warranty Risk Update, Secondary Marketing, July 10, 2007. The last three pages of the exhibit bear the Production Identifier but the identifier itself is on the very last page of the exhibit and using the Doc ID, the identifier says MM004FDIC00003558. There's also a Doc ID which is the same number but the last digit is 7 rather than 8.

Sir, have you seen Government Exhibit 151 before?

A don't recall seeing this, no.

Q Do you recall seeing any portion of Government Exhibit 151 before? And let me be specific. Would you take a look at Page 5?

A No, I don't recall seeing Page 5 before.

Q Let me continue and have you look at Page 7. Do you recall seeing that page before?

A No, I don't recall seeing Page 7 before either.

Q Okay. In the context of home loan sale contract provisions in the 2007 time frame, do you have an understanding of the use of the term "Holy Grail?"

A Well, I can see how they're using it here in this document, but -- but during that time frame, I wouldn't have had a concept of what they mean by that, unless somebody explained it to me.

Q Okay. So separate from seeing it in the document, you don't have an understanding of the use of that term in the context of home loan sale transactions for 2007?

A No.

Q In 2007, did you ever gain an understanding that rating agencies would not provide a rating for a securitization deal if there were sunset provisions for non-early payment default reps and warranties?

A Repeat that one more time.

Q Sure. In the context of non-EPD reps and warranties, did you ever learn in 2007 that rating agencies

would not rate a securitization deal if there was a sunset provision?

A I don't recall specifically that -- that issue, no.

Q What is it that you recall generally then?

A Just generally, you know, as I said earlier, that the rating agencies and the provisions were heavily influenced by the standard Fannie/Freddie contractual provisions.

MR. TERCERO: Let's go off the record at 1:57.

(A brief recess was taken.)

MR. TERCERO: Let's go back on the record and it's 2:05 p.m., and during the break, our very brief break, there were no communications of substance between the staff of the Commission on one hand and the witness and counsel on the other. Would you agree, counsel?

MS. VETA: I would.

MR. TERCERO: All right.

(SEC Exhibit No. 193 was referred to.)

BY MR. TERCERO:

Q Sir, let me now hand you what previously was marked as Government Exhibit 193.

Could you take a look at it and let me know if you recognize it?

It is a little bit different than Government

Exhibit 44 because there's a date on Government Exhibit 193 of July 2nd, 2007, in the upper right-hand corner. It says IMB Mortgage Fraud Update, June 2007, in the upper left, and the IndyMac Bank Service Mark in the lower right.

And, sir, the question to you is do you recognize Government Exhibit 193?

A No, I don't.

Q Just to see if it refreshes your recollection, could you look at Page 1? And it says 1 in the lower right-hand corner. There are -- at the top, it says, "Why are we here?" And then there's a series of bullet points. The last one, the last black square says, "The CEO and others have asked for," and then there are three subparts to that.

Do you recall ever asking for any of those three items listed under -- listed under the line identified in the 2007 time frame?

A I don't recall specifically the 2007 time frame, but, yes, I recall asking for those specific items.

Q And who did you ask for those items? And if we need to go item by item, we can do that.

A I don't think you need to do that, but probably our Chief Risk Officer Ruthann Melbourne and her team.

Q Now you said probably. What is the basis for your answer?

A Well, that's -- in that time -- if it was 2007, she

was the Chief Risk Officer and I would -- Executive Committee Member, and -- and it was a risk management issue. I would have been coordinating with her on something like that.

Q So at least in part, it's based upon the practice at that time?

A Yeah. I mean, it's -- it's -- you know, it's my best view about who I would have asked.

Q I suppose it's also, at least in part, based upon the structure of the organization, as well?

A Sure.

(SEC Exhibit No. 184 was referred to.)

BY MR. TERCERO:

Q Let me now hand you what previously was marked as Government Exhibit 184.

Would you take a look at the exhibit and please let me know if you recognize it?

For the record, Government Exhibit 184 appears to be a PowerPoint Presentation with the date of August 14th, 2007, in the upper right-hand corner. In the upper left, it says Central Mortgage Operations, Q2 2007, Management Accountability. In the lower right, it says -- it has the IndyMac Bank Service Mark, and it bears Production Number 563687 through 732.

Sir, do you recognize Government Exhibit 184?

A No, I don't recall seeing this document.

Q Okay. Do you recognize the writing on the very first page?

A I don't -- I don't recognize that writing.

Q Can you say with assurance that it is not yours?

A Pretty sure that's not my handwriting.

Q Okay.

(SEC Exhibit No. 47 was referred to.)

BY MR. TERCERO:

Q Let me now hand you what previously was marked as Government Exhibit 47.

Could you take a look at Government Exhibit 47 and let me know if you recognize it?

For the record, Government Exhibit 47 appears to be a PowerPoint Presentation or Dec. It says in the upper left Quality and Fraud Risk Management and beneath that it says Quality Fraud Report, Second Quarter 2007. The IndyMac Ban Service Mark is in the lower right-hand corner of the very first page. The Production Identifier is Nyland_N_00104418.

Do you recognize Government Exhibit 47?

A You know, I don't recall seeing this report, no.

Q In the 2007 time frame, did you typically receive any Quality and Fraud Risk Management Reports?

A You mean -- you mean like on a standard basis or

something?

Q Yes, that's actually a very good qualifier. Yes, on a standard basis.

A No. You know, as I said earlier, you know, I had the overall Corporate Management Accountability package which had a number of risk factors under the CAMELS framework and a number of Credit Risk factors and so I was utilizing that document.

Q Yes, I -- I do recall your testimony in that regard. I am asking about a specific unit.

A Yeah.

(SEC Exhibit No. 48 was referred to.)

BY MR. TERCERO:

Q Just to make sure, could you please take a look at what previously was marked as Government Exhibit No. 48, and let me know if you recognize that document?

For the record, Government Exhibit 48 appears to be a PowerPoint Presentation or Dec with the date of September 12th, 2007, in the lower right-hand corner and the IndyMac Bank Service Mark. It says up at the top on the left CMO -Quality and Fraud Risk Management, Quality Control, Consolidated Report, September of 2007.

A No, I don't recall seeing this report.

Q Sir, at any point in 2007, do you -- did anyone

communicate to you that the percentage of loans in IndyMac Bank loan production that had fraud or misrepresentation in them was more than 10 percent?

A Not that I recall.

Q And is your answer the same concerning 2008?

A Yes.

Q Okay. In the initial documents I showed you, 211 and 212, there was discussion about the -- trying to determine the ratings and the definitions for ratings. That was back in the 2003 time frame.

Do you recall ever learning of a resolution of defining what ratings meant?

MS. VETA: In what time period?

MR. TERCERO: Oh, in the 2007 time frame.

THE WITNESS: Regarding a resolution of the definitions in 2007?

MR. TERCERO: Well, actually, I should change the time frame.

BY MR. TERCERO:

Q Following 2003, did you ever learn that the definitions that were used by Post Purchase Quality Control, those definitions had been resolved?

A I don't remember exactly whether they did or didn't get resolved. We had, you know, as I said, a number of layers of management between me and that group and I'd kind

of express my views and I don't recall how that ultimately got resolved out.

MR. TERCERO: All right. Well, why don't we go off the record at 2:17 p.m.?

(A brief recess was taken.)

MR. CHUNG: Why don't we get started? It is 1:33 p.m. We're back on the record.

MR. RAZI: 2:30.

MR. CHUNG: I'm sorry. 2:33.

BY MR. CHUNG:

Q Mr. Perry, during our break, were there any substantive communications between you and the SEC staff?

A No.

Q Okay. I want to talk about what was occurring at IndyMac in the 2008 time frame, before the Form 10-Q was filed. I wanted to first get some background on your day to day duties during that time period.

Can you tell me the meetings that you were attending regularly during that time period?

A You know, I would say I wasn't attending too many meetings on a regular basis and we weren't having a lot of regular meetings, you know, given the crisis period that we found ourselves and a lot of financial institutions found themselves in during that time period.

That was -- you know, beyond that, I was dealing

with my normal duties, along with, you know, -- but with, you know, a heavy focus on keeping IndyMac safe and found.

Q Okay. What -- what were you doing, what were you monitoring may be a better question, to -- to ensure that IndyMac was staying safe and sound?

A Well, one of the most important things, besides the credit issues that we've been discussing here, you know, today, was the size of the balance sheet and -- and, in particular, making sure that that balance sheet from a capital -- it wasn't growing so that we weren't depleting our capital and depleting our capital ratios and so we had still -- while we had dramatically cut loan volume, we were still doing several billion dollars a month of loan volume and we needed to ensure that that loan volume could be sold so it wasn't increasing the balance sheet and reducing our capital ratios.

You know, another big thing we were focused on was trying to raise capital and that was very difficult in this environment, given the uncertainties surrounding housing prices and -- and -- and, you know, the whole financial system and our stock price to -- to raise capital.

Q You mentioned shrinking the balance sheet. Can you describe what the relation is between the balance sheet and capital ratio?

A Well, all over things being equal, if your balance

sheet is declining without creating losses in its declination, the capital ratios are being -- are being bolstered even if you haven't raised any capital.

Q Okay. Well, let's talk about the capital ratios. What do the capital ratios represent?

A Well, they represent a measure of safety and soundness. It was one of the factors in the CAMELS Risk Management Framework that the regulators use and capital adequacy, you know, is literally first in that -- in that risk management category and -- and so it was important to -- to -- from a safety and soundness standpoint to -- to have strong capital ratios.

Q All right. And what was your understanding as to IndyMac's requirement in terms of its capital ratio in order to be considered safe and sound?

A Well, I don't think there was a specific -- you know, there's not a definition to be safe and sound, but there was a regulatory regime that described capital levels of well-capitalized, adequately-capitalized, and, I think, under-capitalized, and I think we discussed and disclosed that in a lot of our SEC filings.

Q Okay. And what were you doing during this early 2008 time period to monitor IndyMac's capital ratios?

A Well, I was getting updated forecasts from our Financial Planning Group on a regular basis, you know, almost

weekly that were making assessments as to what our forecasts would be in the near term about our capital ratios.

Q Okay. And how would you get these forecasts?

A I mean, they would either be a full forecast or some subset of -- of the full forecast.

Q Okay. But how would you get them? Would you get them handed to you or would you --

A Yes.

Q -- review them in a meeting or would you g et them by e-mail?

A Generally handed to me or e-mailed to me, saying, you know, here it is, let's discuss.

Q And who would be the conduit, who would be the person providing you with that forecast?

A It was generally Pam Marsh or Brian Carter or a combination of the two of them.

Q Okay. And do you recall having regular meetings with Mr. Carter or Ms. Marsh to review the forecast?

A You know, not during this time frame. We were getting them so frequently updated, they were just ad hoc meetings, you know, as they -- as they produced them.

Q Okay. Well, I don't mean that they necessarily had to be regulars -- regularly-scheduled meetings. Just the meetings that you can remember, how often did they occur?

A Yeah. I don't recall specifically, but, you know,

we were discussing forecasts on almost -- almost a weekly basis during the first quarter of 2008.

Q Okay.

A Maybe every other week sometimes, but -- but week -- week to every other.

Q Okay. And when you say we, are you referring to yourself, Mr. Carter, and Ms. Marsh?

A And generally some other managers, like Scott Keys, our Chief Financial Officer.

Q All right. And so what -- what would you typically review in these meetings and what would you typically discuss?

A Well, we were looking at everything from our earnings forecasts for the first quarter to balance sheet size to capital ratios to, you know, credit quality and sometimes it would be, as I said, comprehensive forecasts and other times it might be certain segments of the forecasts. But sometimes it might just be an e-mail where they gave me two sentences with just the capital and their view of what the capital ratios were.

Q And so the persons providing you with the capital ratios via e-mail would be either Mr. Carter or Ms. Marsh?

A I would say generally. It might have been Scott Keys, our CFO, at points in time during that period of time.

Q Well, at this point in time, did Mr. Keys have any

supervision over Financial Planning?

A He -- he didn't, but, you know, everybody was pitching in to help out in -- in really any area and he was the Chief Financial Officer of the company.

Q Okay. And just generally in terms of forecasting, who was primarily in charge of forecasting capital ratios?

A Well, no one was -- you don't forecast capital ratios, you build a plan from bottom up, and the capital ratios flow out of that plan.

Q Okay.

A And -- and so Pam Marsh, as I recall, was the head of Financial Planning and she was working with the various units who provided the sub-forecasts that then built up to the overall forecasts that then built up to calculating capital ratios.

Q All right. And what involvement, if any, did Mr. Carter have in that process?

A You know, I don't recall specifically. They were -- you know, it got to be such a voluminous activity during that time period that I think he was pitching in and helping her with the forecasts. That's -- that's my, you know, just general or vague recollection of what was going on during that time period.

Q Okay. Well, going back to the meeting that you attended, I just wanted to review your membership or

participation in any management committees. Did you have any such participation or membership in those types of committees?

A During 2008?

Q Yes.

A You know, other than the Senior Management and the Executive Committee, I -- I can't recall participating in a management meeting during the first quarter of -- of 2008.

Q All right. Any other committees or working groups that you were a member of?

A At one point, you know, and I don't -- I don't think I was on it in 2008. At one point, I was on the Senior Loan Committee, but I don't think I was in 2008. But no, I can't remember any others.

Q Okay. And in terms of the Board level, obviously you were a member of the Board. Were you a member of any committees of the Board?

A I was years ago, but I have -- I hadn't been for several years a member of any of the particular committees.

Q Okay. Did you regularly attend any meetings of committees of either the Board of the bank or the Bancorp?

A I attended some, but I wouldn't say I regularly attended them. I was familiar with all of -- you know, most of the packages because the management lies on to that Board committees would oftentimes come in and review the materials

with me in advance of the meeting. So if there's a piece of it that I thought I needed to be present for, I -- I would attend that piece.

Q Okay. Did you have any specific concerns about IndyMac's capital ratios during the early part of 2008, January-February?

A I mean, certainly during 2008, I had concerns about IndyMac's capital ratios. I don't remember specifically when it became, you know, from not -- not much of a concern to a concern to a serious concern and that really kind of evolved during that quarter.

Q Okay. Just as an overview of the entire period between January and early May, prior to the filing of the 10-Q, in 2008, at some point did you become concerned that IndyMac would be below 10 percent on its risk-based capital ratios?

A At some point, yes, I did become concerned that we could potentially be below 10 percent on that, on the total risk-based capital.

Q And when did that first occur?

A You know, I don't recall specifically when that first occurred. It was, you know, February-March-April, you know, time frame, somewhere in that time frame.

Q Can you tie it to an event?

A I probably could, if you laid out memos for me.

During that time period, I probably -- I probably could tell you if you did it chronologically, okay, I'm concerned, I'm seriously concerned. The -- the -- you know, and -- and there was a point that I wasn't concerned because we hadn't even filed our fourth quarter results yet where we had the large loss.

Q I'm sorry. You were concerned because you hadn't filed the 10-K yet?

A No. I'm -- what I'm saying is in the first part of '08, we didn't even know the results for the fourth quarter of '06 yet and how material that loss was going to be.

Q Okay.

A And so prior to that, I probably wasn't that concerned on capital ratios. I thought we had plenty of capital. Okay. After the fourth quarter was closed and we had that large loss was probably when I became concerned and then at some later point, I became more concerned.

Q Okay. Well, we'll go through chronologically memos and e-mails that occurred in the first part of 2008. I just at this point want to get big picture of -- of what was going on and your knowledge and/or participation of what was going on.

So moving beyond the capital ratios, did you have an understanding that there was an ongoing OTS examination at IndyMac during that first part of 2008?

A Yes, I did.

Q And what was your participation or involvement in that examination?

A Well, it was -- was limited. You know, we had a head of Regulatory Relations who was a former FDIC examiner. She coordinated the -- that regulatory exam on our behalf and she and various managers primarily dealt with the regulators and their exam. I think it commenced some time in January.

Q Okay. And in January of 2008, did you become aware of a downgrade to a CAMEL 3 composite rating?

A Yeah. I -- I believe at some point in January I received a phone call from the head of the Western Region of the OTS and he called me and said -- I think it was based on our fourth quarter earnings. I had been keeping him informed of what our numbers were going to be for the fourth quarter and when he -- when we got those preliminarily in place and he was aware of them, I think, you know, that -- that's what kind of said, "Mike, we're going to need to downgrade IndyMac to a 3 as of 12/31/07." So it was some time in January.

Q Okay. Did you have any expectations of a downgrade prior -- prior to being informed by the OTS of it?

A No, I didn't.

Q Do you have any understanding of, generally through the course of an examination, whether the OTS signals which or what composite rating it's leaning towards?

MS. VETA: I'm sorry. Would you repeat the question?

BY MR. CHUNG:

Q Do you have an understanding if, during the course of an OTS examination, if they alert the thrift, its management, of what composite rating the OTS is leaning towards?

A I mean, typically, they don't do that. They don't tell you where they're leaning towards.

Q Okay. You mentioned that there's a head of Regulatory Relations at IndyMac. Is that Christine Hunt-Fuhr?

A Fuhr, yes.

Q Fuhr. Okay. What updates did you receive from her or from others about the examination in 2008?

A You know, from time to time she would send me an e-mail generally. There might have been some verbal updates where she told me some of the things that were going on with respect to the exam.

Q Okay. Would you ever receive agendas of meetings that Ms. Hunt-Fuhr had with the OTS?

A Yeah. I might have. If you showed me a document, I'd be happy to look at it. I might have received some updates.

Q Okay.

BY MS. ESON:

Q Mr. Perry, did you give the name of the person who was head of the Western Region of the OTS?

A Was Darrel Dochow.

Q Thank you.

A He did follow up with a letter after that on the 3.

(SEC Exhibit No. 664 was marked for identification.)

BY MR. CHUNG:

Q Let me hand to you what's just been marked as Exhibit 664.

Exhibit 664 is an e-mail, dated January 17th, 2008, from Mr. Perry to a number of persons, including the Board Dashboard and the IndyMac Executive Committee. The subject of the e-mail is OTS Update Confidential, Marked for Secure Delivery.

Why don't you read through that and let me know if you recognize it?

(The witness reviewed the document.)

THE WITNESS: Yes, I do.

BY MR. CHUNG:

Q All right. Is this an e-mail that you wrote at IndyMac?

A Yes, it is.

Q Now in the second paragraph of your e-mail, near the bottom of that paragraph, you've written that "he," I believe referring to Mr. Dochow, "was forced to move us to a CAMELS 3 now and not wait until the exam is completed as of 12/31/07 and a 4 on both asset quality and earnings. He is apologetic about this and emphasized his confidence in us."

What did you mean by Mr. Dochow being "forced," and that's in quotes, to move IndyMac to a CAMELS 3?

A Well, just I think "forced" by the circumstances of the environment that we and a lot of others were in in the industry with, you know, the deteriorating housing prices and the collapse of the private secondary market.

Q Now, the -- your reference here about the exam not being completed, is that the exam that began in January of 2008?

A That's right.

Q Okay. When had the prior exam -- when had the OTS previously examined IndyMac?

A About the same time in the prior year.

Q 2007?

A Yes.

Q And just for purposes of background, how long had Mr. Dochow been the Western Regional head of the OTS?

A I'm not sure.

Q How long had you known Mr. Dochow?

A He was the assistant regional head before he was

the head of the Western Region and then he got elevated when the head of the Western Region became the head of the Northeast Region. I don't recall the specific time frame. I mean, it happened -- if you asked me, it probably happened after 2005 but I'm not sure.

Q Okay. And how long had Mr. Dochow been the deputy head of the Western Region?

A I'm not sure if he -- as I recall, my vague recollection is he was since we had been a thrift in 2000.

Q Did you have regular communications or meetings with Mr. Dochow prior to 2008?

A We had our annual exit meeting on the safety and soundness exam. His staff had quarterly meetings with our -- with our -- with our staff. I kept him informed, as I said, like I kept my Board and my senior management, on a lot of the issues in '07 and '08, and we had a few informal calls in '07 and '08, given the -- the extent of the financial crisis that was going on, and there -- there's probably a couple of other ad hoc meetings that he and his team and I were involved in during -- during that time period, too, but I don't recall the exact time frames of those.

Q In what context, other than these annual safety and soundness meetings, would you have with Mr. Dochow?

A You know, my recollection is they were really, you know, update meetings, given the state of the housing and

mortgage finance industry. So he was, you know, seeking an update on how we were doing.

Q And did you ever socialize with Mr. Dochow?

A No.

Q Okay. Going back to Exhibit 664, the third paragraph here says, "Christina gave me a little "color" on this. Darrel has been pressured since October to move us to a 3 and had been able to fend this pressure off, saying, "Let's wait until the exam is done in January." Given the worsening in the marketplace and our results, he could no longer wait."

Did you have an understanding as to who was pressuring Mr. Dochow to move IndyMac to a 3 since October?

A Yeah. I mean, I didn't really delve into it nor care.

Q Well, do you have an understanding as to who Mr. Dochow received orders from or direction?

A Well, his superiors, but, I mean, that's -- that's it, from my understanding.

Q To your understanding, who are Mr. Dochow's superiors?

A I'm not sure. There are superiors in Washington, D.C., at the OTS.

Q Do you have the names or are you familiar with these people?

A Well, I mean, I know who the head of the OTS was, Frank Reich at that time, but that's it. Other -- other senior managers, I think he -- I don't think he reported directly to the director of the OTS.

Q In the next paragraph there, it says, "I don't see the above as a big issue. We expected to have this happen anyway and the subcomponent ratings are meaningless in a month or so anyway."

What did you mean in that sentence about expecting the CAMELS 3 composite rating?

A Well, I think, you know, given the environment and the loss that we suffered in the third and the fourth quarter and the deterioration in our capital ratios, the deterioration in our stock price, the total collapse of our core business, the private label securitization market, it -- what I meant was it wasn't surprising that we would be down-graded from a 2 to a 3.

Q Well, at some point prior to January 17th, 2008, was it considered -- did you consider that downgrade inevitable?

A I -- I didn't consider -- I didn't think about it.

Q Well, is IndyMac's composite CAMELS rating important to IndyMac's business?

A You know, the CAMELS composite rating is a confidential rating and it -- it is important in that it is a

sign of confidence privately with your regulator and other superior regulators. There's a cost to being a 3 and you can see it in Cs, but in substance, we had been a 3 when we first became a financial institution for a year and became a 2 and so, you know, I was highly confident that as a 3, we could operate our business effectively and -- and eventually get back to a 2.

Q What are the different fees that -- what's the additional fee that you're referring to in this e-mail?

A I think it was insurance fees, but I'm not -- I'm not sure and maybe exam fees, but I'm not sure.

Q Okay. So the insurance fees are FDIC fees?

A I'm not -- again, I'm -- I don't recall specifically, could have been insurance. It could be just exam fees.

Q And exam fees are paid to the OTS?

A Correct.

Q Okay. And earlier, you mentioned that one of the things you were interested in was shrinking IndyMac's balance sheet. What were you doing in that area to make sure that that goal got accomplished?

A Well, one of the things that we did is we shut a number of business units down where there was no secondary market for them any longer. We had, in '07, we had closed both of our construction businesses. We had closed our

conduit and we had stopped doing almost all non-conforming lending and were doing almost all agency loans at the present time. So we were very focused on producing loans that could be sold in what was then a reduced secondary market and that, you know, is the key way that we were going to shrink the balance sheet over time and then sell -- you know, selling what we could off of our balance sheet.

Q Well, did you have a team assigned to this task or --

A I mean, there were -- there were various managers who had key responsibilities related to all of those activities.

(SEC Exhibit No. 555 was referred to.)

BY MR. CHUNG:

Q I want to hand to you what's previously been marked as Exhibit 555.

Exhibit 555 is an e-mail, dated January 28th, 2008, from Mr. Perry to a number of persons, including the IndyMac Senior Managers' e-mail list. The subject of the e-mail is Latest Forecast Update.

(The witness reviewed the document.)

THE WITNESS: Okay.

BY MR. CHUNG:

Q Do you recognize Exhibit 555?

A I do.
Q Is this an e-mail that you drafted in January of 2008?
A It is.
Q Let's start by looking at the attachment, the Forecast Update, which is dated January 25th, 2008. Is this exemplary of the forecasts that you had seen at IndyMac?
A It is, and it's also the ones that we provided to shareholders in a lot of our disclosures when we disclosed the details of our forecasts.
Q Well, would the forecasts that you normally saw at IndyMac in this early 2008 time period have any greater or less detail than the Forecast Update that's in Exhibit 555?
A Generally, this is -- this was the format.
Q All right. And you said that these forecasts were put together by Financial Planning?
A Yes, I believe so.
Q Okay. In your e-mail that's on the second page of Exhibit 555, the one dated January 25th, 2008, at 10:50 a.m., you mentioned that you want Francisco and David to be in charge of monitoring this weekly and getting a group together, the group that's being held fully accountable for achieving the balance sheet reduction in 2008.
Do you have an understanding as to whether that group met weekly to monitor the balance sheet reduction?

A I don't.
Q Do you recall getting updated on any regular basis on whether the balance sheet reduction was taking place?
A Just in a very general sense, that we were achieving some results with respect to the balance sheet reduction.
Q And who was -- who would provide you with such updates?
A Well, I mean, the one was I was getting these, as I said, these updated forecasts on, you know, a weekly or every-other-week basis as -- as events were changing and volumes were changing, loan sales were changing and other events.
Q Was there a targeted balance sheet amount for this balance sheet reduction?
A You can see that in that second page of this e-mail, that the targeted reduction for the year was roughly five and a half billion.
Q I'm sorry. The second page?
A Of this e-mail.
Q Oh. Well, five and a half billion from 2007?
A The end of 2007 to the end of 2008, correct.
Q Okay. And so my question is do you recall getting updates on whether that target was being met through the course of 2008?

A I don't think that -- well, they probably didn't have a weekly forecast of the target and I don't recall specifically focusing on that issue at -- when we filed our first quarter Q, but I -- I just don't recall specifically that issue.
Q You said you would get a forecast roughly every week or so during this 2008 time period, --
A Yeah.
Q -- and do you have an understanding as to how that forecast was put together?
A You know, as I said earlier, it was, generally speaking, it was rolled out from the business units and -- and then compiled together. Certainly if you were talking about every other week, you know, business units might say, you know, no change and there might not have been a detailed forecast unless there was a change.
Q But generally do you have an understanding as to how often the business units would update their forecasts?
A I don't. I wasn't involved in specific details on that.
Q Do you recall what IndyMac's capital ratio was for the fourth quarter of 2007?
A I don't recall specifically what the capital ratio was, but we were well capitalized at the end of 2007.
Q Well, I'll represent to you that the ratio reported

in its Form 10-K for the year-ended 2007 was 10.81 and that's not on a subprime-adjusted basis.
In this forecast that's attached here, the Forecast Update, dated January 25th, 2008, the forecast for the first quarter of 2008 is 10.95. Can you see that?
A In this plan here?
Q Yes.
MS. VETA: I'm sorry. What page are you on? Of the forecast?
MR. CHUNG: Page 1 of the forecast.
MS. VETA: Thank you.
BY MR. CHUNG:
Q The projection for the first quarter of 2008, the very -- the number at the very bottom of that column, 10.95 is projected risk-based capital ratio.
A Mm-hmm.
Q Did you at that time think it was reasonable to project a capital ratio that was higher in the first quarter of 2008 than the fourth quarter of 2007?
A Well, I didn't -- I mean, I don't think it was unreasonable to do it. I think the assumptions that they put in this forecast were reasonable and appropriate assumptions. We had tried to really build our reserves, credit reserves up and we had done that substantially in the second half of '07, and we felt that our credit reserves weren't going to have to

be built at that same level going forward, so that our loss was going to decline, and so, you know, with some balance sheet shrinkage and a declining loss and continuing to raise capital through the direct stock purchase plan, yes, I thought that was a reasonable forecast for the first quarter.

Q Well, previously, I think earlier this morning, you mentioned that IndyMac had missed its earnings forecast for the year 2006.

MS. ESON: 7.

THE WITNESS: For the fourth quarter 2007, she's right.

BY MR. CHUNG:

Q From that point forward, did you question the reliability of IndyMac's forecasting?

A Absolutely, we did, and disclosed -- disclosed that in all of our disclosures, that it was an incredibly challenging period to forecast, and all I can say is a forecast -- our best effort forecast is better than no forecast and the forecast that we were using internally to manage the company was the same forecast that we used externally.

Q Well, did you ever have concerns in the 2007-2008 time period that IndyMac's forecasts were overly-optimistic?

A You know, I had concerns that it was very difficult to forecast, given the uncertainty in the environment, but

our forecasts were always the most realistic forecasts that we felt was -- was appropriate at that point in time and it was the forecast that we were using to manage the company internally, too.

Q Well, did you have an understanding as to whether the OTS criticized IndyMac's forecasting process in 2007?

A Yeah. I mean, they -- they provided a comment related to missing that fourth quarter of '06 and asked us to improve our forecasting process which -- which we did. We implemented kind of a mini-SOX -- as I discussed earlier, kind of a mini-SOX certification process for the forecasting process.

Q And did you notice any improvement in the forecasting in -- in 2007?

A No, and that really didn't have to do with people not doing it with good faith. It had to do with forecasting models for everyone are built on recent history and the future during this period was so radically different than anybody's recent history, everybody's forecasting models for everything were -- were wrong.

Q Okay. In January of 2008, just switching topics a bit here, do you recall there being a downgrade of IndyMac mortgage -- of IndyMac's mortgage-backed securities?

A In which period?

Q In January of 2008.

A No, I don't recall that.

(SEC Exhibit No. 634 was referred to.)

BY MR. CHUNG:

Q Let me hand to you what's previously been marked as Exhibit 634.

Exhibit 634 is an e-mail, dated January 30, 2008, from Michael Perry to Scott Keys and others. The subject of the e-mail is Income Statement Adjustment, Confidential.

(The witness reviewed the document.)

THE WITNESS: Okay.

BY MR. CHUNG:

Q All right. Mr. Perry, do you recognize Exhibit 634?

A Vaguely.

Q Did you write this e-mail on January 30, 2008?

A The two sentences above, yes, to Scott, yes.

Q Okay. Does this refresh your memory as to MBS Downgrade in January of 2008?

A Well, I don't think this is a downgrade. This is a decline in the value of the bonds.

Q Okay.

A He doesn't -- he doesn't say downgrade, that the rating agencies downgraded these bonds.

Q Well, he does refer to bonds being downgraded

during Q1 and that --

A I'm sorry. Where's that line?

Q This is in the second paragraph, four lines down from the top of that second paragraph. "As these bonds had been downgraded during Q1, we were already forecasting a first quarter charge."

A Oh, I see.

MS. VETA: So what's the question?

BY MR. CHUNG:

Q Well, the question is do you have an understanding as to whether that refers to a downgrade during the first quarter of 2008?

A Yeah. It does look like it refers to a downgrade.

Q And so does that refresh your memory as to a downgrade in January of 2008?

A Yeah. I mean, it -- it does. It's a relatively small group of bonds and -- and a relatively small amount in relation to the issues we were dealing with during this period, but yes, it does. Thank you.

Q Did you participate in any discussions about whether the downgrades should be reflected in IndyMac's profit and loss statements for either the first quarter of 2008 or the fourth quarter of 2007?

A I don't believe I did.

Q Were you involved in any discussions as to whether

any changes in risk weighting of downgraded mortgage-backed securities should be made effective as of either the first quarter of 2008 or the fourth quarter of 2007?

A No, not that I recall.

Q Did you have an understanding as to whether IndyMac had a policy in that regard?

A No, I don't have an understanding that we had a policy in that regard.

Q Who would the responsible person at IndyMac be to make that determination in terms of which quarter to take the risk-weighting impact of an MBS downgrade?

A Well, that would be something that would be handled by our Financial Group and the group that filed our thrift report.

Q Did IndyMac have a policy in terms of minimum liquidity requirements at the Bancorp level?

A Oh, yes, we had an internal policy regarding liquidity, minimum liquidity requirements at the holding company.

Q Was that policy public information?

A I'm not sure. I -- I don't recall that it was public information. As I said, it was an internal liquidity policy.

Q Okay. Do you have an understanding as to what that policy was in the January 2008 time frame?

A Roughly speaking.

Q Roughly, what was your understanding?

A That the policy required us to maintain a certain number of quarters of our preferred stock dividend and our common stock dividend in -- in -- in operating liquidity at the holding company.

Q Okay. Do you have an understanding as to whether that was disclosed -- sorry. Let me start over.

Do you have an understanding as to whether the Bancorp's cash position was disclosed publicly?

A I don't recall whether it was disclosed publicly or not.

(SEC Exhibit No. 557 was referred to.)

BY MR. TERCERO:

Q Let me hand to you what's previously been marked as Exhibit 557.

Exhibit 557 is an e-mail, dated February 11th, 2008, from Pam Marsh to the IndyMac Executive Committee with a copy to Mr. Perry. Attached to the e-mail is IndyMac's Fourth Quarter 2007 Earnings Presentation, Earnings Release, and 2007 Shareholder Letter.

Okay. Mr. Perry, are you familiar with IndyMac's Fourth Quarter Earnings Presentation?

A Yes, I am.

Q Is that presentation something that you reviewed before it was filed with the SEC?

A Yes, I did.

Q Okay. If you'd look at Page 5 of the Fourth Quarter Review, it's a slide entitled IndyMac Ended the Year With a Strong Liquidity Position, Both at the Holding Company and at the Bank.

The left column under the heading Holding Company, it's stated here, "Cash at 12/31/07 is approximately $64 million."

Do you have a recollection whether the holding company's cash position was something that was regularly presented in IndyMac's earnings presentations?

A My recollection is it probably wasn't, but I certainly don't recall it being something -- I was, you know, very involved in putting these PowerPoint presentations together and -- and reviewing them with shareholders and now that I see this, I remember it, but I don't recall it being kind of a standard part of the package, you know, in, you know, many quarters.

Q Is there any specific reason why the holding company's cash position is being disclosed in this particular earnings presentation?

A Well, we were going through, given the focus on safety and soundness in '07 and '08 and trying to keep our

shareholders informed of that, we were walking through the CAMELS framework and liquidity is a key piece of that, and I think I probably decided to discuss the holding company liquidity in this presentation.

Q Was that something that you felt should be emphasized, IndyMac's strong liquidity position at the end of 2006 -- I'm sorry -- 2007?

A Yeah. I mean, I think that, in particular, the bank liquidity position was -- was very strong and I thought that was something that -- that definitely should be interested, you know, that shareholders would be interested in.

The holding company position and the internal policy that we had here was -- was a belt and suspenders position because we had the right to really move the negative cash flow of the holding company almost to zero in the event of a crisis period.

Q I'm sorry. Move the negative cash flow?

A Well, in other words, there was really two big payments coming out of the holding company, the preferred, which we had the contractual right to defer for up to five years the payments on those, and we could obviously eliminate our common dividend and both of which we did, so that we dramatically reduced the holding company's need to hold cash at this level.

Q Okay. Well, --
A In other words, two times zero is zero.
Q Right. I can see your math there. In terms of the debt obligations, the -- what's listed here is $441 million of 30-year trust preferred securities with quarterly interest payments of $7.3 million.
Did you have an understanding as to the time periods in which these quarterly interest payments were made?
A In terms of the exact date that they were paid?
Q Well, were they all paid on a specific date?
A I -- I don't recall specifically when they were paid.
Q Do you have an understanding as to whether these trust preferred securities were paid in a monthly, quarterly, depending on when the trust preferred securities were issued?
A I -- I'm not -- I'm not sure.
Q Okay. And, well, the first bullet point in the shaded area on Page 5 of this Earnings Presentation reads, "Holding company has enough cash to pay trust preferred quarterly interest payments for over two years without any dividends from the bank or additional debt or equity raised."
Do you have an understanding as to whether there was any correlation with this two years to the IndyMac minimum liquidity requirement?
A No. I think we were just dividing 64 million by

7.3 and coming up with that bullet point, as I recall.
Q Okay. And the bullet point under that reads, "Holding company has the right to defer dividend payments on trust preferred for up to five years. We do not expect to have to exercise this right."
Was there any discussion when this presentation was prepared on IndyMac's expectation to exercise the right to defer dividend payments on these trust preferred shares?
A No, not at this point in time.
Q When did that -- did that discussion arise later?
A I mean, at some point it did because we did make the decision to recommend to the Board to do that, but it was relatively late, as I recall, you know, you know, very close to when we filed our financials for the first quarter.
Q Okay. Do you have an understanding as to IndyMac Bank having its own capital adequacy policy?
A You mean as a regulated financial institution?
Q Yes, the thrift.
A Yes, we had an internal policy that we wanted to keep seven percent Tier 1 core capital and 11 percent total risk-based capital and that internal policy was one that we had informally agreed with with our regulators to keep.
Q Okay. And so if IndyMac -- if the bank fell below 11 percent on its risk-based capital ratios, did that trigger any sort of heightened monitoring of that ratio?

A Well, it would have -- it would have been a signal to -- to us that we needed to -- to work as best we could to raise our capital ratios back above those levels, but it really -- the seven and 11, the purpose of that internal policy was -- it was designed as a cushion between the well-capitalized five and 10 and our internal policy.
Q And did you get notification whenever IndyMac Bank fell below the 11 percent, seven and 11 percent requirements?
A I believe there was a policy notification and I think the first time that I can recall that that occurred was when we recorded that loss in the fourth quarter and we fell below the -- the one or both of those ratios and -- and I started to receive policy notifications as did the Board.
(SEC Exhibit No. 556 was referred to.)
BY MR. CHUNG:
Q Let me hand to you what's previously been marked as Exhibit 556.
Exhibit 556 is an e-mail, dated February 13th, 2008, from David Hayes to Ruthann Melbourne with a copy to Michael Perry and others. The subject of the e-mail is Board ERM Policy Violations - Capital Adequacy.
(The witness reviewed the document.)
BY MR. CHUNG:
Q All right. Mr. Perry, do you recognize Exhibit

556?
A I do.
Q Is this an e-mail that you received at IndyMac on or about February 13th, 2008?
A I believe so.
Q Okay. When you received this notice of the -- the violation of the Board ERM Capital Adequacy Policy, what did you do, if anything?
A Well, I didn't do anything because we were doing everything we possibly could to bolster our capital ratios at this point. It was really, you know, yes, it's an important internal policy because it's important for us to do our very best to maintain that cushion between the seven and 11 internal policy and a well-capitalized limit and we were taking all the steps that we possibly could take to get back above that and avoid having an internal policy violation.
Q Okay. But -- so were any additional monitoring -- was there any additional monitoring implemented as a result of this Notice of Exception to the Board ERM Policy?
A I mean, there -- there -- I mean, that really speaks for itself. We -- we were below our cushion level but above the well-capitalized limits and we needed to do everything we could if it was within our power to get back above those internal policy limits and -- and get our cushion back.

Q Right. Well, I was just wondering whether, as a result of this notification, you received more frequent updates on forecasts or --

A Well, I was -- I was already doing that --

MS. VETA: Let him finish his question --

THE WITNESS: I'm sorry.

MS. VETA: -- first before you answer.

BY MR. CHUNG:

Q Well, that's the substance of my question. Were you doing anything differently as a result of this notification in terms of monitoring IndyMac's capital ratios?

A No. I mean, this -- this notification is really more form, I think you can see, than substance. We all knew that the capital ratios had dipped below the seven/11, including the Board, including our regulators, and we were going to do everything in our power to get back above those.

Q Looking at the -- I'm sorry -- the memo from Mr. Hayes, which is the second page of Exhibit 556, and there's a reference here to a "trust preferred debt as a percentage of Tier 1 capital limits."

Do you have an understanding as to what that refers to?

A I think that there was -- I'm not sure exactly, but I think that there might have been a rating agency view with financial institutions that -- that preferred stock should

only be a certain percentage of total capital and so that's what they -- and so that's why we had set that limit, but I don't remember specifically if it triggered anything.

Q Well, do you know if this information was passed on to the rating agencies?

A I don't know.

Q What's the double leverage ratio under Holding Company Stand-Alone Ratios?

A Probably at one time I knew how to explain that and I -- I would be -- we'd have to sit here for awhile and have me try to figure that out. It has something to do with leverage at the holding company and leverage at the bank.

Q Well, at some point in early 2008, did you and others at IndyMac discuss raising additional capital through the direct stock purchase plan?

A During which time period? I'm sorry.

Q In early 2008, January-February.

A We actually were -- were raising capital through the direct stock purchase plan, as I recall, in the second half of '07, also, and as my recollection is in the Fall, maybe September-October or October-November, we raised, you know, maybe a 130 million, 120 million, in capital through the direct stock purchase plan. We had raised hundreds of millions of dollars years ago with that program. It had its own, you know, shelf registration and approval with the Board

and we were -- we were utilizing it, yes, in the first quarter to raise capital and -- and in the second quarter of '08.

Q What's your understanding -- what was your under-standing at the time, in early 2008, as to how the DSPP, the direct stock purchase plan, functioned? Just the mechanics of it?

A Well, my understanding is that there -- that you went out to a select group, you had an administrator, third party administrator, I think maybe ours might have been Mellon, at one point it might have been Bank of New York and now it's Bank of New York/Mellon because they merged, but -- and maybe at one point it was BearStearns in earlier years, but that administrator went out and found individual institutional investors who would commit to buy the stock at -- I think it was like a one or two percent discount to the market price of the stock and there are a lot of complicated mechanics around how that exactly occurred and was raised, but I don't recall the specific details behind that.

Q Well, do you have an understanding as to any limitations on the number of shares that the DSPP could issue, you know, based on things like trading volume of IndyMac common stock, anything like that?

A I mean, my recollection was that, you know, you

were -- that the -- the program -- these institutional investors really weren't owning the stock. They were shorting it on a daily basis during their investment period to earn the arbitrage of the one percent discount and so, in essence, it was new supply coming out into the market without a commensurate real demand, so that it put some pressure on your stock and so that there generally was a recommendation, no -- no rule, as I recall, but a recommendation that you should only put out X percent during -- during Y period of time or it could put even more pressure on your stock.

Q Well, when you say these institutional investors were arbitraging these shares issues through the DSPP, do you have an understanding as to whether they were immediately -- whether they were holding these shares or -- or selling them?

A My understanding was that they were not holding the shares for any period of time, other than to -- and that they were shorting the shares an equal -- roughly an equal amount or trying to. I mean, they may not have perfectly succeeded. So that they were earning the arbitrage discount.

Q So these weren't long-term investors?

A That's my understanding.

Q How did you get that understanding?

A Because at one point -- because I vaguely remember how the program works.

Q Well, who told you how the program works?

A Our team did and, you know, we had, as I said, had used it many years ago when we were a REIT and raised, I want to say, a half a billion dollars of capital through it.

Q When you say your team, are you referring to a specific department or person?

A Well, I think Pam Marsh was administering it during this time period.

Q And she would have been the one that told you that the purchasers of DSPP shares were institutional investors who were arbitraging the --

A Well, I don't -- I don't --

MS. VETA: Let him finish his question and then you can answer it. Otherwise, the court reporter can't get it down.

THE WITNESS: I'm sorry.

MR. CHUNG: Well, I had finished the question. I don't know if you want me to repeat it, but --

THE WITNESS: No. I understand. I don't remember if she told me it, but I had known it for years, you know, prior to that. So someone else may have told me years ago when we first started it, when we were a real estate investment trust.

BY MR. CHUNG:

Q And so in this 2008 time period, someone told you that your -- you know, something to the effect that led you

to believe that your understanding from earlier time periods had changed?

A No.

MS. VETA: Mr. Chung, when you get to a good place, could we take a break?

MR. CHUNG: Sure. Why don't we take a break now? It's 3:34. We're off the record.

MS. VETA: Thank you.

(A brief recess was taken.)

MR. CHUNG: All right. Why don't we go back on the record? It's 3:39. We are back on the record, and during our break, Mr. Perry, were there any substantive communications between you and the SEC staff?

THE WITNESS: No, there weren't.

BY MR. CHUNG:

Q All right. In terms of the DSPP, do you have an understanding as to whether the discount given to the purchasers of those DSPP shares were -- was public information?

A I don't -- I don't recall specifically.

Q Did you review the prospectus that was filed for the DSPP shares?

A I don't recall ever reviewing that, no.

Q Do you have an understanding as to who was in charge of that?

A You know, as I said, I think Pam Marsh administered that program and she worked with outside counsel, you know, related to that program and it was a Board-approved program.

Q And do you remember there being any disclosure related to the end of 2007 about whether IndyMac anticipated raising any additional dilutive capital in 2008?

A Could you be more specific on -- are you -- are you saying disclosure in our public filings about whether we anticipated raising dilutive capital?

Q Yes, either in the earnings presentation or the Form 10-K.

A I vaguely recall that we had some discussion about the fact that, you know, we may be having to raise dilutive capital, but I can't -- can't pinpoint exactly where.

Q Is that something that you wanted to avoid, to raise dilutive capital?

A It was a double-edged sword, right? You know, you had the -- the -- the bottom line is safety and soundness was ultimately in the best interests of the shareholders and so, you know, during a time period like this, you know, unfortunately, you were going to -- you know, all of us shareholders were going to have to take dilution if we could keep the institution safe and sound.

(SEC Exhibit No. 570 was referred to.)

BY MR. CHUNG:

Q Let me hand to you what's previously been marked as Exhibit 570. It's a little hard to make out on that copy but this is Exhibit 570, and it's an e-mail, dated February 19th, 2008, from Michael Perry to Pam Marsh and others. The subject of the e-mail is Book Value Per Share Sensitivity.

(The witness reviewed the document.)

THE WITNESS: Okay.

BY MR. CHUNG:

Q All right. Mr. Perry, do you recognize Exhibit 570?

A I do.

Q Okay. Is this an e-mail that you sent on or about February 19th, 2008?

A Well, parts of it are mine and it's a chain of e-mails, some of them are mine and some of them are other people's, yes.

Q Okay. But when I ask you about e-mails that you've sent, I'll be referring to the last e-mail in the chain.

A Okay. Yes, yes.

Q Okay. Now, did you at this point in time request the analysis that's attached to this e-mail, the Book Value Per Share Sensitivity Analysis?

A I don't recall whether I requested it or whether they took it upon their own initiative to show me what the

dilution would be as a result of raising capital.

Q Okay. Well, were you considering raising additional shares through the -- additional capital, I should say, through the DSPP at this point in time?

A Around that time period, yes.

Q Okay. And why did you -- who made that decision?

A I don't think it was -- you know, probably ultimately I -- I made that decision that we needed to move forward with this. I think we were looking at all types of alternatives in terms of raising capital to stay well capitalized during this period of time.

Q Okay. But did you as the CEO have the authority to make the decision to -- to raise additional capital through the DSPP or is that -- or is this something that you would need Board approval for?

A We had authorization from the Board to raise capital under the Direct Stock Purchase Plan and as the way it worked is if, you know, I had said, hey, we need to raise this, if we didn't have the Board authorization, Pam and team would go get that.

Q Okay. And --

A But, you know, I am copying the Board here.

Q All right. Well, you say in your e-mail that you've authorized the management team to go forward with up to $50 million in $10 to $15 million increments. How did you

decide on those numbers?

A Well, I think it was just, you know, a judgmental decision based upon, you know, where our capital ratios are, the forecast that we had for the first quarter, and -- and I would say the book value dilution was, you know, far less of a concern for me than -- than the safety and soundness issues.

Q Okay. But did you look at analysis or any analyses of what $50 million in capital through the DSPP would -- would do to IndyMac's capital ratios?

A You know, I probably looked at this in relation to the loss for the quarter. I think, you know, you showed me that forecast, had a $64 million loss, raising 50 million almost covers the loss, right? So if you don't grow the balance sheet, then the capital ratios stay relatively static, all other things being equal.

Q And how did you decide on the $10 to $15 million increments?

A You know, again, that was that issue that I described earlier about, you know, how much you could, you know, get out without having too much impact on the stock price.

Q Okay. Well, just going back to that process whereby money was raised through the DSPP, do you have an understanding as to the time period in which shares would be

offered to purchasers?

A You know, just generally.

Q Well, generally, what was your understanding at the time?

A Well, prior to this period, it was offered in a 12-business-day window was my recollection. The investment was made over 12 days.

Q Prior to the time period of 2008?

A 2007-8. I think we changed the time period somewhat.

Q To what?

A I don't remember specifically what the time period was. Shorter time periods.

Q Okay. Well, what did the time period reflect?

A The investment period.

Q Well, was the 12 days a time period in which the average IndyMac stock, common stock price was calculated?

A For the investment decision, you mean?

Q Yes.

A My understanding is when it was the 12-day period, you took the average of the high and low for each day and if it didn't fall below a certain threshold, they invested one/twelfth that day and, you know, it went day by day by day.

Q Okay.

A We made the time periods smaller because I think there might have been a period where we had the one day and then the other 11 days fell below the threshold so we didn't raise any capital. So we refined the program so that we could effectively raise capital, given the market volatility that was going on out there.

Q And this was in 2008 where that change was made?

A I don't remember if it was 2007 or 2008.

Q And who made the decision to shorten that window?

A I don't remember specifically who, you know, who recommended it, but ultimately I approved that decision.

Q Did you need Board approval for that?

A I -- I wouldn't think so as a technical mechanism. It wasn't capital-raising. It was more of a technical mechanism of how we were raising the capital.

Q Okay. At some point in February of 2008, was a forecast generated that showed IndyMac falling below 10 percent at quarter's end?

A In February of 2008?

Q Yes.

A I'm not sure.

Q Do you have a general recollection as to when you first saw a forecast for the first quarter of 2008 where the risk-based capital ratio fell below 10 percent?

A I don't have -- I don't have a specific

recollection of that, no. I would have to say I saw a forecast at some point where -- where we did fall below.

(SEC Exhibit No. 571 was referred to.)

BY MR. CHUNG:

Q Let me hand to you what's previously been marked as Exhibit 571.

Exhibit 571 is an e-mail, dated February 19th, 2008, from Michael Perry to Scott Keys and others. The subject of the e-mail is Capital and MSR.

(The witness reviewed the document.)

THE WITNESS: Okay.

BY MR. CHUNG:

Q All right. Mr. Perry, do you recognize Exhibit 571?

A I do.

Q Is this an e-mail that you sent on or about February 19th, 2008?

A Yes, it is.

Q Okay. Looking at Mr. Keys's e-mail on the second page, he refers to a discussion between you and -- you and him. Do you remember that discussion?

A No, I don't recall that specific discussion, no.

Q Okay. Well, the second sentence in -- well, why don't I read Mr. Keys's e-mail from the beginning?

It says, "Mike, as you and I discussed, the increase in value of the MSR due to increasing long-term rates is creating pressure on our capital ratios, particularly the risk-based ratio where we have less cushion. As of right now, we appear to be right at or slightly under the 10 percent level, but we are looking at a couple TFR items."

Does this refresh your memory as to when you first became aware that the risk-based capital ratio was being projected at or slightly under the 10 percent level?

A I don't think he's -- he's not saying he's projecting that at the end of the quarter. He's saying as of right that moment, he thinks we're right at the 10 percent level and, you know, given the loan volumes that -- that we do, that we did within a quarter, you know, there probably were many times over the years where we were right at or below that risk-based capital level before a quarter-end until we had sold all our loans.

Q So was this in any way alarming to you?

A Well, the overall issue that we were close to that ratio was -- was definitely concerning to me.

Q Okay. Well, Mr. Keys lists in his e-mail six items which, I guess, the group met to discuss that -- that morning. If you look at Item 5, it says, "We are going to review certain TFR and capital reporting matters that might improve risk-based capital somewhat."

What's your understanding as to what those items were?

A You know, I mean, you know, I read -- read this memo, you know, recently and I don't recall focusing on that particular issue. I just kind of recall reading his memo, not having concern with anything in it, and, you know, pointing out that, you know, let's move forward with those issues and, you know, we need to raise more capital because we need to, you know, do our very best to be well capitalized at 3/31.

Q Well, Mr. Keys writes in Item 6 that "with the recent stock price increase, we believe that there may be some opportunity to access the DSPP for $20 to $30 million by quarter end. We will know much more on this in a few days and make a recommendation."

We saw the earlier e-mail in Exhibit 570 where he gave authorization to raise $50 million. Do you recall a discussion with Mr. Keys about his $20 to $30 million figure?

A Yeah. I mean, I don't know that really -- again, you know, I didn't really focus on the specifics of his e-mail, other than I knew that they were all focused on doing everything that they could that was appropriate so that we could stay well capitalized at the end of the quarter and I was encouraging them to do that and also giving authorization

to raise -- to try to raise 50 million of capital.

Q Okay. Well, looking at your e-mail on the first page of Exhibit 571, near the middle of that first paragraph, it says, "In addition, as we discussed, I think we should be prepared to contribute $25 to $50 million of holding company cash to the bank just before quarter end if we need to do so." Do you remember that discussion with Mr. Keys?

A You know, you know, as I said, I communicated a lot by e-mail. So, you know, it was kind of redundant probably to talk to him about it if I sent it out in an e-mail to him and a number of other managers and the Board. So I don't remember -- I'm just saying be prepared to do that. I don't want to be -- you know, I want to -- I don't want to be close. I want to be -- if we have the capital, the holding company liquidity policy to me was relatively lower level policy versus a regulatory requirement to be well capitalized, especially given the fact that I could eliminate the trust preferred dividend and the common stock dividend and have almost no cash requirement at the holding company.

Q Well, if I understand correctly, suspending the preferred and trust preferred dividends helps your liquidity position going forward, but does it have any impact as of the day you -- you suspend those dividends?

A Well, mathematically, the policy would change, too m, at that point in time because you would have no

requirement. Your quarterly dividends, you know, times however many quarters -- I don't remember what the policy specifically was, but it's times zero now. Four quarters of zero.

Q Right. I'm not talking about the policy. I just mean the impacts on IndyMac's capital ratios on the day that it decides to suspend the preferred or trust preferred dividends. Those -- the impact is prospective as opposed to immediate.

A The impact on -- on which issue?

Q The capital ratios.

A Well, it depends on whether you contributed the capital down and then changed the policy, right, right, or you decided to violate the policy and contribute the capital down anyways. You see what I'm saying?

Q No, not really.

MS. VETA: Let Mr. Chung try asking his question again.

MR. CHUNG: Right.

BY MR. CHUNG:

Q A decision to suspend a dividend refers to a future dividend payment. Let's say this is December 16th, right? If you decide on this day to suspend future dividends, that has no bearing or impact on what your capital ratios are on December 16th, 2008. Do you see what I'm saying?

A You're absolutely correct. I agree with that. What I'm saying is the -- the bearing it has is that it frees up the liquidity that you do have at the holding company to contribute as capital down to the bank at that point in time.

Q Because otherwise that money would have been set aside for future dividend payments? Is that what you're saying?

A If you didn't -- unless you decided you were going to violate the policy and I absolutely would have violated an internal policy versus staying well capitalized.

Q Okay. Previous to 2008, generally, can you tell me how decisions were made in terms of how much money would be contributed from the holding company to the bank?

A I mean, the -- the capital that was contributed from the holding company to the bank was a relatively administrative matter because we were growing, you know. We -- we were growing over the years and so capital was constantly being contributed from the holding company to the bank and, you know, I had the authority to do that.

We contributed that and I delegated that authority to our CFO and to his unit and they were contributing capital on a regular basis that we had raised externally either from equity or debt offerings down to the bank to maintain our well-capitalized status which was a Board policy to do, and then we communicated those capital contributions to the Board

on a quarterly basis.

There was a standard report in the Board package called the Intercompany Accounting Transactions and it showed the capital contributions from the holding company to the bank.

Q Okay. But just procedurally, how were decisions made in terms of setting the amount of the capital contribution from the Bancorp to the bank prior to January of 2008?

A You know, I don't -- I don't -- it wasn't -- you know, we had such a cushion, we were above the internal policy cushion, that it wasn't something that I focused on and it was really, as I said, more an administrative manager, our Financial and Treasury people handled as they were tracking the growth in our balance sheet over the years.

Q Okay. So did you have any involvement in that decision-making process then?

A You know, as I recall, I saw it as part of the Intercompany Transaction Report on the quarterly basis, also, you know, like the other directors did. It wasn't -- as I said, it was, you know, an administrative matter. The capital-raising had been approved -- at the holding company had been approved by the Board. There was no purpose to raise capital, other than to contribute it to the bank. We didn't have another subsidiary that, you know, had -- you

know, that -- we had no other subsidiary that would have needed capital.

Q Well, do you know if that was disclosed in the DSPP Registration Statements or prospectus that money raised through that program would be contributed from the holding company to the bank?

A I'm not -- I'm not sure what -- what was disclosed and I would expect that there would be pretty fulsome language about what the proceeds would be used for.

Q And again, just going to the -- going through the procedural steps, you know, that occur typically on the transfers of capital from the holding company to the bank, would you generally have to sign a form authorizing the contribution?

A That's a good question. I don't recall specifically that, you know, that issue. As I said, the contribution of capital from the holding company to the bank was a very perfunctory activity. The balance sheet was growing. The Board had approved capital and debt being raised into the holding company. The only place it could go was to the -- to the bank who was growing and we had a Board-approved policy that required us to maintain the bank at a well-capitalized level and then after the fact each quarter, we were communicating with the Board what capital we had contributed from the holding company to the bank.

Q All right. But I'm assuming that at some point someone would have to look at the amount raised through the DSPP and whatever other avenues IndyMac Bancorp had to raise capital and looked at the cash position at the holding company and then make a decision on how much of that capital would be moved and so I'm just wondering what your role, if any, there was in that decision-making process.

A Well, you know, as we said, we had that -- the control was we had that holding company liquidity policy and if they -- we had the liquidity that exceeded that policy and they needed to -- the capital down at the bank in order to -- as a result of growth in order to be well capitalized, they contributed that capital down, and -- and that process, as long as we weren't butting up against the holding company liquidity policy, was a perfunctory process that occurred regularly on a quarterly -- you know, quarterly basis and was communicated to the Board in the Intercompany Transaction Report.

Q I -- I just want to know what involvement you had in that process.

A Well, as I said, I don't recall specifically if they had me sign a form that says Mike, you're authorizing. I mean, I recall that I might have signed a form that you would say we're contributing 50 million, Mike, will you approve this, you need to approve this transaction. We

need -- we need to contribute 50 million in capital from the holding company to the bank. So -- but I don't know if that occurred every time.

Q Okay. Well, do you remember reviewing any documents before you would authorize a contribution from the holding company to the bank?

A I think sometimes I would, you know, and sometimes it would be more of a verbal discussion, Mike, the balance sheet's grown by X, you know, we've got -- we raised all this capital at the Board -- at the holding company level, we're above our liquidity policy, you know, here, you know, here's the capital that we need to contribute to the bank in order to be at our seven and 11 and have our proper cushion.

Q Okay. So who would you generally review these types of analyses with?

A You know, it probably would have been the CFO or one of his, you know, key lieutenants, generally speaking.

Q Who would this key lieutenant be?

A Might -- might have been the Chief Accounting Officer Greg Sosnovich. It might have been Francisco Nebot who was the -- who was monitoring the holding company as treasurer, and it might have been Pam Marsh or Brian Carter.

Q Would -- would the CFO come to you with a recommendation or is this something that would be decided by, you know, you and the CFO in these meetings?

MS. VETA: I think, Mr. Chung, your question assumes some facts that aren't consistent with his testimony.

MR. CHUNG: Well, --

MS. VETA: I mean, I think he's told you what happened several times now.

MR. CHUNG: Well, --

MS. VETA: Now you've sort of in your last question kind of set it out as, okay, this is what the procedure was in these meetings. I don't think that's what his testimony was.

MR. CHUNG: I believe Mr. Perry testified that he would occasionally review analyses --

MS. VETA: Okay.

MR. CHUNG: -- prior to approving.

THE WITNESS: That's my recollection.

BY MR. CHUNG:

Q Okay. And what would these analyses show?

A You know, it's very vague recollection. Might have shown the holding company liquidity policy and that we were above it after the capital contribution, vaguely recall maybe seeing that sometimes. It might have shown their projection of the capital ratio at the bank at the end of the quarter, but -- but again, I would say relatively vague and, you know, the overall writing point you should take away is that capital contributions from the holding company to the bank

were a perfunctory matter that occurred all the time and were a result of our -- you know, we weren't an institution where the assets were staying level for years and that you -- you raised capital and, you know, it was like a big issue that you were contributing capital from the holding company to the bank.

The holding company only had one primary subsidiary, the bank. The only purpose for raising capital at the holding company was to either pay dividends at the holding company or contribute the capital to the bank, and -- and so -- and the Board approved all of our capital-raising at the holding company, whether it was through additional public offerings, debt offerings, or the Direct Stock Purchase Plan. They authorized all of this and then they saw the capital contributions that were made from the bank to the holding company to the bank on a quarterly basis in their board package.

Q Okay. Was -- was there a reason to contribute money from the holding company to the bank, other than to bolster the bank's capital ratios?

A I mean not -- not that -- I'm trying to think of a reason you would do that. No, it -- I can't think of one.

Q Okay. And prior to the decision being made to contribute capital from the holding company to the bank, would you generally look at analyses that would show the

impact of various dollar amount contributions from the holding company to the bank?

A As I said, sometimes I did and because it was so perfunctory sometimes, I didn't.

Q Okay. Well, in the times that it was perfunctory, did you have an understanding that a contribution was being made to bolster the bank's capital ratios?

A I'm not sure that every time we contributed capital from the holding company to the bank, I had an understanding of that ahead of time. I'm not -- I'm not sure. It was literally such a perfunctory activity that it -- it -- if I could have completely delegated it to the treasurer and the CFO, I would have and -- and I'm not sure that I didn't. I just don't recall.

Q Okay. Going back to your e-mail, Exhibit 571, looking at the second part of the first paragraph, you've written here, "I believe we should be okay, stay above 10 percent this quarter and from there we get more balance sheet shrinkage and less of a loss as we don't have the severance and office closing costs, but the total risk-based capital was closer than I would like. We always knew from our plan that that Q1 '08 would be the most challenging on the capital front. Please keep me very informed. Thanks, Mike."

What were you referring to when you say -- when you've written here that first quarter of 2008 would be the

most challenging on the capital front?

A Well, just in looking at the forecasts, that was our low point in the -- in all the forecasts that I saw in terms of our capital ratios.

Q And when you say wrote "keep me very informed," were there any changes on the number or quality of the updates that you received after February 19th, 2008?

A I think you know the record here. Lots of --

MS. VETA: Just answer Mr. Chung's question.

THE WITNESS: -- updates.

MS. VETA: Just answer Mr. Chung's question.

THE WITNESS: Lots of changes and updates from here through when we filed our financials in May.

BY MR. CHUNG:

Q Well, what were the changes?

A I don't remember specifically. I'd be happy to -- if you'd show me point by point, I'd be happy to show -- show you them, but there were lots of changes in terms of the forecasts from that point forward.

Q Well, I'm just asking for your recollection at this point. I mean, obviously, we'll go through a lot of documents during the course of today and tomorrow, but I'm asking what your general recollection is to the changes on the updates that you received after February 19th, 2008.

A My general recollection would be that they were

negative to the forecast.

BY MS. ESON:

Q I think he's just asking you did you meet with people more often, did you require a weekly update, or how was the form of the information conveyed to you, isn't that right?

A Yeah, yeah. I'm sorry. Then I misunderstood. Definitely in ad hoc meetings on as promptly as anything changed, I was asking to be kept up to date and so I would say that generally, as I said earlier, weekly or every other week, I was getting updates on the forecasts for the first quarter, our capital ratios, our balance sheet size, a lot of different factors.

BY MR. CHUNG:

Q Do you recall getting updated as frequently as two to three times a week on the capital ratios?

A Some weeks where they were, you know, really working on refining it, it'd be like, okay, we've got this forecast and then now we're going to go and it's reflective of these issues and now we've got -- then we're going to go dig into these issues and we'll be back to you and it's going to probably change somewhat and so I vaguely recall, you know, some weeks where I might have got two or three in a week.

Q Okay. And the time that you would receive a paper

copy of the forecasts, what would you generally do with those?

A I would widely distribute them and -- and to the -- to the Executive Committee, to the Board, to regulators, to auditors, and -- and, you know, that's just part and parcel of my practice of keeping everybody well informed during this crisis period.

Q Well, how would you disseminate a paper copy of a forecast?

A Usually I'd ask them, if they gave me a paper copy, send that to me electronically so I can send it on, you know, as an attachment.

Q But were there instances when you didn't do that?

A I mean, it would -- it would have been rare. It might have been where they send me -- gave me something on Monday and said, hey, this is preliminary, thought you'd want to see it, we're not -- you know, we're not comfortable with it yet. So, you know, if they gave me some -- some caveat like that, you know, that obviously wouldn't be something that I would be disseminating, unless there was something so materially different with it, then I might want to highlight that issue and say, hey, this is very crude, but I'm worried about this issue. That would be the only time I would -- I would send something out where they were -- with a big caveat like that.

Q Okay. And going back to Exhibit 571, in the second paragraph of your e-mail, you make reference to "a few regulatory requirements impacting IndyMac's capital ratios."

MS. VETA: I'm sorry, Mr. Chung. Where are you?

MR. CHUNG: Second paragraph, first page.

MS. VETA: I just don't see the reference to a few regulatory issues.

BY MR. CHUNG:

Q Well, are you familiar, Mr. Perry, with surfacing asset cap on IndyMac's capital ratios?

A Yeah. Yes, generally, I am.

Q Okay. And there's a discussion of that in this e-mail?

A Yes.

Q Okay. And the excess general loan loss reserve cap, are you familiar with that issue?

A Yes, generally, I am.

Q Okay. Was IndyMac -- well, and there's a third issue, a double risk weighting of subprime loans. Are you familiar with that regulatory requirement at IndyMac?

A Yes. Yes, I am.

Q And what is your understanding of that requirement, specifically the double risk weighting of subprime loans?

A You know, my recollection of that is that that was a requirement in a regulation related to institutions that

were deemed as subprime -- subprime issuers of -- of securities, I think, and -- and it required you to have special risk management procedures and potentially a higher capital requirement against subprime loans on your balance sheet.

Q Well, are you aware of a specific requirement applying to IndyMac specifically as opposed to a general requirement applying to subprime issuers?

A Well, as part of that regulation, we had informally agreed with the OTS to double risk weight subprime loans and I think initially it was all subprime loans and then it became just the loans held for investment.

Q Okay. So was your -- did you have an understanding as to whether IndyMac, in order to maintain a well-capitalized status as a thrift, whether IndyMac was required to stay above 10 percent on its risk-based capital ratio after double risk weighting subprime loans?

A It's a great question, and I didn't have -- I didn't focus on that issue as CEO. No, I didn't have an understanding.

Q Well, in your e-mail, you reference discussions with the OTS about --

A Can I --

MS. VETA: Let him -- go ahead.

THE WITNESS: I would just like to correct what I

just said because you're just going to pound that one back at me.

I mean, in my mind I did not have an understanding of that, but obviously in -- in people alerting me to it, it must have because I wouldn't have been raising it as an issue to -- to deduct here. Do you see what I'm saying? So -- so, you know, I don't know if that was -- I don't know for sure even in raising it here today whether we would have -- they would have said we weren't well capitalized -- you know, all other things being equal and we -- and the only thing that was causing us to not be well capitalized was the double risk weighting, whether that really meant that we weren't well capitalized or not, I couldn't tell you sitting here today whether that's the case.

I can just tell you that my team pointed it out as one of the issues that was affecting our risk-based capital ratio and that's why I was raising it.

BY MR. CHUNG:

Q When you say your team, who are you referring to?

A The -- the team in our Finance and Financial Planning area, in Accounting and Finance and Financial Planning. Scott Keys, Pam Marsh, that group.

Q So someone told you that the double risk weighting penalty, if you will, to use your language here, has a 31 basis point impact on IndyMac, its capital ratios?

A That's correct.

Q Did you ever see any documents from the OTS referencing that double risk weighting requirement for subprime loans?

A It's possible. I -- I don't recall specifically seeing a document with that. It's possible.

Q Now, is this e-mail, February -- the February 19th, 2008, e-mail, the first instance in which you had discussions about or where you raised this issue about requesting relief from the double risk weighting of subprime loans?

A Well, I don't -- I don't think I ever -- I mean, I didn't read this all the way through and I can, but I don't think I'm requesting relief here. I'm just pointing out that these factors are having an artificial effect on our capital ratios versus other regulated financial institutions.

Q Okay. Well, let me rephrase the question. At what point was this issue raised to you prior to you sending this e-mail about the issue being the penalty, if you will, from the double risk weighting subprime loans?

A I don't recall specifically when -- when it was raised with me. Obviously, you know, we were focused on this total risk-based capital ratio, you know, in the first quarter because that was the ratio that was the closest to the well-capitalized minimum, and -- and so, you know, at some point our CFO and others brought this issue to my

attention and laid out the components that were having the big impact on us with respect to this capital ratio.

Q Okay. And at some point did you discuss with your team whether IndyMac should request relief from the double risk weighting of subprime loans from the OTS?

A Yeah. I vaguely recall that we had discussions about that and I, you know, clearly followed through with some -- some memos to the OTS requesting that -- those waivers.

Q Okay. What generally do you recall about those discussions internally at IndyMac about requesting that relief?

A You know, I mean, nothing more than, you know, I wouldn't have requested relief from something that I didn't think was a legitimate request, you know. I mean, from my perspective, I wouldn't be asking them to do something that I didn't think was appropriate and so, you know, I mean, and I don't remember discussing that particular issue with others, but in my mind, you know, I mean that's what I'd -- that was what I was focused on.

I felt when you looked at these, they were not really fair or appropriate deductions and so I felt comfortable after my team identified them with me raising them with the OTS.

Q So are you referring to all three as being

reasonable in terms of requesting relief, the MSR cap, the loan loss reserve cap, and the double risk weighting of subprime loans?

A I think in particular that -- it's ironic, but I think in particular the servicing cap and the loan loss reserve one both had the strongest legitimacy and -- and the subprime one also did, too, but to -- to a little lesser extent.

Q Well, why did you think relief from double risk weighting of subprime loans was a legitimate request?

A Well, we were no longer a subprime issuer and no longer met the definition for having all of those expanded requirements as a subprime issuer.

Q Okay. Well, what -- what is your -- what was your understanding as -- as to the purpose behind the requirement that IndyMac double risk weight subprime loans?

A Well, I think that -- I think that's more spelled out in that regulation. You'd have to -- I mean, you'd have to read that regulation and I think it spells out clearly what the purpose is.

Q Well, what's -- what's your understanding, though?

A Well, my understanding is that it was designed so that institutions that were actively marketing subprime loans and had an active and ongoing program of originating subprime loans would have stronger risk management practices and

policies and procedures and capital requirements in place. Those institutions that weren't active originators didn't have to have those procedures in place and we were at this point in time not an originator of subprime loans.

Q Okay. Well, do you know if that double risk weighting requirement was based, at least in part, in a belief that subprime loans were inherently riskier than prime or Alt-A loans?

A No doubt, I agree with that.

(SEC Exhibit No. 538 was referred to.)

BY MR. CHUNG:

Q Let me hand to you what's previously been marked as Exhibit 538.

Exhibit 538 is a fax cover sheet from the OTS, dated June 20, 2008, addressed to Michael Perry --

A 2008.

Q I'm sorry. June 20, 2000, and attached to the fax cover sheet is an Office of Thrift Supervision Approval of Acquisition of a Federal Savings Association and Rebuttal of Control, also dated June 20, 2000, and the document is Numbered 635116 through 651 -- 635119.

Mr. Perry, why don't you look through this document and let me know if you've seen this before?

(The witness reviewed the document.)

THE WITNESS: Yeah. I see the document.

BY MR. CHUNG:

Q And do you recognize it?

A I vaguely recall receiving it back in 2000, yes.

Q Do you have an understanding as to whether this Approval of Acquisition of a Federal Savings Association and Rebuttal of Control was a publicly-available document?

A I don't recall.

Q Do you recognize the handwriting on the first page of Exhibit 538?

A I don't.

Q Okay. If you could turn to Page 3 of the cover, Paragraph 11 reads, "Savings associations must maintain a well-capitalized risk-based capital position based on an alternate risk-based calculation described herein. The risk-based capital ratio must be calculated using OTS-prescribed rules, except all subprime loans, whether held for investment or held for sale, must be risk weighted at double the risk weight prescribed by 12 CFR Part 567." Do you see that?

A I do.

Q Do you recall being aware in the June 2000 time frame about that requirement?

A In June 2000, yes.

Q Okay. And I think you earlier testified that at

some point only loans held for sale that were aged a certain number of days will be included in that risk weighting?

A Only loans held for sale that were aged over a certain number of days or loans held for investment.

Q Okay.

A That was a modification to this.

Q Do you recall when that modification was implemented?

A I -- I don't recall specifically, no.

Q Do you recall who asked the OTS for that modification?

A I don't recall specifically who asked for that modification.

Q Do you have an understanding as to who Richard Riccobono, R-i-c-c-o-b-o-n-o, is?

A Other than just his title here and he's got a distinctive name, no.

Q Did you have an understanding that the deputy director is someone in the Washington office of the OTS?

A Yes, generally speaking, yes.

Q And did you have any understanding as to the level of the OTS in terms of seniority? Who at the OTS would have the authority to modify IndyMac's requirement that it double risk weight certain subprime loans?

A No, I did not.

Q Do you have an understanding as to who approved the earlier modification on loans held for sale aged more than a certain number of days?

A I might have at that time, but I don't recall now.

Q Okay. Do you recall generally whether anyone at IndyMac formally or informally requested the OTS for a waiver on the double risk weighting of subprime loans?

A Excuse me?

Q Do you recall anyone at IndyMac, either formally or informally requesting that the OTS remove the requirement that IndyMac double risk weight certain subprime loans?

A This was -- this was in -- you're talking about in the first quarter of 2008 now?

Q Yes.

A During that kind of time -- time period?

Q Correct.

A Well, I recall myself writing a memo laying out the three issues that were affecting our total risk-based capital ratios and requesting a waiver on the servicing cap.

Q Okay. Before that, do you recall anyone at IndyMac making a request to anyone at any level at the OTS?

A And we're not talking about the first change of the subprime? You're talking about waiving it all -- all together?

Q Correct. In the first quarter of 2008?

A I don't recall anyone discussing that, no.

(SEC Exhibit No. 572 was referred to.)

BY MR. CHUNG:

Q Let me hand to you what's previously been marked as Exhibit 572.

Exhibit 572 is an e-mail, dated February 20, 2008, from Ruthann Melbourne to Michael Perry and others. The subject of the e-mail is Regulation Regarding Servicing Asset Limits.

(The witness reviewed the document.)

THE WITNESS: I see it.

BY MR. CHUNG:

Q All right. Do you have a memory of this Exhibit 572?

A I do have a vague memory of this, yes.

Q And what do you remember about this e-mail?

A This, you know, was one of the, you know, numerous updates that -- that I received during this time period regarding, you know, various regulatory issues.

Q Okay. Well, in Ms. Melbourne's e-mail at the top of the first page of Exhibit 572, she's written in the P.S. portion, "We'll get you the subprime guidance, as well, but in the meeting today with Scott to discuss the MSR Capital Limit Issue, Dave made it very clear they are not going to

waive the subprime double risk weight requirement." Do you see that?

A I do.

Q Okay. Do you remember being informed of this information in February of 2008?

A Well, I -- I certainly read this e-mail in February 2008. So I don't recall it specifically today, but I do recall reading this e-mail at that time.

Q Do you have an understanding as to who -- who Scott and Dave are in this sentence?

A Probably Scott Keys, our Chief Financial Officer, and Dave being, I think, David Hewes, who was the examiner in charge of our exam in the field from the OTS.

Q Well, and just generally, do you recall any discussions around this time period about the likelihood of the OTS granting IndyMac relief on the double risk weighting of subprime loans?

A You know, my focus was on the servicing cap waiver, that that created the most volatility for us and the greatest risk and was the most important to me. So, you know, I probably read this and go it's fine, but I -- I'm focused on the -- the -- the servicing cap waiver.

Q Well, the -- can you tell me what the impact on interest rates were to IndyMac's capital ratio?

A Well, I know during this time period we produced

some schedules. In fact, we shared them with our regulators that showed our capital ratio because we were up against that servicing cap, showed that total risk-based capital ratio fluctuating up and down based upon the value of the servicing asset and interest rates.

Q And the MSR values are tied to interest rate fluctuations?

A They are, primarily.

(SEC Exhibit No. 592 was referred to.)

Q Let me hand to you what's previously been marked as Exhibit 592.

Exhibit 592 is an e-mail, dated February 20, 2008, from Michael Perry to various persons. The subject of the e-mail is Capital Stress Summary.

Why don't you look through this exhibit and let me know if you recognize it?

(The witness reviewed the document.)

THE WITNESS: Okay.

BY MR. CHUNG:

Q Mr. Perry, do you recognize Exhibit 592?

A I do.

Q Is this an e-mail that you sent on February 20th, 2008?

A I believe it is.

Q Okay. And do you have any memory of this e-mail?

A I do.

Q What do you remember about it, other than what's just written here?

A It's pretty -- it's pretty self- -- it's pretty much what we've just been discussing. I'd be happy to answer a specific question you have regarding it.

Q Well, you've written in this e-mail and the attached schedules show that the estimate at this point in time was that IndyMac is short of well-capitalized on total risk-based capital, in the neighborhood of 9.4 percent. Do you see that?

A I do.

Q And that -- well, let me just ask you what the estimate is, as of February 20, 2008, or the projection for the end of the quarter, March 31st, 2008?

A It's hard to say for sure. I mean, I could venture a guess.

MS. VETA: Don't guess.

BY MR. CHUNG:

Q Well, if your guess is based on practice at IndyMac or your experience there, tell me what your guess is and the basis for it.

A Well, it wouldn't be based on practice because these are brand-new schedules.

Q Okay.

A I guess I would have to say then I'm not sure.

Q Okay. There's a discussion in this e-mail about obtaining relief from the servicing, general reserve and subprime issues.

At this point, did you have an understanding as to whether IndyMac was likely to get relief from any of these three issues?

A Well, I think, as the e-mail notes, that, I mean, I kind of end with if he's negative on the waiver, so, you know, I really didn't have, you know, a strong view about whether they would approve any of these or not.

Q Okay. And given what the estimate was on IndyMac's total risk-based capital ratio at this point in time, was there any discussion about disclosing this estimate to the investors?

A That this -- this estimate here?

Q Yeah.

A No, I don't think so because we were -- I mean, the numbers are moving all over the place at this point. I mean, it was -- you know, one day it was 9.84 and interest rates rose and it was 10.14 the next -- literally the next day. So it was so volatile, given that we were right up against that cap, you know, and -- and I think, you know, we had done a good job in disclosing the impact of what capital ratios

meant and -- and clearly shareholders knew that our capital ratios were deteriorating.

Q How were they aware of that?

A They were deteriorating in actual fact.

Q You mean on a quarter by quarter basis?

A Yes.

Q Okay. But during this time period, was IndyMac raising capital through the DSPP?

A I'm not sure of this specific time frame that we were raising capital through the DSPP, but we were raising capital through the DSPP at some point in the first and second quarters of 2008.

Q Well, did you -- did you consider whether IndyMac should disclose to purchasers of DSPP shares that IndyMac was forecasting that it may not be well capitalized by the end of the first quarter of 2008?

A Well, we weren't -- we were fore -- in certain forecasts, we may not be well capitalized at the end of the first quarter on one -- one ratio. I'm not sure whether that was considered or not in terms of the DSPP disclosure.

Q Well, when you say you're not sure, what -- what do you mean?

A I'm not sure whether they considered disclosing that or not, the -- the group that was administered the Direct Stock Purchase Plan.

Q And again, that group would be Pam Marsh?
A Right.
Q And the CFO?
A Potentially, yes.
Q But you yourself did not consider that?
A I didn't consider it, no. We still had, you know, as I said, the e-mails and a lot of levers to pull between this point and the end of the quarter and in fact we did finish the quarter as a well-capitalized institution.
Q Did you have an understanding as to whether, in order to obtain relief from any of the three issues that you've referenced here in testimony, whether a formal written submission was required to the OTS?
A Well, I did provide them a written submission. I -- I don't know if there's a particular form or format that that should have taken beyond what I provided them.
Q Well, when you say you did provide a written submission, what are you referring to?
A Well, I -- I sent Mr. Dochow an e-mail laying out the facts regarding our risk-based capital and how these three factors were impacting our total risk-based capital and requesting the servicing waiver.
Q So are you saying that you considered an e-mail to be a formal written submission?
A Well, I'm not sure what -- I've never heard the

term "formal written submission."
MS. VETA: Mr. Chung, it's up to you. How late did you plan to go today?
MR. CHUNG: Well, why don't we discuss scheduling off the record? It's 4:48. Let's go off the record.
MS. VETA: Thank you.
(Discussion off the record.)
MR. CHUNG: Let's go back on the record. It's 5 -- I'm sorry -- 4:54, and during our break, Mr. Perry, were there any substantive discussions between you and the SEC staff?
THE WITNESS: No, there were not.
BY MR. CHUNG:
Q All right. Looking again at Exhibit 592, the first page of the schedules, there are three separate scenarios laid out here, Old Numbers, Base, and Scenario 1 Plus 75 Million.
Do you have an understanding as to what those three scenarios refer to?
A Very vaguely.
Q So, well, generally, what's your understanding of those three ratios?
A Well, it looks like the first one was an old forecast, the second one is the new base case forecast, and the third one is one of the scenarios on that new base case

forecast with a $75 million capital raise.
Q Capital raise or capital contribution?
A Yeah. Capital contribution to the -- to the bank.
Q And next to that column, under, I guess, Reference or R-E-F, there are references to Page Numbers. Do you have an understanding as to what documents this is referring to?
A Well, there probably were more pages to this document is -- is my guess.
Q Okay. And then looking at the second and last pages of the schedules, it's entitled First Quarter 2008 Regulatory Capital Scenario Analysis.
Do you have an understanding as to what the Base Case with Adjusted MSR Start Point refers to?
A I think what they're probably saying is with roughly the current MSR valuation.
Q Using interest rates on that day?
A Yeah. On whatever day that they prepared this forecast, yes.
Q And you mentioned the volatility of interest rates at that time. Was there any consensus or estimate on where interest rates would end up on March 31st, 2008?
A I don't think there was a consensus about that, no. I mean, it would have been hard enough predicting our own numbers, let alone a forecast of interest rates.
Q Well, I mean, was this a climate in which interest

rates were rising or decreasing or was it just up and down on a daily basis?
A I -- I don't remember specifically. I -- I know there was some -- it seemed like there was some days in this period that were very volatile, but I can't remember whether they were up or down.
(SEC Exhibit No. 574 was referred to.)
BY MR. CHUNG:
Q Let me hand to you what's previously been marked as Exhibit 574.
And Exhibit 574 is an e-mail, dated February 21st, 2008, from Michael Perry to Darrel Dochow. The subject of the e-mail is Servicing Rights and Their Impact on IMB's Regulatory Capital, Confidential.
(The witness reviewed the document.)
THE WITNESS: Okay.
BY MR. CHUNG:
Q All right. Mr. Perry, do you recognize Exhibit 574?
A I do.
Q Is this an e-mail that you sent on or about February 21st, 2008?
A It is.
Q Okay. And what do you remember about this e-mail,

other than what's written here?
A I mean, -- I mean, I think the e-mail is a very fulsome explanation of what -- what I was requesting from Mr. Dochow.
Q Well, what were you requesting from Mr. Dochow, if you know?
A I was essentially requesting a servicing cap waiver.
Q An MSR cap waiver?
A Yes.
Q Well, if you look on the second page of your e-mail, second-to-the-last paragraph reads, "I will call you tomorrow to discuss the potential waiver which I understand requires a formal submission. Thanks, Mike."
What's -- what was your understanding as to a formal submission requirement to obtain an MSR cap waiver?
A I mean, I see it now and so, you know, I didn't recollect that, but I see it here and it must have been something that our outside regulatory counsel, Alston and Bird, had informed me was required to get that approval.
Q And so a written -- was a formal submission ever made for the MSR cap waiver?
A I -- I don't recall specifically on the overall servicing cap issue. It's possible that on the reverse mortgage servicing where we were discussing that with them as

a subset of this kind of servicing issue that a formal submission was made.
Q During what time period would that --
A Would have been subsequent to this.
Q Subsequent to February 21st, 2008?
A Yes, but I'm not -- I'm not sure. Again, I'm not sure.
Q And what about on the general reserve cap issue, was there a formal submission ever submitted to the OTS for relief from that requirement?
A Not that I -- not that I recall.
Q And what about for the -- for relief on the double risk weighting of subprime loans, was a formal submission ever submitted for that?
A Not that I recall.
Q Did you have an understanding as to whether a formal submission was required to obtain relief from the subprime double risk weighting requirement?
A No, I didn't have an understanding on that.
Q And so you said this e-mail was requesting relief only from the MSR cap limit and not for either the loan loss reserve limit or the double risk weighting of subprime loans?
A That's correct.
Q Did you have any follow-up conversations with Mr. Perry -- I'm sorry -- with Mr. Dochow regarding any of these

waivers subsequent to February 21st, 2008?
A I vaguely recall that we did have some discussions, you know, over the phone or via e-mail, but I can't remember the specifics.
Q Well, your e-mail says you would call tomorrow. I mean, I suppose the 22nd of February. Do you have any memory of making a call on that date?
A No.
Q Well, did at some point IndyMac receive any relief from the OTS on any of the three limits that's referenced in your e-mail?
A My -- my recollection is that we received the waiver on the subprime double risk weighting.
Q Okay. And do you recall when that relief was granted?
A I don't recall the specific data, no. I mean, if you showed me documents, I -- I think it was discussed in one of the Board minutes, that it occurred on the day one of the committee or Board meetings was meeting.
Q Well, can -- do you recall the context in which the relief was granted?
A Very vaguely. I think it was granted over the phone and -- and then widely communicated at IndyMac, both with the Board, with our auditors, with our reg -- with -- with our management team, and then rediscussed with numerous

OTS people who were out in the field and implemented.
Q Okay. Well, we have documents that go through that timeline.
I am now handing to you what --
MR. CHUNG: Well, actually, let's go off the record. It's 5:06 p.m.
(Off the record.)
MR. CHUNG: Okay. We're back on the record. It's 5:11 p.m, and during our break, Mr. Perry, were there any substantive communications between you and the SEC staff?
THE WITNESS: No, there weren't.
MR. CHUNG: All right.
(SEC Exhibit No. 577 was referred to.
BY MR. CHUNG:
Q Well, let me hand to you what's previously been marked as Exhibit 577.
Exhibit 577 is an e-mail, dated February 25th, 2008, from Michael Perry to Christina Hunt-Fuhr and others. The subject of the e-mail is Servicing Rights and their Impact on IMB's Regulatory Capital.
(The witness reviewed the document.)
THE WITNESS: Okay.
BY MR. CHUNG:
Q All right. Mr. Perry, do you recognize Exhibit

577?

A I do.

Q Is this an e-mail that you sent on or about February 25th, 2008?

A It is.

Q Okay. Looking at the second page, lower e-mail, dated February 22nd, 2008, at 10:45 a.m. you've typed in here, I suppose, the -- an e-mail that Mr. Dochow had sent to you in a secured e-mail.

A Yeah. I probably cut it.

Q Cut and paste?

A Cut and pasted it.

Q All right. Well, in Mr. Dochow's e-mail, second paragraph, he's written, "Clearly, capital is thin, notwithstanding the MSR issue, in light of the deteriorated asset quality. The bank has fallen below agreed-upon levels that were established at a time that the asset quality picture was much better. One of the questions that I have is whether there is a ready market for your servicing asset and can some of this asset be sold at a price that you would accept. I also wonder if the holding company can provide additional capital support."

Do you have an understanding as to what Mr. Dochow was referring to in that first sentence that I read, "Clearly, capital is thin, notwithstanding the MSR issue, in light of the deteriorated asset quality?"

A I -- I think that's just regulatory speak for "Mike, we would like more capital."

Q Well, what does the "deteriorated asset quality" refer to?

A I mean just the -- I mean, we're sitting here now in February having, you know, significant losses in the third and the fourth quarter of '07, significant increases in delinquencies and nonperforming loans, huge build-up in credit reserves, loan loss reserves, warranty reserves, mark to market reserves. So, I mean, all -- all of that is what he is referring to.

Q Those reserves refer to asset quality?

A Well, nonperforming assets and -- and as a result, there's reserves that were built up against those assets, yes.

Q And there's also, well, on the first page, a reference to a call that you're supposed to have with Mr. Dochow the following day, February 26th. It says, "I am supposed to talk with him first thing tomorrow," which you've written at the very top of the first page.

A I'm sorry. What was the question?

Q My question is, do you remember having a call with Mr. Dochow the following day, February 26th, 2008?

A I don't recall specifically, you know, having that call. I mean, I probably did, I just don't recall it.

Q You've written, "On to Plan B, if that is the case." What does Plan B refer to?

A Well, sitting here today, I'm not sure exactly what Plan B would be, but Plan B would be no help from the regulators on these three ratios, raise our capital through our Direct Stock Purchase Plan, keep the balance sheet down, try to sell -- sell what assets we can to keep our capital ratios up. You know, that -- that essentially is Plan B.

(SEC Exhibit No. 636 was referred to.)

BY MR. CHUNG:

Q Let me hand to you what's previously been marked as Exhibit 636.

Exhibit 636 are the Minutes of a Regular Meeting of the Enterprise Risk Management Committee of the Board of Directors of IndyMac Bank, FSB, on February 26th, 2008, and the document is Bates-numbered 008224 through 008230.

(The witness reviewed the document.)

THE WITNESS: Okay.

BY MR. CHUNG:

Q All right. Mr. Perry, do you recognize Exhibit 636?

A Just generally as the minutes for this committee.

Q Okay. Looking at Page 4 of these minutes, just before the heading Loss Mitigation Strategic Plan near the bottom, I'll just read the first two paragraphs above that.

It says, "At this point Mr. Perry joined the meeting. Mr. Perry gave an update on his call with the OTS and stated that they rejected our request for an exception on our servicing cap. However, as will be discussed in the full Board meeting, the OTS is agreeing to the subprime risk waiver." Do you see that?

A I do.

Q Okay. Does this refresh your memory as to the call with the OTS?

A Vaguely.

Q Well, as much as you can recall, can you tell me --

A I can't recall the call. I can -- I mean, I see this. It makes sense to me. I know we were having those discussions. I can't -- I can't recall the call.

Q But do you recall generally the OTS agreeing to the subprime risk waiver?

A I saw all the information requesting it. I -- I read these minutes. I saw what people communicated afterwards that they -- you know, that it's widely disseminated, including discussing it with the OTS and, you know, field people and there was some exchanges back and forth, and it was implemented.

Q But I can't recall specifically -- for some reason,

I just can't recall it, I'm sure it occurred, the specific yes, you know, here's the waiver.

Q Well, do you remember anyone else being present when you got the news that the OTS had approved the waiver on the subprime risk waiver issue?

A I don't recall. I mean, I just don't recall the meeting.

Q Do you recall who specifically at the OTS granted that relief?

A Well, I mean, I don't. I don't recall the meeting. I mean, I just -- I mean, I'm sure it was Darrel, based on the communications kind of before, during, and after, I can piece it together, but I can't really say for sure because I just don't have a recollection of this meeting.

Q Did you --

MS. VETA: You keep saying meeting. Do you mean meeting?

THE WITNESS: Well, phone -- phone call or whatever.

BY MR. CHUNG:

Q Okay. Do you -- did you have an understanding as to whether Mr. Dochow had the authority to grant IndyMac relief on the double risk weighting of subprime loans?

A I -- I didn't have a view about that. I -- you know, he was the head of the Western Region of the OTS. I

thought he spoke for the OTS.

Q Because that approval that we saw going back to June 2008 in Exhibit 538 was --

MS. ESON: June 2000.

THE WITNESS: June 2000.

MR. CHUNG: I'm sorry. June 2000.

BY MR. CHUNG:

Q That document, as we saw, was signed by the Deputy Director of the OTS. Do you remember considering whether Mr. -- Mr. Dochow had the authority to waive something that was apparently signed by a Deputy Director of the OTS?

A Well, remember we had another change in that subprime risk weighting in earlier years and I don't recall that change occurring from Washington, D.C. It's possible it could have, but I guess I would be skeptical that it was from Washington, D.C., and not from the region.

So, you know, in my mind, I didn't think of a 2000 document and, you know, at all. I just -- Mr. -- Mr. Dochow apparently -- I mean, I don't remember the meeting or whoever it was gave us the approval to -- to stop double risk weighting subprime.

Q Now, you said you were skeptical that -- that earlier relief was granted by Washington and not the Western Regional official. Why do you -- why do you say that?

A Well, because I think if it -- I would have a

better recollection of that waiver if it came from Washington, D.C., in a formal letter than in a more informal approach which is my assumption and I could be wrong about that, of how the previous waiver came, on the subprime risk weighting.

Q Okay. Have you ever seen any documentation of the relief on the double risk weighting of subprime loans from the OTS?

A The one in 2008?

Q Yes.

A Not that I recall.

Q Did you have an understanding as to the scope of the waiver, that it was all subprime loans or some subset of subprime loans, like in the earlier relief on, you know, HFS --

A Yeah.

Q -- subprime loans?

A I mean, as I said, I -- I -- this is as much as I can recall on this issue, and so I can't -- you know, if I -- I mean, if I can't recall the meeting and the participants, I certainly couldn't recall the scope of -- of the waiver. I just know kind of what occurred before and what occurred after and it all looks like it was done perfectly appropriately in -- in my viewpoint.

Q Well, just to ask a more -- another specific

question. Did you have an understanding as to whether the relief was retroactive?

A I didn't have an understanding of whether it was retroactive or prospective.

Q And you said afterwards, there were discussions with OTS staff about the waiver. Can you tell me what those were?

A Well, just in -- in preparation for this, I recall seeing some -- some e-mails where staff and IndyMac staff were talking about that waiver and how to implement it.

Q OTS staff and IndyMac staff?

A Vaguely.

Q How to implement the waiver?

A Discussing it just generally.

Q Was this more than one e-mail?

A I think it might have just been one brief -- brief piece.

Q Well, other than the e-mail that you're referring to, do you recall any discussions with OTS staff after February 26th, 2008?

A I don't recall them, no.

Q Specifically regarding the waiver and --

A I don't.

Q -- the subprime loans?

A I don't.

Q You don't?
A No.
Q Was there ever any discussion about whether the relief granted by the OTS on subprime risk weighting of loans should be disclosed by IndyMac?
A I'm not sure about that. I mean, I wasn't involved in the -- the detailed, you know, disclosure item related to that in our -- in our SEC filing. So I'm not sure if they had that discussion or not.
Q Well, are you -- did you ever raise that issue?
A There were -- there were -- I don't recall ever raising that issue.
Q Did you consider it?
A I -- I don't think I ever -- I don't think I considered it.
MR. CHUNG: I'm sorry. Did you have a question, counsel?
MS. VETA: I'm just puzzled by the questions when he says he doesn't recall it generally.
MR. CHUNG: Well, a discussion versus personally considering it but not having a discussion about it is the distinction I was making.
THE WITNESS: My -- my viewpoint is, you know, we -- you know, we had a strong team in this area.
BY MR. CHUNG:

Q Which area?
A In finance -- in the financial area and --
Q Okay.
A -- the disclosure area and -- and -- and that our regulatory counsel was involved in this and they would take the appropriate action to implement this -- this waiver.
Q Do you have an understanding generally how the subprime double risk weighting requirement was disclosed in IndyMac's SEC filings prior to 2008?
A You mean at that time?
Q Yes.
A No.
Q Do you have an understanding today?
A I do.
Q And is that based on reviewing the documents?
A Yes.
(SEC Exhibit No. 593 was referred to.)
BY MR. CHUNG:
Q Let me hand to you what's previously been marked as Exhibit 593.
Exhibit 593 is an e-mail, dated February 28th, 2008, from Michael Perry to the IndyMac - Board, among others. The subject of the e-mail is OTS, Confidential.
(The witness reviewed the document.)

THE WITNESS: Okay.
BY MR. CHUNG:
Q All right. Mr. Perry, do you recognize Exhibit 593?
A I do.
Q Did you send this e-mail on or about February 28th, 2008?
A I did.
Q And you mentioned earlier that you reviewed and e-mail referencing a discussion between IndyMac staff and the OTS without a -- about the subprime double risk weighting waiver. Is this the e-mail that you're referring to?
A I believe it is, yes.
Q Okay. So other than this e-mail, are you aware of any other documentation referencing a change in the way IndyMac double risk weighted subprime loans as -- in the form of relief granted by the OTS?
A I'm not, other than we -- we implemented it and filed our thrift report, disclosed it in our public filings, and no one -- you know, and no one from the regulatory body objected to -- to any of that.
Q I'm sorry. What would they have objected to?
A The fact that we were no longer double risk weighting subprime loans in our regulatory capital calculation.

Q I'm not sure that's entirely correct, but, I mean, we can address that later in terms of the chronology of events.
MS. VETA: You're not sure it's correct that no one objected?
MR. CHUNG: No. That it was reported, that it stopped being reported.
THE WITNESS: That's different. My understanding in kind of reviewing this was that they wanted us to continue to report it but that it was no longer required.
BY MR. CHUNG:
Q And what's the basis for that understanding?
A There's some -- some communication or document that -- that showed that or -- or -- I'm not -- I'm not sure exactly.
Q Something from the OTS?
A I'm not -- I'm not sure. That was my recollection.
Q Based on what?
A I'm not sure. That's just my recollection.
Q Okay. I thought you were referring to a document that refreshed your memory.
A I mean -- I mean, we filed our thrift report with those capital ratios and disclosed our total risk-based capital without the double risk weighting and the regulators reviewed not only our thrift report but our public filings

and expressed no concerns about them.
Q I'm sorry. The OTS reviewed IndyMac's public filings for the first quarter of 2008?
A They always did. It's pattern and practice.
Q And who -- who from the OTS would communicate with you about their review of the SEC filings?
A They would call you occasionally, from time to time, and ask you questions about them. That's how you knew that they were reviewing them.
Q Well, when you say they, who are you referring to? What level of --
A Just various levels. Could be the head of the -- the Western Region. It could be Steve Gregovich, the Assistant Director. It could be David Hewes, who was the examiner in charge.
Q Okay. Well, are you aware that IndyMac filed an addendum to its TFR which disclosed what its subprime adjusted capital ratios were for the first quarter of 2008?
A I wasn't aware of that, no.
(SEC Exhibit No. 654 was referred to.)
BY MR. CHUNG:
Q All right. And let me show you one other document before we conclude for the evening.
It's -- this is Exhibit 654, marked as such prior

to today.
Exhibit 654 are the Minutes of the Regular Meeting of the Board of Directors of IndyMac Bancorp, Inc., dated February 26th, 2008.
I don't expect you to read this entire document, but familiarize yourself with it to see if you recognize it.
A Okay.
(The witness reviewed the document.)
BY MR. CHUNG:
Q Do you recognize Exhibit 654?
A I mean, I understand this as the minutes of the meeting on February 26th.
Q Do you recall a discussion of the waiver of the double risk weighting of subprime loans requirement at this meeting?
A No, I don't recall that.
Q Well, if you look on Page 4 of Exhibit 654, under the Executive Session Discussion, the paragraph below the first line, the last sentence of the first two, "Taking Advantage of the OTS's Decision to Remove Double Risk Weighting From Subprime Loans Held by the Company." Do you see that?
A I'm sorry. Where is that at?
Q Right here. The last line of the paragraph that begins, "The purpose of this approximately one-hour add-off

session," the very last sentence there.
A Okay.
Q Do you recall a discussion at this meeting about specifically taking advantage of the OTS's decision to remove double risk weighting of subprime loans held by IndyMac?
A No, I don't.
Q Okay. Did you have an understanding as to the likelihood of IndyMac staying -- or maintaining a well-capitalized risk-based capital ratio in light of the subprime risk waiver?
A Well, I mean, I think you can see in Scott's e-mail that the CFO is saying, Mike, I think we're going to be well capitalized at -- at 3/31. You know, this is as of February 27th, based upon -- based upon that issue.
Q You mean on Exhibit 593, where Mr. Keys has written, "We now felt that it was highly likely that we would be able to maintain well-capitalized status?"
A Correct.
Q Well, do you recall being aware of that at the time or is that just something you're -- you're reading now?
A No. I recall being aware of that at that point in time, yes, just generally, but, you know, things were in fluctuation and, you know, as I said, from about this point on, things continued to slide negatively till, you know, almost we filed our financials in May.

MR. CHUNG: All right. Well, with that, why don't we conclude for the day? Do you understand, Mr. Perry, that you remain under subpoena until tomorrow morning at 9 a.m.?
THE WITNESS: I do.
MR. CHUNG: Okay. It's 5:37. Let's conclude for the day. We're off the record.
THE WITNESS: Okay. Thank you.
(Whereupon, at 5:37 p.m., the examination was adjourned.
* * * * *

REPORTER'S CERTIFICATE

I, Christopher Cutchall, reporter, hereby certify that the foregoing transcript of 221 pages is a complete, true and accurate transcript of the testimony indicated, held on December 16, 2009, at 9:00 a.m. in the matter of: IndyMac Bancorp, Inc.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date: _____

Official Reporter: _____

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PROOFREADER'S CERTIFICATE

In the Matter of: INDYMAC BANCORP, INC.
Witness: Michael W. Perry
File Number: LA-03517-A
Date: Wednesday, December 16, 2009
Location: Los Angeles, California

This is to certify that I, Robert T. Moser (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

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